

Pennsylvania Special Education Hearing Officer

Final Decision and Order

Open Hearing

ODR File Number:

27581-2223AS

Child's Name:

Kyndal [REDACTED]

Date of Birth:

[REDACTED]

Parents:

Elaina and Ronald Adams

[REDACTED]

[REDACTED]

Counsel for Parents

Joseph Montgomery, Esq.
Montgomery Law LLC
1420 Locust Street, Suite 420
Philadelphia, PA 19102

Local Education Agency:

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

Counsel for LEA

Kalani Linnell, Esq. and Gabrielle Sereni, Esq.
Raffaele Puppio, LLC
19 West Third St.
Media, PA 19063

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

10/12/23

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently sixteen years old and enrolled in the eleventh grade in the District (District) and a protected handicapped student pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and Pennsylvania Chapter 15.² The Student has a current Section 504 (504 Plan) /Chapter 15 Accommodation Plan to address diagnoses including juvenile idiopathic arthritis (JIA), polyarthritis, major depressive disorder, and generalized anxiety.

The Parent³ filed an initial due process complaint against the District. The Parent was granted leave to amend the complaint. After hearing dates were scheduled, the Parent requested a sixty-day conditional dismissal of the amended complaint because a settlement was pending. Before the conditional dismissal period expired, the Parent requested reinstatement of the complaint.

In the amended complaint, the Parent alleged the District violated its child find responsibilities under the Individuals with Disabilities Act, 20 USC §§ 1400-1482 (IDEA), denied Student a FAPE by failing to provide appropriate accommodations through the 504 service plans, and

¹ Although an open due process hearing was requested, 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), 34 C.F.R. § 300.513(d)(2), and 15 Pa. Code § 15.8.

² 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

³ Both of the Student's parents are involved in educational programming. However, one Parent participated in all due process hearings and is the subject of many of the factual circumstances that gave rise to the filing of the due process complaint.

discriminated against the Student.⁴ In response, the District maintained that its educational program, as implemented, was appropriate for Student based on the information available, that it did not discriminate, and that no remedy was due.

For the reasons set forth below, the claims of the Parent are granted in part and denied in part.

ISSUES

- 1) Did the District violate its child find obligation?

- 2) From 2021 onward, did the District deny this Student a FAPE by failing to provide a 504 plan that provided appropriate accommodations, including access to a nurse on District-sponsored away trips or comparable medical care and related services?

- 3) Did the District discriminate against the Student in violation of Section 504?

- 4) If the District denied the Student a FAPE and/or discriminated against the Student, what, if any, remedy is appropriate?

FINDING OF FACTS

Background

⁴ 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).

1. The Student is diagnosed with juvenile idiopathic arthritis (JIA) and polyarthritis, which can cause morning stiffness, joint pain, swelling, achy, throbbing joints, and loss of joint function. The Student is treated with medication prescribed by a pediatric rheumatologist. (S-20, p. 1; NT 529)
2. The Student is an athlete. The Student is on the varsity cheerleading and lacrosse teams and works as a swim coach. Cheerleading is regarded as a high-impact sport that includes tumbling and stunts. Lacrosse is considered a medium-impact sport. (NT 534-535, 612)
3. Since the first grade, the Student has received accommodations under a Section 504 plan to address diagnosed disabilities. (S-3)
4. In January 2013 and again in 2017, the District evaluated the Student. Both evaluations concluded that the Student did not meet the eligibility criteria for special education programming. (S-2; NT 317-318)
5. The Student has received care from a pediatric rheumatologist for fifteen years. The Student's treating rheumatologist is the current Chief of the Division of Rheumatology at a well-known children's hospital. Since March 2022, the Student's physical condition has increased in severity. (NT 492-494, 520, 528)

Summer 2021

Cheerleading Camp

6. In June 2021, before starting ninth grade, the Parent registered the Student to participate in cheerleading for the 2021-2022 school year.

On the registration, the Parent indicated the Student had Juvenile Rheumatoid Arthritis (JRA) (S-4, S-5; NT 695)

7. On August 18, 2021, the Parent registered the Student for a multi-day overnight cheerleading camp. On the registration, the Parent indicated the Student was prescribed a daily morning dose of Mobic, with doses in the afternoon and evening, if needed. A morning dose of Prevacid was also prescribed. The Parent also indicated the Student needed an MSM supplement, Vitamin D3, and Folic Acid. Instructions for "stress dosing" were also provided. ⁵ (S-5)
8. The Parent signed the education administration consent policy and authorized the school nurse or other employee designated by the principal, an employee and authorized representative of the District, to administer the medication listed. (S-5, p. 3)
9. The summer cheerleading camp had an onsite, full-time nurse and athletic trainers. Upon arrival, the District's cheerleading coach provided the camp nurse with the Student's medication regimen and the registration form completed by the Parent that indicated walking, sitting, and activity accommodations. (S-5; NT 213, 221, 465, 621, 696)
10. The Student participated and attended all scheduled activities during the cheerleading camp. (NT 221, 704)

2021-2022 School Year

⁵ Stress dosing *stress dosing only to be given for no more than 3 days in a row for 1 cycle and no more. (S-5, p. 2)

11. During the 2021-2022 school year, the Student was enrolled in the ninth grade in the District.
12. On November 22, 2021, the team developed a 504 service agreement (504) to address the Student's arthritis disabilities and vision needs. (P-6, S-6)
13. The November 2021 504 offered accommodations that included consultative physical therapy (P.T.) and occupational therapy (O.T.), modifications to P.E. class, if needed, preferential seating, seating choice (chair, bean bag, yoga ball), movement breaks, extended time, use of computer or iPad, Parent consult with teachers for missed assignments, elevator usage, school nurse administration of medications with a note on file. In the event of a flare-up, the Parents were to inform the nurse, and teachers would be contacted. (P-6, S-6)
14. The Student's second quarter grades ranged from 80 to 97. (S-8)
15. On January 24, 2022, the Parent and school counselor discussed accommodations for the Student's 504 plan. Through email, the Parent requested a nurse to accompany the Student on school-sponsored trips "for assessment of students medical needs, proper administration of scheduled and PRN medications, monitoring of reactions of medications and assist with navigation of wheelchair as needed." (S-1, p. 7-10, 13; NT 269-270)

