

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: SZ
ODR #2007/10-11-KE

Date of Birth:
[redacted]

Dates of Hearing:
August 1, 2011
September 27, 2011
September 30, 2011
October 3, 2011
November 8, 2011
November 11, 2011

CLOSED HEARING

Parties to the Hearing:

Representative:

Judith Gran, Esquire
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Pocono Mountain School District
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Date Record Closed:

November 30, 2011

Date of Decision:

December 12, 2011

Hearing Officer:

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

Background

Student¹ is an eligible teen-aged child who during the relevant period was classified as having an Other Health Impairment. The Parent requested this hearing, asserting that the District failed to timely evaluate Student for eligibility for special education under the IDEA and/or for a 504 Service Plan, that once identified the program delivered was inappropriate, and that the District inappropriately sought to graduate Student. The District maintains that in all respects it delivered a free, appropriate public education [FAPE] and that graduation is appropriate.

For the reasons presented below I find for the Parent regarding timeliness of the evaluation and appropriateness of the implementation of the IEP, but for the District regarding the issue of graduation.

Issues

1. What was Student's pendent placement as of the start of the hearing?²
2. Did the District fail to evaluate Student for eligibility for special education and/or 504 accommodations in a timely manner?
3. Once Student was evaluated and found eligible for special education, did the District fail to provide Student with FAPE?
4. Did Student meet the requirements for graduation at the end of the 2010-2011 school year?

Findings of Fact

1. Student is a teen-aged aged eligible child who enrolled in the District for 10th grade, the 2008-2009 school year. Prior to Student's enrolling in the District the family had experienced significant trauma and loss which deeply affected both Student and the Parent. [NT 654-655, 658, 662]
2. In the aftermath of the trauma, there was a dramatic change in Student and the Parent took Student to a psychiatrist specializing in adolescents; Student was prescribed medication. One symptom Student displayed for a brief period was

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 On August 1, 2011, having heard relevant testimony and having examined pertinent documents, the Hearing Officer concluded that since there was an active dispute as of the day before graduation, pendency attached to the then-current educational placement and Student should not have been graduated. On the record the Hearing Officer explained her reasoning, and ordered rescission of Student's high school diploma pending the outcome of this matter. Accordingly the issue of pendency will not be further addressed in this decision. [NT 110-113]

delusional thinking. As academic functioning was deteriorating, the school district in the former state of residence placed Student on homebound instruction³. [NT 656-658, 660-661]

2008-2009 School Year

3. Although upon Student's enrollment in the District the Parent did not want to share details of the family situation⁴, she did inform the District, via the Student Health History form, that Student was taking psychotropic medication to help with concentration/focus. [S-2, S-3]
4. Additional traumatic stress befell the family when the Parent had to assume responsibility for health care decisions regarding her dying brother who lived some distance away. [NT 226-232, 673-674]
5. The principal expressed concern to the school psychologist that Student was making statements that were [redacted] and seemingly out of context for the classroom and asked that the school psychologist speak with the Parent. The Parent was very receptive to talking with the school psychologist, and after the Parent explained some aspects of the family's situation the school psychologist concluded that given the past and ongoing traumatic events in the family Student's comments [redacted] were not pathological. [NT 226-232]
6. In February 2009, Student's computer teacher expressed concern to the guidance counselor that Student was unable to focus, unable to complete assignments and attempted to hug the teacher. The guidance counselor followed up with the Parent in a parent-teacher conference and one of the things that Parent shared was that one-to-one instruction had worked well for Student in the past. [NT 124, 126, 191, 667-668; S-5]
7. Although the guidance counselor told the Parent that Student could receive a 504 Service Plan if there were a medical diagnosis, the Parent expressed discomfort with a person in the special education department having access to confidential family information and she also was not comfortable because she had always associated special education with intellectual disabilities. The discussion was brief since other faculty members had arrived; the guidance counselor did not follow up with the Parent further. [NT 118, 127, 191-192, 199, 697]
8. The guidance counselor did not explain special education services under the IDEA with the Parent. [NT 218]

³ Homebound instruction is provided when a student is deemed not able to attend school according to a physician's instruction due to medical conditions. The instruction is often written on a prescription sheet with or without an accompanying district form. Homebound is for a given period of time (three-calendar-months) which may be renewed or extended with a subsequent physician's instruction. Homebound, therefore, is not a placement determined by an educational team nor is it an option under the continuum of alternative placements. 34 C.F.R. §§300.39(a)(1)(i), 300.115(b)(1).

⁴ It was only during her testimony in the due process hearing that the Parent, taking being under oath very seriously, revealed the exact nature of the trauma.

9. In February 2009 the guidance counselor referred Student to the Child Study Team.⁵ The Child Study Team discussed some behaviors of concern and considered a referral to the Student Assistance Process [SAP]. The Child Study Team did not issue the Parent a Permission to Evaluate [PTE] Student for a Section 504 Service Plan or for eligibility for special education services under the IDEA or a copy of the Procedural Safeguards. [NT 128, 215-216, 235-243]
10. The Parent consulted Student's psychiatrist and they decided on a trial of homebound instruction. On March 11, 2009, the psychiatrist wrote the request, citing "severe problems with focus" as the reason and recommending "continue medication." Homebound instruction began on March 12, 2009. On May 11, 2009, the psychiatrist renewed the prescription for homebound. The District approved both requests. [NT 125, 667-668; S-5, S-6, S-7, S-8]
11. Homebound instruction for five hours per week began in March 2009. The homebound instructor was not required to provide progress data to the respective monitors of the instruction [first guidance counselor and then the assistant superintendent for special education]. [NT 129-130]

