This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: A.R.

Date of Birth: [redacted]

ODR No. 1448-1011 JS

CLOSED HEARING

Parties to the Hearing:	Representative:
Parent[s]	Minali Arora, Esquire Ilene Young Law Offices 50 East Court Street, Main Floor Doylestown, PA 18901
School District of Philadelphia 801 North Richmond Street Fleetwood, PA 19522-1031	Heather L. Matejik, Esquire Office of General Counsel 440 North Broad Street, suite 313 Philadelphia, PA 19130
Dates of Hearing:	March 28, 2011, April 7, 2011, April 12, 2011
Record Closed:	May 2, 2011
Date of Decision:	May 17, 2011
Hearing Officer:	William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[Student] is a high school student and a resident of the School District of Philadelphia (District). (NT 11-14.) Student is no longer identified under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). Ibid. The District has provided Student with a Service contract under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) (section 504). [Name redacted] (Parent) requested due process to require the District to evaluate Student pursuant to its IDEA Child Find obligation, provide accommodations to Student on account of Student's disability, and to provide compensatory education. The District asserts that the Student is not suspected of being a child with a disability pursuant to the IDEA, and that it has provided appropriate accommodation for the Student's disabilities through its offered Service Agreements.

The hearing was conducted in three sessions and the record closed upon receipt of the written summations. I conclude that the District did not violate either the IDEA or section 504.

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ISSUES

1. During the period from February 3, 2009 to March 16, 2011 (relevant period), did the District fail to evaluate the Student appropriately for eligibility pursuant to its Child Find obligation under the IDEA?

2. During the relevant period, did the District fail to evaluate the Student appropriately pursuant to its obligations under section 504?

3. During the relevant period, did the District exclude the Student or deny Student equal participation and benefit from educational services and opportunities on account of Student's disability by failing to provide appropriate accommodation to transportation services; failing to modify Student's courses; failing to provide appropriate accommodations with regard to homework and assignments when Student was absent; or providing inappropriate homebound education services?

4. During the relevant period, did the District discriminate against the Student on account of Student's disability by imposing discipline for lateness caused by Student's inability to access the school elevator or by lateness of school-provided transportation?

5. Should the hearing officer award compensatory education for all or any part of the relevant period?

FINDINGS OF FACT

1. The Student is diagnosed with a chronic, incurable osteopathic disease that requires repeated and frequent surgery, and causes constant pain, as well as difficulty negotiating steps, and the constant need for a wheelchair to travel. (NT 57-61, 713; P25.)

2. Student is unable to ascend or descend stairs without assistance on many days due to the extreme painfulness and weakness that are caused by Student's condition. (NT 57-61, 263-265.)

3. During the relevant period, Student has demonstrated academic achievement at a high level. Student is planning to attend college in the fall and has received both college admission and several scholarships. Student has accumulated enough credits to graduate from high school in three years; however, Student and Parent decided that Student would remain in high school for a fourth year for social and developmental reasons and to maximize Student's ability to graduate with a high grade point average. Student is taking advanced placement courses and demonstrates high level learning skills and habits. (N.T. 68-69, 668, 685, 700-701.)

4. Student also has excelled in sports after school and on weekends and has traveled extensively alone for sports events in the current school year. (NT 729; P-23 p. 3.)

5. Student is successful socially, and is well liked by most peers and faculty. (N.T. 680.)

6. In the current school year, Student was subject to heightened anxiety and depression. Student's chronic pain, adolescent social and career concerns, and conditions at school all have contributed to this emotional difficulty. (NT 712-713.)

7. Based upon a re-evaluation report dated October 2005, the District in November 2005 exited Student from special education because Student was performing on grade level academically and did not need specially designed instruction. Parent agreed with this decision. (P-9, 10.)

8. The District offered a section 504 service agreement dated November 2005, which provided for "curb to curb" transportation in a lift bus, physical accommodations to the school environment, an extra set of books, reduced workloads for written work, and extended time for written assignments and standardized testing, to which the Parent agreed. (P-12.)

9. The District also obtained a permission to evaluate in November 2005, and evaluated the Student for occupational therapy and physical therapy services, as well as accessibility needs. District staff addressed specific needs for accommodation when brought to their attention. (NT 496-499, 505-506, 516-524, 698; P-12, S-19, S-20.)

