

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

Student's Name: N.J.

Date of Birth: [redacted]

ODR No. 13553-1213AS

CLOSED HEARING

Parties to the Hearing:

Parents

Representative:

Pro Se

Neshaminy School District
2001 Old Lincoln Highway
Langhorne, PA 19047

Jane Williams, Esq.
331 Butler Ave.
New Britain, PA 18901

Dates of Hearing: 08/13/2013

Record Closed: 08/13/2013

Date of Decision: 10/05/2013

Hearing Officer: Brian Jason Ford

Introduction

The Parents¹ requested this due process hearing to obtain accommodations for their child (the Student) under Section 504 of the Rehabilitation Act of 1973 (Section 504).² The District argues that the Student is not eligible for Section 504 accommodations.

The Parents originally requested two due process hearings, one for each of their children, on February 18, 2013. Both complaints (this one and ODR No. 13552-1213AS) were consolidated – meaning that they would be heard together, but that separate decisions would be written for each child. Both complaints raised claims under the Individuals with Disabilities Education Act, (IDEA)³ and Section 504. After some delays, a hearing convened on August 13, 2013.

At the outset of the hearing, the Parents withdrew their IDEA claims and proceeded under Section 504 only.⁴ The Parents were quite clear that they are demanding particular accommodations for the Student, and did not care whether the accommodations were provided under the IDEA or Section 504. They did, however, view IEPs as “limiting” in comparison to Section 504 accommodation plans and were clear and explicit about their desire to proceed under Section 504 only.⁵

This decision and order concerns the student referenced in the cover page (the Student) only. Portions of this decision and ODR No. 13552-1213AS are identical; for example, sections explaining the applicable laws. The findings of fact and ultimate outcome of this case is, however, student-specific.

Issues

Is the Student entitled to a Section 504 Service Agreement or Plan?

If the Student is entitled to a Section 504 Service Agreement or Plan, must that Plan include the specific accommodations demanded by the Parents, specifically a communications log (between home and school), preferential seating, and tutoring?⁶

¹ “Parents” in this decision refers to the Student’s biological father and his current wife. The Student’s biological mother was not a party to these proceedings. Other than in the cover page of this decision, identifying information is omitted to the extent possible.

² 34 C.F.R. Part 104.4.

³ 20 U.S.C. § 1400 *et seq.*

⁴ NT at 19-26.

⁵ NT at 19-26. Although I could not offer legal advice to either party, I did have a significant conversation with the Parents on the record about this decision, took a recess in order for the Parents to consider this decision, and made an exceedingly clear record about the Parents’ choice.

⁶ The Parent characterized their claim as including four demands: 1) a § 504 agreement, 2) a communications log, 3) preferential seating and 4) tutoring. I have divided these demands into two issues, as entitlement to a § 504 plan is a prerequisite to the other two demands.

Section 504 / Chapter 15 – Overview

I will begin by explaining what Section 504 is, how it applies to Pennsylvania school districts, and what it requires schools to do. Broadly, Section 504 prevents school districts from discriminating against children with disabilities by denying them participation in, or the benefit of, regular education.⁷ Unlike the IDEA, which requires schools to provide special education to qualifying students with disabilities, Section 504 requires schools to provide accommodations so that students with disabilities can access and benefit from regular education.

In 2008, the Americans with Disabilities Act was amended, and those amendments extended the protections of Section 504 to all students who 1) have a physical or mental impairment that substantially limits one or more major life activities; or 2) have a record of such an impairment; or 3) are regarded as having such an impairment. As such, students who are regarded as having a disability are protected. However, the United States Department of Education, Office of Civil Rights (OCR) has clarified as follows:

“In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act ..., in which Congress clarified that an individual who meets the definition of disability solely by virtue of being “regarded as” disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.”⁸

As such, the Student in this case is entitled to accommodations, including a Section 504 Plan, only if the Student actually has a disability.

