

*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

DUE PROCESS HEARING

Name of Child: J.H.

ODR #15046 / 13-14-KE

Date of Birth:  
[redacted]

Dates of Hearing:  
September 9, 2014  
September 12, 2014

OPEN HEARING

Parties to the Hearing:  
Parent[s]

Representative:  
Pro Se

Upper Darby School District  
4611 Bond Avenue  
Drexel Hill, PA 19026

Scott Gottel, Esquire  
Holsten & Associates  
One Olive Street  
Media, PA 19063

Date Record Closed:

October 2, 2014

Date of Decision:

October 10, 2014

Hearing Officer:

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is a teen-aged student who resides in the District [District] and was previously enrolled in the District's public schools. Student is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] and Pennsylvania Chapter 14 under the classification of Other Health Impairment due to Attention Deficit Hyperactivity Disorder. As of the beginning of the 2014-2015 school year Student was enrolled in a cyber-charter school and the District is no longer Student's LEA.

Student's guardian [Guardian] requested this hearing under the IDEA and Section 504 of the Rehabilitation Act, alleging that the District denied Student a free appropriate public education [FAPE] through failing to provide/implement appropriate Individualized Education Programs [IEPs].

An evidentiary hearing was previously held regarding the limitations period governing the scope of the hearing<sup>2</sup>. The hearing officer determined that neither of the two exceptions to the IDEA's two-year limitations period exists and made this ruling on the earlier record. Therefore the period in the current matter to be addressed is from May 16, 2012 to the end of the school year in June 2014.

## Issue

Did the District provide Student with a free appropriate public education during the relevant time period, specifically were Student's IEPs appropriate and if so were they appropriately implemented?

## Findings of Fact

### Background<sup>3</sup>

1. Student is an eligible student, classified as Other Health Impaired [Attention Deficit Hyperactivity Disorder], who resides with Student's aunt [hereinafter Guardian] within the boundaries of the District. [S-52, P-120]
2. Student does not have a specific learning disability. [NT 119; S-52, P-120]

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<sup>1</sup> This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

<sup>2</sup> The District filed a separate hearing request to defend its evaluation pursuant to the Guardian's request for an IEE and the matters were originally consolidated. However, all evidence on that matter was heard on July 21, 2014 so the cases were uncoupled and the decision on the IEE was filed on July 26, 2014 under ODR #15047/13-14 KE. The guardian chose to have the present matter heard once school had begun so that District personnel would be available as witnesses.

<sup>3</sup> Much of this section recounts events prior to the relevant period of this hearing. However the events are intertwined with the current issues and therefore are presented to create a context.

3. Student's mother alleged that Student had been bullied in the neighborhood school and that this caused Student to develop generalized anxiety disorder. Further, as mother alleged that Student was unable to attend school because of anxiety, the District placed Student on homebound instruction but discontinued homebound when mother could not produce a physician's note indicating medical necessity. Student then missed significant amounts of instruction when the mother withheld Student from attending the neighborhood school. The District eventually filed truancy proceedings and the mother obtained legal representation and filed for due process. [NT 52-54, 282, 442-446, 458]
4. Given mother's continued claims that Student suffered from anxiety, the District sought her permission to evaluate Student for potential eligibility for special education; mother refused permission. Student's physician wrote two "Recommendation for Student Transfer" forms, one on March 26, 2010 and the other on June 28, 2010. Neither form provided a level of detail that would justify a transfer from Student's neighborhood school. The director of special education convened a conference call to ask the physician if he could provide additional clarification. In that conference call attended by Student's physician, mother, mother's former attorney, the director of special education, and the attorney for the District the physician, when pressed, would not confirm or explain his written statement that Student suffered from anxiety, and the physician ended the call by hanging up. Mother continued to withhold Student from school; at some point counsel for the mother withdrew representation. [NT 444-447; S-2, S-5]
5. Student's custody eventually was transferred to the father, Student returned to school, and father consented to an evaluation. When Student was in father's custody Student did not display any behaviors of concern, and Student's demeanor in school was different than when mother had custody. Father wanted Student held accountable for Student's actions and father worked well with the school. Student finished 5<sup>th</sup> grade without incident and went on to middle school for 6<sup>th</sup> grade. [NT 56, 273-276, 367, 447-448, 465; P-120]
6. Student's evaluation resulted in identification as eligible for special education under the classification of Other Health Impaired due to ADHD. The evaluation showed a relative weakness in math that did not rise to the level of a specific learning disability in math. [S-52, P-120]
7. There was another change in custody/residence from father's home back to mother's home on February 25, 2013. Because of the location of mother's residence, Student was slated to transfer from the neighborhood school of father's residence [Middle School A] to the neighborhood school of mother's residence [Middle School B]. As the mother was very opposed to the transfer<sup>4</sup>, the District

