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

ODR No. 13959-1213 KE

Child's Name: J.M.

Date of Birth: [redacted]

Dates of Hearing: 9/17/13, 10/10/13, 10/14/13, 11/7/13, 11/8/13

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents	Parent Attorney None
School District Rose Tree Media 308 North Olive Street Media, PA 19063	School District Attorney Gabrielle Sereni, Esquire Raffaele & Puppio, L.L.P. 19 W. Third Street Media, PA 19063
Date Record Closed:	December 2, 2013
Date of Decision:	December 15, 2013
Hearing Officer:	Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Parents in this case initially alleged a number of violations by the District that infringed both Parents' and Student's rights. After a ruling on the District's sufficiency challenge that limited the issues to those implicating a denial of FAPE and/or discrimination on the basis of disability, the hearing proceeded on Parents' claims that Student's IEP was improperly implemented in one instance, that the District's conduct prevented Student from participating in extracurricular activities during the 2011/2012 and 2012/2013 school years, and that Student was generally not treated fairly with respect to [redacted] extracurricular activities.

The hearing on those claims was held over five sessions between mid-September and early November 2013. Although there was no doubt that Parents sincerely believed that Student's non-participation in extracurricular activities during 11th and 12th grade was the District's fault, the record established that it was Parents' decisions in both instances that resulted in Student's non-participation. There is also no doubt that Parents sincerely believed that the District was wrong with respect to the circumstances that led to their decision to withdraw Student from the activities, thereby justifying their decisions, and that Student did not have the same opportunities in an extracurricular activity as non-disabled students. The facts and applicable legal standards, however, do not support Parents' claims as explained below.

ISSUES

1. Did the School District violate Student's IEP by failing to assure that an aide was present to facilitate peer social interactions resulting in a cyber-bullying incident in June 2011?

2. Did the School District prevent Student from participating in extracurricular activities to the same extent as non-disabled peers from May 31, 2011 through the end of the 2012/2013 school year?

3. If so, is Student entitled to an award of compensatory education and if compensatory education is due, what amount should be awarded and in what form?

FINDINGS OF FACT

1. Student, born [redacted] is a late-teen aged resident of the School District. At all times relevant to the claims in this matter, Student was enrolled in the District and eligible for special education services. (Stipulation, N.T. pp. 20, 21)

2. Student was identified as IDEA eligible in the disability category Autism, in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1); 22 Pa. Code §14.102 (2)(ii); (N.T. p. 103; S-29 p. 7)

3. Student graduated from the District high school in June 2013 and is presently enrolled in a four year college, majoring in [an area of interest related to the extracurricular activity about which the complaint centers]. Student [redacted] currently participates in [this activity] at college. (N.T. pp. 140, 142, 834)

4. During high school, Student participated in several extracurricular activities [redacted]. Student's Father provided transportation to and from the after school and evening activities and helped with [redacted] activities. Student, however, could [perform the same tasks as Father] independently, for the most part, and needed no more time or help than other students without a disability. (N.T. pp. 35, 49, 50, 258, 283, 293, 294, 298, 300, 301, 310—312, 533, 551, 552, 621)

5. Student had difficulty controlling the impulse to [engage in the activity with more vigor than necessary and thus stood out from other participants]. Student continues to work on controlling the impulse to [carry out the activity too vigorously]. (N.T. pp. 381, 382, 384, 446—451, 548, 551, 834)

6. The specially designed instruction (SDI) in the IEPs in place through mid-June, 2011 and the next school year included a provision for an instructional aide to accompany Student during the school day to, among other functions, monitor and facilitate Student's peer interactions during structured and unstructured times. (S-27 p. 29, S-29 pp. 37, 38)

7. As part of the positive behavior support plan included in Student's June 2011 IEP and continuing as part of the general SDI in the June 2012 IEP, an instructional assistant was to stay with Student for after school activities and accompany Student to co-ed events at other locations. Although Parents were to be notified if an aide could not be present, neither IEP provided for a Parent to accompany Student to extracurricular activities in the absence of the aide or otherwise. (N.T. pp. 337, 361; S-29 p. 56, S-30 p. 28)

