

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

Pennsylvania Special Education Hearing Officer

Final Decision and Order

CLOSED HEARING
ODR File Number: 18412 16 17

Child's Name: W. H.

Date of Birth: [redacted]

Dates of Hearing:
02/24/17, 06/08/17, 06/14/17, 07/18/17, 07/19/17, 07/20/17

Parent:
[redacted]

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Hearing Officer: William F. Culleton, Jr., Esquire, Certified Hearing Official

Date of Decision: 09/18/17

INTRODUCTION

The child named in this matter (Student)¹ is a resident of the District named in this matter (District), and is enrolled currently in a private school. The District has classified Student under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA) as a child with the disability of Speech or Language Impairment. Parents assert that the District failed to offer Student a free appropriate public education (FAPE) pursuant to the IDEA; section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504); and the respective implementing regulations. Parents withdrew Student from the District unilaterally on July 8, 2015, and placed Student in a private school. (S 27; NT 183.)

Parents' complaint in this matter alleged that the District denied Student a FAPE by refusing to identify Student with the disabilities of Specific Learning Disability in reading comprehension and Other Health Impairment due to attention deficit hyperactivity disorder and anxiety disorder. Parents' complaint also asserted that the District failed to address Student's educational needs arising from these disabilities by offering appropriate IEPs². Parents requested compensatory education for the period from March 24, 2011 until they withdrew Student from the District on July 8, 2015. The District asserts that it has offered a FAPE at all relevant times, and it seeks dismissal of all claims.

¹ Student, Parents and the respondent District are named in the title page of this decision and/or the order accompanying this decision; personal references to the parties are omitted here in order to guard Student's confidentiality. References to Parent in the singular refer to Student's Mother, who engaged in most of the interactions with the District discussed herein.

² Parents expressly limited their claims at the hearing to the offer of a FAPE, without asserting that District educators had failed to implement those IEP provisions that had been offered. The hearing officer formulated the issues for hearing and final decision accordingly; therefore, I will not decide such issues. That said, the evidence of record does not show preponderantly any such failure to implement existing IEP provisions. (NT 200-203, 204-205; District Exhibit "S-A".)

The hearing was completed in six sessions the first of which was limited to evidence relevant to the District's motion to limit claims to a period two years prior to the filing date pursuant to the IDEA statute of limitations, discussed below. I have determined the credibility of all witnesses and I have considered and weighed all of the evidence of record. I conclude that the District has offered a FAPE to Student at all relevant times, and I therefore dismiss Parents' claims.

PRE-HEARING RULINGS

MOTION TO LIMIT CLAIMS

Parents filed their complaint on November 1, 2016. Their claims encompass District actions and refusals to act beginning more than two years prior to filing. The District moved to dismiss all parental claims that were based upon District actions that had occurred more than two years prior to Parents' filing date. The District based its motion upon the IDEA statute of limitations. 20 U.S.C. §1415(f)(3)(C). This is a "look forward" statute of limitations, and if a parent delays filing for due process more than two years after knowledge or notice of the "action which forms the basis of the complaint", the parent cannot proceed with due process. G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 611 (3d Cir. 2015). Parents asserted that they did not know, nor should they have known, of their claims until a date less than two years before they filed; they did not assert the operation of either of the two exceptions to the IDEA statute of limitations, 20 U.S.C. §1415(f)(3)(D).

The parties provided detailed offers of proof pursuant to my procedural directions, and I scheduled a hearing limited to evidence relevant to the determination of the date on which Parents either knew or should have known of the District actions of which they complained. In a ruling

after the first hearing session (which had been devoted entirely to the KOSHK date issue)³, I limited Parents' claims to alleged District actions and inactions on or after November 1, 2014, two years prior to the date of filing. G.L., 802 F.3d above at 620-621. Thus, this final decision addresses Parents' claims that the District failed to address Student's disabilities appropriately during Student's eighth grade year, from November 1, 2014 until July 8, 2015, when they removed Student from the District.