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<sup>4</sup> Mother's opposition to the transfer was at least in part based on the makeup of the neighborhood of Middle School B and her perception of the types of pupils in Middle School A which she favored as opposed to those in Middle School B which she did not prefer. [NT 458, 466]

- postponed the transfer until there could be an IEP meeting to discuss her concerns. About this time Student began exhibiting some disrespectful behaviors in school. [NT 285, 454-455, 459]
8. District administration reached out to Student's psychologist to see if there were legitimate reasons why Student should not be transferred. The psychologist could not provide a reason based on medical necessity, commenting simply that it "would be nice" if Student could remain at Middle School A. The mother did not produce any type of direct verbal or written documentation from a medical or mental health professional that there was any substantial physical or emotional reason for Student not to transfer to Middle School B. [NT 456-457]
  9. Student's mother remained highly resistant to the change in middle schools and delayed the change through appealing to District administration, filing a Complaint with the Pennsylvania Department of Education Bureau of Special Education regarding non-implementation of the IEP [which was resolved by PDE/BSE in the District's favor], scheduling and then canceling a mediation session, delaying scheduling of the IEP meeting, and requesting a due process hearing but canceling it the night before the first session. [NT 286-297, 302, 458, 460-464, 470, 472-473; S-21, S-26]
  10. Finally, having determined no legitimate reason to delay the transfer any longer, on May 1, 2013 the District convened an IEP meeting at Middle School A to plan Student's May 6<sup>th</sup> transition to Middle School B, Student's neighborhood school, and to amend the IEP as necessary given the transfer. District personnel in attendance at the IEP meeting were staff from Middle School A, the then-assistant principal of Middle School B, the District's director of special education, the coordinator of special education and a behavior consultant. Mother was not in attendance. [NT 41-42, 66, 221, 288, 468; S-27]
  11. The then-assistant principal of Middle School B [currently the principal of Middle School B] holds Pennsylvania certification as a special education teacher, among other certifications. She attended the May 2013 IEP meeting for the purpose of describing Middle School B's programming and service delivery to the parent[s]. [NT 21, 38, 40, 216-218]
  12. Student's IEP was able to be implemented at Middle School B; the transfer was a change of location not a change in special education placement. [NT 73, 125]
  13. Unfortunately, rather than allow the transfer, Student's mother removed Student from school entirely on May 3, 2013 through the end of the 6<sup>th</sup> grade year. Student did not return to school until October 24, 2013, well after the start of the 7<sup>th</sup> grade year, when the Children and Youth Agency became involved and the Guardian obtained physical custody. [NT 48-50, 302, 473-475; S-39]

14. The Guardian did not become the educational decision-maker until January 2014. Although the District wanted to have an IEP meeting right after Student resumed attending school the Children and Youth Agency advised the district to hold off until the Guardian's position as educational decision maker was legally established. However there was a meeting on November 19<sup>th</sup> but nothing could be finalized until the Guardian received educational decision making authority. [NT 112-113, 126; S-39]
15. When Student actually entered Middle School B Student adjusted well and seemed happy there and initially the Guardian worked well with the school as had Student's father previously. [NT 457, 475-476]

