

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

Child's Name:

J. S.

CLOSED HEARING

ODR Case #20344-1718AS

Date of Hearing:¹

June 25, 2018

Parent:

[redacted]

Jennifer Modell, Esquire & Toni Haraldsen, Esquire
429 Forbes Avenue – Suite 450
Pittsburgh, PA – 15219
Counsel for Parent

School District:

Keystone Oaks School District – 1000 Kelton Avenue –
Pittsburgh, PA – 15216

Christina Lane, Esquire – 424 S. 27th Street – Suite 210
Pittsburgh, PA – 15203
Counsel for the School District

Date of Decision:

September 30, 2018

Hearing Officer:

Michael J. McElligott, Esquire

¹ The hearing commenced at the June 25, 2018 session. Based on evidence at that session, the hearing officer ordered certain documents to be obtained and shared as part of the record. On August 27, 2018, those records were obtained and shared. Neither party had questions for any witness as to those documents, and the documents, speaking for themselves, were admitted to the record. This decision follows.

INTRODUCTION AND PROCEDURAL HISTORY

Student (“student”)² is a late-teen age student residing in the Keystone Oaks School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations as a student with [unspecified in original].³

Parent asserts that for the period March 2016 – March 2017, the student was denied a free appropriate public education (“FAPE”) as a result of the student’s placement outside of the District over that period. More specifically, the parent asserts that this placement was not the least restrictive environment (“LRE”) for the student and that the District failed in its obligation to provide FAPE in the LRE. Parent claims compensatory education as the result of the alleged denial of FAPE.⁴

The District asserts that at all times it provided the student with FAPE. The District asserts that given the student’s mental health needs and behaviors exhibited in the District prior to the placement, the placement outside the District was appropriate over the period encompassed by the parent’s claim.

² To protect the confidentiality of the student, the generic use of “student”, rather than a name or gender-specific pronouns, will be employed and will be substituted in direct quotes throughout the decision.

³ It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 24 PA Code §§14.101-14.163.

⁴ As set forth below, the chronology and facts related to the parent’s claim for remedy largely pre-date March 2016. But that chronology/those facts form a necessary backdrop to the parent’s claim for remedy over the period March 2016 – March 2017.

For the reasons set forth below, I find in favor of the District.

ISSUE

Did the District provide
FAPE in the LRE for the student
over the period March 2016 – March 20017?

FINDINGS OF FACT

7th Grade / 2014-2015

1. The student enrolled in the District in the midst of 7th grade in December 2014. (School District Exhibit ["S"]-4 at pages 5-24).
2. Enrollment documentation indicated that the student had previously received occupational therapy ("OT") services in fine motor skills. In late January 2015, the District requested permission to evaluate the student for OT needs, permission granted by the parent in early February 2015. (Parent's Exhibit ["P"]-1, P-2; S-4 at page 15).
3. In February 2015, contemporaneously with the exchange of the permission documents for the OT evaluation, the student's mathematics teacher emailed the student's mother about the student's organization skills and low quiz/test scores in mathematics. The teacher mentioned that other teachers had

shared concerns about the student's performance in their classes. (S-7).

4. The student's mother responded to the math teacher's email questioning the content of the teacher's email and the fact that the student's performance had been discussed amongst teachers. (S-7).
5. The teacher responded to the email that the 7th grade teachers, and the school counselor, as a group consult about students as they see those students surfacing in the school environment. (S-7).
6. The principal, copied on the teacher's response, joined the email conversation to indicate that the student had only been in the District for two months at that time, including the winter break, so that educators were attempting to gain an understanding of the student and the student's needs, including the formal OT evaluation. (S-7).
7. In mid-February 2015, the District requested permission to conduct a comprehensive psychoeducational evaluation, permission granted by the parent. (P-6, P-7).
8. In the parent input form, gathered as part of the evaluation process. (P-8).
9. On Thursday, March 26, 2015, in the midst of the evaluation process, a teacher reported to the school counselor and principal that the student was reported to be bothering another student

("student X"). The teacher stated: "I have witnessed (the student) talking to (student X) and hanging around (student X's) desk and (student X) has clearly asked (the student) to back away and to leave (student X) alone. I spoke with (the student) after class this morning and (the student) told me that (the student) is in love with (student X) and (the student) is frustrated with (student X) not liking (the student)." That day, a school counselor (different from the counselor copied on the email) spoke with the student about the behavior. (S-15 at page 1).