2009-2010 School Year

12. At the beginning of the 2009-2010 school year Student returned to school and did well initially, but by October 2009 the guidance counselor learned that Student was failing Algebra II and Psychology. She arranged a peer tutor for Algebra II. [NT 145]
13. Toward the end of November 2009 the assistant principal called the Parent to come get Student from school because of concerning behaviors and to have Student psychiatrically evaluated. Several days later the guidance counselor called the Parent to tell her that Student had to be picked up again and strongly suggested that Student receive a psychiatric evaluation. [NT 677-678, 680, 1068-1070]
14. Earlier on the day the guidance counselor called the Parent to pick up Student there had been a meeting with the Parent, the guidance counselor and the principal to discuss teachers' reports of Student's behavior. The school staff did not speak about an evaluation, a 504 Plan or special education services under the IDEA. [NT 205, 217]
15. Among other things, teachers had reported that Student was [redacted], [redacted], [redacted], and had been [redacted]. [NT 120-121, 124, 214]
16. The assistant principal provided the Parent with a form utilized when students are thought to be a danger to self or others, stating that the Parent had "been informed

⁵ The team was composed of Student's and other guidance counselors, the school psychologist, the educational consultant and the principal.

by the school district of the concerns they've expressed regarding my son or daughter" and that the school's recommendation is for the child to "have a psychiatric assessment completed immediately" The form also states, "I agree to provide a copy of the recommendations, and I understand that my child will be excluded from the [school] until such documentation is provided and appropriate placement is determined." Because she feared that the District wanted to send Student to a mental institution the Parent crossed out the portion of the form that required her to provide a copy of the psychiatrist's recommendations.⁶⁶ [NT 132-133, 683; P-4]

17. The Parent took Student to a psychiatrist who recommended a partial day hospitalization program which Student attended for a month, during which time Student received work from a homebound instructor. [NT 680-682, 694-695]
18. Upon discharge, Student continued to be treated by a psychiatrist from the partial program for medication and for therapy. [NT 696-697]
19. Student spent the entire rest of the school year on homebound instruction. Although the District asked the Parent how Student was, there were no attempts to bring Student back to school. The Parent was not sure if Student should return to school, and feared that if Student did return Parent would be asked to pick Student up again because Student was not fully functional. [NT 698-699]
20. The guidance counselor, who was responsible for monitoring Student's homebound instruction while Student was still in regular education was not aware of certifications of homebound teachers or of the subjects that they were highly qualified to teach. She did not review any of Student's homebound instruction work. [NT 151-152]
21. During a December 2009 Child Study Team meeting, Student was discussed. The team concluded that the academic information it had "did not support the possibility of a learning disability," but related more to emotional factors. The team also decided that the issue of an evaluation would be deferred until the school psychologist talked with the assistant superintendent for special education. [NT 136-140, 195]

2010-2011 School Year First Semester

22. Having been cleared by both the psychiatrist and the pediatrician Student again returned to school in the fall of 2010. The guidance counselor invited the Parent and Student to a meeting with her and the assistant principal in mid-August prior to school's beginning. The assistant principal expressed some concern about making sure Student was ready to return because he didn't want a repeat of the previous year. Student stated the desire to come back to school. [NT 156, 699-705]

⁶⁶ Although Parent is educated and articulate, there seem to have been [redacted] that led to an incomplete understanding of the rights of governmental institutions such as schools versus the rights of parents.

23. Around the end of August 2010 the guidance counselor spoke with the assistant superintendent for special education about obtaining an evaluation. Although the guidance counselor informed the assistant superintendent for special education that the Parent was “not receptive” to an evaluation, the assistant superintendent for special education correctly directed her that a Permission to Evaluate and Procedural Safeguards should be issued as “[w]e don’t go on a verbal [refusal].” [NT 529-530, 544]
24. The assistant superintendent for special education was concerned that Student had several rounds of homebound instruction and the District needed an evaluation to assess the situation. [NT 535-536, 540-541, 553, 580]
25. Despite the direction of the assistant superintendent for special education to the guidance counselor, a Permission to Evaluate was not sent to the Parent. [NT 531]
26. In mid-October 2010 Student went to the guidance counselor saying that Student needed help and was exhausted. The school day previously, another counselor had reported to the guidance counselor that Student said that other students were bullying Student in [redacted] class, although the teacher did not recall any problems. [NT 157]
27. Student’s guidance counselor called and asked the Parent to pick up Student as Student was not focusing and not working. When the Parent asked if Student should return to school the next day the guidance counselor said that they should wait and see what the doctor says. [NT 161, 705-706; P-6]
28. Student was again placed on homebound instruction, the form being given to the Parent to have completed on October 20, 2010. [NT 156, 161]

Evaluation, Identification and IEP

29. In fall 2010 through mental health professionals treating Student the Parent was put into contact with a special education lay advocate and through him received information from various sources about the nature and purpose of special education services, her rights as a parent , and procedural safeguards. The Parent had never received any such information from the District. [NT 586-589, 711-713]
30. On October 24, 2010 with the advocate’s help the Parent made a written request for an evaluation for special education eligibility. [NT 161-162, 589; P-6, P-18]
31. The evaluation consisted of a cognitive measure [WAIS], an academic achievement measure [WIAT], an assessment of executive functioning [BRIEF] and behavior rating scales [BASC]. [NT 258]

32. The Parent's endorsements on the BRIEF did not yield any clinically significant scores. Although Student's teachers at the school did not feel they knew Student well enough to complete the BRIEF, the school psychologist did not ask the homebound instructor to complete it. The teachers to whom the school psychologist spoke reported that Student was disorganized and that performance fluctuated. [NT 258-262]
33. During the school psychologist's evaluation session(s) she noted that Student became anxious to the point of rocking, knee-shaking and finger/hand twitching, and needed a great deal of repetition which then did improve Student's ability to respond correctly. The school psychologist "could see where [Student] would have difficulty ... within the classroom" and believed that her observations during the testing situation were helpful to understanding the interventions that would be helpful within an educational setting. She recommended and the multidisciplinary team agreed that Student should be reevaluated cognitively in six months, as anxiety seemed to be interfering with obtaining an accurate estimate of cognitive ability. [NT 265, 294]
34. Having received a prescription from the treating psychiatrist stating that Student had a diagnosis of Generalized Anxiety Disorder, and observing anxiety during testing, the school psychologist classified Student as Other Health Impaired. [NT 267, 270, 278, 611]
35. Although the PTE included a psychiatric evaluation, the Parent did not consent to this part of the evaluation because she did not want to release private information to the school and because Student was already receiving psychiatric services [NT 590-591; P-18]
36. Although she believed that a psychiatric evaluation would provide better information about supports Student needed in school, the school psychologist did not discuss the issue with the Parent. [NT 268-269]
37. At the multidisciplinary team meeting to discuss the evaluation report, the Parent advocate suggested that an Independent Educational Evaluation with a local psychiatrist known to the District could be conducted, and the assistant superintendent for special education indicated that this was an option that could be considered. [NT 591-593]
38. The multi-disciplinary team concluded that Student exhibited inconsistent emotional behavior and problems in attention, focus and concentration. [NT 290-291]
39. Although the classification of Other Health Impairment had been conferred on the basis of a physician's diagnosis of Generalized Anxiety Disorder, the District's Evaluation Report did not confer a secondary diagnosis of Emotional Disturbance even though the school staff including the guidance counselor and

