

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. 30064-24-25

Child's Name:

E.L.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Kathleen Metcalfe, Esquire
1230 County Line Road
Bryn Mawr, PA 19010

Local Education Agency:

Garnet Valley School District
80 Station Road
Glen Mills, PA 19342

Counsel for the LEA:

Gabrielle C. Sereni, Esquire
Samantha L. Newell, Esquire
32 Regency Plaza
Glen Mills, PA 19060

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

12/30/2024

INTRODUCTION AND PROCEDURAL HISTORY

The student, E.L. (Student),¹ is a [redacted] teenaged student residing within the boundaries of the Garnet Valley School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² based on an Emotional Disturbance³ and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.⁴ Student currently attends the District high school.

In the summer of 2024, the Parents filed a Due Process Complaint under the IDEA, Section 504, and the ADA, contending that the District did not provide appropriate programming for Student over the 2022-23 and 2023-24 school years and during the summers of 2022 and 2023, seeking compensatory education, reimbursement for certain expenses, and declaratory relief. The District denied the Parents' contentions and all the relief demanded. The matter proceeded to an efficient due process hearing requiring less than two full-day sessions.⁵

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ Student has also been identified as gifted.

⁴ 29 U.S.C. § 794. The federal regulations implementing Section 504 are codified in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15). The Parents also assert related claims under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 – 12213.

⁵ The Parents' Due Process Complaint does not raise any claims after the summer of 2023, but some of the findings after that time provide context. References to Parents in the plural are made where it appears that one was acting on behalf of both. Citation to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number,

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

ISSUES

1. Whether the District failed to timely identify Student as eligible for special education under the IDEA;
2. Whether the District denied Student a free, appropriate public education from the spring of 2022 through the end of summer of 2023;
3. Whether the Section 504 Service Agreements developed for Student were appropriate and implemented as written;
4. Whether the special education program developed for Student in the spring of 2023 was appropriate for Student;
5. If the District committed any violation of the IDEA and/or Section 504 during the relevant time period of spring 2022 through the end of summer 2023, is Student entitled to compensatory education; and
6. If the District committed any violation of the IDEA and/or Section 504, are the Parents entitled to reimbursement for expenses incurred for the private placements in which Student was enrolled in 2022 and 2023?

and Hearing Officer Exhibits (HO-) followed by the exhibit number. HO1 through HO-6 are hereby admitted. Duplicative exhibits may not all be cited in the factual findings.

FINDINGS OF FACT

1. Student is late teenaged residing in the District and, during the relevant time period, attended its high school. Student has been identified as eligible for special education based on an Emotional Disturbance. (P-24; S-21.)
2. Student is very bright with high expectations of self, is an analytic thinker, is confident, kind, and empathetic, and has self-advocacy skills. Student has had a rigorous schedule of courses at the District. (N.T. 270-71, 274-75, 279, 321-23, 393.)⁶
3. Student has had anxiety from a very young age, first receiving therapy at approximately age [redacted]. (N.T. 279-80, 331-32.)
4. Student's final grades for the 2019-20 and 2020-21 school years were all in the A to A+ range. (P-2; P-3.)

General District Background

5. The District high school has block scheduling, with students having eight classes but only four each day, meeting for all classes every other day for approximately seventy minutes. The high school is an open campus, with various areas with comfortable seating and tables where students can go to work independently during classes with teacher permission. (N.T. 252, 261, 389-91.)
6. In order for a student to be given medication in the District, a parent must take the medication to the school nurse with consent, along with an order from a physician. Students are not permitted to ever carry a medication on their person. (N.T. 364-66, 371.)

⁶ Student also qualifies for [redacted] education services. (P-1; P-24; S-21.)

7. All visits to the nurse by a student are documented by date and time with a nurse's note about the visit. (N.T. 368.)
8. Risk assessments conducted at the District involve two professionals and begin with a screening if necessary, then a determination of a level that depends on consideration of both risk and protective factors. (N.T. 92-94.)

