

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: X. F.

Date of Birth: [redacted]

ODR No. 14325-13-14-AS

CLOSED HEARING

Parties to the Hearing:

Representative:

Parent[s]

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Dates of Hearing:

January 23, 2014; January 30, 2014; March
12, 2014; March 14, 2014

Record Closed:

April 2, 2014

Date of Decision:

April 11, 2014

Hearing Officer:

William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student in this matter (Student)¹ attended kindergarten in the respondent school district (District)² during the 2012-2013 school year.³ (NT 7, 19.) Student is identified with Other Health Impairment and Speech or Language Disorder pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 19.) Parent⁴, identified in the title page of this decision, requested due process under the IDEA and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504)⁵, alleging that the District failed to provide Student with a free appropriate public education (FAPE) and requesting compensatory education. The District asserts that it has provided appropriate services.

The hearing was completed in four sessions, and the record closed upon receipt of written summations. I conclude that the District provided a FAPE to Student and that there is no basis for awarding compensatory education.

ISSUES

1. Was the District's re-evaluation dated October 11, 2012 appropriate?
2. Did the District fail to provide Student with a FAPE during all or any part of the 2012-2013 school year?
3. Did the District fail to provide an appropriate placement for Student during all or any part of the 2012-2013 school year?

¹ Student is named in the title page of this decision; all personal references in this matter are to "Student" in order to guard Student's confidentiality.

² The respondent District is named in the title page of this decision; its identity is withheld from the remainder of the decision in order to guard Student's confidentiality.

³ The Student's Mother (Parent), who requested this due process matter, requested that the hearing officer decide the appropriateness of District's provision of educational services to Student within the period beginning on the first day of the 2012-2013 school year and ending on the last day of that school year. (NT 19.) I refer to this as the relevant period.

⁴ The complainant Parent is named in the title page of this decision; her identity is withheld from the remainder of the decision in order to guard Student's confidentiality.

⁵ I conclude based upon the record as a whole that my analysis under the IDEA is sufficient to resolve Parent's section 504 claim, for reasons stated below. Therefore, I address only the IDEA analysis in this decision.

4. Did the District fail to comply with the procedural requirements of the IDEA regarding parental participation in Student's educational planning?
5. Should the hearing officer order the District to provide compensatory education to Student for all or any part of the 2012-2013 school year?

FINDINGS OF FACT

1. Starting in 2010 when Student was [not yet school-aged], and continuing until Student entered the District's kindergarten in September 2012, Parent obtained numerous medical assessments and evaluations of Student. Student has a history of the following diagnoses: gastroesophageal reflux disease, autistic spectrum disorder, pervasive developmental disorder not otherwise specified, a mild to moderate articulation disorder, asthma, generalized anxiety disorder, adjustment disorder with mixed disturbance of emotion and conduct, anxiety disorder not otherwise specified, sensory integration disorder, atypical absence epilepsy, moderate phonological disorder and moderate receptive and expressive language disorder. (NT 45-60; P1, 2, 3, 4, 8, 9, 12, 13, 14, 16, 17, 19.)
2. Student received early intervention services in [another state] beginning at age 3, and transferred to a Pennsylvania intermediate unit for early intervention services in March 2012. In early intervention, Student received speech and language services and occupational therapy services. Parent signed a permission to evaluate in January 2012 for an evaluation by the Pennsylvania intermediate unit; the intermediate unit performed an evaluation, and sent it to Parent on March 13, 2012. (NT 60-63; P 6; P 34.)
3. The Pennsylvania intermediate unit evaluation report found Student eligible for early intervention services. It found a mild delay in articulation skills and limited tolerance for some sensory input, especially wet textures. The evaluation report noted that Student's behaviors in these areas might stem more from an emotional basis than from neurologically based tactile defensiveness. A standardized, individually administered assessment battery of key developmental skills in children resulted in developmental levels for specific skills that were slightly below expectations for Student's chronological age. (P-6.)
4. The Pennsylvania intermediate unit evaluation report found that Student was functioning within an age appropriate range with regard to receptive language skills, expressive language skills, social and behavioral skills, gross motor skills, fine motor skills, fine motor coordination, visual motor coordination, pre-writing skills and self-help skills. With regard to sensory defensiveness, a standardized assessment tool endorsed a finding that Student did not need more sensory input than typical peers, did not seek more sensory input than typical peers, and was not withdrawn from learning activities. (P-6.)
5. The Pennsylvania intermediate unit evaluation report indicated that the early intervention program would provide the family with ongoing assistance regarding Student's transition to school age programming. (P-6.)
6. On March 13, 2012, Parent enrolled Student in the District. (S 4.)

7. At a transition meeting on March 20, 2012, Parent signed an “Intent to Register” form for registration in the District. (NT 375-376; S 6; P-34.)
8. On March 28, 2012, the IU/EI program provided an IEP for student that addressed Student’s articulation, conversation skills and resistance to tactile stimuli. (P-7.)
9. In May, Student attended a District kindergarten orientation. (NT 379.)
10. Parent signed a Permission To Re-Evaluate Consent Form on May 23, 2012, addressed to the District. This was for a speech and language evaluation, an occupational therapy evaluation and review of records. The District received this form on May 30, 2012. (NT 62-63, 381-383, 622-629; P-10.)
11. The District’s special education supervisor received the Parent’s request to evaluate in August 2012, and called Parent to advise parent of receipt. The supervisor assured Parent that the District would implement the IU IEP until an evaluation could be completed and a new IEP put in place. (NT 281-283.)
12. In August 2012, a few days before the beginning of the new school year, the District held an orientation for entering kindergarten students and their parents, called an “open house”. Parent renewed Parent’s request for a re-evaluation on the same day. (NT 63, 71, 368, 278-379.)
13. Parent was late for the open house, and did not meet Student’s assigned kindergarten teacher. (NT 378-379; P 34.)
14. The District arranged a meeting of Parent and Student with Student’s assigned kindergarten teacher, and it was held on the first day of school, September 4, 2012, before the start of class. (NT 379.)
15. District personnel held a meeting with Parent on September 5, 2012, at which it was agreed that the District would begin a process of re-evaluation. (NT 86-89, 384; P 21.)
16. Parent signed a handwritten request for a psychoeducational evaluation on September 11, 2012; Parent signed a formal request in typewritten form on September 14, 2012. (NT 385-387; P 18, 21; S 15, 16.)
17. On September 14, 2012, Parent consented in writing to an evaluation for section 504 eligibility. On September 17, 2012, Parent met with District personnel, at which time the District found that Student was not eligible under section 504, because there was insufficient information to permit a determination regarding whether or not Student’s physical disability of seizure disorder limited a major life activity “substantially”. Nevertheless, the District agreed to provide a one to one educational assistant to Student on a full time basis, and the assistant was available to work with Student on September 17. (NT 91-93, 389-390, 579-580; S 17.)
18. On September 17, 2012, the District requested that Parent obtain a seizure plan from Student’s physician, but Parent did not return the plan to the District until November 2012. (NT 389-391; S 28.)

