

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: T.D.

Date of Birth: [redacted]

Dates of Hearing:

October 2, 2014

October 3, 2014

October 9, 2014

October 10, 2014

November 5, 2014

November 6, 2014

November 11, 2014

November 12, 2014

CLOSED HEARING

ODR Case # 15100-1314KE & 15417-1415KE

Parties to the Hearing:

Representative:

Parent[s]

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Date Record Closed:

December 15, 2014

Date of Decision:

January 20, 2015

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION

Student¹ is a pre-teenage student residing in the Pocono Mountain School District (“District”). The parties’ dispute arises out of a complex, and pointed, factual mosaic, dating from January 2012, which is set forth in the *Findings of Fact* section below.

In terms of the parties’ positions, the student’s parent claims that the student is eligible as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)² and that the District failed to identify the student. As a result of this claim, and consequent lack of an individualized education plan (“IEP”), the parent claims that the student is owed compensatory education from the spring of 2012 through the remainder of the 2011-2012 school year, and the entire 2012-2013 school year. Subsequently, the parent undertook a unilateral private placement for the student, and so the parent seeks tuition reimbursement for this private placement in the 2013-2014 school year and the current 2014-2015 school year.

Parent also asserts that the District has not met its obligations to the student under the Rehabilitation Act of 1973, particularly Section 504 of

¹ To protect the confidentiality of the student, the generic use of “student”, rather than a name or gender-specific pronouns, will be employed and will be substituted in direct quotes throughout the decision.

² It is this hearing officer’s preference to cite to the implementing regulation of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”) wherein Pennsylvania education regulations explicitly adopt most provisions of 34 C.F.R. §§300.1-300.818.

that statute (“Section 504”).³ The District counters that, at all times, it met its obligations to the student under IDEA and Section 504.

For the reasons set forth below, I find in favor of the parent.

ISSUES

1. Did the District meet its obligations to the student under IDEA?
2. Did the District meet its obligations to the student under Section 504?
3. If the answer to either question #1 or #2, or both questions, is/are answered in the negative, is the student entitled to compensatory education?
4. If the answer to either question #1 or #2, or both of those questions, is/are answered in the negative, is the parent entitled to tuition reimbursement?

FINDINGS OF FACT

1. The student attended District schools since kindergarten. (School District Exhibit [“S”]-33).
2. In the 2011-2012 school year, the student entered 3rd grade. (S-33).
3. From the perspectives of academics, behavior, discipline, and overall health/engagement in the school environment, the

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. *See also* 22 PA Code §§15.1-15.11 (“Chapter 15”) wherein Pennsylvania education regulations explicitly adopt the provisions of 34 C.F.R. §§104.1-104.61.

student's experience in the District through the beginning of 3rd grade was unremarkable. (S-33; NT at).

2011-2012/3rd Grade

4. At the outset of 3rd grade, the student's participation in school was as it had been. (NT at 536-537, 855, 883).
5. In approximately December 2011, by later report of the student, a fellow student ("Student Z") surreptitiously began to inappropriately touch the student's private parts and rear end. (NT at 228-229).
6. In December 2011, the student began to exhibit defiant behavior at home. (Parent's Exhibit ["P"] P-5; NT at 235-237).
7. In mid-December 2011, the student was disciplined for disrespect and using profanity during a teacher's review of bus safety procedures. (P-4).
8. In January 2012, the student resumed seeing a private counselor, a counselor the student had seen earlier for issues related to the [family]. (P-5; NT at 832-834.)
9. In mid-January 2012, in an unrelated incident, an instructor at the [area of leisure interest] school which the student attended was arrested for statutory rape after multiple sexual encounters with an underage student at the [area of leisure interest] school. (S-47).

10. Following the [area of leisure interest] school incident, the [area of leisure interest] school held a community-based education session for students of the school and their parents, with multiple speakers addressing issues related to sexual abuse. The education session contained content that characterized any unwanted sexual contact or conduct as 'rape'. The student attended the education session. (S-47; NT at 230-232, 234-235).
11. On Thursday, January 26, 2012, after school, the student informed [a sibling] that the student had been 'raped' in school by a fellow student. The student asked the [sibling] to keep it a secret, but the [sibling] informed the student [he/she] could not keep confidence as a secret and that the student needed to tell their mother, or the older [sibling] would. The student's [sibling] phoned the mother at work, telling the mother that it was imperative the mother come home because the student needed to share something with her. (NT at 227-230).
12. At home in the late afternoon, the student reluctantly told the mother about the incidents which had begun, by the student's report, in December 2011. The mother clarified with the student the nature of the inappropriate touching and, as it was after school hours, left a voicemail with the school building. (NT at 227-230).
13. The next day, on Friday, January 27, 2012, the student's mother accompanied the student to school and asked to speak

with the building principal. The principal would not make herself available to the student's mother and, ultimately, the building assistant principal met with the student's mother. (NT at 239-242).⁴

14. After the student's mother reported to the assistant principal what the student had told her, the assistant principal met with the student alone. In answer to the assistant principal's questions, the student shared the following: the nature of the touching, the name of Student Z, the locations (in hallways and the cafeteria), the approximate number of times the touching took place, and the name of another student who had allegedly witnessed the events. (P-60; NT at 472-583).
15. Following the meeting with the student and the student's mother, at approximately 9:22 AM on January 27th, the assistant principal emailed the student's teachers and school counselor,

⁴ There is a dispute in the record as to the chronology of interactions and events over the course of January 24-27, 2012. The District's evidence purports to show that the student reported the alleged incidents to the student's mother on Tuesday, January 24th, that the student's mother telephoned the school and spoke with the building principal on Wednesday, January 25th, that the building principal interviewed cafeteria personnel on Thursday, January 26th, and that the mother accompanied the student to the school building on the morning of Friday, January 27th. (P-59, P-60; NT at 473-479, 1279-1283). The parent's evidence purports to show that the student reported the alleged incidents to the mother in the late afternoon of Thursday, January 26th, whereupon the mother left a phone message for the principal, that she did not speak directly by telephone with the building principal, and that the mother accompanied the student to the school building the next morning, on Friday, January 27th. (P-5, S-3; NT at 227-230, 237-246, 834-835). Where evidence on these events differed, evidence supporting the mother's testimony on the chronology of events over those days was found to be more credible than evidence supporting the District's version of the chronology.