10. In 2007, Student enrolled in an innovative high school (School). The District provided a section 504 service agreement that provided for "curb to curb" transportation with a lift bus, physical accommodations to the school environment and extended time for written assignments and standardized testing, to which the Parent agreed. (P-13.)

11. The District provided section 504 service agreements for each school year from 2007 to 2011 that provided for curb to curb transportation with a lift bus, physical accommodations to the school environment, occupational therapy and physical therapy services and extended time for written assignments and standardized testing. The Parent agreed to these accommodations in 2007, 2008, and 2009. (P-14, S-2, 8, 14, 21, 22, S-18, 19.)

12. Parent did not request transportation service to include assistance to Student on the stairs outside Student's home until after the complaint was filed in this matter. (NT 465, 485-486; S-2, 8, 14, 21, 22.)

13. Prior to enrolling in the School, Student's section 504 service plan provided for reduced workloads; however, this accommodation was eliminated by the educational staff at the School, due to Student's academic achievement and success. Parent agreed to this change. (NT 487: S-22.)

14. Student was home bound after surgery in 2009. For that period of absence, District staff provided homebound educational services in major subjects and regarding Student's senior project, and extended time for homework and assignments. When Student returned to school, tutoring was provided. Student returned to school earlier than prescribed by Student's doctor. (NT 566, 699, 727-729; S-15, 16, 17.)

15. In the 2010-2011 school year, Student received a "D" in biology and F grades in calculus, despite receiving extended time in the 504 service agreement. Overall, grades declined significantly. Student's biology teacher considered a "D" appropriate despite Student's disability and surgery. The homebound services did not include either biology or calculus. (NT 591-592; S-29.)

16. Student was unable to compensate for missing work due to surgery, sufficient to succeed in biology and calculus. (NT 717-718; P-16 p. 4.)

17. Student was suspended for a breach of security which Student asserted was accidental. Student was accused of threatening verbalizations toward a student in another school, along with inappropriate verbalizations to a peer of the opposite sex. The vice principal of the School obtained special permission to forego disciplinary expulsion from school. The school offered counseling to Student, but the parent declined such services. (NT 398-399, 405, 543-547, 694; S-33.)

18. Prior to and during the current school year, the Student was not disciplined for being late to class. During the present school ear, Student was given detention only if Student was so late as to miss an entire class. If the lateness was caused by the lateness of the assigned bus or inability to utilize the school elevator to go to classes located above the first floor, no detention was assigned. (NT 455-461, 637-638, 704-705.)

19. School staff were willing to reschedule detentions due to Student's professed inability to serve detentions after school due to problems getting up the stairs at home. (NT 725-726.)

20. In the present school year, Student received detentions for missing entire classes on several occasions. Student was unable to serve the detentions because of the need for help with the stairs to get into Student's home upon arrival. Detentions were to be served on the day after the lateness, and Student did not present a note from Parent asking the School to excuse or reschedule detention. Student simply did not attend detention. As a result, Student received given three suspensions of one day each, served at home, for not serving detentions when missing entire classes. (NT 455-461,621-635, 678-679.)

21. The School changed its innovative curriculum when Student was in Student's third year. The curriculum had offered courses with combined disciplines, and the School changed this to separate the disciplines. When Student continued into a fourth year at the School, Student repeated some material in some courses due to this change; however, Student was not penalized nor did Student lose any opportunities for high school credit. (NT 436-438, 639-646, 688, 720-721, 725-726.)

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.[1] The United States Supreme Court has addressed this issue in the case of an administrative hearing challenging a special education IEP. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). There, the Court held that the IDEA does not alter the

[1] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

traditional rule that allocates the burden of persuasion to the party that requests relief from the tribunal. Thus, the moving party must produce a preponderance of evidence[2] that the District failed to fulfill its legal obligations as alleged in the due process Complaint Notice. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)

In Weast, the Court noted that the burden of persuasion determines the outcome only where the evidence is closely balanced, which the Court termed "equipoise" – that is, where neither party has introduced a preponderance of evidence to support its contentions. In such unusual circumstances, the burden of persuasion provides the rule for decision, and the party with the burden of persuasion will lose. On the other hand, whenever the evidence is preponderant (i.e., there is greater evidence) in favor of one party, that party will prevail. Schaffer, above.