16. In 2022, the District's cheerleading team was invited to participate in a national competition in Orlando, Florida. The current District cheerleading coach regarded the competition as a business trip, not a mother-daughter excursion. (NT 219-220)

17. In January, the Parent decided to attend the Orlando cheerleading trip. (S-1, p. 12; NT 466, 622, 624)

18. On January 27, 2022, the District acknowledged the Student had extenuating circumstances that necessitated accommodations for the Florida cheerleading trip. The Athletic Director advised the cheerleading coach to provide the Parent with travel information for the trip, full access to the Student while in Florida for medication management, and communication with the coaching staff. The email indicated the Parent would stay at a hotel with other parents but would be coming to provide care to the Student. (S-1, p. 12; NT 466-467, 622-624)

February 2022 Florida Cheerleading Trip

19. On February 1, 2022, the Parent registered the Student for the cheerleading trip to Florida. On the registration form, the Parent listed the Student's prescribed medications and supplements with dosage instructions. (S-10)

20. On February 8, 2022, the cheerleading coach provided the Parent with airline and hotel information for the Florida trip. From

February 9, 2022, to February 14, 2022, the Parent and Student attended the cheerleading trip in Florida and stayed in different hotels. The Student participated in the cheerleading activities. During the trip, the Parent administered the Student's medication. (S-1, p. 14; N.T. 163, 169-170, 223-225)

21. In March 2022, the Student's arthritis condition increased in severity, and injectable medication was prescribed. (NT 492-494, 520, 528, 532, 538)
22. In Spring 2022, the Student reported suicidal ideations. The Student was diagnosed with depression and anxiety. (NT at 260, 429-30)
23. In March 2022, the Student experienced peer conflict that resulted in social and emotional struggles. After the Student expressed thoughts of self-harm, the Parent advised medical providers. The Student's rheumatological treatments at that time were believed responsible for the suicidal ideation. (NT 73, 75, 87-88, 139, 260, 506, 552)
24. The Student's third-quarter grades ranged from 80 to 96. (S-8)
25. On April 5, 2022, a (504) team meeting occurred. The 504 offered accommodations intended to address the Student's arthritis and vision needs. Accommodations included consultative P.T. and O.T., preferential seating, extended time and movement breaks. (P-6, S-1, S-11)

26. During the April 5, 2022, meeting, the Parent advised the team of Student's diagnoses of anxiety and depression, untreated ADHD and medication-induced psychosis. The team advised the Parent that the 504 plan would be updated after it received medical documentation. (P-6, S-11)
27. On April 7, 2022, the Student's Pediatric Rheumatologist provided written treatment directions. After Student received a morning dose of Mobic at home, additional dosages could be administered in school, depending on pain. If a school dose were given, the Student would need re-evaluated for pain. (S-20, p.2)
28. On April 7, 2022, the Student's Pediatric Rheumatologist provided written recommendations for services (extra time, two sets of books, wheelchair if needed, movement breaks, lateness and absences excuses, OT/PT consult) and medication and dosage administration directions. (S-1, p. 20-22, S-20; N.T. 499)
29. On April 7, 2022, a psychiatric provider drafted a medication order for a bedtime dose of sertraline (ZOLOFT) and every six-hour dosing of (ATARAX), if needed for anxiety. The note included diagnoses of major depressive disorder and generalized anxiety disorder and suggested accommodation of extended time on assignments/tests. The letter contained an order for the school nurse to administer the medication. (S-1, p. 20-22, S-20, p. 3-4)

30. On April 7, 2022, the District issued a permission to evaluate-evaluation request form to the Parent. The permission indicated that after it was received by the District, either a Prior Written Notice for Initial Evaluation and Request for Consent Form or a Notice of Recommended Educational Placement/Prior Written Notice (NOREP) with an explanation of the refusal to evaluate would be issued to the Parent. (P-19; NT 273)

31. On April 8, 2022, the District received the medication orders and documentation supplied by Student's providers. (S-1, p. 21-22)

32. On April 13, 2022, the team modified the Student's 504 plan and added the Student's diagnoses of depression and anxiety. Amblyopia was removed as a disability. The plan added accommodations that offered testing in a small group. The updated 504 referenced the letters from the Student's mental health provider and treating rheumatologist. (P-8, S-1, p. 23, 34, S-13)

33. On April 22, 2022, the Parent emailed the signed PTE to the District with concerns of the Student's inability to focus, learn, retain information, anxiety related to social/emotional learning, following directions and assignment completion. (P-19; NT 272-273)

34. The District did not respond to its receipt of the signed PTE until July 2022. (S-15; NT 275, 690-691)

35. On May 3, 2022, the Student's treatment provider advised that prescribed Adderall was to be administered at school until the end of the school year. (S-20, p. 5)
36. During the ninth grade, the Student opted to attend "Learn Class", a thirty-five minute, teacher supervised period to receive additional assistance. Sign up for the class was on a daily basis. The Student trusted and confided in the Learn teacher. Student's family and the Learn teacher's family were socially connected, outside of school. (NT 22,63-64, 71-72, 89, 718)
37. The Learn teacher spoke with the Parent about the social and peer conflicts that arose in the high school. (NT 69, 72)
38. At the conclusion of the 2021-2022 school year, the Student received final grades that ranged from 84 to 98. The Student was absent five days that were excused and one day that was unexcused. (S-8, S-9)

Summer 2022

Cheerleading Camp

39. In preparation for the Student's attendance at cheerleading camp, the school nurse advised the Asst. Dir. Special Education that the camp had an experienced, twenty-four hour nurse and a medical center staffed with athletic trainers. (S-1, p. 24-25)
40. On June 30, 2022, the school nurse spoke with the camp nurse who advised the Parent would need to provide physician's orders for medication that required administration and a signed consent. The

Student and cheerleading coach were advised to go to the nursing office after arrival to review medication administration. (S-1, p. 25; N.T. 703)