10. The next day, on Friday, March 27, 2015, the school counselor (the counselor copied on the email of the day before) spoke with student X, telling student X that the student's behavior had been addressed and to contact a school counselor if the student engaged in any further concerning behavior toward student X. (S-15 at page 1).

11. On Tuesday, March 31, 2015, the same teacher emailed school counselors and the principal that the "today as class was concluding, I saw (the student) approach (student X) and accuse (student X) of not liking (the student) (for a certain reason). I spoke with both students and informed both of them I would be emailing guidance and the principal. I have spoken with (the student) several times about how inappropriate these incidents are." (S-15 at page 3).

12. The school counselor who had been originally copied on emails and had spoken with student X responded that day that she would be in touch with the student's mother about the situation. (S-15 at page 3).
13. In April 2015, the District issued the evaluation report ("ER"). (P-9).
14. The input of teachers in the April 2015 ER indicated that the student had organization and task-completion difficulties, as well as academic struggles, in English, history, mathematics, and health. Handwriting was also noted as a consistent weakness. No teacher reported any behavior or peer-related issues in their classes, but the ER noted concern by teachers with the student's ability to progress adequately through the curriculum without modifications. (P-9 at pages 2-3).
15. The April 2015 ER contained a cognitive assessment, yielding a full-scale IQ score of 74. The evaluator characterized the student's cognitive ability as "not easily summarized" due to disparate scores in verbal reasoning (verbal reasoning index of 93, with strengths in verbal information and verbal abilities to understand and solve complex problems) and nonverbal reasoning (perceptual reasoning index of 67, with a relative weakness in utilizing part-whole complex visual/spatial information to understand and solve problems, especially as indicated in the

- student's low scores on the block design subtest). (P-9 at pages 4-8).
16. The April 2015 ER contained achievement testing. The evaluator utilized the verbal reasoning index score of 93 as the truest measure, in the evaluator's view, of the student's intellectual functioning. Based on that score, the student showed a significant discrepancy between intellectual ability and achievement on the following measures: pseudoword decoding, math problem-solving, numerical operations, quantitative concepts, punctuation/capitalization, and editing. (P-9 at pages 8-11).
 17. The April 2015 ER included up-to-date grades/classroom performance information. (P-9 at page 13).
 18. The April 2015 ER did not contain any social/emotional/behavioral assessments. (P-9).
 19. The April 2015 ER recommended that the student be identified as a student with specific learning disabilities based on the discrepancies between intellectual functioning and achievement exhibited in the assessments of the student and the teacher's input. (P-9 at pages 14-15).
 20. [In the spring of 2015], the student allegedly exposed [self, details redacted] in school, and the principal requested a meeting with the student's parent. The parent recognized the behavior as unacceptable but indicated she could not meet with the principal

- until [a later date around the time of] the scheduled date of the meeting to craft the student's individualized education program ("IEP"). (S-5, S-18).
21. The student was suspended for two days [dates redacted]. (S-4 at page 4, S-18).
 22. On May 14, 2015, the student's IEP team met to discuss the student's IEP. (S-5; P-9 at page 21).
 23. The May 2015 IEP indicated that the student did not exhibit behavior that impeded the student's learning or that of others. (P-11 at page 3).
 24. The May 2015 IEP included five goals (two in reading comprehension, one in math problem-solving, one in organization/attention, and one in social interaction with peers). (P-11 at pages 13-19).
 25. The May 2015 IEP included modifications and specially designed instruction in each goal area, in addition to multiple modifications and specially-designed instruction related to the student's fine motor skills, writing, and written expression. (P-11 at pages 19 -22).
 26. The May 2015 IEP included consultation for school staff with an OT sixty minutes per month. (P-11 at page 23).
 27. The May 2015 IEP indicated that the student would receive all instruction in the regular education setting. The student would