- indicating that he was investigating allegations of “inappropriate touching” between the student and Student Z. The educators were instructed by the assistant principal to keep the student and Student Z separated that day. (P-61).
16. The assistant principal instructed school counselors to meet with the student and with Student Z. The student recounted largely what had been shared with the assistant principal; Student Z was non-committal about the allegations. (NT at 835-836, 1012-1016).
 17. Following the meeting with the school counselors, they reported back to the assistant principal. The assistant principal did not interview cafeteria workers or interview the student who allegedly witnessed the events. (NT at 539).
 18. The assistant principal told the student’s mother that Student Z had admitted to inappropriately touching the student. (NT at 301-303).
 19. The assistant principal followed up with the student’s mother and the parents of Student Z. At 1:37 PM on January 27th, the assistant principal sent an email to the student’s teachers and the school counselors regarding the student and Student Z indicating, in full: “The situation has been addressed and parents have been contacted. The end result is that they should not be

- near each other in any environment (class, café, assembly) for the rest of the year.” (P-61).
20. On Tuesday, January 31st, Student Z was withdrawn from the District. (P-5; NT at 258-259, 837).
 21. In February 2012, the student did not exhibit any problematic behaviors, although the student received a disciplinary notice for lack of homework completion. (S-32).
 22. In early March 2012, the student received three disciplinary notices, one for homework completion, one for lack of a required parental signature, and one for inattention during instructional time. The student’s mother responded in the course of these communications that the student was “having a rough time since all the problems’ in school and on the bus”. (S-32).
 23. In mid-March 2012, the student’s mother emailed the student’s teacher, indicating that the student had told her the student did not wish to attend school in the District and wanted to attend private school. The student’s mother related that the student reported to her that the student “hated” and “can’t stand” school. The mother asked if the teachers had noticed anything amiss with the student; the teachers responded that they had not noticed anything problematic. (P-77 at pages 8-10).
 24. In late March 2012, the student’s mother met with the student’s teachers and school counselor regarding the student’s

- negativity toward school and behavior. A daily check-in/check-out procedure with the school counselor was initiated. (P-5; NT at 287-288, 820-875).
25. In March 2012, the student also began to see a consultant for victims of sexual abuse to discuss the inappropriate touching. (P-5; NT at 1462-1527).
26. In March and April 2012, the student complained of difficulty seeing. The student underwent two visual evaluations, one by the student's pediatrician in March 2012 and, upon that doctor's recommendation, a more extensive visual processing evaluation in April 2012. (P-1, P-2; NT at 271-276).
27. In the April 2012 visual processing evaluation, the student reported that "my eyes are blurry" and that "random colors in abstract shapes" intruded. These visual interruptions occurred during the week and on weekends. Upon examining the student, the evaluator noted highly variable visual acuities, with the student's responses changing "from line to line and eye to eye regardless of the type of acuity chart used". (P-2).
28. Following the visual examination, the evaluator spoke with the student's mother. The evaluator shared with her that "(the student) truly seemed to believe that (the student) could not see even though (the student) actually could" and inquired "about any life events that (the student) had recently experienced that may

have traumatized (the student).” The student’s mother told the evaluator that the student was a victim of abuse at school and was in therapy because of it. The evaluator concluded: “Because of this information and the tone and results of the exam, it was determined that (the student) was most likely experiencing hysterical amblyopia and not malingering.” (P-2).

29. In late April 2012, the student’s mother shared her concerns with the student’s teacher about potential problems with the student’s eyesight, asking if the teacher had noticed anything in the school environment. The teacher responded that she had not noticed anything amiss. (P-77 at pages 11-12).

30. Upon receiving the April 2012 visual processing report, the student’s mother shared it with building-level administrators. (NT at 273-276).

31. Over the course of January-April 2012, the student’s mother testified credibly that the student’s behavior at home and attitude toward school, as shared with her, had markedly deteriorated and that the student’s continuing eyesight complaints were not resolving. (NT at 224-451).

32. In late April 2012, the student’s mother contacted central office administration to discuss her concern over the events of the spring of 2012. In a conversation with the assistant superintendent, central office administration learned for the first

- time about the December 2011 inappropriate touching and the January 2012 building-level investigation. (P-34; NT at 276-281, 679-736).
33. On May 4, 2012, a large multi-member team gathered to discuss the issues related to the events of December 2011-April 2012. Attendees included: the District superintendent, a District assistant superintendent, the building principal, the assistant principal, a school psychologist, the school counselor, the student's mother, and the sexual abuse consultant who the student had been seeing. (S-3).
34. The meeting included a recounting of events from December 2011-April 2012, including, among other things, the inappropriate touching, the investigation, reports of the changes in the student's behavior, the student's negativity toward school, and the student's vision complaints. (S-3).
35. For the first time, in the May 4th meeting, the student's mother learned to her surprise that the District's building-level administrators and educators did not feel the inappropriate touching had taken place. (NT at 301-303).
36. The District superintendent indicated that central office administration was not informed of the inappropriate touching and, had they been, the investigation would have been handled differently. The superintendent noted that the investigation of the

- reports of inappropriate touching were not handled according to District procedures/protocols for such reports. The superintendent explained, and expressed confidence in, the District's student-safety and anti-bullying programming. (S-3).
37. The District superintendent indicated that the check-in/check-out procedure with the school counselor would continue. (S-3).
38. The District superintendent indicated that efforts would be coordinated with 4th grade teachers and school counselor for a smooth transition to 4th grade. (S-3).
39. The consultant for victims of sexual abuse explained her work with the student. The District indicated an interest in having the consultant provide staff development training for District staff. (S-3).⁵
40. As a result of the May 4th meeting, the District sought permission to evaluate the student, permission which was granted by the student's mother. (P-6, S-2, S-3).
41. At the May 4th meeting, the District's central office administrators showed legitimate concern for the events of December 2011-April 2012, and, coming out of the meeting, the

⁵ Ultimately, the consultant did not have the credentials to meet the District's requirements for professional development services and did not provide any training.

District was proactive in its approach to the student. (NT at 292-304).