2021-22 School Year

9. Beginning in the fall of 2021, Student began meeting occasionally with the school counselor. The first session included one of the Parents, who related that Student had a history of anxiety and depression. Student reported feeling lonely at school. (N.T. 32-34, 334-35.)
10. In approximately January 2022, Student's mood became more negative, feeling sad and depressed. Student exchanged text messages with one of the Parents during the school day describing difficulty coping at school. (N.T. 283-87, 293, 338; P-10 at 1.)
11. Student continued meeting with the school counselor in the spring of 2022 when Student felt a need to do so and sometimes to check in. At times, Student described experiencing anxiety or difficulty with peer relationships. By March 2022, Student and the counselor met frequently. (N.T. 36-41; P-10 at 1-2.)
12. In March 2022, Student also began to experience difficulty attending afternoon classes for the whole period. Student would meet with the counselor or work in other areas of the high school rather than in the classroom. By late April 2022, Student was reporting feeling sick to the stomach and was meeting even more frequently with the counselor. (N.T. 41-43, 59-60; P-10 at 1-2.)

13. On March 3, 2022, Student experienced suicidal ideation (SI)⁷ and went to the counselor. The District conducted a risk assessment with the counselor and a school psychologist, noting that it was not the first or only time in the previous month for such thoughts. Student did not have a plan but had identified a method; additional risk factors included sleep disturbance, anxiety, stress, and prior unidentified self-injurious behaviors. Protective factors were also present: support of the Parents and a peer, several interests, and plans to which Student looked forward. A moderate level of risk was determined to be present, and the District recommended that Student schedule a medical appointment on an emergency basis. The Parents arrived at school after contact by the District to take Student home, and it was at this time that the District first became aware of Student's therapy services.⁸ (N.T. 44-46, 144-48, 287-88; P-5; S-1 at 1-3.)
14. A few days after the March 3, 2022 risk assessment, Student's therapist (a psychologist) made a referral for disability accommodations to the District. This referral was based on Student's anxiety and its impact on attention and concentration, memory, physical well-being leading to absences, manifestation of confusion, and difficulty interpreting information presented. Suggestions included availability of breaks, check-ins/check-outs with a trusted adult, a plan to make up missed work, and access to calming objects. Acquisition of coping skills and strategies were also planned.⁹ (P-6; P-33; S-2.)

⁷ It is not generally necessary to fully describe Student's manifestation of SI for purposes of this decision, therefore details have been omitted where possible.

⁸ The Parent who testified was not able to identify if or when Student's mental health therapy service was shared with the District. (N.T. 335-36.)

⁹ The recommendations did not specify that the District, rather than the therapist, should assist Student in acquiring these skills.

15. The first Section 504 meeting convened on April 8, 2022 with the Parents. Student's therapist's input was made part of the evaluation for Section 504 services. The Section 504 Service Agreement provided for the following accommodations: access to trusted adults including the school counselor, breaks from class as needed, extended time for assignments after an absence, prompts and cues, checks for understanding, preferential seating, and access to calming objects. (N.T. 54, 150-51, 201-03, 289-90; P-7; P-8; P-34; S-3; S-4.)
16. The Parents approved the Section 504 Service Agreement. They believed that the accommodations were helpful to some extent, but did not impact Student's difficulty with school attendance. (N.T. 291-92.)
17. Shortly after the Section 504 Service Agreement was implemented, Student reported frequent vomiting to the school nurse, and continued to see the school counselor on an ongoing basis. (P-10 at 1-2; P-31 at 11; S-45 at 11.)
18. On May 4, 2022, a second risk assessment was conducted for the same reasons as in March but with a more extreme manifestation. Student had increased thoughts about and a wish for ending life with a defined plan, method, and location; Student was also overwhelmed. In addition, Student reportedly had recently attempted to [self-harm], but the Parents intervened successfully. Numerous risk factors were present including depression, a belief that Student was a burden to others, peer bullying, and physical symptoms. Concern about family reaction was a protective factor but support of the Parents and friends was considered by Student to be less than before. Student reported having a bottle of medication and an inability to stop thinking about it, and a school nurse confirmed the item in Student's possession, which can be prescribed for anxiety. The nurse immediately removed the

item from Student. The District determined that Student had a high level of risk, and recommended that Student be evaluated by a medical professional at that time followed by inpatient hospitalization. (N.T. 61-64, 152-56, 158, 204-05, 294-96, 369-72; P-9; S-5; S-15 at 8.)