19. Student attended the assigned District kindergarten class for the first two days of September (September 4 and 5), but Parent withheld Student until the District appointed a one to one educational assistant for Student on September 17. Student attended school on September 17 and September 18, and Parent withheld Student from school thereafter until October 29, when Student began attending school sporadically, with numerous absences (some excused for illness or medical visits) from then until the end of the school year. (P 34; S 62, 66.)
20. Parent reported that Student's anxiety increased significantly when Student was sent to school. Parent reported that Student damaged Student's skin in various places of the body, including the lining of the nose, which caused bleeding and resulted in a visit to the doctor. (P 34.)
21. District personnel did not observe marks or bruises on Student's body or damage to Student's tongue or nose. There was no report of such observations from Intermediate Unit personnel. In school, personnel did occasionally see Student biting hands or cheek and running fingers over lips repeatedly. Student did make animal noises in school, but this behavior was normal for a child of kindergarten age and was easily redirected. (NT 321, 327, 485, 540-547, 590-592, 620-627, 682-689, 699, 707-723, 727-729, 734, 867-871, 944-946; P 34; S 5, 20, 52 pp. 26, 42, 46, 128, 164, 165, 180, 186, 210, 212, S 56.)
22. District and Intermediate Unit personnel observed Student to be age appropriate socially. (NT 321, 325; P 34; S 5.)
23. Parent attempted to interfere with the speech and language therapist's testing of Student in September. Parent sat in on the session in September, and answered questions for Student, thus interfering with the validity of the test results. (NT 1090-1097.)
24. On September 26, 2012, at an IEP meeting, the District provided Parent with a re-evaluation report limited to speech/language and occupational therapy questions. The evaluation report found Student eligible for special education under the IDEA with the classification of speech or language impairment. The report also found that Student qualified for school age occupational therapy, after assessing fine and gross motor skills and sensory needs. An IEP was offered; however, Parent did not agree to the IEP because it did not offer a smaller classroom and other supports to address Parent's safety concerns. Parent terminated the meeting. (NT 106-108, 392-394, 580-582, 795-797; P 34; S 18, 68-69.)
25. During the September 26 meeting, a District teaching paraprofessional spoke about Student's behavior in school. The paraprofessional referred to notes during the meeting. When Parent asked for the notes after the meeting, the principal objected and withheld the notes from Parent. Parent never received the notes. (NT 101-104, 135-140, 426-434, 584-586; S 35.)
26. A qualified District school psychologist conducted a re-evaluation of Student, beginning with testing sessions on September 28, 2012, October 1, 2012 and October 2, 2012. (NT 194-197; P 34.)

27. The psychologist reviewed private diagnostic reports provided by the Parent, including documents that indicated that the Student had been diagnosed with autism, pervasive developmental disorder, and generalized anxiety disorder. The psychologist also reviewed a treatment plan issued by a local behavioral health provider in July 2012, and the Student's family physician's report recommending a smaller class setting for Student. (NT 202-206, 333-334; P 34.)
28. The psychologist considered written Parent input regarding Student's family situation, early development, medical history, behaviors and concerns. The Parent's written report indicated that Student is very fearful of school and hurts self while regressing, as a result of that fear. Parent's written input recommended a "smaller setting" for Student. (NT 296; P 48, 34.)
29. The psychologist reviewed and considered the March 13, 2012 evaluation report of the local Pennsylvania intermediate unit, as well as a previous evaluation report provided in 2011 by the [other state] intermediate unit. (NT 324; P 34.)
30. The psychologist considered a local evaluation of reading skills by a District reading support teacher, and, in response to Parent's concerns about the validity of the first test administration, the psychologist repeated administration of the tests that had been utilized by the reading support teacher, during the evaluation process. The psychologist concluded that the Student's lower scores in reading were not an estimate of Student's highest achievement in reading, due to Student's "silly" behavior during testing. (P 34.)
31. The psychologist considered a speech and language evaluation by a District speech and language pathologist, which concluded that Student should be classified with Speech or Language impairment, because Student tested below the 10th percentile in semantics skills and language development, including areas of weakness in expressive and receptive semantics. (P 34.)
32. The psychologist considered Student's sensory processing. (NT 326-327; P 34; S 18.)
33. The psychologist did not conduct a classroom observation of Student, because the Student was not in class during the period of time in which the evaluation was conducted. (P 34.)
34. The psychologist observed and interacted with Student during the evaluation on 3 different dates. Because the Student was not in school on a regular basis, the psychologist attempted to do more testing for longer periods of time when Parent brought Student specially for testing. As a result, Student was in testing for more than the thirty minutes at a time that the psychologist ordinarily would attempt with a kindergarten age student. This led to some silliness and off task behavior on Student's part. (NT 322-324; P 34.)
35. While being observed by the psychologist, Student displayed interactive and conversational social skills. Student did not display fear or anxiety, even when transitioned into 3 different settings in school, in which other adults and other students were present; these other settings were for vision and hearing screening, as well as taking of height and weight. (P 34.)

