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

Child's Name: A.P.

Date of Birth: [redacted]

ODR No. 13677-12-13-KE

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents	Jennifer Lukach Bradley, Esquire McAndrews Law Offices 30 Cassatt Avenue Berwyn, PA 19312
Hamburg Area School District 701 Windsor Street Hamburg, PA 19526	Mark W. Cheramie Walz, Esquire Sweet, Stevens, Katz & Williams LLP 331 East Butler Avenue New Britain, PA 18901
Dates of Hearings:	May 22, 2013; July 16, 2013; August 16, 2013
Record Closed:	September 6, 2013
Date of Decision:	September 17, 2013
Hearing Officer:	William F. Culleton, Jr., Esquire, CHO

INTRODUCTION AND PROCEDURAL HISTORY

The child named in the title page of this decision (Student) was a resident of the school district named in the title page of this decision (District) at all times relevant to this decision. (NT 9.) Student is no longer enrolled in the District. The Student's Parents, named on the title page of this decision (Parents), request compensatory education for Student. Parents assert that the District failed to identify Student as a child with a disability as required by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq. (IDEA), and therefore denied Student a free appropriate public education under the IDEA (FAPE), from March 25, 2011 until November 12, 2012[1], when Parents removed Student from the District. Parents also assert derivative claims under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504). The District denies these allegations.

The hearing was concluded in three sessions, and the record closed upon receipt of written summations. I conclude that the District did not fail to comply with its child find obligations or to provide Student with a FAPE during the period of time that is relevant to this decision, and that the District's March 2012 evaluation was appropriate.

ISSUES

1. Did the District inappropriately fail to identify Student as a child with a disability, and thus fail to comply with its Child Find obligations under the IDEA and section 504, during the relevant period from March 25, 2011 to November 12, 2012?

[1] The parties stipulated that this would be the period subject to review in this matter, during which I would consider whether or not any act or omission of the District denied a FAPE to which Student was entitled under the IDEA. (NT 9-10.) I refer to this period of time as the "relevant period" in this decision.

2. Did the District inappropriately fail to identify Student as a child with a disability in its evaluation report dated March 6, 2012, contrary to its Child Find obligations under the IDEA and section 504?

3. Should the hearing officer order the District to provide Student with compensatory education for all or any part of the relevant period pursuant to the IDEA and section 504?

FINDINGS OF FACT

1. Throughout Student's elementary, middle and high school years, Student has been reported to be distractible and easily bored in school. Student manifested what seemed to be a nervous tic at an early age. (S 5, 6.)

2. Student has no history of mental health treatment. (S 5, 6.)

3. Student's intelligence is in the superior range. Student's academic achievement in oral language, listening comprehension, reading, mathematics and academic applications was average to high average until eleventh grade, and Student's mathematics reasoning was superior. Student's achievement on state testing showed Student either proficient or advanced in every area except twelfth grade science. (S 6, 12, 15.)

4. Student had generally passing to good grades, with some failures or near failures and a class rank in the second half of the grade, from first grade until eleventh grade. Student's scores seemed higher in mathematics and other subjects not requiring high levels of reading. (S 2 p. 2, S 6, S 12.)

5. When Student was in eighth grade, or in the summer after eighth grade, Parents discovered that Student was using marijuana, and asked the District for advice; the District personnel referred parents to a private drug treatment program. Student entered treatment, but subsequently quit. Parents referred Student to the District Student Assistance Program when Student was in eleventh grade. (NT 33-36, 51; P 7.)

6. Until eleventh grade, Student did not have significant problems with attendance, but in eleventh and twelfth grades, Student had excessive absences. (S 6, 9, 11.)

7. In sixth grade, Student was suspended for three days for physical confrontation; aside from this incident, Student did not have any significant behavior or disciplinary difficulties in school until eleventh grade, when Student was suspended once in school, and January 10, 2011, when Student was suspended for ten days out of school for multiple offenses including possession of marijuana and drug paraphernalia on school grounds. (S 6, 11.)

8. In eleventh grade, Student was failing to turn in assignments on time. (S 6.)

9. On January 10, 2011, while in eleventh grade, Student was suspended with intent to expel for possession of marijuana on school grounds. Prior to a scheduled hearing before the District Board of Education, Parents agreed to have Student enroll in a District alternate education program in order to avoid expulsion. (S 2, 6; P 1.)