- receive learning support in the study resource one period per school day (approximately 42 minutes), including one study resource period per week for social skills, a total of 90% of each school day spent in regular education. (P-11 at pages 25-26).
28. At the May 2015 IEP meeting, the IEP team discussed the potential involvement in the District's student assistance program ("SAP"). The SAP team is a group of District teachers, counselors, administrators, and non-District counselors that gathers to discuss, and work with, students who may be struggling with non-school issues and issues outside of academics. The student's parent was provided with paperwork for consent to allow the student to participate in the SAP program. (Notes of Testimony ["NT"] at 156-159).
29. On May 14, 2015, the parent approved the student's IEP and the recommended placement. (P-11a).
30. On Tuesday, May 26, 2015, the parent emailed the principal. The student's mother indicated that student X had said negative things to the student and requested that the two students not be in classes together. (S-15 at page 4).
31. On Wednesday, May 27, 2015, the principal responded that the student and student X shared only homeroom and lunch and that the student was going to be reassigned to a new homeroom. The principal was going to gather more information about the

students' potential interactions at lunch and look into assigning seats at lunch. (S-15 at page 4).

32. In the May 27th email, the principal further related that the student, in conversation with the principal, may be feeling badly about the student's self-perception. The principal offered the content of that conversation/self-observation for the parent's information and in the context of again requesting that the parent consider providing permission to allow the SAP team to become involved with the student. (S-15 at page 4; NT at 156-159).

8th Grade / 2015-2016

33. The student returned to the District for 8th grade under the terms of the May 2015 IEP.
34. In late August/early September 2015, at the outset of the school year, the student's assistive technology for support in writing was being established. (S-19).
35. In early September 2015, at the outset of the school year, the school was coordinating the social skills groups for all students, including the student here, who required social skills programming. By late September 2015, however, the social skills groups had still not met. (S-20).
36. In mid-September 2015, the District was still hopeful that the student could be included in the SAP team process, but parent

had not provided permission for the involvement of the SAP team. Failing to receive permission to allow the student to participate in the SAP program, the District then requested that the student become involved in a regular education curricular effort about healthy relationships/interactions. (S-21, S-22 at page 1; NT at 248-250).

37. On September 28, 2015, the student was reported to the administration for offending statements made by the student to students and a staff member. The principal met with the student about the situation “and a few others” associated with student X. No administrative action was taken, but the student was warned that future inappropriate behavior would result in potential detention or suspension. (S-4 at page 4).
38. On Friday, October 16, 2015, the student surreptitiously destroyed the work of fellow students which was stored in a common area, interfering with the students’ ability to complete work. The student was assigned a morning detention the following school day, Monday, October 19th. (S-4 at page 4).
39. On Monday, October 19, 2015, the student was involved in an incident in the cafeteria involving student X. [Redacted]. The student was sent to the principal’s office and given a three day out-of-school suspension, over October 20th, 21st, and 22nd. (S-4 at page 4, S-22 at page 2).

40. After the cafeteria incident involving student X, in an interview with the principal about the incident, the student made the statement: “If I cannot have (student X), no one can have (student X)”. (S-22 at page 2).
41. In the interview with the principal, the principal asked the student how the student would feel if student X became involved in a romantic relationship with another person.⁵ The student responded that the student would light the person on fire with gasoline and matches, something that the student also would do to a future spouse should student X marry in the future. (S-22 at page 4).
42. The principal described the student’s affect as “angry” except when speaking of the harm to others, where the principal described the student’s affect as “happy and (smiling)”. (S-22 at page 4).
43. The principal emailed the student’s mother to relate these matters and recommended that the student be seen for a mental health assessment and asked that the results of any such assessment be shared with the District. (S-22 at pages 2, 4).
44. On October 20, 2017, the parent took the student to a psychiatric clinic for a psychiatric evaluation related to the

⁵ There was no specific person named in the principal’s question or the student’s answer. The exchange was about a hypothetical relationship.