Pennsylvania regulations describe how school districts must comply with Section 504.⁹ Those regulations are found at Title 22, Chapter 15 of the Pennsylvania Code (Chapter 15). Chapter 15 defines a “protected handicapped student” as a student who:

Is of an age at which public education is offered in that school district; and

Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student’s school program; and

Is not IDEA eligible.^{10 11}

⁷ 34 C.F.R. Part 104.4(a).

⁸ <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

⁹ 22 Pa Code § 15 *et seq.*

Chapter 15 also defines a service agreement as 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.”

After providing these definitions, Chapter 15 explains what schools must do for protected handicapped students:

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 the 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.”¹²

From this point, Chapter 15 goes on to list a number of rules describing what must happen when a schools or parents initiate evaluations to determine if students are protected handicapped students.

After evaluations, Chapter 15 goes into more detail about service agreements. In doing so, Chapter 15 first sets out rules for what must happen when parents and schools are in agreement:

If the parents and the school district agree as to what related aids, services or accommodations should or should no longer be provided to the protected handicapped student, the district and parents shall enter into or modify a service agreement. The service agreement shall be written and executed by a representative of the school district and one or both parents. Oral agreements may not be relied upon. The agreement shall set forth the specific related aids, services or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive. The agreement shall also specify the date the services shall begin, the date the services shall be discontinued, and, when appropriate, the procedures to be followed in the event of a medical emergency.¹³

When parents and schools cannot reach an agreement, a number of dispute resolution options are available, including formal due process hearings.¹⁴

¹⁰ 22 Pa Code § 15.2.

¹¹ All IDEA-eligible students are also protected by Section 504. However, for IDEA-eligible students, school districts satisfy their obligations under both laws by compliance with the IDEA and its regulations. For example, IDEA-eligible students receive an IEP, not an IEP and a Section 504 plan. The particular requirements of Chapter 15 apply when a student is a protected handicapped student, but is not IDEA-eligible.

¹² 22 Pa Code § 15.3

¹³ 22 Pa Code § 15.7(a).

¹⁴ 22 Pa Code §§ 15.7(b), 15.8(d).

Applied to this case, I must first determine if the Student is a protected handicapped student. If so the Student must have a 504 Agreement, and I will consider the Parents' specific demands for accommodations. If the Student is not a protected handicapped student, the Student is not entitled to a 504 Agreement.

Protected Handicapped Student

The Parents argue that the Student is a protected handicapped student, and the District disagrees.¹⁵ As noted above, Chapter 15 establishes a three part test to determine eligibility. Two of those three parts are not in dispute. The Student is school-aged, and neither party argues that the Student is IDEA-eligible (for purposes of this hearing). The remaining question, therefore, is whether the Student has a "disability which substantially limits or prohibits participation in or access to an aspect of the student's school program."¹⁶

The Burden of Proof

In lay terms, the Parents have requested this hearing, and are asking me to find that the Student is 504-eligible and force the District to provide accommodations. The Parents must, therefore, prove that the Student is 504-eligible. The Parents must satisfy their burden by a preponderance of evidence, meaning that the evidence must demonstrate that it is more likely than not that the Student is 504-eligible. If the evidence favors the District, or is completely equal on both sides, I cannot find in the Parents' favor.

More specifically, the burden of proof consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief.¹⁷ The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise.¹⁸ In this particular case, the Parents are the party seeking relief and must bear the burden of persuasion.

Findings of Fact

At the Parents' request, the District's Certified School Psychologist (CSP)¹⁹ conducted an educational evaluation of the Student.²⁰

¹⁵ Neither party used those exact words. The Parents, who were pro se, left no doubt that, in their view, the Student is entitled to a written 504 Agreement, including specific accommodations. The District was equally clear that, in its view, the Student is not 504-eligible. There is no doubt, therefore, that eligibility is not only a threshold issue, but the primary issue in this case.

¹⁶ 22 Pa Code § 15.2.

¹⁷ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

¹⁸ See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004)

¹⁹ The School Psychologist testified, and her curriculum vitae was entered as S-12.

