

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.M.
Date of Birth: [redacted]

Dates of Hearing: 1/29/2015, 3/24/2015, 3/26/2015

CLOSED HEARING

ODR File No. 15467-14-15KE

Parties to the Hearing:

Parents
Parent[s]

Local Education Agency
Lakeland School District
1355 Lakeland Drive
Scott Township, PA 18433-9801

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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May 18, 2015

June 15, 2015

Cathy A. Skidmore, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a late elementary school-aged student in the Lakeland School District (District) who is a protected handicapped child. Student's Parents filed a due process complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973,² as well as the federal and state regulations implementing those statutes.³

The case proceeded to a due process hearing convening over three sessions, at which the parties presented evidence in support of their respective positions. The Parents sought to establish that the District failed to identify Student in a timely manner as a protected handicapped child or a child with a disability, and further failed to provide Student with FAPE. They sought compensatory education as a remedy. The District maintained that it did not fail to timely identify Student and that the educational program it provided was appropriate for Student.

For the reasons set forth below, I find in favor of the District on the FAPE claims, but will order the team to reconvene and revise the Section 504 Plan.

ISSUES

1. Whether the District timely identified Student as a protected handicapped child under Section 504 and Chapter 15;
2. Whether the District provided an appropriate educational program to Student under Section 504 and Chapter 15 from September 2011 to the present;

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

² 29 U.S.C. § 794.

³ 34 C.F.R. §§ 104.1 - 104.61; 22 Pa. Code §§ 15.1 – 15.11.

3. If the District did not timely identify and/or program appropriately for Student, is Student entitled to compensatory education,⁴ and if so, in what form and amount?

FINDINGS OF FACT

1. Student is a late elementary school-aged child who is a resident of the District. Student has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) and Mood Disorder, Not Otherwise Specified (NOS). (Notes of Testimony (N.T.) 22-23)
2. The Parents first registered Student in the District in April 2009. As part of registration, the Parents noted that Student had been provided with behavioral support services (therapeutic staff support (TSS) and mobile therapy) at home and had been diagnosed with Reactive Attachment Disorder. (N.T. 209-10, 285-87; S-1)
3. Student tends to rush through completion of homework, and can be impulsive and inattentive. (N.T. 283-84)
4. Student sometimes experiences difficulties with peer relationships. (N.T. 352-53)
5. Student often comes home from school upset about children's behavior on the school bus. Student has been reported for misbehavior on the school bus. (N.T. 357, 358-59; S-41)
6. The elementary guidance counselor holds classes for all elementary school students relating to social skills that included bullying. These classes are held four times per school year. (N.T. 237-39)
7. Student successfully passed all classes in the 2011-12 (second grade) school year with average to above average grades. Student's scores on the TerraNova in the spring of 2012 were in the average range, consistent with Student's cognitive profile. No teacher reported any concerns about Student to the guidance counselor. (N.T. 84-87, 232; S-22 pp. 1-4, S-24 pp. 2, 7)

2012-13 School Year

8. During the 2012-13 school year (third grade), the behavioral service agency provided case management services at school on a weekly basis. (N.T. 211, 304)
9. The guidance counselor met with Student on several occasions during the 2012-13 school year, and with the behavioral services consultant at school a few times. Student asked to meet with the guidance counselor on one of those occasions. (N.T. 213-19, 234-35)

⁴ The Parents previously filed a Due Process Complaint against the District and the parties indicated that they had a tolling agreement as they arranged for Independent Educational Evaluations (IEEs). (Notes of Testimony 17-20) The time period October 10, 2013 through October 8, 2014 was accordingly removed from consideration of any award of compensatory education. (*See also* Parents' Closing Argument at 1; District Closing Argument at 1)