- the school psychologist had observed symptoms of anxiety requiring the Parent to be called, Student was under the care of a psychiatrist who was prescribing psychotropic medication, Student had been placed in partial psychiatric hospitalization, and Student had spent most of high school on homebound instruction based on a psychiatrist's referral. [NT120-121, 124, 214, 265, 267, 270, 278, 294, 611, 677-678, 680-682, 694-697, 1068-1070]
40. At the initial IEP meeting held in December 2010 the special education advocate raised the question of what emotional support could be provided but the school-based members of the team did not suggest supports at the school, said that given the existing homebound status authorization from a medical doctor was required to return Student to the school building, and that an emotional support teacher could not be provided in the home. [NT 609-611]
41. The IEP team discussed and determined that Student had behaviors interfering with learning and that a Functional Behavioral Analysis [FBA] was required and that a Permission to Evaluate would be issued. A PTE was printed and the Parent signed it but an FBA was not done, either because the District did not receive/file the signed PTE and/or the special education case manager believed that an FBA could not be done in the home setting as opposed to the school although this would have been possible and the issue was discussed. [NT 457, 459, 461-463, 556, 595-597, 643-646, 720-721]
42. At the IEP meeting, the only District staff who had repeated and prolonged contact with Student was the homebound teacher who did not attend the meeting but was briefly phone-conferenced while she was on the porch of another pupil's home. The homebound teacher could not provide baseline information about such behaviors as time on task, frequency of prompts, and frequency of leaving the table, data that would be appropriate for collection through an FBA and which would assist in progress monitoring of IEP goals. [NT 600-603]
43. The IEP team discussed transition, and it was decided that the District's transition coordinator would conduct an additional evaluation. [NT 606-607]
44. The IEP states that Student "exhibits a high level of distractibility in response to the conditions present in the larger group instructional environment. When [Student] is experiencing a feeling of anxiety/stress, [Student] is unable to focus in the classroom." The IEP also states that Student will not participate with nondisabled peers in the general curriculum "due to stress and anxiety which even with modifications and accommodations in the classroom cannot be meaningfully articulated within the curriculum." [S-24]
45. Although the IEP team briefly considered supports that could be provided in order to bring Student back to school, the District seemed reluctant to have Student return and the Parent was reluctant as well. Supports and services to maintain Student in school had not been tried when Student was in attendance and was

having difficulties; rather the District requested that the Parent bring Student home or to a psychiatrist. [NT 132-133, 161, 183-184, 608-609, 677-678, 680, 683, 705-706, 716-718, 1068-1070; P-4]

46. As per the December 2010 IEP all specially designed instruction would be provided at the Itinerant Level in the environment category of Instruction in the Home, the most restrictive placement on the continuum. On the Notice of Recommended Educational Placement [NOREP], the only placement options considered as an alternative were “regular education without supports” and “regular education with supports, including specially designed instruction”. [NT 582; S-24, S-25]

2010-2011 School Year Second Semester

47. Although the IEP team discussed the number of hours of Instruction in the Home that Student would receive, Student continued to receive only five hours of instruction [in only one subject, 12th grade English] despite that having an IEP should have entitled Student to supports and specially designed instruction different than that previously provided under the general education protocol of homebound instruction. [NT 614-15, 645-646, 722]
48. The teacher [home teacher] assigned to provide Student’s general education homebound instruction and later Student’s special education Instruction in the Home held a certification in elementary education, was not highly qualified to teach any high school subject and held no training or certification in special education. [NT 306-308]
49. The home teacher could not speak the foreign language Student was taking and the foreign language teacher back at the school did not know whether or not the home teacher could speak, read or write the language. [NT 324-325, 947, 961, 964]
50. After Student received an IEP the home teacher’s approach did not change significantly, and she thought that the whole point of having the IEP meant that Student could retake tests, have a reduced workload, and have more breaks. She stated her understanding of specially designed instruction as “special rules for certain students that have special needs.” She testified that her approach “probably changed a little to the point where I wasn’t expecting as much ... from [Student] as prior years, and probably prior to the IEP”. She testified vis a vis implementing the IEP goals, “I just thought that I was observing” organization and task completion. [NT 311-314, 328, 351]
51. The home teacher did not take data on implementation of the IEP goals. She did not know the baseline for any of the goals and seemed to have difficulty understanding the concept of a baseline, as she thought Student likely started out at zero on the first day under the IEP. [NT 338- 341]