42. In May 2012, the student's mother and the District addressed issues related to the student's bus behavior. The student's mother reported to the District that the student was exhibiting defiant behaviors at home. The student also asked the mother about the possibility of cyber-schooling. (P-35 at pages 1-2, P-77 at pages 13-15).
43. In June 2012, at the request of the student's mother, the consultant on victims of sexual abuse wrote a generic "to whom it may concern" letter outlining her understanding of events and her role in consulting with the family, to be supplied when/where the events of the spring of 2012 needed to be explained to a reader. The letter was provided to the District at that time. (P-52, NT at 321-322, 1481-1483).
44. In July 2012, the District issued its evaluation report ("ER"). (P-7, S-4).
45. The July 2012 ER was comprehensive and included teacher input, observations of the student in school, cognitive and achievement testing, and behavior assessments. (P-7, S-4).
46. The July 2012 ER contained multiple instances of qualifying language, indicating that the evaluator considered the inappropriate touching to be only by allegation and

mother/student-report. The July 2012 ER did not include input from administrators about the inappropriate touching and did not include the April 2012 visual processing report, which had been previously provided to the District. (P-7, S-4).

47. The July 2012 ER concluded that the student did not have a disability under the IDEA and was not eligible for special education. (P-7, S-4).
48. Over the course of 3rd grade, the student did not make an inordinate amount of visits to the school nurse, and the student's grades showed academic progress. (P-58, S-33, S-35).

2012-2013/4th Grade

49. In August 2012, the student was promoted to 4th grade and continued to attend school at the District. (S-33).
50. In August 2012, the student's multi-disciplinary team met to discuss the July 2012 ER. The student's mother approved the District's recommendation that the student did not have a disability and did not qualify for special education. At this time, information was shared with the student's 4th grade teachers about the December 2011 inappropriate touching and events in the spring of 2012. The teacher who would be responsible for most of the student's 4th grade instruction/activities (reading, spelling, science, as well as homeroom, recess, and dismissal) was unable to

attend the August 2012 meeting and was not informed later by administrators in attendance about the inappropriate touching or the events of the spring of 2012. (S-6, S-15, P-77 at 19-26; NT at 1111-1113).

51. In October 2012, the student's mother and teacher exchanged emails regarding complaints the student was registering with the student's mother. Teachers indicated that the student's assignments and grades were up-to-date, but one teacher noted that the student was asking to leave class excessively (for a drink or the bathroom). (P-77 at 16-18).
52. In November 2012, the student visited the nurse five times, including three times over two days. The student also received a detention for incomplete work. (P-8, P-58, S-35).
53. In November 2012, the student exhibited disrespect to the primary 4th grade teacher. The student's mother communicated her deep concern about the student and the student's behavior. At this time, the teacher was informed for the first time of the inappropriate touching in December 2011 and the events of the spring of 2012. The teacher shared concerns about the student's assignment-completion. (P-35 at pages 3-6, P-77 at pages 19-26).
54. In late November 2012, the student underwent a vision screening at the District. The student failed a vision acuity test for far vision. (P-9).

55. In late November 2012, the student was involved in an incident on the bus with fellow students. (P-36, S-15).
56. In December 2012, the student had a follow-up private eye examination. The student and the student's mother shared information about "letters swimming around and sometimes sees two images of things". The student was diagnosed with myopia. (P-10).
57. In mid-December 2012, the student's mother and teachers met to discuss the concerns of the student's mother. The District's central office administration was advised of the meeting but did not attend. Again, though, the central office administrator communicated in a supportive and positive way. (P-77 at pages 27-30, P-35 at pages 3-8).
58. In December 2012, the student visited the nurse twice in the first half of the month. (P-58, S-35).
59. In early January 2013, the student's math teacher reported that the student had told her about eye discomfort. (P-77 at page 31).
60. In early January 2013, the student's physician recommended an MRI scan, and the student's mother undertook plans for an independent neuropsychological evaluation. Both of these initiatives were shared with the District. (P-12, P-35 at page 9, P-77 at page 32; NT at 339-340).

61. In late January 2013, the student's mother and reading/spelling teacher corresponded about interventions the teacher had recommended for her class. (P-77 at page 36).
62. In late January 2013, a pediatric neuropsychologist had been retained by the student's mother to perform a comprehensive neuropsychological evaluation. The neuropsychologist provided the student's teachers with behavior scales and checklists. (P-14, P-15, P-16, P-17, P-18, P-19, P-35 at pages 10-11).
63. On the neuropsychological scales/checklists, the student's mathematics teacher recorded that the student "pretty much" had difficulty organizing tasks and activities, avoided or strongly disliked schoolwork or homework that require mental effort, and was easily distracted.⁶ The teacher rated as "very true or often true" the following statements: clings to adults or too dependent, fears he/she might think or do something bad, feels he/she has to be perfect, nervous/high-strung/tense, and too fearful or anxious. Under a section for physical problems, the teacher wrote, in a subsection called eye problems, "words wiggle". (P-16, P-17).
64. On the neuropsychological scales/checklists, the student's social studies teacher did not rate any behavioral pattern as "pretty much" or "very much". The teacher indicated, in a section

⁶ On the instrumentation, the rater was asked to rate 18 behavioral items using a scale of "not at all", "just a little", "pretty much", or "very much". (P-16, P-18, P-19).

for concerns about the pupil: “(The student’s) absences from school. (The student) misses class time and needs to make up work.” The teacher did not rate any behavioral observation as “very true or often true”. (P-18).

65. On the neuropsychological scales/checklists, the student’s reading/spelling/science/homeroom teacher did not rate any behavioral pattern as “pretty much” or “very much”. The teacher indicated that the student behaved slightly less appropriately than same-age peers. The teacher indicated, in a section for concerns about the pupil: “I am concerned with [the student’s] constant need to leave the room to go to the nurse. [The student] tells me [the student] does not feel well (almost) all the time. But when we are doing a fun activity or playing at recess [the student] never complains. I just need to remind [the student]...to try to stay in class and usually it works and [the student] seems to forget [the student] wants to leave.”⁷ The teacher did not rate any behavioral observation as “very true or often true”. Under the section for physical problems, the teacher wrote, in the sub-section called eye problems, “mother believes”. (P-19).

66. In late January 2013, the student was involved in an altercation with another student on the bus. (P-20).

⁷ The use of “student” is substituted for the student’s name or gender-specific pronouns. See footnote 1. The word “almost”, however, was presented as a parenthetical by the teacher.

