

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: M. Z.

Date of Birth: [redacted]

CLOSED HEARING

ODR File No. 18558-16-17 AS

Parties to the Hearing:

Representative:

Parents

Parent[s]

Parent Attorney

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Dates of Hearing:

February 6, 2017; February 22, 2017;
March 22, 2017

Date of Decision:

April 18, 2017

Hearing Officer:

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a mid-teenaged student who resides within the boundaries of the Upper St. Clair School District (District) and formerly attended its schools, but now attends a charter school. Student was never identified by the District as a child who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student's Parents filed a due process complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,³ as well as the federal and state regulations implementing those statutes, in failing to identify Student as in need of special education and/or accommodations, and otherwise discriminated against Student on the basis of Student's disability. The District denied all of the Parents' allegations.

The case proceeded to a due process hearing.⁴ At the first session, evidence was presented on whether the Parents should be permitted to proceed with claims that extended beyond the IDEA statute of limitations. Following a ruling in favor of the District on the record, substantive evidence was presented during that initial and two subsequent hearings.⁵ The record closed on receipt of the parties' written closing arguments.⁶

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 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are set forth in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are codified in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ The record closed upon receipt of written closing arguments. Citations to the record will be as follows: Notes of Testimony (N.T.); Joint Exhibits (J-) followed by the exhibit number; Parent Exhibits (P-) followed by the exhibit number; and School District Exhibits (S-) followed by the exhibit number. Counsel should be commended for coordinating a concise record and participating in the Electronic Exhibits Pilot program.

⁵ The decision due date was extended for good cause on joint request as permitted by 34 C.F.R. § 300.510.

⁶ The parties' respective objections to P-16 and S-13 were taken under advisement. (N.T. 621-25) Because those documents are helpful to an understanding of the parties' contrasting positions on the issues, they are hereby admitted; however, P-16, consisting of an after-acquired evaluation and educational program, was not considered as

For the reasons set forth below, the Parents' claims must be denied.

ISSUES

Whether the District failed in its obligation to evaluate and identify Student as eligible for special education prior to May 2016;

If it did fail in that obligation, did the District deny Student a free, appropriate public education;

If the District did deny Student a free, appropriate public education, should Student be awarded compensatory education?

FINDINGS OF FACT

1. Student is a mid-teenaged student residing in the District but currently attending a charter school. (N.T. 27-28)
2. Student was diagnosed with Obsessive Compulsive Disorder (OCD) and anxiety in approximately June 2013. Student had had therapy since the age of five, but began intensive outpatient counseling at the time of those diagnoses. (N.T. 38, 69, 74)
3. Student attended a District middle school for the 2013-14 school year. The school principal and teachers communicated with the Parents about Student throughout that school year. (N.T. 99-100; P-1 pp. 16-26, 36-46)
4. During the spring of 2014, the Parents asked the middle school guidance counselor assigned to Student to provide suggestions for an outside behavioral health provider, and she provided several. (N.T. 280-83)
5. Student began counseling in June 2014 with a new provider, meeting with a psychiatrist and a licensed social worker on a regular basis. (P-13)
6. Student was diagnosed with Oppositional Defiant Disorder (ODD) in August 2014 and was prescribed medication at that time. (N.T. 39, 194; P-13 p. 146)
7. The District was aware of the OCD and ODD diagnoses, but was not provided with written confirmation of the diagnoses or any evaluation reports during the time period in question (December 2014 through the end of the 2015-16 school year). (N.T. 101-04, 121-22, 194-95, 270-71, 298-99)

substantive evidence that Student was eligible under the IDEA while attending school in the District; and S-13 had very limited utility to the issues presented.