Based upon the above rules, the burden of proof, and more specifically the burden of persuasion in this case, rests upon the Parent, who initiated this due process proceeding. If the Parent fails to produce a preponderance of the evidence in support of the claim, or if the evidence is in "equipoise", the Parent cannot prevail.

CHILD FIND AND EVALUATION UNDER THE IDEA

In opening remarks, the Parent asserted that the District had failed to properly evaluate Student under its Child Find obligation. 20 U.S.C. §1412(a)(3). The District is obligated to ensure that all children with disabilities within its jurisdiction - "who are in need of special education and related services" - are located and properly evaluated. Ibid. The IDEA regulations provide that the District must evaluate for eligibility if a parent requests an evaluation, but its time frame for completing the evaluation begins running from receipt of

[2] 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.

parental consent. 34 C.F.R. §1414(a)(1)(c)(i). State regulations provide that a child must be evaluated pursuant to the Child Find obligation upon written parental request. 22 Pa. Code §14.123(c).

There is no evidence of record to support Parent's claim under the IDEA. The Student was evaluated and given an IEP early in Student's school career. The District exited Student from special education in 2005, with the Parent's acquiescence. (FF 7.) Since then, Student has performed on grade level in all subjects, even taking advanced placement courses. (FF 3.) There is no evidence that the Student needs specially designed instruction, nor is there evidence that the Parent ever sought an evaluation, in writing as required by Pennsylvania rules, or provided consent for evaluation.

Parent in summation appears to acknowledge that the record does not support a claim that the District should have evaluated the Student for IDEA eligibility purposes. Instead, Parent argues that the District is claiming that needed accommodations are unavailable under section 504, thus requiring it to evaluate so that such services can be provided under IDEA. I decline to accept this analysis. In this case, there was no IDEA obligation; any limitation on the extent of section 504 protections is irrelevant to that essential conclusion.

VIOLATIONS OF SECTION 504

*Parent argues that the District violated section 504 in several respects. Section 504 protects "handicapped persons" from discrimination on account of their handicaps, by recipients of federal educational funding. Although no evidence was submitted that the District receives federal funding through the state Department of Education, 34 C.F.R. §104.2, this element of proof is uncontested. It is uncontested also that the Student is a "handicapped person" within

the meaning of section 504. 34 C.F.R. §104.3(j). I see no reason to question that either of these elements of a 504 claim is present in this matter.

Section 504 provides:

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

29 U.S.C. §794(a). Thus, the question of fact which I am asked to decide is whether or not the District either "excluded" the Student from participation in educational services, denied educational benefits from the Student or subjected to discrimination through its educational program of services.

The Department of Education's regulations further delineate the above statutory prohibition, prohibiting, among other things, agency actions whose intent or effect is to:

> (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
>
> (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
>
> (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

34 C.F.R. §104.4(b). Thus, I must review the evidence in this matter to determine whether or not the District actions challenged here had the above effect. I find that the evidence preponderantly proves that the District did not subject the Student to discrimination as defined above.

Failure to Evaluate

Parent asserts that the District failed to evaluate Student's needs appropriately for accommodation purposes. However, aside from citing the regulation under section 504 that requires evaluations[3], Parent does not provide a sufficient factual basis for this assertion. There is no evidence that the Parent sought specific evaluation for the Student during the relevant period. On the contrary, the District showed by a preponderance of the evidence that the District did evaluate the Student's needs for purposes of devising accommodations. (FF 1, 2, 7, 9.)

Failure to Provide Appropriate Accommodation for Transportation

Parent asserts that the District failed to accommodate its transportation service to assist Student to travel from Student's home to the bus on the way to school and from the bus into the home upon returning from school. Section 504 and its implementing regulations address the District's obligations with regard to transportation at 34 C.F.R. §104.37, which requires that any non-academic service such as transportation must be provided "in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services … ." Ibid.