41. On July 14, 2022, the Student's Pediatric Rheumatologist recommended, in writing that Student receive assistance from a 1:1 nurse to administer medications, monitor pain and re-evaluate after medication is taken. The physician requested the nurse bring medication to the Student's cabin, one-hour before getting out of bed. The nurse was directed to re-evaluate the Student one hour later. The letter also addressed additional dosing dependent on pain levels, and the need to monitor for side effects. (P-10, p.1, S-1, p. 27, 41, S-20, p. 7; NT 499-501, 520-523,538, 699-700)
42. Student's physician recommended a 1:1 nursing because the Student was incapable of self-management of medication administration and monitoring for side effects. Although the Student's diagnoses were not life-threatening, the treating physician regarded the Student as medically fragile. (NT 499-501, 523, 525-530, 538-539)
43. Student's treating rheumatologist clarified that the nurse would not need to accompany the Student twenty-four, hours a day and be solely assigned to the Student and could have others under his care, but would need to be available to the Student, much like a building school nurse. (NT 522-523)

44. The District's procedure for determining the necessity of assignment of a 1:1 nurse includes a 504/IEP team discussion about the need, significant medical necessity and a life threatening condition. (NT 700)

45. On July 18, 2022, the District mailed a prior written notice for initial evaluation and request for consent form to the Parent. The consent indicated it was the third notice. The Parent did not respond to the consent issued by the District. (S-15; NT 430)

46. On July 20, 2022, the Parent forwarded the recommendations from the Student's physician to the District. In response, the District advised the Parent it would consider the physician's letter and asked if a release could be signed to permit direct contact with the treating physician. (S-1, p. 28)

47. On July 21, 2022, the Parent questioned the necessity, reiterated the Student's medical issues, and advised a response would occur after an attorney consultation. (P-9, p. 4, S-1, p. 28-31)

48. On July 22, 2022, the District reiterated its request for a release but also indicated if the Parent declined, consideration of the accommodation would occur based on the information at their disposal. (P-9, p. 4, S-1, p.30)

49. On August 3, 2022, a psychiatric provider provided a letter that Student was under the care of its behavioral health division and

directed the administration of medication (Adderall, Zoloft, Atarax) and monitoring needs. (P-10, p.4, S-20, p. 8)

50. On August 5, 2022, the District contacted its medical consultant for an opinion on whether a 1:1 nurse was medically necessary for the Student to participate in cheerleading camp. The District provided the Student's treating physician's letters, Parent emails, and the 504 service agreement. (S-1, p. 33, 36; NT 701, 733-734, 737)

51. On August 8, 2022, the District advised the Parent that a 1:1 nurse was not required for the Student to access the cheerleading camp and meaningfully participate in activities. The District advised it would send three coaches; the camp had an onsite experienced nurse available twenty-four hours a day along with trainers to attend to the campers. The District attached the Student's 504 plan, procedural safeguards and an invitation to reconvene the 504 team for further discussion. (P-9, p.1-3)

52. On August 10, 2022, the District school nurse spoke with the camp nurse and explained the necessity of onsite nursing services for the Student. The Parent agreed to provide the prescribed medications to the camp nurse. (S-19, p. 38; N.T. 375-376)

53. The Student attended the cheerleading camp from August 20, 2022, to August 23, 2022. (S-16; NT 698)

54. After the cheerleading camp, the District did not receive reports that the Student missed medication or had any disability-related needs. (NT 226, 704)

2022-2023 School Year

55. During the 2022-2023 school year, the Student was enrolled in the tenth grade in the District. (P-9)

56. At the end of November 2022, the Parent contacted the District and requested a 1:1 nurse to assist the Student during a February 8-19, 2023, cheerleading trip to Florida. (P-9, p. 22-23; N.T. 705)

57. On December 23, 2022, the Parent made an airline reservation to attend the Florida cheerleading trip. (S-1, p. 65; N.T. 228, 469)

58. On January 10, 2023, the District advised the Parent that it declined to send a 1:1 nurse with the Student to Florida and cited no changes to the medical history, medical record review determined a 1:1 was unnecessary, and onsite staff in Florida could administer needed medications. (S-1, p. 1-2; N.T. 709)

59. On January 15, 2023, the Parent contacted the District to obtain the contact information for the onsite medical staff in Florida qualified to administer the Student's needed medication. (P-9, p. 7)

60. On January 17 and 18, 2023, the District advised the Parent that the athletic trainer traveling with the team could administer medications, identify side effects, and adverse reactions. (P-9, p. 19)
61. On January 26, 2023, a primary care practice wrote a letter of medical necessity that requested a 1:1 nurse to administer medications and monitor for adverse reactions on the Student's school trip. The medications included prescribed and over the counter ointment, a weekly injection, and oral tablets. Three of the medications had to be administered in the morning. On January 30, 2023, the Parent provided the letter to the District. (P-10, p. 3, S-1, p. 58, S-20, p. 9-10)
62. On January 27, 2023, the District advised the Parent that it identified a "licensed volunteer"⁶ willing to accompany the cheerleading team to Florida and assist with medication administration to the Student. (P-9, p. 17; N.T. 228, 706)
63. On January 31, 2023, the Parent contacted the District with concerns that a 1:1 nurse and not a licensed volunteer accompany the Student on the cheerleading trip to Florida. That same day, the Parent advised the District that she would attend the Florida cheerleading trip. (S-1, p. 61-62; N.T. 707)

February 2023 Florida Cheerleading Trip

⁶ The licensed volunteer's assigned duties must be within their professional scope of practice. The volunteer's license must be active and in good standing. For an out-of-state field trip, the school should ensure the nurse and/or licensed volunteer is permitted to practice in the state under their Pa. license. <https://www.health.pa.gov/topics/Documents/School%20Health/Field%20Trip%20Considerations%20updated%20April%202018.pd> (9/19/23)