8. Student took medication at school when attending the District's middle schools. (N.T. 113)
9. At home, Student could be defiant and argumentative and make misleading statements or lie when asked direct questions. Student sometimes acted impulsively and could misread social cues, and also exhibited difficulty with organization. Student at times expressed to the Parents that Student did not want to go to school, and complained about peers. (N.T. 32-34, 156-57, 159, 168, 172-73, 179-80, 184; P-4 p. 3)

2014-15 SCHOOL YEAR

10. Student began sixth grade at the start of the 2014-15 school year at one of the District middle schools. (N.T. 99, 133, 156)
11. The Parents met with a District School Psychologist in approximately September 2014 to discuss challenges Student was experiencing at school. The District did not offer to conduct a special education evaluation, and the Parents did not understand such an evaluation could be pursued. The Parents did ask that certain teachers complete Vanderbilt medication management forms that are used by pediatricians and psychiatrists. (N.T. 49-50, 55, 72, 84, 89-90, 317-18, 340-41; P-3 p. 55-56; S-8)
12. The Parents did not ask the treating psychiatrist to provide the Vanderbilt forms to the District at any time. (N.T. 85-87)
13. The District does not utilize Vanderbilt forms but will complete them on request of an outside provider. (N.T. 113)
14. The Parents met with Student's treating psychiatrist in September 2014. At that time, they became aware of the psychiatrist's recent call to the Guidance Counselor and information the psychiatrist believed was conveyed during that conversation. (N.T. 52-53; P-1 p. 59; P-13 p. 138)
15. The Parents met with the District Director of Support Services in October 2014, and the Parents asked about special education services. The Director of Support Services did not recommend pursuit of special education for Student at that time, but the possibilities of an evaluation or Section 504 Plan were mentioned. (N.T. 55-56, 84, 90, 126-27, 131-32; P-1 p. 55; S-8)
16. The Director of Support Services communicated with Student's psychiatrist after that October 2014 meeting. (P-1 p. 54)

17. The Parents knew, or had reason to know, of the availability of special education evaluations and services and that the District did not believe they were necessary for Student as of that October 2014 meeting. (N.T. 90, 143-44)⁷
18. In November 2014, the middle school Principal was in communication with Student's treating psychiatrist following a situation involving a peer, after a meeting with the Parents to discuss the matter when they asked the Principal to update the psychiatrist. The Principal referenced the Vanderbilt forms, noting that the prior therapist had not provided them and that she recommended that the Parents follow up on those. The Principal noted that Student had "peaks and valleys" and could be impulsive and at times lacked perception of events that occurred. (N.T. 104-05; P-1 p. 54)
19. The Parents contacted the District Director of Special Education again in December 2014 to ask about the completion of the Vanderbilt forms. They did not follow up with the treating psychiatrist about those forms at that time. (N.T. 57, 86-88; P-1 pp. 55-56; S-8)
20. The Parents provided the Vanderbilt forms to the District in February 2015. (N.T. 127; P-1 pp. 30-31)
21. The Parents expressed concerns in March 2015 that Student was experiencing more difficulties at school than was communicated to them. (N.T. 117-19; P-1 p. 186)
22. Also in March 2015, District representatives met with Student's wraparound service provider who provided services in the home. (N.T. 296, 306; P-1 p. 197)
23. Students in fifth grade travel for an educational trip with their parents for a weekend event in the spring. Student had a successful experience going on the trip, which one of the Parents described as "great." (N.T. 163, 430-32, 454-63; S-14)
24. The middle school Principal and teachers regularly communicated with the Parents about Student throughout the 2014-15 school year with respect to Student's difficulties with peers (N.T. 157-59; P-1 pp. 32, 50-53, 181-82, 191-93, 209, 220-22); concerns and questions about quizzes, tests, and assignments (P-1 pp. 6, 47-49, 120, 170-73, 198-200, 206-07, 228); medication (P-1 pp. 27-29, 62, 64-67, 171, 178, 201, 213, 217-18, 226); and organizational concerns (P-1 pp. 183-85, 188-90).
25. Student had five disciplinary referrals during the 2014-15 school year, all between December 2014 and February 2015. Four related to tardiness to class as part of Student's medication administration routine, and one was for tardiness for an unspecified reason. (N.T. 409, 412; J-4 p. 2)
26. During the 2014-15 school year, Student was tardy fifteen days and absent seven days, with eight early dismissals. (J-3 pp. 2-3)

