

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

Child's Name:

N. M.

Date of Birth:

[redacted]

CLOSED HEARING
ODR Case #19810-1718KE

Dates of Hearing:¹

November 28, 2017 – January 6, 2018 – January 26, 2018
February 6, 2018 – March 12, 2018 – April 9, 2018

Parents:

[redacted]

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School District:

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Counsel for the School District

Hearing Officer: Michael J. McElligott, Esquire **Date of Decision:** May 8, 2018

¹ The hearing convened over five sessions for substantive evidence. After the fifth session in March 2018, the parents deliberated whether or not they would call a final witness. Deciding that they would not, the April 2018 session was utilized for oral closing statements presented by counsel.

INTRODUCTION

Student (“student”)² is a late-teen aged student who resides in the District (“District”), although at the time of this hearing, the student did not attend District schools. The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)³ as a student requiring learning support and having a health impairment.

Parents claim that the student was denied a free appropriate public education (“FAPE”) for the 2015-2016 and a portion of the 2016-2017 school years related to allegations of deficiencies in programming for the student’s organization skills, work/task-completion, and school anxiety. Parents seek compensatory education as a remedy.

The District counters that it responded to the student’s needs in the educational environment and at all times provided FAPE to the student. As such, the District argues that the parents are not entitled to a compensatory education remedy.

For the reasons set forth below, I find in favor of the District.

² The generic use of “student”, rather than a name or gender-specific pronouns, is employed to protect the confidentiality of the student.

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

ISSUES

Did the District meet its obligations
to provide FAPE to the student
over the
2015-2016 and 2016-2017 school years
(through April 1, 2017)?⁴

If this question is answered in the negative,
is the student entitled to compensatory education?

FINDINGS OF FACT

1. In September 2012, in the student's 5th grade year, the student's family moved to the District from another state. The student had an individualized education program ("IEP") in the out-of-state school district and had been medically diagnosed with attention deficit hyperactivity disorder ("ADHD"). (Parents' Exhibit ["P"]-2; NT at 28-159).
2. In September 2012, the student was identified by the District as an eligible student, requiring special education support for organization and spelling. The student was included in the regular education environment for 98% of the school day. (Joint Exhibit ["J"]-12).
3. In March 2014, the student's parents, with the consent of the student's multi-disciplinary team, waived the student's triennial re-evaluation. (School District Exhibit ["S"]-1).

2014-2015/7th Grade

4. In September 2014, in the fall of the student's 7th grade year, the student's IEP team met for its annual meeting to revise the student's IEP. (J-7, J-18; NT at 798-830).
5. The September 2014 IEP contained a goal, specially designed instruction, and supports for spelling. Program modifications also included modifications related to organization. (J-18).

⁴ The parties stipulate that the parents' claim for remedy does not accrue past April 1, 2017. Notes of Testimony ("NT") at 882-884.

6. Over the course of the 2014-2015 school year, the student's IEP team decided that organization skills, and not spelling, should be the focus of the interventions for the student. (J-19 at page 7; NT at 798-830).

2015-2016/8th Grade

7. The September 2014 IEP was in place at the outset of the 2015-2016 school year, the student's 8th grade year. (NT at 169-278; J-18).
8. In September 2015, in the fall of the student's 8th grade year, the student's IEP team met for its annual meeting to revise the student's IEP. (J-19).
9. The September 2015 IEP identified organization and task-focus skills as an area of functional need. (J-19 at page 7).
10. The September 2015 IEP contained one goal, based on regular education grade achievement: "Given proper supports and accommodations to address (student's) needs in focusing and executive functioning, (the student) will earn a 90% or better overall in all (the student's) academic subjects". (J-19 at page 15).
11. Parents requested that the goal in the September 2015 IEP be written in terms of grade-achievement goal. The District members of the IEP team did not agree but acquiesced in parents' request. (J-19 at page 15; NT at 28-159, 169-278, 660-731).
12. The September 2015 IEP recommended that the student remain in regular education environments, with support, for 100% of the school day. (J-19 at page 22).
13. In October 2015, the student's first quarter grades in academic subjects were as follows: Language Arts/Reading – 77, Language Arts/Writing – 77, Mathematics – 87, Science – 84, Social Studies – 93. (J-1, J-8).
14. In October 2015, the parents provided to the District a private evaluation report from a licensed clinical psychologist located in another state. (P-2).
15. The October 2015 private evaluation did not recommend any specially designed instruction for learning but found that the student's ADHD and other needs related to attention and task-focus needed to be addressed in an IEP. (P-2).