Here the record is clear that the District provided for a bus equipped with a lift to pick up and deliver Student to and from school every day; this was provided in every 504 service agreement offered to Student during the relevant period. (FF 8-12.) The service was described as "curb to curb" transportation in every service agreement. (FF 8,11.) Witnesses testified that the District offers various grades of transportation service, but curb to curb service is the most generous service that it offers to any student. (FF 11.) Thus, the record shows that, by providing for a lift bus that accommodates wheel chairs, the District offered transportation service in a

[3] This section, 34 C.F.R. §104.35, requires evaluation for purposes of initial placement; it provides no guidance as to the District's obligations to evaluate needs on an ongoing basis, except to require procedures for periodic re-evaluations. 34 C.F.R. §104.35(d).

"manner" that afforded the Student an equal opportunity to utilize – and thus to "participate in" the District's transportation services, in compliance with the above section 504 regulation.

Parent suggests that the District's failure to provide assistance to Student on the stairs to Student's home was arbitrary and unnecessary – and misleading to Parent - because that service had been provided previously by a caring bus driver. I do not find this argument to be convincing. The record is preponderant that the District never offered assistance with stairs to Student in the 504 service plans during the relevant period. The phrase used consistently is "curb to curb." Even if a caring bus driver exceeded the offered services in previous years, this does not create any greater rights in Student, nor was it an additional service that the Parent had any entitlement to rely upon. See 22 Pa. Code §15.7(a)(providing that oral agreements may not be relied upon for section 504 services). Nor can I accept the suggestion that the Parent was unable to understand the plain language of the service agreements' description of the transportation service to be provided. There is no ambiguity in the term, "curb to curb." It cannot be misinterpreted to mean, "door to door." (FF 10-12.)

Parent's argument may be interpreted to be directed, not to a violation of 34 C.F.R. §104.37, but rather to a violation of the general proscriptions of 34 C.F.R. §104.4(b). One thrust of Parent's argument is that that the District violated section 504 by declining to provide an extra service above and beyond what it provides to other students. The argument is that the District's failure to do so in effect either deprived the Student of the opportunity to "participate in or benefit from the aid, benefit, or service" that the District provided at the Student's assigned high school, 34 C.F.R. §104(b)(i); or afforded Student a "service that is not equal to that afforded others", 34 C.F.R. §104(b)(ii); or afforded a service that is not as "effective as that provided to others", 34 C.F.R. §104(b)(iii).

I find that the evidence is insufficient to prove by a preponderance that the District's refusal to help Student down the steps at Student's home deprived Student of the opportunity to participate in or benefit from school, or rendered the education offered to Student substantively different from or less effective than that offered to other students. The record does not indicate that Student's need for help getting down the steps in itself resulted in Student missing time at school. In the first year at the School, Student had very few absences, despite the School's policy against helping students from door to door. (P-16.) During the years in question, Student was able to do very well in school; thus, there is no evidence that the District's transportation policy resulted in a deprivation of educational services.[4] (FF 3-5.)

Parent argues that the lift bus sent for the Student delivered Student late to class and thus deprived Student of time in school. (FF.) This allegedly happened in the 2007-2008 school year and resulted in Parent hiring a friend to transport Student. Parent's testimony about lateness is based largely upon hearsay statements made by Student at that time. Student testified that the school bus had made Student late three to four times per week, and Student was up to an hour late each time. (NT 625-630, 676.) Student testified that a friend of the family subsequently drove Student to school in the 2008-2009 and 2009-2010 school years. (NT 626-627.) Thus, Student's testimony suggested that the friend was driving Student in order to remedy a serious problem with a late school bus that was depriving Student of an equal education.

Official school records, however, reflect that Student was late only six times in the entire 2007-2008 school year – far fewer times than would have been recorded if Student was late three

[4] I also find that Parent exaggerated the difficulty experienced in getting Student help to get down the stairs in the morning. Parent suggested that the Student had this difficulty every day; yet, Student testified that, when taking [public transportation], Student had help getting down the steps to get to the bus. (NT 627-628.) Moreover, Student testified that Student had help every day in getting up the stairs to Student's home at the end of the day. (NT 679.) I find it implausible that Student would have more difficulty getting help down the stairs when taking the school bus but not when taking [public transportation]; I also find it implausible that the family was resourceful enough to get help at the end of the day but not at the beginning.

of four times per week all year, especially if lateness sometimes extended to a full hour. (P-16 p. 1, 2.) Moreover, in 2008-2009 and 2009-2010, Student was late over forty times; thus, the remedy of the friend driving was worse in terms of lateness than the lateness caused by the school bus in the previous year. Ibid. Student admitted that some of those late days were due, not to the friend getting Student to school late, but to the pain of Student's condition keeping Student from getting up out of bed on time. (NT 715-716.)