64. On February 1, 2023, the Parent registered the Student for the Florida cheerleading trip. (S-17; NT 704)
65. The Parent attended the Orlando cheerleading trip with the Student but stayed in a different hotel. The Student participated in most activities, missed one dose of medication, and did not attend the scheduled party night at Disney World.⁷ (NT 230-233)
66. On February 23, 2023, the District issued permission to evaluate the Student. The request indicated that since April 2022, the District previously issued three previous permissions to evaluate the Student. The permission was issued in response to the Parent's request for an IDEA evaluation as "relief requested" in the due process complaint. (S-22)
67. On March 2, 2023, a 504 service agreement (504) was developed for the Student. The 504 was intended to address Student's reported disabilities of arthropathy/hypermobility; depressive disorder; anxiety disorder; (JIA); polyarthrititis; ADHD; accommodative esotropia; refractive amblyopia of left eye; pathological hypermetropia of both eyes; astigmatism of both eyes; and allergic conjunctivitis of both eyes. The Parent also reported additional diagnoses of bilateral hyper amblyopia and hypermobile joint Syndrome. (P-12, S-21)
68. On March 9, 2023, the Parent submitted an amended due process Complaint. (P-14)
69. On March 14, 2023, the Student's clinician provided medication administration directions for Mobic and Tylenol. (P-10, p. 5-6)

⁷ During party night, Disney World opens the last night of the competition, only for the cheerleaders. (N.T. 230)

70. On March 21, 2023, the Student's psychiatric provider indicated the Student had diagnoses of ADHD, Major Depressive Disorder and Generalized Anxiety Disorder, the letter requested "appropriate supports". (S-20)

71. On March 24, 2023, the Student's Ophthalmologist indicated diagnoses that included accommodative esotropia, juvenile rheumatoid arthritis, refractive amblyopia, hypermetropia, astigmatism and conjunctivitis. The provider made recommendations for accommodations that included preferential seating, artificial tears, and wetting drops. (S-20)

2023 - Evaluation Report

72. On April 24, 2023, the District issued its evaluation report (ER). The evaluation contained Parent, physician and teacher input, assessment observations, physical, developmental and academic history, a summary of previous evaluative data, and current psychoeducational assessment results. For inclusion in the ER, a school psychologist conducted cognitive and achievement testing, assessments of social and emotional functioning, and a Student interview. (P-13, S-23)⁸

73. The ER listed Student's medical diagnoses that included:
Arthropathy/hypermobility; Major depressive disorder; Generalized

⁸ P-13 had a cover page with a watermark of "Draft", S-23 does not. In all other respects the exhibits were identical.

anxiety disorder; juvenile idiopathic arthritis; polyarthritis; Attention Deficit Hyperactivity Disorder, Combined Type; Accommodative esotropia; JRA (juvenile rheumatoid arthritis); Refractive amblyopia of left eye; Pathological hypermetropia of both eyes; Regular astigmatism of both eyes; and Allergic conjunctivitis of both eyes. The Parent also reported additional diagnoses of Bilateral Hyper Amblyopia, Hypermobility Joint Syndrome, and AMPS. (S-23)

74. The ER concluded the Student presented with overall cognitive abilities in the average range. The ER concluded that the Student demonstrated overall academic abilities in the average range for reading comprehension, basic reading skills, reading fluency, spelling, sentence composition, math problem solving, and math calculation skills. The Student scored in the above average range for essay composition. The Student's cognitive abilities and academic achievement scores were consistent with an evaluation that occurred in 2017. (S-23)

75. To assess behavioral and social emotional functioning, the District's certified school psychologist administered to the Student the Behavioral Assessment for Children-Third Edition (BASC-3), an Executive Functioning Index Summary, Emotional Disturbance Qualification Scales (EDQs), BASC-3 Self-Report of Personality-Adolescent (SRP-A), the Conners 4th Edition (Conners 4), the Revised Children's Manifest Anxiety Scale-Second Edition (RCMAS-2), the Children's Depression Inventory, Second Edition (CDI-2). (S-23, p. 19-28)

76. On the BASC-3, the Parent's ratings led to clinically significant scores on the anxiety and somatization scales, as well as at-risk scores

on the hyperactivity, depression, attention problems, withdrawal, adaptability, leadership, activities of daily living, and functional communication scales. One of the two teachers that completed the BASC-3, rated the Student as to at-risk on the somatization scale. All other scales were in the acceptable range. (S-23, p. 20-21)

77. On the Executive Functioning Index Summary, the Parent's ratings led to an elevated score on the overall executive functioning index, as well as for the areas of attentional control, behavioral control, and emotional control. Neither of the teachers' ratings led to elevated scores for executive functioning skills. (S-23, p. 22)

78. On the EDQs, the Parent endorsed responses on clinical and adaptive items that indicated a clinically significant score in the area of physical symptoms or fears, as well as at-risk scores in the areas of inappropriate behavior/feelings, unhappiness or depression, and schizophrenia and related disorders of thought. Neither teacher endorsed responses that led to clinically significant or at-risk scores. All EDQs were in the acceptable range. (S-23, p. 22)

79. On the SRP-A, the Student's ratings led to clinically significant scores on the attention problems and hyperactivity scales, as well as at-risk scores on the locus of control, social stress, anxiety, depression, somatization, interpersonal relations, self-esteem, and self-reliance scales. On April 12, 2023, the school psychologist notified the Parent of these screening results. (S-23, p. 23-24)

80. On the EDQ, the Student endorsed responses on clinical and adaptive items that indicated at-risk scores in the areas of inappropriate behavior/feelings, unhappiness or depression, physical symptoms or fears and schizophrenia and related disorders of thought. (S-23, p. 24)
81. On the Conners 4, the Parent's ratings led to very elevated scores on the hyperactivity and emotional dysregulation scales. On the three scales of schoolwork, peer interactions, and family life, the Parent's ratings did not lead to any very elevated or elevated scores for these scales. On the short forms completed by two of Student's teachers the ratings did not lead to any very elevated or elevated scores for these scales. On the self-report, the Student's ratings led to a very elevated score for emotional dysregulation and elevated scores for hyperactivity and impulsivity. On the schoolwork, peer interactions, and family life ratings, the Student's ratings did not lead to any very elevated or elevated scores for these scales. (S-23, p. 25-27)
82. On the RCMAS-2, a self-report instrument used to assess the level and nature of anxiety in children and adolescents, the Student's responses did not lead to any problematic scores. (S-23, p. 27)
83. On the (CDI-2), used to assess depressive symptoms in children and adolescents, responses led to an average total CDI score, high average emotional problems score, and average functional problems score. The Student's ratings led to a very elevated score on the negative mood/physical symptoms subscale. (S-23, p. 28)