MOTION TO DISMISS BASED ON RES JUDICATA PRINCIPLES

The District moved to dismiss all remaining claims on grounds that Parents' claims regarding Student's identification had been adjudicated in a complaint which Parents had filed in 2015 and settled in mediation. As explained in my ruling limiting claims, I reserved on this motion and heard evidence on the merits of Parents' claims not barred in my view by the IDEA statute of limitations. For the reasons discussed below, it is unnecessary to reach the legal issues raised in the District's motion to dismiss, because Parents have failed to prove the claims subject to the District's motion, and they will be dismissed on other grounds.

ISSUES

1. Did the District fail to comply with its Child Find obligations during the relevant period from November 1, 2014 to July 8, 2015, in violation of the IDEA and section 504, by failing to recognize and identify all of Student's educational needs?
2. Did the District offer a FAPE to Student during the relevant period, in compliance with the IDEA and section 504?
3. Should the hearing officer order the District to provide Student with compensatory education on account of all or any part of the relevant period?

³ Exhibit S-L. See also, District Exhibits S-C through S-K, the offers of proof and other submissions addressing the District's motions to limit claims.

FINDINGS OF FACT

1. Student is a high-school-aged resident of the District, and is enrolled currently in a private school. (NT 10-11, 16; J 10; S 25.)
2. The District has classified Student under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA) as a child with the disability of Speech or Language Impairment. (J 10.)
3. Student has average range cognitive ability; in verbal comprehension, the various standardized cognitive tests administered over the years indicated ability in the low-average to average range. (NT 659-661; J 2, 5, 10; P 6, 10.)
4. Student's academic achievement is within the average range, with weakness in reading comprehension and language processing. (J 10; P 5, 6.)
5. Student has a history of educational interventions for speech and reading as early as preschool and continuing in the early elementary school grades at the District. (S 25.)

EVALUATIONS AND INTERVENTIONS KNOWN TO DISTRICT – SIXTH GRADE

6. In sixth grade, the District provided an Independent Educational Evaluation to Student conducted in February and March 2013. The independent evaluator found that Student's verbal comprehension and reading comprehension abilities were in the low average range, in contrast with Student's other cognitive scores in the average range, including non-verbal reasoning scores that were more than a statistical standard deviation higher than Student's verbal comprehension scores. Based upon these statistical differences and other data, the report medically diagnosed a "language based learning disorder". The report stated that this disorder was characterized by weaknesses in "concept imaging", vocabulary and language processing. (J 5.)
7. The evaluator recommended consideration of interventions including direct and multisensory instruction; improving language processing and vocabulary; teaching active listening and reading; teaching author viewpoint and visualization of stories, as well as sequencing and summarization; addressing attention, focus and working memory; extended time for testing; modified homework; and direct teaching of speech pragmatics and social skills. (J 5.)
8. Student's final grades in sixth grade (2012-2013 school year) ranged from B to C, with scores of B in reading literacy, language and writing. (J 5, 10, 11.)

EVALUATIONS AND INTERVENTIONS KNOWN TO DISTRICT – SEVENTH GRADE

9. In September 2013, near the beginning of Student's seventh grade year, a teacher who had about one month's experience with Student rated Student's adaptive skills as "at-risk", due

to concerns about leadership, adaptability, social skills, study skills and functional communication. (J 11.)

