

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

DECISION

DUE PROCESS HEARING

Name of Child: NH
ODR #00252/09-10 LS

Date of Birth:
XX-XX-XXXX

Dates of Hearing:
November 13, 2009
November 19, 2009

CLOSED HEARING

Parties to the Hearing:

Ms.

Representative:

Fredrick Stanczak, Esquire
179 N. Broad Street 2nd Floor
Doylestown, Pennsylvania 18901

Mathematics, Civics and Sciences Charter School
447 North Broad Street
Philadelphia, Pennsylvania 19123

Maria Ramola, Esquire
350 Eagleview Boulevard Suite 100
Exton, Pennsylvania 19341

Date Record Closed:

November 27, 2009

Date of Decision:

December 2, 2009

Hearing Officer:

Linda M. Valentini, Psy.D.
Certified Hearing Official

Background

Student¹ is a nearly sixteen year old student who has been enrolled in the Mathematics, Civics and Sciences Charter School [hereinafter School] since 1st grade. Student is a protected handicapped student; Student experiences migraine headaches. Pursuant to a lengthy history of unexcused absences the School disenrolled Student on October 28, 2009 and referred Student as being truant to the School District of Philadelphia. The Parent argues that the School discriminated against the Student on the basis of Student's handicap and that the absences were due to the handicap rather than to truancy. Additionally the Parent contends that the School impermissibly developed a 504 Plan for the Student without her participation. The School argues that the Student's absences represented a pattern of truancy rather than being related to Student's disability and that it appropriately developed the 504 Plan with input from the Parent despite her not having participated in a meeting in person.

The Parent sought to have Student returned to the School under the pendency provision of the IDEA. Although Student is not IDEA-eligible, due process matters under Section 504, including pendency or "stay put" provisions, are in large part handled in the same manner as under the IDEA. The hearing officer granted the Parent's Motion to Enforce Pendency following the first hearing session.

Issues

1. Did the School act inappropriately in dropping the Student from its rolls due to multiple absences?
2. Was the School's developing a 504 Plan in the physical absence of the Parent inappropriate?

Findings of Fact²

1. According to a report dated November 28, 2006 from the Children's Hospital of Philadelphia Division of Neurology, Student had "reported experiencing headaches about once a week for 1½ years...Occasionally [Student] wakes from sleep with a headache". Student's headache history was consistent with "common migraine". [J-D p. 14-15 of 25]
2. According to a report dated March 19, 2008 from the Children's Hospital of Philadelphia Division of Neurology, Student had last been seen at that service on

¹ The decision is written without further reference to the Student's name or gender to provide privacy.

² Due to mislabeling of some exhibits, the exhibit numbers in the transcript may be incorrect. The exhibits were relabeled and therefore in some cases they carry two exhibit letters. The cites in the findings of fact match the exhibits as they are currently labeled in the packet of documents.

- November 28, 2006. As of the March 2008 report, Student reported that the headaches “last one day, whereas previously they could last three-to-five days; however the frequency of the headaches has increased so that they currently are occurring one time per week and sometimes even more than once a week”. [Student] stated that Student often forgets to take the daily prophylactic medication. Sleep studies [2/23/07] and an EKG [11/28/06] were normal. [J-D p. 16-17 of 25]
3. According to a letter dated December 14, 2008³ from the Children’s Hospital of Philadelphia Division of Neurology, “headaches occur throughout the day but seem to primarily occur during school hours...headaches were much better over the summer and [Student] was not limited in [Student’s] activities because of headaches over the summer... [Student] also has fewer headaches on the weekends and in general [Student’s] weekend activities are not limited by headaches”. [J-K, J-L p. 2 of 4]
 4. In the December 2008 letter the physician states, “I am concerned that there is an element of school avoidance as well” and “I am concerned that [Student] is missing so much school and I think [Student] needs to be encouraged to go to school even on migraine days”. The neurologist did not refer Student for an individual and family psychiatric consult. [J-K, J-L p. 3 of 4]
 5. In December 2008 a neurologist referred Student for a pain management consult but to date the Parent has not taken or sent Student for the consult. [NT 93-94, 228]
 6. According to a letter dated February 10, 2009 from the Children’s Hospital of Philadelphia Division of Neurology, Student was seen by the writing physician only once to date; that appointment was on December 2, 2008. The physician noted, “[Student] does have migraine headaches, but this is not a contraindication to [Student’s] attending school and I have tried to encourage [Student] to go to school even when [Student] has headaches. [Student’s] mother told me yesterday that [Student] has not had bad headaches for about two months and that [Student’s] most recent absences were related to [Student’s] asthma...[Student] has no neurologic condition that should prevent [Student] from attending school on a regular basis”. The Parent is aware of the neurologist’s recommendation that Student attend school even when Student has a headache. [NT 94-95; J-D p. 4 of 25]
 7. According to a report dated May 11, 2009 from the Children’s Hospital of Philadelphia Division of Neurology, the Student has had “intermittent headaches for more than 4 years”. Student’s headaches fulfill the criteria for “pediatric migraine”. The headaches are not secondary to severe neurologic problems. [J-D, p 1, 3 of 25]

