

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

## **Pennsylvania Special Education Hearing Officer Final Decision and Order**

### **Closed Hearing**

#### **ODR File Number:**

25695-21-22

#### **Child's Name:**

L.M.

#### **Date of Birth:**

[redacted]

#### **Parent:**

[redacted]

#### **Counsel for Parent**

Pro se

#### **Local Education Agency:**

Ephrata Area School District  
Washington Educational Center  
Ephrata, PA 17522

#### **Counsel for LEA**

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#### **Hearing Officer:**

Joy Waters Fleming, Esq.

#### **Date of Decision:**

April 18, 2022

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (Student)<sup>1</sup> is currently [early teenaged], a resident of the District, and currently enrolled by the *pro se* parent (Parent) [redacted] in a home education program. The Student is eligible for special education as a child with Autism and as Speech-Language impaired under the IDEA and is entitled to protection under Section 504 of the Rehabilitation Act.<sup>2</sup>

The Parent's first two complaints resulted in challenges by the District to its sufficiency. The second amended Complaint alleged the District denied the Student a free, appropriate public education (FAPE) under the IDEA and Section 504. The District maintained that its special education programming was appropriate for Student and that no remedy was due. For the following reasons, the claims of the Parent are denied.

### **ISSUES<sup>3</sup>**

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<sup>1</sup> 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).

<sup>2</sup> 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 set forth 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).

<sup>3</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number.

- 1) During the Fall of 2021, did the District deny the Student a free appropriate education (FAPE) through its requirement that the Student wear a mask or face covering?
- 2) Did the District deny Student a FAPE by failing to provide Speech-Language services?
- 3) Did the District deny Student a FAPE by improperly changing the Student's placement?
- 4) Did the District deny Student a FAPE by failing to provide an education in the least restrictive environment?
- 5) Does the hearing officer have the authority to require the District to amend the Student's past education records to change the primary disability category from Other Health Impairment to Autism?
- 6) Did the District discriminate against the Student in violation of Section 504 of the Rehabilitation Act?
- 7) If the District denied Student a FAPE, what if any remedy is appropriate?

## **FINDINGS OF FACT<sup>4</sup>**

### **2019-2020 School Year**

1. During the 2019-2020 school year, the Student was enrolled [redacted] in the District and, through an IEP received monthly speech and language therapy and other services. (S-1)

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<sup>4</sup> The Parties stipulated to the admission of the following exhibits: P-1 P-2,P-3, P-4, P-9 ,P-13, P-14, P-15 ,P-16, P-17, P-18, P-19,P-20, P-21,P-22,P-23 ,P-24,P-25,P-26, P-30. S-1, S-2, S-3, S-4, S-6, S-7, S-10, S-12,S-14, S-15, S-16, S-17, S-18, S-19, S-20, S-21, S-22, S-23, S-24, S-25, S-26, S-27, S-28, S-29, S-30, S-31.

2. In March 2020, the Governor of the Commonwealth of Pennsylvania closed public schools to lessen the spread of the COVID-19 virus.

3. On July 1, 2020, due to the spread of the COVID-19 virus, the Pennsylvania Department of Health (DOH) issued an order requiring universal face coverings in any indoor location where the public was permitted. (S-2)

### **2020-2021 School Year**

4. During the 2020-2021 school year, the Student attended the District [redacted]. (S-1)

5. In September 2020, the Parents requested that the District stop speech-language therapy for the Student because it interfered with social development opportunities. After reviewing the speech goals and progress, the District agreed to discontinue speech services to the Student. (S-7; N.T. 157)

6. On November 17, 2020, the DOH issued an updated order requiring universal face coverings, which required schools to take reasonable steps to enforce the requirement. In response, the District adopted a Health and Safety Plan for the 2020-2021 school year that "students and staff must wear face coverings at all times while in school ... [f]ace covering breaks may occur for up to ten (10) minutes when students are spaced at least six feet apart." (S-3, S-4)

7. The District instituted a process to request an exemption to the face-covering requirement. The District's face covering exemption process required completion of a pre-printed request, contact information for the healthcare provider, and a medical certification that explained the child's

disability and how it limited the ability to wear a face covering in school. (S-6; N.T. 159-161)

