

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

ODR No. 2273-1112 KE

Child's Name: CD

Date of Birth: [redacted]

Date of Hearing: 11/7/11

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent Attorney

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Date Record Closed:

December 16, 2011

Date of Decision:

December 29, 2011

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student in this case resides within the District but has been enrolled in a charter school since the beginning of the 2010/2011 school year. The issues in this case center primarily on Student's last two years in the District.

Although Student has a medical diagnosis of ADHD, for which the District provided accommodations and supports via a §504 Service Agreement during the last quarter of the 2008/2009 school year and the entire 2009/2010 school year, a multi-disciplinary evaluation completed in February 2009 resulted in the District's conclusion that Student was not IDEA eligible under the categories of specific learning disability (SLD) in math, and/or other health impairment (OHI) because Student did not need specially designed instruction, although Student met the first part of the eligibility criteria for both disability categories.

Parents initiated the due process complaint in August 2011, claiming that the District's failure to provide Student with special education services from the time Student enrolled in the District at the beginning of the 2004/2005 school year through the end of the 2009/2010 school years constituted a denial of FAPE. At the time the hearing was convened, however, Parents limited their claim to full days of compensatory education from February 2007 through the end of Student's last year in the District, based upon the alleged identification error and an alleged child find violation for the 2 years prior to the District's evaluation.

The record compiled at the one session due process hearing established that the District's non-eligibility conclusion was correct, and, therefore, the record did not support Parents' claims for denial of FAPE based upon a failure to properly identify Student and/or a child find violation.

The record further established that the District provided Student with an effective and properly implemented §504 Service Agreement. Parents' claims in this matter are, therefore, denied.

ISSUES

1. Did the School District improperly fail to identify Student as a child with a disability and eligible for services under the IDEA?
2. Did the School District effectively address Student's needs for academic supports through an appropriate and properly implemented §504 Service Agreement?
3. Is Student entitled to an award of compensatory education and if so, for what period, in what amount and in what form?

FINDINGS OF FACT

1. Student, a teen-aged child born [redacted] is a resident of the School District. (Stipulation, N.T. p. 17)
2. The School District acknowledges that Student is a protected handicapped student under §504 of the Rehabilitation Act of 1973 U.S. Code §794, *et seq.* and 22 Pa. Code Chapter 15. When last enrolled in the District, Student was provided with a Service Agreement in accordance with 22 Pa. Code §15.2 that included accommodations to address the effects of Attention Deficit Hyperactivity Disorder. (Stipulation, N.T. p. 18; S-1, p. 17, S-2, pp. 20—26)
3. Student had a history of receiving instructional supports in math before and after enrolling in the District in 4th grade. During 7th grade, Student participated in a tutoring program directed toward practicing the math skills tested on the PSSA. (N.T. pp. 30, 31, 119, 129, 137, 138, 140, 177—179; P-2, p. 1, P-4, pp. 1, 8—14, S-1, pp. 4, 6)
4. Student consistently scored at the proficient and advanced levels in reading and writing on the PSSA tests and the Terra Nova group achievement tests administered by the District. In 6th grade, prior to participating in the math tutoring class, Student scored at the below basic level in math on the PSSA test. Student's 7th grade PSSA math score was at the proficient level, and Student again scored at the proficient level in math on the 8th grade PSSA test. (N.T. p. 91; S-1, p. 9, S-6, pp. 4, 5)
5. In 7th grade, Student had difficulty acquiring, understanding and applying basic math skills and those issues continued in 8th grade, with Student performing slightly below grade level and below average in math computation and problem-solving. Student became increasingly frustrated, despite informal supports and strategies implemented by the 8th grade math teacher. (N.T. pp. 32, 34, 36, 47—49, 138, 139; P-4, pp. 8, 9, S-1, p. 6)

