

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. 30666-24-25

Child's Name:

N.A.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

Charles W. Jelley Esq.

Decision Date:

June 2, 2025

Background

The Parent filed the pending Due Process Hearing Complaint alleging multiple violations under the Individuals with Disabilities Education Act (IDEA) and Section 504. First, the Parent seeks prorated tuition reimbursement. Second, the Parents seek a limited award of compensatory education. The District, on the other hand, seeks a declaration that at all times relevant, it complied with the IDEA and Section 504. After a thorough review of the record—including both intrinsic and extrinsic evidence—I find that the District failed to offer or provide the Student with a Free Appropriate Public Education (FAPE) for each of the school years in question. I further conclude that the Parents' selected private placement is appropriate under the applicable legal standards. In weighing the equities, I now determine that the equities favor the Parent in part. Accordingly, the Parents are entitled to a prorated award of tuition reimbursement. I further find that the Parents' Section 504 FAPE claims are inextricably intertwined and overlap with their IDEA FAPE claims; therefore, the resolution of the IDEA claims fully disposes of the Section 504 FAPE allegations and requests for relief.¹

¹ The following Findings of Fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited or given equal weight. However, in reviewing the record, while the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements not all testimony or exhibits were given proper weight. 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 USC § 1415(h) (4) (A); 34 CFR § 300.513(d)(2); 34 CFR § 104.1- 104.36) and 22 Pa Code § Chapter 14. References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District /LEA Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number.

Statement of the Issues

- a) Whether the District's IEPs, as offered and implemented, failed to provide the Student a FAPE in the least restrictive environment during the 2023-2024 and 2024-2025 school years under both the IDEA and Section 504? If not, what relief is appropriate?

Findings of Fact

The 2023 and 2024 History of IEP Rewrites, Revisions

1. **Initial Evaluation and IEP Development (Fall 2023):** The Student's parents requested a reevaluation in 2023 when the Student was enrolled at the private school as they contemplated a return to public school. The psychologist completed the Reevaluation Report and provided it to the parents on November 2, 2023. The reevaluation confirmed the Student's eligibility under specific learning disabilities (SLD), Attention Deficit Disorder –Other Health Impairment (OHI), and Speech and Language Disorder (SLD)I.
2. The IEP team (including the parents) met on November 29, 2023, to develop a new IEP - found at SD-11. This meeting produced the draft IEP of 11/29/2023, which was the District's initial offer of FAPE for the Student's return to the District. (S-11).
3. Next, on November 29, 2023, the District proposed learning support for English Language Arts (ELA) and Math, with the rest of the day in general education participation with support in other subjects. The parties also agreed that the Student should participate in a shadow day. Parents expressed interest in public placement but requested clarification on class sizes, speech support, and social opportunities. (SD11 p. 15–16).
4. Furthermore, on November 29, 2023, the IEP team convened to develop an IEP for the Student in anticipation of [redacted] grade following a recent evaluation. The Student's Parents indicated at that meeting that they were considering enrolling the Student at the Middle School (public) for [redacted] grade. Still, they had questions about the support and services the

district could provide. They expressed specific concerns regarding class sizes and social opportunities in the public school environment, especially in comparison to the small classes at the private school (SD11 p. 15-16).

5. The IEP team signature page and Section I of SD11 reflect this meeting date and participants, including the parents, special education teacher, regular education teacher, school psychologist, speech pathologist, and LEA representative. The IEP was projected to start implementation on 11/30/2023 even though the parties agreed that the Student would return to the District at the beginning of the [redacted] grade - the 2024-2025 - school year. (SD 11).
6. **The NOREP and Parental Partial Rejection (November 2023):** After the November 29, 2023 meeting, the school issued a Notice of Recommended Educational Placement (NOREP) to the Student's parents, formally proposing the described program and placement - itinerant learning support at the middle school. The parents returned the NOREP indicating disagreement, specifically noting concerns or questions about services and goal development. (SD 11).
7. On February 15, 2024, the IEP team reconvened to clarify concerns. Initially, the Parents questioned the date printed on the IEP and the source of the goal statements. The parents believed that the goals statements were similar to previous IEPs. The District confirmed, and the Parents accepted the representation that the IEP source data came from the November 2, 2023 evaluation. (SD11 p. 11).
8. In response to the parents' inquiries, the District's team members provided detailed information during the November 29, 2023, meeting. The special education teacher explained that typical regular education class sizes at the middle school range from about 18 to 25 students. In contrast, special education classes -learning support- are much smaller, about 2-8 students, allowing for a more individualized environment. The IEP team outlined a tentative program including instruction in a learning support class for Language Arts (English) and Math, but would join regular education classes (with supplementary adult support). At the same time, the Student would participate in

- regular education for subjects like social studies, science, and "specials" (electives).
9. The speech-language pathologist shared a summary of the Student's recent speech/language evaluation results and recommendations with the parents, indicating that the Student still needed receptive and expressive language. To ease the transition, the special education supervisor proposed a "shadow day" – an opportunity for the Student to spend a day at the middle school following a student's schedule with a peer– so that the Student and the Parents could see a typical day in the public school setting (SD11 p. 15-16).
 10. **Parental Objection and Request for Clarification:** After the November meeting, the Student's parents did not immediately approve the IEP. They returned the signed Notice of Recommended Educational Placement (NOREP) indicating that they were "not in agreement" with the services as proposed, and they specifically requested that the school team provide more information about how the IEP goals were developed. In response to this partial rejection, the District scheduled a reconvened IEP team meeting for February 15, 2024, to address the parents' questions and concerns, with the understanding that the IEP would be revised to clarify these issues and a revised NOREP would be issued afterward (SD11 p. 10-11).
 11. Also, on February 15, 2024, the team clarified that baseline performance data needed to establish present levels and ambitious goals would be collected after the Student's enrollment. The Parties further agreed and confirmed that the shadow day would be scheduled following the spring 2024 break. (SD11 p. 11).
 12. On April 29, 2024, the IEP team met again after the parents requested tuition for Delaware Valley Friends and raised concerns that the shadow day had not occurred. The District acknowledged the oversight and committed to rescheduling the visit. (SD11 p. 10).
 13. On April 29, 2024, the IEP was revised to confirm that a shadow day would be provided after the initial miscommunication. (SD11 p. 10).

14. Also, on April 29, 2024, the IEP team discussed the Parents' request for tuition for Delaware Valley Friends and raised concerns that the shadow day had not occurred. The District acknowledged the oversight and committed to rescheduling the visit. (SD11 p. 10).
15. Also, on April 29, 2024, the IEP was revised to address the parents' concern that the District failed to make good on the offer of "shadow day" transition support included in the proposed IEP. The IEP team confirmed that a shadow day would be scheduled, and miscommunication regarding district policy was acknowledged. (SD11 p. 10).
16. Next, on August 23, 2024, the Student was administered the WADE 4th Edition by the district reading specialist; the Student scored 78% on high-frequency word reading, 21% on decodable words, and 10% on pseudowords. [Student] total reading accuracy was 33%. Spelling accuracy was 8%. These results indicated severe deficits in decoding and encoding. (SD11 p. 10).
17. On September 3, 2024, the IEP was revised to incorporate WADE test data, update baseline scores, and reflect a shift in instructional placement for Reading, including daily Wilson Reading instruction. (SD11 pp. 9–10, 21–25, 31).
18. School District 11 the IEP- after multiple iterations beginning in 2023 through September 2024, includes the following goal statements, present levels, specially designed instruction, accommodations, and explanations:
 - a. **Measure of Academic Progress (MAP) testing and the Reading Goal:** The IEP's present levels of academic achievement include data from the NWEA Measures of Academic Progress (MAP) assessments, which provide norm-referenced scores (RIT scores) in Reading and math. The Student's Reading MAP scores show a significant achievement gap. In the Fall 2022 of [redacted] grade, the Student Reading RIT was 198. In Spring 2023 (end of [redacted] grade), the Student obtained a Reading RIT score of 202, which placed the Student at the 20th percentile for [redacted] graders nationally. A RIT of 202 for a [redacted] grader indicates that the Student's reading skills were well below grade level (approximately

equivalent to the beginning of [redacted] grade in Reading).