8. On May 13, 2021, the DOH extended the face-covering requirement until May 31, 2021. In response, the District decided to follow its Health and Safety Plan, including the face-covering requirement, for the remainder of the school year. (S-5; N.T. 128-129)

9. Although the Student complied with the face-covering requirement throughout most of the 2020-2021 school year, on June 1, 2021, the Student did not wear a face covering and was not permitted to enter the classroom. (P-25; N.T. 21)

10. On June 2, 2021, the Parent emailed the District seeking a written explanation of the exemption policies. That same day the District advised that if non-compliance with the mask requirement occurred, the Student would receive online instruction for that day and the next. (P-25)

### **2021-2022 School Year**

11. During the 2021-2022 school year, the Student attended the District [redacted].

12. On August 31, 2021, DOH issued an order directing that beginning on September 7, 2021, face coverings must be worn by every teacher, student, staff, or visitor to a school unless an exception is applied. The District placed information on its website explaining the application of the DOH order directing face coverings in schools and that it would be flexible in reminding students to wear masks during the first few days but "continued and intentional failure to wear a mask as required under this [DOH] Order will result in disciplinary measures." (P-2, S-12, S-13)

13. On September 4, 2021, the District updated information on its website that explained the multi-step face-covering exemption process. The steps

included: parent completion of a "[District] Face Covering Exemption Form;" a signed medical certification from a licensed physician with a clear diagnosis listed; submission of the completed exemption documentation to the building principal; contact from a District representative to the medical provider; District contact with the parent. (S-12, S-15)

14. On September 6, 2021, the District updated its website in accordance with PDE guidance that "any exemption be in accordance with eligibility under Section 504 of the Rehabilitation Act or IDEA for such medical or mental health condition or disability. School entities should follow their established processes for determining student eligibility under those laws, including any medical documentation that they would normally require." The District further clarified that it would accept parent-signed notes to start the exemption process during the first week of implementation of the Order, recognizing that additional information would be needed from the student's medical provider.

15. On September 7, 2021, the Parent advised the District that Student's wearing a face covering "would either cause a medical condition or exacerbate an existing one, including respiratory issues that impede breathing, a mental health condition or a disability." The Parent cited provisions of the Pennsylvania and federal criminal codes and the US Constitution in the letter. (P-3, S-14).

16. On September 9, 2021, the District notified families that it would accept a parent note as sufficient to grant a face-covering exemption through September 14, 2021. The District clarified that information from a medical provider explaining the need for the exemption must be submitted by September 17, 2021. The District further advised that generic forms that did not include details about a student's medical or mental health condition were insufficient to satisfy medical documentation requirements. (S-12).

17. On September 13, 2021, the Student did not wear a face-covering to school. In response, the District sent information to the Parent by email and text, including information that: (a) the option to request a mask exemption; (b) the requirement for medical information to be submitted in support of a mask exemption request; (c) how to reach the District's FAQ page; (d) generic statements or forms without details of the medical condition were insufficient to grant an exemption (S-30; N.T. 166-67)

18. On September 20, 2021, the District's middle school principal met with students who were not compliant with the face-covering requirement, including the Student. At the meeting, the Principal explained that students had to wear a mask or obtain an exemption. (N.T. 115)

19. On September 21, 2021, after not wearing a face mask to school, the Principal asked the Student to the office. [redacted] After the Parent arrived, the District explained the mask and exemption policy to the Parent while the Student waited in the guidance office. The Parent took the Student home. (N.T. 117)

20. On September 21, 2021, the Parent enrolled the Student in a home education program without notification or dis-enrollment from the District. The Parent notified the District of the Student's home education enrollment on November 10, 2021. (S-26, S-27)

21. On September 22, 2021, after the Student did not wear a face-covering to school, the Principal telephoned and left a message for the Parent. Although the Parent did not return the Principal's call, the Student remained in school. (N.T. 117-118)

22. On September 23, 2022, although the Student was not in school, the Principal called the Parent, left a message and requested completion of an exemption form. (N.T. 118)

23. On September 24, 2021, after the Student did not wear a face-covering to school, the Principal called the Student to the office and telephoned the Parent. After the Parent arrived, the Principal explained that without a face covering or exemption, the District would need to enroll the Student in its virtual academy. The Principal, the Parent and Student toured the virtual academy. After viewing the virtual academy, the Parent took the Student home. (N.T. 120, 170-171)