6. Based upon Student's performance in 7th grade math, the District had recommended placement in the Basic Pre-Algebra math class for 8th grade, in which the concepts were taught at a slower pace than the Pre-Algebra math class in which Student was placed when Parents overrode the District's recommendation. (N.T. pp. 77, 78, 140, 157)
7. In November of the 8th grade school year, at Parents' request, Student was referred to the Instructional Support Team (IST) for processing and organization issues. Parents also requested an evaluation to determine IDEA eligibility, and the District issued a Permission to Evaluate (PTE) after the 1st quarter of 8th grade. (N.T. pp. 31, 32, 34; P-4, p. 8, S-1, pp. 1, 2)
8. In the same time period, Parents also had Student examined by a physician due to difficulties with organization and memory, primarily manifested by Student's inability to complete school assignments and/or forgetting to turn in assignments and frustration arising from the memory and organization issues. The doctor diagnosed ADHD inattentive type and prescribed medication. (N.T. pp. 34—37; P-4, p. 8, S-1, p. 6)
9. Teacher input for the District's evaluation indicated that Student's inattentiveness decreased and classroom performance improved after beginning medication. (S-1, p. 9)
10. A school psychologist intern, supervised by a District school psychologist, completed the District's psycho-educational evaluation in February of Student's 8th grade year. The results of standardized tests of cognitive potential, which placed Student in the average range, compared to standardized measures of achievement revealed a significant discrepancy, also described as "rare," between ability and achievement in math reasoning. (N.T. pp. 38—40, 113, 114, 116; S-1, pp. 12, 16, 17)
11. The intern who conducted and scored the assessments evaluator and the District's school psychologist supervisor concluded, however, that Student did not meet IDEA eligibility standards for either a specific learning disability (SLD) in math or other health impairment (OHI), based upon the ADHD diagnosis, because Student's grades and statewide achievement test scores established that Student had insufficient academic need for IDEA services, since modifications to the curriculum were not necessary for Student to successfully access the regular curriculum and meet District educational standards at Student's grade level. (N.T. pp. 39, 116, 117, 156, 157, 180, 181; S-1, pp. 16, 17, S-2, pp. 1, 2)
12. Based upon the medical diagnosis of ADHD, the District also conducted a §504 evaluation and determined that Student would benefit from a §504 Service Agreement to address focus, attention and self-regulation issues that could impact Student's academic achievement. (N.T. pp. 39, 41, 44, 45, 164; S-1, p. 17, S-2, pp. 20—25, S-4, pp. 29—31)
13. Although Parents disagreed with the District's non-eligibility determination, believing that Student had a specific learning disability in math, Parents made a number of suggestions concerning accommodations to address academic issues related to Student's

- ADHD. District staff drafted a proposal for a §504 Service Agreement that included Parents' requests and additional accommodations. (N.T. p. 165; S-2, pp. 5, 16, 24—26, 34—37)
14. After a meeting to discuss the District's Service Agreement proposal, Parents notified the District of their acceptance on April 15 of Student's 8th grade school year. (N.T. p. 43; S-2, p. 30)
 15. The accommodations included in Student's §504 Service Agreements for both 8th and 9th grades included verbal prompts to initiate problem-solving skills and to retrieve and turn in completed work, repetition of newly taught concepts to assist in sustaining working memory, extended time for tests, quizzes and assignments, use of graphic organizers and visual aids when needed to improve understanding of concepts, assistance in breaking larger assignments into smaller segments, a homework log reviewed by teachers, checks for understanding, peer partnering at teacher discretion, explicit instruction in organizational skills, preferential seating, opportunities to use resources such as IST services, tutoring and guidance counselors, access to the District's online grading program to assist in home-school communication, monitoring of progress by the guidance counselor and notification of Parents if Student was failing a major subject in order to discuss options for support. (S-2, pp. 34—37; S-3, pp. 18—20)
 16. The 8th grade Service Agreement also included a second set of textbooks to keep at home and weekly reports from the math, social studies, English and science teachers, reviewed by the guidance counselor. (S-2, p. 36)
 17. The 9th grade Service Agreement, completed at the end of October of that school year, added a provision for Student to identify 3 ways to self-advocate through the help of the IST team and a provision for Student to check power school regularly to monitor class progress. (S-3, pp. 18, 19)
 18. Parents considered the §504 Service Agreement in place during the 4th quarter of 8th grade helpful in addressing Student's focus and attention issues, although Student finished 8th grade with a D+ in math for the year. Parents believed that the weekly reports from the guidance counselor concerning Student's completion of assignments and the one-on-one support Student received from teachers during the last period of the school day were particularly helpful in addressing Student's needs. (N.T. pp. 49, 50; S-6, p. 2)
 19. In the 8th grade Pre-Algebra class, Student's quarterly grades improved from 60% at the end of the 1st quarter to 67%, 73% and 72% for the 2nd, 3rd and 4th quarters, respectively. (N.T. p. 90; S-6, p. 6)
 20. From the beginning of 9th grade, Parents were concerned about the District's implementation of Student's §504 Service Agreement because they were no longer receiving weekly progress reports from teachers or the guidance counselor. Some teachers reported that Student was not completing all assignments, and Student was

receiving some low grades on math tests and quizzes. (N.T. pp. 51—53, 55; P-3, pp. 24—34, 40—45, 50, 51; S-3, pp. 18—20)