- b. **MAP – Mathematics:** Student's Math MAP scores exhibit a similar trend of low performance. In Fall 2022 ([redacted] grade), the Student's Math RIT was 204, and by Spring 2023, it actually decreased to 202, which is at the 12th percentile for [redacted] graders. This drop and low percentile were characterized in the report as "Low Growth," as the Student was performing at the 6th percentile for growth among academic peers. In practical terms, a RIT in the low 200s for math in [redacted] grade corresponds to about a 4th or 5th-grade level in many math skills. Specific problem areas likely included multi-step problem-solving and applications. The IEP's math goal targets concepts and applications on a 4th-grade level. The IEP team interpreted the math data to mean the Student had significant gaps in math reasoning and needed continued math support. The IEP contains a mathematical problem-solving goal to address word problems and applied math skills rather than attempting [redacted] - grade-level work (SD11 p. 13, 24).
- c. **The Present Levels Include the Consistently Low MAP Percentile Scores:** The IEP present levels also reference the Student's earlier MAP scores from elementary school, which show that [student] academic difficulties have been persistent. For instance, back in [redacted] grade (Spring 2021), the Reading RIT was 176 (4th percentile) and Math RIT 194 (14th percentile). The [redacted] grade (Fall 2021) Student's Reading RIT was 182 (approximately 9th percentile), and Math RIT was 191 (around 12th percentile). These longitudinal data points illustrate that the Student has been performing in roughly the bottom 5–15% in Reading and math for several years. (SD11 p. 13-14).
- d. **The Impact of the November 2023 Reevaluation Academic Achievement Data Set:** The Student's November 2, 2023, included formal achievement testing, which is summarized in the IEP and included as the

baseline in the goal statements. On the Woodcock-Johnson Tests of Achievement, 4th Edition (WJ-IV), the Student's scores were exceptionally low in areas of basic Reading and spelling. For example, the Word Attack measures (a subtest measuring the ability to decode nonsense words) yielded a Standard Score of 73, which is about the 4th percentile. A Standard Score of 72 is classified as a "Low" range of performance. This percentile ranking means that the Student, as a rising [redacted] grader, was decoding unfamiliar words at roughly an early elementary level. Similarly, the Spelling standard score of 62 places the Student around the 1st percentile, again described as "Very low." This score means nearly 99% of age-matched peers performed better in spelling. (*Id*).

- e. The IEP team used these achievement data sets to establish baselines for goals. The IEP's Reading Decoding goal statement includes as a baseline reference to the Woodcock-Johnson Achievement (WJ V) Word Attack score of 73 (4th %ile), and the WJ V Encoding (spelling) goal lists a baseline of Spelling SS 62 also at the 1st %ile). (*Id*)
- f. The IEP also incorporated data on the Students' reading comprehension and math skill set. The Student Broad Reading and Broad Math scores were similarly low. Notably, the Student Broad Math composite of 69 places the Student at the 2nd percentile, reflecting difficulties in basic early elementary math problem-solving and calculation problems. (SD11 p. 22-23).
- g. **Math Problem-Solving – Data Set and Goal**
Alignment: Given the Student's WJ-IV math results and classroom performance, the IEP team set a goal in the area of Mathematical Problem Solving. The baseline for this goal notes that the Student could solve only 1 out of 2 problems correctly. The Goal statement requires the Student to solve 4th-grade Mathematic Problem-Solving – problems at an 80% success rate on 3 out of 4 trials as assessed in a given making period. Reflecting the Student's low performance in math, the IEP includes a Mathematical Problem-Solving goal, which was crafted

directly from the reevaluation results of the Student's Broad Math standard score on the WJ-IV was 69 (2nd percentile, "Very low"), indicating severe difficulty in 8th grade-level math. The goal focuses on concepts and applications at a 4th-grade level, a level where the Student can begin to build skills. The goal statement states that "Given a calculator and a concepts and applications word problem assessment on the 4th-grade level, and after one-to-one error analysis sessions with the teacher, [redacted] will score 80% or higher on 3 of 4 trials per marking period." The baseline for this goal also noted that the Student's WJ V Broad Math standard score of 69 placed the Student at the 2nd %percentile. This score means that at the start of the [redacted] -grade school year when given a couple of sample 4th-grade word problems with support, the Student could only solve one correctly.

- h. The goal statement use of a calculator is significant – as it indicates that computational fluency, at the 4th-grade level, is not the primary focus. Instead, this type of goal statement is likely linked to the Student's weak basic calculation skills, which further acknowledges that the weakness lies in choosing the proper steps as the target. (SD11 p. 24-25). The record is unclear how the teacher picked the 4th-grade benchmark for a rising [redacted] grader as the goal statement anchor score. (*Passim*).
- i. **The Wilson Reading – WADE Results Add Context:** A crucial piece of assessment data in the IEP is the Wilson Assessment of Decoding and Encoding (WADE), administered in August 2024. The WADE provides a precise diagnostic of the Student's reading abilities. The WADE results are detailed in the IEP and show exactly which phonics patterns the Student has mastered and where the Student struggles. According to the WADE 4th Edition standards, mastery for group-instructed students is around 85% for high-frequency (sight) word reading and 90% for decoding words. The Student's performance fell short: the Student scored 78% on the high-frequency word reading, which is just below mastery. Notably, however, the

Student could read the high-frequency words from Wilson Steps 1-4 and 6 with 100% accuracy. This score suggests that sight word recognition for early elementary-level words is solid. The Student, however, found that Step 5 words, which include more complex high-frequency words, revealed a phonics application gap—more concerning the scores on decoding phonetically regular words (decodable words and pseudowords). The Student did not reach the 90% mastery criterion on any of the Step 1 Wilson materials. The Student earned an 80% on Step 1, which includes simple consonant-vowel-consonant (CVC) words and consonant blends. The Student earned 70% on Steps 2 and 3, which involve digraphs, blends, and maybe common suffixes, and only 30% on Step 4, which involves vowel teams or more complex patterns. These scores clearly indicated that as an [redacted] grader, the Student had significant gaps in early elementary decoding skills typically mastered by 2nd or 3rd grade. Id.

- j. The WADE encoding–spelling results were strikingly low. While the WADE Spelling Mastery for spelling under group instruction conditions is set at around 75%, the Student's overall spelling accuracy in Steps 1-4 was 34%. The Student earned a score of 40% of Step 1 patterns correct, 44% of Step 2, and 33% of Step 3, with an overall "phonetically regular spelling" score of 11% correct. Scores like this indicate the Student might spell simple short vowel words correctly some of the time but struggled immensely with more complex sounds and patterns. The WADE scores align with the WJ-IV Spelling score at the 1st percentile. (S-11 and S-10).
- k. The breakdown of the WADE data set appears in a descriptive table in the IEP. The data set indicates that out of 24 consonant sounds tested, the Student got 23 correct (96%), but for vowels, the Student was 24/56 (43%), indicating that the Student struggles particularly with vowel sounds. Similarly, in reading nonsense words (pseudo words), the Student only got 6 out of 60 (10%), highlighting difficulty decoding unfamiliar words. The IEP

team interpreted these granular WADE results to mean that the Student needs direct, systematic phonics instruction in decoding and encoding to address foundational reading skills deficits. Consequently, the IEP explicitly notes that "[Redacted] demonstrates a need in decoding and encoding skills and would benefit from instruction in these areas." The team used this data set to justify the inclusion of a Wilson Reading System program as SDI and to write specific 4th-grade reading goals. For example, the Decoding goal in the IEP calls for the Student to read decodable word lists with 80% accuracy. The Encoding goal similarly targets 80% accuracy in spelling decodable words, yet the Student's overall spelling on WADE is 34%. Moving from 34% to 80% on controlled lists is a significant expectation with Wilson intervention, given the Student's overall circumstances. (SD11 p. 9-10). The goal statement does not describe the grade level or the basis for the "decodable word list." (*passim*)