67. In January 2013, the student twice visited the nurse's office. (P-58, S-35).
68. In early February 2013, the student's mother voiced concerns to the school counselor that the student continued to complain of struggling with vision and school-based complaints, especially with the classes with the reading/spelling/science teacher. (P-36, S-15).
69. In February 2013, as part of the neuropsychological evaluation, the neuropsychologist asked mother to request an adaptive behavioral assessment by the District, a request which the mother made. (P-35 at pages 12-13, P-77 at 39-40).
70. In mid-February 2013, following the mother's request, for the first time on this record, the District's special education administrators were made part of the process for the mother's concerns and the student's programming. (P-35 at pages 14-16).
71. On February 21, 2013, after internal consultation amongst District personnel, including central office administrators, building-level administrators, special education administrators, a District school psychologist, and the student's school counselor, the District explicitly decided not to perform the requested

assessment. Instead, it requested permission to evaluate to perform only a records review.⁸ (P-35 at pages 14-17).

72. Later that day, on February 21, 2013, the school psychologist was tasked with communicating the District's decision not to perform the requested assessment. The school psychologist wrote to the same District group, in part: "I need (the mother's) number because I need to call her and explain what we are doing. Being that she and I have spoken in the past (on an unrelated matter) she won't be shocked to hear from me....I will explain to mom that I have read through the (July 2012 ER) which is comprehensive and attempt to make her understand that adaptive rating scales are done for the reason of evaluating for an intellectual disability. (The director of special education) suggested that if she still insists on having adaptive looked at—we will just include it." (P-35 at pages 17-18).

73. In late February 2013, the District sought permission from the mother to perform the records review, permission which the mother granted. (P-21, S-7).

⁸ In an email exchange of February 21, 2013, including all of the District individuals named in this finding of fact, the school counselor confirmed for the group: "I just spoke with (the director of special education) regarding (the student's) situation. Here is our game plan she told us to do. We will issue (a permission to evaluate) for review of records ONLY...". (capitalization in the original). The email went on to detail how the District would handle the records-review process and the neuropsychological report when it was issued. (P-35 at page 17).

74. In February 2013, the student twice visited the nurse's office (P-36, S-15).
75. In March 2013, the student's assignment log shows that the student was not completing reading work, with the mother communicating through the log that the student still complained of vision problems. (P-22, P-23).
76. By the end of March 2013, the student had been assigned detention for missing schoolwork. (P-25).
77. In late March 2013, the student was teased by other students on the bus (related, in the District's disciplinary write-up, to the November 2012 bus incident). (P-24, P-35 at pages 22-25, P-36, P-77 at pages 41-50, S-15, S-32).
78. In March 2013, the student visited the nurse's office three times (one visit on one day, and two visits on another day). (P-36, S-15).
79. As part of the neuropsychological evaluation, the consultant on victims of sexual abuse provided input. (P-31).
80. In early April 2013, the neuropsychologist issued her report. The report was comprehensive, including 25 assessments or assessment procedures (including the teacher's input at P-16, P-17, P-18, and P-19). (P-26).
81. The April 2013 neuropsychological report made two psychological diagnoses: the student had somatic complaints

- (vision problems) which had no physical or organic etiology leading to a diagnosis of conversion disorder and slightly elevated anxiety which led to a diagnosis of anxiety disorder/not otherwise specified. (P-26 at pages 23-24).
82. The April 2013 neuropsychological report found that the student did not have a specific learning disability, or attention-deficit hyperactivity disorders. (P-26 at pages 23-24).
83. Conversion disorder is a condition where an individual manifests one or more symptoms or deficits affecting voluntary motor or sensory function which is “preceded by conflict or other stressors”, a condition which “starts as a mental or emotional crisis—a scary or stressful incident of some kind—and converts to a physical problem”. (P-27, P-28).
84. In diagnosing conversion disorder, the neuropsychologist explicitly noted that student met the criteria for diagnosis, including the context of the inappropriate touching incident of December 2011. (P-26 at pages 6-7 and 23-24, P-27).
85. The April 2013 neuropsychological report noted a high degree of consistency between the mother’s input and the teacher’s input, especially for physical (somatic) complaints and internalizing problems. (P-26 at pages 19-20).
86. In April 2013, the student’s mother shared the diagnosis of conversion disorder, and details about the condition, but did not

share the neuropsychological report with the District.⁹ The District director of special education researched the condition. (P-35 at pages 26-43, P-77 at pages 52-53; NT at 748-751).

87. In anticipation of a mid-April 2013 meeting with the student's mother, without having seen the neuropsychological report, the District pre-determined that the student would not qualify for services. The District's special education director communicated to the District superintendent and assistant superintendent that, after a meeting including the director of special education, the building principal, the school counselor, and the school psychologist, the District would seek to secure the neuropsychological report from the student's mother and that the school psychologist would review it. As of the date of the email, April 20, 2013, the director of special education reiterated that "it does not appear the student will meet the eligibility criteria" under IDEA and that "(the student's) disorder is not substantially limiting a major life activity." (P-35 at page 43).

88. As part of these April 2013 communications, the student's mother queried the District about having the student attend a different District elementary school in the 2013-2014 school year, the student's 5th grade year. The District characterized the mother

⁹ It is unclear, exactly, when the student's mother shared the April 2013 neuropsychological report. Certainly, the District school psychologist had it for inclusion in the District's May 10, 2013 ER (P-41, S-9).

and this request as being “difficult”. In anticipation of a meeting with the student’s mother, the superintendent communicated the following to the assistant superintendent and building level administrators: “Seems like changing schools is her main mission!”, to which the assistant superintendent (replying to all) responded: “Yes it does—it should be very interesting meeting with the team.” (P-35 at pages 38, 43-45; NT at 718-719).

89. In April 2013, the student’s mother corresponded with various District employees about difficulties regarding the student taking the PSSA state assessment, difficulties with the student’s reading/spelling/science teacher, and school reassignment for 5th grade. (P-33, P-35 at pages 45-53, P-77 at page 54).
90. On April 29, 2013, the student’s mother contacted a non-profit education law center regarding concerns about the student. (P-77 at page 55).
91. In April 2013, the student visited the nurse’s office four times. (P-58, S-35).
92. On May 10, 2013, the District issued an ER based on records review which included the neuropsychological report. (P-41, S-9).
93. On the afternoon of May 14, 2013, the student’s mother met with a school-based team, including the director of special education, the building assistant principal, a District school

psychologist, the school counselor, and a teacher. The student's mother shared the April 2013 neuropsychological report with that team. All agreed that the student did not require an IEP. The District sought to review the document in light of Section 504 eligibility. The District continued to stand by its pre-determination that the student would not qualify for services under Section 504. (P-42, P-43, P-77 at page 57, S-10).