10. In December 2012, a classmate called Student a name; the principal investigated the incident and spoke with the classmate. (N.T. 136-41, 192-93, 202)
11. Also in December 2012, several students in Student's classroom misbehaved during a fun holiday activity. The students who misbehaved were directed to place their written work product into the recycling bin while the other students took their work home. None of the student work products were displayed on the wall. The principal investigated the incident and spoke with the teachers. (N.T. 144-46, 193-94, 307, 479-85, 489, 490-91, 494, 591-93)
12. Student's Parents expressed concern to the teacher about Student's homework and a few poor grades on tests in late fall 2012. The teacher responded and indicated that Student did rush through work, and offered to provide some accommodations. (P-3, P-5, P-6)
13. The Parents also reported to the principal that Student became anxious at home on Sunday evenings in the late fall of 2012 in anticipation of returning to school on Monday. (N.T. 310)
14. The Parents met with the principal in December 2012 about the incidents that month. Student's teachers were also present and the meeting was highly emotional. (N.T. 308, 310-12, 481-84, 596-97, 600)
15. Around the same time as the meeting with the principal, the Parents requested that the District evaluate Student for special education eligibility. The District responded by sending a Permission to Evaluate form, and when the Parents indicated Student had an ADHD diagnosis, the District suggested a meeting. At that meeting, the District explained the differences between a Section 504 Plan and an Individualized Education Program (IEP), and the Parents' concerns were discussed. (N.T. 35, 38-40, 43-45, 314-15; P-9; S-31, S-32)
16. The Parents withdrew their request for a special education evaluation in late December 2012. In January 2013, the District sought, and the Parents provided, consent for an evaluation under Section 504. (N.T. 46-47, 317, 655-58; S-3, S-33)
17. The District was provided with information from a private behavioral health service provider in January 2013 indicating that Student had been diagnosed with ADHD. (N.T. 35-36; S-2)
18. The Section 504 evaluation reflected concerns with Student's rushing through assignments; inattention and impulsivity; and difficulty remaining seated. The team concluded that Student did qualify for Section 504 Plan. (N.T. 80-82; S-4)
19. A Section 504 Plan was developed and School representatives met with the Parents to discuss the accommodations. The listed accommodations and services, with the additions from the meeting, provided for Student's ability to stand at times while working and to move about; visual chunking of assignments and tests; extra time for tests; positive redirection and prompting; use of a slant board; no penalty for handwriting; and teacher

monitoring of Student's progress with notification to the guidance counselor for any concerns with success. (N.T. 57-61; P-17; S-5, S-6)

20. In March 2013, the Parents met with the school psychologist and Student's TSS worker to discuss Student's needs at school, particularly the tendency to rush through work. (N.T. 329)
21. Student visited the nurse on several occasions over the course of the 2012-13 school year (headache, not feeling well, discomfort, minor injury). (N.T. 533-58; S-38)
22. For Student's second grade year, the students had morning activities then classes in mathematics, reading, language arts, spelling, science, social studies, and specials. The teachers provided the accommodations in the Section 504 Plan as needed. Student completed all work successfully with all grades largely ranging from A to B+ (with two second quarter grades of C+) and satisfactory or outstanding in special classes. Student at times rushed through assignments and was inattentive or impulsive, but Student was easily redirected and the teachers did not have concern with Student's progress to report to the guidance counselor. Student scored in the proficient range on the reading and mathematics tests for the Pennsylvania System of School Assessment (PSSA) (N.T. 458-59, 462-65, 470-71, 473, 547-561, 562-64, 566-67; S-24 pp. 1, 8, S-26, S-36)
23. In July 2013, the behavioral service agency provided updated diagnoses for Student: Mood Disorder NOS and ADHD. (P-24)

2013-14 School Year

24. In August 2013, the District provided to the Parents a Section 504 Plan for the 2013-14 school year (fourth grade). That Plan was identical to the previous version from the spring. There was no meeting or conversation with the Parents to discuss the new Section 504 Plan. (N.T. 67-69; S-7)
25. In December 2013, the Parents approved the August 2013 Plan pending completion of an Independent Educational Evaluation (IEE), noting their belief that Student had additional educational needs. (S-8)
26. The District began to implement a Schoolwide Effective Behavior Support (SWEBS) program at the beginning of the 2013-14 school year. In the SWEBS program, general school rules apply to all students, and there is a hierarchy of consequences for failure to comply with those rules depending on the nature of the violation. The program provides consequences consistently based on the type of behavior exhibited. There are several tiers in the SWEBS program, with higher tiers providing successively more intensive behavior supports. There are also reward activities available for students who do not engage in behavior at a certain tier level, and opportunities to earn other rewards. (N.T. 118-27, 168-69, 190-91, 201; P-22, P-32 pp. 4-5)
27. Student received a Tier I consequence in September 2013 for talking instead of listening, and a Tier II consequence for physical aggression toward a peer at recess. Student did