52. The home teacher rated Student's achievement as 65% on the goal related to organization of materials, commenting that organizational skills had inconsistently improved, but there was only one subject. The goal of increasing time on task in classroom work was rated as 50%, but the home teacher stated that while she was at the home they only did one or two things. Student ranged from staying on task most of the time at the beginning of second semester of 12th grade but perseverance deteriorated to 20-30 minutes before needing to take a break. The goal of self-advocacy was not an issue according to the home teacher because work was done at Student's own pace and Student did not have to ask for additional time. The home teacher did not help Student to identify Student's levels of frustration and ask for breaks because the Parent would ask Student if a break was needed or Student would get up from the table without verbalizing the need. [NT 340, 342, 344, 348, 350-351, 357]
53. Student's behavior and responsiveness to the home teacher changed during 12th grade, and although Student had sometimes been in a fog in previous years, in 12th grade Student "never snapped out of it like [Student] did the other two years". It became difficult to get Student to finish certain assignments such that, toward March, the home teacher "just stopped" giving homework. Although the Parent wanted Student to work on math in the second semester Student had so much difficulty that the home teacher ceased this instruction. [NT 353, 405]
54. After being found eligible for special education under the IDEA, Student was assigned to a case manager. Student's case manager, who holds special education certification, identified her role as to "to make sure that what should be going on is going on [for] the Student." The case manager did not instruct Student. [NT 453]
55. Although she had taught students requiring emotional support the case manager offered no opinion about the supplementary aids and services that Student may have needed. [NT 465]
56. Once Student received an IEP the home teacher spoke to the case manager by phone several times and met once. They did not discuss the IEP or how the goals should be implemented or how the work should be modified, and had only one discussion about Student's progress pursuant to which the home teacher was given a progress reporting form to complete. They did discuss whether Student was meeting course requirements for graduation. [NT 312, 456-457, 465-466]
57. The case manager testified that there was satisfactory progress on IEP goals, based on her assumption that the baseline for each of the goals was 0%, but admitted that no actual baseline had been determined because an FBA had never been done. [NT 457]
58. The home teacher gave a great deal of help and corrective promoting to Student such that some of the work turned in was not indicative of what Student actually

knew. [NT 731-732]

Graduation

59. Although Student was registered for four courses during the second semester of 12th grade, the guidance counselor instructed the home teacher to drop all except English 12 because only that subject was still needed to complete graduation requirements. [NT 316-318]
60. The testimony of Student's high school teachers and the on-line grade books revealed wide variability in teachers' counting or not counting missing work and assigning grades. In some instances pupils being instructed in class are treated differently than students who are taught in their homes. [Compare Notes of Testimony of the teachers and see also HO-3]
61. Student was allowed to satisfy the physical education requirement in 12th grade by doing exercises at home and keeping a log of what activities were performed. The physical education teacher assigned a just-passing grade of 70, reasoning candidly that he could not justify giving a higher grade unless he were able actually to instruct Student. [NT 985; H.O. 3]
62. The American Issues teacher estimated Student's grade based on how Student was in class before going on homebound. When grading a test or quiz, this teacher takes into account that the homebound student has not been in class and able to benefit from the teacher's instruction, but also takes into account that a homebound student is able to take the test as an "open book" test. [NT 1173, 1177-1178, 1181-1184]
63. The Applied Algebra II teacher excused assignments already covered in PSSA Math, but testified that she excused a large number of assignments that she simply did not get back, even though they were not on material covered in the PSSA class. [NT 1025]
64. As English was Student's only 12th grade subject, the case manager spoke with the English teacher at school about Student every couple of weeks. She understood from the English teacher that Student had "completed all the requirements that the other students had completed, read all the works that were assigned and taken all the tests". However, Student had taken only four of the class' seven tests and none of the class' four quizzes and the English teacher graded only on the work received back, leaving it up to the discretion of the home teacher as to what to send in. . [NT 426, 464, 470, 1000-1003, 1005]
65. Student was excused from the 12th grade English oral presentation and excused from the exit examination because for security reasons, the District does not allow the test to go home. [NT 416]
66. The District requires completion of a research paper for graduation. The paper is monitored through English 12 class and is counted as a major portion of the

- English grade. [NT 426]
67. Both the home teacher and the Parent gave Student a great deal of help in researching and writing the paper. The home teacher helped Student arrive at the thesis. The home teacher found sources on the internet and went to the library to look up materials. The home teacher “probably did the writing” of the required outline. She edited Student’s writing and testified, “I stayed up [and] spent this amount of hours at home on my own doing the writing and everything, and [telling Student] this is what I need you to do”. The Parent would type as the home teacher dictated, while Student just sat at the table. The home teacher testified, “I know [Student’s] mother helped a lot and I helped a lot, and I’m not denying that”. There is no indication that the English 12 teacher knew the circumstances under which the research project had been completed. [NT 384-387, 394, 742-743]
 68. At the time of the December 2010 IEP meeting, Student had been accepted to community college and the Parent was aware that Student was scheduled to graduate. [NT 503-504; S-24]
 69. The Parent contacted the case manager on various occasions in spring 2011 to check that Student was on track to graduate. [NT 504- 505; P-18]
 70. Although the Parent knew Student wanted to graduate, she knew that a significant amount of work had been excused during homebound instruction and Instruction in the Home. She spoke with the English teacher who assured her that Student was doing fine and would graduate. [NT 834]
 71. The guidance counselor testified about the District’s graduation requirements: completion of certain coursework, a senior project, and demonstration of proficiency on state testing. [NT 206-207]
 72. The guidance counselor testified that Student met all the District’s graduation requirements prior to June 13, 2011. [NT 104-105, 209-209; S-16; S-28]
 73. Student’s special education case manager testified that Student made academic progress toward graduation. [NT 507-509, 524-525]
 74. Following the hearing officer’s order on pendency, an IEP meeting was held in August 2011. The IEP team decided that Student would attend the local community college which had already accepted Student. Student is enrolled full time at the community college and does not attend any courses or activities at or through the District. [NT 1298]
 75. District staff are precluded from working with or accompanying Student at the college, and Parent has also discouraged the presence of Student’s assigned special education teacher at the college. [NT1279, 1323]

76. Neither the Parent nor Student has cooperated with the District's attempts to complete a comprehensive transition evaluation; Student did not appear for an aptitude battery recommended in August 2011. [NT 1231-1232, 1259, 1322-1325; S-35]
77. Student receives accommodations [at college] such as a recorder, a note taker and extended time for taking tests. The Parent and the special education advocate testified that Student is doing well academically and socially, Student's courses are not remedial in nature, Student is much more focused, makes eye contact, holds conversations and is happy to be around other students. [NT 626, 744-748, 1281, 1301]