84. Teachers regarded the Student as resilient, very organized, with a great work ethic. (S-23, p. 25-26)
85. The ER concluded that based on the performance on the WISC-V and WIAT-4, the Student did not meet the criteria for a specific learning disability as there were no significant discrepancies between cognitive abilities and academic achievement in reading, writing, and math and all academic abilities were within age and grade-level expectations. (S-23)
86. The ER concluded that behavior concerns endorsed consistently on the Parent, teacher, and self-report rating scales including somatization, could be a result of the Student's medical diagnoses but did not rise to the level of the IDEA disability classifications of emotional disturbance or Other Health Impairment. (S-23, p. 30-31)
87. The ER further concluded the emotional disturbance qualification scales were endorsed on Parent and self-report rating scales but fell in the acceptable range on teacher rating scales. Furthermore, the Parent, teacher, nor Student rating scales indicated significant impairment in the areas of schoolwork, peer interactions, and family life. The Student did not demonstrate significant academic difficulties that required specially designed instruction. Reading, writing, and math achievement were at age and grade level expectation and performance was adequate based on report cards, standardized assessments, behavior records, attendance records, and teacher feedback. (S-23, p. 31)

88. Input from the evaluating OT and PT recommended continued consultative occupational and physical therapy due to the Student's medical diagnosis and the impact of fluctuating symptoms. (S-23)
89. The ER concluded the Student had a disability but did not need specially designed instruction and was ineligible for a special education programming. The ER determined that Student's preexisting medical diagnoses necessitated continuation of the 504 Service Agreement. (P-13, S-23, p.31)
90. The ER concluded that the Student had needs that included accommodation for medical diagnoses, consultative O.T. and P.T., continuation of a 504 service agreement t would be beneficial. (P-23, S-23, p. 32)
91. On May 11, 2023, the District issued a NOREP that recommended the Student continue in a general education placement supported with accommodations listed in the 504 Service Agreement (S-24)
92. From May 12, 2023, through May 23, 2023, the District attempted to obtain a signature on the NOREP from the Parent. The Parent did not sign the NOREP. (S-24, p. 5-6)
93. At the conclusion of the 2022-2023 school year, the Student received final grades that ranged from 89 to 99. The Student was absent from school for six days. (S-25, S-26)

DISCUSSION AND CONCLUSION OF LAW

Burden of Proof

In general, the burden of proof consists of two elements: the burden of production and burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 US 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The burden of persuasion must be established by a preponderance of the evidence. *Jaffess v. Council Rock School District*, 2006 EL 3097939 (E.D. Pa. October 26, 2006). A "preponderance" of evidence is a quantity or weight of evidence greater than the quantity or weight of evidence produced by the opposing party. *Comm. v. Williams*, 532 Pa. 265, 284-286 (1992). This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in *Schaffer* called "equipoise." Whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See *Schaffer*, above. In the present matter, the burden of persuasion rests on the Parents who filed the complaint that initiated the due process proceeding. If the Parents fail to produce a preponderance of the evidence in support of its claims, or if the evidence is in "equipoise," the Parents cannot prevail.

Credibility Determinations

Special education hearing officers, in the role of fact-finders, are charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (MD Pa. 2014); *AS v. Office for Dispute*

Resolution (Quakertown Community School District), 88 A.3d 256, 266 (Pa. Commw. 2014). This Hearing Officer found some of the witnesses to be credible, testifying to the best of their ability and recollection concerning the facts necessary to resolve the issues presented. The testimony offered by the Student's Rheumatologist stood out. She testified, without a subpoena or compensation and very credible. Her testimony was truthful, recall was without pretense, and her delivery was persuasive.

Child Find and Evaluation

The IDEA and state and federal regulations obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); see also 22 Pa. Code §§ 14.121- 14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C. §1414(a)(1)(C)(i). The obligation to identify students suspected of having a disability is referred to as "Child Find." LEAs are required to fulfill their child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). More specifically, LEAs are required to consider an evaluation for special education services within a reasonable time after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). School districts are not, however, required to identify a disability "at the earliest possible moment" or to evaluate "every struggling student." *Id.* The IDEA further defines a "child with a disability" as a child who has been evaluated and identified with one of a number of specific classifications and who, "by reason thereof, needs special education and related services." 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a).

The process of identifying children with disabilities is through an evaluation. Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are examined. 20 USC § 1414(b)(2); see also 34 CFR §§ 300.303(a), 304(b) Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(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). Upon completion of all appropriate assessments, "[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]" 34 C.F.R. § 300.306(a)(1)

Section 504

Section 504 requires that districts "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 CFR 104.33(a); 22 PA. Code §15.1 To receive a free and appropriate public education as defined by Section 504, a student must be provided with regular or special education and related aids and services that are designed

to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met. 34 CFR § 104.33(b); *T.F. by D.F. and TSF v. Fox Chapel Area School District*, 62 IDELR 74 (W.D. Penna. 2013), affirmed in an unpublished decision at 589 F. App'x 594, 64 IDELR 61 (3d Cir. 2014).

The Third Circuit has interpreted the phrase "free appropriate public education" (FAPE) to require "significant learning" and "meaningful benefit." *Ridgewood, supra*, 172 F.3d at 247. Significantly, "[t]here are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not." *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F. Supp.2d 422, 427 (E.D. Pa. 2002). Considering whether an educational program for a child with a disability is appropriate "can only be determined as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2 1031, 1040 (3d Cir. 1993); see also *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same). In addition, a local educational agency (LEA) is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. MR*, 680 F.3d 260, 269 (3d Cir. 2012); *Andrew F.*, ___ U.S. ___, 137 S. Ct. 988, 197 L.Ed.2d 3; *H.D. v. Kennett Consolidated School District*, (E.D. Pa. October 4, 2019) (although the Section 504 plan did not address all sources of the student's anxiety, the District was not obligated to offer the student the best possible education. Rather, it was merely required to offer appropriate services. Districts are not required to maximize the student's education by acquiescing to each request the parents make)

Chapter 15 applies Section 504 in schools to prohibit disability-based against children who are "protected handicapped students." See 22 Pa. Code

§ 15.2. Unlike the IDEA, which requires schools to provide special education to qualifying students with disabilities, Section 504 requires schools to provide accommodations so that students with disabilities can access and benefit from the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities. Under Chapter 15, Student's receive education through a service agreement, "executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student." 22 Pa. Code § 15.2. Service agreements become operative when parents and schools agree to the written document; oral agreements are prohibited. 22 Pa Code § 15.7(a).