8. An incident occurred in June 2011 in which a peer called Student a derogatory name in a social media post. The name calling incident may have originated with a negative interaction at school, either in the hall while changing classes, in gym class or at lunch. Neither Parents nor District staff knew the date or location of the incident in school, or whether the instructional aide was present. (N.T. pp. 22, 71, 73, 150—153, 698, 752)

9. When the name calling incident came to the attention of the high school assistant principal, the perpetrator was called to the office and reprimanded. That student's father later returned Parents' call and apologized for his child's behavior. (N.T. pp. 153—155, 700)

10. Parents suggested that someone speak to the student leaders [in the extracurricular activity] about the effects of autism and how to deal effectively with Student's disability-related behaviors and needs. The school psychologist volunteered to do that. (N.T. pp. 118, 175, 176)

11. After discussion with the [staff member overseeing the extracurricular activity], the school psychologist agreed that it would be best for the [this staff member] to engage the student leaders in a more general discussion of appropriate leadership techniques and treatment of the peers they were [leading] to avoid singling Student out as the reason for the remarks. The [staff member] distributed a handout to the student leaders that had been developed by the school psychologist. (N.T. pp. 176—180, 454, 455, 484, 485, 546. 547, 658, 659; S-25)

12. Student was not selected as a student leader for [the chosen extracurricular] activities at any time during high school. Student did not do well in try-outs for a student leadership position in [the extracurricular activity]. The [staff member] did not believe that Student demonstrated the kind of leadership capacity necessary to obtain one of the few student leader positions and that other students were more qualified for leadership positions. (N.T. pp. 266, 267, 349, 456—458, 553—556, 568)

13. At the end of the [extracurricular activity] season, students listed their preferences for the [positions in the activity] they wanted the following year. Final assignments were based on an assessment of each student's ability and the needs of the entire [group]. After tryouts each year, students were also selected for [various roles based upon the needs of the group]. Using that criteria, and taking into account Student's difficulties Student was assigned to [one position but not the other]. (N.T. pp. 470, 471, 548, 549, 662—664, 670)

14. Although Parent suggested that Student wanted [a certain position], Student completed a preference form before the 2011/2012 school year listing [other positions] as first and second choices. In June 2011, Parents and Student met with the [staff member] and Student asked about [the position Parent suggested Student wanted], but appeared to accept the [staff member's] explanation of the reasons [for Student's assignment]. Parents, however, expressed the view that the [redacted] assignment was unfair to Student. (N.T. pp. 463, 564, 565, 635, 662—664; S-14, S-33)

15. In October 2011, a student section leader berated Student [in public] for problems the peer leader perceived in Student's [carrying out the activity]. (N.T. pp. 50, 120—124; P-11 p. 1)

16. The aide assigned to Student for extracurricular activities ended the confrontation. District staff reprimanded the other student for his conduct. (N.T. pp. 173, 504, 587—589, 709, 712)

17. Although the District would not disclose any disciplinary action(s) it may have taken, Parents knew that the student leader had not been suspended from school or removed as a leader. Parents, therefore, were dissatisfied with the District's response to the incident, believing that it was insufficient in light of the nature of the other student's conduct toward Student. (N.T. pp. 150, 504, 505)

18. Parents did not permit Student to participate in [a related activity], which began [subsequently], because the other student was also participating in [that activity]. Although the other student had no leadership position in [the activity], Parents wanted to limit Student's exposure to that student. (N.T. pp. 50, 51, 54, 60, 120, 124—126, 130)

19. Student participated in [a related activity] during the 2011/2012 school year. Student tried out for [the same activity] for the 2012/2013 school year but was not selected that year. (N.T. pp. 50, 54, 470)

20. Student signed up to participate in [the related activity] again [the next] year because the other student had graduated. (N.T p. 50)