⁷ The transcript at N.T. 143 L 12 is missing the word "not" just before the word "recommending," likely due to this hearing officer misspeaking what she had concluded, as is evident from N.T. 143-44. The Parents' claims were limited to the period December 3, 2014 through the end of the 2015-16 school year. (N.T. 143-44)

27. Student's grades reflected good to outstanding overall performance in all classes throughout the sixth grade year. (J-5 pp. 16-31)
28. Throughout the 2014-15 school year, Student experienced some challenges that were not atypical of a sixth grader with respect to peer relationships and social skills (N.T. 100, 102, 202-06, 218-19, 231, 239-43, 426, 438-41); academic performance (N.T. 201-02, 239-41, 307-08, 312, 420, 424-26, 443-46); attendance (N.T. 213); organization (NT. 308-09, 431-33, 454); attention (N.T. 420); being untruthful (N.T. 428-29); conflicts with peers during group projects (N.T. 427-28, 451-52); and minor discipline (N.T. 101, 123-24, 128-31; J-4 p. 2).
29. Student visited the Guidance Counselor about peer conflicts just as other students did, and no more significantly or frequently, during the 2014-15 school year. (N.T. 269-70, 276-77, 299-304, 307, 310-14)

2015-16 SCHOOL YEAR

30. Student attended a different middle school for seventh grade. Student expressed anxiety over and concern about the transition to the Parents, and they in turn conveyed that anxiety to one of the teachers. The District responded to those concerns. (N.T. 174-76; P-1 p. 68; S-11 pp. 1-2)
31. Most students moving to the other middle school experience difficulty with that adjustment. Counselors and teachers meet to consider needs of any individual students as part of that transition. (N.T. 372-73, 518-19, 580-82)
32. This middle school holds student support meetings once each month where staff discuss students of concern. Most or all students are also discussed at regular meetings among staff. (N.T. 377-80, 405-06, 412, 573-77)
33. In September 2015, the Parents were in communication with the Guidance Counselor, and they discussed a possible evaluation. After a meeting with the Guidance Counselor and teachers, the Parents decided not to pursue an evaluation at that time. (N.T. 375-77, 380-83, 587-89; P-1 p. 76; S-7)
34. In January 2016, Student was referred to the student support meeting following an incident with a peer. The team agreed to continue communicating if any further concerns arose, and also to communicate with the Parents to keep them informed of Student's classroom performance. (N.T. 590-9, 605-08, 611; P-1 p. 89; J-1 p. 87)
35. In May 2016, the Parents asked the District to complete Vanderbilt forms again, and it did so. (P-1 pp. 116-18)
36. District teachers and other staff regularly communicated with the Parents about Student throughout the 2015-16 school year with respect to Student's difficulty with peers (P-1 p. 102); concerns and questions about homework and assignments (P-1 pp. 68-70, 73, 80, 83-86, 90-93, 95-99, 106-12, 119, 123-39, 143-65; S-11, S-12); tutoring (P-1 pp. 74-75,

105; S-11); absences (S-11, S-12); organizational difficulties (P-1 pp. 72, 80-82, 100, 120; S-12); and motivation (P-1 pp. 83, 106; S-12).