- l. Cognitive and Attention Assessments Provide Context for Specially Designed Instruction:** The Student's cognitive assessment found the Student's overall ability to be in the Average range. When placed in context, although the Student has average intelligence, due to core learning skill deficits, like Reading, comprehension, calculation, and executive functioning deficits, along with ADHD attention difficulties, the Student is not achieving commensurate with the average cognitive potential. The IEP notes the "severe discrepancy between [redacted's] cognitive abilities and [redacted] academic achievement" in areas like basic Reading, reading fluency, comprehension, and math, which satisfies Pennsylvania's criteria for Specific Learning Disability. At the same time, the IEP does not explain why the Student is not receiving written expression and instruction on executive functioning skills. (*Passim*).
- m. The District 2023 reevaluation report also updated the Student's ADHD profile.** Through the Conners-4 rating scales and self-report, the Student's

attention/executive functioning ratings were "Very Elevated," particularly on Inattention/Executive Functioning and ADHD Inattentive Symptoms. The Student endorsed many symptoms, *e.g.*, trouble staying on task, being easily distracted, difficulty organizing, etc. (7 out of 9 inattentive symptoms). The reevaluation confirmed that the Student's ADHD – Primarily Inattentive Type – continues to impact learning significantly. The IEP team also recognized that the Student's ADHD meets the criteria for Other Health Impairment (OHI) due to ADHD. (SD11 p. 12, 14).

n. **Repeated FAPE Offers and LRE Regular Education**

Considerations: The SD-11 the September 2024 IEP dated as amended on 02/15/2024, 04/29/2024, and 09/03/2024 – was aimed at refining the IEP to meet the Student's needs better and address the Parties' concerns. The IEP documents consideration of LRE consideration, describing times when the Student is out of regular class (for necessary specialized instruction). It also details the educational placement category (Itinerant) and confirms that the Middle School is the Student's neighborhood school, is appropriate.

o. **Least Restrictive Environment (LRE) and Participation with Peers:**

Per the September 3, 2024, revision, the Student was placed in daily Wilson Reading instruction in lieu of a regular education world language class. (SD11 p. 31). The LRE section states that the Student attends regular education classes for language arts (with push-in support), reading (with specialist), science, social studies, and special areas. The Student is placed in special education settings for math and language arts instruction and goes to the Resource Room twice per 6-day cycle for additional support (SD11 p. 31). The Student does not participate with nondisabled peers during Learning support classes (Language Arts, Math – daily) Resource room (twice per cycle), Group speech therapy (25 minutes weekly) (SD11 p. 31). The participation with

nondisabled peers in general education amounts to at least 6.01 out of 6.67 daily hours, or approximately 90.1% of the school day, placing the Student in the "80% or more" LRE category under PennData reporting. (SD11 p. 33).

p. **Delivery of Services and Educational Placement**

Level of Support – Itinerant Learning Support: The final IEP- S-11-, was revised in September 2024. The IEP describes the Student's program as an Itinerant Learning Support placement in [redacted] grade. "Itinerant" indicates that special education services are provided for 20% or less of the school day, with the Student spending the remaining 80% or more of the day included with nondisabled peers. This reflects a relatively high level of inclusion, given the discrepant data profile. In the Student's case, the IEP team identified "Learning Support" as the primary type of special education support, addressing academic needs in Reading and math, and additionally identified "Speech and Language Support" to address communication needs. Together, these supports qualify the Student for special education under multiple IDEA disability categories (Specific Learning Disability, Other Health Impairment for ADHD, and Speech/Language Impairment) (SD11 p. 32). Although the Student's writing data profile was "very low," the IEP does not include a writing goal. (Passim).

25. **The Student's IQ and the Achievement/Academic Assessment Data Set:**

The Student's cognitive profile, based on WISC-V scores, reflects average intellectual functioning with notable strengths in visual processing and executive functions. The Student's Full Scale IQ improved to 94 in 2023, showing progress in core thinking skills such as verbal reasoning and working memory. While some areas, like Verbal Comprehension, improved substantially (73 to 95), others, like Fluid Reasoning, declined modestly (103 to 94). The Student's Processing Speed rose from 92 to 100, reflecting stronger output efficiency. Academic testing, however, shows a divergent trend. The Student's basic reading skills—particularly phonological decoding and word identification—have declined sharply despite cognitive gains. Letter-word ID and Word Attack fell into the 'Very Low' range

- by 2023. The Student's math scores also dropped significantly. The Student's Math Calculation and Math Fluency regressed into the lowest percentiles, signaling significant challenges with computation and recall despite stable reasoning skills.
26. On September 3, 2024, an IEP meeting was held to review WADE results and revise the Student's schedule to include daily Wilson Reading instruction. The Student's parents verbally approved the revised placement and goals. (SD11 pp. 10, 31–32). As of September 3, 2024, the Student's updated decoding baseline was 87% accuracy on Wilson Sub step 1.3 real words; the encoding baseline was 80%. Comprehension, on the WADE, was measured at 60% accuracy on 3.0-level passages. (SD11 pp. 22–24). Although the profile was "low" the Student's educational placement was changed to reflect greater time in general education classes (Language Arts push-in model) and a daily Wilson reading class. (SD11 p. 31–33).
27. The Student's written language profile is mixed. The Student's Writing Samples score ranges from the 7th to 27th percentile. However, the Student's Spelling score fell to the 1st percentile, aligning with other phonological deficits. In sum, the Student demonstrates an SLD profile: average cognitive ability across domains with disproportionate underachievement in Reading, spelling, and math. These data validate the need for specially designed instruction and ongoing progress monitoring across domains of concern. (*Id*).
28. **Speech/Language Evaluation – Impact on Goals:** As part of the multi-disciplinary evaluation, the Student underwent a Speech-Language Assessment in October 2023. The evaluation found that the Student continued to qualify under the Speech or Language Impairment category, with particular difficulties in receptive and expressive language tasks. For instance, the Student likely had trouble comprehending complex sentences, finding the right words to express ideas, and organizing spoken language (these are common issues for students with language disorders). The IEP incorporated these findings into the present levels and the design of interventions. While the IEP does not list separate academic goals for speech/language (since those are often handled via the related service), it does include a robust set of supports and SDI to address language needs in the classroom. For example, the SDIs include: "Use simple, direct language when explaining concepts and giving instructions. Repeat and rephrase as necessary." this is one such support recommended for all teachers. Also, "pre-teach vocabulary" and "check for understanding of key terms" might

be included to help with receptive language. Furthermore, the speech evaluation observed how the Student's ADHD behaviors (like distractibility, attention, focusing, and task completion) played out in a testing environment – *i.e.*, needed breaks for noise, used fidgets, *etc.* The SDIs noted additional testing accommodations and attention supports (SD11 p. 12, 29- 30).