student's interactions with student X in the school environment.
(Hearing Officer Exhibit ["HO"]-2 at pages 7-10).⁶

45. When asked about the interactions with student X, the student reported that it made the student sad when student X asked to be left alone and when student X characterized the student's behavior as "creepy". The evaluator noted, however, that the student smiled as the student made these statements/observations, an affect which the evaluator noted as inappropriate (HO-2 at pages 7, 9).
46. The psychiatric evaluation yielded a provisional diagnosis of an unspecified schizophrenia spectrum/other psychotic spectrum disorder. The evaluator noted that this diagnosis was based on the inappropriate affect, avoidance of eye contact, and perseveration on student X. (HO-2 at pages 9-10).
47. The psychiatric evaluator recommended follow-up with a program at the psychiatric clinic. (HO-2 at page 10).
48. A day or two after the psychiatric evaluation, the student's mother shared with the principal the fact that the provisional diagnosis was psychosis. The parties dispute whether this information was shared specifically in those terms at that time:

⁶ The following exhibits comprise the Hearing Officer Exhibits in this matter: HO-1/Parent's Complaint, HO-2/Psychiatric Hospital Documents, HO-3/Parent's Motion *in limine*, HO-4/Ruling re: Parent's Motion *in limine*, HO-5/Parent's Closing Statement, and HO-6/SD Closing Statement.

The student's mother testified that there was no such diagnosis; the principal testified that the student's mother had told him that the student had been diagnosed with psychosis. The principal's testimony is credited. (S-22 at page 5; HO-2 at pages 7-10; NT at 52-53, 68-69, 173-177, 264-266).

49. The mental health evaluation was not provided to the District. The only information the District had was the mother's indication about the evaluation. (NT at 215-220).
50. On Friday, October 23, 2015, the student returned to school from the 3-day suspension. The student spent the day in a conference room at the school while the parent met with the principal, the student's special education teacher, and a special education administrator. The student was also part of the meeting. (S-11; NT at 53-55, 215-220).
51. The team discussed the student's increasingly problematic behaviors and potential placement in a partial hospitalization program to address the student's mental health needs. The parent signed the permission document for the student to participate in the SAP program at the District. (S-11; NT at 54-56, 126-132, 214-220).
52. At the October 23, 2015 meeting the student's mother was not in immediate agreement to undertake a partial hospitalization

- program for the student but was amenable to considering it and visited the program. (NT at 55-58, 245-247).
53. At the October 23rd meeting, the May 2015 IEP was revised to reflect the parent's consent for the student to participate in the SAP program. (P-12).
54. Following the October 23rd meeting, the District contacted a private hospitalization program about potential enrollment. (P-13).
55. On Monday, October 26, 2015, the student met with the mental health counselor as part of the SAP program. (S-22 at page 6).
56. On October 26th, the mental health counselor met twice with the student and could not stop perseverating on student X and asking about the whereabouts and safety of student X. (S-11).
57. That same day, October 26th, the student was in the special education classroom in the last period of the day. The student would not listen to instructions to stay seated and kept checking through the window of the classroom door. Upon seeing student X in the hallway, the student exited the classroom and [approached student X, details redacted]. (S-22 at page 6; HO-2 at page 11; NT at 48-49).
58. The student was suspended from school for three days for the hallway incident. The next day, on Tuesday, October 27, 2015, the student was expected to be out of school for the follow-up

- appointment with the psychiatric clinic, so the 3-day suspension was in effect for October 28th, 29th, and 30th. (S-4 at page 4, S-22 at page 6).
59. On Tuesday, October 27, 2015, the student had the follow-up appointment with the psychiatric clinic. The treatment plan from the psychiatric clinic recommended a partial hospitalization program. (HO-2 at page 13).
60. On November 2, 2015, the partial hospitalization program contacted by the District on October 23rd accepted the student. On that date, the student's mother participated in the intake process with the program. (P-14; S-22 at page 17).
61. On November 4, 2015, effective November 6th, the District undertook the obligation for enrollment of the student at the partial hospitalization program, including implementation of the student's IEP as part of that program. (P-15).
62. On November 4, 2015, the District issued a notice of recommended educational placement ("NOREP") for the student's placement at the partial hospitalization program. (P-16).⁷
63. The student began to attend the partial hospitalization program on November 6, 2015. (NT at page 229).