94. On May 14, 2013, the student's mother gave permission for the District to evaluate the student for potential Section 504/Chapter 15 eligibility and services. The student's mother also gave permission for the District to speak directly to the student about the student's feelings about programming, school reassignment, etc. (P-44, S-11, S-46).

95. The District director of special education and the student's school counselor met with the student later that day, May 14th. The conversation centered entirely on the student's feelings regarding school assignment. (P-46).

96. On May 15, 2013, the student's mother emailed to say that, in discussing the District's interview of the student, the student's mother took offense at the nature and tone of the interview. (P-35 at page 54-60, P-46, P-77 at 58-59).

97. On May 15, 2013, in a pointed email exchange with the District director of special education, the student's mother

- referenced that the student was “the victim of a violent crime”. The director of special education replied, asking: “Was this alleged violent crime reported to the police?”. (P-77 at 60-61).
98. In May 2013, the student had multiple incomplete assignments in various classes. The student’s mother communicated her displeasure over repeated indications that the student was not completing work. The student received detention for incomplete work. (P-47, P-49, P-50).
99. In late May 2013, the student was involved in a physical altercation with another student. (P-48).
100. In May 2013, the student visited the nurse’s office four times (including two visits on one day). (P-58, S-35).
101. On June 2, 2013, the District received a request for records from the private school where ultimately, as seen below, the student enrolled. (S-13).
102. On June 5, 2013, the District issued (by email and U.S. mail) an invitation to participate in a June 11th Section 504/Chapter 15 meeting to review the student’s eligibility for services. (S-14, P-35 at pages 64-65, P-51).
103. On June 7, 2013, the student’s mother responded by email that she could not arrange her schedule for a June 11th meeting. Based on her schedule, the student’s mother offered June 19th as a meeting date. (P-35 at pages 64-65).

104. June 19, 2013 was the last day of school. The school counselor indicated that the teachers' schedules could potentially be arranged for that day; the District director of special education responded to the school counselor: "That is impossible". (P-35 at pages 66-68).
105. Based on the availability of the District director of special education, the District scheduled a meeting for June 21st. On June 19th, the student's mother emailed to say she could not attend the meeting and would contact the District to schedule a new meeting date. (S-14, P-35 at pages 66-72, 75-79).
106. On June 19, 2013, the building assistant principal emailed to say that he would be the point-of-contact over the summer break. (P-35 at page 80).
107. On June 20, 2013, the private school contacted the District a second time for the student's records. (S-13).
108. On July 1, 2013, the building assistant principal emailed the superintendent, building principal, director of special education, supervisor of special education, school psychologist, school counselor (and another individual unidentified in these proceedings), indicating that a request for the student's records had been received from the private placement and the records had been sent. (P-35 at page 81).

109. At some point in the summer of 2013, the District unilaterally dis-enrolled the student without notifying the parent and did not consider the student to be on its rolls. (P-35 at page 85).
110. On August 9, 2013, the student's mother emailed the building assistant principal, indicating that she would like to convene the Section 504/Chapter 15 team. On August 12th, the assistant principal asked if, given the records request from the private placement, the student was returning to the District. That same day, the student's mother responded that the records request was a necessary precursor to potential enrollment and that she was undecided about enrolling the student. (P-35 at pages 82-84, S-51).
111. On August 12, 2013, after receiving the email from the student's mother, the assistant principal emailed the director of special education indicating that the student would be added back to the District's rolls after its unilateral dis-enrollment earlier in the summer. The assistant principal asked about the mother's request to convene the Section 504/Chapter 15 team; the director of special education responded: "There is no reason to bring the staff in before the start of school." (P-35 at page 85.)
112. On August 13, 2013, after an email exchange with the student's mother about attendees at the Section 504/Chapter 15

meeting, the assistant principal emailed the District director of special education regarding the District's pre-determination: "This email JUST came in from [parent]. Should I tell her (via email) we feel a 504 is not necessary?" (capitalization in the original). (P-35 at page 31).

113. On August 19, 2013, the student's mother informed the District by letter that she was withdrawing the student and enrolling the student in the private placement. The student was formally dis-enrolled, this time with notice to parent. The student was formally dis-enrolled on August 21st. (P-35 at pages 89-90, S-16, S-17).

2013-2014/5th Grade

114. The student entered the private placement for 5th grade. (P-75).
115. Initially, the student experienced transition issues when entering 5th grade. The student exhibited social and emotional issues and frequently visited the nurse. By the middle of the school year, however, the student had adjusted and these issues resolved. (NT at 1531-1533, 1586-1589).
116. The private placement does not "implement" IEPs and Section 504 plans but does utilize the accommodations in those

documents for individualizing instruction and supports for students. (NT at 1586).

117. In September 2013, the District shared numerous internal communications about whether, and if so how, to secure releases of information from the student's mother to share information about the student Section 504/Chapter 15 process. (P-35 at pages 91-101).
118. In October 2013, after securing the necessary releases, the District provided the Section 504/Chapter 15 information to the private placement. (S-19).
119. In November 2013, the student's mother sought a private psychoeducational consultation with an independent school psychologist. (S-20; NT at 170).
120. The private school psychologist did not perform an evaluation. His consultation was based on records review, and input from the student's mother and private placement teachers, including formal assessment. The private school psychologist did not speak with anyone at the District. (S-20; NT at 170-172).
121. In November 2013, the student was still experiencing social/emotional/academic difficulties in the private placement, a fact reflected in the private school psychologist's consultation. (S-20; NT at 1531-1533, 1586-1589).

122. The private school psychologist opined that the student appeared to be a student who qualified for services under the IDEA as a student with an emotional disturbance and who required special education/related services to meet the student's needs. The private school psychologist was explicit, however, that these findings were not based on a comprehensive evaluation and were "limited in scope". The private school psychologist recommended further, comprehensive evaluation. (S-20).
123. In November 2013, the student's mother provided the private school psychologist's consultation report to the District. The District requested permission to evaluate the student. For the first time on this record, counsel for the District and parent's counsel were involved and copied on communications. The student's mother granted permission for the District evaluation. (P-64, P-65, S-21, S-22).
124. In December 2013, the District issued an addendum to the May 2013 ER, an addendum which incorporated the findings and conclusions of the private school psychologist. (P-66, S-23).
125. In the December 2013 ER addendum, a District school psychologist recommended, in line with the recommendation of the private school psychologist, that a comprehensive evaluation be undertaken. The addendum also recommended resumption of the

Section 504/Chapter 15 process initiated in May 2013. (P-66, S-23).