36. The psychologist observed that, in the presence of Student's mother and home behavior health service provider, in an office area of the school, Student displayed fearful behavior when another child entered the office area. (P 34.)
37. The psychologist spoke with the kindergarten teacher in whose classroom Student had participated for 4 days. The teacher reported age-appropriate social skills and behavior, and did not report any inappropriate behavior or self-harming behavior. The teacher did report some off task behavior throughout the school day, but noted that Student was easily redirected. (P 34.)
38. The psychologist administered a standardized intelligence test, an adaptive behavior scale, a standardized individual achievement test and a behavior inventory. Testing was administered in accordance with publisher recommendations, and the psychologist deemed the testing to be accurate and valid. (P 34.)
39. The psychologist considered the test results to be accurate, but cautioned that the scores may not reflect Student's highest cognitive and academic potential, because the Student did engage in significant "silly" behavior during testing. (P 34.)
40. Student demonstrated average cognitive skills, based on the cognitive test scores. (P 34.)
41. Standardized achievement testing indicated that Student was achieving in the average range for early reading skills, mathematics, and oral language. Student was achieving in the low average or borderline range in alphabet writing fluency, spelling, listening comprehension, oral language and total written expression. Student demonstrated educational needs in vocabulary and fine motor skills. (P 34.)
42. Testing revealed that Student had some difficulty with writing letters and numbers. (P 34.)
43. Parent completed the adaptive behavior inventory. Parent rated Student deficient in all domains of that inventory. (P 34.)
44. Parent completed a general behavior inventory for Student. The psychologist did not obtain a behavior inventory from Student's assigned teacher, because the teacher had such little exposure to Student's behavior that the inventory manual does not support using teacher responses in that situation. Parent rated Student in the clinically significant or at risk range in almost all categories of behavior and emotional well-being, including clinical scales and adaptive scales. However, the inventory's validity index was elevated into the "extreme caution" range. This indicates that Parent may have rated Student's performance more severely than is warranted. (NT 340-341; P 34.)
45. The psychologist considered the educational classification of autism in light of the private diagnostic reports reaching or reporting this clinical diagnosis; however, the psychologist concluded that the classification of autism was not the best explanation for Student's symptoms, agreeing with other evaluations that questioned the clinical diagnosis of autism. (NT 207; P-34.)

46. The psychologist did not administer any autism scales to Student, Parent or any teacher. (NT 208.)
47. The psychologist considered the educational classification of Emotional Disturbance. The psychologist concluded that this classification should be deferred until Student could be observed in the school setting, Student's behavior can be observed over an extended period of time, consistent with the educational definition of emotional disturbance, 34 C.F.R. §300.8(c)(4), and until Student's response to intervention could be assessed. (P 34.)
48. The psychologist considered whether or not to classify Student with specific learning disability. The psychologist ruled out this classification at the time of the evaluation because Student had not at that time received consistent, appropriate academic instruction. In addition, Student was experiencing difficulty with the physical mechanics of writing, something not developmentally unusual and something that would make it impossible to know if Student's writing issues were caused by specific learning disability. Thus, it was not possible to reach an appropriate classification of specific learning disability. (NT 209, 216, 322; P 34.)
49. The psychologist utilized a subtest from achievement testing that obtains the score for early reading skills. There is no other subtest of the particular achievement test selected for this evaluation that measures achievement in reading for children of kindergarten age, and the psychologist did not utilize any other cognitive test addressing early reading skills. (NT 207-210; P 34.)
50. The psychologist did not conduct additional executive functions testing. (NT 209.)
51. The psychologist considered and rejected a classification of Intellectual Disability, because Student's cognitive scores were well above the level required to support such a classification, despite the very low adaptive skills reporting of Parent. (P 34.)
52. On October 11, 2012, the District provided Parent with the evaluation report that included the psychologist's findings as well as those of the September 2012 speech/language and occupational therapy evaluations that had been reported previously to Parent. The evaluation report classified Student with Other Health Impairment, based upon Student's diagnosed seizure disorder, which affected Student's alertness to environmental stimuli in the classroom, requiring additional support and intervention. In addition, Student's history and outside evaluation reports indicated a heightened alertness to environmental stimuli, such as lights, sounds, textures, clothing and Student's own body; this might impact Student's attention and alertness to classroom activity, and furnished additional support for the classification. (P 34.)
53. The evaluation report identified educational needs in the areas of vocabulary, fine motor skills, changes in routine, frustration tolerance, self-regulation and attendance. The report recommended that Student receive support in the form of a set routine in order to reduce anxiety, increased monitoring in school in order to address Student's seizure disorder, increased praise, attention and rewards for attending school, clear behavior expectations and consequences, adult support and modeling regarding social situations

and new classroom routines, explicit teaching of coping strategies and relaxation techniques, speech and language support and occupational therapy. (P 34.)

