

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

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: H.R.

ODR #17760 / 15-16-AS

Date of Birth:
[redacted]

Dates of Hearing:
August 15, 2016
October 4, 2016
October 5, 2016

OPEN HEARING

Parties to the Hearing:
Parent[s]

Easton Area School District
1801 Bushkill Drive
Easton, PA 18042

Date of Decision:

Hearing Officer:

Representative:
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November 7, 2016

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

Background

Student¹ is a pre-teen aged District resident with multiple disabilities who is eligible for special education services under the Individuals with Disabilities Education Act (IDEA)² and as such is also a qualified handicapped person / protected handicapped student under §504 of the Rehabilitation Act of 1973.³ The District, which was and remains the Student's Local Educational Agency (LEA), placed Student in a self-contained classroom operated by the Intermediate Unit (IU) and located in a building in another school district (other district). The Parent filed under the IDEA and Section 504 against the District as well as against the IU and the other district, alleging that Student was denied a free appropriate public education (FAPE). Both the IU and the other district, through counsel, filed motions to dismiss which the hearing officer granted, holding that only the District of residence is Student's LEA and ultimately responsible for the provision of FAPE.

For the reasons given below I find in favor of the Parent on the majority of her claims.

Issues⁴

1. Did the School District fail to offer Student FAPE in any of the following areas, including but not limited to:⁵

Not providing an appropriate education in the area of Activities of Daily Living (ADLs);

Not providing a Personal Care Assistant (PCA) as specified in the IEP;

Not providing appropriate instruction in communication skills including providing appropriate augmentative communication devices;

Not continuing bilingual programming given that Student's maternal language is not English;

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

² 20 U.S.C. §§ 1400-1482.

³ 29 U.S.C. § 794.

⁴ The parties disagreed about whether the issues presented were beyond the statute of limitations. After an initial "mini-hearing" to address this matter, the hearing officer determined that the overall issue of denial of FAPE, and a portion of the issue of denying the Parent meaningful participation, were not filed in a timely manner vis a vis the date the Parent knew of the actions that formed the basis of her complaint, and as such the relevant period was limited to the two years prior to the filing of the complaint, i.e. from May 16, 2014 onward. However, parts of the complaint subsumed under the overall issue of denial of FAPE and discrimination only became known to the Parent within the two years prior to the complaint being submitted, and thus were filed well within the statute of limitations. [NT 30-138]

⁵ I have reworded and recombined the issues as stated on the record in order to provide a clearer framework for this decision.

Not providing, and/or providing inappropriate amounts of, Occupational Therapy, Physical Therapy, Language Therapy and Vision Therapy?

2. Did the School District deny the Parent meaningful participation, including failing to provide documents translated into her native language, failing to provide interpretation throughout IEP meetings, and/or failing to inform her of the specific supports that Student was or was not receiving, and if so did such failures constitute a denial of FAPE for Student?
3. If the School District denied Student FAPE in any or all these areas, what remedy is appropriate?

Findings of Fact

The Student

1. Student is a pre-teen aged student residing in the School District who is eligible for special education under the classification of multiple disabilities. [S-14]
2. The District placed Student in the IU's multiple disabilities support classroom located in a neighboring school district. [NT 113-114]
3. Student has cerebral palsy, microcephaly, a seizure disorder and swallowing difficulties. Seizures occur throughout the day and without warning. [S-14]
4. Although Student is a pre-teen, Student's stature, height and weight give Student the appearance of a slender and frail child of between six and seven years of age. [NT 435-436]
5. Student wears corrective lenses and is legally blind. [S-14]
6. Student's gross motor skills are impaired. Student can ambulate for short distances but gait is unsteady and Student requires physical assistance when walking. Student cannot access the environment unless escorted from place to place. [NT 434]
7. Student is totally dependent on others for Student's personal care needs. Student's fine motor skills are impaired such that Student can self-feed with fingers but is not adept at using utensils. Student is not toilet trained and wears diapers. Student can only minimally assist in self-dressing. [S-14]
8. Student is non-verbal but vocalizes at times to express wants, needs and feelings. Student understands instructions in the Parent's native language spoken in the home. [S-14]

Nurse

9. A nurse is a healthcare professional providing school health services, which are defined as “health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP,” and may be provided by “a qualified school nurse or other qualified person.” [34 C.F.R. 300.34(c)(13)]
10. Nursing is a school health service. When a student has medical needs that have to be addressed throughout the day, and cannot attend school without a nurse, the nurse is a necessary component to the educational plan and the student must have the nurse to take advantage of the educational program. [NT 404]
11. When Student entered the District with an IEP from a neighboring state there was a discussion around Student’s needing to be monitored for seizures in order for Student to attend school. Written communication between IU administration and District administration acknowledged “the need for a full-time nurse for bus/school” and indicated that Student’s “specific medical needs” should be clarified. [NT 121; S-9, P-9]
12. The IU special education supervisor wrote to the District special education supervisor that, “This student will N-O-T (sic) be able to start until nursing services are in place either through [Medical Assistance] or through the district.” [NT 122; P-9]
13. A nurse, funded through the Student’s health insurance, was assigned to Student during the entirety of the school day. [NT 42]
14. The nurse was assigned to monitor Student’s frequent seizures that occurred throughout the day and without warning, as well as to monitor Student’s other medical issues. [NT 79, 119-120 195; S-14]
15. One of the teachers responsible for Student during the relevant period confirmed that when the nurse was absent Student could not come to school: “If a child has a nurse that comes to school with them, and that child is absent, that nurse does not come to school. And if the nurse is absent, that child does not come to school, unless the nursing agency can put a substitute nurse in for the day.” [NT 655-656]
16. Student was excused from attendance on at least nine days in the 2013-2014 school year because the nurse was not available. The attendance record also reflects excused absences when the nurse was not present on eight days in May/June 2013, prior to the relevant period. [S-60]