10. Student began attending the alternative school, but within days Student refused to continue attending, and Parents placed Student in a District cyber school. (S 2, 6; P 2.)

11. Student failed to participate in the cyber school for the remainder of Student's eleventh grade year and consequently failed most subjects in eleventh grade. Student did not participate because Student was not motivated to participate. (NT 334; S 6.)

12. Student returned to the District for twelfth grade and maintained good grades despite a high rate of absenteeism and suspensions for leaving school without permission. (S 11, 12.)

13. On December 16, 2011, Student's Father requested a special education evaluation. The District forwarded a Permission to Evaluate form on December 21, 2011. Student's Father signed the form on January 5, 2012 and the District received it on January 9, 2012. (S 2 p. 1, S 3, S 4.)

14. On March 6, 2012, the District provided its evaluation report for Student. The report found that Student did not have a disability as defined in the IDEA, and thus recommended no specially designed instruction. (S 6, 7.)

15. The evaluator interviewed Parents and Student, reviewed school records, sought teachers' feedback, administered standardized cognitive and achievement tests, and administered three standardized behavior inventories to Student, Parents and three teachers. (NT 328-341; S 6.)

16. The evaluator obtained the responses of seven of Student's current teachers to an informal questionnaire containing 29 items, asking for assessment of Student's classroom academic performance, social skills, work and study skills, and communication skills. The teachers rated most of Student's skills and behaviors as either satisfactory or exhibiting strength. However, absences were identified as a problem. (NT 328; S 6.)

17. Teachers' responses to the standardized Behavior Assessment System for Children, Second Edition (BASC-2), a behavior inventory, did not identify any clinically significant area of emotional difficulty from their observations of Student in school. Student's Father's responses, from his observations at home, identified conduct problems, adaptability, social skills and functional communication as clinically

significant, and withdrawal, attention problems, leadership and activities of daily living as "at risk"; this resulted in a composite score for adaptive skills in the clinically significant range on the inventory. Student's responses identified only hyperactivity and relations with parents as "at risk." (S 6.)

18. The responses of Student and Student's Father to the BASC-2 questionnaire, when scored, indicated no significant concerns with anxiety. (P 5 p. 21.)

19. The evaluator also administered the Connors 3d Edition Rating Scales by obtaining responses from Parents, in order to obtain observations about Student's behavior that would be more specific to Attention Deficit Hyperactivity Disorder (ADHD) and its most commonly related problems. Parents' responses were not indicative of ADHD. They resulted in standardized scores that were consistent with diagnoses of Oppositional Defiant Disorder and Conduct Disorder; however, the informal and BASC inventory responses of teachers did not indicate that these symptoms were occurring at school. Thus, the evaluator concluded that the Student was not exhibiting these disorders of conduct. (S 6.)

20. The evaluator also administered the Behavior Rating Inventory of Executive Functioning (BRIEF) by obtaining responses from Student's Father and seven teachers, in order to obtain observations about Student's self-control and problem solving skills related to Student's cognitive process known as executive functioning. Student's Father's scores indicated some difficulty with shifting focus, initiating tasks, organization and self-monitoring. Student's teachers indicated no executive functioning deficits. (S 6.)

21. The evaluator concluded that Student was not exhibiting executive functioning deficits. The evaluator found that Student's marijuana use may have impacted Student's executive functioning skills. (S 6.)

22. The evaluator interviewed Student and found no indication of anxiety or depression. (NT 328-341, 347, 358-360.)

23. The evaluator analyzed whether there was evidence of emotional disturbance as defined in the IDEA and concluded that there was no evidence that Student displayed any of the statutory criteria to the detriment of school performance. (S 6.)

24. On March 16, 2012, Parents disagreed with the evaluation report and requested an independent educational evaluation at public expense (IEE). (S 7.)

25. In August 2012, Student was charged with two counts of Driving Under the Influence and two associated crimes. The charges were referred to Common Pleas Court, in which

the matter was resolved through a pre-trial Accelerated Rehabilitative Disposition, with DUI charges held in abeyance. (S 16.)