54. The District made its personnel available for an IEP team meeting as early as October 15, 2012, in order to discuss the October 11, 2012 evaluation report. A meeting occurred on October 23, 2012, and the re-evaluation report was discussed, as well as placement options. (NT 335-337, 398, 586-590; S 22-26.)
55. On November 7, 2012, the IEP team met and developed an IEP for Student. Student was placed in supplemental emotional support, with a plan to transfer Student to a different elementary school within the District, so that Student would receive all academic instruction in the emotional support setting for reading, language arts, mathematics, science and social studies. The IEP also provided for itinerant speech and language support, nursing consultation and occupational therapy. Student was to participate in the general education classroom for related arts classes. The emotional support classroom would provide a small group setting with a highly structured, multi-sensory approach to Student's behavioral needs. (NT 335-336; P 41; S 22-26.)
56. The emotional support placement was intended to address all reported needs of the Student. (NT 339.)
57. The IEP was based upon minimal information about Student's behavior, achievement and needs in the school setting, and was offered on the assumption that it could be refined as more data became available. (NT 342-343, 406, 409.)
58. In the present levels section of the IEP, Student's educational needs were identified as: specially designed instruction; small group instruction; teaching at Student's instructional level; modifying the rate of instruction; modifying the rate of queuing and prompting; increasing articulation of age appropriate speech sounds; improving expressive and receptive semantics skills; increasing written expression skills; increasing appropriate behaviors; and decreasing inappropriate behaviors. (P 41.)
59. The November 7, 2012 IEP offered a goal for copying a sentence with correct punctuation and spacing. This goal was aligned with the kindergarten curriculum and was designed to be measureable as soon as a baseline could be developed. (NT 406-407; P 41.)
60. The November 7, 2012 IEP offered goals for manipulation of classroom materials; appropriate pencil grip; cutting tracing and coloring; and printing letters with appropriate formation, orientation and spacing. These goals were designed to address the fine motor needs identified in the evaluation report and were designed to be measureable as soon as baselines could be developed. (NT 411-412; P 41.)
61. The November 7, 2012 IEP offered a goal for mastering expressive and receptive semantic vocabulary skills. This goal was designed to address the speech and language needs identified in the evaluation report and was designed to be measureable as soon as a baseline could be developed. (NT 413-414; P 41.)

62. The November 7, 2012 IEP offered a goal for articulation. This goal was designed to address the speech articulation needs identified in the evaluation report and was designed to be measureable as soon as a baseline could be developed. (NT 414; P 41.)
63. The November 7, 2012 IEP offered a goal for coping with frustration. This goal was designed to address the emotional needs identified in the evaluation report and was designed to be measureable as soon as a baseline could be developed. (NT 414-415; P 41.)
64. The November 7, 2012 IEP offered goals for social skills and conversation. These goals were designed to address the social and pragmatic needs identified in the evaluation report and were designed to be measureable as soon as baselines could be developed. In the absence of classroom experience with Student, the District consulted its behavioral specialist to design these goals. (NT 414-415; P 41.)
65. The November 7, 2012 IEP offered goals for appropriate classroom behavior. These goals were designed to address the social and pragmatic needs identified in the evaluation report and were designed to be measureable as soon as baselines could be developed. In the absence of classroom experience with Student, the District consulted its behavioral specialist and Student's home behavioral intervention program staff to design these goals. (NT 414-416; P 41.)
66. The November 7, 2012 IEP offered modifications and specially designed instruction that addressed the needs identified in the evaluation report. These included supplemental reading, language arts and mathematics instruction; clear and concise directions; seizure action plan; behavior plan; advance notice of changes in schedule or routine; verbal and tangible reinforcement of a positive nature with frequency, particularly addressing on task behavior; daily point sheet; teacher modeling for targeted speech and language behaviors; multisensory cues and prompts; visual and auditory modeling of correct sound production; and social skills lesson. (NT 416-420; P 41.)
67. On November 7, 2012, the District issued a Positive Behavior Support Plan. There was no functional behavioral assessment, because Student could not be observed for classroom behavior; however, the District's behavioral specialist consulted in developing the plan based upon behaviors reported by the home services providers. The plan identified four behaviors of concern: making animal noises; imitating animals; visual signs of anxiety; and self-injurious behavior. The plan identified three functions of these behaviors: to gain attention from peers and adults; to avoid peer interactions; and to escape uneasy situations. The plan identified four behavioral goals: to cope with frustration; to demonstrate social skills and/or appropriate behaviors; to improve verbal interaction skills; and to earn checks for appropriate behavior. (NT 421-424; P 39.)
68. The November positive behavior support plan listed strategies for school personnel to deal with Student's behaviors, if they should be demonstrated in the school setting. These included notification of transitions to decrease anxiety; small group setting for instruction; clear directions; frequent positive reinforcement; explicit social skills lessons; utilization of stickers and daily rewards; use of token economy; use of frequent praise; utilization of "count 1 – 2 – 3" technique; color-coded visual support system; daily point

sheets; parent contact; loss of recess and other rewards; time out; and calm down chair. (39.)

69. After November 7, 2012, the teacher assistant from the emotional support classroom accompanied Student during lunch and recess, in order to address Parent's concerns about seizure activity during those periods. (P 52 p. 2.)
70. The purpose of providing the November IEP was to induce the Parent to return the Student to school. (NT 236.)
71. Parent observed the proposed emotional support classroom and agreed to Student's placement there. Student attended there from November 9, 2012 until the end of the year, with numerous absences and latenesses. (NT 109-115, 399-405, 425; S 27.)
72. For a few days, a Therapeutic Staff Support (TSS) worker was assigned to Student in the school; however, the District reported that the service was not needed, and the TSS hours were transferred to the in-home and community settings. (NT 117-118.)
73. On or about November 14, 2012, Parent provided the District with a seizure action plan. (NT 395-396; P 45.)
74. In January 2013, at Parent's request, the District provided a bus for transportation and furnished it with a harness for Student and a monitor. (NT 391-392; S 30, 32.)
75. Student continued to be absent for medical and unexplained reasons on numerous days. In February 2013, the District offered to send a teacher to the home to provide supplementary instruction when Student missed school for three days in a cycle. (NT 435-437; S 45.)
76. By February 2013, Student exhibited age appropriate classroom and social behavior. District personnel did not observe Student engaging in self-harming behaviors in school. (S 39, 41.)
77. In February, the District proposed to reduce the level of support provided to Student because Student was meeting Student's IEP goals. The District also proposed to add baselines, revise goals that were mastered, add a truancy elimination plan, and re-evaluate Student. (NT 435-442; S 39, 41.)
78. Parent did not agree to the changes in placement, and Student continued to receive supplemental emotional support placement. (NT 452-454; S 46.)
79. Student continued to be absent frequently, and the District called an IEP meeting in an attempt to further amend Student's educational program in order to encourage Parent to return Student to school. (NT 453-454; S 46, 54.)
80. Parent requested an independent educational evaluation and the District agreed. Arrangements were made and the evaluation was completed. (NT 442-443; S 54.)
81. On March 26, 2013 the IEP team met, including Parent, and amended the IEP to restore a supplemental level of emotional support services, with small group instruction for

reading, mathematics, and language arts. The District also offered to provide social skills training in the emotional support classroom. The team reviewed the truancy elimination plan. Present levels were amended to reflect Vineland Adaptive Behavior Scales returned by Parent. Student's school day was reduced by allowing Student to leave school at 2:15 PM. The District agreed to allow Parent to observe the program in the emotional support classroom. (NT 450-451; S 46.)