Personal Care Assistant

17. Personal Care Assistants and instructional paraprofessionals provide one-on-one individualized supports in order to address the behavioral and care needs of a student with a disability, over and above the individualized educational support that the student would normally receive from the teaching staff. [Pennsylvania

Department of Education, Bureau of Special Education BEC, *Special Education FAPE and One-to-One Support Obligations for Students with Disabilities* (August 2015)]

18. A Personal Care Assistant works according to the educational program under the direction of the teacher by providing instruction in academics or personal care. [NT 408]
19. Student previously resided in a neighboring state and had, in addition to a nurse, an assigned Personal Care Assistant (PCA). However, the first IEP the District developed for Student in June 2011 included a Specially Designed Instruction (SDI) for “Personal Care Assistance,” to be provided for “self-help skills, safety, redirection and behavior.” [S-15]
20. The May 2012 IEP, while noting that Student has “a nurse to attend to [Student’s] medical needs,” removed the SDI for “Personal Care Assistance” from the IEP. [S-19]
21. In its 2013 Re-evaluation the District noted that, “The need for increased assistance has occurred more recently as compared to the beginning of the school year.” However, the May 2013 IEP did not reinstate the SDI for “personal care assistance” or put a PCA in place. [S-25, S-31]
22. The April 2014 IEP provided for a **Personal Care Assistant (as opposed to personal care assistance)**, to help Student “in the areas of behavior, safety awareness, remaining on task during instruction, toileting, eating, and dressing”. That SDI was continued in the December 2014 IEP and in the April 2015 IEP. However, the District never implemented that SDI, as a PCA was never assigned to Student. [NT 42, 91, 413-414; S-9, S-33, S-41, S-45]
23. The IU exclusively used the nurse in place of a PCA for Student. The nurse did not instruct Student in activities of daily living such as feeding, toileting, dressing and personal care. The nurse was the only person responsible for providing Student’s feeding, toileting, and personal care; classroom staff occasionally participated with the nurse in dressing Student. The nurse did not engage in teaching Student skills directed towards self-care. [NT 42-45, 566-567]
24. One of the teachers responsible for Student during the relevant period is uncertain about how the role of the PCA was to be filled. She initially supported the view of the nurse as being Student’s “personal care assistant” and “for any medical needs also,” but in testimony at a later session testified that the role of a PCA was meant to be filled by the “classroom associates” or “assistant teachers” in her classroom. [NT 659, 660]
25. The IU did not inform the Parent that the nurse was used as Student’s PCA. Based on her previous experience in the neighboring district, the Parent assumed that

Student had a PCA for instructional purposes in addition to the nurse who was attending to the child's medical needs. [NT 42-44, 79-80, 99]

26. The Parent believed that the Personal Care Assistant specified in the IEPs from April 2014 onward was present and working on teaching Student steps toward independence in activities of daily living such as feeding, dressing and toileting.⁶ [NT 78-79]
27. As recently as an April 22, 2016 IEP meeting at which the new nurse was present the District did not ask the nurse for input about the status of Student's toileting, feeding, dressing or other functional activities for programming purposes even though the nurse was in an excellent position to observe Student and report data. [NT 244; S-52]

IEPs

28. Student's IEP from October 2010, prior to Student's entry into the District, notes, "[Student] needs support in all areas of daily living." [S-9]
29. Subsequent IEPs included language reflecting the District's knowledge of Student's needs for instruction in activities of daily living: "Due to [Student's] disability [Student] is unable to participate in the general education curriculum. [Student's] delay in cognition, receptive/expressive language and daily living skills impede [Student's] ability to make significant progress in the general education curriculum without special education supports and specially designed instruction. [Student] requires instruction and support to participate in everyday activities in school, home, and community." [IEPs dated June 7, 2011, May 31, 2012, May 22, 2013, April 24, 2014, April 22, 2015, and April 22, 2016. S-19, S-26, S-33, S-45, S-52]
30. Student's IEPs from May 2013 and April 2015 indicate that Student needs a functional, individualized curriculum. [S-26, S-45]
31. Notwithstanding recommendations flowing from an evaluation as early as June 2011, another in May 2013, and the last as recently as April 2015, and acknowledgements throughout Student's IEPs, the educational programming for Student failed to provide appropriate, measurable goals and objectives in areas of Student's most significant identified needs, i.e. improving functional and daily living skills including self-help skills, motor skills and communication. [S-9, S-14, S-15, S-19, S-25, S-26, S-33, S-44, P-6]
32. In developing and implementing the Student's IEPs the District relied on the "Carolina Curriculum," a research-based program that includes assessment tools and intervention strategies for children with special needs. The Carolina Curriculum provides detailed criteria for assessing a child's functional progress.

⁶ The Parent also believed that the SDI for "Personal Care Assistance" was being implemented through a dedicated one-to-one PCA who was a separate person from the nurse.