24. After September 24, 2021, the Student did not attend school in the District. (P-30, S-24)

25. The District offered a virtual academy educational option for families unable to comply with the masking requirement. Face coverings did not need to be worn in the virtual academy, but social distancing guidelines were enforced. The District's virtual academy offered education to general and special education students through a curriculum aligned with state standards. IEP implementation occurred onsite, and a special education teacher pushed in as needed. Students had the option of participating in the virtual academy from home or in the District. (N.T. 29-30, 120-121, 170-171)

26. On September 27, 2021, the Parent advised the District of disagreement with the District's decision to enroll the Student in the virtual academy. (P-9)

27. On October 4, 2021, the school principal emailed the Parent and advised that without a mask exception, the Student would be assigned to attend the virtual academy but that an IEP meeting could be scheduled for further discussion. (P-9)



28. On October 8, 2021, the IEP team met with a Parent and an advocate. At the meeting, the District agreed that the Student qualified for a face covering exemption, which was incorporated into the IEP. At the meeting, the Parents expressed concerns about Student's speech and requested that the District list Autism as the primary disability category in its records. (S-18; N.T. 175-176).

29. Through the October 14, 2021, NOREP issued after the IEP meeting, the team proposed a mask exemption for the Student. The Parents did not sign the NOREP. (S-19)

30. On October 14, 2021, the Parents consented to a speech-language reevaluation of the Student. (S-20)

31. On October 22, 2021, the District invited the Parents to the Student's annual IEP meeting. The Parents did not respond and did not attend the meeting, held on November 1, 2021. (S-21)

32. On November 8, 2021, the District wrote the Parents, enclosed the NOREP from the IEP meeting, expressed concerns about the missed days of school, and suggested a meeting for November 10, 2021. (S-24)

33. On November 9, 2021, the Parent returned the NOREP, disapproved of the recommended programming and indicated, "the LEA has and is proposing to subject my [child's] IEP protections to its own ever-changing health plan rules, which are imposed on my [child] against my consent by school employees with no medical license or knowledge of the medical or social harms of their policies. I have been reasonable in inquiring of these policies, but the LEA continues to evade and misstate communication in their self-interest." (S-21, S-22, S-23)

34. On November 10, 2021, the Parent notified the District that the Student was enrolled in a home education program. The District designated

the Student's missed school days as absences from September 27, 2021, through November 9, 2021. (S-25, S-26, S-27)

35. On December 13, 2021, the District completed its reevaluation report. The District changed the Student's primary disability category to Autism. (S-20, S-29; N.T. 179-181 )

36. On January 24, 2022, the Parents filed a due process Complaint. (P-30)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Principles**

#### **The Burden of Proof**

The burden of proof is composed of two considerations, the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005), held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence that the moving party is entitled to the relief requested. The burden of going forward simply determines which party must present its evidence first, a matter that is within the discretion of the hearing officer. The burden of persuasion, in this case, was borne by the Parent, the filing party. Application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. *Id.*

### **Witness Credibility**

It is the responsibility of the hearing officer, as factfinder, to determine the credibility and reliability of witnesses' testimony. 22 Pa. Code §14.162 (requiring findings of fact); *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also 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*, 88 A.3d 256, 266 (Pa. Commw. 2014) (it is within the province of the hearing officer to make credibility determinations and weigh the evidence to make the required findings). This hearing officer found each of the witnesses to be generally credible, testifying to the best of his or her ability and recollection concerning facts necessary to resolve the issues presented. The findings of fact were made as necessary to resolve the issues; thus, not all the testimony and exhibits were explicitly cited when unnecessary. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' comprehensive closing statements.