³ This document was not given to the School by the Parent until the date of the first hearing session. Nevertheless the School asked that it be admitted into the record. The Parent did not object. [NT 198-199]

8. According to the May 11th report, “currently [Student] has 2-3 headaches per month” but they were more frequent before [an increase in medication]”. [J-D, p. 1 of 25]
9. According to the May 11th report, “untreated headaches last several days; with treatment [ibuprofen] they still last 2-3 days; with Imitrex [prescription medication] headaches are usually gone in a few hours”. [J-D, p. 1 of 25]
10. The May 11th report notes there was to be a follow-up neurology visit in three months. Student did not attend a follow-up appointment and has no appointments scheduled. [NT 98; J-D p. 3 of 25]
11. Following the May 11, 2009 physician visit, Student’s medications were changed, with positive results. [NT 51, 77-79, 208-209]
12. A Registered Nurse is at the School daily. The RN is supervised by a Certified School Nurse. [NT 184-185]
13. The Parent has never sent in medication for Student’s headaches or for a gastrointestinal disorder to school. [NT 91-92, 101]
14. Student’s migraines were not triggered at school by bright lights or noise. Headaches were triggered by smells once in a while and being bumped but not that often. [NT 216-219]
15. During the four years the school nurse has been at the School, Student has never gone to him because of a migraine. Student has never gone to the school nurse because of a headache or any other medical condition. The nurse had never met Student prior to the second hearing date. [NT 187, 190, 223-224]
16. No one at the School has ever seen Student experience a migraine at school or be informed by Student that Student had a headache while at school during 2008-2009 or 2009-2010. The school nurse informed teachers about signs that Student may be experiencing a headache. [NT 84, 161, 164, 167-168, 176]
17. On days Student has come in late Student has never gone to the school nurse complaining about the effects of the migraine or the effects of the medication. [NT 90-91,
18. Student was aware that if Student experienced a headache in school Student could tell school staff, could go to the nurse’s office and lie down, could receive medication from the school nurse if such were provided to the School, and/or would be transported home if needed. [NT 224-225]