21. Overall, Student's grades showed improvement in 9th grade, having finished the year with a grade point average of 3.46. Student struggled in math again, but enjoyed the class. The math teacher worked with Student and provided extended time for testing. Student's final grade in math for 9th grade was a B-, the lowest grade on Student's report card. Student also received a final grade of B- in two other classes in 9th grade, a B+ in one class and A grades (A-, A and A+) in the remaining classes. (N.T. pp. 54, 56, 92, 182—184; S-6, pp. 1, 2)
22. Student enrolled in a charter school at the beginning of 10th grade and is currently in 11th grade there. After an evaluation conducted upon Student's enrollment, the charter school identified Student as IDEA eligible in the primary category of OHI due to ADHD, with a specific learning disability in math as a secondary eligibility category. (N.T. pp. 18 (Stipulation), 58, 59; P-2, p. 2)
23. According to a recent independent evaluation report, Student's charter school IEP includes goals, adaptations and accommodations designed to address ADHD symptoms, a goal for math concepts and applications and a transition plan. (P-2, pp. 2, 3)
24. The results of the independent evaluation, conducted during the summer between Student's 10th and 11th grade years, was consistent with the results of the District's evaluation conducted in the middle of Student's 8th grade year. The independent evaluator also placed Student's cognitive functioning in the average range, and obtained significantly discrepant scores on standardized assessments of ability and achievement in the area of math reasoning. (P-2, pp. 3, 9, S-1, pp. 11, 12, 16)
25. The evaluator concluded that Student needs adaptations and accommodations within the general education curriculum to address the effects of the ADHD, including extended time for tests, quizzes and assignments, assistance in breaking larger assignments into smaller segments, checks for understanding, taking tests and quizzes in a low distraction environment. (P-2, p. 9)

DISCUSSION AND CONCLUSIONS OF LAW

The issues in this case implicate both of the statutory/regulatory sources of the right to an education for school age residents of local school districts who may have a disability that affects participation and/or academic progress in a regular classroom, *i.e.*, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, 34 C.F.R. Part 300 and §504 of the

Rehabilitation Act of 1973, 29 U.S.C. §794 and 34 C.F.R. §§104.32—104.37, as well as 22 Pa. Code Chapters 14 (IDEA) and 15 (§504).

Parents contended, first, that the District should have identified Student as eligible for special education services due to a specific learning disability in math no later than February of Student's 8th grade year and as early as two years before, in 6th grade. To that extent, therefore, Parents asserted an IDEA "child find" violation, and sought to extend the IDEA two year limitations period to permit an award of compensatory education February 2007 through the end of the 2009/2010 school year, when Student left the District. Parents argued that application of the misrepresentation exception to IDEA limitations period justified the additional time. 20 U.S.C. §1415(b)(6)(B), (f)(3)(D); 34 C.F.R. §300.511(f). Parents asserted that after completing its evaluation, the District misrepresented the reason for its conclusion that Student did not meet the IDEA eligibility criteria under the SLD category. (N.T. pp. 40, 67)

Parents further contended that although the District acknowledged Student's status as a protected handicapped student and need for accommodations and supports to address the effects of ADHD, first diagnosed, medically, in November of Student's 8th grade year, the District should have identified Student as IDEA eligible in the OHI category based upon the ADHD diagnosis and the evaluation the District conducted in the middle of Student's 8th grade year. In addition, and related, to that aspect of Parents' IDEA identification claim, Parents argued that the Service Agreements the District provided under §504 and Chapter 15 of the Pennsylvania education regulations from the last quarter of Student's 8th grade year and during 9th grade did not effectively meet all of the academic needs arising from ADHD.

After a discussion of the overall legal standards applicable to due process hearings, Parents' claims and arguments are addressed sequentially below, beginning with the identification issues.

