

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

Pennsylvania Special Education Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR File Number 19219 16 17

Child's Name: T.B.

Date of Birth: [redacted]

Dates of Hearing:

7/31/2017, 8/4/2017, 9/5/2017, 9/26/2017, 10/2/2017

Parent:

Parent(s)

Pro Se

Local Education Agency:

North Allegheny School District, 200 Hillvue Lane
Pittsburgh, PA 15237

Counsel for the LEA

Christina Lane, Esquire, 424 S. 27th Street, Suite 210
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Counsel for the LEA

Hearing Officer: Michael J. McElligott **Date of Decision:** 10/31/2017

INTRODUCTION

[The student] (“student”)¹ is [a late-pre-teenaged] student who resides in the North Allegheny School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with health impairment. [Redacted.]³

Parent claims that the student was denied a free appropriate public education (“FAPE”) for a period, in effect, from the student’s mid-year enrollment in January 2016 through the remainder of the 2015-2016 school year (4th grade), the 2016-2017 school year (5th grade), and continuing through the current 2017-2018 school year (6th grade). [Redacted.]

The District counters that it timely identified the student’s special education needs and has provided appropriate programming to meet those needs. [Redacted.]

For the reasons set forth below, I find in favor of the District. The order, however, contains provisions for a revision of the student’s identification status under IDEIA and directives to the student’s IEP team. Finally, an award of

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

³ [Redacted.]

hours, as discussed between the parties in July 2017, will be made explicit through the order.

ISSUES

Did the District meet its obligations
to provide FAPE to the student?

[Redacted.]

FINDINGS OF FACT

2015-2016/4th Grade

1. In January 2016, in the midst of the 2015-2016 school year and after having attended a private school, the student enrolled in the District in 4th grade. (NT at 128-232).
2. The parents shared achievement testing completed in April 2015, the spring of the prior school year at the private school, showing that the student achieved above average in national percentiles in reading, math, science, and social studies, and in the high-average range in language. (School District Exhibit [“S”]-24; NT at 128-232).
3. Upon enrollment, on achievement testing administered by the District, the student scored in the 95th percentile in reading, the 84th percentile in vocabulary, the 61st percentile in mathematics, the 17th percentile in computation, and the 46th percentile in total math. (S-28 at page 3).
4. As part of the enrollment process, to gauge where the student should receive mathematics instruction, the District administered its end-of-4th-grade mathematics placement test, given to students District-wide. (S-29; NT at 128-232).
5. To gauge the student’s abilities in January, the mathematics assessment was graded on the questions that 4th grade students in the District would have covered by the mid-point of 4th grade. The student scored 8 out of 20 and was placed in the standard-paced general education math class. (S-29; NT at 128-232).

6. Over the spring of 2016, the student experienced a somewhat difficult transition to the District. The student had difficult peer interactions, including being teased, and in the 3rd nine weeks earned the following grades: A in science, B in social studies, C in reading, and Ds in English, spelling, and mathematics. (S-38; 128-232, 993-1049, 1252-1332).
7. The student met weekly with the school counselor to focus on socialization/peer interactions. (NT at 993-1049).
8. In February 2016, the parents shared with the District a medical diagnosis of attention deficit hyperactivity disorder (“ADHD”)/Episodic Impulsivity. (S-40).
9. In March 2016, the District requested permission to evaluate the student based on concerns shared by both parents and educators. (S-41, S-44).
10. Over March and April 2016, the District provided multiple copies of the permission-to-evaluate form, but parents did not provide permission to evaluate the student. (S-42, S-43).
11. In May 2016, [the student] was placed in the same level of regular education mathematics for 5th grade. (S-22; NT at 136, 933-988).
12. On May 6, 2016, the parents and a group of educators/administrators met for a wide-ranging discussion of the education of the student. (S-30, S-32).
13. On May 8, 2016, parents returned the permission-to-evaluate form, denying permission to evaluate the student. (S-45).
14. On May 24, 2016, parents and a group of educators met to discuss and design regular education interventions in writing and spelling. (S-46).
15. On May 31, 2016, the parents and a group of educators/administrators again met to discuss the education of the student. (S-31).
16. In late June 2016, after the school year had ended, the parents provided permission to evaluate the student for potential special education services. (S-47).
17. [Redacted.] (S-6).
18. On the Pennsylvania System of School Assessment (“PSSA”) 4th grade testing, the student scored in the basic range in English/language

arts and mathematics, and in the advanced range in science. (Parent's Exhibit ["P"]-20; S-25, S-36).