126. On December 6, 2013, the same day the December 2013 ER addendum was issued, the student's Section 504/Chapter 15 process was resumed. The Section 504/Chapter 15 team determined that the student did not qualify for supports, services, and accommodations under Section 504/Chapter 15. (P-67, S-24).

127. On December 6, 2013, again in line with the recommendations of the private school psychologist and the District school psychologist, the District agreed to provide an independent educational evaluation ("IEE") at District expense, and the District made arrangements for an IEE. (S-26, S-52).

128. In early May 2014, the independent evaluator issued the IEE. (P-69).

129. The May 2014 IEE was comprehensive. It included records review of previous evaluations (both private and District evaluations), multiple and varied cognitive, achievement, social, emotional, behavioral, and specialized assessments, parent input, input from teacher's private placement teachers, and classroom observations. (P-69).

130. In the May 2014 IEE, the independent evaluator found that the student did not qualify as an eligible student under IDEA. But the independent evaluator concluded that the student "is a child

with a disability (i.e., Conversion Disorder and Anxiety Disorder/Not Otherwise Specified)” and “it is clear that (the student) qualifies for a Section 504 Accommodation Plan based on (the student’s) diagnoses and requires accommodations.” The independent evaluator went on to detail examples of potential accommodations. (P-69 at page 33).

131. The independent evaluator recommended follow-up speech and language and central auditory processing evaluations. (P-69 at page 33).

132. The independent evaluator also explicitly recommended that the student’s mother and the District “discuss and consider having (the student) remain at the (private placement) as it appears (the student’s) socio-emotional and academics needs [sic] are being met in this setting.” (P-69 at page 33).

133. At the hearing, the independent evaluator testified credibly that, in his opinion, the student was inappropriately touched in December 2011 and as reported to the District in January 2012. (NT at 89-91).

134. At the hearing, the independent evaluator testified credibly that the private placement was appropriate for the student and that it would be inappropriate and detrimental to change that placement. (NT at 89-90).

135. The student successfully completed 5th grade at the private placement. (P-75; NT at pages 1528-1603).

136. On June 12, 2014, the District issued an ER, based on the May 2014 IEE, finding that the student had a disability but did not require special education. The June 2014 ER recommended that the student be provided with a Section 504 plan. (P-70, P-71, S-27).

2014-2015/6th Grade

137. The student returned to the private placement for the current school year. The student continues to have academic, social, and behavioral progress at the private placement. (P-79, P-82; NT at 1528-1603).

Special Education Due Process

138. On June 3, 2014, the student's mother filed the special education complaint that led to these proceedings. (Hearing Officer Exhibit ["HO"]-1).

139. The parties scheduled a meeting for June 18, 2014, a meeting which would serve the dual purpose of a multi-disciplinary team meeting to discuss a Section 504 plan and the resolution meeting required as the result of the filing of parent's complaint. On June 16th, the student's maternal grandmother passed away.

- Parent's counsel first, and ultimately the student's mother, attempted to reschedule the June 18th meeting as the student's mother needed to attend to funeral arrangements and other matters related to her own mother's passing. (P-77 at pages 62-71).
140. The District, through its counsel, was resistant and unsympathetic regarding the rescheduling request. Parent's counsel sought the intervention of this hearing officer, who, new to the matter, declined to issue an order to the parties vis a vis the resolution meeting. This hearing officer urged the parties to collaborate and informed both counsel that while there would be no order, the matter would be allowed to be placed into evidence as it might impact the equities between the parties. (HO-5).
141. Parent's counsel informed District counsel definitively that the student's mother would not be attending the June 18th meeting due to her own mother's passing. Ultimately, the District proceeded with the meeting on June 18th and contacted the student's mother, inquiring why she was not in attendance. (P-77 at pages 62-71).
142. On June 23, 2014, the multi-disciplinary team met to devise a Section 504 plan for the student. (P-71, S-27, S-29, S-31).
143. By allegation in the complaint, the parent claimed that District personnel violated their obligation as mandated reporters under the Child Protective Services Law (23 Pa C.S.A. §§6301, *et.*

seq.) (“CPSL”) for suspected abuse of a child. The student’s mother was instructed to submit clarifying statement on the issue, and the District filed a response. Based on the filings, this hearing officer issued an interim order that the issue of whether mandated reporting or non-reporting under the CPSL could be a potential issue in the hearing, if evidence indicated a nexus between the mandated reporting/non-reporting under the CPSL and the claims in the complaint. (HO-3).

144. For this reason, this hearing officer ordered that the consulting private school psychologist, the independent evaluator, and the student’s mother would testify first to see what, if any, nexus existed between the CPSL mandated reporting issue and the claims in the complaint. (HO-3).

145. These witnesses testified at the first two substantive hearing sessions on October 2, 2014 and October 9, 2014. Based on their testimony and the evidence in those sessions, this hearing officer determined that there was no evidentiary nexus between the reporting/non-reporting of potential abuse under the CPSL and the claims in the complaint. Therefore, issues related to mandated reporting under the CPSL were not made part of the hearing. (HO-6; NT at 1-202, 464-465).

146. The totality of the record supports a finding that, as a matter of fact, the parties cannot engage in a productive, mutually trusting/respectful relationship going forward.

WITNESS CREDIBILITY

- A. The testimony of the student's mother, the independent evaluator, the 3rd grade school counselor, and the consultant on the victims of sexual abuse were all accorded heavy weight.
- B. The testimony of the following individuals was accorded a modicum of weight: the consulting private school psychologist, the building assistant principal, the assistant superintendent, the special education director, both 3rd grade teachers, the supervisor of special education, the 4th grade mathematics teacher, the 4th grade social studies teacher, the District school psychologist, the private school teacher, and the private school principal.
- C. The testimony of the District superintendent, the 4th grade reading/spelling/science teacher, the 4th grade school counselor, and the building principal were accorded very little weight.