At the time of the evaluation, the Parents were concerned about the Student's inconsistent organization skills and inconsistent performance in school. Specifically, the CSP understood from conversations with the Student's father that the amount of time and effort that it took the Student to perform school work and homework were of paramount concern. The CSP learned of these concerns by interviewing the Student's father, and the CSP characterized those concerns as concerns about executive functioning.²¹

The CSP observed the Student in an English class. The CSP selected English based on some concerns about the Student's spelling and some history of early reading difficulties.²²

The observation in English class was a structured behavioral observation, in which the Student's engagement and attention were assessed and compared to other students in the same class. The CSP had not met the Student before the class, and so, in the CSP's opinion, the Student did not know that the Student was the focus of the observation.²³

The observation was 15 to 20 minutes long, and the Student was on-task 98% of the time. This was on par with the Student's classmates during the same time.²⁴

The CSP testified that that, generally, there is an observable difference between passive, on-task behavior and passive, off-task behavior. To the extent that the Student was passive during the observation, the CSP believed that the Student was also on-task.²⁵

The CSP collected information from, and sent behavior rating scales to the Student's Math and English teachers.²⁶

After the observation, but before receiving information from the Math and English teachers, the CSP interviewed the Student, and administered behavior rating scales and standardized tests that measure cognitive functioning, academic performance, memory and visual-perceptual ability.²⁷

Neither the formal nor the informal portions of the CSP's interview with the Student raised any concerns about the Student's health or mental wellbeing.

Based on standardized assessments, the Student's working memory (both short term and long term) and processing speed were average as compared to a normative

²⁰ NT at 42-43.

²¹ NT at 44-45.

²² NT at 45.

²³ NT at 45, 48.

²⁴ NT at 45-47, 107.

²⁵ See, e.g. NT at 148.

²⁶ NT at 48.

²⁷ NT at 49.

sample of same-aged peers. The Student's verbal comprehension was above average as compared to a normative sample of same-aged peers.²⁸

Based on standardized assessments, the Student's academic abilities were all assessed to be within expectations relative to same-aged peers with the exception of listening comprehension, in which the Student was above average.²⁹

More specifically, the Student scored within expected limits in all reading and math assessments, and demonstrated organizational skills as a strength when completing math assessments.³⁰ The Student also scored above average on writing assessments that measured volume of writing for a set time, style, theme development, and spelling (the Student expressed a few spelling errors, but to a very minor degree and within expected levels).³¹

The CSP observed the Student during the standardized testing, and saw no signs of inattention or disorganization.³²

The Student took a standardized behavioral self-assessment as part of the evaluation. On this measure, the Student's self-concept was lower than average but all other areas (depression, anxiety, anger, and destructive behavior) were all within normal limits.³³

The Student's English and Math teachers, and the Student's father, all completed standardized behavioral ratings scales in which they were asked to assess the behaviors they observed in the Student. Neither teacher endorsed concerns about attention or hyperactivity, but leadership and adaptability ratings were elevated. In contrast, the Student's father endorsed much higher ratings in atypicality, hyperactivity, and attention.³⁴

In addition to clinical rating scales, the CSP learned from teachers that there were some concerns that the Student was not consistently focused in class, and would sometimes socialize with peers during instructional time. Teachers reported that these concerns were effectively addressed by changing the Student's seating.³⁵

Changed or preferential seating is often given as a regular education accommodation.³⁶

Anecdotal information was solicited from teachers via forms on which teachers are asked to describe the Student's inattentive or off-task behaviors. Unlike the standardized scales, the anecdotal forms ask teachers to describe whatever incidents of those behaviors the Student may present, regardless of frequency or severity.

²⁸ NT at 52-56 [CITE EXHIBIT]

²⁹ NT at 53

³⁰ NT at 56-57.

³¹ NT at 57.

³² NT at 59-61.

³³ NT at 63-64.

³⁴ NT at 64-65.

³⁵ NT at 68.

³⁶ NT at 114.