19. Student asserted that headaches that begin at school are less severe than those beginning at home because, “I didn’t get enough sleep, because I’m doing makeup work. Sometimes because of the stress, the whole situation”. [NT 236]
20. Student said that “maybe twice” not getting enough sleep was due to doing makeup work this year. Student usually gets eight hours of sleep a night. [NT 238-239]
21. Student is aware that Student’s physician said that the headaches should not keep Student from going to school. [NT 239-240]
22. Student was diagnosed with asthma in first or second grade but has not had an asthma attack since May 2008. [NT 81, 98, 206, 208, 215-216]
23. In fifth grade Student was having gastro-intestinal difficulties and was referred for some medical tests. Student has no appointments scheduled for any gastro-intestinal problems, nor is Student on any medications for a gastro-intestinal condition. Student had a gastro-intestinal problem lasting a few days in February or March 2009. [NT 82, 98-99, 205-206]
24. During the 1999-2000 school year, Student was absent 16 days. [J-C p. 3 of 23]
25. During the 2000-2001 school year, Student was absent 24 days. [J-C p. 4 of 23]
26. During the 2001-2002 school year, Student was absent 30 days. [J-C p. 5 of 23]
27. During the 2002-2003 school year, Student was absent 51 days. [J-C p. 6 of 23]
28. During the 2003-2004 school year, Student was absent 61 days. [J-C p. 7 of 23]
29. During the 2004-2005 school year, Student was absent 80 days.⁴ [J-C p. 8 of 23]
30. During the 2005-2006 school year, Student was absent 76 days. [J-C p. 9 of 23]
31. During the 2006-2007 school year, Student was absent 82 days. [J-C p. 10 of 23]
32. During the 2007-2008 school year, Student was absent 55 days. [J-C p. 11 of 23]
33. During the 2008-2009 school year Student was absent 121 days, of which 3 were excused and 118 were unexcused. [J-C p. 2 of 23]
34. The School did not receive a doctor’s note for every three consecutive days of absence during the 2008-2009 school year. The School received notes from the

⁴ Beginning this school year lateness also became an issue. There were 32 instances of lateness in 04-05, 45 in 05-06, 48 in 06-07, 36 in 07-08, and 28 in 08-09.

- Parent but these notes did not cover the 121 days Student was absent. [NT 109-112; J-I pp1-40]
35. During the current 2009-2010 school year, as of October 28, 2009 when Student was disenrolled, Student has been absent for 35-36 days. Student testified that these days were not missed because of headaches. [NT 222, 244]
 36. The School received excuse notes from the Parent for 4 of those days. [NT 103-105, 273; J-H pp 1-4]
 37. Student cannot recall the last time Student had an appointment with the family doctor. Student did not see the family doctor this school year or last school year. [NT 232]
 38. Student has considered instruction at home but Student, “like[s] the school environment. I couldn’t take being at home every day”. Student says Student loves the School. [NT 229, 239]
 39. Student plays bass guitar in a jazz band that includes drums. Student practices a little every day, but not always connected to the amplifier. Three or four times Student did not play because of a headache. [NT 236-238]
 40. The School sent numerous written correspondences to the Parent regarding the Student’s absences and the need for documentation from physician[s]. The School had conversations with the Parent about this issue as well. [NT 250-251; 254-257, 264-266, 268-269, 271, 289-290, 302; J-E, J-F, J-G]
 41. The School offered to send instructors to the home but the Parent refused. {NT 302-303}
 42. At the Resolution Meeting held on October 13, 2009 the Student said Student would come back to school and attend regularly. After attending one day, October 14th, Student was absent for 10 consecutive days before disenrollment. [NT 106]
 43. The hearing officer issued a pendency ruling on November 17, 2009 ordering that the Student be readmitted to the School. Student attended school on November 18th but was absent on November 19th, although Student came to the 3:00 pm, hearing session. [NT 152-153, 213]
 44. The School sought to convene, but the Parent could not secure transportation for, a 504 Plan meeting in March 2009. [NT 118-119]
 45. In a February 10, 2009 letter to the Chief Administrative Officer of the School, one of the CHOP neurologists suggested accommodations for the Student as follows: allowing Student to leave class 5 minutes early to avoid crowds in the halls, allowing Student to lie down in the nurse’s office if Student has a severe

- headache, the school nurse's allowing Student to take medication as needed. The physician recommended getting a school social worker involved as well. The School made the school counselor available to see if anything else was needed. [NT 333; J-D p 4 of 25]
46. The Chief Administrative Officer of the School discussed accommodations for Student over the telephone. The Parent did not disagree with any of the recommendations discussed or with the follow-up letter. The Parent alleged she did not construe the recommendations to constitute a 504 Plan. [NT 120-122, 291-292, 294, 313-314]
47. The school nurse was involved in developing the 504 Plan. The school nurse believes that if Student came to him complaining of a headache the Plan offers sufficient accommodations. [NT 186-189]
48. Teachers were made aware of the 504 Plan. [NT 162, 175, 179-180]
49. In reviewing the 504 Plan⁵ at the hearing Student did not believe that anything needed to be added. [NT 231-232]