### IEPs

16. Given the mother's ongoing belief that Student suffered from anxiety, and her noting these concerns as part of parental input on Student's evaluation and subsequent IEPs, the District made provisions in the IEPs to address any potential anxiety that Student might demonstrate. [S-18, S-19a, S-27, S-39, S-42, S-50, S-52, S-62, P-120]
17. The IEP in effect at the end of Student's 5<sup>th</sup> grade marked the beginning of the relevant period [mid-May 2012]. The IEP noted that Student exhibited no behavior problems requiring discipline and no overt anxiety and therefore an FBA was not needed and no behavior goals were needed. However the IEP provided for data collection in order to ascertain if at any point an FBA was needed. [S-18]
18. Although Student was generally attentive, Student's ADHD manifested itself in off-task behavior one to four times an hour. The IEP addressed Student's ADHD through Specially Designed Instructions [SDIs] that provided extra time for assignment completion, supports to help Student stay organized, morning and afternoon check-ins to be sure Student had materials needed for classes and for homework, cueing, use of an assignment book, and parent/school communication. [S-18]
19. At the start of 6<sup>th</sup> grade Student was beginning to engage in some behaviors such as talking to others and calling out in class, requiring several redirections to stay on task. An FBA was completed in early October with input from mother and father and a behavior plan was created and implemented, and this was so noted in the November 2012 IEP. [NT 263; S-19a]
20. Student continued to be provided with SDIs to address focus and organization/executive functioning difficulties caused by ADHD. [S19a]
21. The IEP addressed Student's need in math through a math goal directed toward specific gaps in skills. [NT 255; S-18]

22. Although Student was maintaining a B average in math, Student was changed to a smaller math class to help fill in the gaps that may have been created by Student's previous extensive absences. [NT 352-355; S19a]
23. Student's case manager at Middle School A saw no evidence of anxiety - no nervousness, no crying, no outbursts and no panic attacks. [NT 307-308, 339-340]
24. While Student remained in father's custody mother expressed no concerns with Student's IEP and was reportedly pleased with the November 2012 IEP. When custody transferred to mother, she noted approval of Student's behaviors but requested that the IEP focus more on academics even though Student was on grade level in reading and math. Student's teacher became concerned because mother's requests were for changes/additions to the IEP that were already covered in the IEP; the teacher scheduled a meeting with mother. [NT 273-274, 284, 287, 300; P-46, P-47]
25. As recounted above, difficulties arose regarding Student's need to transfer schools. Eventually the IEP meeting was held on May 1, 2013 to address any issues that might surround Student's transfer. Being well aware of the mother's continued belief that Student experienced anxiety, the District developed a transition plan for Student to allay any possible apprehension that changing schools may cause Student. [NT 43-45, 224, 265; S-27]
26. The transition plan included the assignment of an administrative teacher at Middle School B to meet Student at the beginning and the end of each day to assist with organizing Student's materials<sup>5</sup>. [NT 47-49, 222; S-27]
27. The transition plan included the assignment of a peer buddy for Student's first week at Middle School B. Student and the peer buddy established a relationship that went beyond Student's first week of school. [NT 44, 70, 223; S-27]
28. Because Student had met the math goal in the previous IEP a new math goal was added. [NT 301-302; S-27]
29. After the Children and Youth Agency became involved and mother no longer had custody, Student re-entered school [Middle School B] for 7<sup>th</sup> grade with good motivation and without behavior issues and Student continued to make academic and behavioral progress. [NT 48-50, 70; S-52]
30. Other than one mid-year altercation with another peer Student enjoyed good relationships with fellow students at Middle School B. [NT 121, 238]

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<sup>5</sup> On Student's first day at Middle School B the assigned teacher was out so the principal saw to it that arrangements were made for another teacher to meet Student. The Guardian disagrees that arrangements had been made, asserting that she herself recruited a teacher to escort Student to class. While I find the principal credible on this point of disagreement, even if the Guardian's version were correct there was no denial of FAPE. [NT 48-52, 69-70; P-1]