The Carolina Curriculum is based upon a child's functional level rather than the child's chronological age. [NT 542, 576-577; HO-1; CCIT⁷]

33. Instead of directed functional activities supporting daily living goals, Student's program provided goals/activities only very loosely related to Student's needs. One of Student's teachers who helped develop a goal of this type (retrieving toys from a container) testified that she did not know why the goal was selected. [NT 582-583, 629-631; S-33]

Toileting

34. Although the Carolina Curriculum includes an assessment sequence for "Self-Help Toileting," the IU made no assessment of Student's toileting functioning in a Reevaluation Report or IEP until April 2015 when it was noted that, "[Student] is able to stay dry for 2-3 hour periods during the day. Student has occasionally voided on toilet but [is] not consistent. [Student] is unable to indicate need to use toilet." The Carolina Curriculum suggests that a child is generally ready to begin toilet training when these factors are in place. [S-44; CCIT]
35. The District did not include toileting goals in any of Student's IEPs within the relevant period, including the last offered IEP, even after the April 2015 reevaluation tied to the Carolina Curriculum which indicated that Student was at the stage of being ready to begin the toilet training process. S-44, S-62, CCIT.]
36. One of the classroom teachers responsible for Student during the relevant period had virtually no familiarity with Student's toileting routine or problems and did not view toileting as a classroom educational issue. She did not monitor toileting, collect any data, or ask the nurse to collect data. She testified that in her career she has, "...never seen an IEP goal for toileting." [NT 248-249, 630; S-9]
37. The other classroom teacher responsible for Student during the relevant period noted that toileting was the nurse's issue: "She came into my classroom and changed [Student]. I therefore assumed that she would be forever changing [Student] when [Student] needed to be changed." [NT 567]
38. The Parent frequently expressed concern about Student's need to learn daily living skills such as toileting. The IU responded that toileting was going to be implemented in the classroom with a special toilet seat. [NT 81-82; S-25, S-26]
39. The IEP team wrote into the May 2013 IEP, "Toileting to be implemented in classroom with special seat," and included an SDI for a "Toileting Schedule". However there was no IEP goal for toileting. [S-26]
40. Parent nevertheless believed that a toileting schedule would be implemented and that Student would be provided with an adaptive toilet seat. The toilet seat the

⁷ For reference purposes, this decision, as did Parent's closing brief, cites to Nancy M. Johnson *et al.*, *The Carolina Curriculum for Infants & Toddlers with Special Needs* (3d ed. 2004) (CCIT).

classroom had was too large and presented the danger that Student, being so small, would fall through or be injured during a seizure. It was not until approximately March 2016 when a new nurse was assigned that the Parent learned that the classroom did not have an adapted toilet seat that was safe for Student and that Student was not being taught toileting skills. [NT 81-85; P-9]

41. The new nurse developed the first toileting schedule for Student in late April or early May 2016 after the proper sized adaptive toilet seat had been provided. [NT 250; P-9]

Feeding

42. Feeding was another adaptive skill limitation identified in the June 2011 Reevaluation Report. The first Carolina Curriculum Assessment Log completed for Student in May 2011 noted that, at [Student's pre-teenage], Student was still relying on bottle feeding at home, and was not able to self-feed at the developmental level of an 18 to 21 month-old child. [S-14; HO-1]
43. The June 2011 IEP included an annual goal for "Self-Help: Eating": Student would bring food to [Student's] mouth with an adapted spoon and eat from the spoon, with 80% independence. A similar goal was included in the 2012 IEP. [S-15; S-19]
44. In May 2013, Parent requested that the Student be provided with "related services" to work on independence for living, including feeding. [S-25]
45. Inexplicably, in 2013 self-feeding was dropped from the IEP goals entirely. No self-feeding goal appeared in any of Student's 2013, 2014 or 2015 IEPs, nor in the proposed 2016 IEP. [S-26, S-33, S-45, S-52]
46. The Carolina Curriculum assessments from 2014 and 2016 state that Student was not able to consistently accomplish the spooning goal from the 2011 IEP; it was noted to be an "emergent" or "inconsistent" skill. By the time of the 2015 Reevaluation Report, Student was "able to scoop with a spoon and an adapted plate, however food does not always get on [the] spoon, and hand over hand or over wrist assistance is needed" reflecting that Student had not gained functional independence over a four-year period. [S-44; HO-1]
47. When asked at the hearing why basic goals and objectives related to feeding were missing from the IEP, one of the responsible teachers during the relevant period responded, "It was not something that was discussed during the IEP meeting" and acknowledged that she had never collected any data regarding feeding. [NT 629]

Dressing

48. When Student entered the District in 2011, Student could remove loose clothing but could not put on any clothing independently. [S-14]

49. For the IEP covering the 2011-2012 school year the IEP carried a goal that Student be able to pull a shirt off, partially, to 80% independence. The Carolina Curriculum Assessment Log for 2012 indicates that Student mastered that goal. [HO-1]
50. No further dressing goals were introduced until the 2015 IEP, when Student had a goal for putting on Student's coat using the over-the-head method. In 2015, a Progress Report notes that Student was able to put on a coat in this manner only "with complete physical assistance" conveying the information that Student was doing no more than cooperating with a caregiver, performing this dressing task no differently than in 2011, when it was reported that "Student will cooperate with dressing and undressing." (S-14, P-12)
51. One teacher responsible for Student in the relevant period acknowledged that there should be goals for self-dressing. When asked why there were no additional or ongoing IEP goals for self-dressing she replied that it was the determination of the IEP team. There was no evidence that a goal for dressing was discussed. [NT 561-562]