21. In late November 2012, the high school assistant principal and principal sent Parents a letter describing an incident concerning Father's disagreement with staff concerning the [position] Student was directed [to carry out]. The letter also listed several prior incidents from the spring through the fall of 201l that the school officials considered inappropriately negative conduct by Father in interactions with staff during extracurricular activities, and one instance of inappropriate contact with both Student and peers participating in a field trip during school hours. (N.T. pp. 672—675, 754, 836; P-3 p. 2, P-7 pp. 2, 3, S-15, S-20 p, 1)[1]

22. The letter banned Father from school property, particularly the [extracurricular activity] areas, noted that state police would be called if Father was found on school property and that Student's participation in extracurricular activities would be put at risk. The letter invited Father to contact the principal with any questions. (N.T. pp. 134, 733, 734, 842—845; S-20 p.2)

23. Prior to sending the letter, the assistant principal contacted Parents by telephone to discuss the incident [redacted] described in the letter and obtain Father's agreement to refrain from similar conduct in the future. Parents did not speak with the assistant principal but were aware from a voice mail message that he wanted to speak with them, particularly Father, to discuss his concerns. Student' case manager encouraged Parents to

[1] Parents' hearing exhibits were marked with Student's initials followed by the exhibit number. As explained to the parties on the record, Parents' exhibits have been re-designated "P-" followed by the number in order to preserve confidentiality by eliminating any reference to personally identifiable information specific to Student.

meet with the assistant principal to resolve the issue. (N.T. pp. 132, 133, 144, 366, 754, 755, 757; S-21)

24. Parents believed, and continue to believe, that the November 2012 letter was completely unjustified. Father noted that the 2011 incidents described in the letter had already been discussed with District staff and believed they had been satisfactorily resolved. Parents also stated that some incidents were exaggerated or false, including the [redacted] incident that immediately precipitated the letter, and that Father's actions relating to extracurricular activities were in all respects necessary, or at least justified by the need to assist Student's participation in the [redacted] activities. (N.T. pp. 43—46, 52, 136, 164—166, 422, 730, 840; P-1, pp. 1, 3, 4, P-3 pp. 1, 2, P-4, P-7, p. 1,)

25. Father was offended by the letter and believes that he should not have been required to speak to or meet with the assistant high school principal about it since the inaccurate contents of the letter demonstrated that it would have been futile and because the letter banning Father from school property, in addition to being unjustified, demonstrated a lack of respect for Father by the District and was intimidating. (N.T. pp. 104, 105, 422)

26. Because Father had always been the Parent responsible for transporting Student and other children in the family to extracurricular activities, and because it was difficult for Mother to assume that role on a regular basis due to her work schedule and health issues, Student did not participate in any extracurricular activities from the time of Father's banning from school property through the end of the 2012/2013 school year. (N.T. pp. 47, 148, 149, 807—813, 816, 825)

27. [F]ollowing the November 28, 2012 letter Mother notified District staff that Student would not be participating in [the extracurricular activity]. Although there is no unequivocal evidence establishing whether she gave any reason, prior to an e-mail from Parents to the school superintendent early in May 2013, neither Parents nor Student notified the District that Student was unable participate in [that activity] or any other extracurricular activities because Father could no longer transport Student due to being banned from school property. (N.T. pp. 99, 138, 148, 333, 369, 372, 373, 375, 377, 426, 431, 755, 821, 824; P-1)

28. Had Student's special education case manager, the school psychologist, the high school assistant principal, the special education director or even the superintendent been aware that Student was not participating in extracurricular activities in the winter and spring of the 2012/2013 school year due to lack of transportation, District officials would have taken steps to rectify the problem by either looking into alternative means of transportation or making an exception to the ban from school property to permit Father to provide transportation. (N.T. pp. 97, 374. 426, 427, 772, 775)