31. Student did strongly dislike reading intervention class, but this seemed to be a function of a personality clash between Student and the reading teacher. Student was provided with accommodations as well as support from a behavior specialist to support success in this class, but these did not ameliorate Student's dislike of the teacher nor Student's belief that the class was not necessary for Student. After one notable disciplinary incident however, Student's deportment improved substantially and the reading teacher was providing positive feedback. The reading teacher's testimony did not provide anything to contradict the explanation that Student simply and heartily disliked the class. [NT 127-129, 434-440; P-37, P-98]
32. Student had no behavior problems in class and teachers in all Student's other subjects were pleased with Student's grade-level progress and found Student to be easily redirected when necessary. Student's main difficulty was completing assignments. [NT 122, 129, 131, 147-151, 154, 173, 186, 213, 231, 234-235, 300, 352]
33. The District provided SDIs and accommodations for Student's ADHD such as a person to check in with daily about any concerns, a person to assist with organizing materials for the day and for homework, verbal and non-verbal cues in the classroom to draw attention to task, modified materials, time extensions for assignments and a behavior consultant to work on strategies Student could use to keep focused [for example "fidget toys"<sup>6</sup>] as well as to implement a behavior plan<sup>7</sup> to assist Student to navigate the class Student did not like, to complete assignments, etc . [NT 136-137, 142, 244-246, 466-468; S-38]
34. Student received additional math instruction in a small regular education class taught by a special education teacher. The class helped fill in the gaps in Student's math skills given Student's history of absences from instruction. Student did quite well in this class. [NT 164-165, 170-174, 184-185]
35. Once the District received documentation of the Guardian's having been awarded legal custody<sup>8</sup> the District obtained her permission and reevaluated Student. The reevaluation was completed in April 2014.<sup>9</sup> An IEP meeting was held in May

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<sup>6</sup> Contrary to what might be expected, some learners stay focused and learn more easily if they have something to do with their hands, and "fidget toys" are part of a sensory diet. This makes sense if one thinks of the common habit of doodling while having a telephone conversation at one's desk. Student was permitted to choose the fidget toys from a website. At some point Student stopped wanting to use the fidget toys. [NT 264-265, 376-377]

<sup>7</sup> For a time the Guardian directed that the use of Student's favorite reinforcer be stopped but then allowed the particular reinforcer again. The behavior specialist worked with Student to identify other reinforcers; a particular type of pen worked well. [NT 129, 152]

<sup>8</sup> In January 2014.

<sup>9</sup> This is the evaluation with which the guardian disagreed and her request for an IEE occasioned the first decision in this matter. The reevaluation, including its conclusions that Student continued to be eligible for special education under the OHI classification only, was found to be appropriate in all respects except that the FBA, while not inappropriate on its face, was performed by an individual whom this hearing officer

- following the April evaluation. The IEP contained a behavior plan to address Student's manifestations of ADHD, and goals and specially designed instruction to address Student's other needs<sup>10</sup>. [NT 132-134; S-52, S-62]
36. Although anxiety interference was not observed in the school setting, given the Guardian's continued concerns in this area the District obtained a psychoeducational program, the "Anxiety Program" which was included in the May 2014 IEP. [NT 340-341, 421-422; S-62]
  37. Student evidenced motivation and enthusiasm at school about classes that Student did not evidence at home. Whereas at school Student could do a task, at home Student would tell the Guardian that Student did not know how to do the same task. [NT 146-147]
  38. The Guardian indicated her frustration with the homework experience and at one point declared that she was going to withdraw from the homework process with which she had formerly been very involved. It was likely that at home Student needed the same types of cues and prompts to complete work as Student received in school, and that this was understandably wearying for the Guardian. [NT 143-145]
  39. The District noted a change in the Guardian's attitude and cooperation around the time of the April reevaluation and the May IEP, and at the same time noted a change in Student's behavior and attitude. The IEP team made adjustments to Student's program to address this change. Student lost interest in "point sheets" for rewards in the early spring of 2014 but again became interested and cooperative around May of that year forward to the end of the year. [NT 129, 141, 151, 156, 238, 439, 476-477; S-62, P-20]
  40. The Guardian wanted the IEP to state that Student had a learning disability. Given that neither of the District's evaluations found Student to have a learning disability the District refused to accede to the Guardian's wishes. [NT 333-335; P-28]

### Legal Basis

**Burden of Proof:** The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. In this case the Guardian asked for

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judged to be unqualified. The hearing officer ordered that the District have a new FBA conducted by a properly credentialed professional if and when Student returned to the District.