Related Services-Vision

52. When Student transferred into the District in 2011, Student's IEP from a neighboring state indicated that, "It is difficult to determine how clearly [Student] is able to see. An assessment by the Commission of the Blind and Visually Impaired is recommended when [Student] starts [Student's] school program." The District's Reevaluation Report of June 2011 noted that Student "did not appear to use [Student's] vision to locate objects." [S-9, S-14]
53. One of Student's teachers during the relevant period testified that it did not appear to her that Student had a visual impairment although her signature is on the May 2013 IEP which referenced Student's visual difficulties. [S-26]
54. In the April 2014 IEP meeting the Parent raised the concern that Student was not receiving vision services. The teacher testified that she was not informed that Student had a visual impairment and that she observed that Student "was able to access" the environment. [NT 67-68; S-33]
55. In 2014 Student received a private vision evaluation at a specialized facility. One recommendation was that Student should use a light box for certain instruction and receive services from a teacher of the blind/visually impaired in a consultative and transdisciplinary model once a month for 30 minutes. Student did not receive any vision services. [NT 84; S-33, S-44]
56. On December 15, 2014 the District conducted a functional vision assessment. Although a Specially Designed Instruction for a light box was included in the 2015 IEP, there is no data in the record regarding its use and an IU special

education supervisor did not note its use when she observed in Student's classroom. [NT 716; S-34, S-45]

57. In or about March 2016 the Parent learned from the new nurse that a light box was not being used for Student. When asked, the teacher reportedly told the Parent that the light box was a distraction in the classroom. [NT 84-85, 255, 722]

Related Services-Physical Therapy

58. Although Student did not meet mastery of previous goals of increasing the flexibility in Student's legs and walking independently up and down steps, physical therapy services were not included on Student's 2014 and 2015 IEPs. The nurse had become responsible for taking Student for walks. [NT 409-410; S-19, S-26]

Related Services-Communication

59. In 2011 there was a recommendation for an evaluation for "assistive technology and an augmentative communication device". Student did not receive this type of an evaluation as the District/IU believes there is no additional information to be gained from such an evaluation of Student. [NT 695; 700; S-9]
60. Despite not having a formal augmentative communication evaluation Student has been tried on the use of various communication devices, such as Big Mac, CheapTalk, Talk 2, Power Link and Step by Step and has made some progress. [NT 588-589; S-33; S-45, S-49, P-12]

Related Services-Bi-Lingual Education

61. A Bilingual Speech-Language Evaluation completed in October 2010 included the information that language skills were deficient in both English and [Parent's native language] although Student understood instructions given at home in the Parent's native language. [S-14]
62. As early as 2011 the District's reevaluation report indicated that Student needed to increase communication skills by identifying common, functional familiar objects in the environment. [NT 427-428; S-14, S-15, S-26, S-33]
63. When Student entered the District in 2011, Student was included in the English as a Second Language (ESL) program. Student's IEP of June 7, 2011 indicates that "Instruction on receptive language skills will be presented in English followed by instruction in [native language]. [S-15]
64. However, despite what the June 7, 2011 IEP indicates, Student had actually been removed from the ESL Program effective June 2, 2011, on the grounds that "[Student] has achieved English proficiency levels sufficient for exit from the ESL program." No evidence was presented to indicate that Student received an evaluation or assessment to demonstrate Student's level of English proficiency the District indicated. [S-15, S-17, S-19, S-20, S-22, S-25]

Parental Participation

65. Mother is a primarily self-taught English learner, and her comprehension of English is limited such that she finds telephone communication in English difficult and she requires time to look up vocabulary words as she reads documents written in English. [NT 73, 86-87, 96-98; P-9]
66. When she first arrived in the District the Parent asked for translations of documents into her native language, and translated Procedural Safeguards were provided once. After this mother felt shy and did not ask for translated documents beyond that first time. [NT 56, 98, 110-111]
67. Subsequent IEPs, written in English, were not provided to the Parent far enough in advance for her to review them carefully at home with a dictionary at hand, nor were IEPs translated into Parent's native language. [NT 87]
68. The Parent asked for an interpreter for IEP meetings, and although the occupational therapist who spoke the language helped mother to express some things she did not know how to say, the entire IEP meeting conversation was not translated so that mother could fully understand and participate in the discussion. [NT 99]
69. In an April 2016 email the teacher informed the IU special education supervisor, a community liaison, and a program specialist that she and/or her associate teachers observed that Student's nurse occasionally seemed to smell of alcohol, and would nod off in class, slur her words, and move slowly. The Parent was not informed. [NT 53-54, 115; S-55]
70. In this April 2016 email the teacher also noted that she and/or her associate teachers observed that Student's nurse interacted with Student in enumerated ways that child protective services has since determined to constitute child abuse.⁸ [NT 47-49, 53-54; S-55]
71. In addition to not informing the Parent that the IU was using the nurse as Student's PCA, neither the teacher, the IU special education supervisor, nor other IU staff informed the Parent of the entirety of the information about the nurse's actions towards Student. Although the teacher asserted that she shared some of this with the Parent at a May 2013 IEP meeting there is no supporting documentation, and mother denies the teacher's assertion.⁹ [NT 47-48, 74-77, 115]

⁸ The hearing officer made clear to the parties well before, immediately before, and during the hearing that this hearing concerned denial of FAPE, and that neither child abuse nor the reporting of same are within her jurisdiction as they can be properly addressed in other forums. Only the most minimal information about these matters needed for clarity is included in this decision and, despite noted and repeated objection by Parent's counsel, as little as possible was made part of the record.