10. The District provided an Evaluation Report on November 13, 2013. The evaluation team considered parental input indicating concerns about a specific learning disability; 3 classroom observations; 8 teacher reports; a brief standardized test of cognitive ability; 2 standardized achievement tests; a general behavior inventory addressing emotional, social and behavioral concerns; state and local assessments; grades and academic history; and a thorough speech and language evaluation. (J 5; P 10.)
11. The November 2013 Evaluation Report specifically considered the February and March 2013 Independent Educational Evaluation and its recommended intervention for learning disability. The District's November 2013 reported cognitive ability scores differed from the results of the independent evaluation, indicating average-range verbal intelligence, a smaller difference between that ability and Student's non-verbal reasoning ability, and average achievement in reading comprehension. (J 5.)
12. The District's November 2013 Evaluation Report declined to identify Student with a specific learning disability in reading, and identified Student with Speech or Language Impairment. The report concluded that there was no severe discrepancy between Student's ability and achievement in verbal and reading comprehension, based upon standard scores and all other relevant data. (NT 645-647; J 5; S 25.)
13. Student's seventh grade teachers did not report problematic behavior or performance otherwise. Teachers recommended preferential seating, wait time (additional time to respond when called upon in class), checks for understanding, repeating directions and one-on-one review of performance at the beginning and end of the day. (J 10.)
14. In a March 2014 central auditory processing examination, Student performed within normal limits in all tests except competing words in directed ear. Student's auditory processing composite was scored as "borderline"; however, the evaluator noted that Student's hearing was compromised by wax build-up, calling into question the validity of the scores. (J 10.)
15. The central auditory evaluator recommended facing the speaker when listening; visual communication; wait time; additional time for tests; chunking communications; manipulatives; reducing distracting noises and visual stimuli; preferential seating; earplugs; quiet study areas; checks for comprehension; and repeating and clarifying verbal information. (J 10.)
16. Although Student struggled with deficits in language processing, Student in seventh grade was able to perform within the normal limits for Student's age in all but one area of language processing. Student demonstrated below average linguistic memory, sequencing and higher-order skills such as drawing inferences. (J 10.)
17. In March 2014, Parents provided Student with private tutoring for reading comprehension and mathematics. The private tutoring company reported that Student had made progress from below-grade achievement to above-grade achievement. (S 46.)

18. Student achieved mastery or substantial progress toward mastery of most seventh grade IEP goals. (J 10.)
19. Student performed at grade level in seventh grade reading; state testing in 2014 showed Student reading at a proficient level. (J 10.)
20. In seventh grade, Student's grades were lower through part of the fourth quarter, but Student was passing all subjects. Student had D grades in science for two quarters and part of the fourth quarter. Student had one D in language arts in the partial fourth quarter reported. (J 11; S 58.)
21. Student's needs in seventh grade included practice for higher-level critical thinking and higher-level figurative language skills; development of semantic knowledge and word associations; improving receptive and expressive language processing; improving of participation and self-advocacy skills; and improved understanding of information and vocabulary skills. (J 10.)
22. The District issued a re-evaluation report in July 2014. It continued Student's classification of Speech or Language Impairment. It considered but ruled out severe discrepancy between ability and achievement. (J 10.)
23. Parents contributed input to the re-evaluation, including their assertion that Student should be classified with a specific learning disability in understanding and using spoken and written language or reading comprehension. Based in part upon evaluations that Parents had obtained privately, Parents urged that the District should find a severe discrepancy between Student's standardized scores on subtests for perceptual reasoning and verbal comprehension, that had resulted in Student's delayed ability to understand similarities, differences and multiple meanings. (J 10.)
24. The July 2014 re-evaluation considered private evaluations provided by Parents with differing standard scores than found by the District's school psychologist. The District requested parental consent to discuss these disparate findings with the private evaluators. (J 10; S 23.)
25. The July 2014 re-evaluation recommended, in addition to the accommodations and modifications listed by evaluators in the report, providing a copy of notes where appropriate and providing a set of textbooks at home. (J 10.)

EVALUATIONS AND INTERVENTIONS – EIGHTH GRADE

26. In August 2014, as updated in November 2014, the District provided Student with an Individualized Educational Program (IEP) placing Student in itinerant speech and language support. (J 11.)
27. The August 2014 IEP provided thorough present levels of functioning; three measurable goals that addressed various needs, including conversational vocabulary, higher-level reasoning, figurative language skills, and receptively sequencing and summarizing oral

language; and modifications addressing all of Student's identified educational needs, including speech therapy in small group twice per week for thirty minutes per session, and almost all of the modifications recommended in the July 2014 re-evaluation report. (NT 371-386; J 11.)