Pennsylvania's Chapter 15 regulations similarly obligate the LEA to obtain sufficient information to determine whether a child is a "protected handicapped student" and to involve the parents in that process. 22 Pa. Code §§ 15.5, 15.6. If a parent seeks to modify or change the service agreement, the Parent should include relevant medical records with the written request. A school district has twenty-five days to respond to the Parent after receipt of the written request to modify a service agreement. 22 Pa. Code §15.6 (d)(e)(f).

Parent's Claims

In the complaint, the Parent contended that during the 2021-2022 and 2022-2023 school years, the District failed to comply with its child find obligations, denied the Student a FAPE through its inappropriate 504 plans and discriminated against the Student. It is undisputed that this Student is a scholar and an athlete with juvenile arthritis and vision disabilities that, since kindergarten, warranted the implementation of a Section 504 service agreement or plan. Management of the Student's arthritis diagnoses requires

compliance with a medication regimen to diminish and minimize "flare-ups." Since entering high school, mental health needs have emerged, but despite these challenges, the Student is a cheerleader, on the lacrosse team, and a swim coach. As a cheerleader, camps and competitions, some overnight and out of state, are a component of the high school experience that the Student is entitled to access. Attendance at these camps and competitions is at the heart of this dispute with Parent allegations that travel nursing services are a reasonable accommodation for the Student to fully participate in activities during school sponsored events. That claim and the others raised in the complaint are discussed below. Based on the evidence presented, the Parent's claims are partially granted and partially denied.

Summer Cheer Camp – August 2021

The first claim for consideration arose due to the Student's attendance at a 2021 summer cheerleading camp. The summer preceding the ninth grade, the Parent registered the Student for cheerleading and for a few days in August 2021, the Student attended an overnight school-sponsored camp. In the complaint, the Parent contended that although she asked the District to provide a 1:1 nurse to assist the Student during the cheerleading camp, this accommodation request was refused, resulting in a FAPE denial.

Based on a thorough review of the hearing record, the Parent has failed to sustain the necessary burden of proof concerning this allegation. In the complaint, the Parent, who did not attend the trip, contended that Student was medically unsupervised during the three-night cheer camp, resulting in improper self-administration of medication. According to the Parent, the Student experienced pain and fatigue after returning home. The testimony and documentary evidence established the cheerleading camp attended by the Student had an onsite, full-time nurse and athletic trainers. Aside from the registration form, completed by the Parent, which outlined

the Student's daily medications, vitamins and, no physician order for administration or personal nursing services accompanied the supplied information. Additionally, the District's cheerleading coach, who attended the trip, credibly testified that she spoke with the Parent before the trip about the Student's needs and provided the camp nurse with the medication regimen and the registration forms. The coach's testimony was also persuasive that the Student fully participated in all scheduled cheerleading activities during the camp. Finally, the 504 plan in place at the time of the cheer camp was not introduced, and the Parent failed to present any compelling evidence that she requested a modification to it.

2021-2022 School Year

The Student appeared to transition to the ninth grade successfully. During this time, the Student received medical attention, if needed, from the school nurse, accommodations were implemented, and academically the Student did well. At the November 2021 meeting to update the 504 Plan, the Parent failed to introduce preponderant evidence that she requested a modification to this plan or expressed dissatisfaction with the existing accommodations.

February 2022 Florida Cheerleading Trip

Next, the Parent contended the District denied Student a FAPE by failing to provide appropriate accommodations, including a 1:1 nurse during a February 2022 cheerleading trip to Florida. Preceding the trip, the Parent and guidance counselor discussed proposed accommodations for the Student. In a follow-up email, the Parent reiterated her understanding of the conversation, adding that the Student needed nursing services during

school-sponsored trips to assist with medication administration and to monitor for reactions. Although documentary evidence was introduced that substantiated this communication, the District witness who testified claimed not to know of the Parent's request. Through testimony, the District implied it did not receive a request for a nurse to accompany the Student to Florida and that the Parent agreed to attend the trip and manage the Student's medication needs. The evidence indicated otherwise and weighed in favor that the Parent did request modification to the 504 plan to include nursing services. Through email, District athletic staff directed the cheer coach to make provision for the Student's "extenuating circumstances" and provide the Parent with the travel details. Although the Parent attended the trip and managed the Student's medication administration, that did not relieve the District of its obligations under the law.

After receiving the Parent's request to modify the Student's 504 plan to add nursing services during a school-sponsored trip, the District should have considered this request and provided a written response.⁹ It did not. Although the Parent attended the trip and the Student received medical attention, inconveniences arose from the separate hotel accommodations. Although the District disregarded the procedural requirements of Section 504, no preponderant evidence was offered that the Student lacked access to or was excluded from participation in the scheduled cheerleading events or failed to receive needed medication. *H.D. v. Kennett Consolidated School District*, (E.D. Pa. 2019); *A.C. v. Owen J. Roberts Sch. Dist.*, 554 F. Supp. 3d 620 (E.D. Pa. 2021). No remedy is due for this violation of FAPE.