29. **The IEP Includes Related Services:** The IEP includes speech-language therapy (group) for 25 minutes a week. (SD11 p. 29). The IEP also includes a 25-minute individual session each week. The level of support also falls in the Itinerant Level speech service, complementing the learning support program (SD11 p. 29).
30. **Consultative Supports for Staff:** The IEP recognizes that supporting the Student is a team effort and includes formal provisions for consultation and collaboration among school staff. Specifically, the IEP lists several supports for school personnel: (a) Special Education Teacher consultation with the Student's general education teachers on a weekly basis to review progress, adapt materials, and plan upcoming supports; (b) Guidance Counselor consultation weekly; likely to monitor the Student's social-emotional adjustment and coordinate any counseling or organizational supports may be needed; and (c) Speech-Language Pathologist consultation (up to 10 minutes monthly or as needed) with the Student's teachers. The SLP consult is meant to help teachers implement communication strategies in the classroom, such as simplifying complex language or checking for understanding of instructions. Additionally, the IEP document includes a note that all IEP team members will reconvene within the first six weeks of the Student attending school (*i.e.*, roughly by October 2024) to review the Student transition and make any needed adjustments. (SD11 p. 29).
31. **Access to Regular Education and Peers:** Consistent with the goal of participation to the maximum extent appropriate, the Student's IEP notes that the Student will have access to the general education curriculum across all subject areas and will participate with nondisabled peers to the maximum extent appropriate. Aside from the specified times in the Learning Support classes (Math, Reading, push-in, and resource period,

plus the brief speech sessions), the Student is in regular education. The Student is with peers for homeroom, lunch, assemblies, extracurricular activities, and mainstream classes like Science, Social Studies, and electives. The Student is also encouraged to participate in extracurricular and nonacademic activities alongside classmates. The Student receives specialized instruction in Reading, writing, and math to remediate learning deficits but remains an active member of the general education [redacted] -grade cohort for the majority of the day. (SD11 p. 15, 31; SD11 p. 29). The IEP team also recommended that the Student receive daily regular education instruction in the Wilson Reading System, delivered by a reading specialist in a small-group setting. This regular education intervention service was added when the Student was removed from a regular education world language elective. (SD-11, pp. 10, 15, 31)

32. The combination of services for language arts support included two distinct components each day: (1) the general education ELA class focused on literature, writing, and comprehension, and (2) the daily Wilson Reading class focused on foundational skills such as phonics, decoding, and spelling. (SD-11, pp. 10, 31–32)
33. Although the Wilson Reading class was classified as a "reading class" in the schedule, it functioned as an intervention service due to its specialized structure and focus. The IEP team determined that this level of intensity was necessary given the Student's significantly below-grade-level reading performance. (SD-11, pp. 31–32). The IEP also provided that the Student would receive additional English/Language Arts intervention from the regular education ELA teacher, with push-in support, as the Core Extension school-wide schedule allowed. (SD-11, p. 1).
34. The Student's schedule included a Core Extension period, which the Student used to receive additional support. Two days per six-day cycle, Student attended a learning support resource room session during this period, working on executive functioning, organization, reading/writing pre-teaching, and

- goal monitoring in a group of up to eight students. (N.T. 137; 141; SD-11, p. 31)
35. On the remaining five days of the Core Extension cycle, the Student participated in the period with the regular education ELA teacher. (SD-11, p. 10)
36. Outside of specially designated learning support classes, the Student was included in the general education setting for science, social studies, physical education, health, the arts, and other special area classes. The Student used the standard [redacted] grade curriculum materials/books with accommodations and occasional adult support. (SD-11, pp. 15, 25)
37. The IEP also identified two primary areas of support: (1) Learning Support for academic areas, including Reading and math, and (2) Speech and Language Support for communication skills. No special education instruction was explicitly provided for reading comprehension beyond the supports integrated into the general education ELA setting. (N.T. 150).
38. In mathematics, the Student attended a learning support math class daily. This small-group special education class provided individualized pacing, re-teaching, and accommodations. (SD-11, pp. 15, 31; SD-11, p. 32).
39. The IEP lists several supports for school personnel: (a) Special Education Teacher consultation with the Student's general education teachers on a weekly basis to review the Student's progress, adapt materials, and plan upcoming supports; (b) Guidance Counselor consultation weekly, likely to monitor the Student's social-emotional adjustment and coordinate any counseling or organizational support the Student up to 10 minutes monthly or as needed. The SLP consult is meant to help teachers implement communication strategies in the classroom, such as simplifying complex language or checking for understanding of instructions. Additionally, the IEP document includes a note that all IEP team members will reconvene within the first six weeks of the Student attending school (i.e., roughly by October 2024) to review the transition and make any needed adjustments. This meeting is essentially

a planned check-in to ensure that the IEP is working as intended after the Student's return to public school. (SD-11 p. p.15, p.29, p.31).

40. On August 9, 2024, the Father left a voice message for the school counselor that the Student would be attending the Middle School for [redacted] grade.(SD-28, p.12(. The school counselor forwarded the message to the Supervisor of Special Education on August 10, who then forwarded it to the special education teacher and school psychologist on August 11, 2024. (SD-28, p.12).
41. Father completed the District's registration for the 24-25 school year on August 13, 2024.SD-8.
42. The Student was given the Wilson Assessment of Decoding and Encoding ("WADE") on August 23, 2024, by a Wilson teacher at the middle school. P-45. The results show that Student demonstrates a need in decoding and encoding skills and would benefit from instruction in those areas. (P-45).
43. The WADE report was sent to the Supervisor of Special Education on the same day, August 23, 2024. SD-28,
44. On August 26, 2024, the school counselor inquired about the schedule for the Student and the reading class. Even though the special education teacher stated that [student] needed Wilson instruction, the Supervisor responded that that they were still working on it. (SD-28, 7).
45. On August 27, 2024, a partial schedule was sent to the [redacted] ~grade teachers by the school psychologist. (SD-28).
46. A few days before the start of the school year, an open house was scheduled. However, the Student did not have a schedule yet but still attended because the counselor said it was an ice cream social. (N.T. 506-507).
47. After the ice cream social, there was another open house for new students and sixth graders, but the Student still did not have a schedule. (N.T. 508).
48. The Student did not have a schedule by the first day of school and was feeling very anxious and nervous. N.T. 509. An IEP meeting was held on September 3, 2024, to review the results of the WADE. The school team recommended a daily reading class to receive Wilson instruction from a reading specialist. In order to accommodate this change, the school team proposed that

the Student would be in a regular education class for language arts with the support of a special education teacher. (SD-11). The special education teacher was the second teacher in the regular education language arts classroom, where there were 21 students. (N.T. 139). In order to further address the Student's reading/writing needs, the school team proposed that the Student receive English/Language Arts intervention from the regular education ELA teacher as the "Core Extension schedule allows." (SD-11).

49. No special education instruction was provided for reading comprehension. (N.T.150)
50. The Student during the core extension period for forty-six minutes. There were "at most eight" students with the special education teacher where [student] worked on executive functioning. (N.T. 137). The other five days of "Core Extension" were with the regular education ELA teacher. SD-11, 10. The reading specialist who provided the Wilson instruction on Step 1.3 is not a certified special education teacher. (N.T. p.268).
51. Even though the meeting was held on September 3, 2024, the IEP and NOREP were not issued to Parents until September 23, 2024. P-14. This was because the IEP was in "draft" mode, as the teacher was waiting on a baseline from the reading specialist for the reading goal. P-13, 8. Once the revised IEP was issued, Parents saw that the placement was actually reduced to itinerant learning support due to the number of regular education teachers providing instruction to the Student. (SD-11, pp.31-33).
52. Even though a NOREP was not issued until September 23, 2024, for this significant change, the District was implementing it. (N.T. pp. 187-188).
53. The result was the Student's significant emotional decline. When the Student was in the regular education social studies and science classes, [student] began to exhibit frustration and anxiety. (N.T. p.511).
54. The Student could not do simple things in the classes; [student] would not be done reading the paragraph, and other kids were done and received them to be laughing. (N.T. p.513). When the Student returned home, they went to the bathroom, lay on the floor, and began to hit their head with a closed fist to pull out their hair, all the while screaming what was wrong with me? (N.T. p.514). Since leaving the District, the Student has participated in ongoing counseling. (*Passim*).