not express any concerns about the SWEBS program to teachers at school. (N.T. 403, 409-10; P-25, P-33 p. 1)

28. In the fall of 2013, the Parents asked that Student and Student's siblings not participate in a particular sport at recess because Student and others became aggressive during the activity. (N.T. 356, 470-71; S-34)
29. In January 2014, an incident occurred in Student's science classroom wherein the teacher raised her voice with and reprimanded the class after several students gave an incorrect answer. The principal investigated this incident, speaking with the teacher and several students including Student. According to Student's version of the incident, the teacher made an obscene gesture at the class. (N.T. 104-07, 180-82, 195-96; P-30)
30. For Student's fourth grade year, the students had a morning activity before classes in mathematics, social studies, specials, and reading. The teacher provided all of the Section 504 Plan accommodations, and found them to be adequate for Student in addition to general teaching practices (seating in front of and in view of the teacher's face, teacher inflection and intonation, repeated directions, small and large group instruction, check for understanding, chunking of assignments, structured environment, seating and grouping with peers who were not a distraction, and checking of planners for homework). Student completed all work successfully with all grades ranging from A to B+ and satisfactory or outstanding in special classes. Student was easily redirected when needed and the teacher did not have concerns with Student's success to report to the guidance counselor. Student scored in the proficient range in reading and in the advanced range in mathematics and science on the PSSAs. (N.T. 233, 379-85, 386-93, 396, 397-99, 404-05, 413, 424-25, 427-28, 430; S-24 p. 10, S-36 p. 1)

Independent Evaluations

31. Two Independent Educational Evaluations (IEEs) of Student were conducted in the spring of 2014, one by a certified audiologist for speech/language, and one by a licensed and certified school psychologist. Both issued reports. (S-9, S-11)
32. The Speech/Language IEE, issued in June 2014, reflected some parental concerns with understanding questions, following directions, and using language to express feelings. Student's hearing was normal and Student demonstrated age-appropriate speech and language skills with well-developed vocabulary knowledge. One exception was a possible weakness with verbal working memory suggesting delayed auditory processing development, which may have been related to Student's ADHD. A possible high frequency hearing loss was also suggested. Recommendations from this evaluator were preferential seating with a good view of the teacher; use of inflection, intonation, and good articulation; chunking of instructions; frequent checks for understanding; structure and routine throughout the school day; and minimal distractions around Student. (N.T. 644-45; S-9)
33. The psychoeducational IEE was conducted in March 2014 with a report issued in August 2014. The IEE included parental and teacher input and a classroom observation in

addition to assessments of cognitive ability, achievement, executive functioning, social skills, and behavior. (S-11)