16. In November 2015, the September 2015 IEP was revised based on the private psychological report. At the recommendation of the private evaluator, multiple additional accommodations and supports in organization and task-focus were added to the student's IEP. (P-2; J-19 at page 8; NT at 28-159, 169-278, 660-731).
17. Over the 2015-2016 school year, the student began to exhibit difficulty completing and turning in homework. The District had the student work with teachers after school and implemented a periodic tutorial period with the student's special education teacher for the student to remain organized with homework, as well as reviewing with the student the District's online assignment/grade portal, available to all students and parents for monitoring schoolwork. The parents also met with the student's teachers about the student's needs. (P-5 at pages 43-49; S-4, S-5, S-7, S-8, S-10; NT at 169-278).⁵
18. During the tutorial period, in the presence of the special education teacher, the student was involved in an incident where the student used profanity directed at the task being addressed. The student was sent to the school office. (NT at 169-278).
19. Over the course of the 2015-2016 school year, the student's quarterly grades in academic subjects were as follows: Language Arts/Reading – 77, 83, 84, 85; Language Arts/Writing – 77, 83, 84, 85; Mathematics – 87, 90, 81, 81; Science – 84, 79, 78, 69; Social Studies – 93, 84, 79, 79. (J-1).
20. In the spring of 2016, anticipating that the student would move on to 9th grade the following school year at the District's high school, the District recommended that the student enter the college-prep level of coursework at the high school. (S-2; NT at 169-278).
21. The District's policy is that parents, by written request, may override the District's recommendation for the level of coursework for a high school student. Parents requested an override of the District's recommendation, and the student was placed in honors level coursework for English, social studies, and science for 9th grade. (P-5 at pages 29-35; S-2; NT at 28-159, 169-278, 283-386, 838-882).

⁵ Certain party exhibits involving copies of emails have highlighting on the documents. At the hearing, the hearing officer confirmed that the highlighting was placed on the documents as part of exhibit-preparation but neither party objected to the admission of the exhibits or the presence of the highlighting. (NT at 55-57, 102-103).

2016-2017/9th Grade

22. In September 2016, in the fall of the student's 9th grade year, the student's IEP team met for its annual meeting to revise the student's IEP. (J-20).
23. The September 2016 IEP continued to identify organization and task-focus skills as an area of functional need. (J-20 at page 7).
24. The goal in the September 2016 IEP continued to be written in terms of grade-achievement at 90% in academic subject areas. (J-20 at page 15).
25. In the early fall of 2016, the student's attendance did not present any substantial difficulties. (J-4).
26. The student continued to require support in homework completion. (P-5 at pages 16-28).
27. The student's first quarter grades in academic subjects were as follows: Mathematics – 92, Digital Art – 94, Social Studies – 93, English – 92. (J-9).
28. Beginning in October 2016, however, the student began to exhibit difficulty in attending school, being routinely absent. (J-4, J-5; P-5 at pages 1-14; NT at 283-386).
29. School excuses were provided by various medical providers, one of whom was a treating private psychologist who was seeing the student. The psychologist's excuses were provided to the District based on parent report and not an office visit by the student. (J-6; NT at 895-959).
30. Through the winter of 2017, the student's absences continued and the student's teachers continued to work with the student on assignment completion and progress towards course-passing and credit accumulation. (J-4; NT at 28-159, 490-528, 532-568, 572-609, 613-656, 736-787).
31. In January 2017, the out-of-state clinical psychologist who performed the October 2015 evaluation provided a letter to the District recommending that the District continue to address the attention/task-focus needs of the student. (P-1).
32. In February 2017, the parents provided permission for the District to speak with the treating psychologist, who attributed the student's absenteeism to school anxiety. Formally, after one office visit in January

2017, the psychologist had diagnosed the student with a secondary adjustment disorder (in the words of the psychologist, “a temporary emotional condition that maybe has accompanying behavioral disturbances that are related to stress”). (NT at 283-386, 391-442, 895-959 [with quoted material at 899]).

33. In February 2017, the student was re-evaluated and a re-evaluation report (“RR”) was issued. There was initial consideration given to the student’s eligibility as a student who required special education instead of regular education accommodations. Ultimately, this recommendation was not made, and the student remained eligible for services under IDEIA. (J-25, J-26; NT at 28-159, 391-442, 660-731).
34. By March 2017, the student’s absences jeopardized the student’s eligibility for a spring sport and the District was formulating a schedule for credit-completion for the 9th grade year. (S-13, S-14; NT at 28-159, 736-787).
35. Taken as a whole, the record clearly supports a finding that, by and large, the student is bright, social, active, and engaged in learning in the school environment. (J-18, J-19, J-20; NT at 169-178, 283-386, 490-528, 532-568, 572-609, 613-656, 798-830, 838-882).
36. The parents’ claim for remedy does not accrue after April 1, 2017, and at some point thereafter, the student dis-enrolled from the District and no longer attends school at the District. (NT at 882-884).