82. On March 26, the District filed a private criminal complaint against Parent due to Student's absenteeism. (S 47.)
83. On April 30, 2013, the District provided speech and language and occupational therapy assessments as well as teacher reports on Student's classroom social and behavioral skills. The occupational therapy evaluation addressed sensory needs. (NT 800-805; S 50, 53.)
84. In April, Parent asked to be present during speech and language testing, but was not permitted to do so. (NT 1090-1097.)
85. Student made significant progress in speech and language skills from September 2012 to April 2013, despite a relatively small number of subtests in which Student scored lower in April than in September. (NT 1088-1114; S 50, 51, 68.)
86. Student made significant progress in academic, behavior and social skills from September 2012 to April 2013. (NT 876-893, 909-925, 932-933, 821-824, 1000-1007; S 51, 52, 53 p. 77.)
87. In July 2013, the IEE was provided to Parent and District. The independent evaluator found that Student demonstrated average intelligence and academic achievement. The evaluator recommended classification of Other Health Impairment and Speech or Language Impairment. The evaluator recommended against classification with Autism or Emotional Disturbance. The evaluator recommended that the District continue to provide an itinerant level of special education services, supports, evaluation and counseling or therapy for anxiety, and both speech and occupational therapy services. (S 54.)
88. Parent's response to several behavior inventories all indicated high levels of concerning behavior, while teachers' responses consistently indicated no problems. On one inventory, a validity scale indicated that the Parent's scores should be viewed with extreme caution, as they demonstrated some likelihood of being an exaggeration of Student's negative behaviors. (S 54.)
89. Parent and Student moved out of the District on July 19, 2013. (NT 459.)

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 (which in this matter is the hearing officer).⁶ 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 evidence⁷ that the other party failed to fulfill its legal obligations as alleged in the due process complaint. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006).

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 this matter, Parent requested due process and the burden of proof is allocated to Parent. Parent bears the burden of persuasion that the District failed to comply with its obligations under the IDEA and section 504. If Parent fails to produce a preponderance of evidence in support of Parent’s claims, or if the evidence is in “equipoise”, then Parent cannot prevail.

⁶ 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.

⁷ 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.

APPROPRIATENESS OF EVALUATION

The IDEA sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA regulations prescribe in detail the procedures to be used in order to fulfill this requirement. 34 C.F.R. §§300.301 to 300.311.⁸ Courts have approved evaluations based upon compliance with these procedures alone. See, e.g., Eric H. v. Judson Independent School District, 2002 U.S. Dist. Lexis 20646 (W.D. Texas 2002).

These procedures must include the use of “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information” 20 U.S.C. §1414(b)(2)(A), 34 C.F.R. §300.304(b). The agency may not use “any single measure or assessment” as a basis for determining eligibility and the appropriate educational program for the child. 20 U.S.C. §1414(b)(2)(B), 34 C.F.R. §300.304(b)(2). Here, the evidence is preponderant that this standard has been met. The District’s strategies in the October 11, 2012 re-evaluation included review of documents; written input from Parent and teachers; clinical observations of Student; standardized testing with multiple instruments evaluating cognitive skill and academic achievement, curriculum based testing to the extent available; multiple instruments evaluating adaptive and general behavior, social and emotional needs; and standardized speech and language and occupational therapy testing.

The agency must utilize information provided by the parent that may assist in the evaluation. 20 U.S.C. §1414(b)(2)(A). This must include evaluations or other information provided by the parents. 20 U.S.C. §1414(c)(1)(A)(i), 34 C.F.R. §300.305(a)(1)(i). Part of any

⁸ Under the IDEA regulations, re-evaluations must meet the same standards as evaluations, in terms of both the scope of the re-evaluation and the required procedural standards. 34 C.F.R. §300.303. Therefore, I will apply the standards applicable to evaluations, even though the District action in question was a re-evaluation.

evaluation must be a review of relevant records provided by the parents. 34 C.F.R. §300.305(a)(1)(i). The parent must participate in the determination as to whether or not the child is a child with a disability. 34 C.F.R. §300.306(a)(1). The record is preponderant that the District's evaluator solicited and obtained parental input through review of previous parental input, a request for written input, and solicitation of behavior inventories.

The District complied with the legal requirement that the agency review classroom based assessments, state assessments and observations of the child, 20 U.S.C. §1414(c)(1)(ii), (iii), 34 C.F.R. §300.305(a)(1), including observations of teachers and related services providers, 20 U.S.C. §1414(c)(1)(A)(iii), 34 C.F.R. §300.305(a)(1)(iii). Although the psychologist was unable to do a formal classroom observation because of Student's absenteeism, the reviewed record contained a classroom observation as part of the speech and language report. As Parent obstructed the District's compliance with this requirement, any dearth of classroom observation does not render the re-evaluation inappropriate.

The agency used technically sound testing instruments, 20 U.S.C. §1414(b)(2)(C), 34 C.F.R. §300.304(b)(3); all instruments used were valid and reliable for the purpose for which they were used, 20 U.S.C. §1414(b)(3)(A)(iii), 34 C.F.R. §300.304(c)(1)(iii), and all were administered in accordance with the applicable instructions of the publisher, 20 U.S.C. §1414(b)(3)(A)(v), 34 C.F.R. §300.304(c)(1)(v). (FF 18.) The evaluator was trained and knowledgeable. 20 U.S.C. §1414(b)(3)(A)(iv), 34 C.F.R. §300.304(c)(1)(iv).