28. The August 2014 IEP, as updated in November 2014, addressed Student's language processing weaknesses, and recommended most but not all of the interventions that had been recommended in the Independent Educational Evaluation. (J 5, 11.)
29. For eighth grade (2014-2015 school year), Student was placed in a regular education reading class for students who needed extra support in reading. The course emphasized reading comprehension. Student performed well in the class throughout the year. (NT 79, 83-85; S 63.)
30. In October 2014, Student scored proficient twice and advanced once in benchmark testing. Student passed over 95% of tests and quizzes in reading. (J 11.)
31. At an informal meeting in October 2014, Parents repeated their desire for Student to receive learning support in addition to the speech and language support that Student was receiving. Parents sought educators' intervention regarding Student's organization, independence, reading comprehension and social skills. Parents also requested alternative testing accommodations. (S 24.)
32. In the first two marking periods of eighth grade, Student was passing all subjects and did not exhibit difficulties with comprehension, attention to task, social skills or class participation. Teachers confirmed that Student needed additional wait time. Progress monitoring indicated mastery or substantial progress toward mastery of IEP goals and grade-level performance. (NT 79-81, 310-327, 347-357, 386, 397-402, 768-771; S 46.)
33. The District provided a re-evaluation report in December 2014. Parents provided input expressing disappointment with the District's refusal to identify Student with a specific learning disability in reading comprehension and speech and language; its refusal to implement all of the recommendations of the March 2013 Independent Educational Evaluation and other subsequent private evaluations; and its refusal to provide what Parents considered to be appropriate goals and specially designed instruction. (S 46.)
34. In December 2014, the District offered a revised IEP for Student, placing Student in itinerant speech and language support. (S 46.)
35. The December 2014 revised IEP provided three goals addressing vocabulary and language comprehension skills; accommodations and modifications addressing language processing weaknesses, attention, homework and organization, written assignments and classroom participation. (S 46.)
36. In the third quarter of eighth grade, Student maintained passing grades, with a B in reading, a C in Language Arts, a D in social studies (where Student performed poorly throughout the year), and grades of B and C in all other subjects. Teachers reported no significant problems. Student continued to make progress on IEP goals. (NT 758-763; S 47, 65.)

37. In the third quarter of eighth grade, Student's speech and language therapist used visualization strategies effectively in direct teaching of language comprehension to Student. (S 46.)
38. In the third quarter of eighth grade, Student made progress in language arts vocabulary; conversational vocabulary; reading comprehension, extracting key terms; rephrasing; and sequencing. (S 46.)
39. In April 2015, the District convened an IEP team meeting at Parents' request. The team proposed a revised IEP retaining placement in itinerant speech and language support. (S 47.)
40. The April 2015 proposed IEP included a new goal addressing language sequencing. It added a modification addressing instructions for long-term projects, requiring visual schedule and chunking. (S 47.)
41. In May 2015, Parents obtained a private evaluation report that provided a diagnosis of Attention Deficit Hyperactivity Disorder, Specific Learning Disability in Reading Comprehension and Other Specified Anxiety Disorder. The report noted difficulties with auditory attention, working memory, reading comprehension, executive function (the primary etiology of the attention problems). The report's recommendations were substantially similar to the modifications already being provided to Student. The report did not recommend change in placement. (P 6.)
42. In May 2015, Parents filed a request for due process, seeking, among other things, compensatory education and change of placement. (S 26.)
43. Student passed all courses in eighth grade. (S 58.)
44. On July 1, 2015, Parents signed an agreement with the District Director of Pupil Services pursuant to mediation to settle the issues presented in the May 2015 due process complaint. (S 26, 49.)
45. On July 8, 2015, Parents notified the District that Student would be withdrawn and placed in a private school. (S 50.)

RELIABILITY

46. Parents made great efforts to monitor Student's homework and preparation for tests, which concerned them because they had not needed to do the same for Student's high-achieving siblings. Parents did not observe Student's performance at school sufficiently to have personal knowledge of Student's day to day behavior in classes. (NT 804-812, 843.)

CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations, the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact.⁴ In Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence⁵ that the moving party is entitled to the relief requested in the Complaint Notice. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006).

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”. On the other hand, 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, based upon the above rules, the burden of persuasion rests upon the Parents, who initiated the due process proceeding. If the Parents fail to produce a preponderance of the evidence in support of Parents’ claim, or if the evidence is in “equipoise”, the Parents cannot prevail under the IDEA.

⁴ The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

⁵ A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. See, Comm. v. Williams, 532 Pa. 265, 284-286 (1992). Weight is based upon the persuasiveness of the evidence, not simply quantity. Comm. v. Walsh, 2013 Pa. Commw. Unpub. LEXIS 164.