37. At the end of the seventh grade school year, the Parents worked with Student to complete a number of missing assignments. They also made inquiry about how to request a special education evaluation. (N.T. 189-90; P-1 p. 103)
38. Student had two disciplinary referrals during the seventh grade school year. The first, in January 2016, was for tardiness to class; the second, in May 2016, was for behavioral disruption before a class. (N.T. 593-95; J-4 p. 3; S-10)
39. During the 2015-16 school year, Student was tardy twenty one days and absent six days, with thirteen early dismissals. (J-3 p. 1)
40. Student's grades reflected satisfactory to good performance, with the exception of needing improvement for a portion of the school year in Mathematics/Pre-Algebra, Social Studies, and a foreign language. (J-5 pp. 32-41)
41. Throughout the 2015-16 school year, Student experienced some challenges that were not atypical of a seventh grader with respect to peer relationships (N.T. 371-72, 390-94, 402-04, 407-09, 414-15, 486-87, 530, 535-39, 542-44, 553-54); completing assignments and homework (N.T. 478-80, 501-02, 504-05, 509, 512-13, 519-20, 529, 546-50, 557-58 (N.T. 500-01, 514-15, 517, 531-32, 552-53, 559-60); and being untruthful (N.T. 531).

DISTRICT EVALUATION

42. The District initiated a special education evaluation at the request of the Parents in May 2016. The Parents were provided and signed the Permission to Evaluate form, returning it to the District at the end of that same month. (N.T. 65, 67-68, 91-92, 132, 227-28, 320-21, 366-67; J-1, J-2; S-10)
43. The Parents completed a parent input form for the District evaluation. They also executed a release for all of the psychiatric records. (P-4, P-13 p. 1)
44. The Parents enrolled Student in the charter school in July 2016 before the District evaluation was completed. The District did not complete that evaluation as a result, and therefore did not reach a conclusion regarding special education eligibility. (N.T. 92-93, 226-27, 321, 335-38; P-2; S-2, S-6)
45. Student was cooperative during the assessments administered by the District School Psychologist. On the Wechsler Intelligence Scale for Children – Fifth Edition, Student's Full Scale IQ was within the average range, with some variability among the Index scores and between subtests within Indices. Scores on the Wechsler Individual Achievement Test – Third Edition were in the average range on the reading comprehension and oral fluency, mathematics, and written expression composites, with a relative strength in oral reading fluency. (N.T. 323-24; J-6 pp. 2-5)

46. Teachers completed the rating scales from the Behavioral Assessment System for Children – Third Edition (BASC-3). At least one of the four teachers' rating scales reflected clinically significant concerns with hyperactivity, aggression, conduct problems, depression, attention problems, atypicality, and withdrawal; and additional at-risk concerns in the areas of learning problems, adaptability, social skills, and leadership. Additional concerns in all Content Scale areas (anger control, bullying, developmental social disorders, emotional self-control, executive functioning, negative emotionality, and resiliency) at an at-risk or clinically significant level were also indicated by at least one teacher. (N.T. 324-26; J-6 pp. 6-7)
47. Student completed the BASC-3 Self-Report, indicating an at-risk concern with attitude to school but no other areas. No Parent rating scales had been sought before the Student was enrolled in the charter school. (N.T. 355; J-6 pp. 6-7)
48. The District School Psychologist summarized, in paragraph form, information from the teachers that was essentially derived from their BASC-3 rating scales. The majority of the teachers' input was through checkboxes on the BASC-3 with a few open-ended questions, none focused on positive behaviors. The teachers responded as thoroughly as they could, answering in the affirmative if they could recall one instance of a behavior, or a similar behavior, that was reflected in a checkbox. (N.T. 326-27, 485-86, 492, 527-30, 533-34, 536, 561-62; J-6 pp. 7-8)
49. Student's treating psychiatrist provided written confirmation on July 20, 2016, that Student was under his care for OCD and ODD. (N.T. 356; S-1 p. 3)