55. Because of the Student's mental health concerns on top of the delayed revised IEP, Parents sent an email to the Supervisor of Special Education on September 23, 2024, providing notice of the intent to place the Student back at DVFS for the remainder of the school year and seek tuition reimbursement.
56. Parents rejected the NOREP on September 26, 2024. (SD-22, p.2).
57. The District held an IEP meeting on September 26, 2024. (SD-10).
58. At the meeting, the Supervisor proposed hiring a special education teacher from the IU to provide the Wilson instruction, changing the ELA instruction to a special education classroom, and changing the resource room to daily with the special education teacher. (SD-10, pp.10-11; N.T. p.303). The school team also proposed adding school counseling and another session of speech and language therapy. SD-10, 11. However, there was no change to the IEP goals, as the IEP still does not have an executive functioning goal. SD-10.
59. The IEP also continued to include the fact that the Student receives science and social studies in the regular education classroom. (SD-10, p.10). No new SDIs were added for these classes. (SD-10, pp.28-33).
60. Parents rejected the NOREP on October 14, 2024. The Student began at DVFS for [redacted] grade on October 2, 2024. (SD-25, p.1; N.T. p.428).
61. From the fall of 2023 to the fall of 2024, Student went from a 194 in reading on the MAP to a 200. While below grade level, the Student showed average growth in the 52nd percentile. (SD- 42, p.1).
62. From the fall of 2023 to the fall of 2024, Student went from a 197 in math on the MAP to a 204. While below grade level, the Student showed average growth in the 62nd percentile. (SD- p.42).
63. Upon enrollment at the private school, the Student was "extremely low" in Reading. The initial MAP scores in the Fall of 2022 were 198 in Reading and 204 in Math. (N.T. 393; SD-4, p. 7.)
64. DVFS developed a "Learning Profile" for the Student based on the October 2021 psychoeducational evaluation. (SD-19; P-1; N.T. pp.393-395.)
65. Since enrollment, Student has received Orton-Gillingham instruction in a very small group setting throughout [student's]

- placement. This instruction includes intensive decoding and encoding support. (N.T. pp.396–397.)
66. The Orton-Gillingham teacher is certified and is described as one of the school's best OG practitioners. The private school is a certified Orton-Gillingham provider. (N.T. pp.398–399.)
 67. For math, Student receives multisensory instruction using both Gina Wilson's curriculum and Sadlier: Progress in Mathematics. (N.T. 400.)
 68. Across all classes, Student receives multiple accommodations including check-ins for understanding, directions read aloud, visuals, and multimodal presentations. (N.T. p.401.)
 69. The Student is provided with note-taking strategies and daily executive functioning instruction through the advisory program: 10 minutes in the morning, 45 minutes mid-day, and 10 minutes in the afternoon. (N.T. p.402.)
 70. Student receives assistive technology support, including a one-to-one computer with preloaded software for math and Reading and access to "Natural Reader" text-to-speech. (N.T. p.403.)
 71. The Student has received speech and language therapy during the 2022–2023 school year at DVFS. (N.T. pp.403–404.)
 72. By Spring 2023, the Student's reading MAP score had increased to 202, showing Low Average Growth at the 35th percentile. (SD-11).

Credibility and Persuasiveness of the Witnesses'

Testimony

In a due process hearing, the hearing officer must assess the credibility of witnesses, weigh the evidence, and determine the persuasiveness of the testimony presented. *J.P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. 2008); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. Ct. 2014). All witnesses testified in a candid and forthright manner. However, the testimony of the District's staff, while sincere, was neither sufficiently clear, cogent, nor persuasive. Notably, no witness from the District could adequately explain how a Student with documented deficits in Reading, writing, and executive functioning could reasonably be expected to make meaningful educational progress in the regular education environment, given the services and supports outlined in each IEP. Moreover, District staff were unable to respond coherently to critical questions regarding the IEPs' deficiencies—particularly the absence of goals addressing writing and executive functioning, the presence of vague or mismatched goal

statements, and the undue reliance on accommodations rather than the legally required specially designed instruction (SDI).

In contrast, the Mother provided testimony that was articulate, specific, and credible. The Father also offered persuasive and forthright testimony, particularly regarding the decision to assume the financial risk by prepaying private school tuition and, at the same time, enrolling the Student in the District. I accept and credit the Parents' testimony that the Student's increasing emotional dysregulation was the proximate cause of their decision to return the Student to private school, notwithstanding the District's assertions to the contrary. The testimony of the private school staff member was also candid and consistent. After weighing all testimony, I accord greater weight to the testimony of the Parents and private school witness than to that of the District staff. Accordingly, for the reasons outlined above and those discussed in detail below, I find that each IEP offered by the District was procedurally and substantively flawed, educationally inadequate, and legally inappropriate.

CONCLUSIONS OF LAW

1. Under the IDEA, a Free Appropriate Public Education (FAPE) requires an IEP that is reasonably calculated to enable a child to make progress appropriately in light of the child's circumstances. (Endrew F. v. Douglas County Sch. Dist., 580 U.S. 386, 399 (2017); 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101). An IEP must confer more than de minimis educational benefit. (K.D. v. Downingtown Area Sch. Dist., 904 F.3d 248, 254–55 (3d Cir. 2018)).
2. The IDEA mandates that specially designed instruction be provided in all areas of identified need. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.320(a)(2)–(4). IEPs must include measurable goals and services tailored to the child's disabilities and aligned with evaluative data.
3. The IEP failed to provide individualized, measurable annual goals to address the Student's documented deficits in decoding, phonics, reading fluency, spelling, math fluency, and written expression. This omission violated 34 C.F.R. § 300.320(a)(2).
4. The IEP lacked specially designed instruction in core academic domains—including basic reading skills, math computation, and executive functioning—despite data showing multi-year regression. This failure violated 34 C.F.R. § 300.320(a)(4).
5. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) section did not meaningfully synthesize the Student's testing profile, nor did it form a coherent basis for the goals and services proposed, in violation of 34 C.F.R. § 300.320(a)(1).

6. The IEP team failed to align the Student's cognitive strengths, as measured by the WISC-V, with the design of individualized academic interventions, thereby failing to ensure the IEP was reasonably calculated for progress under Endrew F.
7. The IEP failed to offer direct instruction in decoding, comprehension, or fluency, even though WADE, WJ-IV, and MAP data showed persistent deficits in these foundational reading skills. These errors denied the Student access to essential literacy instruction and violated 34 C.F.R. § 300.320(a)(2).
8. No goals or SDIs addressed spelling or encoding deficits despite a documented drop in performance to the 1st percentile. This omission rendered the IEP substantively deficient with respect to written expression support.
9. Math instruction was limited and generic, failing to include goals or supports to address severe declines in basic calculation and fluency, as reflected in percentile scores falling to the 1st–6th range. This violated 34 C.F.R. § 300.320(a)(4).
10. The District placed the Student in general education science and social studies using unmodified [redacted] grade materials without consideration of [student's]4+ year reading gap. This violates the LRE mandate in 20 U.S.C. § 1412(a)(5)(A) and 34 C.F.R. § 300.116(b)(2).
11. The IEP did not explore or document whether the Student could be included in general education with supplementary aids and services, as required by *T.R. v. Kingwood Twp. Bd. of Educ.*, 205 F.3d 572, 578 (3d Cir. 2000) and 34 C.F.R. § 300.114(a)(2).
12. The Itinerant Learning Support model, constituting less than 20% of the school day, was insufficient to remediate severe academic deficits. Placement must reflect the intensity of need, not administrative convenience. *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 857–58 (6th Cir. 2004).
13. The District failed to consider or incorporate the Parents' concerns about emotional distress, executive functioning, and placement. This violated their procedural rights under 34 C.F.R. § 300.322(a) and § 300.324(a)(1)(ii).
14. Placement decisions were made by staff in isolation and not by the full IEP Team, violating 34 C.F.R. § 300.116(a)(1). Predetermination of services undermines meaningful parental participation. (*Deal, supra*).
15. The failure to timely finalize the IEP and implement services at the beginning of the school year denied the Student timely access to

special education and violated 34 C.F.R. §§ 300.323(c), 300.503. See also Letter to Watson, 48 IDELR 284 (OSEP 2007).