I conclude that Student was exaggerating the extent of the problem with the late school bus, and I accord little weight to the testimony of the Student and the Parent suggesting that there was a deprivation of equal education as a result. Weighing this evidence against the Student's very good performance at school, I find that the evidence is not preponderant that the transportation issues caused an unequal education within the meaning of section 504 and its implementing regulations.[5]

Discipline Due To Lateness

Student testified that, from the beginning of the 2010-2011 school year, the School began giving detentions every time a student was late. (FF 18.) Student further testified that Student began taking the school bus again in mid-October, and that the bus was late again frequently as it had been in the 2007-2008 school year. The Student began receiving detentions, but Student could not serve them because it was necessary to get home in time to get help ascending the stairs to the home. As a result, Student testified, Student was suspended three times for one day each time. (FF 20.) Student testified that it was possible to be excused from detention or have it re-scheduled, but Student was unable to get a note from Parent asking for this accommodation.

[5] Student testified that Student was not late often with [public transportation], and that Student took [public transportation] for only a few weeks. (NT 627-629.)

Student admitted that the detentions were always to be served on the day following the lateness.[6] (FF 20.) Student also admitted that the vice principal agreed to find a way to reschedule the detentions. (FF 19.) I find that this testimony undercuts the Student's assertion that it was impossible to get a note from Parent asking for relief from detentions. Student had a day in which to secure a note from Parent each time detention was assigned. Moreover, by Student's own admission, School staff were willing to make adjustments due to Student's need to be home at a certain time.

Also undermining the assertion that the discipline for lateness was unfair was Student's extracurricular schedule, which took place after school, and which would have most probably made Student late getting home on some nights. (FF 4.) I find it implausible that the Student was unable to attend detention due to an invariable deadline for getting home, but was able to find a way to schedule Student's sports commitments. Thus I accord reduced weight to the testimony suggesting that the School applied its detention policy for lateness in a discriminatory or arbitrary manner, thus depriving Student of educational benefit.[7]

Similarly, there was testimony that Student was given detentions for being late due to inability to use the elevator in the school to get to classes. This testimony is tainted by the inaccuracies in testimony of both Student and Parent as to the disciplinary consequences, which

[6] This contradicted Parent's testimony that Student needed to serve detentions on the day of the lateness. (NT 290-291.) Parent also testified that that Student was given detention two to three times per week at one point in the 2010-2011 school year. (NT 291.) This conflicts with the evidence of the much smaller number of incidents of lateness recorded in the official record, and with Student's testimony that Student received only three suspensions over a two month period for not attending a detention given due to lateness. (FF 20.) This also conflicts with credible District testimony that this year's policy provided for detention only when a student missed an entire class, not for every lateness, (FF 18); this conflict further undercuts Parent's reliability as a witness and undermines Student's reliability also, (NT 630, 635-638), since both testified incorrectly that the policy was to give detention for every incident of lateness. Therefore, I accord much reduced weight to both Parent's testimony and Student's testimony, on this issue and in general.

[7] There was much testimony about two incidents of disciplinary action for serious allegations – one a breach of security in the school and one consisting of allegations of inappropriate and threatening behavior. (FF 17.) I find no evidence that these incidents were part of a conspiracy to discriminate against Student – whether based upon dislike for Student or based upon Student's disability. On the contrary, District witnesses testified credibly that these matters were handled with appropriate concern for Student's academic future and welfare. (FF 17.)

conflicted with credible District testimony that there were no such consequences, and with the admitted infrequency of the detentions (three suspensions for not attending detention – in contrast with, according to the testimony of Parent and Student, detentions that were levied several times per week). I find the testimony on this subject unreliable and give it little weight.