DISENROLLMENT FROM DISTRICT

50. In August 2016, the Director of Special Education provided a summary of the District's findings from the portion of the evaluation that had been completed and shared it with the Parents and the charter school. (N.T. 187-88, 335-36, 362-63; J-6; S-4)
51. The charter school issued a reevaluation report (RR) for Student, incorporating the District's evaluation information and input from the Parents in addition to some further assessments and rating scales/inventories. The charter school RR concluded that Student was eligible for special education on the basis of an Other Health Impairment. (N.T. 92-93; P-16)
52. The charter school initially provided Student with Section 504 accommodations based on the BASC-3 results included in the District's summary report, and developed an Individualized Education Program (IEP) in February 2017. (N.T. 93; P-16)
53. In late August 2016, the Parents contacted the District Superintendent and asked for explanation about the District's assessments, as well as inquiring why a special education evaluation had never been conducted. (N.T. 63; P-1 pp. 8-12)

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 credible, testifying to the best of his or her recollection from his or her perspective. The testimony was generally consistent rather than contradictory as to factual matters necessary to decide the issues, although witnesses’ perceptions about how to interpret certain events was not necessarily aligned, particularly since the Parents and District witnesses had divergent viewpoints of how Student presented Student’s self. As will be discussed further below, it is noteworthy that every witness, including the Parent who testified, expressed some inability to recall certain events that occurred sometime in the past.

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

were thoroughly considered in issuing this decision, as were the parties' closing arguments.

GENERAL IDEA PRINCIPLES

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to students who qualify for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed.

The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). Local educational agencies (LEAs) meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).

Recently, the U.S. Supreme Court considered a lower court’s application of the *Rowley* standard, explaining that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County School District RE-1*, ___ U.S. ___, 137 S. Ct. 988, ___, 197 L.Ed.2d 335, 352 (2017).

PRINCIPLES REGARDING IDEA EVALUATION/ELIGIBILITY FOR SPECIAL EDUCATION

The IDEA and its implementing state and federal regulations obligate LEAs to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a). This obligation is commonly referred to as “child find.” LEAs are required to fulfill the child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). In other words, an LEA is required to identify a student eligible for special education services within a reasonable time after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). LEAs are not, however, required to identify a disability “at the earliest possible moment.” *Id.* (citation omitted). Moreover, “[c]hild find does not demand that schools conduct a formal evaluation of every struggling student.” *Id.* (citation omitted).

The IDEA defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 34 C.F.R. § 300.8(a); *see also* 20 U.S.C. § 1401. Those classifications or categories are “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.” 20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a).

With respect to the second prong of IDEA eligibility, “special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). Further,

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3). When evaluating a student for autism, an emotional disturbance, intellectual disability, multiple disabilities, other health impairment, traumatic brain injury, or specific learning disability, a certified school psychologist must be part of the team. 22 Pa. Code § 14.123(a).

GENERAL SECTION 504 PRINCIPLES

Section 504 specifically prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii). “The question of whether an individual is substantially limited in a major life activity is a question of fact.” *Williams v. Philadelphia Housing Authority Police Department*, 380 F.3d 751, 763 (3d Cir. 2004).

In the context of education, Section 504 and its implementing regulations require LEAs to “provide a free appropriate public education to each qualified handicapped person[.]” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). This FAPE obligation includes a child find duty of under Section 504. 34 C.F.R. § 104.32; *Ridgewood* at 253.

EVALUATION/IDENTIFICATION OF STUDENT

The first issue is whether the District erred in failing to identify Student as eligible under the IDEA. The District was clearly on notice that Student had been diagnosed with several mental health disorders, OCD and ODD, from the start of the 2014-15 school year; and, staff communicated with Student's treating psychiatrist at times. Nevertheless, the existence of a mental health diagnosis, in and of itself, does not mean that the District should have suspected a disability under the IDEA or Section 504. The definition of special education eligibility is two-pronged, requiring some impact on the student's education. Here, as set forth above, each and every District witness testified, credibly and persuasively, that Student did not exhibit social/emotional/behavioral concerns or academic struggles that were atypical of a middle school student. *See, e.g., D.K., supra*, 696 F.3d at 251 (finding no child find violation where the student's difficulties were not unusual for the child's age and grade) and cases cited therein. All concerns with Student's academic and social/emotional/behavioral functioning at school (including conflicts with peers, academic performance, attention, organizational difficulties, motivation, and minor discipline), whether brought to the District's attention by the Parents or noted by its staff, were promptly and easily addressed in the regular education environment. In addition, Student achieved academic success overall throughout the time period in question, with none of the concerns impacting Student's education to any significant degree.