19. The Parents consulted with Student's psychiatrist after the May 4, 2022 incident and waited for a residential mental health hospitalization placement to become available for Student. One in a different state was first open, and Student traveled to and entered that facility. The Parents incurred costs for that placement that were not covered by insurance. (N.T. 298-99, 302-03; P-13; S-52 at 1.)
20. On May 10, 2022, the Parents reported to the District that school was a stressor for Student, that the anxiety needed to be managed before a return, and that they anticipated the hospitalization placement to begin very soon. Student's psychiatrist provided an excuse for the absences, and the District provided classwork and assignments for Student to complete. (P-35 at 5-9.)
21. Student did not return to the District in the 2021-22 school year after the second risk assessment and the Parents' report of Student's admission to the residential facility. Individual, group, and family therapy were all components of the stay. Student's diagnoses at discharge in mid-July 2022 were Major Depressive Disorder and Generalized Anxiety Disorder. During that hospitalization, the District provided school assignments for Student to complete with the Parents' permission; education at the facility was essentially limited to health and medical needs rather than what constitutes special education in public schools. The facility provided a discharge summary to the District in late July 2022. (N.T. 66-67; P-12; P-35; S-6; S-7; S-52.)

22. Student's grades at the end of the 2021-22 school year were all in the A- to A+ range with the exceptions of courses in mathematics and psychology (B to B- grades). Student had 33 or 34 total absences, with 27 of those in the fourth quarter. (P-4; S-43 at 1-5.)
23. Student had a good summer after returning home in 2022 from the Parents' perspective, but the discharge summary from the mental health facility reported their exploration of a partial hospitalization program. The facility later confirmed that it recommended that follow-up placement. Student did continue with psychiatric care and therapy. (N.T. 304-06; S-52 at 247, 253.)

2022-23 School Year

24. Student began the 2022-23 school year positively, then had an illness that kept Student from attending school for a period of time. Student met with the school counselor weekly as part of the reentry plan. (N.T. 306-07, 346; P-31; P-51; S-46 at 1-3.)
25. Later in the fall of 2002, Student was hospitalized as an inpatient at a behavioral health hospital for ten days after another [self-harm] attempt outside of school. Student returned to school and had occasional brief interactions with the school counselor, primarily focused on making up work from a period of absence due to the illness. (N.T. 70-72, 210-11, 306-09; S-10 at 1.)
26. The District convened a reentry meeting for Student's return after the fall 2022 hospitalization to ensure that Student would be provided with any necessary supports in the transition back to school. Recommendations included scheduled check-ins with an adult, screening for the Student Assistance Program, reduced assignments, and extended time to complete them. The Parents approved the reentry plan. (N.T. 169, 212-13, 347; P-37 at 12; S-8.)

27. The District did not convene a meeting of the Section 504 team in the fall of 2022, but did issue a Permission to Evaluate form for a special education evaluation in November. (N.T. 78, 178, 213-14, 311-13; P-18; P-37 at 3; P-39; S-11.)
28. Two risk assessments were conducted in November 2022, both occurring when Student went to see the counselor after further suicidal ideation. The level of risk was determined to be moderate for both, with the support of family and friends as protective factors along with several interests. Risk factors were similar to those in May in addition to academic concerns, but Student did not have a defined plan at the time. (N.T. 77, 175, 310-11; P-15; P-17; S-10; S-12.)
29. The Parents asked the District about a potential private school placement for Student in November 2022 because Student had so much difficulty completing coursework. The District confirmed that an evaluation would be conducted following receipt of their consent, but declined to refer or recommend a private school. The Parents provided consent for the evaluation in early December 2022. (P-16; P-18; S-11; S-13.)
30. Two more risk assessment occurred in December 2022, when Student reported not having a reason to live to the school counselor and a recently written [self-harm] note. Very similar risk and protective factors as in November existed at the time, and the level of risk was determined to be somewhere between moderate and high. Student was to meet with the psychiatrist later in the day of the first of the two. (N.T. 78; P-19; P-20; S-14.)
31. The District sought but was not granted permission to obtain a psychiatric evaluation in early January 2023. The Parents were concerned about Student's mental health if Student needed to undergo

another psychiatric evaluation. The District requested but was not provided copies of any psychiatric report or evaluation. (N.T. 217-18, 318, 330-31; P-21; S-44.)

32. Student began attending the District's online learning program for two classes in December 2022, dropping some others in favor of less rigorous coursework. (N.T. 79, 315, P-41; P-42.)
33. Another risk assessment in January 2023 reflected a high level of risk, with a specific plan and no reason to live. Hospitalization was recommended. The District followed with a [self-harm] risk screening several days later. (P-22; P-23; S-17; S-19.)
34. In late January 2023, the Parents arranged for Student to begin a partial hospitalization program while still attending online District classes. Student's day included time for academic classes, as well as group, family, and individual therapy. The Parents incurred costs for this program that were not covered by insurance. (N.T. 79. 83-84, 219-20, 317-18, 355; P-28.)