### **General IDEA Principles**

The IDEA requires the States to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to

permit a child to benefit educationally from the program and comply with the procedural obligations in the Act. The State, through its local educational agencies (LEAs), meets the obligation of providing FAPE to eligible students through development and implementation of an IEP which is "reasonably calculated to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009) (citations omitted). Fairly recently, the U.S. Supreme Court observed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, \_\_\_ U.S. \_\_\_, \_\_\_, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). "A focus on the particular child is at the core of the IDEA." *Id.*, \_\_\_ U.S. at \_\_\_, 137 S. Ct. at 999, 197 L.Ed.2d at 349-50 (2017) (citing *Rowley* at 206- 09) (other citations omitted). Individualization is, thus, the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the law demands services are reasonable and appropriate considering a child's unique circumstances and not necessarily those that his or her "loving parents" might desire. *Endrew F.*, *supra*; *Ridley*, *supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

### **Least Restrictive Environment**

Another critical premise in the IDEA is the obligation that eligible students receive an education in the "least restrictive environment" (LRE) that also satisfies meaningful educational benefit standards. To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, must be educated with

children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.S. § 1412(a)(5)(A); see *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

### **Section 504 Principles**

In the context of education, Section 504 and its implementing regulations "require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); see also *Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, "an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of" the related subsections of that chapter, §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b). The Third Circuit has interpreted the phrase "free appropriate public education" to require "significant learning" and "meaningful benefit." *Ridgewood, supra*, 172 F.3d at 247. Significantly, "[t]here are no bright-line rules to determine when a school district has provided an appropriate education required by Section 504 and when it has not." *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002).

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. Accordingly, where a Section 504 claim is asserted in tandem with an IDEA claim, the same standards apply to both claims. *Ridgewood, supra*, 172 F.3d at 253. A student with a disability who is otherwise qualified to participate in a school program and was denied the benefits of the program or otherwise discriminated against based on disability has been subject to disability discrimination in violation of Section 504 protections. (34 C.F.R. §104.4; *S.H. v. Lower Merion School District*, 729 F. 3d 248 (3d Cir. 2013). A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district in its purported acts/omissions. *S.H.*

### **Parent's Claims**

The Parent's claims are unsupported by the evidence of record, and the burden of proof was not met. In the amended Complaint, the Parent contends that the District denied FAPE and discriminated against this Student by requiring a mask or face covering during the 2021-2022 school year during the COVID-19 pandemic.<sup>5</sup> Specifically, the Parent contends that the District removed the Student from general education and was "imprisoned" in a conference room, advised that school attendance would not be permitted without a face covering, and denied IEP mandated speech services.

### **Masking**

In the amended Complaint, the Parent contends that the District engaged in coercion to gain compliance with its unlawful actions of requiring a face covering during the 2021-2022 school year, which resulted in a FAPE

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<sup>5</sup> The Student's last day of school attendance in the District was September 24, 2021.

denial to the Student<sup>6</sup>. The changing and unpredictable nature of the COVID-19 pandemic necessitated the imposition of policies that simultaneously protected the District's students and employees but balanced the needs of those unable to comply with face-covering requirements. On August 31, 2021, DOH issued an order that beginning on September 7, 2021, a face covering must be worn by every teacher, student, staff, or visitor to a school unless an exception is applied. In response, the District employed a procedure for parents and guardians to request an exemption for their child from the face-covering requirement. This procedure was clearly and repeatedly communicated to families in the District. The face-covering policy and procedure for exemption applied equally to every District student. The Parent sent the Student to school without the necessary face covering on multiple occasions. Although the District communicated with the Parent about the policy and the procedure to request an exemption for the Student, the Parent refused to follow the necessary steps. The District went to great lengths to maintain the Student in its student body, mitigate the exposure to the COVID-19 virus and implement the Student's IEP when school was attended.

Furthermore, after an October IEP meeting with the family and their advocate, the District granted a mask exemption. The refusal of the Parent and, by extension, the Student to comply with the mandated health and safety protocols and the District's insistence that they do so did not equate to a FAPE denial.

### **Change in placement**

Next, the Parent contends that the District denied Student's access to an education because of meetings with the Principal and improperly changed

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<sup>6</sup> The Student complied with the face-covering requirement throughout most of the 2020-2021 school year.

the Student's placement through an assignment to the virtual academy. These arguments are without merit. The record evidence has established that the Parent was advised multiple times of the District's face covering policies, the procedure to obtain an exemption, and the consequences for non-compliance. When the Student came to school without a face covering, the District telephoned the Parent, and the Student was called to the Principal's office and reminded of the policy. On each occasion, the Parent came to the office and opted to remove the Student from the school.