29. Although Father never met with the high school assistant principal or principal to discuss the contents of the November 2012 letter, Father was permitted to attend an IEP meeting for Student in the spring of 2013. The District superintendent also permitted him to

attend the [redacted] and commencement in the spring of 2013. (N.T. pp. 95, 100, 146—148, 432; S-22)

DISCUSSION AND CONCLUSIONS OF LAW

Legal Standards

IDEA

The legal obligation of to provide for the educational needs of children with disabilities has been summarized by the Court of Appeals for the 3rd Circuit as follows:

> The Individuals with Disabilities Education Act ("IDEA") requires that a state receiving federal education funding provide a "free appropriate public education" ("FAPE") to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan ("IEP"). 20 U.S.C. § 1414(d). The IEP "must be 'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.' " *Shore Reg'l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir.2004) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)).

Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3rd Cir. 2009)

The IDEA statute and regulations also provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*.

§504

In addition to IDEA, the claims in this case are covered by the statute prohibiting disability-based discrimination, commonly referred to as "§504 of the Rehabilitation Act of 1973" or simply "§504," found at 29 U.S.C. §794(a). §504 provides that,

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, 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.

The protections of §504 are implemented by federal regulations found at 34 C.F.R. §§104.32—104.37. In addition, Pennsylvania has adopted regulations implementing §504 in the context of prohibiting discrimination on the basis of disability and providing educational services in the public schools, found in 22 Pa. Code §§15.1—15.11 (Chapter 15). As explained in §15.1:

> a) This chapter addresses a school district's responsibility to comply with the requirements of Section 504 and its implementing regulations at 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance) and implements the statutory and regulatory requirements of Section 504.
>
> (b) Section 504 and its accompanying regulations protect otherwise qualified handicapped students who have physical, mental or health impairments from discrimination because of those impairments. The law and its regulations require public educational agencies to ensure that these students have equal opportunity to participate in the school program and extracurricular activities to the maximum extent appropriate to the ability of the protected handicapped student in question. School districts are required to provide these students with the aids, services and accommodations that are designed to meet the educational needs of protected handicapped students as adequately as the needs of nonhandicapped students are met. These aids, services and accommodations may include, but are not limited to, special transportation, modified equipment, adjustments in the student's roster or the administration of needed medication. For purposes of the chapter, students protected by Section 504 are defined and identified as protected handicapped students.

Although the protections of IDEA and §504 overlap in some respects, the statutes differ in focus. The primary focus of §504 is to "level the playing field," *i.e.,* to assure that an individual, specifically, a school-aged student in this context, is not disadvantaged in education based upon a disability. As stated in *Chavez v. Tularosa Municipal Schools,* 2008 WL 4816992 at *14, *15: (D.N.M. 2008):

> "In contrast to the IDEA, Section 504 emphasizes equal treatment, not just access to a FAPE. In other words, the drafters of Section 504 were not only concerned with [a student] receiving a FAPE somewhere (as was the case

> with the IDEA), but also that a federally funded program does not treat [the student] differently because [she is disabled]…
> Unlike the IDEA, Section 504 does not only look at what is a FAPE, but also what is fair." *Ellenberg v. N.M. Military Inst.,*478 F.3d at 1281-82 n.22 (quoting C. Walker, Note, *Adequate Access or Equal Treatment: Looking Beyond the IDEA to Section 504 in a Post*-Schaffer *Public School,* 58 Stan. L.Rev. 1563, 1589 (2006)).

To assert a successful §504 educational discrimination claim, a parent must prove four elements: 1) that the student has a disability; 2) that he or she is otherwise qualified to participate in school activities; 3) that the LEA receives federal financial assistance; 4) that the student was excluded from participation in, denied the benefits of or subjected to discrimination at school. *Andrew M. v. Delaware Valley Office of Mental Health and Mental Retardation*, 490 F.3d 337, 350 (3rd Cir. 2005); *School District of Philadelphia v. Deborah A.*

Pennsylvania law defines a §504/chapter 15 "protected handicapped student" as

> A student who meets the following conditions:
>
> (i) Is of an age at which public education is offered in that school district.
>
> (ii) Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program.
>
> Is not eligible as defined by Chapter 14 (relating to special education services and programs) or who is eligible but is raising a claim of discrimination under §15.10 (relating to discrimination claims).