District Evaluation Report February 2023

35. The District conducted the evaluation and issued its Evaluation Report (ER) in February 2023. Parent input into that evaluation included appropriate development of self-care skills, as well as a number of talents and abilities, but existing anxiety and depression as well as difficulty with peer relationships. They described Student as "completely fragile" (S-16 at 6) and they were very concerned about Student. (P-24; S-16; P-18; S-21 at 5.)
36. Teacher input into the February 2023 ER reflected very positive academic skills and performance but some missing assignments, difficulty with focus/attention at times, and weak self-advocacy skills in some classes. Student was described as a strong writer and having

excellent analytical skills, but barely on pace with an online course and exhibiting weak coping skills. Student was provided tutoring in several subjects at the time. (S-21 at 2-5.)

37. The District school psychologist interviewed Student for the February 2023 ER. Student described a variety of interests, identified a favorite and least favorite class, and concerns about “ ‘everything’ at school” (S-21 at 23) and recent lack of motivation to complete work. Student expressed a desire for post-secondary education. (N.T. 190; S-21 at 5, 22-23.)
38. The District ER briefly described the risk assessments, noting that the Parents were promptly notified about each. The Section 504 Service Agreement accommodations were also summarized. (S-21 at 5-6.)
39. Cognitive assessment for the District ER (Wechsler Adult Intelligence Scale – Fourth Edition) yielded a high average range general ability score and an average range Full Scale IQ. These scores were lower than a similar instrument administered in 2014. (P-1; S-21 at 9-11.)
40. Assessment of academic achievement (Wechsler Individual Achievement Test – Fourth Edition) for the District ER reflected above average range scores across subtests and composites, with the exceptions of reading comprehension and phonemic proficiency (average range). (S-21 at 11-14.)
41. Social/emotional functioning for the District ER (Behavior Assessment System for Children – Third Edition (BASC-3)) was examined through rating scales completed by the Parents, two teachers, and the school counselor. Results were somewhat variable. The Parents endorsed at-risk scores with withdrawal, adaptability, leadership, and activities of daily living; and clinically significant concerns with anxiety and depression. One of the teachers endorsed at-risk concerns with

adaptability, leadership, and functional communication; and a clinically significant score for social skills. The school counselor endorsed at-risk concerns with atypicality, withdrawal, adaptability, social skills, and leadership; with clinically significant concerns for anxiety, depression, and somatization. All rater scores were considered to be acceptable except for the school counselor, whose ratings were viewed with caution because it was excessively negative. (S-21 at 15-18.)

42. The raters for the BASC-3 also completed Emotional Disturbance Qualification scales. The Parents endorsed at-risk concerns with inappropriate behavior/feelings, unhappiness/depression, and physical symptoms or fears. Although the teachers did not have concerns for this measure, the school counselor's ratings were in the clinically significant range for inappropriate behaviors/feelings, unhappiness/depression, and physical symptoms or fears, as well as at-risk concerns with interpersonal relationships and schizophrenia/disorders of thought. Student's own ratings were in the clinically significant range for inappropriate behavior/feelings and self-esteem, and in the at-risk range for interpersonal relationships and schizophrenia/disorders of thought. (S-21 at 18-19, 20-21.)
43. Student also completed a Self-Report of Personality – Adolescent, a separate BASC-3 scale. Results revealed several areas of clinically significant concern: anxiety, depression, somatization, and self-esteem. At-risk concerns were also endorsed by Student for attitude toward school, locus of control, social stress, sense of inadequacy, attention problems, and hyperactivity. The overall Emotional Symptoms Index was in the clinically significant range. (S-21 at 19-20.)
44. A scale of manifest anxiety was also obtained from Student for the District ER. Student's Total Anxiety was in the extremely problematic

range, with all areas noted to be of concern. On a children's depression inventory, Student similarly rated self as very elevated in all areas, with the exception of interpersonal problems (elevated range). (S-21 at 21-22.)

45. The same individuals who completed the BASC-3 also provided ratings for Student's executive functioning skills for the District ER. The Parent had an extremely elevated score for emotional control, whereas the teachers had none that were elevated; the school counselor's rating for emotional control was in the elevated range. (S-21 at 18.)
46. The District ER determined that Student was eligible for special education based on Emotional Disturbance.¹⁰ A number of strengths were set forth, in addition to needs in the areas of coping and self-advocacy, attendance, and work completion. Recommendations included emotional support services, many of the existing accommodations, and support for executive functioning, assessments, and online classes. (S-21 at 24-25, 26-27.)
47. The District school psychologist called the Parents to review the ER. (N.T. 193.)