⁹ The IU special education supervisor testified that he also did not forward this email to the District. [NT 116-117] The District's then-special education supervisor was not aware of this information and she did not know what the Parent knew or was told about the nurse's interactions with Student. [NT 133, 135]

72. At one point the nurse was suspended for an incident captured on videotape of her hitting another student on the head with a book. During the time of her suspension Student did not have a nurse and could not attend school. Mother was not informed of the reason for the nurse's suspension. [NT 117-118]

Placement

73. As part of the May 2013 re-evaluation process the Parent provided input, opining that the IU program was not meeting Student's needs, that Student was regressing, and that Student needed a more intensive program focusing on improving skills in activities of daily living. The Parent expressed the same belief at a subsequent IEP meeting. [NT 61-62, 72, 81-82, 100-101. 128; S-25]
74. Confirming the Parent's beliefs in 2013 which persist to this day, the April 2015 re-evaluation revealed that Student's skill levels were largely unchanged from 2011 to the re-evaluation date. [S-14]
75. At or after the May 2013 IEP meeting and over the summer the District's then-LEA representative spoke with the Parent about a possible change in placement. Nevertheless Student remained in the same classroom through the end of the 2015-2016 school year. [NT 126; S-28]
76. In its NOREP issued September 19, 2016, the District acknowledged that Student's former multiple disabilities classroom was not an appropriate program and placement for Student, concluding "Though [the] IU classroom meets [Student's] needs, based on parental concerns regarding safety and supervision, the District believes that [Student's] needs cannot be met, with appropriate parental participation." [S-62]
77. During the pendency of the due process hearing the District proposed a placement in another IU. In the considered opinion of deeply experienced witnesses for the Parent this proposed placement is not deemed appropriate for Student given the current extent and severity of Student's needs. [NT 321-322, 430-431, 501-503]
78. The Parent has located a private school (School) which she and consultants who have worked extensively with children having profiles similar to Student believe is appropriate for Student. After reviewing Student's records and observing Student the School's executive director determined that Student would be a "typical student" at the School. [NT 324, 430-431, 504-505, 528, 538]
79. The School's staff is experienced in working with children with severe cognitive limitations and visual impairments. [NT 430-431]
80. At the School Student would be assigned a one-to-one person who would work on teaching Student the vital skills of how to feed, dress and toilet self. [NT 538]

81. The teacher in the classroom to which Student would be assigned also would provide vision services as that teacher is vision certified. [NT 536]
82. Vision is a component throughout the School's program and vision is particularly emphasized in the communication program such that a multisensory approach is incorporated into virtually every aspect of the program. [NT 299]
83. In the words of its executive director, the School's mission is "to provide an education and daily living experiences for both children and adults, so that they can have the greatest quality of life available and possible for them." [NT 523]
84. The daily living skills in which the school provides instruction are, "everything you can imagine that you do to live your life. Learning life skills. Going out in the community. It could be self-help skills, taking care of yourself. It's everything you do to live your life." [NT 524]

Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case the Parent asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); see also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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).

The witness who had been Student's teacher for three years testified that she believed, but was not sure, that the Parent was aware that the nurse was carrying out the duties of a PCA, relying on her assumption that the nurse had informed the Parent of this. The Parent testified credibly that she was not aware that Student did not have a PCA as provided for in the IEPs, or that the nurse was carrying out the duties of a PCA. Given

the testimony of both these witnesses taken as a whole, including their demeanor while testifying, I find the Parent credible on this important point. [See NT 44 vs NT 77] Another point on which the teacher's testimony contradicted the Parent's was whether the Parent's concerns about the insufficiency of Student's program were adequately addressed at an IEP meeting. The Parent's version of the events was significantly more credible than the teacher's version. [See NT 62 vs. NT 102-104]

FAPE: Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA" or "IDEA 2004" or "IDEA"), which took effect on July 1, 2005, and amended the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et seq.* (as amended, 2004). "Special education" is defined as specially designed instruction...to meet the unique needs of a child with a disability. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child ...the content, methodology, or delivery of instruction to meet the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children. C.F.R. §300.26

In *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 3051 (1982), the U.S. Supreme Court articulated for the first time the IDEA standard for ascertaining the appropriateness of a district's efforts to educate a student. It found that whether a district has met its IDEA obligation to a student is based upon whether "the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." The Third Circuit has adopted this minimal standard for educational benefit, but has refined it to mean that more than "trivial" or "*de minimus*" benefit is required. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995), quoting *Rowley*, 458 U.S. at 201. Benefits to the child must be 'meaningful'. Meaningful educational benefit must relate to the child's potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). "The right to a FAPE ensures that students with special education needs receive the type of education that will 'prepare them for further education, employment, and independent living.'" *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717 (3d Cir. 2010) (quoting 20 U.S.C. § 1400(d)(1)(A)).

The central mechanism by which the IDEA secures the right to a FAPE for all children is the "Individualized Education Program," 20 U.S.C. §§ 1412(a)(4), 1414(d), which is "the package of special educational and related services designed to meet the unique needs of the disabled child." *Ferren C.*, 612 F.3d at 717 (quoting *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 526 (3d Cir. 1995)). "[A]n Individual Education Program (IEP) is the primary vehicle for providing students with the required free and appropriate education." *S.H. v. State-Operated School District of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

The IEP for each child with a disability must include a statement of the child's present levels of educational performance; a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting the child's other educational needs that result from the child's disability; a statement of the special education and related services and supplementary aids and services to be provided to the child...and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals (and) to be involved and progress in the general curriculum...and to be educated and participate with other children with disabilities and nondisabled children; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class... CFR §300.347(a)(1) through (4)

At the IEP meeting, a student's IEP team must consider, among other student-specific factors, a student's strengths, concerns of the parents, results of the most recent evaluation, and the academic, developmental, and functional needs of the child. (34 C.F.R. §300.324(a)).