Discussion and Conclusions of Law

Burden of Proof

In November 2005, the U.S. Supreme Court held the sister burden of proof element to the burden of production, the burden of persuasion, to be on the party seeking relief. However, this outcome-determining rule applies only when the evidence is evenly balanced in "equipoise," as otherwise one party's evidence would be preponderant. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. *L.E. v. Ramsey Board of Education*, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). Thus, the party bearing the burden of persuasion must prove its case by a preponderance of the evidence, a burden remaining with it throughout the case. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Here, the Parent requested this hearing and was therefore, assigned the burden of persuasion pursuant to *Schaffer* and also bore the burden of production. The evidence was not in equipoise on the issues of evaluation and IEP implementation, as the Parent's evidence was preponderant, and therefore the *Schaffer* test on burden of proof did not apply. The evidence was more closely matched on the issue of graduation, but the District's evidence presented by each of Student's teachers was persuasive, making the case that graduation was not inappropriate although the District could have been justified had it reached the opposite conclusion.

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).

The Parent was particularly credible, especially as she did not overstate her case, and as she admitted her ambivalence regarding an evaluation, schooling at home versus the school building, and whether or not Student was ready to graduate. Although her

reticence to discuss very personal family matters was understandably a reaction to her own ongoing traumatization, it is here noted that her finally discussing them at the hearing because she believed her oath required such was courageous and lent weight to her overall testimony. The parent advocate's testimony appeared to be forthright and as requested he confined his testimony to his recollection of events in which he participated; his contribution to the body of this hearing officer's understanding of the case was appreciated. For purposes of deciding the issues per se, this hearing officer agrees with the District that the testimony and report of the Parent's expert should be disregarded. The expert is not a certified school psychologist, his research was regarding terminally ill children, and the District did not have access to the report until July 2011 after the due process hearing had been requested. However, for purposes of helping the Parent and Student choose services under compensatory education his findings may be helpful.

For the most part, with two notable exceptions that did not bear heavily on the outcome of this decision, the District witnesses conveyed a sense of honesty and cooperation, and were credible. Although the guidance counselor and the school psychologist made incorrect judgments regarding evaluating Student, their reasons for delay appeared to arise from an overcautious deference toward the Parent rather than an attempt to evade their responsibilities to Student. The assistant superintendent for special education inherited a difficult position and it is not clear why, when she issued a directive regarding sending a PTE, that directive was not followed. Given her forthrightness during testimony it can only be concluded that she trusted that her directives would be followed and given her many responsibilities did not find the need to check up on her staff. The school psychologist conveyed a sense of caring and compassion toward Student and the Parent. Had the PTE been issued earlier, and/or had she discussed special education with the Parent in detail, the outcome of this child's high school experience could have been very different.

At the request of the hearing officer, and over the initial and continuing objections of the District, most of Student's teachers testified. They each were able to explain how they graded Student given Student was on homebound instruction and later Instruction in the Home. They have the discretion to assign grades, and this discretion can be over-ridden only by the building principal and presumably the superintendent. The structure of their relationship with the home teacher either did not encourage their making inquiries as to how much work Student actually did and with how much assistance and how much prompting, or their experiences in the past with this particular home teacher did not lead them to think that they had to inquire. The single most troubling aspect of whether or not Student qualified for graduation was the senior research project. The English teacher may or may not have given Student a passing grade had he known the extent to which the Parent and the home teacher contributed to completing this assignment. What however must be acknowledged is that he also had no absolute way of knowing which of his Students in attendance at school had some, or even a great deal of, help from their parents, friends or siblings on the research project. Although this hearing officer's personal preferences and practice may have led her to be a more circumspect and more demanding instructor, she accepts the practice and conclusion of the English teacher,

particularly as the Parent was fully complicit in the manner by which Student's research paper requirement was fulfilled.

The home teacher provided credible testimony. It was abundantly clear that she had compassion for Student and that she did the best she could both before and after Student was identified as eligible for special education. She was unequipped to provide specially designed instruction and emotional support services, and to conduct progress monitoring on IEP goals, not because of unwillingness, but because she was ill-served by the person responsible for training and monitoring her.

Identification

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 [IDEA] which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act. 20 U.S.C. § 1400 *et seq.* (as amended, 2004). The IDEA sets forth the responsibilities (commonly referenced as "child find" responsibilities) borne by school districts for identifying which children residing in its boundaries are in need of special education and related services such that "[all] children with disabilities residing in the State...regardless of the severity of their disabilities...are identified, located and evaluated..." 20 U.S.C. §1412(a)(3). Parents do not have a duty to identify, locate, or evaluate their child pursuant to IDEA. This obligation falls squarely upon the district. *Hicks, ex rel. Hicks v. Purchase Line School Dist.* 251 F.Supp.2d 1250, 1253 (W.D.Pa., 2003), citing, *M.C. v. Central Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir.1996).

When Student entered the District for the 2008-2009 school year the Parent disclosed that Student was taking psychotropic medication, but did not disclose the nature or extent of a significant trauma the family had experienced. By February 2009 the school staff had Student on the radar screen because of some concerning behaviors, and discussed Student with the Parent and among themselves at a Child Study Team meeting. The District decided to defer issuing a PTE for special education eligibility under the IDEA or a 504 Service Plan because of Parent's clear reluctance. Although this hesitation was acceptable for a brief period, perhaps to give the school a chance to know Student better and perhaps to work more on gaining the Parent's trust, a bright red flag was raised when the District received a request for homebound instruction from a psychiatrist who cited "severe problems with focus and attention".

It was at this point, in mid-March 2009 that the District should have issued a PTE, regardless of whether or not it thought the Parent would approve. It was the District's obligation to notify the Parent, in writing, that it believed an evaluation was needed, give the Parent a written description of the proposed evaluation, and provide a copy of the procedural safeguards notice. If the Parent did approve Student could have been evaluated and identified. If the Parent did not approve, or took no action, the District would have had the choice of whether or not to request a due process hearing to obtain an order for an evaluation over the Parent's objection. We have no way of knowing whether or not the Parent would have given permission for an evaluation. What we do know is that the Parent did not have the tools to give informed consent or informed disapproval.