Individualized Education Program March 2023

48. A meeting to develop Student's Individualized Education Program (IEP) convened in early March 2023. The ER was also reviewed at the IEP meeting. (N.T. 196, 252-54; P-25; S-23.)
49. The resulting March 2023 IEP reiterated the strengths and needs identified by the District ER. A coping skills goal during weekly check-ins addressed Student's weakness in using those, but the document was silent on how Student would learn those skills. There were a

¹⁰ Student's [redacted] classification was also confirmed. (S-21 at 26.)

number of program modifications and items of specially designed instruction to include access to emotional support, executive functioning supports and strategies, and test/assignment accommodations. However, none of the items specially designed instruction addressed how Student would gain coping skills in order to identify and use them when needed. Student's program was one of emotional support at an itinerant level at the District high school, and non-eligibility for extended school year services. (P-26; P-27; S-24).

50. The Parents approved the Notice of Recommended Educational Placement (NOREP) for implementation of the March 2023 IEP. (S-25.)
51. A revision to Student's IEP was made in mid-May 2023 to provide a goal baseline and support for Student's re-entry into school. Student remained ineligible for ESY services. (P-29; S-26.)

Return to School May 2023

52. A reentry meeting convened in May 2023 for Student's return to school. Representatives of the facility where Student was at the time attended the meeting. Student was referred to the Student Assistance Program (SAP), had scheduled check-ins with a reentry liaison, and would be provided nursing services for medication. (N.T. 258-59, 267-68; P-48; S-27.)
53. At discharge in May 2023, the partial hospitalization program provided the following diagnoses for Student: Major Depressive Disorder, moderate; Anxiety Disorder, unspecified; and Bipolar disorder, unspecified. Recommendations of the program mirrored those previously provided to Student and were part of the IEP. Student had reportedly made growth with family and interpersonal relationships, use of coping skills, and self-advocacy. However, education there was

primarily limited to health and medical needs rather than what constitutes special education in public schools. (P-50; S-28; S-53.)

54. Student resumed online learning in May 2023, but was present in the special education classroom a majority of the time although not every day through the end of the school year, on a modified schedule. The special education teacher implemented Student's IEP, provided emotional support, and helped Student to manage time and organize assignments as the two began to know each other and Student became reacclimated to attending school in the building. Student also met with the school counselor weekly following reentry. (N.T. 260-62, 268-69, 271-72, 276, 355-56; P-51.)
55. Student's final grades at the end of the 2022-23 school year were all in the A- to A+ range with the exceptions of a psychology course (B grade) and precalculus (C+ grade). Student was absent for approximately one-half of the school year with the majority in the third and fourth quarters; and exhibited no growth on the coping skills goal with progress monitoring reflecting below baseline performance at the end of the school year. (S-35 at 21; S-41 at 5-10; HO-3.)

2023-24 School Year

56. Student's IEP was revised in November 2023 following two meetings. The team members discussed Student's return to school following the partial hospitalization program with support. (S-35.)
57. Student's IEP was revised in January 2024. At that that time, the team discussed Student's tutoring, the availability of a school-based intensive mental health program, and Student's transition to the school setting for completion of online coursework with a modified schedule. Student remained ineligible for ESY services. The Parents

did not approve the accompanying NOREP and asked for an informal meeting. (S-35; S-36.)

58. Another IEP meeting convened in April 2024. The District proposed continuation of itinerant learning support through the online program with an option to attend in person for the remainder of that school year. Another meeting was contemplated for May or June to review therapist recommendations, and Student was qualified ESY services at Student's option and/or to cover missed curriculum over the school year. ESY services would be provided from June 18, 2024 through July 18, 2024 for a period of four hours for tutoring. The Parents also asked that the intensive school-based mental health services end. They approved the NOREP. (S-40.)
59. Student's final grades for the 2023-24 school year were all in the A to A+ range other than calculus and a foreign language (B to B+ grades). Student was absent for approximately sixteen days that year. (S-41 at 5-6.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof encompasses two discrete components: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents because they filed for this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of fact-finders, are also responsible for making credibility determinations of the witnesses who testify before them. *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 (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them; in the relatively few instances that minor discrepancies may have occurred, those must be attributed to differing perspectives or lack of recall, not intent to mislead. The weight accorded the evidence, however, was not equally placed because of uneven persuasive value discussed as necessary below.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' concise yet thorough closing statements.¹¹