DISCUSSION AND CONCLUSIONS OF LAW

IDEA

Under the terms of the IDEA/Chapter 14, an eligible child must be provided with a free appropriate public education (“FAPE”). (34 C.F.R. §300.17). At the outset of providing FAPE to a student, the student must be evaluated and identified through a comprehensive educational evaluation as a student with a disability (34 C.F.R. §300.300-300.311) and must be provided with an IEP (34 C.F.R. §300.320-300.328). Eligibility under IDEA is a two-prong determination, requiring (a) a qualifying identification which (b) requires special education. (34 C.F.R. §300.308).

Here, the student does not qualify as a student with a disability under the IDEA. The student does not require special education to make progress in the educational environment. In fact, the only element of the record where eligibility under IDEA surfaced was in the private school psychology consultation of November 2013 where the evaluator recognized that the consultation was not a comprehensive evaluation. The consultant himself, both in the report and through testimony, was very cautious about the determination and, sagely, recommended that further comprehensive evaluation was necessary. The record in its entirety fully supports the conclusion that, at no time, has the student required special education as the result the diagnosed disability.

Accordingly, the student is not a student with a disability under the terms of IDEA/Chapter 14.

Section 504/FAPE

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §15.1).¹⁰ The provisions of IDEA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (*See generally P.P. v. West Chester Area School District*, 585 F.3d 727 (3d Cir. 2009)).

While the obligations of IDEA/Chapter 14 to evaluate and to identify students with disabilities are much more intricate than Section 504/Chapter 15, school districts are still obliged to perform an evaluation of students who they suspect of having a disability and provide programming or modifications in the educational environment to accommodate the student's disability. (34 C.F.R. §§104.33-104.35; 22 PA Code §§15.5-15.7).

¹⁰ Pennsylvania's Chapter 14, at 22 PA Code §14.101, utilizes the term "student with a disability" for a student who qualifies under IDEA/Chapter 14. Chapter 15, at 22 PA Code §15.2, utilizes the term "protected handicapped student" for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term "student with a disability" will be used in the discussion of both statutory/regulatory frameworks.

Section 504/Chapter 15 Eligibility. Here, the student clearly qualifies as a student with a disability (here, conversion disorder and anxiety disorder/not otherwise specified) who requires accommodations in the educational environment as the result of those disabilities. After a year and a half of educational struggle in the District following the December 2011 inappropriate touching incidents, ultimately leading the student's mother to privately place the student, and the professional insights of two independent examiners, the District recognized this fact.

Section 504/Chapter 15 Programming. Unfortunately, the recognition of the student's disability status under Section 504/Chapter 15 came too late for the District to implement programming for the student in any meaningful way. At the end of the day, in June 2014, the District proposed a Section 504 plan, two and a half years after the inappropriate touching incidents of December 2011 and the District's knowledge of those events in January 2012. But this recognition of the need for support and accommodations came after a litany of careless mis-steps in and, more decisively deliberate mis-service of, the student's educational programming needs. (These issues are outlined further below.) As set forth immediately below, however, the District's acts and omissions did not lead to a denial of FAPE that needs to be remedied through compensatory education.

Compensatory Education. Where a school district has denied a student FAPE under the terms of the IDEA/Chapter 14, compensatory education is an equitable remedy that is available to the student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). Compensatory education is also an available remedy for a student who has been denied FAPE under Section 504/Chapter 15. (Chambers v. School District of Philadelphia, 587 F.3d 176 (3d Cir. 2009); P.P., *infra*; and see Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999) and M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)). Applying the compensatory education approach utilized under IDEA/Chapter 14 claims, where a school district has denied FAPE to a student, the student is entitled to compensatory education from a point where the school district knew or should have known that the student was being denied FAPE, accounting for a period of time from that point for the school district to remedy the denial. (Ridgewood; M.C.).¹¹

Here, the District committed multiple acts and omissions that are problematic (as set forth below). But the record supports a finding that, even though the District mis-handled its investigation of the inappropriate touching in January 2012 (see below), through the end of

¹¹ A student who is denied FAPE “is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” (M.C. at 397).

3rd grade (the 2011-2012 school year), the student's conversion disorder and anxiety disorder were only beginning to emerge. Into the fall of 4th grade (the 2012-2013 school year), manifestations of the student's disabilities were building. By January 2013, as evidenced most poignantly by the input of the student's 4th grade teachers in the neuropsychological evaluation, in addition to the patterns of assignment incompleteness, nursing visits, school resistance, and disciplinary incidents, it is clear that the student's education was being impacted by the conversion disorder and anxiety disorder. Therefore, no later than January 31, 2013, the District knew or should have known that it needed to evaluate the student again. Had the District sought permission to evaluate, roughly by the end of March 2013, the District would have been in a position to have a Section 504 plan in place, especially because, at exactly that moment, in early April 2013 the private neuropsychological report was issued.

Here, though, the fact that the student's mother did not immediately share the April 2013 neuropsychological report could not have aided the District in understanding the complex conversion disorder diagnosis, a diagnosis the school psychologist was not in a position to make. Therefore, the upshot of these chronologies is that the District denied the student FAPE beginning on May 14, 2013, when the student's multi-disciplinary team met to consider the May 2013 ER. As a matter of equity, the student will be awarded an hour of compensatory education

for every school day from May 14, 2013 through the end of that school year.

An award of compensatory education will be made accordingly.

Tuition Reimbursement. Long-standing case law and the explicit provisions of IDEA/Chapter 14 provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); *see also*, 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). While tuition reimbursement claims are relatively rare under Section 504/Chapter 15, it is a remedy which federal District Courts within the 3rd Circuit have awarded (*see* Lauren G. v. West Chester Area School District, 906 F.Supp. 2d. 375 (E.D. Pa. 2012)), applying the same type of analogous reasoning between IDEA and Section 504.

A claim for tuition reimbursement for a denial of FAPE under IDEA/Chapter 14 is gauged through a three-step analysis, commonly referred to as a Burlington-Carter analysis, which has been incorporated into IDEA and Chapter 14. (34 C.F.R. §§300.148(a),(c),(d)(3)). A similar analysis will be utilized to gauge parent's claim in this case.