⁷ The parent did not sign and return the November 2015 NOREP until February 2016. (P-16).

64. In December 2015, the partial hospitalization program designed an IEP for implementation at the program. (P-17).
65. The student and parent were invited three times by mail but did not give any indication that they would participate in the IEP team meeting. On the day of the IEP team meeting, the IEP team attempted to have the parent participate by telephone but could not reach the parent. (P-17 at pages 4, 47-48).
66. The December 2015 IEP was in effect in March 2016. (P-17)
67. The December 2015 IEP indicated that the student exhibited behaviors that impeded the student's learning or that of others. (P-17 at page 5).
68. The December 2015 IEP included updated levels of present performance. (P-17 at pages 6-22).
69. The December 2015 IEP included a behavior assessment and positive behavior support plan. (P-17 at 17-19, 23-26).
70. The December 2015 IEP contained four goals, (two in behavior, one in reading, and one in mathematics). The goals, modifications, and specially designed instruction were largely geared to the student's behavior. (P-17 at pages 35-43).
71. The student completed 8th grade, the 2015-2016 school year, at the partial hospitalization program. (P-17).

72. The student attended the partial hospitalization program under the terms of the December 2105 IEP through December 2016, in effect through the first semester of 9th grade. (P-17; NT at 234-235).
73. In December 2016, the student's IEP team met to design a new IEP. (P-18).
74. The December 2016 IEP was crafted for implementation at the District, following a gradual re-introduction of the student back to the District. (P-18).
75. Beginning in January 2017, the student would attend part of the school day schedule at the partial hospitalization program and part of the day at the District high school. In phases, the time at the partial hospitalization program would decrease and the time at the District would increase, until the student was attending the District high school for a full school day. (P-18; NT at 234-235).
76. Transition was completed by March 27, 2017, when the student was attending full-time at the District high school. (NT at 236).

DISCUSSION AND CONCLUSION OF LAW

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.163)). 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, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, F.3d (3d Cir. at No. 17-3605, September 18, 2018)).

Moreover, both federal and Pennsylvania law require that the placement of a student with a disability be in the LRE. Educating a student in the LRE requires that placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting which affords exposure to non-disabled peers and regular education and that “separate schooling...occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (34 C.F.R. §300.114(a)(2) and, generally, 34 C.F.R. §§300.114-120 ; 22 PA Code §14.145; Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

Here, the critical understanding of the record is how the District generally, and the student’s IEP team specifically, understood the student’s needs at a point in time, based on the information that those

entities had at that time. Looking at the record as a whole, projecting after-acquired information back to understandings at a previous point in time must be avoided; the factual foundation for actions must be understood in terms of what was known at the time of consideration, not in the light of how that knowledge may have shifted based on newly-acquired information.

With that in mind, the student entered the District in December 2014 and by February 2015, having had a chance to work with the student in the District for approximately eight weeks, the District had requested permission to evaluate the student. As the evaluation process was nearing its end, in March 2015, the student's first issues with student X appeared. At that time, the interactions were characterized repeatedly as 'bothering', and the student was engaged/instructed about appropriate interactions as any regular education student would be. As part of the evaluation process, teachers reported no difficulties socializing or with peer interaction. The record does not support the conclusion that the District knew or should have known anything that would lead it to evaluate the student any differently.

In May 2015, admittedly, there was an incident where the student exposed [self]. In retrospect, whatever one makes of the behavior based on after-acquired information, at the time everyone—including the student's mother—believed that the behavior was related to

inappropriate adolescent tomfoolery and was not related to any behavioral needs in the school environment.