16. The District did not provide a copy of the revised IEP to the Parents until weeks into the school year, depriving them of a meaningful opportunity to understand and enforce their rights. This violated 34 C.F.R. § 300.503(a).

17. Based on evaluation data showing a pattern of strengths and weaknesses and a significant discrepancy between ability and achievement, the Student qualifies for special education under the classification of Specific Learning Disability (SLD). 34 C.F.R. § 300.309(a)(2)(ii); 22 Pa. Code § 14.102(a)(2)(ii).

18. The Student's deficits in Reading, writing, and math are not attributable to exclusionary factors (e.g., environmental, visual, or emotional causes) but rather indicate a specific learning disability necessitating specially designed instruction. 34 C.F.R. § 300.309(a)(3)–(6).

19. Based on both procedural and substantive deficiencies—including the failure to address documented academic needs, improper placement, lack of executive functioning support, and compromised parent participation—the District denied the Student a FAPE as defined under 20 U.S.C. § 1412(a)(1) and 34 C.F.R. § 300.101.

20. Because the District failed to offer a FAPE and the Parents' unilateral placement is appropriate, the Parents are entitled to equitable relief, including tuition reimbursement and compensatory education, consistent with *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) and 34 C.F.R. § 300.148(c).

In reaching the above conclusions and prior to completing the following analysis, this hearing officer reviewed the following regulations and case law.²

² This analysis and the above Conclusion of Law incorporated a detailed review of the federal and state statutory and regulatory standards, case law, OCR/OSEP guidance, the exhibits, the testimony including but not limited to the reevaluation report along with a review of the Student's IEP present levels, measurable goals, and specially designed instruction (SDIs), the public and private placement. It draws upon the following authorities: *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Downingtown Area Sch. Dist. v. G.B.*, 482 F. Supp. 3d 553 (E.D. Pa. 2020); *Oberti v. Bd. of Educ. of the Borough of Clementon Sch. Dist.*, 995 F.2d 1204 (3d Cir. 1993); *Anchorage Sch. Dist.*, 51 IDELR 230 (SEA AK 2008), and OSEP guidance including *Letter to Hayden*,

Analysis and Conclusions of Law

Procedural and Substantive Violations of the IDEA and Section 504

The record demonstrates, by a preponderance of the evidence, that the District made a series of procedural and substantive errors, which in turn caused violations of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. This pattern of violations denied the Student a FAPE and interfered with the Parents' participation in the FAPE process.

The Present Levels are Procedurally Flawed

The present levels of academic achievement and functional performance (PLAAFP) in the Student's IEP are procedurally flawed and legally deficient under the Individuals with Disabilities Education Act (IDEA). Federal regulation 34 C.F.R. § 300.320(a)(1) requires that each IEP include a coherent, comprehensive statement of the child's current academic and functional status. However, the IEP, in this case, fails to integrate and interpret the Student's standardized test scores, including WADE decoding levels and WJ-IV subtest scores, in a manner that clearly explains the educational implications. For example, the IEP presents conflicting metrics—such as Wilson Substep 1.3 and a WJ-IV Word Attack standard score of 73 (4th percentile)—without reconciling their significance or demonstrating how they inform instruction. This confusion violates the guidance provided in *Red Clay Consol. Sch. Dist. v. T.S.*, 949 F. Supp. 2d 289, 293 (D. Del. 2013), which held that an IEP lacking coherent baseline present levels and synthesis fails to satisfy IDEA requirements.

Furthermore, the IEP fails to articulate the impact of the Student's ADHD, written expression, executive functioning, and speech-language impairments on classroom performance, contravening 34 C.F.R. § 300.304(c)(6). As emphasized in *OCR's Dear Colleague Letter*, 65 IDELR 181 (2015), IEPs must be based on accurate, complete, and

20 IDELR 621 (OSEP 1993); *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997); *Letter to Butler*, 213 IDELR 118 (OSEP 1988).

relevant evaluation data. The PLAAFP here also lacks a narrative that connects present levels to the Student's measurable annual goals, violating the standard set in *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 399 (2017), which requires IEPs to be reasonably calculated to enable progress based on a student's current circumstances. The failure to connect and establish reliable academic and functional baseline present levels obstructs the development of ambitious, appropriately tailored goals as required by 34 C.F.R. § 300.320(a)(2) in *Clovis Unified Sch. Dist.*, 109 LRP 69459 (SEA CA 2009), the court concluded that vague or internally inconsistent present levels invalidate the IEP. The presentation of test scores without interpretation, the omission of executive functioning impacts, and the failure to describe instructional needs based on these data render the PLAAFP non-compliant. Without a clear, individualized understanding of the Student's current performance, the IEP cannot serve as a foundation for appropriate goals or services. Therefore, I now conclude that the IEP PLAAFP is procedurally defective and fails to meet IDEA requirements.

The Goals, as Drafted and Presented, are Procedurally and Substantively Flawed

Applying the "snapshot" rule, I now find that the IEP developed for the Student contains procedurally inappropriate goal statements. *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041, 83 Ed.Law Rep. 71 (3d Cir. 1993) (Mansmann, J., concurring). Federal law mandates that each IEP must include measurable annual goals designed to meet the child's unique needs resulting from the disability and enable involvement in and progress in the general education curriculum. (34 C.F.R. § 300.320(a)(2)). The IEP must also reflect a logical connection from the Student's present levels to the goal statements and then connect directly to the specially designed instruction (SDI). However, the goal statements in this IEP suffer from several critical procedural flaws that render the entire plan legally deficient.

First, the goals lack measurability. Vague, confusing goal statements and SDIs, when combined, do not satisfy the requirement of being measurable. See also *OSEP Q&A on Endrew F.*, 71 IDELR 68 (OSEP 2018) (goals must be based on current data and provide a framework to assess progress). Second, the goals are not appropriately ambitious in light of the Student's circumstances. Here, despite documented needs in decoding, encoding, math fluency, and executive functioning, the IEP includes no corresponding goals for written expression,

spelling, writing, or organization. This absence of targeted academic goals ignores areas of demonstrated need found in the District's reevaluation in violation of 34 C.F.R. § 300.320(a)(2). Third, the goal statements omit a goal for 'written expression' otherwise noted in the WJ-IV or WADE assessments, which indicate that the Student's spelling and sentence composition skills are significantly below grade level. This omission undermines the requirement that IEPs target unique needs noted in valid evaluation data. *Damarcus S. v. District of Columbia*, 55 IDELR 286 (D.D.C. 2010) (goals unmoored from evaluative data are otherwise inappropriate). Fourth, despite team acknowledgment of the Student's ADHD, task initiation difficulties, and parental input regarding emotional distress, the IEP omits goals for executive functioning and emotional regulation. Failure to include goals in areas of behavioral needs —particularly when those areas impede access to instruction—constitutes a denial of FAPE. See *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 864 (6th Cir. 2004) (predetermining services and failing to individualize goals violates IDEA). See *Anchorage Sch. Dist.*, 51 IDELR 230 (SEA AK 2008) (omitting goals in areas of demonstrated academic weakness violates the IDEA); *Letter to Hayden*, 20 IDELR 621 (OSEP 1993); *Amanda J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (procedural violations rise to substantive denials of FAPE where they impact educational benefit).