<sup>10</sup> The Guardian did not approve this IEP so it was never implemented and Student left the District at the end of the 2014-1015 school year.



the hearing and thus bore the burden of proof. Courts in this jurisdiction have generally required that the filing party meet their burden of persuasion by a preponderance of the evidence. *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). 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. If the parties provide evidence that is equally balanced, or in “equipoise”, then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012); *Ramsey*. As the evidence was not equally balanced the Schaffer rule was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses”. *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). All the witnesses the Guardian called for her case in chief were employees of the District, and the District called one additional District witness for its case in chief. The Guardian did not testify. I found each of the witnesses to be credible, and virtually without exception they conveyed a sincere concern for Student’s welfare and a positive attitude towards Student. The director of special education’s passionate and caring testimony was particularly persuasive; the District and the District’s children are fortunate indeed to have such a dedicated and compassionate person working on their behalf.

Standards for a Free Appropriate Public Education: Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §711.1 *et seq.* and 34 C.F.R. §300.300, *et seq.* a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA). A FAPE is "an educational instruction specially designed . . . to meet the unique needs of a child with a disability, coupled with any additional 'related services' that are 'required to assist a child with a disability to benefit from [that instruction].'" *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982); *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 127 S. Ct. 1994, 167 L. Ed. 2d 904 (2007) (citing 20 U.S.C. § 1401(29)); see also 20 U.S.C. §§ 1401(9), (26)(A). In determining whether an LEA has offered an appropriate program, the proper standard is whether the proposed program is reasonably calculated to confer meaningful educational benefit. *Rowley*. “Meaningful benefit” means that an eligible student’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3<sup>RD</sup> Cir. 1999). This standard has been affirmed repeatedly. See for example, *Coleman v. Pottstown School Dist.*, 983F.Supp.2d 543 (E.D. PA 2013)

However, under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, an LEA is not required to provide an eligible student with services designed to provide the best possible education to maximize educational benefits or to maximize the child's potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995). Pennsylvania's Eastern District Court wrote that under the IDEA "schools are held to a minimum baseline standard, a standard that may fail to meet the expectations of the parents of disabled and nondisabled children alike". *Sinan L. et al vs School District of Philadelphia*, 2007 WL 1933021 ([E.D. Pa. 2007]). What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

Compensatory Education: An eligible student to whom a District has denied FAPE is entitled to correction of that situation through compensatory education, an equitable "remedy ... designed to require school districts to belatedly pay expenses that [they] should have paid all along." Compensatory education is given for a period equal to the deprivation and measured from the time that the school district knew or should have known of its failure to provide FAPE. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3<sup>rd</sup> Cir. 2009) (internal quotation marks and citation omitted); *M.C. v. Central Regional School District*, 81 F.3d at 395; *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District*; *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District*.

Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she "has a physical or mental impairment which substantially limits one or more major life activities," or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). "Major life activities" include learning. 34 C.F.R. § 104.3(j)(2)(ii). The obligation to provide FAPE is substantively the same under Section 504 as under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). As the Guardian's claims under Section 504 are coextensive with her claims under the IDEA any potential remedy would satisfy both claims.

## Discussion

The testimony of every witness, and the content of each exhibit, was considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit. The parties' written closings were also carefully considered.

The guardian targeted her allegations of denial of FAPE on three major points – failure to appropriately address Student’s purported anxiety; failure to provide appropriate academic support, particularly in math; failure to adequately address Student’s needs in the areas of behaviors/ executive functioning.