General IDEA Principles: Child Find and Eligibility

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

¹¹ Neither party had possession of the records from the mental health facilities until this hearing officer issued a subpoena in the fall of 2024 (HO-6). The marked Hearing Officer exhibits were made available to the parties after the closings were submitted; thus, the District's reference to HO-1 instead of HO-6 is not its error.

methodology, or delivery of instruction as appropriate to a child with a disability to meet educational needs and to provide for access to the general education curriculum. 34 C.F.R. § 300.39(b)(3). The process of identifying children who may be eligible for special education is generally through an evaluation by the local education agency (LEA).

The IDEA and state and federal regulations further obligate LEAs to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. The process of identifying children who may be eligible for special education is through an evaluation.

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

Substantively, the IDEA describes the primary purposes of a special education evaluation as twofold: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other

health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); *see also* 34 C.F.R. § 300.8(a).

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

General IDEA Principles: ESY Programming

The FAPE requirement extends to provision of ESY services as necessary for the child. 34 C.F.R. § 300.106(a)(1). Pennsylvania sets forth a number of criteria that IEP teams must consider to ascertain whether a student is eligible for ESY; in essence, a determination must be made on whether ESY services are “required as part of a Student’s program.” 22 Pa. Code § 14.132(a). Eligibility is established if the seven factors in Section 14.132(a)(2) “make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives.” Pennsylvania Department of Education, Basic Education Circular, Extended School Year Eligibility (April 15, 2013). Although no one factor may be determinative, the seven categories may be summarized as follows: a decrease in skills or behaviors after an interruption in services; the ability to recover skills after interruption; the impact of both regression and recoupment on maintaining IEP goal skills; the extent of mastery at the point of interruption; the impact of successive interruptions of services; and the severity of the disability (such as “serious emotional disturbance”). 22 Pa. Code § 14.132(a)(2). If the student is eligible, the team must also determine the services to be provided. 22 Pa. Code § 14.132(a)(1).

In determining whether a proposed ESY program is appropriate, the general principles applicable to special education must be applied, since ESY

services must be provided in accordance with the child's IEP. 34 C.F.R. § 106(b). The fundamental premise for ESY services has generally been described as preserving skills that the child has gained over the school year, rather than as a means for maximizing growth. "An ESY program continues the goals and objectives of the IEP during the summer months, after the school year has concluded, so the student does not regress from one school year to the next." *L.G. v. Wissahickon School District*, 2011 U.S. Dist. LEXIS 476 *16 n.3, 2011 WL 13572 (E.D. Pa. 2011). As noted, FAPE does not require a maximization of programs or services, and ESY services are not an exception to that general principle.

General IDEA Principles: Placement

LEAs are required to have available a "continuum of alternative placements" in order to meet the educational and related service needs of IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. Furthermore, the "continuum" of placements in the law enumerates settings that grow progressively more restrictive, beginning with regular education classes, before moving first toward special classes and then toward special schools and beyond. 34 C.F.R. § 300.115.

Residential placement is one option on the continuum, and is appropriate if "is necessary to provide special education and related services to a child with a disability." 34 C.F.R. § 30.104. The question of whether a residential placement must be provided at public expense requires an assessment of whether that full-time placement is "necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process." *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 243-44 (3d Cir. 2009, (quoting *Kruelle v. New Castle County School District*, 642 F.2d 687, 693 (3d Cir. 1981)). In other words, if the medical, social, and emotional components of the residential program are "part and parcel of a

specially designed instruction to meet the unique needs of a handicapped child,” the local education agency is responsible for that placement. *Id.* at 244 (quoting *Kruelle* at 694).

[N]ot all services that can be broadly construed as educational are cognizable under IDEA. This is because “ultimately any life support system or medical aid can be construed as related to a child's ability to learn.” Instead, we declared that we must “assess the link between the supportive service or educational placement and the child's learning needs.”