26. Student returned to the District for the academic year after twelfth grade to complete credits for graduation that Student had failed to complete in eleventh and twelfth grades. (S 11, 12, 14.)

27. The District agreed to the requested IEE and the independent examiner tested Student in October 2012. (S 17.)

28. The District disenrolled Student due to excessive absences on or about November 12, 2012. (S 10.)

29. The IEE examiner issued a report in January 2013. The examiner diagnosed Student with Generalized Anxiety Disorder, Mood Disorder Not Otherwise Specified, Attention Deficit/ Hyperactivity Disorder Not Otherwise Specified, Polysubstance Abuse and Parent-Child Relational Problem. (S 17.)

30. On March 25, 2013, Parents requested due process in this matter. (S 1.)

DISCUSSION AND 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.[2] 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 evidence[3] that

[2] 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).

[3] 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. Dispute Resolution Manual §810.

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)[4]

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 either the IDEA or section 504.

CHILD FIND UNDER THE IDEA

Under the IDEA Child Find requirement, the District has a "continuing obligation ... to identify and evaluate all students who are reasonably suspected of having a disability under the statut[e]." 20 U.S.C. § 1412(a)(3)(A); see P.P. ex rel. Michael P. V. West Chester Area School Dist., 585 F.3d 727 (3d Cir. 2009); Taylor v. Altoona Area Sch. Dist., 737 F. Supp.2d 474, 484 (W.D. Pa. 2010). Even if parents do not cooperate fully with district efforts to identify a student, it is still the responsibility of the school to identify those children who are in need of the IDEA'S protections. Taylor, 737 above at 484.

[4] Although Parent brings this matter under both the IDEA and section 504, I see no reason to deviate from this analysis under section 504. The Supreme Court's analysis in Schaffer was based upon basic principles in the common law and in administrative law. Moreover, the Third Circuit Court of Appeals has recognized that the two statutes are unusually similar with regard to the rights that they protect, and that at least one procedural requirement of the IDEA should be applied in section 504 cases. P.P. v. West Chester Area School District, 585 F.3d 727, 736 (3d Cir. 2009)(applying the IDEA statutory limitation of actions to section 504 cases). I conclude that the same reasoning applies with regard to the burden of proof, and allocate that burden to Parents.

An evaluation must be sufficiently comprehensive to address all of the child's suspected disabilities. 20 U.S.C. §1414(b)(3)(B); 34 C.F.R. §300.304(c)(4), (6). Failure to conduct a sufficiently comprehensive evaluation is a violation of the District's child find obligations. D.K. v. Abington Sch. Dist., 696 F.3d 233, 250 (3d Cir. 2009)(a poorly designed and ineffective evaluation does not satisfy child find obligations).

CHILD FIND UNDER SECTION 504

The Rehabilitation Act of 1973, section 504, provides:

> No otherwise qualified individual with a disability … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance … .

29 U.S.C. §794. Federal regulations implement this prohibition in school districts receiving federal financial assistance.[5] 34 C.F.R. §104 et seq. These regulations require school districts to provide a FAPE to qualified handicapped children, but that obligation is defined differently than under the IDEA. Districts must provide "regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy" the procedural requirements of the Act. 34 C.F.R. §104.33.

Districts are obligated to "[u]ndertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education … ." Thus, section 504 imposes a "child find" obligation on school districts analogous to that which they shoulder under the IDEA. 34 C.F.R. §104.32(a). This includes the obligation to evaluate

[5] The District receives federal financial assistance within the meaning of section 504, because the District is bound by the IDEA, which is a federal funding statute. The District has not denied this criterion of section 504 applicability.

children within their jurisdiction appropriately to determine whether or not they are qualified handicapped persons. The District must evaluate "any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement." 34 C.F.R. §104.35(a).

THE DISTRICT DID NOT FAIL TO COMPLY WITH ITS CHILD FIND OBLIGATION

I conclude that the District did not fail to perform its child find obligations during Student's seventh grade year. There was no credible evidence at the hearing of this matter that proved that Student suffered from any disability defined in the IDEA in or before the relevant time. Parents' testimony did not establish any emotional difficulty prior to or during the relevant time. Parents' testimony did show that Student was having problems in middle school (sixth through eighth grades) with organization and completion of homework and long term report assignments; however, Student passed most of Student's courses, and there is not preponderant evidence that organizational difficulties - or any disability causing them – interfered with Student's access to the District's curriculum. Thus, Parents did not present preponderant evidence that the Student's school failures were due to a disability.