A. Due Process Complaints/Burden of Proof

The IDEA statute and regulations provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event of a special education dispute that cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3rd Cir. 2009). Accordingly,

A parent or a public agency may file a due process complaint...[when a public educational agency]... [p]roposes to initiate or change the identification, evaluation, or educational placement of..a child with a disability...or the provision of FAPE to the child; or [r]efuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. §§300.507(a)(1), 503(a)(1), based upon 20 U.S.C. §1415(b)(6). Here, Parents' complaint was primarily based upon their disagreement with the District's refusal to change Student's identification to IDEA eligible.

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parents have challenged the District's non-identification conclusion and assert a child find violation dating to the middle of Student's 6th grade year, Parents were required to establish by a preponderance of the evidence that the District's conduct in this matter constituted one or more violations of the IDEA. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

Allocating the burden of persuasion, however, affects the outcome of a due process hearing only in that rare situation where the evidence is in “ equipoise,” *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. In this case, the evidence is far from equipoise. To the contrary, the testimony and documentary evidence produced in this case strongly supported the District’s conclusion that Student was not IDEA eligible at the time the District declined to provide special education services.

B. Parents’ Identification Claims

1. Specific Learning Disability

Since the underlying and primary issue in this case is the accuracy of the District’s conclusion that Student was not eligible for special education services during the time Student was enrolled in the District, the dispute between the parties centers on the most basic and fundamental aspects of the IDEA statute and regulations, *i.e.*, the definitions of the terms “child with a disability,” (34 C.F.R. §300.8(a)(1))¹ and “special education”/“specially designed instruction,” (34 C.F.R. §300.39(a)(1), (b)(3))².

¹ **§ 300.8 Child with a disability.**
(a) General. (1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

² **§ 300.39 Special education.**
(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, ...
(b) Individual special education terms defined. The terms in this definition are defined as follows: ...
(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction —
(i) To address the unique needs of the child that result from the child’s disability; and
(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

In accordance with the IDEA regulations, determining whether a student meets the criteria for identification as a “child with a disability” is based upon a number of components: 1) an evaluation conducted in accordance with statutory/regulatory requirements; 2) confirmation, via the evaluation, of the existence of at least one of 12 identified disabilities; 3) establishing a need for adaptations to the content, methodology or delivery of instruction in order to assure access to the general curriculum and the ability to meet the educational standards applicable to all children.

Here, the District conducted an evaluation and determined that Student met part of the criteria for IDEA eligibility in the SLD category, in that the District’s evaluation revealed a significant discrepancy between Student’s ability and achievement in the area of math reasoning, as measured by standardized assessments. (FF 10; 34 C.F.R. §§ 300.8(c)(10), 300.307(a)(1), 300.309(a)((1)(viii)) The District further concluded, however, that Student did not meet the final criterion for IDEA eligibility because Student did not require adaptations to content, methodology or delivery of instruction in order to meet grade level standards in the general education environment. (FF 11; 34 C.F.R. §300.39(b)(3)(ii))

The record in this case amply supported the District’s conclusion with respect to IDEA eligibility under the SLD disability category. Throughout the period in dispute in this matter, including the additional two years Parents sought to add to the claim period, Student fully participated in both regular education classes at the age-appropriate grade level and in statewide assessments, and except in two instances, met or exceeded appropriate curriculum-based standards. (FF 4)

The first instance of Student’s failure to meet grade level standards, cited by Parents as a basis for finding eligibility, occurred in 6th grade, when Student scored in the “below basic”

range in math on the PSSA test. (FF 4) Subsequently, the District placed Student in a math tutoring class explicitly directed toward developing the math skills tested on the PSSA, and Student reached the proficient level on the PSSA in both 7th and 8th grades. (FF 3, 4) The single instance of Student's failure to meet statewide, grade level achievement standards was, therefore, quickly corrected with the type of support the District routinely offers to regular education students. (N.T. p. 138)

Although Student struggled with math in 7th grade, Student received a B- as the final grade. (FF 5; S-6, p. 2) There was no suggestion in Parents' testimony that Student's difficulties with the 7th grade math class triggered parental concern about Student's ability to learn grade level math concepts at the time, or that Parents discussed with anyone at the District, the problems they noted at home with respect to Student's understanding of basic, everyday math concepts. *See*, N.T. p. 32. In fact, the District appeared more concerned about Student's math difficulties in 7th grade than Parents, since the District recommended an 8th grade class taught at a slower pace, but covering the same concepts as the more difficult class Parents selected over the District's recommendation. (FF 6)