CREDIBILITY/RELIABILITY

It is the responsibility of the hearing officer to determine the credibility and reliability of witnesses' testimony. 22 PA. Code §14.162 (requiring findings of fact); A.S. v. Office for Dispute Resolution, 88 A.3d 256, 266 (Pa. Commw. 2014)(it is within the province of the hearing officer to make credibility determinations and weigh the evidence in order to make the required findings of fact). I carefully listened to all of the testimony, keeping this responsibility in mind, and I reach the following determinations.

Considering the testimony in light of the documentary evidence, I find all of the District witnesses to be credible and reliable. All of these witnesses' statements were substantially in accord with the documentary record. I found the demeanor of these witnesses to be consistent with truth, and their manner of answering questions to be suggestive of an effort to be truthful and accurate. For reasons discussed below, I placed particular weight upon the testimony of the Student's eighth grade reading and English language arts teachers.

I also found Parents to be credible and sincere in their testimony. They repeatedly demonstrated great devotion to Student's education and success by making strenuous efforts on Student's behalf. However, their conclusions as to Student's performance in school were naturally hampered by the typical inability of a parent to observe a child in the classroom setting, and the concomitant need to rely upon impressions gleaned from the child's sometimes reluctant responses to parental questioning, and teachers' easily misunderstood responses at meetings. In this matter, I conclude that Parents' impressions of Student's performance at school were not congruent with the testimonial and documentary evidence that comprises the record upon which I must rely.

Moreover, as discussed below, I conclude that Parents sought a greater degree of support for Student than is required by the IDEA. This was colored by the fact that Parents' expectations

for Student were based in part upon a contrast with Student's older siblings, who set a standard for performance that was far greater than the IDEA could be said to require. While one greatly respects Parents' insistence upon such excellence from Student, Student's failure to attain their high standards does not imply that the District failed to provide Student with a FAPE as the law defines it, as explained below.

THE DISTRICT DID NOT FAIL TO OFFER OR PROVIDE A FAPE DURING THE RELEVANT PERIOD OF TIME

The IDEA requires that a state receiving federal education funding provide a "free appropriate public education" (FAPE) to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). FAPE is "special education and related services", at public expense, that meet state standards, provide an appropriate education, and are delivered in accordance with an individualized education program (IEP). 20 U.S.C. §1401(9). Thus, school districts must provide a FAPE by designing and administering a program of individualized instruction that is set forth in an IEP. 20 U.S.C. §1414(d). The IEP must be "reasonably calculated" to enable the child to receive appropriate services in light of the child's individual circumstances. Andrew F. v. Douglas County Sch. Dist., RE-1, ___ U.S. ___, 197 L.Ed.2d 335, 137 S. Ct. 988, 999 (2017). The Court of Appeals for the Third Circuit has ruled that special education and related services are appropriate when they are reasonably calculated to provide a child with "meaningful educational benefits" in light of the student's "intellectual potential." Shore Reg'l High Sch. Bd. of Ed. v. P.S. 381 F.3d 194, 198 (3d Cir. 2004) (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182-85 (3d Cir. 1988)); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3d Cir. 2009), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009). In appropriate circumstances, a District that meets this Third Circuit standard also can

satisfy the Endrew F. “appropriate in light of the child’s individual circumstances” standard. E.D. v. Colonial Sch. Dist., No. 09-4837, 2017 U.S. Dist. LEXIS 50173 (E.D. Pa. Mar. 31, 2017).

In order to provide a FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S. Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d Cir. 1993).

A school district is not necessarily required to provide the best possible program to a student, or to maximize the student’s potential. Endrew F., 137 S. Ct. above at 999 (requiring what is reasonable, not what is ideal); Ridley Sch. Dist. v. MR, 680 F.3d 260, 269 (3d Cir. 2012). An IEP is not required to incorporate every program that parents desire for their child. Ibid.