Procedural Safeguards/Burden of Proof

In *Schaffer v. Weast,* 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parents have challenged the District's actions during the period in dispute, Parents were required to establish the violations they alleged and that were identified at the beginning of the due process hearing in this case.

The Supreme Court limited its holding in Sc*haffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding. Allocating the burden of persuasion affects the outcome of a due process hearing only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012)

Time Limits[2]

The IDEA statute and regulations provide that a due process complaint must be initiated no more than two years after the party filing the complaint knew or should have known of the action that forms the basis of the complaint, and must assert claims that arose no more than two years before the filing party knew or should have known of the action that forms the basis of the complaint. 20 U.S.C. §1415(b)(6)(B), (f)(3)(c); 34 C.F.R. §300.507(a)(2), §300.511(e). In the usual circumstances, including this case, parents who initiate a due process complaint are aware of the action or actions that form the basis of a due process complaint as they occur, and, therefore, have two years to determine whether the action(s) with which they are dissatisfied violate their eligible child's IDEA rights and file a due process complaint. Moreover, because alleged IDEA violations are rarely based upon a single occurrence, the provision limiting the contents of a due process complaint to actions that occurred no more than two years before parents knew of the action that forms the basis of the complaint assures that parents who become generally dissatisfied with a school district after an action that spurs them to file a due process complaint may only assert claims for conduct that occurred no more than two years before the incident that precipitated the complaint. Other instances of alleged violations for which parents

[2] In *P.P. v. West Chester Area School District*, 585 F.3d 727 (3rd Cir. 2009), the court of appeals determined that the limitations period that applies to the IDEA statute also applies to §504 claims arising from special education services.

elected not to file due process complaints within two years of such actions are barred. As a practical matter, the limits on filing a complaint and the contents of the complaint permit parents to assert all claims that arose no more than two years before the due process complaint was filed, since on the date the complaint is filed, Parents are within the filing limitation period for any action that allegedly amounts to an IDEA violation.

In this case, the action that, in essence, tipped the balance toward Parents' filing of a due process complaint was the November 28, 2012 letter banning Father from school property. Parents' due process complaint, filed less than a year later, could properly include that claim, as well as other matters that occurred within two years prior to the filing of the complaint.[3]

Determination of Parents' Claims

By the time the hearing began, after a sufficiency challenge that was granted in part, and a motion to dismiss a claim that had survived the sufficiency challenge but was later determined to be based upon an incident that had occurred more than two years prior to the date the complaint was filed, Parents' complaint was limited to 1) an incident of bullying that allegedly occurred because of a failure to properly implement a provision of Student's IEP in June 2011, *i.e.*, that an aide would accompany Student during the school day to help facilitate peer interactions (FF 6, 8); 2) Student's non-participation in [a certain activity] as an extracurricular activity during the 2011/2012 school year due to an incident of improper conduct by a student leader that Parents believed the District allegedly did not properly address (FF 15, 16, 17); 3) Student's non-participation in any extracurricular activities from December 2012 through the end of the

[3] A proper due process complaint is also limited to matters relating to the identification, evaluation, educational placement or provision of FAPE to a child with a disability. 34 C.F.R. §300.507(a). A due process complaint, therefore, may not proceed to a hearing on matters unrelated to identification, evaluation, placement or FAPE if the party defending against the allegations in the complaint challenges the sufficiency of the complaint in accordance with §300.508(d) and the hearing officer agrees, in whole or in part, that issues included in the complaint do not meet the requirements of §507(a), as occurred in this case.