Consequently, teachers endorsed that the Student is un-focused, off-task and disorganized, (indicating that the Student may occasionally exhibit these problems) and described the Student as “appears lost in class” “some days [Student’s] work is complete; other days it’s not” and “inconsistent.” At the same time, the teachers did not endorse problem behaviors on standardized ratings.³⁷

The Student has no disciplinary history.³⁸

At the time of the evaluation, the CSP examining potential IDEA eligibility. As a result of the evaluation, the CSP determined that the Student did not have any of the disabilities or categories of disabilities recognized by the IDEA.³⁹

Separate from the question of whether the Student had an IDEA-recognized disability, the CSP further concluded that the Student did not require specially designed instruction (*i.e.* that the Student was not in need of special education, regardless of the Student’s disability status).⁴⁰

Although the IDEA was the focus of the evaluation at the time, based on the same information obtained through the evaluation, the CSP testified that, in her opinion, the Student does not have a disability for purposes of Section 504 or Chapter 15.⁴¹

The CSP’s evaluation was memorialized in an Evaluation Report (ER).⁴²

The CSP and other District personnel reviewed the ER with the Parents.⁴³ The Parents were not in agreement with the ER.

The CSP testified, credibly, that she observed no ADHD symptoms as described in the DSM-5, and none were reported to her.⁴⁴ The CSP was clear, however, that it is not within her purview to make medical diagnoses. Rather, the CSP evaluates to determine if ADHD symptoms are present and impacting upon a student’s education.⁴⁵

After the ER, and after initiating these proceedings, the Parents obtained a private ADHD Evaluation.⁴⁶ The private ADHD evaluation concluded that the Student has ADHD, predominately inattentive type, and “probably has some executive functioning deficits.”⁴⁷

³⁷ S-8 at 7-8; NT at 84; 110-112

³⁸ NT at 105.

³⁹ NT at 70.

⁴⁰ NT at 69-71.

⁴¹ NT at 71-72.

⁴² S-8; NT at 72.

⁴³ NT at 73.

⁴⁴ NT at 88-90.

⁴⁵ NT at 100-101.

⁴⁶ P-3; NT at 75. Completion and review of the private ADHD evaluation was one reason for the delay of the hearing session.

⁴⁷ P-3 at 5.

The private ADHD evaluation quotes from the anecdotal reports from teachers contained within the District's ER.⁴⁸

The private ADHD evaluation included a computerized memory test. The numerical results of that test are not contained within the private ADHD evaluation, but the results are explained in a narrative, indicating that the Student is more likely to experience poor performance under conditions of low arousal.⁴⁹

The private ADHD evaluation also indicates that behavioral ratings scales were given to the Student's father and biological mother. The scales used in the private ADHD evaluation have forms for parents, teachers and students. The private ADHD evaluation only reports scales for the Student's father and biological mother.⁵⁰ The Father's ratings indicated ADHD, the biological mother's did not.

The Parents' private evaluator contacted the District for input into the private evaluation. The District indicated a willingness to provide written input and/or complete paperwork for the private evaluator. The private evaluator neither solicited written input nor sent forms for the District to complete.⁵¹

Generally, the Student's grades reflect significant difficulty with homework completion (the Student missed 39 assignments, receiving no credit for those assignments) which, in turn, reduced the Student's overall grades in some subjects.⁵²

The CSP had no explanation as to why the Student missed 39 assignments. When requested to speculate as to why the Student missed 39 assignments, in the absence of an objection, the CSP complied with the request. I give that speculative testimony no weight in light of 1) the CSP's own concerns about speculating and 2) the CSP's overall testimony, indicating that no hypotheses for the missing assignments can be directly derived from the ER.⁵³

In addition to the homework assignments for which the Student received no credit, the Student received low (Ds) or failing grades on 61 other tests, quizzes and graded class work during the 2012-13 school year.⁵⁴

Credible testimony reveals that the Student typically spends between one to four hours per night on homework.⁵⁵

Credible testimony reveals that, on at least one occasion, the Student has had difficulty planning and executing long term projects for school.⁵⁶

⁴⁸ P-3.

⁴⁹ P-3.

⁵⁰ P-3.

⁵¹ See NT at 226.

⁵² See P-1, NT at 116-117, 120, 128

⁵³ See, e.g. NT at 121, 136.