The law requires only that the program and its execution were reasonably calculated to provide appropriate benefit. Endrew F., 137 S. Ct. above at 999; Carlisle Area School v. Scott P., 62 F.3d 520 (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S. Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) The program’s appropriateness must be determined as of the time at which it was made, and the reasonableness of the program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010); D.C. v. Mount Olive Twp. Bd. Of Educ., 2014 U.S. Dist. LEXIS 45788 (D.N.J. 2014).

Applying these standards to the above findings and the record as a whole, I conclude that the District offered a FAPE to Student during the relevant period in Student’s eighth grade year. I conclude that the offered program was reasonably calculated to provide educational benefit that

was meaningful and appropriate in light of Student's circumstances. The District offered services based upon appropriately comprehensive evaluations and knowledge of Student's educational needs. It offered services that addressed all of those needs appropriately in light of Student's circumstances. Retrospectively, the record shows that Student made progress during the relevant period of time that was appropriate in view of Student's circumstances.

THE PROGRAM WAS BASED UPON APPROPRIATE UNDERSTANDING OF STUDENT'S NEEDS

By November 1, 2014, the evidence shows preponderantly that the District was proceeding on the basis of an appropriate understanding of Student's needs, based upon the information available to it. The District had conducted at least one comprehensive and thorough initial evaluation, which included a searching effort to address the diagnoses of learning disability in private reports that the evaluator reviewed. The evaluation considered data regarding all aspects of Student's cognitive, developmental and adaptive behavior, based upon multiple sources, including a thorough speech and language evaluation.

Parental disagreement with the District psychologist's conclusions is not a reason to find the evaluation to be inappropriate. The IDEA requires school districts to consider contrary opinions and data, not also to agree with them. The District's reports show preponderantly that District evaluators did consider the private reports' clinical diagnoses when those were made available to them. The testimony demonstrates District evaluators' clear and cogent basis for disagreeing with the private evaluators' and Parents' conclusions that Student should be classified with Specific Learning Disability.

Parents argued repeatedly with the District that the law required the District to identify Student with a Specific Learning Disability. They argued that certain standardized cognitive ability

scores in an Independent Educational Evaluation were significantly discrepant; therefore, they asserted, the District had to recognize a specific learning disability. In particular, they pointed to the fact that Student's scores for verbal comprehension and reading comprehension in that evaluation were different by more than a statistical standard deviation from Student's scores for non-verbal reasoning. I conclude that the IDEA does not compel Parents' asserted conclusion that this compels identification with Specific Learning Disability.

The IDEA and Chapter 14 of the Pennsylvania Code, which implements the IDEA, both allow but do not compel a school district to determine Specific Learning Disability through standardized scores that show a discrepancy between a child's cognitive ability and achievement. 34 C.F.R. §300.8(c)(10)(defining Specific Learning Disability to be a "disorder" of cognitive functioning); 34 C.F.R. §300.307(a)(1)(forbidding a state from requiring, but not forbidding, a finding based upon "severe discrepancy between intellectual ability and achievement"); 34 C.F.R. §300.309(a)(1)(permitting consideration of inadequate achievement in reading comprehension); 22 Pa. Code §14.125(2)(ii)(authorizing a finding based upon "severe discrepancy between intellectual ability and achievement"). In this case, even the Independent Educational Evaluation did not show such a discrepancy: the discrepant scores were subtests of cognitive functioning that did not reveal Student's level of achievement. Indeed, the evidence showed preponderantly that Student's achievement in reading comprehension was not discrepant with Student's cognitive ability: Student was measured repeatedly to be achieving above Student's cognitive level -- at an average level and on grade level in reading comprehension, in contrast to the scores indicating low average ability.

Parents pointed to language suggesting that discrepancies in intellectual functions would compel identification with Specific Learning Disability. Yet, the record is preponderant that

Student's standardized test scores did not establish such a discrepancy, when viewed in light of the entire record, including contradictory standardized scores in District testing and Student's performance in classes, especially Student's reading and English Language Arts classes. The evidence does not show preponderantly that the District was incorrect to address Student's verbal comprehension and reading comprehension weaknesses as an impairment of language skills that could be addressed through Speech and Language services.