Although the Parents suggest that the District witnesses displayed a lack of candor in their testimony at the hearing that they could not recall Student's struggles (Parent Closing at 5 n.1), this hearing officer did not detect any deception or intention to mislead; rather, the witnesses' collective inability to recall details about Student's presentation at school supports their testimony that Student did not stand out as a child with worse behavior, more significant

academic challenges, or more frequent peer conflicts than other students in the middle school during the 2014-15 and 2015-16 school years. As noted above, it does appear that Student presented very differently at home than Student presented in the District middle schools. However, because the evidence is preponderant that Student did not demonstrate a need for special education in the school setting, or that Student had a disability that substantially limited Student's learning, there was no child find violation. *Cf. Jana K. v. Annville-Cleona School District*, 39 F. Supp. 3d 584, 602 (M.D. Pa. 2014) (finding school district's constructive knowledge of the child's mobile therapy did not abrogate its child find obligation where academic, social/emotional/behavioral, and physical manifestations were evident at school) (*see* Parents' Closing at 8).

This hearing officer has no doubt that the Parents were shocked and alarmed by the summary report provided by the District before the evaluation could be completed; the paragraphs summarizing the teacher's input based solely on the BASC-3 rating scales could easily lead one to suspect that Student was a particularly challenging student with numerous behavioral manifestations at school. Whether it was wise to provide that information in that manner is not the question before the hearing officer. In any event, the role of a school psychologist in conducting a comprehensive special education evaluation is, in part, to review and interpret assessment results (including their reliability and validity), seek more information where necessary, and offer guidance on the eligibility determination and any necessary services based on his or her education and expertise. In this case, the teachers who completed the BASC-3 rating scales explained that they were trying to be as thorough as possible, and in the course of doing so ultimately provided an inaccurate portrayal of how they really perceived Student, as evidenced by the convincing testimony of how they actually viewed Student: as a typical middle

school child having the types of experiences that children of that age frequently encounter. Had Student remained enrolled in the District, its obligation as the LEA to complete the evaluation would not have terminated;⁸ and, there is every reason to believe that a complete evaluation with broader teacher input would have depicted a much different child in the school environment while in the District.

It is also not insignificant that the Parents were in continual communication with the teachers and other District professionals throughout the time period in question. The Parents, commendably, were clearly very involved in Student's education and dedicated to helping Student achieve as much success as possible at school, including academically and socially. Their suspicion that the District concealed information from them, based in part on the psychiatrist's reported belief that an undisclosed "notebook" on Student existed (P-13 p. 138), is understandable because of its source, but is wholly unsupported on this record.

This hearing officer is compelled by the evidence to conclude that the Parents have not established that the District should have suspected that Student was a child with a disability under the IDEA or a protected handicapped student under Section 504 and Chapter 15. Thus, the failure to evaluate and identify Student under either the IDEA or Section 504 was not error, and did not operate to deny Student FAPE or constitute discrimination. Accordingly, there is no basis for any relief.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District did not violate the IDEA or Section 504 in failing to identify

⁸ See 20 U.S.C. § 1414(a)(1)(C) and 34 C.F.R. §§ 300.301(d)(2) and 300.301(e) regarding a student who transfers to a different LEA while an evaluation is being conducted.

Student as a child with a disability or a protected handicapped student, and that no remedy is due.

ORDER

AND NOW, this 18th day of April, 2017, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not fail in its Child Find obligations to Student under the IDEA or Section 504.
2. The District did not discriminate against Student.
3. The District is not ordered to take any action.

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
ODR No. 18558-1617AS