The school psychologist presented as a particularly kind and empathic person; given the chance for a long, unhurried meeting with her and given the chance to read the Procedural Safeguards at leisure there is no reason to conclude that the Parent absolutely would not have approved the PTE. Accordingly I find that the District failed in its child find obligation to Student by not issuing a PTE, and that the PTE should have been issued, signed and returned no later than March 31. The 60-day period for completion of an evaluation would have expired on May 30, 2009 and there is no doubt that once evaluated Student would have been found eligible for special education. Allowing time for an IEP meeting at the end of the 2008-2009 school year, there should have been an IEP in place at the start of the 2009-2010 school year. The remedy for the District's child find violation will be discussed below.

Appropriateness of Student's Special Education Program

"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." Thus, 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) (district must show that its proposed IEP will provide a child with meaningful educational benefit). Furthermore, an IEP must be specific enough to address all a child's identified needs, academic, functional and behavioral. 20 U.S.C. §1414(d)(1)(A)(i)(II), (IV); *Christen G. v. Lower Merion Sch. Dist.*, 919 F.Supp. 793 (E.D. Pa. 1996); 20 U.S.C. §1414(d)(3)(A)(iv).

The Third Circuit articulated its position that education is more than academics and involves emotional and social progress in its holding that an IEP is appropriate if it offers meaningful progress in *all relevant domains under the IDEA* (emphasis added). *M.C. v. Central Regional S. D.*, 81 F.3d 389 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996). Recently, turning to its finding in *M.C.* when deciding *Breanne C. v. Southern York County School District*, 2010 WL 3191851, M.D. Pa, Aug 11, 2010 our Third Circuit noted that when an eligible child receives an IEP, that IEP must be reasonably calculated to afford the child the opportunity to receive a "meaningful educational benefit" [*Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir.2004) ; *Ridgewood Bd. of*

Educ. v. N.E., 172 F.3d 238, 247 (3d Cir.1999)] and that an IEP confers a meaningful educational benefit when it is more than a trivial attempt at meeting the educational needs of the student, and it is designed to offer the child the opportunity to make progress in all relevant domains under the IDEA, including behavioral, social and emotional.

The evidence brought forth during this hearing suggests that Student's IEP did not address Student's need for emotional support, was not designed to be delivered in the least restrictive environment and was not appropriately implemented in the chosen environment. The home teacher was not a special education teacher, she did not have secondary general education credentials, she did not understand the nature and purpose of special education, and she did not understand progress monitoring. This is not to say that the home teacher was anything but kind, well-intentioned, hard-working and compassionate. It is not her fault that she was put into a position for which she was not prepared and that she received minimal if any support and guidance. A regular education teacher can provide instruction to special education students in close collaboration with a special education teacher, and this is done very effectively in many inclusion models. Unfortunately the home teacher and Student were isolated from a school environment, and the necessary ongoing support of a special education collaborating teacher was not provided. Given that Student's IEP neglected Student's needs for emotional support, and was not appropriately implemented, and was not delivered in the least restrictive environment the District denied Student FAPE from the effective date of the IEP until Student's graduation from high school. The remedy for this denial of FAPE will be discussed below.

Compensatory Education

For eligible students, special education and related services are the critical constituents of a free *appropriate* public education (FAPE). Special education has at its focal point specially designed instruction (SDI), which to be *appropriate* adapts to an eligible child's unique needs the content, the methodology, or the delivery of instruction, with access to the general curriculum in the least restrictive environment that allows the meeting of state education agency standards for all. The IDEA authorizes hearing officers and courts to award "such relief as the Court determines is appropriate" 20 U.S.C. § 1415(h)(2)(B), and compensatory education is an appropriate remedy only when a school district has failed to provide a student with FAPE. *Lester H. v. Gilhool*, 916 F.2d 865, 871-73 (3d Cir. 1990) The purpose of compensatory education is to replace those educational services lost because of the school district's failure. [*Id.*] Compensatory education is due Student based upon the District's failure to evaluate and identify Student and develop an IEP with measurable goals approached through specially designed academic instruction and emotional supports, both delivered directly and in consultation with qualified special education staff, in the least restrictive environment. Once Student's IEP was created, it was inappropriate and Student was denied FAPE in the areas of instruction, emotional support, and restrictiveness.

The standard for determining whether and to what extent compensatory education should be awarded was summarized by the Third Circuit in *M.C. v. Central Regional School District*, 81 F. 3d 389, (3d Cir. 1996). As the Court in *M.C.* observed, when a school district fails to deliver that to which a student is entitled, an award of compensatory

education is justified. Traditionally in the Third Circuit the calculation of the compensatory education due was generally made on an hour-by-hour basis. However, in 2006 in a case concerning gifted education, Commonwealth Court created an alternative standard, requiring the decision-maker to base an award on what it will take to bring the student to the point he or she would have been if not for the deprivation of FAPE. *B.C. v. Penn Manor*, 906 A.2d 642 (Pa. Cmwlth. 2006). The circumstances of this case are such that this hearing officer chooses to calculate compensatory education according to the *M.C.* standard. The *M.C.* Court, while recognizing a district's responsibility to correct its failure to provide FAPE, also excludes from the calculation of the compensatory education period, "the time reasonably required for the school district to rectify the problem". I must therefore determine the "reasonable time" for fulfilling the District's duties under the IDEA,⁷ and estimate the reasonable rectification deduction for compensatory education.⁸

Above were outlined the details of the District's becoming aware that an evaluation was needed, the reasonable time allowable to get to know Student better and to work with the Parent, and the time for obtaining permission to evaluate Student, finding Student eligible and designing an appropriate IEP. The "reasonable rectification period" in this case is from February 2009 to the end of the 2008-2009 school year. Therefore Student is entitled to compensatory education as Student was eligible for special education and went unidentified and without an IEP for the entire 2009-2010 school year and for the 2010-2011 school year until the effective date of Student's December 2010 IEP. Further, given that the IEP was inappropriately implemented and delivered in the most restrictive rather than the least restrictive environment, Student continued to be denied FAPE and is entitled to compensatory education from the effective date of the December 2010 IEP to the date of Student's graduation in June 2011. Given that student should have been identified and given special education supports and services in the school or at least in an alternative school environment during the first portion of the award entitlement, and given that the special education that was finally offered was inappropriate and unduly restrictive, Student will be given full days of compensatory education, that is, five hours per day, for every day that school was in session, excluding summers, for two years, that is from the beginning of the 2009-2010 school year to the date of Student's graduation in June 2011.