2016-2017/5th Grade

19. In the fall of 2016, the student entered 5th grade at the District.
20. In a standardized universal screening assessment in reading in the fall administration, the student scored in the 99th percentile in the reading composite. On sub-tests, the student scored in the 99th percentile in vocabulary, silent reading fluency, and reading comprehension, and in the 84th percentile in oral reading fluency. (S-27 at page 6).
21. In a standardized universal screening assessment in mathematics in the fall administration, the student scored in the 82nd percentile in the math composite. On sub-tests, the student scored in the 82nd percentile in number comparison fluency and concepts/applications, the 75th percentile in number sense fluency, and the 49th percentile in mental computation fluency. (S-27 at page 6).
22. In October 2016, the District issued its evaluation report ("ER"). (S-48).
23. The October 2016 ER included extensive parental input. (S-48 at pages 2-5).
24. The October 2016 ER included teacher input from the student's reading/language arts and mathematics teachers. The reading/language arts teacher noted that the student was an avid reader (to the point of privately reading rather than being attentive to instruction) and exhibited advanced oral expression and reading skills. Writing and written expression were noted as areas of weakness. The student also demonstrated difficulty with task-initiation and task-persistence. (S-48 at page 5).
25. The student's mathematics teacher noted that the student's performance and skills in mathematics were inconstant. The student demonstrated conceptual knowledge in class but often failed to exhibit this knowledge on tests. Homework completion was inconsistent. The teacher rated the student's math computation and math problem-solving skills as "limited proficiency" for the student's grade. (S-48 at page 6).
26. The October 2016 ER included classroom observation by the District evaluator. (S-48 at page 6).

27. The October 2016 ER noted that the student's reported grades at that time were: 83% in reading, 84% in English, 63% in spelling, and 79% in social studies. The student's math grade was not calculated due to the amount of homework that had not been submitted. The student read 179 words correct per minute, at approximately the 90th percentile for the winter of 5th grade. (S-48 at pages 9-10).
28. In the October 2016 ER, the student's reading/language arts teacher recommended that the student be supported for homework completion, task-approach, and task-persistence. (S-48 at page 11).
29. On cognitive testing in the October 2016 ER, the student's IQ was scored in the average range at 98 (Gf-Gc composite). The student's reported sub-test and composite scores all fell within the average range. (S-48 at page 13-14; NT at 739-868).
30. On assessments of executive functioning in the October 2016 ER, the student's parents did not note any scores which fell in the at-risk or clinically-significant ranges. The student's 4th grade teacher rated the student with multiple clinically significant scores in executive functioning. The student's 5th grade teacher, however, did not rate the student with any at-risk or clinically significant scores, finding that the student exhibited no more difficulty with executive functioning tasks than peers. (S-48 at pages 14-15).
31. On memory and visual/perceptual processing assessments in the October 2016 ER, the student scored in the average range across all areas, except for the letter-pattern matching sub-test on the visual/perceptual processing assessment, where the student's standard score was 75, in the 5th percentile, "suggesting weakness with...rapid visual processing and scanning speed." (S-48 at pages 15-16).
32. On mathematics achievement testing in the October 2016 ER, the student scored in the average range across all sub-tests and clusters, except for the calculation sub-test, where the student's standard score was 79, in the 8th percentile, and the math calculation cluster, where the student scored 80, at the 9th percentile. Sub-test scores on the math problem-solving and quantitative reasoning, however, were both solidly in the average range. (S-48 at pages 16-17).
33. To probe further the issue of math calculation skills, the evaluator administered the numeric operations sub-test from another achievement test. The student scored slightly better—a standard score of 87, in the 19th percentile—but still reflective of relative weakness in math calculation achievement. (S-48 at page 17).