Related Services: Under the IDEA, schools must provide not only special education, but also related services in order to furnish students with FAPE. 20 U.S.C. §§ 1401(9), 1412(a). The term "related services" is defined to include:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child.

An IEP must state "the special education and related services and supplementary aids and services . . . to be provided to the child" and "the anticipated frequency, location, and duration of those services and modifications." 20 U.S.C. §1414(d)(1)(A)(i)(IV), (VII).

Third Circuit case law holds that FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Ridley School District v. M.R.*, 680 F.3d 260, 268-69 (3d. Cir. 2012) *see also Coleman v. Pottstown School District*, No. 13-4724, 114 LRP 40005 (3d. Cir. 2014).

Pennsylvania's Chapter 14 provides that the IEP of each student with a disability must also include a description of any special supports that a student may require, including, among other things,

Blind-visually impaired support. "Services for students with the disability of visual impairment including blindness, who require services to address needs

primarily in the areas of accessing print and other visually-presented materials, orientation and mobility, accessing public and private accommodations, or use of assistive technologies designed for individuals with visual impairments or blindness.”

Life skills support. “Services for students with a disability who require services primarily in the areas of academic, functional or vocational skills necessary for independent living.”

Multiple disabilities support. “Services for students with more than one disability the result of which is severe impairment requiring services primarily in the areas of academic, functional or vocational skills necessary for independent living.”

Physical support. “Services for students with a physical disability who require services primarily in the areas of functional motor skill development, including adaptive physical education or use of assistive technologies designed to provide or facilitate the development of functional motor capacity or skills.” 22 Pa. Code § 14.131

A school district shall provide each protected handicapped student enrolled in the district...those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program...without discrimination.” 34 C.F.R. § 300.107; 34 C.F.R. § 104.37(a); and 22 Pa. Code §15.3

Assistive Technology and Augmentative Communication: Administrative decisions in Pennsylvania have reasonably held that a District is not required to evaluate a student for assistive technology, including communication devices, as long as the IEP team considers whether a student needs such to address needs. *Central Bucks Sch. Dist.*, 114 LRP 41597 (Pa. SEA 2014). Further, an LEA may conduct trials of possible devices on an ongoing basis instead of, or before, a formal evaluation is done. *Souderton Area Sch. Dist.*, 102 LRP 10245 (Pa. SEA 2001); *Wallingford-Swarthmore Sch. Dist.*, 111 LRP 51115 (Pa. SEA 2009); *East Penn Sch. Dist.*, 110 LRP 45548 (Pa. SEA 2010).

Nursing Services: Nursing is a “school health service” that, when required, must be specified in a child’s IEP. A local school district is generally permitted to discharge its obligation to provide a related or special service by contracting with a third-party provider, such as a nursing agency. 34 C.F.R. § 104.33(b)(3). However, the use of a private contractor to deliver a related service does not relieve an LEA of its responsibility for ensuring the continuous implementation of that service consistent with IDEA and Section 504. The public agency remains responsible for ensuring that the requirements of the IDEA are met. 20 U.S.C. § 1414(d)(1)(a)(IV); 34 C.F.R. §§ 300.34(a), (c)(13), 300.320(a)(4).

Personal Care Assistant: A Personal Care Assistant is a paraprofessional who provides “one-to-one support and assistance to a student, including support and assistance in the

use of medical equipment...activities of daily living, and monitoring health and behavior.” [Pa. Code §14.105(a)(4)]

Bi-lingual Instruction: Federal special education regulations require the IEP team to take the language needs of the child into account. Pennsylvania law mandates that LEAs provide programs for students whose dominant language is not English to facilitate the student's English proficiency through bilingual-bicultural or ESL instruction. 22 Pa. Code § 4.26.

Parental Participation: Parents must have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child. U.S.C. § 1415(b)(1) Parental participation must be meaningful. *See Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1078 (9th Cir.2003) (“The IDEA ‘imposes upon the school district the duty to conduct a meaningful meeting with the appropriate parties.’”) (*quoting W.G. v. Board of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1483 (9th Cir.1992)).

Section 504/PA Chapter 15 FAPE: Under Section 504 of the Rehabilitation Act of 1973, § 794 (“Section 504”) and its implementing regulations, 34 C.F.R. §§ 104.31 *et seq.*, public school districts must provide a FAPE to each qualified disabled child in elementary and secondary school. For purposes of Section 504, a FAPE 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 non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.” 34 C.F.R. § 104.33(b)(1).

Pennsylvania Chapter 15 by its terms is intended to implement students’ rights under section 504, and it does not expand or limit those rights. 22 Pa. Code §15.11(c). The obligation to provide FAPE to a child with a disability is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). Here, the conclusions below that the District denied the student a FAPE under the terms of IDEA are adopted in finding that the student was analogously denied a FAPE under the terms of Section 504/Chapter 15.

Section 504/Chapter 15 Discrimination: 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). Since the January 2009 effective date of the ADA Amendments Act of 2008, which expanded the definitions of both “substantial impairment” and “major life activity” under §504 as well as the ADA, learning is explicitly included in the definition of major life activity. *See* 34 C.F.R. §104.3j(2)(i), (ii).