Parents argue that the District also failed to identify Student with Other Health Impairment based upon Attention Deficit Hyperactivity Disorder. The record is not preponderant that the District's refusal to do so was inappropriate. Although the District was aware – or on notice -- of a clinical diagnosis of Attention Deficit Hyperactivity Disorder prior to the relevant period, there was no evidence that any attention difficulties interfered with Student's access to the curriculum or ability to succeed at a level commensurate with Student's average cognitive ability. Student's teachers all testified credibly that Student never displayed significant or age-inappropriate inattention or failure to remain on task. While Student did display some organizational difficulties, all teachers testified that these were no greater than to be expected from [redacted]. IEP present levels repeatedly reflected no significant teacher reports of difficulties with either attention or organization. Thus, based upon what the District knew before and during the relevant period, its decision not to identify Student with Other Health Impairment was not inappropriate on this record.

Nor does the later conclusion by Parents' private evaluator in February 2017 - that Student was struggling in 2017 with Attention Deficit Hyperactivity Disorder - render the District's evaluation inappropriate. By the time of that report, Student had been withdrawn from the District, placed in a private school, and provided with medication whose reported positive effects were a significant basis for the diagnosis. The report is not convincing on the issues before me, because

the District did not have it when Student was with them, and Student's clinical presentation was different in 2017 from that which the District saw in 2015.⁶

Parents argue that the District should have identified Student with an IDEA classification based upon the diagnosis of anxiety disorder in some private reports. As with the argument for classification based upon attention issues, this argument is not supported by a preponderance of the evidence. Teachers repeatedly reported that Student's classroom demeanor and performance were exemplary. None reported evidence of significant anxiety, and they made clear in their testimony that they saw no signs suggesting that Student was impeded by anxiety.

Parents argue that the District failed to identify Student's needs for extensive intervention to support Student's deficits in social skills and the ability to participate in the classroom. I find no evidence in this record that Student needed extensive intervention in this area, beyond what the District provided.

Parents argue that Student's classroom grades were so inconsistent as to raise a red flag that additional or different IDEA classifications were needed. They point to lists of every grade that Student received in each of Student's classes; these include grades for handing in homework or assignments, quizzes and periodic tests during each marking period. Indeed Student failed some of these assessments and received grades of D in others, along with many grades of A, B and C; many of the failures were due to not handing in homework or assignments. The evidence is not preponderant that the District inappropriately ignored this inconsistency; rather, teachers credibly explained that some variability in these daily and weekly grades is typical [redacted]. Classroom

⁶ I read the report as being a clinical evaluation limited to Student's presentation in 2017. However, even if the report was intended to indicate that Student had struggled with this clinical disorder during the relevant period, it would not undermine my conclusion. The District's refusal to identify was based upon what it knew at the time, as described above.

quizzes and assignments are often not for the purpose of final assessment of progress, but for developmental purposes -- to show the student and teacher whether the student and class are ready to move on to new material, or need to focus on areas in which the curriculum is not yet learned sufficiently. The evidentiary weight of these periodic assessments is limited in view of Student's overall passing grades both before and during the relevant period.

Parents lean heavily upon a private evaluation report received in May 2015, supporting their claims for different IDEA classification. Their argument is misplaced. They filed for due process in the same month, and thereafter, the District's response was in the context of litigation. That response was to agree to mediation, which resulted in an agreement within 60 days of the receipt of the evaluation report and the filing of the due process complaint. I conclude that the District thus responded and tried to address the matters revealed in the May 2015 evaluation report within a reasonable time of receiving the information that raised a question about the appropriateness of its services to Student. Thus, its response was consistent with the requirements of the IDEA. See G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 626 (3d Cir. 2015)(districts accorded a reasonable period of time to rectify deficiencies in their services).

THE DISTRICT PROPOSED AN IEP THAT ADDRESSED ALL AREAS OF NEED

While evaluation reports must be considered by the IEP team, it is the IEP team that is responsible for determining how to address needs, and what special education and related services are appropriate to the child in view of the child's circumstances. 34 C.F.R. §300.306(c)(2), 300.320(a). Agencies have the right under the IDEA to select their own educational methodology and exercise their professional judgment, as long as they provide appropriate services. K.C. v. Nazareth Area Sch. Dist., 806 F.Supp.2d 806, 813-814 (E.D. Pa. 2011); See, Leighty v. Laurel

School Dist., 457 F.Supp.2d 546 (W.D. Pa. 2006)(IDEA does not deprive educators of the right to apply their professional judgment).