WITNESS CREDIBILITY

All witnesses testified credibly.

The student’s 8th grade special education teacher’s testimony was found to be especially credible and was accorded heavy weight.

Aside from the 8th grade special education teacher, the testimony of all other witnesses’ testimony was not accorded materially more or less weight than any other witness.

DISCUSSION AND CONCLUSIONS OF LAW

Denial of FAPE

To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her needs (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (Endrew F.; M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).⁶

Here, the parents’ argument is cast in terms of the District denying the student FAPE because the District did not program appropriately for the student’s needs in organization and task-focus which, in turn, led to the student becoming overwhelmed with academic tasks which ultimately led to the student’s inability to attend school. The record in its entirety does not support this causal chain.

There has always been a clear need for organization and task-focus skills for the student, and the District at all times appropriately addressed these

⁶ While in some parts of the United States the U.S. Supreme Court decision in Endrew F. presented a new and higher standard to gauge the appropriateness of special education programming, the standard laid out in Endrew F. has been, largely, the longstanding standard enunciated by the Third Circuit Court of Appeals and has been the applicable standard to judge the appropriateness of special education programming in Pennsylvania.

needs in the school environment. The difficulty consistently arose with the student's inability to complete homework and to work outside of the school environment. The District provided support in this regard—providing strategies to keep track of homework and organization, working with the student on homework completion after school, and making sure the student could understand and navigate the District's online assignment/grade tracking system. But, ultimately, the student chose not to engage in homework which, by definition, is work for the student to complete outside of the school environment.

Unsurprisingly, the student's understanding of academic material and grades in academic classes suffered. But this is where the causal chain is broken—the District met its obligations to provide supports to the student and, indeed, when the student maintained the requirements of the academic coursework, the student progressed admirably. By all accounts, the evidence strongly weighs in favor of a finding that the student is bright, social, active, and, when the student chooses to be, engaged in the learning dynamic. That happened consistently in the school environment. Quite frankly, on this record, the student simply chose not to complete work at home. This led to not-unexpected effects on the student's academic progress, but none of that is a denial of FAPE. The District consistently provided, or stood ready to provide, support for the student's organizational/task-focus needs.

The argument as it is played out by parents would suppose that the stress experienced by the student led to school absence which amounted to a

denial of FAPE. The fact that the student's lack of engagement in homework led to an increase in stress because academic progress was less than the student, and family, would wish for is understandable. But the private psychologist's diagnosis of a temporary stressed condition does not translate into a prejudicial lack of services by the District—such services were in place—and does not amount to a denial of FAPE—the District was programming appropriately for the student's needs in the educational environment. It is a bootstrapped argument which cannot, and on this record does not, support a basis for finding a denial of FAPE.

Having said that, there are non-prejudicial flaws in the District's approach to the student's programming. On this record the District twice made choices in terms of the student's programming which are problematic. First, something it could control, is the grade-achievement goal in the student's IEPs. Receiving a certain grade, or percentage, in regular education classes is almost by definition a problematic goal. In effect, it says 'the student will progress through the regular education curriculum at a certain level' and calls into question the need for an IEP goal at all.⁷ The record is clear that parents pushed for such a goal (and, as is often the case and understandably so, the parents' focus on the student's regular education achievement with a view to

⁷ It is understandable that the District contemplated the question of whether the student requires special education. Not that the student does not require support and accommodation—that is not disputed by the parties. But whether the student requires special education, that is specially designed instruction services for learning, social, emotional, and/or behavioral needs, is a question that, on this record, understandably was being asked.

college admissions is the theme of parents' concerns for the student's education), and the District acquiesced. But that does not remove the problematic nature of the goal. Simply put, 'making parents happy', instead of 'let us program appropriately given the student's needs', almost always leads to flawed programming.

Also, and here the District's hands were tied by its own policy, the decision to have the student take honors level coursework in 9th grade was something that understandably concerned the student's educators. By policy, the parents may unilaterally override the District's recommendation for course placement. Here, though, given the student's choice in 9th grade not to engage in homework completion, a more rigorous academic schedule only compounded the student's lack of academic progress.

Still, these latter two points are presented only as a matter of observation from the record and as *dicta*. The evidence in the record weighs heavily in favor of the District in its understanding, planning, and implementation of supports for the student's organizational and task-focus needs in the school environment.

Accordingly, the District has met its obligations to the student, and there will be no award of compensatory education.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District did not deny the student a free appropriate public education in the 2015-2016 and 2016-2017 school years.

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

May 8, 2018