34. On written expression achievement testing in the October 2016 ER, the student scored in the average range across all sub-tests and clusters. The evaluator noted, however, that the standard scores did not reflect misspellings, punctuation errors, and inconsistent letter/word spacing in the student's writing samples. (S-48 at page 17).
35. To probe further the issue of written expression, the evaluator administered an essay composition sub-test from another achievement test. The student was unwilling to attempt the writing task. The evaluator noted, however, that in the written expression assessments, structured prompts and tasks yielded results in the average range, but spontaneous writing by the student presented the most significant challenges. (S-48 at pages 17-18).
36. On assessments of social/emotional/behavioral functioning in the October 2016 ER, the student's parents did not note any scores which fell in the at-risk or clinically-significant ranges. The student's 4th grade teacher rated the student with multiple clinically significant scores in multiple areas. The student's 5th grade teacher, however, did not rate the student with any at-risk or clinically significant scores, although this teacher noted weaknesses in study skills and organization. (S-48 at pages 18-20).
37. The October 2016 ER included an occupational therapy ("OT") assessment. (S-48 at pages 19-21).
38. The October 2016 ER identified the student as having a health impairment and recommended supports for the student in mathematics and written expression as well as OT services. (S-48 at pages 25-29).
39. [Redacted.] (S-6, S-13 at page 1).
40. Based on the October 2016 ER, the District's master special education teacher assigned to the student's school drafted the student's individualized education program ("IEP"). (S-49).
41. In November 2016, the student's IEP team met to discuss the student's IEP. (S-49; NT at 312-450).
42. The November 2016 IEP incorporated as present levels of academic and functional performance the parent/teacher input and testing results from the October 2016 ER. (S-49 at pages 5-14).

43. The November 2016 IEP identified the student's needs as increasing overall performance in mathematics and writing, and improving organizational skills. (S-49 at page 14).
44. The November 2016 IEP included two goals, one in written expression (for paragraph writing) and one in OT (cursive handwriting). (S-49 at pages 21-23).
45. The November 2016 IEP included specially designed instruction and program modifications to address organization, mathematics, written expression. (S-49 at pages 24-27).
46. The November 2016 IEP included OT services for 30 minutes per week. (S-49 at page 27).
47. The student's placement, as outlined in the November 2016 IEP, indicated that the student would spend 97% of the school day in the regular education environment. (S-49 at pages 30-31).
48. At the November 2016 IEP team meeting, the District provided the parents with a notice of recommended educational placement ("NOREP"), but the parents did not approve the implementation of the student's program. (NT at 128-232, 312-450).
49. The November 2016 IEP was revised in parts to address parental concerns, and in December 2016, the parents approved the IEP for implementation. (S-51).
50. [Redacted]. (S-9, S-10).
51. [Redacted.] (P-14⁴; S-7, S-8, S-9 at pages 1-2).
52. [In] January 2017[, [t]he teacher noted the student's love of reading, highly developed oral expression skills, and insightful thinking. The teacher noted the student's need for support in spelling and written expression. (S-9 at page 3).
53. [Redacted.] (S-9 at pages 4-5).
54. [Redacted.] (S-9 at pages 5-7).

⁴ P-14 was an evidentiary exhibit prepared for the hearing, but it illustrates many of the aspects of the student's activities, experiences, interests, and accomplishments provided in the parents' input and, generally, that forms the parent's view [of the student].

55. [Redacted.] (S-9 at page 4, S-27 at page 6).
56. [Redacted.] (S-9 at page 4, S-27 at page 6).
57. [Redacted.] (S-9 at page 7).
58. [Redacted.] (S-9 at pages 8-9).
59. [Redacted.]⁵ (P-2 at page 1; S-9, S-10 generally and at page 10, S-14; NT at 28-121, 739-868).
60. [Redacted.] (S-9 at pages 9-10, S-11).
61. [Redacted.] (S-13 at page 6; NT at 1252-1332).
62. In January 2017, the District developed a writing rubric to assess the written expression goal. (S-53).
63. In May 2017, the writing rubric entirely changed. (S-54, S-55, S-56).
64. Over December 2016 – June 2017, while the written expression goal was in place, progress monitoring was intermittent due to the student’s absence and school activities. (P-15; S-57, S-58).
65. In the standardized universal screening assessment in reading in the spring administration, the student scored in the 99th percentile in the reading composite. On sub-tests, the student scored in the 99th percentile in silent reading fluency, the 96th percentile in vocabulary, the 86th percentile in reading comprehension, and in the 82nd percentile in oral reading fluency. (S-27 at page 6).
66. In the standardized universal screening assessment in mathematics in the spring administration, the student scored in the 77th percentile in the math composite. On sub-tests, the student scored in the 91st percentile in concepts/applications, the 65th percentile in number comparison fluency, the 57th percentile in number sense fluency, and the 39th percentile in mental computation fluency. (S-27 at page 6).
67. In May 2017, parents produced a report from the medical provider who had diagnosed the student with ADHD. The medical evaluator opined that “(the student) has a specific learning disability/dyslexia. [Redacted.]” (S-16).