34. Parent input into the IEE revealed concerns with Student's hyperactivity, fidgeting behavior, distractibility, and a tendency to talk too much and interrupt, as well as difficulty with organization, need for reminders to slow down, and frequent careless mistakes. They reported that Student was enthusiastic about school but did not make consistent effort toward completing schoolwork. Student also demonstrated problematic behavior at home, including aggression toward siblings, defiance, non-cooperation, and increased anxiety. (S-11 pp. 2-3)
35. Teacher input into the IEE reflected positive comments from all but two of Student's teachers. Most teachers reported that Student was attentive, conscientious in completing schoolwork, and not exhibiting problematic behaviors. Two teachers indicated that Student could be inattentive, impulsive, and distracted, and at times was overly talkative with other students; but both reported that Student's behaviors were not disruptive and that Student was successful academically and socially in their classes. (S-11 pp. 3-5)
36. Student's performance on the Wechsler Intelligence Scale for Children-Fourth Edition reflected average scores on all composites and a Full Scale IQ of 102, with similarly average scores on the Reynolds's Intellectual Assessment Scale. On the Wechsler Individual Achievement Test, Third Edition, Student scored in the average range overall and on all composites. There was no discrepancy between Student's ability and achievement except to the extent that Student demonstrated relative strengths. (S-11 pp. 7-10, 15-20)
37. Assessment of Student's executive functioning yielded average skills and no concerns by the teacher. The results of rating scales completed by Student's mother in this area, however, suggested a number of concerns; but the evaluator noted that these scales must be viewed with caution due to potential invalidity in the responses. (S-11 pp. 11-14)
38. The Behavior Assessment System for Children, Second Edition yielded information from one of the Parents and a teacher. The teacher's ratings reflected no significant behavioral or emotional difficulties. Student's mother's ratings indicated at risk concerns with Externalizing Problems (but a clinically significant score for hyperactivity) and anxiety (Internalizing Problems domain). The evaluator noted that Student's anxiety should be monitored based on the Parent's ratings. (S-11 pp. 20-21)
39. Student's teacher and one of the Parents completed the Conners Third Edition Rating Scale Long Form. Results indicated parental concerns in the areas of anxiety, hyperactivity/impulsivity, restlessness, and defiance/aggression. The teacher's rating scales yielded all average scores reflecting none of these same concerns. (S-11 pp. 22-23)
40. Other social/emotional measures were relatively consistent suggesting no concerns at school with social skills (compared to a parental concern only in the area of self-control). Student's self-reporting reflected no significant internalizing or externalizing difficulties,

and the evaluator also conducted an interview with Student that similarly did not reveal concerns with Student's social/emotional functioning. (S-11 pp. 24-28)

41. The psychologist who conducted the IEE concluded that Student was not eligible for special education, but due to Student's disability, Student did require accommodations in a Section 504 Plan. Recommendations for the educational program were for continuation of previous accommodations as well as annual monitoring of executive functioning skills, monitoring of emotional and behavioral functioning, cues and prompts for focus and attention as needed, and a plan to address Student's concerns with the SWEBS program, in addition to the recommendations of the independent speech/language pathologist. (S-11 pp. 33-36)

2014-15 School Year

42. In August 2014, the District provided to the Parents a Section 504 Plan for the 2014-15 school year. That Plan was identical to the previous version in August 2013. There was no meeting with the Parents to discuss the Section 504 Plan at that time. (N.T. 223-25; S-10)
43. A meeting convened in late September 2014 to discuss the IEE reports. The District also issued an Evaluation Report (ER) on September 30, 2014. The ER incorporated a significant amount of information from the IEEs and included Student's final grades from the 2013-14 school year. The ER indicated that Student was a child with a disability but was not eligible for special education, as had the independent psychologist. (N.T. 25-26, 29-31, 73, 92-94; S-13, S-15, S-16, S-17)
44. Student's Section 504 Plan was revised following review of the IEEs. The previous accommodations remained and the following were added: cues and prompts for focus and attention as needed, provision of attention and praise when Student was on task, encouragement to request additional time for assignments when needed, and preferential seating. (N.T. 29-34; S-15)
45. The Parents responded to the revised Section 504 Plan on October 9, 2014, by providing suggestions that were a verbatim recitation of the two IEE report recommendations. (N.T. 73; S-17)
46. Another meeting convened to review the Section 504 Plan in November 2014. Additional accommodations added at that time in the Section 504 Plan were to approach Student in a non-confrontational manner, make frequent checks for work completion, repeat/rephrase directions as needed, and obtain signatures of Parents and teacher on Student's planner. (N.T. 33-34, 73-74, 93094; P-29; S-19, S-20)
47. For Student's fifth grade year, 2014-15, the class had classes for written expression, mathematics, reading/language arts, specials, social studies, and science. The teacher provided all of the Section 504 Plan accommodations, and during the first two quarters, Student had completed all required work successfully and independently, earning grades ranging from to A to C+ and satisfactory or outstanding in special classes through the end

of the second quarter. As of March 2015, the teachers did not have concerns with Student's behavioral and emotional functioning that should have been reported to the guidance counselor. (N.T. 243-68; S-24 pp. 12, 13A)

48. Student was never referred to the Child Study Team at school. (N.T. 232, 469, 564)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in "equipoise." The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be generally credible, testifying to the facts to the best of their respective recollections. It should also be noted that the Parents, as well as the District personnel, all presented as dedicated individuals who care about Student and Student's education, despite their conflicting positions at the hearing.