⁵⁴ P-1.

⁵⁵ NT at 291.

Credible testimony reveals that the Student receives significant tutoring and help with homework from the Parents.⁵⁷

At home, the Student can be disorganized and inattentive.⁵⁸

Before March of 2013, the Student would spend five days every two weeks with the biological mother (going to the biological mother's house after school on Monday and returning to the Parents' house on Sunday). After March of 2013, the Student remained on the same custody schedule, but would return to the Parents' home after school to do homework before going to the biological mother's house.⁵⁹

Discussion

By hearing this case and ODR No. 13553-1213AS together, certain key principles emerged in both cases that warrant discussion.

I note at the outset that the parties reached certain stipulations about both the Student and the Student's sibling at the start of the case. Even without those stipulations, there can be no doubt that both students are hard-working and want to do well in school.

There can also be no doubt that the Parents' hard work with both students is a significant contributing factor in their successes in school. Both students are very lucky to have such loving and dedicated parents.

It is also important to note that the CSP drafted ERs for both students. Both of these ERs include certain recommendations that the Parents (if not both parties) consider to be reasonable. Nothing prohibits the District from implementing any mutually-agreeable accommodations, whether or not either Student is 504-eligible. Testimony indicates that some teachers are doing exactly that.

Specific to the Student in this case, however, there are conflicting evaluations. The District's ER concludes that the Student does not have a disability. The Parents' private evaluation concludes that the Student has ADHD.

The District's witnesses were highly critical of the private evaluation for several reasons. First, the private evaluation selectively quotes from the District's ER, and then uses those quotes to support broad, conclusory statements. I agree with the District that the private evaluation draws unsupported conclusions from the District's ER. For example, selective quotes from teachers on informal surveys does not evidence the pattern of behaviors suggested in the private evaluation.

The District also takes issue with the way that certain tests were reported on the private evaluation. For example, one test administered by the private evaluator yields a

⁵⁶ See NT at 293.

⁵⁷ See NT at 296-297.

⁵⁸ NT at 306-307.

⁵⁹ See, e.g. NT at 341-342.

numerical score. The private evaluator did not report the numerical scores, but rather provided a narrative interpretation of test results. I disagree with this critique. Although it would have been much better for the private evaluator to provide the test scores, and providing test scores is standard practice for school district evaluations, the District did not challenge the validity of the narrative results. I conclude, therefore, that the test results reported in the private evaluation are accurate, regardless of their format.

The District also challenges the private evaluation on the basis that the evaluator relied upon limited testing to conclude that the Student has ADHD. There is some validity to this criticism. The private evaluator assessed the Student using a standardized, computer-based test, and received behavioral rating scales from the Student's father and biological mother. The Student's scores and the Father's ratings tend to suggest ADHD. The biological mother's do not, and neither do the assessments that were part of the District's ER, or the behavior ratings from the Student's teachers that were part of the District's ER. As such, the private evaluator did not misreport her findings, but did fail to explain the Student's diagnosis in light of the District's testing, which the private evaluator quoted from.

The Parents, however, attempted to challenge the District's evaluation. The Parents argued (via cross-examination of the District's witnesses) that the testing conducted as part of the District's ER inflates the Student's performance because the testing was conducted under conditions of high arousal. The private ADHD evaluation reports that the Student is expected to underperform in conditions of low arousal, but it does not say that high arousal is likely to improve the Student's performance. Moreover, the Parent argues that the high arousal is evidenced by the Student's anxiety about the CSP's evaluation. The CSP's credible testimony does not reveal any observable anxiety during the evaluation, and the Parents conflate anxiety with arousal.

On the whole, the District's evaluation of the Student was more comprehensive and less conclusory than the Parent's private evaluation. There are, however, other critical factors to consider. Student experiences failure in school on a regular basis. The Student routinely receives poor marks on tests and quizzes, and has difficulty with homework and other assignments. Although the District's CSP unambiguously testified that, in her opinion, the Student does not have a disability, the CSP could offer no explanation as to the Student's actual academic performance.