In contrast to the IDEA, Section 504 emphasizes equal treatment, not just access to FAPE. The drafters of Section 504 were not only concerned with [a student] receiving a FAPE [as is the case with the IDEA] but also that a federally funded program does not

treat a student differently because he or she is disabled. *Chavez v. Tularosa Municipal Schools*, 2008 WL 4816992 at *14 (D.N.M. 2008), quoting *Ellenberg v. N.M. Military Inst.*, 478 F.3d 1262, 1281-82 n. 22 (10th Cir.2007)(quoting C. Walker, Note, [Adequate Access or Equal Treatment: Looking Beyond the IDEA to Section 504 in a Post-Schaffer Public School](#), 58 Stan. L.Rev. 1563, 1589 (2006)

The Commonwealth of Pennsylvania protects a student's right to be free from discrimination on the basis of handicap or disability, through Chapter 15 of the Pennsylvania Code, part of the regulations implementing the educational statutes of the Commonwealth. 22 Pa. Code Chapter 15. Similar to Section 504, Pennsylvania's Chapter 15 regulations require a substantial limitation with respect to education, defining a "protected handicapped student" as "A student who meets the following conditions: Is of an age at which public education is offered in that school district; has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program; is not eligible as defined by Chapter 14 [relating to special education services and programs]; or who is eligible but is raising a claim of discrimination under §15.10 [relating to discrimination claims]." 22 Pa. Code §15.2.

In addition to denying Student FAPE under Section 504/Chapter 15 the evidence shows that the District discriminated against Student. A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program has been discriminated against in violation of Section 504. See *Ridgewood supra*; *Board of Education v. N.E. ex rel. M.E.*, 172 F.3d 238 (3d Cir. 1999), *S.H. v. Lower Merion School Dist.*, 729 F.3d 248 (3d Cir. 2013).

In *S.H.* the Third Circuit reiterated its requirements laid out in *Ridgewood* that "a plaintiff must demonstrate that defendants know or should be reasonably expected to know of [the child's] disability," to establish a § 504 violation but that "a plaintiff need not prove that defendants' discrimination was intentional." *Id.* The District discriminated against Student in the following ways:

The District through the IU excluded Student from school on the basis of disability on days when the nurse was suspended, sick, or otherwise absent. By failing to arrange for uninterrupted nursing services, a necessary related service, the District excluded Student from education and thereby violated IDEA and Section 504. See 34 C.F.R. § 300.107; 34 C.F.R. § 104.37(a); and 22 Pa. Code §15.3 ("A school district shall provide each protected handicapped student enrolled in the district...those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program...without discrimination.").

The District neglected Student's severe vision impairment, despite having plain notice of Student's vision problems. After it was determined that Student was legally blind, the District failed to program direct vision services as recommended, and failed to implement its own SDI for a light box and flashlight.

The District declared Student “achieved English proficiency levels sufficient for exit from the ESL program” without conducting an assessment and exited Student from ESL, and did not provide bilingual receptive language therapy, thus impeding Student’s communication with the family in the family’s native language.

The Student was denied the benefit of the Parent’s meaningful participation in planning Student’s educational program by failing to accommodate her needs for translated documents and for interpretation throughout IEP meetings.

Compensatory Education: Compensatory education is an appropriate remedy where an LEA knows, or should know, that a child’s educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996); *Ridgewood Education v. N.E.*, 172 F.3d. 238, 250 (3d. Cir. 1999). *Ridgewood* provides that a school district has a reasonable period of time to rectify a known issue. Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990). Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. Under the first method (“hour for hour”), which has for years been the standard, students may potentially receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*. An alternate, more recent method (“same position”), aims to bring the student up to the level where the student would be but for the denial of FAPE. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005); *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006); *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014); *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(quoting *Reid* that compensatory education “should aim to place disabled children in the same position that they would have occupied but for the school district’s violations of the IDEA.”). The “same position” method has been most recently endorsed by the Third Circuit in *G.L. v. Ligonier Valley Sch. Dist. Authority*, 115 LRP 45166, (3d Cir Sept. 22, 2015).

The Parent, in her closing argument through counsel, requests that I calculate compensatory education services on an hour-for-hour basis. I will decline to do so and instead will order placement at the School, which placement I believe will provide the services necessary to bring Student to the level at which Student would be but for the denial of FAPE.

Discussion

The Student who is the subject of this decision is precisely the kind of severely disabled child who would have, prior to 1975 when the United States Congress passed the Education for All Handicapped Children Act, been invited to remain at home instead of coming to school. In the subsequent iteration of this monumental legislation, the IDEA and relevant

case law have established that even the most disabled child has the right to an appropriate education that confers meaningful educational benefit. It is well accepted that education must address basic developmental needs in the emotional, behavioral and social domains. The regulations promulgated by the Pennsylvania Department of Education for public education require local education agencies to “prepar[e] students for adult life by attending to their intellectual and developmental needs.” 22 Pa. Code § 4.11(b). See generally, *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996); *Breanne C. v. Southern York County School District*, 2010 WL 3191851 (M.D. Pa. 2010)(education includes progress in all relevant domains under the IDEA, including behavioral, social and emotional).

An overall view of the evidence in this matter reveals that one of the primary reasons for the educational misfortunes that befell this child was the decision to utilize the nurse to carry out the role of a PCA. This violation was the first push of the domino that caused Student’s progress in acquiring self-care life skills to come to a virtual halt. The characterization of this choice in Parent’s closing argument is apt: using the nurse to fulfill the role of a medical professional and a PCA was a “convenient arrangement for the teachers and other staff” as well as “a financially advantageous one for the District”. I agree with the Parent that this choice “came at a terrible price to Student’s development of critical life skills”.