2012/2013 school year due to lack of transportation because Father was banned from school property during that period (FF 21, 22); 4) general claims that Student was not treated fairly in [the extracurricular activity with respect to various positions] and selection for a leadership role. (FF 12, 13, 14)

During the hearing in this matter Parents also referred to numerous concerns arising from Student's participation in extracurricular activities in addition, or related, to the issues identified for the hearing. Parents, however, did not directly assert claims arising from those matters in the complaint in this case.[4]

Parents also noted that during the time Student attended school in the District, they attempted to educate the District staff and other students about autism and persuade the District of the value of providing an autistic support program, which the District refused to accept. (N.T. pp. 106, 107) Although there is no doubt that Parents most sincerely believe that it would have been beneficial to all students had the District accepted their advice, Parents greatly misperceive their role and the District's role in providing special education services. The IDEA statute and regulations provide that parents of children with disabilities who are eligible for special education services have the right to participate in decision-making for appropriate placement and services as members of the child's IEP team. The right to participate, however, neither explicitly nor implicitly provides for parental control of IEP team decisions concerning an appropriate placement and appropriate services for their eligible child, much less for the right to force school districts to adopt general programs and practices that parents believe would be beneficial. The

[4] Parent filed a second complaint in September 2013 alleging other IDEA violations, including a failure to appropriately facilitate peer interactions. Although there was some testimony during the hearing concerning difficulties with peers during extracurricular activities, those incidents, other than the November 2011 confrontation with the student leader, were not alleged to have interfered with or prevented Student's participation in extracurricular activities. Such testimony, therefore, was not relevant or considered in determining the issues in this case.

principle that school districts have the ultimate authority to determine curriculum and other educational programs is well established by court decisions. *See, e.g., J.E. v. Boyertown ASD*, 2011 WL 476537 at *4 (E.D. Pa. 2011); *J.C. v. New Fairfield Bd. of Educ.* 2011 WL 1322563 at *16 (D.Conn.,2011 ; *Rosinsky v. Green Bay Area School Dist.*, 667 F.Supp.2d 964, 984 (E.D.Wis. 2009); *Cerra v. Pawling Cent. School District*, 427 F.3d 186, 192 (2d Cir.2005);

Parents, therefore, can have no viable claim, or obtain any relief, arising from the District's refusal to implement their suggestions and agree to their requests, including their request to have the school psychologist speak to student leaders about autism in general and Student's needs in particular. (FF 10) The record established that the school psychologist and the [staff member] agreed that the [staff member] would speak generally about appropriate student leader conduct toward all [students in the activity] rather than make it obvious that Student was the reason for the providing guidelines and addressing appropriate leadership skills. (FF11) That was a proper exercise of the broad discretion of school staff. There is no requirement that the District must grant Parent requests or follow their suggestions, much less address Parent concerns in the manner they prefer. Here, the District staff broadly agreed with Parent's suggestion to speak to student leaders, and, therefore, granted their request, but not in the way Parents preferred. That was not a violation of any kind and did not interfere with Student's participation in extracurricular activities or result in Student's needs not being met as adequately as other [redacted] participants.

1. Failure to Implement IEP/Cyber Bullying Incident

Parents claimed that the incident of a peer calling Student a name on social media began with an incident during the school day that occurred because the aide provided in the IEP to accompany Student was not present. There was, however, no testimony or documentary evidence presented at the hearing to establish where or when the alleged incident occurred, whether the aide was present at the time or whether/how the unspecified but allegedly negative interaction was connected to the social media name calling. (FF 8) Consequently, there is no basis for concluding that Student's IEP was not properly implemented with respect to that incident.

Moreover, although Parents were dissatisfied with the District's response to the bullying incident, regardless of any connection to a lapse in implementing Student's IEP, the high school assistant principal addressed the student's improper conduct when he became aware of it and there is no evidence that there were any further incidents of bullying by that student. (FF 9)

It is unfortunate that Student was subjected to even a single instance of such inappropriate conduct by that peer, but it is impossible to anticipate and forestall every instance of inappropriate peer interactions. The most the District can do is seriously address the past conduct in order to prevent similar conduct in the future. That was apparently accomplished with respect to Student and that particular peer.