April 2022 504 Plan

⁹ 15.6 (a)(d)

Next, the Parent contended the April 2022 504 plan was deficient because it failed to address the Student's mental health needs, omitted accommodations for a 1:1 nurse during school trips and did not offer Zoom as an attendance option. The Parent has not established by a preponderance of evidence that the April plan denied the Student a FAPE. By March 2022, the Student's arthritis had become more severe; weeks later, mental health diagnoses were confirmed, and the provider prescribed, as needed, school-day administration of anxiety medication. Two 504 meetings followed. During the first, the Parent advised the team of Student's new mental health diagnoses. At that meeting, the District advised the Parent, that after it received medical documentation, the Student's plan would be updated with appropriate accommodations. A modified 504 was issued that confirmed substantiation of the Student's updated psychiatric and medical needs, including the recommended medication and dosing regimen for school-day administration. After receipt of the requested information, a modified 504 added the accommodation of small group testing as suggested by Student's treatment providers. Regarding participation in school via Zoom instead of in-person attendance, the 504 plan adopted the medical providers' recommended accommodations for missed schoolwork and absences. Most of the accommodations in the April 504 plan were adopted from the treatment providers' recommendations. Overall, the accommodations through the April 2022 plans were appropriate and calculated to provide meaningful access to the Student's educational needs.

The Parent's claim that the District improperly implemented the 504 plan because the school nurse failed to adhere to the prescribed medication regimen is also unsupported by the record. According to the medical documentation, the Student's first dose of arthritis medication was administered at home. The rheumatologist indicated additional medication

could be administered if the Student experienced pain at school. Similarly, the Student's psychiatric medications were administered at home or, if needed, at school. The Parent presented no persuasive evidence that the Student missed prescribed medication dosages or that the District failed to comply with the medication regimen outlined in the 504 plans.

Summer Cheer Camp-August 2022

Next, the Parent contended that Student was denied a FAPE because the April 504 plan was not modified to include a 1:1 nurse for the summer cheer camp scheduled for August 2022. This contention is also unsupported by the record. This time, the District held a meeting to discuss the Parent's request but rejected the modification on grounds of medical necessity. Although the District had no obligation to amend the plan with the specific demands of this Parent, it needed to take reasonable steps to accommodate the Student's disabilities during the cheer camp. The District did so. By the time the camp occurred in August 2022, the District had received a clinical recommendation that Student have access to nursing services at the camp. Although the District offered unsubstantiated testimony that it received an independent medical opinion recommending it deny the Parent's request, my determination is made on other grounds. The Parent failed to establish that a 1:1 nurse at the cheer camp was a reasonable accommodation. The camp had onsite nursing services available to accommodate the Student's medical needs. Although the Student's physician used the term 1:1 nursing, her testimony was clear: the Student did not need a personal nurse to provide attention and medical supervision around the clock. The cheer camp was staffed with a nurse accessible 24 hours a day and other responsible adults. In anticipation of the Student's participation at camp, the District and Parent contacted the camp nurse to review the Student's medication needs and the importance of access to nursing services. The evidence has established that

the Student attended the cheer camp, medical needs were met, and no disability needs arose. The Parents did not provide any preponderant proof to the contrary. The District did not deny Student a FAPE.

2022-2023 School Year

February 2023 Florida Cheerleading Trip

Next, the Parent contended that the Student was denied a FAPE for failing to provide nursing services during the District sponsored February 2023 cheerleading trip. The Parent has preponderantly established the District's failure to modify the 504 plan to address the Student's disability needs resulted in a FAPE denial. Months before the Florida trip, the Parent requested nursing services for the Student. Throughout January, the District provided multiple reasons to the Parent for its denial. However, even after the Parent supplied a January 2023, letter of medical necessity for nursing services on the school trip, the District still refused citing it identified a "licensed volunteer" to assist the Student. At this point, the District had in its possession July 2022 and January 2023 letters from the Student's treating physicians. Both letters requested that a nurse administer the Student's medications and monitor for adverse reactions. Medication administration through nursing support was a reasonable accommodation in order for this Student to have meaningful access to the Florida school trip.¹⁰ Although the Parent attended the Florida trip, she had to stay in a hotel, away from the Student, and a medication dosage was missed. This disabled Student's

¹⁰ Guidance from other jurisdictions has established that under Section 504, the administration of medication is a related service when the service is necessary to enable a student with a disability to benefit from educational programming. *See, Lee County (FL) Sch. Dist.*, 46 IDELR 228 (OCR 2006); and *San Ramon Valley (CA) Unified Sch. Dist.*, 18 IDELR 465 (OCR 1991).

access to an educational program or activity must not depend on parental participation.¹¹ I agree with the testimony of the Student's treating rheumatologist. This Student does not need a personal, dedicated nurse but should have access to medication administration and aftercare, much like a school nurse provides to a building. Based on my review, the nursing or medication supervision services could be volunteer-based, contracted, onsite, or other arrangements agreed upon by the District and Parent. The individual may not need to be a registered nurse but must be a qualified, licensed and/or credentialed individual in the jurisdiction of medication administration.

Although cheerleading is not a necessary component of an appropriate education, Section 504 ensures students with disabilities have an equal opportunity for participation in extracurricular and nonacademic services to the same extent as their non-disabled peers. 34 CFR 104.37 (a)(1). The District failed to provide the Student with a 504 plan that described how the District would address this Student's medication administration needs during the out-of-state, school-sponsored trip. Based on the totality of the evidence, the District denied the Student a FAPE by failing to reasonably accommodate the Student's medical needs, ensuring meaningful access to an educational benefit.

Child Find

The next issue is whether the District failed to comply with its substantive and procedural child find obligations. Specifically, the Parent

¹¹ 34 CFR 104.4 (b)(iv). See also *Charlotte-Mecklenburg (NC) Schs.*, (OCR 02/13/13); and *Park City (UT) Sch. Dist.*, (OCR 04/13/16) Districts may not require a parent to attend a field trip or other extracurricular activity or nonacademic service as a condition of the student with diabetes participating if they do not impose the same requirement on the parents of nondisabled students.

contended the District should have suspected the Student was IDEA eligible, failed to conduct a timely evaluation, and the ER issued was inadequate in scope. Although the District inexplicably delayed an aspect of the evaluative process, this did not result in a substantive denial of FAPE. Overall, the Parents have not met their burden of proof establishing the District violated its child find responsibilities.