These joint conclusions are reinforced by the *District of Columbia Public Schools*, 125 LRP 13705 (SEA DC 2025), where the hearing officer found that the IEP was substantively flawed when the District placed a student with significant executive functioning, attentional, and emotional regulation deficits in a large, overwhelming school without individualized supports. Here, like the *District of Columbia*, the District failed to respond to the Student's ADHD, executive functioning impairments, and anxiety by omitting instructional grounded SDIs—such as coaching, structured routines, and environmental modifications—rendering the placement inappropriate. Taken together, the decoding, encoding, and missing writing and executive functioning goals reflect a procedural violation under 34 C.F.R. §§ 300.320(a)(1)–(2) (lack of measurable goals linked to present levels) and a substantive violation under *Endrew F.*, *Rowley*, and related precedents that IEPs must be reasonably calculated to confer educational benefit. Accordingly, I now conclude that the IEP goals are somewhat generic, template-based, and disconnected from the Student's need for specially designed instruction during the school day. They also fail to meet both the procedural requirements for specificity and

measurability and the substantive duty to enable meaningful educational progress. These violations resulted in a denial of FAPE.

The SDIs Are Non-Responsive, and LRE Decision Making is Fundamentally Flawed

The Student's IEP fails procedurally and substantively in its design of the specially designed instruction (SDI) and the Least Restrictive Environment (LRE) decision-making. The IDEA mandates that SDI be individualized, evidence-based, and instructionally tailored to address the unique educational needs of the child (34 C.F.R. § 300.39(b)(3)). In this case, however, the SDIs are inappropriately dominated by general accommodations rather than instructional interventions, modifications, and content revisions fail to reflect the proper level of intensity, frequency, and location of services to address the severity and degree of need recognized in the Student's standardized testing profile and known circumstances.

The SDIs list accommodations such as 'preferential seating,' 'extended time,' and 'repetition of directions,' but it does not prescribe direct instruction individualized content modification to address the decoding, encoding, executive functioning, or written expression needs in the regular education or special education classroom. These omissions are striking, given the Student's consistently low performance in key academic areas. For example, the WJ-IV Word Attack score of 73 (4th percentile), MAP Reading RIT scores ranging from the 1st to 11th percentiles over multiple years, and a Wilson WADE Sub step of 1.3 (early first-grade level) illustrate a profound reading disability that cannot be addressed with accommodations alone.

As explained in the OSEP Endrew F. Q&A, 71 IDELR 68 (OSEP 2018), accommodations do not replace the need for specially designed instruction and cannot fulfill the instructional obligations of an IEP. Furthermore, the IEP omitted SDIs related to spelling, writing organization, or math fluency despite significant deficits in these areas. The absence of direct interventions tailored to the Student's executive functioning and attention – ADHD – challenges is particularly concerning. As the Third Circuit noted in *K.D. v. Downingtown Area Sch. Dist.*, 904 F.3d 248, 254 (3d Cir. 2018), the IDEA requires services that enable meaningful progress in light of the child's circumstances—not the provision of generic supports or accommodations that merely place the Student in a seat. These procedural inadequacies are further compounded by the District's failure to explain how or why accommodations would suffice in place of targeted, intensive, individualized, skill-based instruction. Accordingly,

the SDIs as offered constitute a violation of 34 C.F.R. § 300.320(a)(4), which requires SDIs to be designed to meet the child's unique needs.

The LRE Decision Making Was Also Flawed

The LRE statement in the IEP lacks individualization and disregards data that clearly indicate the placement in regular education absent SDIs, supplemental aids, and supports, which renders the offer of a FAPE inappropriate. Under 34 C.F.R. § 300.114(a)(2), the LRE requirement obligates districts to ensure placement decisions are made based on the Student's needs, not administrative convenience. The Student's placement in [redacted] -grade general education classes using unmodified grade-level texts is directly contradicted by the Student's demonstrated reading level, which remains four to five years below grade level. Rather than analyzing whether and how supplementary aids and services could facilitate learning, the District offered rote participation in general education with no meaningful adaptation of curriculum or instructional location, frequency, or scaffolding. This approach ignores longstanding Third Circuit precedent such as *T.R. v. Kingwood Twp. Bd. of Educ.*, 205 F.3d 572, 578 (3d Cir. 2000), which requires a meaningful analysis of whether supports can facilitate significant learning. It further also violates 34 C.F.R. § 300.116(b)(2), which mandates that placement decisions must consider the potential harmful effect on the child. Here, the placement overloaded the Student's executive functioning system, placing excessive cognitive demands on working memory, sustained attention, and processing speed—deficits well-documented in both the record and the Student's ADHD diagnosis.

As courts have explained, the IDEA is not satisfied by placing a child in a general education setting where they cannot access the curriculum. See *L.H. v. Hamilton Cty. Dep't of Educ.*, 900 F.3d 779 (6th Cir. 2018). Critically, here, the IEP team appeared to lose sight of the cumulative impact of the Student's testing profile and functional limitations. The decision to provide limited SDI while assigning the Student to an unmodified [redacted] grade setting lacked any data-based justification and reflects a failure to engage in meaningful team-based decision-making. The failure to develop a coherent plan for accessing the curriculum through individualized support—either through a more intensive learning support model or a modified curriculum—was a procedural and substantive flaw. The Parents' concerns about the impact of ADHD and task initiation difficulties were noted but not incorporated into the SDI or LRE determination, undermining meaningful participation under 34 C.F.R. § 300.322(a). In conclusion, the District's overall decision-making concerning SDIs and LRE

constitutes procedural defects that resulted in a substantively deficient offer of FAPE.

The over-reliance on accommodations, failure to provide targeted instructional interventions, and misplacement in general education without curricular modification denied the Student the opportunity to make meaningful progress. As articulated in *Endrew F.*, 580 U.S. 386 (2017), the IDEA demands more than de minimis benefit; it requires instruction and placement decisions that are reasonably calculated to enable progress in light of the child's circumstances. These individual and combined IEP flaws violated that standard and resulted in a denial of FAPE under 20 U.S.C. § 1412(a)(1)(A).

Appropriate Relief and Tuition Reimbursement

The Parents seek three forms of relief: (1) prorated tuition reimbursement for the 2023–2024 school year, (2) compensatory education for the beginning of the 2024–2025 school year, and (3) full tuition reimbursement for the 2024–2025 school year. (N.T. 14, 24–25). After a thorough review of the entire record, I find that the District failed to offer a FAPE and that the private school placement is otherwise appropriate under the standards set forth in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993), and *School Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985). However, the relief sought must be considered separately for each year and in light of the equities.

Excusing the Notice Requirement under 34 C.F.R. § 300.148(d)

The IDEA provides that a parent's failure to provide the 10-business-day notice required under 34 C.F.R. § 300.148(d) may result in a denial or reduction of tuition reimbursement. However, both the statute and implementing regulations recognize that such notice requirements must yield where enforcement would be inequitable, procedurally unjust, or harmful to the child.

Pursuant to 34 C.F.R. § 300.148(e) and 20 U.S.C. § 1412(a)(10)(C)(iv), a hearing officer or court must not deny or reduce tuition reimbursement for failure to provide the notice if:

- The school district prevented the Parent from providing notice;
- The Parent was not informed of the notice requirement as required by 34 C.F.R. § 300.504; or
- Compliance with the notice requirement would likely result in physical harm to the child.