Id. (citations omitted). Finally, “[o]nly those residential facilities that provide special education, however, qualify for reimbursement under *Kruelle* and IDEA.” *Id.*

General IDEA Principles: Compensatory Education

It is well settled that compensatory education may be an appropriate remedy where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate educational services, while excluding the time reasonably required for a school district to correct the deficiency. *Id.* The Third Circuit has also endorsed an alternate approach, sometimes described as a “make whole” remedy, where the award of compensatory education is crafted “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville-Cleona School District*, 39

F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

General Section 504 and ADA Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). The two statutes as well as the ADA do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 and the ADA are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions on ADA and Section 504 claims. *Le Pape, supra*, 103 F.4th at 979. “The statute’s administrative exhaustion requirement applies *only* to suits that ‘see[k] relief ... also available under’ IDEA.” *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 147, 143 S. Ct. 859, 864, 215 L. Ed. 2d 95 (2023). “[T]he ADA, by regulation, adds another requirement [beyond the IDEA]: the public entity must ‘give *primary consideration* to the requests of [the] individual[] with disabilities.’” *Id.* (quoting 28 C.F.R. § 35.160(b)(2)) (emphasis in original). “Once he has exhausted those claims in an IDEA hearing, a plaintiff may pursue them as he otherwise would in a district court.” *Le Pape, supra*, 103 F.4th at 979.

Where a party raising claims under these statutes based on the same facts does not assert any legal distinction among them as applied to the case, the differences do not need to be separately addressed. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). Thus, to the extent applicable, the IDEA, Section 504, and ADA claims based on the same set of facts may be considered to be discussed together.

The Parents' Claims

The Parents' first claim is that the District failed in its Child Find obligation to Student beginning in the spring of 2022. Essentially, they contend that the District had reason to suspect a disability after Student's mood began to change early in that calendar year, when meetings with the school counselor increased and Student left or failed to attend classes more frequently. They posit that, had the District acted promptly in March 2022, an evaluation would have been completed and an IEP developed and implemented much sooner than had occurred.

It is unquestionable that the first risk assessment in early March 2022 alerted the District to Student's emotional distress and need for increased support. The evidence is not preponderant that the District had any knowledge of Student's previous mental health services until then. The testimony of the school counselor is credited over that of the Parent who testified, who unsurprisingly was unable to recall distant events clearly. It was at that time that Student's own psychologist referred Student for accommodations that that District adopted; and had a plan to provide additional support through coping strategies. The District's response at the time was appropriate with development of a Section 504 Service Agreement; and, this hearing officer concludes that those were reasonably calculated to address Student's needs at the time including any problem attendance in light of the open campus concept. Moreover, the majority of Student's absences that school year occurred during the fourth quarter when Student

reached a crisis and required very intense mental health services in a residential facility, something public schools simply are not equipped to provide. Even if the District had determined that special education eligibility should be considered for Student at the time of the May 2022 incident, the almost immediate entry into the facility meant that Student was not even available to the District to begin an evaluation that would not have been completed until the fall. This conclusion defeats the claim for ESY services in 2022.

When Student returned in the fall of 2022, it was an overall positive experience although impacted by an unrelated illness. It was certainly appropriate for the District to give Student time to become acclimated to reentering school in the building after the previous residential treatment, and to gauge Student's functioning at that time. However, another intensive hospitalization was soon necessary, and Student's reentry success similarly could only be assessed after an additional short period of acclimation. Several risk assessments in November and December were accompanied by the District's prompt request to evaluate Student. On this record, this hearing officer cannot conclude that any additional obligations attached before that point in time, with the Parents providing consent in December.

The ER in February 2023 was timely, leading to a determination of special education eligibility and development of an IEP long before Student could return to school after the partial hospitalization through a majority of the spring of the 2022-23 school year. The District reasonably could await Student's discharge before assessing then-current needs for support. Nonetheless, upon Student's return to school, Student's program did not resemble one of itinerant emotional support with Student spending a majority of time at school in that setting. Moreover, Student's lack of progress and, indeed, regression on the coping skills goal through the end of the 2022-23 school year is not surprising in light of the absence of any

assessment for those skills followed by actual instruction in that area of deficit. Although the District cannot be charged with knowledge of records it did not possess or even know existed, this hearing officer finds it perplexing that the District did not revise the IEP in any significant way to reflect what Student's program actually was, and to examine Student's needs in May 2023 after another period of intensive services during a hospitalization. Further, there is no suggestion that the team revisited Student's ESY eligibility, particularly with Student regressing with coping skills, failing to master the single goal in the IEP, and having been identified as having a severe disability.

For all of these reasons, the District deprived Student of FAPE from the first day of return to school in May 2023 through the end of the 2022-23 school year, and for the summer of 2023. Student is accordingly entitled to a remedy for this period of time.