The re-evaluation of the Student was sufficiently comprehensive to determine whether or not Student suffered from a disability as defined in the law, as well as to identify all of Student's educational needs. The evaluator and the multidisciplinary team considered Student's cognitive functioning, achievement, and emotional, social and behavioral functioning. By a

preponderance of the evidence, I conclude that the evaluator and multidisciplinary team addressed all areas of suspected disability, 20 U.S.C. §1414(b)(3)(B); 34 C.F.R. §300.304(c)(4).

Parent argues that the re-evaluation was delivered late. Parent asserts that she requested an evaluation of the District sometime in the second semester of Student's 2011-2012 year with the Early Intervention program.

She asserts that the District lost the paperwork and did not even begin the re-evaluation until sometime in September, after Parent made multiple requests for evaluation and signed multiple forms.

The record does not support the claim that the re-evaluation was delivered late. There is no evidence to corroborate⁹ Parent's claim that she requested a full re-evaluation by the District weeks before the school year ended in June 2012 for Student in the early intervention program. Rather it shows that Parent requested a re-evaluation limited to speech and language issues and a review on May 23, by Permission to Re-evaluate form received by the District on May 30, 2012. The District produced the requested evaluation by September 26, 2012, well within the 60 day requirement under Pennsylvania law and the IDEA¹⁰.

As to the full psychoeducational re-evaluation requested by Parent, the record shows preponderantly that Parent did not request a full re-evaluation in writing until September 11, 2012, when she provided a handwritten request to the District. The full re-evaluation was provided to Parent on October 11, 2012, just 30 days after the District's receipt of the request. Parent asserts that she requested evaluation orally before that, but even if we take May 30 as the

⁹ As explained below, I conclude that Parent's testimony was unreliable; thus, her word alone does not establish a preponderance of the evidence.

¹⁰ The IDEA permits a state to alter the 60 calendar day requirement. 20 U.S.C. §1414(a)(1)(C)(i)(I). Pennsylvania has done so by regulation, carving out all summer days from the sixty day requirement. 22 Pa. Code § 14.123(b). Here, then, the District had 4 school days from its May 30 receipt of the Parent's request, plus 56 days in the Fall, starting on the first day of school, September 4.

date of request, for the sake of the discussion, the District delivered a re-evaluation within 60 days, giving effect to the Pennsylvania administrative regulation that stops the 60 day time frame during the summer months. Allowing 4 days in May and June 2012, the District had 56 days starting September 4 under the Pennsylvania regulation. The District delivered the full psychoeducational re-evaluation report within 37 days.

Consequently, I conclude that the District's October 11, 2012 re-evaluation was appropriate.

PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION

The 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), 20 U.S.C. §1401(9). 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), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009).

"Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child's IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as

are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a “trivial” or “de minimis” educational benefit. M.C. v. Central Regional School District, 81 F.3d 389, 396 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 (3rd Cir. 1988).

A school district is not necessarily required to provide the best possible program to a student, or to maximize the student’s potential. Ridley Sch. Dist. v. MR, 680 F.3d 260, 269 (3d Cir. 2012). An IEP is not required to incorporate every program that parents desire for their child. Ibid. Rather, an IEP must provide a “basic floor of opportunity” for the child. Mary Courtney T. v. School District of Philadelphia, 575 F.3d at 251; Carlisle Area School District v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. Carlisle Area School v. Scott P., 62 F.3d 520 (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) Its appropriateness must be determined as of the time at which it was made, and the reasonableness of the school district’s offered program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010).

I conclude by a preponderance of the evidence that the District provided Student with a FAPE. On the first day of school, in the absence of a re-evaluation (which cannot be attributed

to the District on this record as set forth above), the District was prepared to implement the intermediate unit's early intervention IEP, which called for specially designed instruction. As discussed above, the District's re-evaluations in September and October were appropriate and the District offered programming that addressed all of the educational needs identified in those re-evaluations. I conclude that the IEPs offered in September and October were timely and appropriate, with present levels, goals and specially designed instruction that addressed Student's known or suspected educational needs appropriately, and that appropriate related services were also provided. Progress monitoring was reliable and showed that the Student had made academic, social and behavioral progress by the end of the 2012-2013 school year.

Parent argues that the District failed to address Student's documented behaviors of making animal noises, biting the tongue and cheeks, and self-pinching, because it denied, despite evidence to the contrary, that these behaviors were occurring in school. On the contrary, the record shows preponderantly that the District was aware of behaviors as some, but not all of them occurred. There is not preponderant evidence that Student's tongue biting and pinching occurred at all in school. There is not preponderant evidence that Student's cheek biting at school caused any significant harm. The evidence shows preponderantly that the animal noises and pretending was often a display of developmentally appropriate behavior, and when it was not appropriate, Student was easily redirected. Thus, Parent has failed to prove this argument, based on this record.

The evidence is preponderant that the District did not ignore the issue of self-injurious behavior. The Parent's reports were reflected in the IEPs and there is evidence that the assigned teachers were aware of the concern. There is evidence that the teachers actively looked for evidence of these behaviors happening in school. School personnel did observe some of the

behaviors, such as pulling at the lip and making animal noises. The fact that school personnel did not observe the vastly more alarming behaviors reported by Parent does not prove that the District failed to look for them.

Parent argues that the District offered goals that were not measureable. I do not agree, after reviewing the goals. Most of them were formulated with reference to curriculum level, and specified the mastery level numerically. The goals were formulated with reference to baselines that could not be established without assessment upon Student's return to school, but this did not render them non-measurable¹¹. Nor did it mean that they were not reasonably calculated to provide an opportunity for educational benefit, which is the legal test for FAPE as set forth above. By February, all goals in the IEP stated baselines and were measureable.

Parent argues that a positive behavior support plan contained goals that were not measureable because they were not defined in terms of behavior that could be observed in the classroom. While the behavioral goal formulations were in some cases very general, Student was not in school so as to permit an observation that would allow the District to refine its definitions for purposes of its goals.