The Parent and Student may select the form of the compensatory education so long as it addresses any appropriate developmental, remedial, tutorial, transitional or therapeutic service identified as needs in the District's ER and/or in the Parent's expert's report. There are financial limits on the Parent's and Student's discretion in selecting the appropriate services, in that the costs to the District of providing the awarded hours of compensatory education should not exceed the full cost of the services that were denied. Full costs are the salaries and fringe benefits that would have been paid to the actual professionals who should have provided the District services and the actual costs for salaries, tuition and transportation for contracted services. This principle sets the maximum cost of all the hours or days of the compensatory education awarded. The

⁷ *W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995).

⁸ *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d at 397.

Parent and Student may balance expensive and inexpensive instruction or services so long as the total cost and hours do not exceed the maximum amount. The Parent and Student also may use fewer hours of expensive services so long as the maximum dollar amount is not exceeded. Finally, the Parent must not be required to make co-payments or use personal insurance to pay for these services.

The time for utilizing compensatory education awarded may extend beyond age 21. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990). Such flexibility is particularly crucial in a case like this one where Student is beginning the second semester of first year of community college and may not complete college in four years given the nature of Student's disability. Therefore, Student may use the compensatory education award up to the date of Student's twenty-sixth (26th) birthday. Although the compensatory education may not be used to pay for tuition, books or fees at a post-secondary institution (college or trade school), in addition to the description above the hours may be used for course-related tutoring, counseling, assistive technology including hardware and software, and tools/equipment for use in a post-secondary setting.

Graduation

The federal regulations implementing the IDEA require that school districts provide FAPE to children with qualifying disabilities until the age of twenty-one. 34 C.F.R. § 300.121. This obligation, however, does not apply where the disabled student has "graduated from high school with a regular high school diploma." 34 C.F.R. § 300.122.

The IDEA mandates that a local educational agency must provide parents with written prior notice whenever the local educational agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. 20 USC §1415 (b)(3) Graduation from high school with a regular high school diploma constitutes a change of placement, requiring written prior notice in accordance with §300.503.

Parents have the opportunity to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child [subject to time limitations not applicable in this matter]. 20 USC §1415 (b)(6)(A) Whenever a complaint has been received the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency. 20 USC §1415 (f)(1)(A)

This matter involves a change of placement to which the Parent objects and about which she is entitled to a due process hearing. There is some authority for allowing parents to keep a child with a disability in school in accordance with the child receiving a FAPE past a district's determination that the child has graduated. In *Susquehanna Township School District v. Frances J.*, the Commonwealth Court of Pennsylvania heard a case involving whether a school district could graduate an IDEA-eligible child despite an objection from the child's parents. In that case, the parents objected to the school district's decision to graduate the child alleging that the school district had never

provided the appropriate services detailed in the student's IEP. At the due process hearing over this dispute, the parents claimed "that the District never provided the transitional services specified in the 2001 IEP." *Susquehanna Township School District*, 823 A.2d 249, 251 (2003). The District countered by arguing that the student had fulfilled the district's graduation requirements. The Hearing Officer determined that the Student had graduated and that the District had therefore fulfilled the obligations of providing the Student with a FAPE. Upon review of the case, the Appeals Review Panel reversed the Hearing Officer's decision, determining that the services detailed in the 2001 IEP had not been provided and awarded the student compensatory education. The Commonwealth Court then heard the case upon review. Upon this review, the court stated, "Although the Hearing Officer did not expressly determine whether the District provided the transitional services specified in the 2001 IEP, we believe that a proper resolution of that issue is essential in determining whether [Student] had 'legally' graduated, thereby terminating the District's obligation to provide FAPE under the IDEA." *Id.* at 254. The court went on to say, "...regulations...pertaining to...graduation requirements provide in pertinent part that 'children with disabilities who satisfactorily complete a special education program developed by an IEP team under the IDEA and this part shall be granted and issued a regular high school diploma by the school district..." *Id.* at 254 (quoting 22 Pa. Code § 4.24(e)). The court then set out the standard by which the determination of "legal" graduation must be made. The court stated, "Pursuant to 22 Pa. Code § 4.24(e), in order to graduate, a child with a disability must satisfactorily complete a program developed by an IEP team under the IDEA. Therefore, this court believes that in order for [Student] to graduate, there must be determination that the 2001 IEP was fully implemented, including the implementation of the planned transitional services. This determination must be in addition to whether [Student] had obtained the necessary credits for graduation." *Id.* at 255. The court found that although the student had fulfilled the standard graduation requirements, the IEP had not been fully implemented. Therefore, in that case, the student was not "legally" graduated and was still entitled to a FAPE under the IDEA.

Turning to the instant matter then, we must look at both credits toward graduation and progress toward the IEP goals. It is true that Pennsylvania law delegates the authority to identify requirements for graduation from high school to the school board of each district. 24 P.S. §§ 16-1605, 16-1611, 16-1613; 22 Pa. Code § 4.24(a). The District argues that the grades assigned to Student's work are not subject to review or challenge in the context of a due process hearing, noting that Pennsylvania law delegates authority to assign grades and recommend promotion or retention of students solely to classroom teachers. 24 P.S. §§ 15-1531, 15-1532. The District also references *Fairfax County Public Schools*, 38 IDELR 275 (VSEA 2003) (educators' grading decisions are to be given deference by non-educator reviewing persons) (hearing officer lacks subject matter jurisdiction to change grades); *Hacienda La Puente Unified School District*, 27 IDELR 885 (CSEA 1997) (process to challenge award of grades and credits is distinct from special education due process), and an OSEP advisory opinion due deference but not binding that the IDEA does not address standards for retention or promotion of students with disabilities. *Letter to Anonymous*, 35 IDELR 35 (OSEP 2000).