As the present record preponderantly shows, the salient circumstances, Andrew F. 137 S. Ct. above at 999, were that Student continued to function on grade level in all core and special subjects. Student was passing reading, English language arts and mathematics, as well as most other subjects, and was progressing from grade to grade. Student's academic performance was consistent with Student's tested cognitive potential, and Student benefitted from and remained motivated in the regular education environment. I conclude that the District's IEPs appropriately addressed Student's educational needs, taking into account these circumstances.

The District's evaluations consistently concluded that Student's primary needs were in speech and language. The record is preponderant that the District provided itinerant speech and language support for Student's eighth grade year that addressed Student's needs with regard to receptive and expressive language, verbal comprehension, comprehension skills for stories, language skills needed for higher-order thinking, note-taking and the social skill of conversational language. In addition, the District provided modifications and accommodations that addressed Student's needs in the areas of distractibility, attention, processing instructions, organization (providing daily checks by teachers and an extra set of books at home) and classroom participation. Thus, the District offered an IEP in September 2014 and as revised in December 2014 that addressed all of the educational needs of which the District was aware or on notice at the time.

Parents remained unsatisfied with this offer of services. Yet, a school district is not legally required to provide all services that could possibly help a student; as noted above, it is not required to provide all services that are desired by parents. Thus, while the District did not promise a "visualization" approach to comprehension, as recommended on one report, it did address

Student's comprehension needs through the speech and language services and goals set forth in the IEP. Similarly, while the District did not provide services typically provided in a learning support placement, its specially designed intervention with vocabulary and teaching of the higher order uses of language by their nature also addressed Student's reading comprehension. Thus, its services were appropriate because they addressed Student's needs, although not fully in accord with Parents' wishes.

STUDENT MADE APPROPRIATE PROGRESS DURING THE RELEVANT PERIOD

The record is more than preponderant that Student made appropriate and meaningful progress during the relevant period of time. Student functioned at grade level in all subjects. Student's marks were passing throughout the period, and indeed Student obtained grades of A, B and C in all but one class throughout the school year.⁷ Teachers testified credibly that Student was making progress throughout the period. Parent introduced no preponderant evidence to the contrary.

Student also made progress on most IEP goals, according to progress monitoring data. Teachers credibly corroborated the data, in that they reported Student's overall satisfactory achievement and behavior in class. Therefore, on the whole, Student made progress on Student's IEP goals and in the regular education curriculum. Parents emphasized Student's inconsistency in daily and weekly classroom assessments, but as discussed above, this does not undercut the preponderant weight of the evidence that Student was making appropriate progress during eighth grade.

⁷ Although local assessments were accommodated sometimes, there is not preponderant evidence that the Student's grades were substantially supported so as to distort the grades as a measure of appropriate progress. Andrew F. 137 S. Ct. above at 999.

In reaching this conclusion, I place particular weight upon the testimony of Student's eighth grade reading teacher and English Language Arts teacher. These witnesses were credible, knowledgeable, and persuasive in their depiction of a student who was doing well in all aspects of the curriculum and the classroom.

SECTION 504 VIOLATION

I conclude that the District provided a FAPE to Student during the relevant period of time. The record preponderantly shows that the District provided appropriate services and accommodations to meet Student's individual needs as adequately as the needs of non-handicapped children in the District are met. 34 C.F.R. §104.33(b)(1). The proposed IEPs were calculated to allow Student to advance meaningfully from grade to grade within the general education curriculum, and to participate with peers socially and collaboratively as called for in that curriculum. There is no preponderant evidence of segregation or unequal educational benefit. Thus, I find no violation of section 504.

CONCLUSION

I conclude that the District provided Student with a FAPE during the relevant period of time. Therefore, I will dismiss Parents' claims and deny the requested equitable relief.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the Parents' requests for relief are hereby **DENIED** and **DISMISSED**. It is **FURTHER ORDERED** that any claims that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

DATED: September 18, 2017