Under the circumstances, I conclude that the IEPs cannot be characterized as inappropriate. They anticipated that those behaviors seen at home might replicate in the school setting. The IEPs called for closer observation of Student as called for in the evaluation report, and teachers were admonished not to monitor behavior by reacting to what is shown in the classroom, but to look for behaviors that the Parent reports are occurring at home. The IEP was

¹¹ At the hearing, Parent pointed out that baselines were not filled in for months after the original goals were put in place. This did not lead to a substantive deprivation of FAPE. Given the Student's numerous absences, and the many Parental concerns that staff were constantly responding to, it is understandable that the formal provision of baselines was delayed until February. Nevertheless, progress monitoring data were provided to Parent and to this hearing officer showing an intelligible, data based progression of skills and regression of supports over time. (NT 520-524.) As this is the purpose of looking for baselines in goals, it would elevate form over substance to find the IEPs inappropriate due to delays in formulation of baselines in the IEPs themselves. 34 C.F.R. §300.513(a)(1) (FAPE determination must be based upon substantive grounds).

based upon minimal information about Student's behavior in school, and was offered on the assumption that it could be changed as more data became available. Thus, I find no denial of FAPE in this plan.

Parent argues that the District failed to coordinate with the home behavioral support personnel, particularly the Therapeutic Support Staff (TSS). While the evidence supports this assertion to the extent of a lack of formal coordination through IEP-based requirements for joint planning of roles, I find that this lack of coordination did not deprive Student of a FAPE on this record. In this matter, the TSS was provided in class only because the Parent insisted on it as a way to provide more assurance of Student's safety in light of Student's seizure disorder; thus, the re-evaluations and the IEP team never established an educational need for one to one monitoring. The evidence is preponderant that coordination of services for instructional purposes was not necessary for the provision of a FAPE. When Student was in school, Student's behavior was easily controlled and did not interfere with learning. Nevertheless, the record reveals more than one instance in which the District teachers supported the TSS workers in dealing with Student's behavior. Thus, the lack of formal IEP-level coordination was not a denial of a FAPE.

Parent also asserts that the IEPs were deficient in that they did not provide counseling services to Student, nor did they specify the location, frequency, and duration of the social skills instruction as part of the specially designed instruction for the specially designed instruction, social skills lesson¹². This argument ignores two underlying circumstances: first, the placement was an emotional support classroom, in which the teacher was trained to address students' emotional needs on a constant basis; second, Student performed typically whenever in school,

¹² Frequency is indeed specified as daily. (S-29 p. 37.)

according to the vast weight of the evidence.¹³ I conclude that any lack of precision in the IEPs' depiction of the services available is not a substantive denial of FAPE.

Parent criticizes the District's truancy elimination plan – charging (somewhat surprisingly) that it came too late, and asserting that it was factually inaccurate in its characterization of Student's absenteeism¹⁴. On the contrary, the record overwhelmingly proves that the District addressed Student's absenteeism early and often, demonstrating its determination to design its educational services specially for Student, in order to make school as safe and attractive as possible -- so that Student would want to come to school, and Parent would find reason to trust the District with the safety and education of her child. Student's absenteeism became an acute problem after only two days of school, when Parent kept Student home due to fears for Student's safety attendant upon Student's seizure disorder. Parent's reluctance to send Student to school rapidly became focused upon getting the exact setting and services that Parent determined were necessary for Student, notwithstanding the disagreement of the District's professional educators.

Nevertheless, the educators provided one to one monitoring and attendance services immediately in September. They provided speech and language, as well as occupational therapy services immediately, in September. They expedited a full psychoeducational evaluation. Upon its receipt, they placed Student in an emotional support classroom for almost all instruction. When their professional recommendation for itinerant services and more inclusion caused Parent

¹³ Thus, Parents' marshalling of the documented evidence falls far short of showing any behavior problem in school. Most of Parent's examples of Student's behavior were consistent with the behavior of a kindergarten student, according to several witnesses: inattention, silly behavior, imaginative behavior like making animal noises and pretending to be an animal, and not observing the personal space of others. The District witnesses who observed Student in school unanimously testified (and the documentation proffered by Parent confirmed) that, to the extent that these behaviors were inappropriate (and of course in several instances they were inappropriate), Student was easily redirected.

¹⁴ I do not address the allegations of factual inaccuracy, since the factual accuracy of the truancy prevention plan is not before me.

to keep Student out of school in early 2013, the District kept Student in the supplemental level placement in the emotional support classroom in order to encourage greater attendance. The IEP was amended several times to provide extra services to Student, including specially designed transportation, reduced school hours and special homebound services for supplemental or remedial instruction in the regular education curriculum. Taking these efforts into consideration, Parent's criticism of the District's efforts to address Student's absenteeism must fail.

APPROPRIATENESS OF PLACEMENT

Based upon the above conclusions, I also conclude that the District offered Student an appropriate placement. The evidence is preponderant that the emotional support placement was protective of the Student's safety, emotional, behavioral and social needs. Student was able to make academic, social and behavioral progress in that placement. Prior to that placement, the District implemented the early intervention IEP; although Student was placed in a general education setting for two days, the District immediately responded to Parent when she objected and asked for a more protective setting. It proposed a one-to-one educational assistant to monitor Student for safety while it expedited the evaluation process. As soon as it could issue a re-evaluation and schedule an IEP meeting, it placed Student in the emotional support setting. I cannot conclude on this record that the District failed to comply with the IDEA in its placement decisions, based upon what it knew when Student first came into school.

PARENTAL PARTICIPATION

The record is preponderant that the District was highly responsive to Parent and included Parent in all decision-making. The evidence is preponderant that the District withheld the notebook of a one-to-one staff person, but it does not establish preponderantly that this withholding was inappropriate. I find no violation of the IDEA procedural requirements in this record.