The record is preponderant that there was no "red flag" by which the District was put on notice that Student might be suffering from an IDEA defined disability during the relevant period. The evidence is preponderant that that any organizational problems exhibited by Student at home did not cause Student to be unable to perform in school -- either during or before the relevant period. Although Parents' informal questionnaire responses indicated some attention issues and suggested that these issues arose in school, Student's and Father's responses to three standardized behavior inventories sent by the District in preparation for its evaluation did not

result in a significant score for attention issues. Teachers saw none, and the District evaluator saw none clinically.

Although there is a paucity of evidence in this record suggesting any reason for the District to suspect that Student was not achieving better because of a disability, there was prominent evidence that Student was not achieving better because Student was abusing marijuana and possibly other substances. Parents began to intervene specifically because they discovered this. This is what Parents assiduously brought to the District's attention. Substance abuse became the prominent feature of Student's life during the relevant period when Student's school performance plummeted and Student began to exhibit the lack of motivation that even Parents recognize is a feature of substance abuse.

Courts that have faced this issue – whether or not substance abuse alone is evidence of an emotional disorder within the meaning of the IDEA – have concluded that substance abuse is not evidence of an emotional disorder without substantial evidence of a mental or emotional disorder that either led to or was comorbid with the substance abuse. See, e.g., W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y. 2011)(substance abuse as most likely cause of educational problems); Brendan K. v. Easton Area Sch. Dist., 2007 U.S. Dist. LEXIS 27846, 2007 WL 1160377(E.D. Pa. 2007)(drug abuse classified as social maladjustment, not emotional disorder). I conclude that these cases are well reasoned and authoritative; I further conclude that the facts in this matter merit the same analysis, and that the Student's substance abuse was not evidence of emotional disturbance.

Parents argue that Student's use of marijuana, alcohol and possibly other illicit substances itself constituted a "red flag". Parents testified that they became aware of Student's substance use during the summer after eighth grade, and immediately notified the District.

However, this did not put the District on notice of a reasonably suspected disability. Although, as Parents' expert says, there is a high co-morbidity between affective disorders and substance abuse, this in itself does not prove that Student's substance abuse was likely a self-medication behavior or caused by an emotional disability. Assuming that many with anxiety disorders abuse substances, this does not prove the inverse (that many with drug abuse also have anxiety disorders). (NT 354.) There was no credible evidence in this matter that logically raises such an inference.

Similarly, Parents argue that Student's academic performance in middle school and high school[6], coupled with Student's high intellectual ability, was a sign that Student was disabled, either as a child with Other Health Impairment[7] due to attention difficulties, or as a child with an Emotional Disturbance. I do not accept this argument, based upon the record in this matter. While Student failed some courses prior to the relevant period and in eleventh grade, the Parents provided no credible evidence that these failures were due to disability. Indeed, it is unlikely that such failures were due to a disability, because Student passed the vast majority of Student's courses, and in some cases obtained "B" and "A" grades. Student's standardized achievement scores showed that Student was maintaining a relatively high percentile rank among Student's peers nationally and statewide. If an IDEA defined disability had interfered with Student's ability to do well in school, it is likely that it would have affected Student's scores more

[6] While I am precluded by the parties' stipulation from deciding the appropriateness of the District's omission to classify Student prior to the relevant period, I consider the record of Student's performance prior to that time solely as it may establish or fail to establish that the District was on notice of a disability and thus obligated to evaluate pursuant to its Child Find obligations under either the IDEA or section 504.

[7] Parents argue in summation that there was a significant discrepancy between Student's cognitive ability and achievement, but their own expert ruled out a specific learning disability. (NT 204.)

generally; thus, it is unlikely that a disability was the cause of Student's intermittent failures prior to the relevant period[8].