Discussion and Conclusions of Law

Legal Basis

Compulsory Attendance⁶

Basic Education Circular 24 P.S. 13-1327 [BEC] issued on August 8, 2006 and expiring on June 20, 2011 addresses Compulsory Attendance and Truancy Elimination. Given that the School which is party to this matter is located in Philadelphia, which is the Student's county of residence, the BEC "does not apply. The truancy procedures and programs of the School District of Philadelphia are developed and implemented by the District's Office of Truancy Prevention in the Department of Human Services". Nevertheless, while not binding, the BEC offers guidance in this matter.

The School District of Philadelphia's Attendance and Truancy Prevention Intervention Process for the 2009-2010 school year⁷ provides that if a student has 5 to 9 unexcused absences the following will occur: the District will refer to ATIPS Providers for Home Visits by the Attendance and Truancy Office; placement of an automated phone call from the School Superintendent to the home. The District's Process provides that if a student has 10 or more unexcused absences the following will occur: Referral to Truancy Court

⁵ The 504 Plan in the record was revised but the revised version was not provided within the 5-day rule and is therefore not in evidence. [NT 318-320]

⁶ Most of the material in this section is cited from Basic Education Circular 24 P.S. 13-1327 except for the information about the Philadelphia School District's Plan.

⁷ Available from the District upon request.

and DHS by the Attendance and Truancy Office; Automated Phone Call from Judge Kevin Dougherty at the 10th unexcused absence.

Pennsylvania provides that “it is mandatory for all children of compulsory school age having a legal residence in Pennsylvania to attend a day school in which the subjects and activities prescribed by the Standards of the State Board of Education are taught in the English language, except in certain situations, none of which apply in this matter.

All absences should be treated as unlawful until the school district receives a written excuse explaining the reason[s] for an absence. Parents/guardians and students should submit the written explanation within three calendar days of the absence and should be informed that if they fail to provide a written excuse within three days of the absence the absence will be permanently counted as unlawful. A maximum of ten days of cumulative lawful absences verified by parental notification may be permitted during a school year. All absences beyond ten cumulative days should require an excuse from a physician.

Students who miss ten consecutive school days shall be dropped from the active membership roll unless the school is provided with evidence the excuse is legal or the school is pursuing compulsory attendance prosecution. Students of compulsory school age who have not complied with compulsory attendance requirements may be offered alternative education services or other provisions of education.

Any child who has attained the age of 13 who fails to comply with the compulsory attendance requirements and is habitually truant may, in lieu of being prosecuted, be referred by the school district to the local county children and youth agency for services which may include addressing family issues that may be responsible for the child’s truant behavior or possible adjudication as a dependent child under the Juvenile Act. Under Title 55 Pa. Code, Chapter 3490.223, children who are habitually and without justification truant from school while subject to compulsory school attendance are subject to an assessment to determine if there is a need for general protective services to prevent the potential for harm to the child.

Charter schools must report to the student’s school district of residence when a student as accrued three or more days of unlawful absences. It is the responsibility of the school district to enforce the compulsory attendance laws in accordance with the Public School Code. However, charter schools should also follow PDE’s Recommended Responses to Unlawful Absences for the first, second and third unlawful absences including the school/family meeting and implementation of a Truancy Elimination Plan. Charter schools should also refer the child to the county children and youth agency as stated above.

Section 504 and PA Chapter 15

This matter involves the Rehabilitation Act of 1973, Pub. L. 93-112, as amended in 2008 by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794 [ADAA]. The ADAA went into effect on January 1, 2009. Section 504 means section 504 of the Act.

A section 504 claim is established by showing that: 1) a student is an individual with a disability as defined by the ADA [42 U.S.C. 12102]; 2) the student was “otherwise qualified” to receive educational services from the LEA; 3) the LEA is a recipient of federal financial assistance; and 4) the student was excluded from participation in, denied the benefits of, or subject to discrimination by the LEA on the basis of disability.