CREDIBILITY

I accord less weight to the testimony of Parent, whose statements were in conflict with the record in material respects. In particular, Parent testified that Student's behaviors of biting Student's tongue and cheek had stopped for a year before Student entered kindergarten in the District; Parent then testified that these behaviors returned in the first week of Student's attendance in kindergarten in September 2012, and that Student's self-pinching had changed in terms of location on the body -- implying that these behaviors were triggered by Student's anxiety over entering kindergarten. (NT 78-80, 122.) This implication was material, both to suggest that Student was experiencing dangerous levels of anxiety and self-injurious behaviors in school, and to demonstrate that Parent was justified in keeping Student out of school in the absence of the small supported classroom that Parent had demanded.

The Parent's allegation contradicts private clinical evaluation reports reciting that Parent reported these behaviors as of concern as late as June 2012. The IU/EI evaluation reflected that Parent had told those evaluators that Student's behaviors included chewing Student's tongue and cheeks; these statements were given sometime between January and March 2012. (P 6 p. 5.) A psychological report from a private treatment center that Parent obtained for purposes of receiving continued in-home behavioral health services disclosed that, in April 2012, Parent

reported pinching and tongue-biting, and showed pictures that she had taken of the resultant injuries. (P 8 p. 3, 5.) In June 2012, Parent again reported pinching and tongue chewing to a developmental pediatrician. (NT 120; P 12 p. 1, 3, 4.) Again in June, Parent showed pictures of Student's bruises and tongue lacerations to a psychologist consulted for purposes of evaluation. (P 13 p. 4.) These contradictions between the Parent's testimony and the record lead me to doubt the reliability of Parent's statements.

Parent engaged in a pattern of making exaggerated reports suggesting that Student was engaging in highly unusual, regressed and self-damaging behavior. Repeatedly, Parent's answers on behavior inventories were flagged as unreliable and possibly exaggerated by the validity index of the behavior inventory. Repeatedly, Parent's reports of extremely deleterious Student behavior contrasted with educators' reports of no such behavior. Again, these contradictions lead me to assign reduced weight to Parent's testimony in this matter.

Parent's motivation with regard to credibility and reliability is called into question by the credible report of one District evaluator that Parent interfered with testing. Repeatedly, Parent attempted to be present in testing sessions with Student. Repeatedly, Parent attempted to prevent Student's correct answer to questions by indicating that Student was unable to answer the questions posed.

The testimony of the nurse-witness called by Parent was unreliable. This witness' memory for events connected with this case was very imperfect. Moreover, her understanding of the special education process was such that I could not rely upon her interpretations of events. Nevertheless, I find that she remembered enough of the transaction concerning the notes withheld by the District's principal sometime in the Autumn of 2012 to corroborate that this in

fact happened; however, her understanding of that transaction did not extend to shedding any light on the District's rationale for the withholding.

There was a conflict between the Supervisor's statements of the supervisor of special education and the elementary school principal and the documentary record. The District officials testified that the paraprofessional hired in September 2012 was not asked to take notes; however, the section 504 evaluation form called for "data" from the paraprofessional. I find that this conflict casts some doubt upon the officials' accounts; however, it is possible that the 504 meeting note taker understood that the paraprofessional was to take data, and that this was not implemented. There is simply too little evidence on this mysterious conflict in the record to support a credibility determination, and for the most part, these witnesses testified in accordance with the record and each other. In the way they answered the questions and in demeanor, they presented as credible.

Parent makes much of the Speech and Language evaluator's ostensibly contradictory testimony, in which she indicated that increased standard scores within the average range were significant progress, while decreases within the average range were not significant. The witness also seemed to backtrack when confronted with a large decrease in percentile rank. It was clear that the witness was jousting with Parent's counsel and thus revealed a somewhat adversarial approach, which in my mind reduces reliability. In this light, the explanation that subtest score declines are not significant when the composites are average appears more the product of jousting than of dispassionate explanation based upon expertise.

Nevertheless, the Parent produced absolutely no contravening evidence. Indeed, it is plausible that the maintenance of an average composite score is a fair indicator of growth in skill – keeping up with the age or class cohort as it expands its average skill level from one year to the

next. While it seems implausible that declines in subtest scores are meaningless as the witness' answers implied, it may be that these declines are significant in pinpointing areas of weakness, while not indicating overall decline in skills. Therefore, I do accord substantial weight to the therapist's testimony.

There were some conflicts among the numerous notes that were introduced into evidence. On some days, as Parent's counsel brought out, the notes were flatly contradictory. Nevertheless, the documentation extended over several months and these conflicts were few. It is a fact of life that errors are part of every set of data, no matter what its nature. A few such errors in a record this vast are not enough to impeach the underlying validity of the data as a whole.

COMPENSATORY EDUCATION

Based upon the above conclusions, no compensatory education is due this Student, and none is ordered.

SECTION 504

Parent's section 504 claims are derivative of her IDEA claims – that is, Parent's section 504 claims are derived from the same set of facts as her IDEA claims, and section 504 would provide Parent no greater relief under this set of facts than Parent could obtain under the IDEA alone. The section 504 “equal benefit” claims are satisfied in this matter by the District's provision of a FAPE, appropriate evaluation and appropriate placement. Parent can make out no discrimination from the degree of parental participation provided to her, which was sufficient under the IDEA. Thus, Parent's section 504 claims are denied.

CONCLUSION

In sum, I conclude that the District provided Student with an appropriate re-evaluation, appropriate IEPs and an appropriate placement. It provided Parent with appropriate access to and participation in the educational planning process as required by the IDEA. No compensatory education is due.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The District's re-evaluation dated October 11, 2012 was appropriate.
2. The District did not fail to provide Student with a FAPE during all or any part of the 2012-2013 school year.
3. The District did not fail to provide an appropriate placement for Student during all or any part of the 2012-2013 school year.
4. The District did not fail to comply with the procedural requirements of the IDEA regarding parental participation in Student's educational planning.
5. No compensatory education is ordered.

It is **FURTHER ORDERED** that any claims that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

William F. Culleton, Jr. Esq.

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

April 11, 2014