The Parent's assertion that the District's enrollment in its virtual academy constituted a change in educational placement necessitating written approval is also unsupported by the record in this matter.<sup>7</sup> To be clear, the Student never attended the virtual academy because, in mid-September, the Parent enrolled the Student in a home education program. The District was not notified of Student's dis-enrollment until November 2021. The Parent's argument that the virtual academy was a change in placement because it was in a different building, with different classrooms and students, is unpersuasive. The District's virtual academy would have altered only the location of Student's educational services. The programming offered in the virtual academy was provided to both regular and special education students whose parents decided it was best for their child not to wear a face covering and did not seek an exemption. For reasons related to the transmission of the virus, the location of the programming needed to remain separate from other students. Through this option, both regular and special education students could access instruction from home or school. If the Student had attended the virtual academy, instruction from regular education teachers, using an approved curriculum aligned with state

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<sup>7</sup> The Parent cites to 34 CFR 300.9, 34 CFR 300.503, 34 CFR 300.505, and 34 CFR 300.513 for the proposition that the District failed to obtain consent, did not issue a NOREP and unlawfully used email communication when it placed the Student in its virtual program.



standards, would have occurred, and the IEP implemented. The term "educational placement" typically refers to the type of services a student will receive and not the specific physical location of those services. *Valentin v. School Dist. of Philadelphia*, 289 F.R.D. 227 (E.D. Pa. 2013). Moreover, by early October, the IEP team, after meeting with the Parent and an advocate, granted a mask exemption. However, by that time, the Parent had already enrolled the Student in a home education program. The District did not change the Student's placement and deny a FAPE.

### **Records amendment**

Next, the Parent seeks Hearing Officer intervention to change the Student's past educational records to reflect Autism as the primary eligibility for special education instead of OHI. The Family Educational Rights and Privacy Act (FERPA) provides the right to inspect student records and request a correction to records that are believed to be inaccurate or misleading.<sup>8</sup>

FERPA includes a definition of educational records, and special education laws adopt that definition.<sup>9</sup> Special education laws ensure that parents and guardians have access to student records. Special education regulations also include a provision that address amendment of records at a parent or guardian's request. The regulations require as follows<sup>10</sup>:

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

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<sup>8</sup> 20 U.S.C. § 1232g; 34 CFR Part 99

<sup>9</sup> 34 C.F.R. § 300.613

<sup>10</sup> 34 C.F.R. § 300.618

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

The hearing referenced in the regulation is not a special education due process hearing. Rather, the hearing is conducted by the school district and provides a forum for parents to challenge information in education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. After the hearing, if the school district decides that the records must be amended, the school district must amend the records.

If the school district decides that the records should not be amended, it must allow the parent or guardian to place a statement in the student's records about the disputed document. The school district must then maintain that statement and forward it with the disputed record, if necessary. If the school decides not to amend the record, the parent or guardian has the right to a formal hearing. However, a due process special education hearing is not the appropriate proceeding. That is a hearing conducted by the school district, not the Office for Dispute Resolution. A special education hearing officer in a due process case has the authority to address the identification, evaluation, or educational placement of a child with a disability. 34 C.F.R. § 300.507 but not to decide claims regarding the amendment of educational records.

## **Speech-Language Services**

The Parent's contention that the District denied Student a FAPE because of unfulfilled IEP mandated speech-language services is unsupported by the record in this matter. In September 2020, the Parents requested that the District cease speech services because they interfered with Student's social development opportunities. The record contains documentation that fully supports this request, the District's concern, as well as compliance with the Parent's preference. A year later, when the Parent raised concerns about Student's speech, the District promptly sought and received a consent to evaluate this need and issued its findings in a reevaluation report, which is not in dispute. The District did not deny Student a FAPE by failing to provide speech-language services to the Student.

### **Discrimination**

Last, the Parent contends that the District discriminated against the Student. The Parent has not provided any evidence that the District denied the Student benefits of the program, acted with deliberate indifference or otherwise engaged in discrimination based on disability. There was no denial of FAPE under the IDEA and no violation of Section 504. The District applied its face-covering requirement equally to students, and no discrimination under Section 504 occurred.

### **ORDER**

AND NOW, this 18th day of April 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the Parent's claims are DENIED.

It is FURTHER ORDERED that any claims raised in this proceeding not specifically addressed by this decision and Order are DENIED and DISMISSED.

Joy Waters Fleming, Esq.

Joy Waters Fleming, Esq.  
Special Education Hearing Officer

April 18, 2022