Parents argue that in sixth grade, nearly five years before the relevant period, Student's performance dropped precipitously in the last marking period, and Student uncharacteristically flunked a course. Teacher comments included: "displays minimal effort, uncooperative attitude, poor study and work habits, assignments often late, and low test scores." (S 12 p. 4.) I do not find that Student had three failing grades in the fourth marking period of sixth grade. Nevertheless, any such academic problems would not necessarily constitute evidence of disability[9], so the District's notice of them, especially so long prior to the relevant period[10], did not trigger a child find obligation to this Student during the relevant period.[11]

I am not persuaded by Parents' argument that the District was on notice of a possible disability when Student refused to attend the alternate school in which Parents enrolled Student for the purpose of avoiding expulsion. As with poor academic performance and the code of conduct violation of bringing an illicit substance into school, Student's refusal to participate in an offered service does not raise an inference of disability, either alone or in combination with all

[8] Parents argue that they brought Student's apparent attention issues to the District's attention, and that at least one teacher told them that Student "zones out" in class, but always knows the answer. I conclude that this one statement by a teacher was insufficient to show that Student was exhibiting a disability due to attention problems, and that, even if the Parents placed the District on notice of this behavior in the school, it was not specific enough or of sufficient magnitude to constitute a "red flag" triggering the District's Child Find obligations to Student.

[9] Parents noted that Student seemed to have lower scores in reading – intensive subjects. Even considering this possible skewing of performance away from reading, I conclude that Student's failures or low scores did not rise to the level of a "red flag" for child find purposes. There are many reasons for poor school performance, including a student's failure to apply herself or himself to a given task that the student does not enjoy as much as other tasks. The mere fact of poor performance does not imply disability, and even taken together with other problems that the Parents knew, such as some organizational difficulties, there was not enough to trigger the child find duty.

[10] Student's Mother testified that the next year was not as bad as sixth grade. (NT 30.) This further diminishes the any inference that a disability was causing the Student's difficulties.

[11] I note that the Student always managed to bring Student's grades up at the end of the year, so that Student did not fail more than one subject in a given year, except in Ninth grade when Student failed two subjects, and eleventh, when Student was out of school and failed to participate in the cyber school substitute offered to Student. This too shows that Student was able to succeed, and that disability was unlikely to be the cause of Student's failures.

of the other facts that Parents and their expert relied upon to argue that the District was on notice of a possible disability.

On the record as a whole, I conclude that no inference of disability arises from combining all of the events that did not imply disability when taken in isolation. In short, the evidence is preponderant that there was no "red flag" requiring the District to evaluate Student or provide special supports.

APPROPRIATENESS OF MARCH 6, 2012 EVALUATION REPORT

The re-evaluation of the Student was sufficiently comprehensive to identify Student's educational needs. The evaluator and the multidisciplinary team considered Student's cognitive functioning, achievement, and functional, emotional and behavioral functioning. I conclude that the evaluation delved into the questions of emotional disorder and attention difficulties in great depth, utilizing extensive informal reports from teachers and an extraordinary number of standardized behavior inventories to explore the observations of teachers, Parents and the Student. The evaluator considered these data along with a review of records, interviews of both Student and Student's Father, and clinical observations of Student during extensive testing sessions.

CREDIBILITY

I accorded reduced weight to the independent evaluator's report and testimony, for several reasons. The report contains at least one significant factual error. It seems biased in its interpretation of the data. It relies heavily upon the reports of Parents about events at home. The

evaluator in testimony misrepresented the implications of research on the co-morbidity of anxiety and substance abuse.

The report asserts that the District evaluator had not interviewed Student. However, the evaluator had interviewed and observed Student more than once, and had detected no clinical evidence of anxiety, depression or other mental illness.

The report seems to interpret the data unevenly. The evaluator reported (and accepted at face value) extensive admissions by Student of symptoms describing various diagnoses – symptoms that Student had never before reported to school personnel. Yet when Student performed well on attention tests, the evaluator reported these with caution due in part to the circumstances of the testing, and in part to an anticipated reluctance of Student to report symptoms. This raises concerns for me that the evaluator was not interpreting the data entirely objectively. Similarly, as to attention problems, the evaluator accepted Parents' assertions about Student's performance at home, seemingly discarding the contrary results of contemporaneous neuropsychological testing that the evaluator's colleague had performed.