An “individual with a disability” is a student who has: 1) a physical or mental impairment that substantially limits one or more major life activities of such individual; 2) has a record of such impairment; or 3) is being regarded as having such an impairment.

“Physical or mental impairment” includes neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine, or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 34 CFR §104.3(j)(2)(i).

“Major life activities” in the statute/regulations now include but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. 42 U.S.C. 12102.

For impairments which are episodic or in remission, whether the impairment substantially limits a major life activity is to be determined as of the time they are active. 42 U.S.C. 12102.

The Section 504 statute prohibits discrimination “solely by reason of her or his disability”. 29 U.S.C. 794. Section 504 regulations, however, prohibit discrimination “on the basis of handicap”. 34 C.F.R. 104.4(a). The ADA prohibits discrimination “on the basis of disability” instead of “because of the disability of such individual” but this amendment does not apply to Section 504.⁸

The FAPE requirement under Section 504, unlike under the IDEA, is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the "design" of a child's “educational program”. Mark H. v. Paul Lemahieu, 513 F.3d 922, 933. As defined by the regulations, a Section 504 FAPE requires education and services "designed to meet individual educational needs of handicapped persons as adequately as the needs of non handicapped persons are met." 34 C.F.R. §104.33(b)(1). (Emphasis added)

⁸ Rebecca K. Spar, Esquire in Section 504 vs. IDEA: Implications of the 2009 ADA. 37th Annual Special Education Law Conference, Lehigh University, May 2009.

Section 504/Pennsylvania Chapter 15 does not require that a student be in need of specially designed instruction (the sine qua non of eligibility under IDEA/Pennsylvania Chapter 14) in order to be entitled to protection. Any student with an identified physical or mental disability which substantially limits a major life activity, e.g. learning, is entitled to protection under Section 504/Chapter 15.

Pennsylvania Chapter 15 regulations, found at 22 Pa. Code § 15.1 *et seq.*, set out the procedures for implementation of Section 504 in Pennsylvania. Chapter 15 uses the nomenclature “protected handicapped student” instead of “individual with a disability”:

A school district shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford that student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student’s abilities.

22 Pa. Code §15.10 provides:

Notwithstanding other provisions of this chapter, an eligible or noneligible student under Chapter 14 (relating to special education services and programs) may use the procedures for requesting assistance under § 15.8(a) (relating to procedural safeguards) to raise claims regarding denial of access, equal treatment or discrimination based on handicap.

Service Agreement

A service agreement is a written 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 may also be called service plans, Section 504 plans, or accommodation plans. Service agreements must be written. The agreement must be signed by one or both the child’s parents and a school representative. The agreement must specify the date the services shall begin and the date they will be discontinued. If the parents and the school cannot agree on what should be provided to the student, either party may use the procedural safeguard system set out at 22 Pa. Code § 15.8, which includes requesting a due process hearing.

Charter Schools

Pennsylvania charter schools are designed to be "independent public schools." Act 22 of 1997 provides charter schools with autonomy from school districts and freedom from certain regulations. However, Act 22 of 1997 requires charter schools to comply with federal laws and regulations governing children with disabilities.

However, on June 8, 2001, the Charter School Services and Programs for Children with Disabilities Law,⁹ was adopted and became effective on June 9, 2001 to specify

⁹ 22 Pa. Code §711.1 *et seq*

how the Commonwealth of Pennsylvania would meet its obligations to ensure that charter schools comply with their obligations to children with disabilities.

Burden of Proof: In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA¹⁰ is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). As the Parents asked for this hearing, the Parents bear the burden of persuasion. However, application of the burden of persuasion does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. In the instant matter, the evidence was not in equipoise under Weast.

Credibility

Hearing officers are empowered to judge the credibility of witnesses, weigh evidence and, accordingly, render a decision incorporating findings of fact, discussion and conclusions of law. Quite often, testimony or documentary evidence conflicts; this is to be expected as, had the parties been in full accord, there would have been no need for a hearing. Thus, part of the responsibility of the hearing officer is to assign weight to the testimony and documentary evidence concerning a child's special education experience. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". Blount v. Lancaster-Lebanon Intermediate Unit, 2003 LEXIS 21639 at *28 (2003). This is a particularly important function, as in many cases the hearing officer level is the forum in which the witnesses will be appearing in person.