In reviewing the record, the testimony of every witness, and the content of each exhibit,

were thoroughly considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit.

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).

In order to establish a violation of § 504 of the Rehabilitation Act, a plaintiff must prove that (1) he is “disabled” as defined by the Act; (2) he is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

Ridgewood v. Board of Education, 172 F.3d 238, 253 (3d Cir. 1995). “In addition, the plaintiff must demonstrate that defendants know or should be reasonably expected to know of his disability.” *Id.*

Pennsylvania makes provision for school districts to comply with Section 504 in the Pennsylvania Code. Specifically, Chapter 15 provides that school district as a public educational agency must “ensure that [protected handicapped] students have equal opportunity to participate in the school program” by providing aids, services, and accommodations that “meet the educational needs of protected handicapped students as adequately as the needs of nonhandicapped students are met.” 22 Pa. Code § 15.2(b). School-age students who have a disability that substantially limits the child’s access to or participation in a school program are protected handicapped children. 22 Pa. Code § 15.2.

Section 104.35 of the applicable federal regulations implementing Section 504 requires

that an evaluation “shall” be conducted “ before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.” 34 C.F.R. § 104.35. An initial evaluation under Section 504 must assess all areas of educational need, be drawn from a variety of sources, and be considered by a team of professionals. *Id.*

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood, supra*, at 253 (citation and quotation marks omitted); *see also* 34 C.F.R. § 104.33(a). Under Section 504, “an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of” the related subsections of that chapter, §§ 104.34, 104.35, and 104.36.” 34 C.F.R. § 104.33(b). “There are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not.” *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002).

The Parents’ Claims

The first issue is whether the District met its Child Find obligations following Student’s enrollment at school in the fall of 2009. There is evidence that the District was aware of Student’s mental health diagnosis and services before Student started first grade. Nevertheless, even assuming that as of the fall of 2009, Student had a disability within the meaning of Section 504 and Chapter 15, eligibility for accommodations requires something more: a substantial limitation on access to or participation in educational programming due to the disability. Prior to

the start of Students' first grade school year, there was nothing to indicate that the District was or should have been aware that Student had a disability that may have needed accommodations in the school environment such that an evaluation under Section 504 was necessary.⁵ Furthermore, there is little evidence about Student's experience at school even through the end of the 2011-12 school year that would suggest the District should have acted sooner.

A few incidents in the fall of 2012 reflected the Parents' increasing concerns over Student's anxiety over and success at school. With respect to Student's tendency to rush through work, the teacher offered to provide accommodations even before the evaluation process began. However, it must also be noted that the parties' perspectives on other events that fall appear to relate not to Student's access to and participation in school programming on the basis of disability, but rather to general disagreement over teaching practices. In any event, the incidents in late fall of 2012, together with a recent ADHD diagnosis, presented the District with new information that should have, and did, cause it to conduct an evaluation in early 2013. This hearing officer concludes that the District did not violate its Child Find obligation in this regard. Further, the evaluation was conducted in a reasonably timely manner, and a team including the Parents met to discuss and identify accommodations to help Student access and participate in the educational program. Those accommodations responded to Student's impulsivity, inattention, difficulty staying seated, and tendency to rush through assignments and tests. The teachers implemented the Section 504 Plan, and Student successfully completed the 2012-13 school year without a need for referral to the guidance counselor. Further, visits to the school nurse did not appear to relate to Student's disability. The record as a whole supports a conclusion that the

⁵ This hearing officer does have concern, however, with the testimony of the school psychologist and another District administrator that described their understanding of Reactive Attachment Disorder (N.T. 78-79, 108-10), which is not consistent with the Diagnostic and Statistical Manual, Fifth Edition.