In addition, the regulation confers discretion upon hearing officers and courts to excuse noncompliance where:

- The parents are not literate or cannot write in English or
- Compliance with the notice requirement would likely result in serious emotional harm to the child. 34 C.F.R. § 300.148(e)(2)(ii).

In this case, the record supports a finding that the 10-day notice requirement should be excused on equitable and discretionary grounds. The Student displayed self-injurious behavior, emotional distress, heightened dysregulation, and clinical vulnerability at the time the Parents decided to withdraw the Student from the District. The IEP, in effect, failed to address the pressing academic and functional needs—particularly in decoding, executive functioning, and written expression—and lacked any finalized schedule, structured supports, or behavioral safeguards. The placement of the Student in an unsupported regular education environment without necessary specially designed instruction triggered self-inflicted emotional harm. Requiring the Parents to comply with the 10-day notice rule under such circumstances would have likely exacerbated the Student's condition and prolonged [student's] exposure to a demonstrably inappropriate setting.

Moreover, the District's conduct contributed materially to the Parents' inability to provide timely notice. Despite receiving relevant assessment data and clear parental input, the District failed to offer a completed, appropriately individualized IEP before the school year began. The Parents acted in good faith and cooperated throughout the process. They did not withhold consent, obstruct the District, or behave unreasonably. Instead, they withdrew the Student only after it became clear that remaining in the District would pose risks to [student's] emotional and educational well-being.

As the District Court in *C.D. v. Natick Public School District*, 78 IDELR 10 (D. Mass. 2020), made clear, the IDEA does **not** mandate an automatic denial or reduction of tuition reimbursement solely due to a parent's failure to provide the 10-day notice required under 34 C.F.R. § 300.148(d). Instead, hearing officers are vested with discretion to evaluate the totality of the circumstances and to balance the equities. Similarly, in *C.L. v. Scarsdale Union Free School District*, 744 F.3d 826, 838 (2d Cir. 2014), the Second Circuit affirmed that tuition reimbursement may still be appropriate when parents act with

diligence and reasonableness in response to a school district's failure to offer a Free Appropriate Public Education (FAPE).

Accordingly, I conclude that the facts of this case justify a finding that the Parents acted diligently, thereby excusing the 10-day notice requirement. The risk of serious emotional harm to the Student, combined with the self-injurious physical harm in light of the District's failure to act in a timely and responsive manner, outweighs any procedural defect. Finally, the District did not present preponderant proof that the lack of notice caused a substantive violation; to elevate form over substance under these circumstances would reward the party with unclean hands. Therefore, the Parents' Claim for tuition reimbursement shall be reduced and not denied for failure to comply with 34 C.F.R. § 300.148(d).

1. Denial of Tuition Reimbursement for the 2023–2024 School Year

Although the initial IEP offered by the District for the 2023–2024 school year was not appropriate, the record is preponderant that the parties mutually agreed to defer Student's enrollment in the District until the start of the 2024–2025 school year. (N.T. 491–493). Given this mutual understanding and the absence of any evidence suggesting the District actively obstructed services or the Parents' detrimentally on the District's assertions during this period, I conclude that the equities for that school year weigh against reimbursement. Therefore, tuition reimbursement for the 2023–2024 school year is denied.

2. Tuition Reimbursement for the 2024–2025 School Year

The circumstances surrounding the 2024–2025 school year are materially different. Based on the evidence presented, the IEP remained substantively deficient and failed to address the Student's specific needs in decoding, written expression, and executive functioning. Moreover, the District failed to provide a finalized schedule, appropriate specially designed instruction, or necessary supplementary aids and services prior to the start of the school year. Despite these circumstances and failures, the Parents acted with diligence, transparency, and cooperation. They consistently raised concerns, participated in the IEP process in good faith, made the Student available for assessment, and gave the District ample opportunity to remedy the deficiencies. Their ultimate decision to continue with the private school placement was measured and reasonable under the circumstances. The private school, in contrast to the District program, offered intensive, targeted instruction that directly addressed the Student's needs, including instruction in

decoding, writing, and executive functioning, as confirmed by standardized testing and progress monitoring (e.g., WJ-IV, MAP, and WADE data).

Equitable considerations, in this case, favor the Parents. There is no evidence that the Parents obstructed the IEP process or acted unreasonably. Their decision to privately place the Student was motivated by a genuine concern for the Student's educational progress and emotional well-being. As held in *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 838 (2d Cir. 2014), parents are not barred from reimbursement where their actions are reasonable and the District fails to fulfill its obligations. Accordingly, I conclude that the Parents are entitled to full tuition reimbursement for the 2024–2025 school year from the first day the Student attends the private school.

3. Compensatory Education for the 18.5 Days of In-District Attendance

Finally, the record shows that the Student attended the District school for 18.5 days before being withdrawn. During this time, the IEP's design flaws failed to offer specially designed instruction, adequate accommodations, or supplementary aids to meet the Student's identified needs. Under *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396–97 (3d Cir. 1996), compensatory education is warranted when the District knew or should have known of its failure to offer FAPE and did not take timely steps to correct the problem. By April 2024, the District was on notice that the IEP was deficient. The August WADE data confirmed that regular education placement without tailored support would not suffice. Yet the District failed to consider or implement appropriate planning or provide any defense that it reasonably attempted to rectify the written expression and the executive functioning dysregulation issue during the Student's brief in-district attendance. Therefore, I conclude that the Student is entitled to hour-for-hour compensatory education for each of the 18.5 school days [student] attended the District program.³

Conclusion

At all times relevant, the District failed to offer a FAPE. The parents established that the private placement was otherwise appropriate.

Therefore, after balancing the equities, I now conclude the following:

1. Tuition reimbursement for the 2023–2024 school year is **Denied**.

2. Prorated tuition reimbursement is appropriate relief for the 2024–2025 school year is **Granted**. The District is directed to reimburse the Parents for each day the Student attends the private placement during the 2024-2025 school year.

3. Hour-for-hour compensatory education for the 18.5 days of in-district attendance during 2024. The IDEA tuition reimbursement relief resolves the Parents' Section 504 claims.

An appropriate order follows.

ORDER

NOW, this 2nd day of June 2025, it is hereby **ORDERED** that the Parent's claims under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act are **GRANTED**. The Parties are directed to collaborate in good faith and to comply with all deadlines and directives set forth herein.

A. Retrospective Compensatory Education Award

1. **Award Period:** The District shall provide hour-for-hour compensatory education for 18.5 school days.
2. **Calculation Method:** For each school day the school was in session during the awarded period, the Student shall receive 6.5 hours of compensatory education.
3. **Expiration:** Compensatory education hours may be used until the Student reaches age 23, after which unused hours shall revert back to the District.
4. **Service Provider Discretion and Reimbursement:** The Parent may choose the provider(s). Lab Charter shall reimburse all services at standard rates and transportation costs within 30 days of invoice. Mileage shall be reimbursed at the IRS standard mileage rate.
5. **Annual Reporting:** On or before January 15 of each year until the Student turns 23, Lab Charter shall provide a written accounting to the Parent of all unused compensatory education hours
6. The Parents' claim for tuition reimbursement for the 2023–2024 school year is **Claim Denied**.
7. The District is directed to reimburse the Parent for their out-of-pocket costs to educate the Student during the 2024-2025 school year. The District is further directed to prorate the tuition reimbursement for each day the Student actually attends the

- private placement during the 2024-2025 school year. **Claim Granted**
8. The IDEA tuition reimbursement relief resolves the Parents' Section 504 claims.
 9. **Finality of Order:** The remedies ordered herein are final and binding, subject to any appeal rights provided under applicable federal or state law.

SO ORDERED this 2nd day of June 2025

s/s Charles W. Jelley, Esq. LL.M
Special Education Hearing Officer
ODR FILE #30666-24-25