Discussion

Listening to the testimony as it was offered, and then later reading it in the transcripts and comparing it with the joint documents offered, this hearing officer reached the inescapable conclusion that the Parent's testimony was simply not credible or internally consistent with respect to why the Student was absent on so many occasions, with respect to her knowledge or lack thereof of requirements for physicians' notes, with respect to her belief that an actual 504 Plan was not written, with respect to her disagreement with the 504 Plan as it was presented at the hearing, and with respect to her communications with a charter school she was considering. Consequently, despite her lengthy testimony, the Parent's testimony contributed toward very few findings of fact in this matter. The Parent offered no explanation within reason as to why despite the advice offered by Student's physicians that Student should attend school even when Student had a headache she did not send Student to school. It is particularly striking that a student with so many absences has seen a physician so few times, and it

¹⁰ As noted above, 504 cases are handled procedurally in much the same manner as IDEA cases and therefore Weast was applied. Even if the School had the burden of proof in this matter the outcome would have been the same.

is likewise striking that according to the Parent and the Student the medication change in May 2009 was effective yet Student has missed almost all the school days from mid-May 2009 to the present.

Likewise, Student's testimony about Student's absences was largely not credible. For example Student said that Student does not get much sleep because of staying up late and doing schoolwork but later testified that to Student's recollection this has happened twice. Student's testimony that Student plays the bass guitar in a jazz band, and practices daily [sometimes without the amplifier], suggests that the headaches do not interfere with activities Student enjoys. It strains credibility that Student's headaches occur mostly on school days during school hours and that on weekends and during summers headaches are less frequent and/or less severe. Student's testimony that Student loves the school and enjoys being in the school is belied by the fact that Student has missed an extraordinary number of school days during 2008-2009 and 2009-2010 despite doctor's recommendations that Student go to school even on headache days. Testimony offered by School personnel was credible in its totality because these witnesses were exact and confident, and presented answers that comported with contemporaneous documents.

The Findings of Fact above, as applied to the law, leads to the conclusion that Student was not discriminated against by virtue of Student's disability. The School was correct in disenrolling Student. The 504 Plan offered by the School was appropriately developed with input from the Parent and a neurologist and the absence of a formal face-to-face meeting did not render the Plan inappropriate and did not deprive the Parent of meaningful participation. If Student had actually gone to school and used the Plan Student might have improved Student's attendance and this hearing would not have been necessary. The Parent has failed to meet her burden of proof under Weast on either issue in this matter.

Pendency no longer attaches to Student's placement in the School.

By way of *dicta*, the following is offered. The evaluation conducted by the School resulted in the recommendation that a medical evaluation be done. What the evaluator meant by a medical evaluation is not in evidence. Given this hearing officer's professional background as a psychologist and many years of experience as a hearing officer, the extent of Student's absenteeism permitted by Student's Parent strongly suggests the need for an individual and family psychiatric examination. Although the School would have been wise to provide such, the School's lapse in this regard must be equitably mitigated in light of the fact that none of the neurologists at Children's Hospital referred Student for such an evaluation at any time prior to or following the completion of the School's evaluation. It is now strongly recommended that Student's treating neurologists be fully informed of the extent of Student's absences, and that they consider referring Student to CHOP's psychiatric division for an assessment as noted above and that any recommendations for mental health treatment be followed.

In the alternative, a referral by the School District of Philadelphia to DHS and the Family Court will likely trigger an order for such an examination.

Order

It is hereby ordered that:

1. The School did not act inappropriately in dropping the Student from its rolls due to multiple absences.
2. The School's developing a 504 Plan in the physical absence of the Parent was not inappropriate.
3. Pendency no longer attaches to Student's placement at the School.

December 2, 2009
Date

Linda M. Valentini, Psy.D.
Linda M. Valentini, Psy.D.
PA Special Education Hearing Officer
NAHO Certified Hearing Official