The IEE report had much less data about Student's presentation in school than the District evaluation report showed. Only one teacher filled out behavior inventories for the IEE evaluator, as opposed to the District's evaluation in which three teachers returned behavior inventory questionnaires and seven teachers returned informal questionnaires[12]. Thus, the independent evaluator's conclusions were heavily dependent upon parental reports of events at home, with far less input from educators about Student's educational performance.

[12] The expert indicated her understanding that the District had refused her office access to teachers; however, this was based upon uncorroborated hearsay, and I cannot give it weight, as it is not substantial evidence. Regardless of the reason, moreover, the data from teachers was relatively sparse, undercutting the weight of the findings in the IEE.

I also note that the independent evaluator saw Student well after the Student had been suspended for bringing marijuana into school; thus the IEE's report of active symptoms of anxiety does not prove that these existed during the relevant period. This is especially true since the IEE was conducted shortly after Student had been taken to court on charges of driving under the influence and the leaving the scene of an accident; these charges were unresolved at the time of the IEE. The evaluator did not show why the latter event in itself could not have been the cause of any anxiety that the evaluator detected in clinical interview. The intervening events were particularly significant because only a few months before the IEE, Student and Student's Father had filled out behavior inventories for the District's evaluation that did not indicate that Student was exhibiting a high level of anxiety. This calls into question both the validity of the inventory scores reported in the IEE and the evaluator's interpretation of the data.[13]

The expert misrepresented the implications of research on the comorbidity of substance abuse and anxiety. In direct testimony, the expert stated that a particular research study showed that children who abused were twice as likely to have mental health problems. (NT 192-193.) Only on cross examination did the expert clarify that the basis for this was an article showing that only social anxiety (with which Student had never been diagnosed) was comorbid with substance abuse, and that the inference was from social anxiety to substance abuse, not the other way around. (NT 278-283; HO-1.) This imprecision and causal illogic further erodes the weight of the expert's opinions in this matter.

I found the District's evaluator to be credible and reliable. The witness' testimony is consistent with the record, and the witness' manner of answering questions demonstrated candor

[13] This discrepancy also highlights why even discovery of a "hidden disability" at the time of the IEE would not prove that the District inappropriately failed to detect such a disability nearly ten months before.

and fair mindedness. The conclusions of the witness' assessment were well founded on multiple instruments, consistent documentary evidence and clinical observations[14].

I was concerned about one flaw in the testimony. The witness indicated that a criterion in her IDEA classification decision was that the organizational problems reported at home were not seen at all in school. The witness indicated that problems being seen in school is a criterion in and of itself for classification with emotional disturbance. However, that is not what the IDEA and its implementing regulations say: problems have to interfere with the student's education, regardless of whether or not they are seen at school. Nevertheless, I am satisfied that this was not the determining factor in the witness' decision not to classify Student. It was a key piece of evidence, and appropriately so, but ultimately the witness' evaluation applied the statutory criteria as stated in the regulations, as the report states. The witness found that the organizational problems at home had no educational impact requiring special education intervention, and I conclude that this ultimate conclusion was correct, based upon the record before me in this matter.

CONCLUSION

I conclude that the District did not fail to comply with its child find obligations, and that its evaluation of March 2012 was appropriate. I also conclude that the section 504 claim is derivative, and that the District's compliance with the IDEA's child find and evaluation requirements also constituted compliance with section 504. I decline to order the District to

[14] In one respect, the witness seemed not to have considered evidence in the record that in the early grades Student had exhibited attention difficulties. (NT 352.) However, it is clear that history was not determinative in the expert's mind because Student's more recent functioning showed no signs of attention problems, and the witness had observed Student exhibit "superb" attention during lengthy testing. (NT 352-353.)

provide compensatory education to Student. Any claims regarding issues that are not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. The District complied with its Child Find obligations under the IDEA and section 504, during the relevant period from March 25, 2011 to November 12, 2012.

2. The District did not inappropriately fail to identify Student as a child with a disability in its evaluation report dated March 6, 2012, contrary to its Child Find obligations under the IDEA and section 504.

3. The hearing officer does not order the District to provide Student with compensatory education for all or any part of the relevant period.

William F. Culleton, Jr. Esq.

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

September 17, 2013