At the May 2015 IEP team meeting, the District did bring up the student's involvement in the SAP program, but SAP is a regular education intervention, outside of special education programming. So even in terms of considerations by the IEP team, the student's needs were viewed as regular education support and not as a need rooted in identified special education needs. And, indeed, the student's mother did not view the need and/or services as something she was interested in pursuing. Even at the end of May 2015, following the student's conversation with the principal, the student's mother sought to have regular education solutions implemented (schedule-change and cafeteria assignments) rather than pursue SAP. All of this supports the conclusion that, by the close of 7th grade, the student's IEP team did not view the student's needs in a way that led anyone to suspect that the student might be mis-served by the May 2015 IEP.

By the outset of 8th grade, however, matters began to change. In late September 2015, the student was involved in an interaction which was viewed as problematic by peers and a teacher. And in mid-October 2015, the student was involved in problematic in-class behavior that involved the destruction of other students' work. This would be the earliest point, on this record, where the District might be viewed as having exhibited behaviors which the District could arguably have been

placed in a position to potentially consider additional special education evaluation and intervention.

The next school day after the in-class incident, however, is when matters took a dramatic turn, a turn that underlies the parent's claim in this matter (placement outside of the District in a way that violated the LRE mandate of IDEIA). The student's behavior and statements in the interview with the principal, both on October 19, 2015, raised legitimate concerns that the student's needs might be psychiatric as well as educational. The psychiatric evaluation the next day confirmed this, with a mental health diagnosis shared with the District.

To address the mental health needs of the student—being exhibited in increasingly profound, and arguably dangerous, ways—the student's IEP team, with the cooperation of the student's mother, considered a partial hospitalization program on October 23, 2015. To characterize this as a unilateral special education placement decision is erroneous: The student's IEP team, including the parent, were grappling with fast-developing information where non-educational mental health needs had become the clear and, at the time, pre-eminent concern for the student. The parent granted permission for the student's participation in the SAP program, and the student remained at the District.

The next school day, October 26, 2015, in work with the SAP counselor, the student was again exhibiting the focus on student X

which was the concern of the mental health professionals and were the window into the psychiatric diagnosis. That day, the student defied directives, left a classroom, and [redacted] contact with student X. On the following day, October 27, 2015, a mental health professional recommended a partial hospitalization program. This aligned with the IEP team's deliberations of a few days prior. On November 2, 2015, the intake process, in cooperation with the student's mother, was completed and by November 6, 2015, the student was participating in the partial hospitalization program under the terms of an IEP.

At this point in the chronology of events, the question in terms of parent's claim is whether the District inappropriately moved to deliver the student's IEP in a partial hospitalization program outside of the District. Said another way, was the fact that the student was receiving services under an IEP in the partial hospitalization program a violation of the LRE mandate? The answer, on this chronology and under these facts, is clearly no.

This chronology, and the fact-finding above, centers on events that arose well before the scope of the parent's claim for remedy. Namely, these events date from the student's enrollment in the District in December 2014 and focused mainly on events as of October 2015, pre-dating by months the claim of parent for remedy as of March 2016. Yet this chronology and these events are the necessary backdrop to the assertion that, as of March 2016, the student was inappropriately

receiving services under the IEP in violation of the LRE mandate of IDEIA.

The evidentiary record as to the delivery of those services, and the student's progress or purported lack of progress, over the period March 2016 through March 2017 is sparse. Indeed, parent fails to meet her burden as to any alleged denial of FAPE for inappropriate design or implementation of the services at the partial hospitalization program from May 2016 through May 2017, when the student had fully transitioned back to the District. Likewise, parent fails to meet her burden for any such claim on the District's part during the transition months of January – March 2017 where the student was receiving some degree of services from the District.

But, as the record shows, the parent's claim is not rooted in programming/services/progress as much as a placement claim regarding the LRE. And, as set forth above, on this record and under these facts, the District met its obligations to the student.

Accordingly, the District provided to the student FAPE in the LRE over the period March 2016 – March 2017.

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ORDER

In accord with the above, the District met its obligations to provide to the student a free appropriate public education in the least restrictive educational environment over the period March 2016 – March 2017.

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

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

September 30, 2018