The Guardian also raised other points, such as her difficulties in obtaining Student’s complete educational file and access to testing records [See Guardian’s Written Closing Statement]. The educational records issue and the testing records issue were addressed by this hearing officer in the weeks before, and at the end of, the hearing session on July 25<sup>th</sup> and will not be further addressed here. Other points raised by the Guardian – teachers’ grading practices, which teacher met Student on the first day of Middle School B - while clearly of great importance to the Guardian are not directly relevant to the inquiry regarding a procedural or substantive denial of FAPE to Student. Likewise the Guardian’s desire to address purported attempts by the District in concert with ODR to change/assign legal custody to father [HO-1 Offer of Proof] is not a matter under my jurisdiction. Although the Guardian, proceeding pro se, was given wide latitude to elicit testimony and/or to introduce documentary evidence on these points so that she could be fully heard, I conclude that they do not bear relevance to the issues of whether Student’s IEPs were appropriate and whether they were implemented appropriately so as to afford Student FAPE.

Anxiety: The Guardian presents a belief that Student has an anxiety disorder that the District has ignored. Previously the mother had also claimed that Student suffered from an anxiety disorder and provided input to this effect in Student’s IEP[s] governing the beginning of the relevant period; as is appropriate, this parental input was included in the IEPs. However, other than the repeated assertions, the family has not in the past or presently produced any documentation of a clinical diagnosis of anxiety disorder from any third party mental health professional. Further, although the mother and/or Guardian seem to believe that school – types of peers, academic demands, location of services – is the primary source of any anxiety they may have observed it is here noted that there are a myriad of reasons, known as well as likely unknown, within the family itself to seek causes and triggers. Although the chronology is not crystal clear, known factors are that during the relevant period the child moved from mother, to father, back to mother, and finally to the Guardian; the mother was in conflict with the District over a proposed change in schools; Student was withheld from school for a substantial period of time, the last two months of the 2012-2013 school year and the first two months of the 2013-2014 school years [as well as having previously been withheld from school to the point where the District filed a truancy petition against the mother]; and/or mother and father being in such a degree of conflict that mother refused to attend a mediation session if father were present. Based on the totality of the testimony of all the witnesses, it is likely that, if anything, school was a haven for Student.

That having been said, the District did not ignore the family’s viewpoint that Student had anxiety. In addition to properly including the mother’s concerns into the IEP, the District put a variety of interventions in place, many proactive, to prevent, address and/or decrease any manifestation of anxiety in the school setting.

Mathematics and Other Academic Subjects: Student's evaluations establish clearly that Student does not have a specific learning disability in math, reading, or written expression. That is not to say that Student's ADHD and Student's appalling attendance record prior to the end of October 2013 did not contribute to weaknesses in these academic areas, but a weakness does not equate to a disability. However, an IEP must address all areas of a student's needs, whether or not these areas are directly related to the student's IDEA classification. The District indeed addressed Student's weaknesses in mathematics through the IEPs and provided additional assistance in organization and study skills to enable Student to be successful. I cannot agree with the Guardian that the District failed in its obligation to Student in this regard.

Behavior/Executive Functioning: In each IEP the District provided SDI to address the manifestations of Student's ADHD. The case managers and the behavior specialist worked diligently on these issues throughout the relevant period of time addressed in the hearing. The teachers' testimony demonstrated that they each knew about the issues related to Student's disability, that they were familiar with Student's IEP and that they implemented the IEP.

Finally, the record reflects that the Guardian believes Student to be eligible under the classification of Specific Learning Disability in addition to Other Health Impairment [P-28]. However, there is no objective evidence from either of the two psychoeducational evaluations completed by the District, or from Student's experiences in the school setting, to lead to the conclusion that Student has a learning disability.

Dicta: This hearing officer observed the Guardian's clear commitment to Student's welfare, and notes that her commitment is particularly commendable given that she is caring for a child who not only lacked a stable home situation but who had also missed large segments of formal education during the important late elementary and early middle school months. The dedication of District personnel was likewise observed, and it was clear that nearly every one of Student's teachers as well as District administrators liked Student and helped Student to succeed. Should the Guardian decide to reenroll Student in the District schools, it is sincerely hoped that the adults will be able to put their differences aside and work together in Student's best interests.

Order

It is hereby ordered that:

The School District did not deny Student FAPE.

Student is not entitled to compensatory education.

Any claims not specifically addressed by this decision and order are denied and dismissed.

October 10, 2014

Date

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official