In the three-step Burlington-Carter analysis, the first step is an examination of whether the school district's programming has denied the

student FAPE. (34 C.F.R. §300.17; Rowley; Ridgewood; M.C. v. Central Regional School District). In this case, the student was denied FAPE when the District failed, as of May 2013, to have a Section 504 plan in place. After a year and a half of school struggles, and a private neuropsychological report in hand that would have allowed the District to fit together the mosaic of the student's disability status and Section 504 plan accommodations, the District failed to provide the requisite supports. Therefore, as of May 2013, the District was denying the student FAPE.

When a school district program at step one is found to be inappropriate, and to have denied FAPE to a student, step two of the Burlington-Carter analysis is an examination of the appropriateness of the private placement which the parent have selected. In this case, the private placement is appropriate. The private placement provides accommodations to students with both IEPs and Section 504 plans. When the student struggled initially at the private placement, a team of educators and the student's mother met to discuss and to program for the issues. The private placement took into account the Section 504 process which was underway in the spring of 2013 as part of this planning. Most persuasively, however, the independent evaluator was clear that the private placement was appropriate and should remain the student's educational placement going forward. Therefore, the private placement was, and remains, an appropriate placement for the student.

Where a school district's program has denied a student FAPE, and a parent's unilateral placement in a private setting provides an appropriate program, the third step of the Burlington-Carter analysis involves a balancing of the equities between the parties. Here, the equities are a critical component of the analysis and, ultimately, the award of tuition reimbursement. The equities weigh decidedly in multiple ways in favor of the student's mother.

When read in its entirety, the record reveals that, after January 2012 when the inappropriate touching came to light, the student's mother regularly communicated and engaged with District personnel at all levels, not only in the spring of 2012, but throughout the 2012-2013 school year. In email after email, the student's mother is relaying information, asking questions, following up and, in every way, making herself available for collaborative approaches to the student's educational needs and programming. As of May 2013, at the meeting which included central office administrators, building-level administrators, and educators, the District seemed to be responding in good faith to these concerns (notwithstanding the January 2013 investigation—closed after three hours without interviewing named witnesses—which was not handled within District protocols).

But then, inexplicably, these efforts by the District stopped. In August 2013, the District did not inform the student's primary teacher of the inappropriate touching incident. The word "inexplicably" is used

because there is not one moment, or one person, on this record to which one can point and say ‘there...that is when things changed between the District and the student’s mother’. And yet things did change. The collaborative, problem-solving approach of May 2013 had morphed, by May 2014, into the District characterizing the student’s mother as “difficult” and the District pre-determining that the student would not qualify for any supports to support the student’s disability. In all of the evidence in this record, both documentary and testamentary, the equities weigh almost uniformly with the student’s mother.

Here, too, the equities weigh against the District in its handling of the dual multi-disciplinary team meeting/resolution meeting. When news was relayed, through counsel to counsel, that the student’s grandmother had died two days prior to the meeting date, one would naturally expect some degree of sympathy and flexibility. The District chose otherwise, generally not to its credit and explicitly as a choice that weighs against it at this step of the analysis.

Accordingly, utilizing an analysis that is analogous to the Burlington-Carter analysis for tuition reimbursement, parent is entitled to reimbursement for both the 2013-2014 and 2014-2015 school years for the unilateral private placement undertaken as the result of the District’s denial of FAPE to the student under Section 504/Chapter 15.

Section 504/Discrimination

In addition to the FAPE provisions of Section 504, its provisions also bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program or otherwise discriminated, has been discriminated against in violation of Section 504 protections. (34 C.F.R. §104.4; S.H. v. Lower Merion School District, 729 F. 3d 248 (3d Cir. 2013); see also Chambers, *infra*.) A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district. (S.H., *infra*).

Here, the District acted with deliberate indifference toward the student regarding the student's disability status. In fact, on multiple occasions, the District acted with deliberate indifference, as follows:

- The January 2012 investigation of the inappropriate touching did not follow District procedures or protocols for handling such reports;
- in February 2013, instead of cooperating with the request of the neuropsychiatrist for an adaptive behavior assessment, the District substituted its own views on the assessment and dissuaded the student's mother from pursuing such a request through the District;

- the persistent pre-determination stance over April-August 2013 that the student did not have a disability and did not qualify for support under Section 504, where the District would collaborate with the student's mother regarding the Section 504/Chapter 15 process and, contemporaneously, share internal communications regarding the District's position that the student would not be receiving services; and
- the secretive, unilateral disenrollment of the student from the District in the summer of 2013.

Accordingly, the order for this decision will include a finding that the District was deliberately indifferent to the needs of the student and discriminated against the student on the basis of disability.

Relationship Between the Parties

The record as a whole, and the experience of this hearing officer in the hearing environment, leads this hearing officer to hold deep and serious doubt as to whether the parties can have a productive relationship, built on mutual trust and respect, regarding the student's educational needs going forward. Indeed, as a finding of fact, it is the considered opinion of this hearing officer that the parties cannot engage in a productive, mutually trusting/respectful relationship. (See Finding of Fact 146). This sentiment from a fact-finding/legal-conclusion

perspective is bolstered by the opinion of the independent evaluator, who opined that the student should remain in the private placement and should not return to the District. While the evaluator's recommendation is specific to the student's programming and the private placement he reviewed as part of the IEE, it is this hearing officer's view that the relationship between the parties has been poisoned irretrievably.

CONCLUSION

The student was denied FAPE from a period beginning in May 2013. Compensatory education and tuition reimbursement will be awarded as remedy for this denial of FAPE. The District discriminated against the student through multiple instances of deliberately indifferent conduct regarding the student's status as a student with a disability.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District denied the student a free appropriate public education beginning in May 2013. The student is awarded one hour of compensatory education for every school day from May 14, 2013 through the end of the 2012-2013 school year.

The student's mother is awarded tuition reimbursement for the 2013-2014 and 2014-2015 school years. To the extent that the parent has been placed in a position to absorb out-of-pocket payment(s) for tuition and fees at the private placement for the 2013-2014 school year and/or the 2014-2015 school year, the District is ordered to reimburse parent. Upon presentation to the District by the parent of proof(s) of payment, reimbursement shall be made to parent within 60 calendar days of the date the parent presents the documentation. Upon presentation to the District by the parent of any unpaid outstanding balance for the 2013-2014 school year and/or 2014-2015 school year, payment shall be made directly by the District to the private placement within 90 calendar days of the date parent presents the documentation.

By acting with deliberate indifference, the School District has discriminated against the student on the basis of the student's disability.

Any claim not addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

January 20, 2015