Section 504 Plan was reasonably responsive to Student's unique educational needs through the end of the 2012-13 school year and, thus, was appropriate.

Although the District did not conduct a meeting prior to the start of the 2013-14 school year to discuss the Section 504 Plan, there is nothing in the record to suggest that Student's needs had changed or that there was a need to revise or add accommodations before the school year got underway. That school year was different in one major respect: the SWEBS program was implemented, and Student expressed anxiety at home over its use at school. The Parents clearly had concerns with the program as well (*see, e.g.*, N.T. 345-46, P-33). However, Student received few consequences through the SWEBS program and was able to participate in positive rewards; Student also did not express concerns at school with the behavior program. As in the prior school year, Student completed the school year successfully and no referral to the guidance counselor was necessary. The one incident about which the Parents expressed significant concern that school year similarly appeared not to relate to Student's access to or participation in the educational program due to a disability. For all of these reasons, Student's 2013-14 school year program was appropriate under Section 504 and Chapter 15.

By the summer of 2014, the parties were awaiting reports of the IEEs. After completion, the information in those reports supported the accommodations already in place, in addition to providing several new recommendations for the Section 504 Plan. Specifically with respect to the SWEBS program, the independent psychologist recommended that the team create a plan to address Student's concerns, expressed at home, with the behavior plan applied schoolwide to all students. He also suggested monitoring of Student's executive functioning skills and emotional/behavioral functioning. All of the other recommendations were already implemented for Student, further suggesting that the program for the 2012-13 and 2013-14 school year was

appropriate in meeting Student's needs.

The psychological IEE is very instructive with respect to one significant conclusion that must be reached based on the record: Student presents very differently at home than Student does at school socially, emotionally, and behaviorally. The psychologist's IEE provides details about these differences throughout his report, including the validity of the information provided to him in completing his IEE. Student's inconsistent presentations across the home and school environments are at the very heart of the parties' disagreement, but serve to explain their very divergent perspectives on Student's educational strengths and needs. Importantly, his new recommendations serve a critical purpose to address any future carryover of Student's anxiety to the school setting, and to assure ongoing consideration of areas of potential weaknesses in particular areas of functioning as Student continues to mature.

Finally, with respect to the 2014-15 school year, the Section 504 Plan accommodations were not inconsistent with the IEEs, and were implemented as in the prior years with Student attaining success at school as of the date of the due process hearing sessions. This hearing officer concludes that the Plan was reasonably calculated to, and did, meet Student's unique needs at school. There are, nonetheless, specific elements of the IEE recommendations that must be addressed in a future revision of Student's Section 504 Plan with input from the District's school psychologist who participated in the ER. The direction to convene the team is intended to ensure that the IEE recommendations that reflect the Parents' concerns are made a part of the Plan going forward, as well as to foster improved relationship between the parties in the future. Having concluded that the District did not fail to timely identify and program for Student, however, no further remedy will be awarded.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, the District did not fail in its Child Find obligation or in its implementation of Student's educational program. The Section 504 Plan team will, however, be directed to reconvene to make specific additions to Student's Plan for the 2015-16 school year.

ORDER

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

1. The District did not fail to timely identify Student as a protected handicapped student under Section 504 and Chapter 15.
2. The District did not fail to provide a free, appropriate public education to Student.
3. The District shall, within 30 days of the date of this Order, convene a meeting of the Section 504 Plan team, including the Parents, to add the following accommodations:
 - a. A plan to monitor and specifically address Student's concerns with implementation of the SWEBS program, including who will monitor those concerns and in what manner, with reporting to the Parents;
 - b. A plan to monitor, on an annual basis, Student's executive functioning skills, including who will monitor those concerns and what measure will be used, with reporting to the Parents;
 - c. A plan to monitor, on a regular and at least annual basis, Student's behavioral and emotional functioning, including who will monitor those concerns and what measure will be used, with reporting to the Parents.

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

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: June 15, 2015