Although the private evaluation over-emphasizes comments from the Student's teachers, those comments cannot simply be ignored. They are consistent with the presentation of inattentive-type ADHD. The same teachers who wrote those comments did not endorse ADHD characteristics on standardized rating scales, but I do not believe that the teachers invented concerns simply so that they could complete a form. These same teachers are already providing a common 504 accommodation – preferential seating – in response to the Student's off-task behaviors.⁶⁰

⁶⁰ It is not uncommon that a student of the Student's age would be off-task while trying to socialize with peers during instructional time. It is not uncommon for teachers to change seating arrangements to better

In sum, both parties agree that the Student is hard-working, wants to do well, and has the ability to do well. On informal measures, the Student's teachers described behaviors consistent with inattentive-type ADHD. The teachers (or some of them) are already providing 504-like accommodations to help keep the Student on task. The Student's grades are strong enough for the Student to advance academically, but the Student routinely experiences failure in school (both on assignments completed at home and on curriculum bases assessments administered at school). Despite concluding that the Student does not have a disability, the District has no explanation for these events.

Not every academic difficulty must be explained by a disability. There are surely non-disabled students who underperform in school despite serious efforts and a desire to succeed. In this case, the District concluded that the Student's educational difficulties are not the result of a disability. That conclusion was based on a thorough evaluation, but offered no other explanation. The Parents' private evaluation was less thorough and somewhat conclusory, but it is the only non-speculative evidence offered by either party that explains the behaviors witnessed both at home and in school, the success of the accommodations that the District has already put in place, and the Student's academic performance. With no better explanation of the Student's presentation offered, I must find that the Parents have satisfied their burden to establish that the Student is a protected handicapped student for purposes of Section 504.

Having found that the Student is 504-eligible as a protected handicapped student, I will address the particular accommodations that the Parents have demanded. First, the record clearly establishes that the Student should have preferential seating. Preferential seating means different things for different students, based on their needs. In this case, some of the Student's teachers have already recognized the need for preferential seating, and have moved the Student away from distracting peers. Placing this accommodation into a Section 504 Plan will alert all of the Student's teachers to this particular need, and will mandate the accommodation (to whatever extent the problem presents itself from class to class).

Next, the Parents have demanded a log book or communications book to go back and forth with the Student from home to school. The Parents testified, credibly, that they would be in a better position to help the Student at home if they knew what homework and projects had been assigned. Under the District's default system, parents can access grades after they are posted online, but the online system does not tell parents what has been assigned. Although this accommodation seems exceedingly reasonable and "do-able," my inquiry is whether the evidence establishes that the accommodation is necessary for the Student to access and benefit from the regular education that is offered to all students in the district. The evidence shows that the Student has been able to access the curriculum without this accommodation and, although there might be great wisdom in such a plan, I cannot find that Section 504 requires it.

manage their classes. These factors, by themselves, do not likely indicate a disability. Rather, these factors in conjunction with the other evidence in this case become more compelling.

Finally, I turn to the demand for tutoring. As with a communications log, the Parents have not proven that the Student requires tutoring in order to access and benefit from the regular education that is provided to all students in the District. In making this determination, I recognize the Parents' diligence in helping the Student complete assignments and prepare for tests. The Parents have, in essence, been the Student's tutors. I cannot find, however, that but for the Parents' efforts, the Student would not have been able to access the curriculum. The Parents have not put forth preponderant evidence to support tutoring as a necessary accommodation.

ORDER

Now, October 5, 2013, it is hereby **ORDERED** as follows:

The Parents have proven by preponderant evidence that the Student is currently a protected handicapped student for purposes of Section 504. Consequently, the Student is currently entitled to a Section 504 Service Agreement or Plan.

The Parents have proven by preponderant evidence that the Student is entitled to preferential seating as an accommodation.

The Parents have not proven by preponderant evidence that the Student is entitled to the other demanded accommodations.

Nothing in this order prohibits the Parents and the District from implementing mutually-agreeable accommodations for the Student, regardless of the Student's disability status.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER