

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:

A. B.

CLOSED HEARING

ODR Case #21053-18-19KE

Parent:

[redacted]

Counsel for Parents

Phillip A. Drumheiser, Esquire, 2202 Circle Road
Carlisle, PA, 17013

School District:

Wyoming Area School District, 20 Memorial Street, Exeter, PA,
18643

Counsel for the School District

Sharon Montanye, Esquire, 331 Butler Avenue, P.O. Box 5069
New Britain, PA, 18901

Date of Decision:

October 16, 2018

Hearing Officer:

Michael J. McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a mid-teen aged student residing in the 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 a health impairment.² Parent also asserts claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute (“Section 504”).³

Parent’s complaint at this file number centers on allegations in a complaint filed by the student’s parent on April 3, 2018 that the student was denied a free appropriate public education (“FAPE”) due to prejudicial procedural acts/omissions that denied the parent an opportunity to participate in the manifestation determination process and individualized education program (“IEP”) team meeting held in the days after a disciplinary incident on March 15, 2018 that allegedly

¹ 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.

² 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.

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. *See also* 22 PA Code §§15.1-15.11 (“Chapter 15”). Parent also makes claims under the Americans with Disabilities Act of 1990 (“ADA”, *see* 28 C.F.R. §§ 35.130). These proceedings were held pursuant to 22 PA Code §§14, 15, neither of which provide jurisdiction to hear claims, or engage in fact-finding, in Pennsylvania related to ADA claims. Accordingly, any ADA claims are denied under the terms of the order below, specifically on the basis of lack of jurisdiction.

involved the student. (Hearing Officer Exhibit ["HO"]-1 – *April 3rd Complaint*).

The April 3rd complaint encompassed a variety of claims. For a complete understanding of those claims, and the consequent procedural tracks that have unfolded since the filing of the complaint, the claims in the April 3rd complaint can be understood broadly as follows:

1. Allegations related to procedural denial-of-FAPE in the District's handling of the manifestation determination process held by the District after the March 2018 disciplinary incident.
2. Allegations related to substantive denial-of-FAPE in the manifestation determination process in light of the finding by school-based members of the student's IEP team that the behavior underlying the disciplinary incident was not a result of the student's disability.
3. Allegations that the student was denied FAPE over the period November 2017 – March 2018 while the student attended the District.

As indicated above, the decision at this file number addresses the procedural denial-of-FAPE allegations related to the manifestation determination process (#1 in the list). The other issues presented in the

April 3rd complaint have been addressed in other decisions issued at other ODR file numbers.⁴

Therefore, the decision at this file number is the final decision in a series of decisions involving the student as the claims brought forward in the April 3rd complaint required different approaches, and involved different resolution timelines, including retrospective, contemporaneous, and forward-looking issues regarding the provision of FAPE across various educational placements.

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

ISSUE

Did the District
engage in a prejudicial procedural denial-of-FAPE,
denying the parent the opportunity
to participate in the manifestation determination
and IEP team processes?

⁴ The allegations related to the substantive result of the manifestation determination process (#2 in the list) had two aspects. One, the hearing at ODR file number 20467-1718, was convened in May 2018, but no result was reached on the merits as neither party was prepared to present evidence in that hearing process as to the disciplinary incident underlying the student's alleged involvement (*see HO-5 – Decision at ODR file number 20467-1718*; also in the record as School District Exhibit- 5). The second, based on the decision of the District's school board thereafter to move forward in June 2018 with a formal hearing under 22 PA Code §12.8(b) and expulsion of the student, involved the necessary change in the student's educational placement. The appropriateness of the District's proposed placement for the 2018-2019 school year, following the school board's expulsion of the student, was placed at issue in a separate complaint following the District's proposed change in placement (*see HO-6 – Decision at ODR file number 20828-1718*). The substantive denial-of-FAPE issue for the period November 2017 – March 2018 (#3 in the list) has already been decided as well (*see HO-7 – Decision at ODR file number 20601-1718*).

FINDINGS OF FACT

As set forth below, the procedural denial-of-FAPE allegations implicate the communication and notice interactions between the parties, so the fact-finding is necessarily granular.

Thursday – March 15th

1. On Thursday, March 15th a writing with a threat of potential violence was found on a wall in the District high school. (Parent's Exhibit ["P"]-16).
2. The District investigated the incident and, by the end of the day, had identified the student as the person it felt was responsible for the writing. (Notes of Testimony ["NT"] at 27-29, 85-86, 192-195).
3. District administrators were, over the course of the day and in the approximately two weeks thereafter, discussing that the District would likely pursue expulsion against the student. (NT at 27-32, 66-69, 123-127, 131-140).

Friday – March 16th

4. On Friday, March 16th, the student did not attend school. The District considered this as this the first day of suspension. (P-17 at page 1; NT at 109).

Monday – March 19th

5. On the afternoon of Monday, March 19th, the high school principal called the student's mother while the family was in the midst of meeting with the public defender's office. (NT at 198).
6. The high school principal informed the parent that he had arranged an informal hearing for the next day, Tuesday, March 20th, at 11 AM.⁵ Parent indicated that she was unsure whether she would be able to attend but would try to make arrangements to do so. (NT at 198-199).

⁵ Given the anticipated length of the suspension, in excess of three school days, the student was entitled to an informal hearing. 22 PA Code §12.6(b)(1)(iv), 12.8(c).

Tuesday – March 20th

7. On the morning of Tuesday, March 20th, the parent was able to make arrangements to attend the informal hearing. (NT at 198-200).
8. The conversations that morning between the District and the parent included potential placement in an alternative education program, although parent did not agree at that time to such a placement. (P-18; NT at 102-103, 202-204).
9. At the informal hearing, the director of special education also discussed generally the manifestation determination process. (NT at 205-208).
10. The parent shared her cell phone number with the high school principal so that he could communicate directly with her. (NT at 241-242).
11. The high school principal provided to the parent at the informal hearing a letter indicating to the parent that the student would be suspended for five school days. (P-17 at page 1; NT at 107-108, 204-205).
12. The high school principal issued a second letter, after the informal hearing, indicating to the parent that a manifestation determination hearing and IEP team meeting would be held on Friday, March 23rd, at 9 AM. (S-1; P-17 at page 2; NT at 110).
13. Enclosed with the principal's letter were invitations to the manifestation determination meeting and IEP team meeting, one addressed to the parent and one addressed to the student. The invitations instructed the parent/student to indicate whether they could attend the meetings and to return the invitations to the director of special education. (S-1; HO-4).
14. After the informal hearing, this second letter and these invitations were hand-delivered on March 20th to the parent and student at the student's home by an individual retained by the District. (NT at 70, 103-104, 110, 113-117, 146, 170-171).

Wednesday – March 21st

15. On Wednesday, March 21st, District schools were closed due to inclement weather. (P-19; NT at 123, 235).

Thursday – March 22nd

16. On Thursday, March 22nd, the parent called the District, speaking with the principal or his office, that she and the student would be unable to attend the March 23rd meeting at 9 AM, as the student had a long-anticipated medical appointment, and the family could not put the appointment at jeopardy or miss it. (NT at 206-207, 213-214, 234-235).
17. The parent also indicated to the District that she had retained counsel and that he would be attending the manifestation determination meeting and IEP meeting. The parent provided dates for her attorney's availability, all of which were on Tuesday, March 27th and the days thereafter. The District was informed that the parent's attorney would not be available for the meetings on Monday, March 26th. (NT at 208-209, 213-214, 221, 229-230).

Friday – March 23rd

18. On Friday, March 23rd, the manifestation determination meeting and IEP team meetings scheduled for 9 AM did not go forward. The student's parent testified that the District knew that she had shared that the family could not participate in the meeting that day due to the student's medical appointment, and that she had shared alternative dates for the meeting the following weeks, based on the family's availability and that of their attorney. The principal testified that the District received no notice from the parent in this regard and simply chose not to continue with the meeting. The parent's testimony is credited. (NT at 100-101, 206-209, 213-214, 221, 229-230, 234-235).
19. That day, the director of special education drafted new invitations to a rescheduled manifestation determination meeting, to be held on Friday, March 26th at 1 PM, one invitation addressed to the parent and one addressed to the student. The invitations instructed the parent/student to indicate whether they could attend the manifestation determination meeting and to return the

invitations to the director of special education. (P-20; S-3; NT at 34-35).

20. Also accompanying the invitations to the manifestation determination meeting was a form seeking consent to have a member of the IEP team, specifically a regular education teacher, excused from the manifestation determination meeting. The consent-to-excuse indicated that it should be returned to the director of special education. (P-20; S-3).
21. Separate invitations to a rescheduled IEP team meeting, one invitation addressed to the parent and one addressed to the student, to be held on Friday, March 26th at 1:30 PM, were also sent. The invitations instructed the parent/student to indicate whether they could attend the IEP team meeting and to return the invitations to the principal. (P-21; NT at 111 -112).
22. In addition to the two sets of invitations and the consent-to-excuse form, on March 23rd, the principal sent a letter to parent indicating that, due to the school closure that week, the student's suspension was being extended one day. The parent was instructed to call the principal with any questions. The phone number and extension on the letter were different from the phone number and extension contained on the invitations. (P-19, P-20, P-21; S-3, S-4; HO-4).
23. Both sets of invitations along with the letter regarding the extension of the suspension, were hand-delivered to the parent and student at the student's home by the same individual who had delivered the prior invitations on Tuesday, March 20th. (P-41; NT at 37-38, 70, 93-95, 146-148, 175).

Sunday – March 25th

24. On Sunday, March 25th, the parent and student each completed the invitations to the manifestation determination meeting and the IEP team meeting sent, respectively, by the director of special education and the high school principal, indicating that they wished to attend the meeting on Monday, March 26th, but the date/time were inconvenient. In the section on both documents entitled "please contact me to make alternative arrangements", they each crossed out "me" and provided the name of counsel for the family, along with his phone number. (P-20 at pages 2, 5; S-3 at pages 2, 5; NT at 215-219).

25. On Sunday, March 25th, the parent and student also completed consent-to-excuse form sent by the director of special education, indicating that they did not consent to excusing the regular education teacher from the meetings. (P-20 at pages 3, 6; S-3 at pages 3, 6; NT at 215-219).

Monday – March 26th

26. On the morning of Monday, March 26th, the parent, accompanied by the student's grandmother, hand-delivered to the high school principal at the District the signed invitations and consent-to-excuse forms, indicating that the family was not excusing the regular education teacher, could not attend the manifestation determination and IEP team meetings, and was requesting rescheduling. The principal made copies of those documents for himself and the family. They met jointly with the director of special education and the parent explained her reasons for not wishing to engage in the meetings that day without her attorney in attendance. The principal testified that, on that morning, the parent did not explain the reasons for not being able to participate in the meetings. Parent's testimony is credited that those reasons were shared, as in the week before, with the District that morning. (P-41; NT at 43-45, 95-97, 101-102, 175-177, 219-222).
27. The parent left the District, thinking that given the conversation with administrators that morning and the information provided in writing in response to the invitations and the consent-to-excuse forms, the meetings would not go forward. (NT at 223-224).
28. In the afternoon, the District proceeded with the manifestation determination meeting in the afternoon, without parent or the student in attendance. The school-based members of the student's IEP team in attendance found that the behavior allegedly engaged in by the student was not a manifestation of the student's disability. (P-23; S-4; NT at 76-77, 98-99, 101-102).
29. The District believed it was under a legal obligation to complete the manifestation hearing on or before Monday, March 26th. (P-41; NT at 33, 45-46, 70, 74, 94, 101).
30. The District believed that without a consent to release records, allowing it to share information with the family's attorney, it could not contact their attorney. The District recognized,

however, that the family's attorney could attend the manifestation determination meeting and/or IEP meeting as an invitee of the parent. (NT at 50-51, 62-63)

Tuesday – March 27th

31. On Tuesday, March 27th, again via hand-delivery, the District provided the manifestation determination worksheet to the parent, indicating the result reached by the school-based members of the student's IEP team. The parent signed and returned the manifestation determination worksheet, indicating her disagreement with the determination and requesting an expedited special education due process hearing. (P-23; S-4; NT at 223-224).
32. On Tuesday, March 27th, the principal was tasked with obtaining the signature of the secretary of the school board on a letter indicating that the school board would hold a formal hearing to consider possible expulsion of the student.⁶ Ultimately, the student was expelled from the District. (P-25; HO-6; NT at 131-135).
33. At no point prior to Tuesday, March 27th was the parent informed in writing that the student might be expelled from school. (NT at 127-129).

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34. The parent testified credibly that she would call the person indicated, at the number/extension indicated, on the invitations or letter, and did so in informing the District about her attorney's unavailability on Monday, March 26th, and provided dates that worked for the family and their attorney. The director of special education testified credibly that she received no call or message from the parent in response to any of the invitations she sent regarding rescheduling to accommodate the family's scheduling needs. The principal could not recall with specificity if he received communications from the student's mother in that regard or, if so, when, including a phone number given to him directly by the parent that may or may not have been the phone number for parental contact in the District's student information system. Taken all together, the testimony of the student's mother is

⁶ With the discipline now amounting to a recommended expulsion, the student was entitled to a formal hearing before the school board. 22 PA Code §12.6(b)(2), 12.8(b).

credited that she communicated with the District, through the principal and/or principal's office, about her attorney's unavailability on Monday, March 26th. (NT at 34, 38, 54-55, 87-89, 90-92, 140-143, 171-172, 174, 208-209, 210-211, 213-214, 221, 226-229, 231).

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)). In pertinent part, where a student identified as a child with a disability under IDEIA is removed for more than 10 consecutive school days due to a disciplinary matter, such a removal is considered a disciplinary change in the student's educational placement. (34 C.F.R. §300.536(a)(1); 22 PA Code §14.102(a)(2)(xxxii)). Within 10 school days of the decision to implement a disciplinary change in placement, "(the school district), the parent, and relevant members of the child's IEP Team (as determined by the parent and the [school district]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine if the behavior underlying the disciplinary action was "caused by, or had a direct and substantial relationship to, the child's disability", or was the direct result of the school district's failure to implement the IEP. (34 C.F.R. §300.530(e); 22 PA Code §14.102(a)(2)(xxxii)). If the manifestation determination team determines that the behavior underlying the

disciplinary action is not a manifestation of the student's disability, the school district may take disciplinary action as it would with a student not identified under IDEIA (34 C.F.R. §300.530(c); 22 PA Code §14.102(a)(2)(xxxii)); if the manifestation determination team determines that the behavior underlying the disciplinary action is a manifestation of the student's disability, the student must be returned to the then-current educational placement, and the team must begin to understand how the behavior must be understood and addressed by the student's IEP. (34 C.F.R. §300.530(e)(f); 22 PA Code §14.102(a)(2)(xxxii)). These are the relevant procedural elements underlying the allegations of procedural denial-of-FAPE.

Explicitly part of the IDEIA, however, is the provision that a procedural violation is not, in and of itself, grounds for a finding of a denial-of-FAPE. A procedural violation of IDEIA may be grounds for a finding of denial-of-FAPE only where the procedural violation impeded the student's right to FAPE, or significantly impeded a parent's right to participate in educational decision-making, or caused a deprivation of educational benefit. (34 C.F.R. §300.513(a)(2); 22 PA Code 14.102(a)(2)(xxx)).

Here, the record clearly shows that a series of actions, omissions, and misunderstandings on the part of the District prejudicially impeded the parent's right to participate in the manifestation determination and IEP team processes engendered as the result of the March 15th incident.

Underlying all of this is the fact, undisputed on this record, that the District intended to pursue expulsion of the student for allegedly engaging in the behavior.⁷ The parent was denied the opportunity to participate in the manifestation determination process, a process that was being held explicitly in contemplation of the student's expulsion from school. Expulsion is obviously the most severe disciplinary consequence a student can face. Indeed, it is exactly the type of situation envisioned by IDEIA where a manifestation determination process is required, to make sure that whenever significant discipline is being contemplated, the student's IEP team can meet to see if the behavior is, or is not, a manifestation of a student's disability. One cannot think of a more important discipline scenario and, given the stakes, the need to have a parent be part of the team's considerations in understanding the student and the behavior.

But there are specific, identifiable ways in which the District prejudicially denied parent the opportunity to participate in the manifestation determination and IEP team processes following the March

⁷ This hearing officer has been careful to attempt to characterize the student's purported engagement in the behavior as "alleged" because throughout the proceedings, across all the decisions issued in this matter (HO-5, HO-6, HO-7 and the instant decision), the student's parent has maintained that the student steadfastly denies being the author of the message. The District based its decision to expel the student on its formal hearing process on a finding that the student had engaged in the behavior. This hearing officer does not adopt that finding as a matter of fact because criminal proceedings are pending and, ultimately, the result of those proceedings should, in the view of this hearing officer, have precedence. (P-16; NT at 105-106). Until that result is issued, this hearing officer views the student's involvement in the underlying behavior as alleged, not a matter of fact.

15th incident. First, the District's communications with the parent were confusing, containing multiple points-of-contact (between the director of special education and the high school principal) with different names and/or phone numbers on communications (invitations and letters). One of the themes the District attempted to portray in the hearing is that the parent did not communicate. This assertion is pointedly rejected—as a matter of fact-finding, the parent's testimony is heavily weighted that she did communicate with the District her unavailability, specifically in light of wishing to have the family's attorney present at the manifestation determination meeting. But the documents speak for themselves— if the District is unclear as to who may have received those calls/voicemails, it is not necessarily surprising because in the documents flowing to the parent, the names and phone numbers of who to contact, and how, fluctuated.

Second, the District operated under the mistaken notion that the manifestation determination process needed to be concluded by Monday, March 26th, ten calendar days after the date of the underlying behavioral incident. This is a mistaken notion and led to undue haste which, in effect, led to the District proceeding without necessary parental participation in a critically important process. As indicated above and repeated here, federal and Pennsylvania special education regulations require that the manifestation determination meeting take place “(w)ithin 10 school days of any decision to change the placement of a child with a

disability because of a violation of a code of student conduct”. (34 C.F.R. §300.530(e)(1); 22 PA Code §14.102(a)(2)(xxxii); emphasis added).

Therefore, with the first day of suspension on Friday, March 16th, the District had until Friday, March 30th (accounting for the school day skipped on Wednesday, March 21st when the District was closed due to inclement weather) to comply with the 10 school-day timeline obligation and to arrange a manifestation determination meeting and IEP team meeting that would have included the parent. It is a simple mistake, but a mistake that led the District to deny the parent an opportunity to participate in a manifestation determination meeting and IEP team meeting on Tuesday, March 27th or the days thereafter, days which the parent communicated to the District were fully available on her schedule.

Third and importantly, especially in light of the District’s misunderstanding of the law, on the morning of Monday, March 26th hours before the 1 PM/1:30 PM meeting were scheduled, the parent appeared at the District with the meeting invitations, indicating that she and the student wished to participate but could not that day and sought to reschedule the meetings. The District witnesses testified that they had no inkling of why the parent did not want to proceed that day. Again, parent’s testimony is credited that she shared the reason with both the director of special education and the principal—that she wished to have counsel for the family attend the meetings. There is simply no reason for the meetings that day to have gone forward. Indeed, at that juncture, a

collaborative conversation needed to take place, cancelling the meetings that day and rescheduling to accommodate the parent's participation. But that did not happen, and parents' testimony is credited that she was surprised that the meetings took place, as she expected that those meetings would be rescheduled.

One of the themes running through the parent's testimony is that she felt the District was rushing through the process, providing paperwork day by day by hand-delivery and not responding to her requests to briefly reschedule to allow for counsel for the family to attend the meetings as her invitee. (*See generally* 34 C.F.R. §300.321, *and specifically at* 34 C.F.R. §300.321(c); 22 PA Code §14.102(a)(2)(xxvii)). More pointedly, parent clearly feels the District was intent on holding the manifestation determination and IEP team meetings without allowing for the participation of her counsel. There was clearly undue haste, and it led directly to impeding the parent's necessary participation in those meetings. But it is an explicit finding that the reason for the District's undue haste is its misunderstanding of the law rather than an effort to freeze out counsel for the family, or limit the parent's ability to invite who she wished to the meetings.

Accordingly, the District prejudicially denied the parent the opportunity participate in the manifestation determination process and IEP team meeting held as a result of the March 15th incident. An award of compensatory education will follow.

Compensatory Education

Where a school district has denied FAPE to a student under the terms of IDEIA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

In this case, the District engaged in a prejudicial procedural denial-of-FAPE by denying the student's parent the opportunity to be part of the necessary manifestation determination process and IEP team meetings held as a result of the March 15th incident. The question, though, is how compensatory education can be utilized to remedy a procedural denial-of-FAPE. That question is further complicated by the fact that the procedural denial-of-FAPE in this case involves denying parent the opportunity, with the student potentially facing expulsion, to participate in the student's manifestation determination process—a negative (i.e., an event that didn't happen). All of this is to say that the compensatory education remedy in a case such as this is almost entirely a question of equity.

It is the considered opinion of this hearing officer that the student should be awarded 200 hours of compensatory education. This award of hours is a substantial remedy for a significantly prejudicial procedural denial-of-FAPE. It is a compensatory education award that must be

weighed by the District in its councils, one would hope, in an effort to comply with the procedural mandates of IDEIA, making sure that its manifestation determination processes, the documentation/communication surrounding those processes, and the accuracy of its understanding of its legal obligations in light of those processes are all measured and perfected. Yet it is not, in the considered view of this hearing officer, an outsized or punitive award.

Accordingly, as a matter of equitable remedy, the student will be awarded 200 hour of compensatory education.

As for the nature of the compensatory education award, the parent may decide in her sole discretion how the hours should be spent so long as those hours take the form of appropriate developmental, remedial, or enriching instruction or services that further the goals of the student's current or future IEPs, or identified educational needs. These hours must be in addition to any then-current IEP and may not be used to supplant an IEP. These hours may be employed after school, on weekends and/or during the summer months, at a time and place convenient for, and through providers who are convenient to, the student and the family. Nothing in this paragraph, however, should be read to limit the parties' ability to agree mutually and otherwise as to any use of the compensatory education hours.

Section 504/Chapter 15

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §§15.1-15.8, 711.3(c)).⁸ The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (*See generally* P.P. v. West Chester Area School District, 585 F.3d 727 (3d Cir. 2009)). Therefore, the foregoing analysis is adopted here—the District failed in its obligations to provide FAPE to the student in prejudicially denying the student’s parent the opportunity to participate in the manifestation determination process and IEP team meeting related to the March 15th incident. The compensatory education award above remedies the denial-of-FAPE under Section 504/Chapter 15.

Additionally, the provisions of Section 504 bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to

⁸ Pennsylvania’s Chapter 711, at 22 PA Code §711.3(b)(1), utilizes the term “child with a disability” for a student who qualifies under IDEIA/Chapter 711. Chapter 15, at 22 PA Code §15.2, utilizes the term “protected handicapped student” for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term “student with a disability” will be used in the discussion of both statutory/regulatory frameworks.

participate in a school program, and was denied the benefits of the program or otherwise discriminated against, has been discriminated against in violation of Section 504 protections. (34 C.F.R. §104.4; S.H. v. Lower Merion School District, 729 F. 3d 248 (3d Cir. 2013)). A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district. (S.H., infra).

Here, the District's handling of the manifestation determination process and IEP team meeting, including the planning/communication surrounding those meetings and its understanding of the legal obligations in light of those meetings, were sloppy and directly led a prejudicial exclusion of the parent from any participation in those processes. But this sloppiness/lack of coordination/legal misunderstanding were not undertaken with deliberate indifference and, therefore, the District did not discriminate against the student as a result of the student's disabilities.

Accordingly, under the provisions of Section 504/Chapter 15, the District failed to provide FAPE to the student in denying the student's parent the opportunity to participate in the manifestation determination process and IEP team meeting as a result of the March 15th incident but did not discriminate against the student under the anti-discrimination provisions of those statutory/regulatory frameworks.

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ORDER

In accord with the foregoing, the School District denied the student a free appropriate public education by prejudicially denying the student's parent the opportunity to participate in the manifestation determination process and IEP meeting following the disciplinary action taken by the District related to the March 15, 2018 incident. For the reasons set forth above, the student is awarded 200 hours of compensatory education.

The District did not discriminate against the student on the basis of disability.

Parent's claim in the complaint for remedy under the Americans with Disabilities Act is dismissed for lack of jurisdiction of these proceedings to adjudicate such claims.

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

With the issuance of this final decision and order, the undersigned hearing officer releases jurisdiction.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

October 16, 2018