⁵ [Redacted.]. (S-10).

68. In May 2017, [redacted]. The parents requested a due process hearing, the indication which led to these proceedings. (S-12).
69. In May 2017, the student's IEP team met to revise the student's written expression goal and issued a NOREP to reflect these revisions. (S-60).
70. In June 2017, the parents disapproved the NOREP and requested a special education due process hearing. These proceedings, then, incorporated both [requests for a due process hearing] related to the student.⁶ (S-61).
71. On PSSA 5th grade testing, the student scored in the proficient range in English/language arts and in the basic range in mathematics. (P-19).
72. In July 2017, the District offered, through NOREP, 12 hours of OT hours, representing missed sessions in the 2016-2017 school year. The parents rejected that offer. (S-5).

WITNESS CREDIBILITY

All witnesses testified credibly. The testimony of all witnesses were accorded roughly the same degree of weight, although the testimony of the District's master special education teacher and the student's 5th grade math teacher were accorded heavier weight in light of the insight they provided regarding the student's needs.

The parent heartily contested certain elements of the testimony of the building principal, including filing a motion to strike parts of his testimony and "motions for contempt" based on the principal's testimony.⁷ Here, it must be made explicit that at no time and in no way was the testimony of the building principal, or his participation in the hearing, viewed as problematic or

⁶ The parent filed the [first] complaint on May 16, 2016. (Hearing Officer Exhibit ["HO"]-1). In mid-June 2016, through communications with the parent and District counsel for hearing-planning related to the [first] complaint, it became apparent that, even though a [second] special education due process complaint had not been filed, parent was voicing issues related to the student's IEP and special education programming. (HO-2). Upon inquiry from the hearing officer, parent confirmed that there were [additional] special education issues [redacted]. (HO-3). Therefore, parent was instructed to file an amended complaint in the nature of a special education due process complaint; parent filed such a complaint. (HO-4). The two complaints, then, were handled under this ODR file number for resolution of the entirety of the disputes between the parties.

⁷ The motion to strike and motions for contempt were all denied. (HO-5; NT at 296-308).

disingenuous. His testimony and participation were at all times exemplary in terms of being forthright, articulate, and provided in good faith.

DISCUSSION AND CONCLUSIONS OF LAW

IDEIA/Denial of FAPE

To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982).

‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her individual needs (Endrew F. ex rel. Joseph F. v. Douglas County School District, U.S. , S. Ct. , 197 L. Ed. 2d 335, (2017); Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (Endrew F.; M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Here, the District provided FAPE to the student throughout the 4th and 5th grades. After a rocky adjustment to the District upon enrolling in the midst of the 2015-2016 school year, the District placed the student in an appropriate mathematics class, based on the student’s standardized and curriculum-based assessments, and provided support when the student’s behaviors and/or peer interactions were problematic. In February 2016, the parents informed the District of the student’s ADHD diagnosis and, based on that and the experience

of educators over the weeks the student had been in the District, it requested permission to evaluate the student. Permission was not provided by parents until late June 2016, but in the intervening months, the District continued to communicate with the parents and put in place regular education interventions to support the student. In the latter half of 4th grade, then, (the winter and spring of the 2015-2016 school year) the District responded exactly as it should have— providing supports in the student’s transition to the District, timely requesting permission when a formal evaluation seemed to be warranted, and modifying the regular education environment as it worked with parents and awaited their permission to evaluate the student.

The October 2016 ER was comprehensive and timely issued. The student was appropriately identified as a student with a health impairment. It is noted here that the student should have been identified as a student with a specific learning disability in math calculation; an in-depth analysis of that identification issue and its impact on the question of FAPE is set forth below. Again communicating and working with parents to revise the draft November 2016 IEP in light of their views, by December 2016, the student’s IEP was in place, providing goal-oriented instruction in written expression and OT, and extensive specially-designed instruction and modifications in mathematics and organization. The goals were appropriate and through the latter half of 5th grade, the winter/spring of the 2016-2017 school year, the student made progress under the terms of the November 2016 IEP.

Accordingly, in terms of the evaluation of, and special education programming for, the student in the 2016-2017 school year, the student was not denied FAPE.