Student's continuing struggles with math in 8th grade, and no doubt, the 1st quarter math grade of 60%, obviously did raise significant concerns for Parents, since they requested services from the Instructional Support Team (IST) and an evaluation in November of Student's 8th grade year. (FF 7, 19) Parents pointed to Student's final grade of D+ in the 8th grade math class, along with the ability/achievement discrepancy revealed by the standardized assessments included in the District's evaluation, as the second indicator of the District's error in not identifying Student as IDEA eligible due to SLD, contending that the below average grade confirmed Student's need for specially designed instruction.

Parents' argument, however, ignores several critical factors. First, as Parents acknowledged, the extra help the 8th grade math teacher provided to Student throughout the school year during the last period study hall was very helpful to Student. (N.T. p. 36) Analysis of the quarterly grade reports confirms Parents' testimony, since Student's math grade showed a significant improvement between the 1st and 4th quarters of 8th grade. (FF19)

In addition, 8th grade was the only time that Student's math grade was below average. The other math grade reports in the record, B- for both 7th and 9th grades, were above average. It is important to note that Student earned those grades in regular, grade-level classes, albeit with the kinds of additional support available to regular education students, and that Student falls into the average range in cognitive potential. (FF 10, 24) The comments by U.S. Supreme Court and the Court of Appeals for the 3rd Circuit in discussing the effectiveness of services for students who are IDEA eligible are also instructive in this context: "[A] special education student who 'is being educated in the regular classrooms of a public school system' and who is performing well enough to advance from grade to grade generally will be considered to be receiving a meaningful educational benefit under the IDEA. *D.S.v. v. Bayonne Board of Education*, 602 F.3d 553, 567 (3rd Cir. 2010), quoting, *Board of Education v. Rowley*, 458 U.S. 176, 203; 102 S. Ct. 3034, 3049 (1982). Although grades, even in regular education classes, are often not dispositive when assessing the appropriateness of a special education program, Student's grades in math are a significant factor in making the determination, in this case, that the District was correct in concluding that Student does not need specially designed instruction. Here, Student, with average intellectual potential and a measurably significant weakness in math reasoning, was placed in grade level, regular education math classes, and except in a single school year, achieved above average grades without any modifications to "the content, methodology or

delivery of instruction.” 34 C.F.R. §300.39(b)(3) Since Student succeeded quite well in meeting the District’s educational standards applicable to all students at the same grade level without specially designed instruction, the District appropriately concluded that Student did not need special education “by reason of” the discrepancy between ability and a standardized measure of achievement in math reasoning.

2. Other Health Impairment

None of the evidence produced by Parents came close to establishing that Student required specially designed instruction to meet grade level academic standards because of the ADHD diagnosis. In fact, there is even more reason to conclude that the District was correct in determining that Student did not meet the need for special education eligibility criterion under the OHI category. Between 7th and 9th grades, Student received only one “C” and one C+ on the final grade reports, both in 7th grade. (S-6, p.2). All other grades, with the exception of the 8th grade D+ in math, were in the A and B ranges. (FF 21; S-6, pp. 1, 2)

Finally, with respect to IDEA eligibility, in general with respect to this Student, it is most important to keep in mind that under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, a school district is not required to assure that even an IDEA eligible student receives services designed to provide the “absolute best” education or to maximize the child’s potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 251 (3rd Cir. 2009); *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995). That principle certainly applies equally to the question whether a Student who meets the first of the two IDEA eligibility criteria demonstrates a need for specially designed instruction. Here, the District was certainly not required to assist Student in reaching even higher levels of academic success by

identifying a need for, and providing, specially designed instruction when Student consistently met the District's educational standards applicable to all students without special education.

C. §504 Service Agreements

Parents also argued that the Service Agreements provided to Student to address the effects of ADHD were ineffective. The record, however, overwhelmingly fails to support this claim. First, as noted above, Student's grades in regular education classes were outstanding even before Student was identified as a protected handicapped student under §504 and first provided with a Service Agreement during the last quarter of 8th grade, demonstrating that Student could succeed in the regular education setting even without support.