The Parents suggest that Student's intensive programming and placements during the various out-of-District treatment facilities were a direct result of its failure to properly and meaningfully address Student's anxiety. Assuming for the sake of argument that this conclusion can be reached, which this hearing officer does not, the Parents simply cannot recover the expenses associated with those placements unless they were necessary for educational purposes such that the medical and emotional components of the residential programs were "part and parcel" of Student's need for specially designed instruction. The placements that Student attended did not provide this form of special education services because the District did not; indeed, Student continued to be provided educational services *by the District*, and any such services provided by the placements was tangential to special education at best. This alternative argument cannot therefore be accepted as a basis for reimbursement.

Finally on liability, the Parents contend that the Section 504 Service Agreement was not appropriate from its development through January 2023. As noted, the accommodations set forth in that document aligned with the recommendations of Student's therapist, who described a temporary disability. Student's school attendance was not consistent enough between April 2022 through the end of the school year and into the fall of November 2023, when a Permission to Evaluate form was provided to the Parents. The evidence does not support a conclusion that the District denied Student FAPE on the basis of the terms and implementation of the Service Agreement.

The Parents do not make other separate arguments under Section 504 or the ADA and, thus, the evidence similarly supports the conclusions regarding denial of FAPE under these statutes for the same periods of time and for identical reasons. To the extent that additional discussion is necessary, this record simply does not establish any disability-related discrimination against Student beyond the rationale already set forth. The Parents also do not seek any relief unavailable under the IDEA. Accordingly, the discussion and conclusions regarding the denial of FAPE also apply to any asserted discrimination, including the reasonable responses of the District that are not at all discriminatory. Thus, the Section 504 and ADA claims beyond the time period for which FAPE was denied fail on this basis as well.

Remedy

Having concluded that the District denied Student FAPE for a period of time, the next issue is the relief to be provided. Reimbursement has already been rejected above. However, compensatory education, an equitable remedy, is appropriate, but the amount to be ordered must be ascertained. Although the District argues in favor of a make whole remedy should compensatory education be awarded, there is little if any evidence in the

record from which such relief may adequately assessed. Thus, the hour for hour approach must be applied.

Giving consideration to Student's modified schedule and essential full-time emotional support from the start of May to the end of the 2022-23 school year, Student shall be awarded compensatory education in that amount; there is no reason to find a period of rectification in light of the history of the events in the spring of 2023 upon Student's return to school including the failure to revisit the IEP following discharge. For ESY 2023, Student shall be awarded four hours per day of compensatory education (the amount for 2024) for each day that the District provided those services to eligible students in the summer of 2023.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs in the areas of identified disability. The compensatory education may not be used for products or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parent. The hours of compensatory education may be used at any time from the present until Student turns age twenty (20). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents; and the cost to the District of providing the awarded hours of compensatory services may be limited to the

average market rate for private providers of those services in the county where the District is located.

CONCLUSIONS OF LAW

1. The District did not fail in its Child Find obligation.
2. The District denied Student FAPE from the first day that Student returned to school in May 2023 through the end of the 2022-23 school year but not for any other period of time.
3. Student was denied FAPE for ESY services in 2023.
4. Student is entitled to compensatory education to remedy the FAPE denial.
5. The Parents are not entitled to reimbursement for the private services and out-of-District placements they obtained for Student in 2022 and 2023.
6. The District did not otherwise engage in discrimination against Student under Section 504 or the ADA.

ORDER

AND NOW, this 30th day of December, 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District denied Student an appropriate education with respect to programming from the first day that Student returned to school in May 2023 through the end of the 2022-23 school year.
2. The District denied Student an appropriate education with respect to ESY services in 2024.
3. The District did not deny otherwise deny Student an appropriate education over the time period at issue.
4. Student is awarded compensatory education for the days that Student attended school beginning in May 2023 through the end of the 2022-23 school year, in the amount of time that Student was present at school pursuant to the modified schedule. The terms and conditions in the attached decision apply as though set forth herein at length.
5. Student is awarded four hours of compensatory education for each day that the District provided ESY services in the summer of 2023. The terms and conditions in the attached decision apply as though set forth herein at length.
6. The Parents are not entitled to reimbursement for expenses incurred during the relevant time period including their cost for each of the mental health programs Student attended.
7. The District did not discriminate against Student on any basis not addressed above from the spring of 2022 through the summer of 2023.
8. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 30064-24-25

Sent to counsel for both parties this date as required by 34 C.F.R. § 300.515 by electronic mail message as requested by counsel consistent with 22 Pa. Code § 14.162(n).