Since there is no evidence establishing an IEP violation, or what could/should have been done to prevent the school incident from leading to the social media name-calling—even assuming that the school incident was related at all to the name calling, there is no evidence of substantive harm to Student if the IEP was not properly implemented in that instance. The most important reason for denying Parents' claim in this regard, however, is that there was absolutely

no evidence to establish the date, location or circumstances surrounding the alleged negative peer interaction during the school day, or any connection to the cyberbullying incident.

2. [Extracurricular activity] Participation During the 2011/2012 School Year

The incident involving the student leader [redacted] berating Student publicly for problems he perceived with Student's [participation] was well documented in the record and was obviously inappropriate conduct. (FF15, 16) Parents, however, did not have the right to determine appropriate discipline for the [student] leader or even to be told the consequences imposed for that incident. Disciplinary measures taken with respect to another student is entirely a matter within the District's discretion. Parents had no right to control or be involved in the discipline in any respect.

Parents alleged that the incident and the District's response precluded Student's participation in [the activity] during the 2011/2012 school year, but the evidence established that Parents determined that they did not want Student to have any further contact with the other student. (FF 18) It is unclear how the District's conduct with respect to the October 2011 incident with the other student would have alleviated Parents' concerns about Student's interaction with him, but that would not have been relevant information in any event. Parents, not the District, prevented Student's participation in [the extracurricular activity].

Moreover, Student participated in an alternative activity, and, therefore, was not precluded from extracurricular activities. (FF 19) Student did not participate in the same activity as prior school years, but there was no evidence of Student's preference of one activity over the other, so there was absolutely no evidence that Student was disadvantaged, even if Parents' decision to keep Student out of [the activity in question] during that year could be attributed to the District's conduct in relation to the incident with the student leader.

3. Non-participation in Extracurricular Activities During the 2012/2013 School Year

This claim was the centerpiece of the issues in this case and the matter that prompted Parents to file a due process complaint. It was apparent throughout the hearing that the heart of the claim was Parents' outrage with the District's November 28, 2012 letter banning Father from school property. (FF 24, 25) The claim that Student could not participate in extracurricular activities during the second half of the 2012/2013 school year, however, was directly related to Father's refusal to meet with the District to address its concerns with Father's interactions with District staff. (FF 23) Father contended that the incident that immediately preceded the letter was based upon a lie, and continually attempted to present evidence to establish that the District had no basis for banning him from school property, despite repeated instructions during the hearing that although the ban was relevant because Parents had alleged that it affected Student's participation in school activities, the reasons for it, and the truth or untruth of those reasons, was not relevant to establishing the effect of the ban on Student. Nevertheless, Parent refused to address those matters directly with the assistant high school principal at the time that resolving the matter might have resolved the matter entirely, and was the appropriate time and place to address his many disagreements with the basis for the letter. The assistant principal testified that he attempted to contact Father prior to mailing the letter, which Parents acknowledged, and wanted to get Father's version of the incident. (FF 23)

Moreover, Parents did not timely address the specific issue that they alleged the District's action directly caused. Parents contended that the ban deprived Student of after school and evening transportation to functions on school property, thereby making participation in extracurricular activities impossible. (FF 26) Neither Parents nor Student informed anyone at the District that Student was not participating in winter and spring extracurricular activities at the

time the activities were beginning because of a lack of transportation. (FF 27) Parents did not explicitly bring that to the attention of any District staff until a May 2013 e-mail to the District superintendent, when it was too late to remedy the situation. (FF 27) There is no objective basis for disbelieving the testimony of all District witnesses that despite the ban, some arrangement could have been made to assure that lack of transportation did not preclude Student's participation in extracurricular activities. (FF 28) Indeed, the record establishes that the District modified the ban to allow Father's participation in important school-related activities for Student's benefit. (FF 29)

The record in this case established that the true basis for Student's non-participation in [extracurricular activities] during the 2012/2013 school year was Parents' deep disappointment with the District's treatment of Father, and their unwillingness to accede to the request of the high school assistant principal to discuss and attempt to resolve the issue. Although Parents' feelings may be understandable, indulging those feelings does not make the District liable for Student's inability to participate in extracurricular activities during the second half of Student's senior year in high school.