However, this hearing officer is not persuaded that she lacks jurisdiction on the matter of whether Student's grades were legitimate and credits properly awarded. Although the IDEA is silent, as it is on other issues, I do not infer lack of jurisdiction. To draw a hypothetical example, if the District were correct that a teacher's award of grades and a District's award of credits were immutable, there would be nothing to stop a District, for any number of reasons, from conferring a minimally passing grade in every subject simply to exit a child from special education, from high school, and from the district's responsibility. This is not the case here. With one exception, and that exception does not lie with the teacher per se, I found that the teachers who testified at my request were able to explain with clarity, albeit considerable variability, the basis on which they awarded Student grades. Although Student in many instances did not do as much work as the other pupils, I did not find any instance where a grade was assigned without a rational basis. This is not to say that, were I the teacher I would have made the same call in some instances, but I found no abuse of discretion on the part of the teachers. In fact on the whole I found them thoughtful, well qualified, and reasonable and being able to hear them in person contributed greatly to my level of certainty about Student's graduation. Although the matter of the senior research project was troublesome, as discussed above under Credibility, given that the Parent was fully complicit in the manner by which Student's research paper requirement was fulfilled, and given that the English teacher had no constructive knowledge of how independently each of his pupils completed the project, I conclude that Student was legitimately given credit for that assignment.

Aside from grades and credits, in deciding whether to graduate a student an LEA must also consider the student's progress in his/her IEP goals in making the determination. 34 C.F.R. 300.102(a)(3)(i) To graduate a student with a disability under the IDEA, the student must meet the general graduation requirements and make progress on or complete the IEP goals and objectives. *Chuhuran v. Walled Lake Consol. Sch.*, 839 F.Supp. 465, 474 (E.D.Mich.1993), *aff'd*, 51 F.3d 271 (6th Cir.1995). Automatic grade promotion does not necessarily mean that the disabled child received a FAPE or is required to be graduated. *See, e.g., Rowley*, 458 U.S. 203, n. 25.

Although the IEP was poorly drafted and poorly implemented, we now have knowledge from the Parent herself and from the parent advocate that Student is enrolled in community college, is taking courses that are not remedial in nature, is accessing appropriate accommodations in college without the assistance of a special educator, is doing well academically and socially, is much more focused, makes eye contact and holds conversations. Given how Student suffered in the school setting in earlier years, there seems to have been considerable progress toward independence and self-sufficiency and toward attainment of the IEP goals.

Given consideration therefore of the awarding of grades and credits, and progress towards IEP goals, I find that the District is correct that Student should be considered as having graduated from high school in June 2011, at the end of the 12th grade year.

Section 504

To establish a violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §793 *et seq.* the Parent must demonstrate that (1) Student is disabled as defined by the Act;⁹ (2) Student is "otherwise qualified" to participate in school activities; (3) the school or the Board receives federal financial assistance; and (4) Student was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *Ridgewood Board of Education v. N.E.* 172 F.3d 238, 253 (3d Cir. 1999); *J.F. v. School District of Philadelphia*, 2000 U.S. Dist. LEXIS 4434, No. 98-1793, (E.D.Pa. 2000); *Nathanson v. Medical College of Pennsylvania*, 926 F.2d 1368, 1380 (3d Cir. 1991); 34 C.F.R. § 104.4(a).

Section 504 requires a recipient of federal funds to make "reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped" person. 34 C.F.R. §104.12 (a). Although the Third Circuit has not specifically addressed what is a "reasonable accommodation" in relation to the Rehabilitation Act's requirement of an "appropriate" education, Courts have concluded that a reasonable accommodation analysis comports with the Third Circuit's explanation that an "appropriate" education must "provide 'significant learning' and confer 'meaningful benefit,'" *T.R. v. Kingwood Township Bd. of Educ.* 205 F.3d 572, 577 (3d Cir. 2000) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182, 184 (3d Cir. 1988), but that it "need not maximize the potential of a disabled student." *Ridgewood*, 172 F.3d at 247; *Molly L v. Lower Merion School District*, 194 F. Supp. 2d 422 (E.D.PA 2002).

The Parent did not argue that the evidence established a separate and distinct claim under §504 in addition to the District's alleged violations of IDEA. The Parent's 504 claim was based entirely upon the same facts that were asserted in support of the IDEA claims. As the Parent prevailed on the IDEA claims, this decision satisfies the 504 claims as well. *See West Chester Area School Dist. v. Bruce C., et al.*, 194 F.Supp.2d 417, 422 n.5 (E.D.Pa. 2002) (court found issue of whether student was entitled to Section 504 Service Plan to be moot because court found student eligible for IDEA services).

⁹ A "Handicapped person" under Section 504 of the Rehabilitation Act is defined as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 34 C.F.R. §104.3(j).

Order

It is hereby ordered that:

1. Student's pendent placement as of the start of the hearing was Instruction in the Home.
2. The District failed to evaluate Student for eligibility for special education and/or 504 accommodations in a timely manner.
3. Once Student was evaluated and found eligible for special education, the District failed to provide Student with FAPE.
4. Student met the requirements for graduation at the end of the 2010-2011 school year.
5. As the District failed in its obligation to evaluate and identify Student in a timely manner, and failed to offer Student FAPE once identified, Student is entitled to full days of compensatory education from the first day of the 2009-2010 school year to the last day of the 2009-2010 school year, and is also entitled to full days of compensatory education from the first day of the 2010-2011 school year to the date of graduation in June 2011. The compensatory education will be used in accord with the parameters presented above, and may be used until Student's 26th birthday.

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

December 12, 2011

Date

Linda M. Valentini, Psy.D., CHO

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