Second, Parents acknowledged in testimony elicited by their own attorney that the 8th grade Service Agreement was helpful in addressing Student's needs, and that Student's grades improved even more in 9th grade. (FF 18, 21) Parents further acknowledged that although Student still exhibited difficulties in math during 9th grade, the supports and accommodations provided via the §504 Service Agreement were effective in helping Student succeed and even enjoy the math class. (FF 21)

Finally, the supports and accommodations provided by the District in both the 8th and 9th grade Service Agreements were extensive and far exceeded the recommendations made by Parents' independent evaluator for an IEP based upon IDEA eligibility based upon the OHI disability category. *Compare*, FF 25, the independent evaluator's recommendations with FF 15, 16, 17, listing the supports and accommodations included in the District's 8th and 9th grade Service Agreements.

Parents' claims arising from the §504 Service Agreements appear to be based upon three contentions: 1) No Service Agreement could be sufficient because Student should have been identified as IDEA eligible and provided with an IEP; 2) The District failed to fully implement the 8th grade Service Agreement in 9th grade prior to development of a new Agreement for 9th grade; 3) The 9th grade Service Agreement did not include weekly reports by teachers that Parents had found particularly helpful. Underlying Parents' implementation arguments was their apparent contention that the District did not assure that ADHD symptoms did not adversely affect Student's performance every day, in every class, and with respect to all tests, assignments and projects.

The record in this case, however, cannot support a conclusion that the District violated Student's rights under §504 based upon Parents' overt or underlying contentions or otherwise. As discussed above, the District was entirely correct in concluding that Student was not IDEA eligible due to ADHD/OHI. In addition, as also discussed above, the Service Agreements were obviously effective based upon the objective criteria of Student's academic performance, and even based upon Parents' judgment of the overall effectiveness of the agreements.

The real issue in this regard, therefore, is Parents' apparent belief that the District was not only required to provide Service Agreements that would assist Student in overcoming the effects of ADHD symptoms on academic performance, but was required to assure Student's success, as well as their own comfort level, with respect to the ongoing effectiveness of the accommodations and supports provided in the Service Agreements. In P-3, Parents provided an extensive e-mail correspondence with District staff requesting close monitoring of Student's grades and assignments. *See, e.g.*, P-3, pp. 22—35, 40—51 (Pages 36–39 appear to be duplicate messages.) Although it is certainly understandable that caring and concerned Parents want to do everything

possible to minimize the effects of ADHD symptoms and maximize their child's academic success, and that Parents want to closely monitor progress, the District is not required to accede to all of Parents' requests. The District is required to provide accommodations and supports that allow Student to participate effectively in the regular education program despite the effects of a disabling condition. The District amply met that standard in this case. Moreover, although the District was not required to assure Student's academic success via the Service Agreements, the record clearly establishes that Student was academically quite successful. Parents cannot reasonably ask more of a §504 Service Agreement than the District provided in this case.

D. Statute of Limitations Issues

The conclusion that the District was correct in determining that Student was not IDEA eligible moots the need for a discussion of whether Parents established a basis for extending the two year limitations period for IDEA claims. The record in this case provides no basis for an award of compensatory education for the 2009/2010 school year or any previous period.

It should be noted, however, that Parents' only asserted basis for extending the two year period, an alleged statement that the District concluded that Student was not IDEA eligible because the ability/achievement discrepancy in math reasoning was not large enough to support IDEA eligibility, does not constitute a misrepresentation that could have extended the limitations period. Even assuming that a former member of the District's special education staff made that statement, and Parents did not misunderstand the explanation of the District's conclusion that Student was not IDEA eligible, the evaluation provided to Parents clearly and extensively explains that the District identified a significant ability/achievement discrepancy in math reasoning but did not believe that Student needed specially designed instruction by reason of that discrepancy. *See*, S-1, pp, 16, 17. In light of that extensive explanation, which surely should

have triggered questions by any reasonable Parent, since it was not at all consistent with the District's alleged oral representation, it would have been unreasonable to rely on the alleged statement as a basis for delaying a due process complaint.

In addition, the charter school Student currently attends conducted an evaluation during the fall of 2010 and reached the opposite conclusion with respect to IDEA eligibility. (FF 22) Consequently, even if Parents could have reasonably relied on the District's alleged misrepresentation between February 2009 and the date they received the results of the charter school evaluation, that development terminated the reasonableness of any possible reliance on the District's statements in 2009.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in this matter are **DENIED**.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

December 29, 2011