Student’s physical and intellectual handicaps require that learning life skills towards as much independence as possible is absolutely essential for FAPE. Had the District put a PCA/educator in place to collect baseline data and, under the supervision of a teacher/educator, teach Student toileting, feeding and dressing through repetition of small incremental learning steps, Student would be expected to be considerably further along the path to independence than Student is at the present time. (*See, e.g., G.K. v. Montgomery Cnty. Intermediate Unit*, 65 IDELR 288 (E.D.Pa. 2015) (PCAs generally work directly with child and collect data); *Sch. Dist. of Philadelphia*, 112 LRP 41992 (SEA Pa. August 3, 2012) (PCA meant to provide one-on-one activities supporting teacher’s instructional program for student); *Sch. Dist. of Philadelphia v. Williams*, 66 IDELR 214 (E.D. Pa. 2015) (delay in implementation of 1:1 aide constituted denial of FAPE where aide would play an “integral role” in student’s educational program).

The extent to which the decision to deny Student a PCA is reflected in the IEPs during the relevant period –goals for activities of daily living were either never considered by the IEP team or considered and rejected.

It is disturbing that one of Student’s teachers assigned to a multiple disabilities classroom asserted that she had “never seen an IEP goal for toileting”, and another of Student’s multiple disabilities teachers “assumed that [the nurse] would be forever changing [Student] when [Student] needed to be changed”. The IEP team similarly showed disregard for Student’s need for self-feeding as a step toward independence. Although IEPs in 2011 and 2012 carried a self-feeding goal that was not mastered, self-feeding was inexplicably dropped from the 2013 and subsequent IEPs. One of Student’s teachers simply stated, “It was not something that was discussed during the IEP meeting.”

Regarding dressing, the IEP for the 2011-2012 school year carried a goal that Student be able to pull a shirt off, partially, to 80% independence, and according to 2012 Carolina Curriculum Assessment Log Student mastered that goal. However, no further dressing goals were introduced until the 2015 IEP, when Student had a goal for putting on Student's coat; a progress report for that goal noted that Student required "complete physical assistance" to don a coat, information akin to 2011, when "Student [cooperated] with dressing and undressing." One teacher acknowledged that there should be goals for self-dressing, and in testimony indicated that the omission was "the determination of the IEP team" without supporting the implication that the team discussed this activity of daily living. Student was not only denied FAPE as discussed above, but was also not afforded the other related services of physical therapy and vision therapy required in order to receive an appropriate education.

There is more than ample evidence that Student was denied FAPE under the IDEA/Chapter 14 and under Section 504. There is also sufficient evidence to support the Parent's contention that Student suffered discrimination under Section 504 and Chapter 15.

With regard to remedy, the degree of harm resulting from the District's abdication of responsibility for teaching Student essential daily living skills over at least a two-year period cannot be assessed with any degree of certainty. Likewise the contribution to Student's virtual lack of educational progress of the District's failure to provide certain essential related services is not quantifiable. I have determined that an award of hours upon hours of compensatory education is inappropriate given the likelihood that after a full school day in the regular school year and after summer ESY services Student would not be in any physical or mental position to utilize additional instructional time. As an alternative to an hour-for-hour approach I will adopt the "make whole" approach to remedy recently encouraged by the 3rd Circuit. *G.L. v. Ligonier Valley Sch. Dist.*, 2015 U.S. App. LEXIS 16776 at 59 (3d Cir. 2015).

I find that placement in the parentally-selected School is likely to provide a reasonable chance to make Student whole. The remedy of a placement in a nonpublic school selected by a parent is available on a finding that (a) the school district has failed to provide FAPE and (b) the placement at the nonpublic school is appropriate under the *Rowley* standard, *i.e.* it is "reasonably calculated to enable the child to receive educational benefits." *Burlington Sch. Committee v. Mass. Dep't of Educ.*, 471 U.S. 359 (1985). *Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d at 276 (3d Cir. 2007).

The Parent has located a facility with a long history of educating multiply handicapped children; its 100th Anniversary of operation will be in 2020. Student is the facility's "typical student". While it is not perfect¹⁰, the School glows in comparison to the program/placement the District has provided for Student up to now. Therefore, I will order immediate placement in the School as a make-whole remedy for the District's multifaceted violation of Student's right to FAPE under the IDEA and Section 504.

¹⁰ Travel to the school takes about an hour and a quarter according to Google Maps and the Parent. My only hesitation about ordering placement there is the travel time, but I will not substitute my judgment for the Parent's judgment that the distance will not adversely affect Student. [NT 504; Parent's closing argument]

Order

It is hereby ordered that:

1. The School District denied Student FAPE by:

Not providing appropriate education in the area of Activities of Daily Living (ADLs);

Not providing a Personal Care Assistant (PCA) as specified in the IEP;

Not continuing bi-lingual programming given that Student's maternal language is not English;

Not providing Physical Therapy and Vision Therapy.

2. The School District denied the Parent meaningful participation, including failing to communicate with her in her native language during IEP meetings, not providing documents translated into her native language, and failing to inform her of the specific supports that Student was not receiving. These failures constituted a denial of FAPE for Student in that had mother understood all aspects of the District's programming she would have been able to more effectively intervene on her child's behalf to secure appropriate programming.
3. As the School District denied Student FAPE in the above areas, an appropriate remedy to bring Student to the place where Student would have been but for the denial of FAPE is prospective placement in the [Redacted Private] School. This remedy shall include tuition for regular school year and ESY programming, door to door transportation from home to the School and from School to home, and reimbursement for mileage when the Parent is required to attend meetings at the School.
4. The [Redacted Private] School shall be Student's pendent placement.
5. In violation of Section 504 and Pennsylvania Chapter 15 the District discriminated against Student on the basis of Student's disability.

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

Linda M. Valentini, Psy.D., CHO

November 7, 2016

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