Since 2013, as a kindergartner, the Student was known to the District as a child with a disability, necessitating the implementation of successive Section 504 plans to address the JIA diagnosis. In the complaint, the Parent contends that by December 2021 or early 2022, the District ignored signals that Student should have been evaluated. The Parent points to changes in the Student's mental health after the treating physician introduced a new medication.

Based on the evidence, until Spring 2022, when the Parent requested an evaluation, the District had no reasonable basis to suspect that the Student might be a child with a disability. Although the Student did experience discord with peers, there was no preponderant evidence that this rose to the level of bullying, interfered with educational access or otherwise signaled the Student might have been an eligible child. In fact, during this time frame, the Student continued to regularly attend school, academically achieve, and fully participate in cheerleading – including plans for the February competition in Orlando, Florida. The evidence suggested that Student's suicidal ideation was isolated and credibly attributable to a March 2022 change in medication, which the Parent promptly addressed with

medical and behavioral health providers.¹² Until April 2022, when the Parent requested an evaluation of the Student and completed the supplied documentation, the District's actions concerning this child find claim were appropriate. However, the District's response after it received the signed PTE from the Parent was not. The Parent did not receive the documentation to formally request an evaluation from the District until July 2022. Although the District maintained that it sent consent to the Parent between April and July, no documentary evidence supported that contention; thus, no evaluation process was started, and no follow-up occurred. Strangely, when the Parent received the July 2022 documentation to sign and return, she did not; again, no evaluation commenced of the Student. Although a roughly two-month period of time elapsed before the Parent received the documentation from the District to commence the evaluation, the Parents have failed to establish that this procedural violation resulted in substantive harm.¹³

Concerning the Parent allegations that the evaluation eventually completed in February 2023 was inadequate in scope and reached a flawed conclusion that Student was ineligible for special education, the burden of proof was not sustained. This ER was thorough, utilizing various assessment tools, strategies, and instruments to gather relevant academic, functional, and developmental information about Student, all relating to areas of suspected disability. Specifically, the District summarized available data,

¹²The Student was not evaluated for an IEP due to receiving access to mental health resources outside of school and intra-familial decisions to keep the Student with a 504 plan. (Amended Complaint)

¹³The IDEA provides that a procedural violation will only amount to a denial of FAPE if it: "[1] impeded the child's right to a free appropriate public education; [2] significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or [3] caused a deprivation of educational benefit."

incorporated results of previous evaluations, included parental input, obtained and reported information from teachers, and administered several assessments. The 2023 ER thoroughly synthesized all the data and available information gathered and provided a solid foundation for determining Student's eligibility for special education. Although the Student's medical diagnoses were acknowledged, I cannot reach the conclusion urged by the Parent that the ER was flawed. One of the most significant concerns presented by the Parent related to the Student's social emotional functioning while managing the JIA along with a recent ADHD diagnosis. The District's school psychologist administered an exhaustive list of screenings, rating scales and assessments to the Student to evaluate social-emotional functioning. Although the Student reported some difficulties on rating scales for anxiety and depression, physical symptoms of fatigue and pain were also endorsed, which logically explained the struggles attributed to medical diagnoses rather than emotional difficulties.

Furthermore, the Student did not demonstrate significant academic difficulties that required specially designed instruction. Reading, writing, and math achievement were at age and grade-level expectations, and performance was above average based on report cards, standardized assessments, behavior records, attendance records, and teacher feedback. The District's evaluation of the Student and its conclusions were not flawed. No child find violation occurred.

Discrimination

The final issue is whether the District intentionally discriminated against Student on the basis of Student's disability. Intentional discrimination requires a showing of deliberate indifference, which may be met by establishing "both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that

knowledge." *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). To prove a denial of benefits, parents must establish the District's actions were intentional; therefore, in this instance, the Parent can meet that burden by establishing deliberate indifference. " Deliberate indifference must be a deliberate choice, rather than negligence or bureaucratic inaction." *Chambers v. School Dist. of Phila.*, 587 F.3d 176, 189 (3d Cir. 2009)

In this matter, the Parent asserts the District discriminated against the Student in numerous ways, including refusal of Zoom instruction and nursing services during school trips. Having decided that the accommodations offered if Student missed school were appropriate, attention must focus on the District's refusal to provide reasonable accommodation through nursing services during the February 2023 Florida trip. The evidence has established that the District attempted to collaborate with the Parent and offer options to provide reasonable accommodation to the Student. Although those choices did not come to fruition, the District's actions could not be characterized as deliberately indifferent. Accordingly, this claim must fail.

Based on the foregoing findings of fact and for all of the above reasons, I conclude that Student was denied FAPE in February 2023 and must be provided compensatory education. I also conclude that the District did not discriminate against Student. A special education hearing officer under Section 504 and the IDEA has broad equitable powers to issue an appropriate remedy when a local education agency violates special education laws. Compensatory education is an equitable remedy that is available to a student. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990); *Big Beaver Falls Area Sch. Dist. v. Jackson*, 615 A.2d 910 (Pa. Commw. 1992); *Easter v. Dist. of Columbia*, 128 F. Supp. 3d 173, 105 (DDC 2015)

ORDER

In accordance with the findings of fact and conclusions of law as set forth above,

1) the Student is awarded 5.00 hours of compensatory education for each day of the February 2023 Florida trip.¹⁴

- a. This award is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. Compensatory education may take the form of any appropriate developmental, medical, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and medical-related services needs.
- b. The compensatory education award may not be used for services, products, or devices that are primarily for leisure or recreation. 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 504 plan.
- c. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age eighteen (18).

¹⁴ This calculation is based on the purported time it took the Parent to travel to and from the Student, administer medication and monitor for side effects.

d. The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. 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.

2) The District is further Ordered to convene a meeting to review and revise the 504 plan of the Student to address medication administration during school sponsored activities and trips. Current medical orders for medication administration must be on file and updated quarterly.

Nothing in this order should be read to limit the ability of the parties to mutually agree otherwise as to the terms of this order, so long as any such agreement is in writing.

Any claim not specifically addressed in this decision and order is denied and dismissed.

/s/Joy Waters Fleming, Esquire

Joy Waters Fleming, Esquire
Special Education Hearing Officer

Dated: 10/12/23