Home Bound Instruction And Making Up Work

Parent argues that the District failed to provide adequate home bound services to Student, as a result of which Student received poor grades in the fourth year of high school. Although the homebound services did not provide sufficient assistance to Student to prevent poor marks or failures in biology and calculus, (FF 14-16), there is no evidence that the inadequate home bound services were less effective or different in kind than those provided to other students without acknowledged disabilities. Moreover, the evidence is not preponderant that the poor grades were caused by the allegedly inadequate home bound services, when consideration is given to Student's ambitious extracurricular schedule, highly demanding academic roster, and concomitant emotional difficulties.

Parent argues that the District personnel failed to allow Student to reduce Student's work load or to make up work after an extended absence due to surgery, again linking that to Student's grades. The record shows preponderantly that the teachers did allow work to be made up, and there is no evidence of an across the board failure to accommodate Student for the time lost due to surgery. (FF 9-14.)

Student and Parent testified that making up work while keeping up with current material after surgery was grueling work, with long hours at night studying and doing assignments. However, the record shows that the Student was a well rounded leader and athlete who had

numerous, time consuming extracurricular commitments. In these circumstances, it is not possible to separate the causal effect of inadequate home bound services from the influence of ambitious academic rostering and extracurriculars, severe pain from Student's condition, and the depression and anxiety that distracted Student during the final year of high school. (FF 1-6.) In the end, Student graduated and is going on to college. (FF 3.) Thus, the record as a whole does not prove preponderantly that Student was deprived of educational benefit by an unequal, different or ineffective homebound service that was any different from what would be accorded to any other student.

Parent argues that the changes in curriculum required Student to repeat work already done. Whether or not this was true, it does not make out a claim of discrimination. There is not any evidence of record suggesting that the changes in curriculum were on account of Student's disability. On the contrary, the preponderant evidence is that the School's principal changed the curriculum in mid stream for everyone, and that it was an administrative decision having nothing to do with the Student individually. (FF 21.)

Parent makes much of the inability of the college student tutors assigned by the District to help Student learn the material in Calculus. While this shows that the tutors were unable to help Student, this is not due to Student's disability, and is not evidence that the Student was singled out or discriminated against. Moreover, there was credible evidence that Student took advantage of tutoring at the School. (FF 14.)

In reaching these conclusions, I rely upon the reduced weight that I accord the testimony of Parent and Student in general, as explained above. Against this reduced weight I must balance the District's credible evidence that homebound services were delivered, that Student was given opportunities to make up work and receive tutoring, and that Student actually succeeded in

school. I find all of the District witnesses to be credible, based upon the clarity of the witnesses' recollection and their expertise in the subjects about which they testified, and upon their demeanor and the lack of material contradictions in their testimonies.

Parent introduced the testimony of a clinical psychologist who diagnosed Student with a generalized anxiety disorder. (FF 6.) While the evidence is preponderant that the Student is suffering from such a disorder, the expert made it clear that the expert was unable to draw any conclusions as to causation of that disorder, based upon independent knowledge of the truth of the allegations of the Student in counseling sessions. The expert, functioning as a diagnostician and therapist, not as a forensic examiner, did not attempt to verify Student's and Parent's allegations of discrimination and retaliation and conspiracy at school. Thus, there is no credible evidence of that the Student's anxiety disorder is the result of a violation of section 504.

CONCLUSION

I conclude that the District did not discriminate against Student within the proscriptions of section 504 and its regulations. Any claims that are not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. During the period from February 3, 2009 to March 16, 2011 (relevant period), the District did not fail to evaluate the Student appropriately for eligibility pursuant to its Child Find obligation under the IDEA.

2. During the relevant period, the District did not fail to evaluate the Student appropriately pursuant to its obligations under section 504.

3. During the relevant period, the District did not exclude the Student or deny Student equal participation and benefit from educational services and opportunities on account of Student's disability by failing to provide appropriate accommodation to transportation services; failing to modify Student's courses; failing to provide appropriate accommodations with regard to homework and assignments when Student was absent; or providing inappropriate homebound education services.

4. During the relevant period, the District did not discriminate against the Student on account of Student's disability by imposing discipline for lateness cause by Student's inability to access the school elevator or by lateness of school-provided transportation.

5. The hearing officer will not award compensatory education for all or any part of the relevant period.

William F. Culleton, Jr. Esq.

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

May 17, 2011