The IDEA statute adopts a model of collaboration between parents and school districts, and neither party can justify withdrawing from that process, regardless of the reason. Certainly, a parent cannot refuse to engage with the school district with a resulting disadvantage to an eligible student's participation in school activities and then seek to blame the school district for failing to assure that the student receives the full benefit of available educational activities, including participation in extracurricular activities. Many court decisions have noted that parents' reasonable cooperation is always required. *See, e.g., K.C., v. Nazareth Area School District,* 806 F. Supp. 2d 806 (E.D. Pa 2011); *Kasenia R. ex rel. M.R. v. Brookline School Dist.*,

588 F.Supp.2d 175, 190 (D.N.H. 2008); *Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) It is the obligation of both parents and school districts to work together to assure the full participation of eligible students in the curriculum and other school-related activities no matter how difficult the relationship becomes, and despite the reasons underlying a deterioration of the relationship.

Substantial problems can, of course, arise when parents believe that the school district is acting unreasonably, as in this case, with respect to banning Father from school property. Even assuming that Parents are entirely right in their assessment of the District's conduct in that regard, however, it did not relieve Parents of the obligation to act reasonably. A truly objective view of the situation leads to the conclusion that the District had no basis for knowing that banning Father from school property would adversely affect Student's participation in extracurricular activities. A reasonable response by Parents would have been to inform the District of the effect of the ban on Student and attempt to resolve at least that issue Although Parents' feelings of anger and disappointment under the circumstances may have been entirely reasonable and justified, their actions in permitting Student to be adversely affected by their dispute with the District were not reasonable. The District is not responsible for the indirect effect of its actions on Student when Parents did not immediately inform District staff of that effect.

4. General Claims of Unfair Treatment of Student in [the extracurricular activity]

Although not explicitly raised in the complaint, Parents identified and elicited testimony concerning two instances of allegedly unfair treatment by the District with respect to Student's participation in [the extracurricular activity], *i.e.*, assignment of [positions and roles] that Parents believed were not consistent with Student's abilities and with respect to not selecting Student for

a leadership role. Parents did not, however, present any evidence or argument with respect to how those facts established disability-based discrimination. The [staff member] testified extensively concerning the procedures for assigning [positions and roles] and the basis for his decisions. Parents clearly believe that Student was assigned to lesser roles not in keeping with Student's talent and abilities, and also appeared to believe that Student should have been given extra consideration due to disability-related issues.

Student, however, was entitled to be provided the same opportunities as non-disabled students, not special treatment. Student was provided with a full opportunity to express [redacted] preferences and [audition] for the same positions as non-disabled students. As with other matters relating to educational policies, the District was entitled to follow and apply its usual procedures with respect to Student and to make decisions that the staff believe was in the best interests of the [group]. It is likely that many parents disagreed with the assessment of their children's skills and decisions concerning roles and [assignments]. Such disagreement does not suggest discrimination when the opinions are held by parents of a student with a disability. The [staff member] obviously did not have as high an opinion of Student's skills and abilities as Parents or a former employee in charge of the [extracurricular activity] through the end of the 2011/2012 school year. Nevertheless, there was no evidence suggesting that the [staff member's] decisions were improperly influenced by disability-based discrimination.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims are **DENIED.** The School District is not required to take any further action with respect to the claims adjudicated in this case.

It is **FURTHER ORDERED** that any claims asserted in the complaint in this case that were not specifically addressed by this decision and order are denied and dismissed.

Anne L. Carroll

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Anne L. Carroll, Esq.
HEARING OFFICER

December 15, 2013