As indicated above, however, the student should have been identified as a student with a specific learning disability in mathematics calculation. In examining a student's pattern of strengths and weaknesses, where a student exhibits a severe discrepancy between intellectual ability and achievement given the student's age, the student qualifies as a student with a specific learning disability. (34 C.F.R. §300.309; 22 PA Code §14.125). Here, a mosaic of evidence points to the fact that mathematics generally, but math calculation specifically (34 C.F.R. §300.309(a)(1)(vii); 22 PA Code §14.125(1)(vii)), were an area where the student may require special education. First, the student's standardized and PSSA scores in mathematics were consistently and significantly below the student's scores on those assessments in reading/English. Second, the student's performance in the District's mathematics curriculum, placed the student—appropriately—in a regular education math setting where the pace and approach was tailored to students who needed support in mathematics.

With that context unfolding across 4th and 5th grades, in terms of the intersection of intellectual/achievement testing, the October 2016 ER revealed a severe discrepancy between the student's intellectual ability and the achievement in mathematics calculation. Specifically, the student's IQ of 98 (as measured most accurately by the Gf-Gc composite) indicated a severe

discrepancy with the student's achievement testing both on the calculation sub-test (a standard score of 79) and the math calculation cluster (a standard score of 80). And this discrepancy was more definitively confirmed with the updated IQ testing in January 2017 [redacted]. There, the student had a full-scale IQ of 105, with a general ability index of 115. By January 2016, at the latest, the District knew or should have known that the mathematics calculation achievement scores supported an identification of the student as a student with a specific learning disability. And the input of the 5th grade math teacher supported this quantitative evidence—the student consistently struggled with calculation, even while exhibiting relative strength in math concepts and math reasoning. Therefore, it will be an explicit finding that, in addition to a primary identification category of health impairment, the student shall be identified with the secondary category of specific learning disability in math calculation.

The question then becomes: Does this mis-identification amount to a denial of FAPE? The answer to this question is “no”. Critical to this finding are the extensive specially designed instruction and modifications in the November 2016 IEP which are targeted to instruction and support in mathematics. It is often repeated, and rightly so, that a category or specific identification does not make an IEP (in)appropriate. Goals, programming, and services make an IEP (in)appropriate. Here, even though the student was not formally identified with a specific learning disability and did not contain an explicit math goal, the District recognized the need for instruction, modifications, and support in

mathematics calculation, and provided those things in a regular education setting that also accounted for the student's needs in mathematics.

Accordingly, even lacking an explicit identification of the student as a student with a specific learning disability in mathematics calculation, the District provided appropriate, targeted support in that area through the November 2017 IEP. Having so found, however, the student's IEP team will be directed to confer over whether a goal, or goals, in mathematics calculation should be made part of the student's IEP and/or whether the student's educational placement should change as a consequence.

Finally, the revised goal in written expression in the May 2017 IEP is appropriate. Therefore, to the extent that the parties have not agreed otherwise outside of this record and the knowledge of the hearing officer, the May 2017 IEP shall be the student's pendent IEP for special education programming.

[Section redacted.]

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District provided the student with a free appropriate public education in the 2015-2016 and 2016-2017 school years. [Redacted.]

Unless the parties have agreed otherwise outside of the record in this matter, the May 2017 IEP shall be the student's pendent placement.

Forthwith, the student's October 2017 evaluation report shall be amended to indicate that the student's secondary identification category is a specific learning disability in mathematics calculation. The October 2017 evaluation report shall indicate, wherever in the report the school district evaluator responsible for making the revision deems it to be appropriate, the reasoning and result of this decision as the reason for the revision.

Within 10 school days of the date of this order, the student's IEP team shall convene to consider a revised IEP in light of the identification of the student's specific learning disability. The revised IEP shall indicate, in the present levels of academic performance, the reasoning and result of this decision as the reason for the revision(s). The IEP team shall also explicitly consider whether mathematics calculation goal(s) should be made part of the IEP and whether the student's specially designed instruction, modifications, and/or placement should be changed in light of the student's specific learning disability.

Finally, the District shall make available to the student 12 hours of occupational therapy. This occupational therapy shall be offered during the school day in the school environment but shall not interfere with, or take time away from, instruction. Notwithstanding this directive, the time and location of the delivery of these occupational therapy services may be changed as the IEP team may agree to such change(s).

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

October 31, 2017