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. 2323-1112

Child's Name: [redacted]

Date of Birth: [redacted]

Dates of Hearing: 12/9/11; 2/21/12; 3/15/12; 4/18/12

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents	Parent Attorney
Parents	None

School District	School District Attorney
Avon Grove 383 South Jennersville Road West Grove, PA 19390	Andrew Faust, Esquire Sweet, Stevens, Katz & Williams 331 Butler Avenue, P.O. Box 5069 New Britain, PA 18901

Date Record Closed:	May 7, 2012
Date of Decision:	May 24, 2012
Hearing Officer:	Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Significant school related issues did not arise in this case until the 2009/2010 school year, when Student was in high school. Although there were many contentious issues between the parties and Parents took a broad view of what constitutes a denial of FAPE, the true special education dispute centered primarily on claims of an child find delay and whether the District proposed an appropriate program and placement for the current school year, after Student was identified as IDEA eligible late in the 2010/2011 school year.

Based upon the relevant facts in the record and the applicable law, Parents claims in this case must be entirely denied.

ISSUES

1. Did the School District fail to timely identify Student as IDEA eligible or protected under §504 of the Rehabilitation Act during the 2009/2010 and 2010/2011 school years?

2. Did the School District fail to offer or provide Student with an appropriate program and placement under IDEA or §504 during the 2009/2010, 2010/2011 and 2011/2012 school years, including appropriate services designed to ease Student's transition [redacted] back into the high school setting in 2011 and appropriate means for addressing concerns [redacted] at school during the 2009/2010, 2010/2011 and 2011/2012 school years?

3. Is Student entitled to an award of compensatory education for the District's failure to provide Student with appropriate educational and related services, and if so, for what period, in what amount and in what form?

FINDINGS OF FACT

1. Student is a [late teen-aged] child, born [redacted]. Student is a resident of the School District and is eligible for special education services. (Stipulation, N.T. p. 22)

2. Student has a current diagnosis of Emotional Disturbance (ED) in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(4); 22 Pa. Code §14.102 (2)(ii);

(N.T. pp. 117, 260; S-9 p. 14)

3. [Redacted]. (N.T. p. 32; S-9 pp. 26, 40, 41)

4. During the 2009/2010 school year, Student began attending [redacted] classes at the high school. (N.T. pp.108, 340)

5. Noting a decline in Student's grades during the 2009/2010 school year, and particularly difficulties with a [redacted] class, which Parents[1] attributed to [redacted], Parents contacted the District, via Student's [redacted] teacher and guidance counselor, to discuss the situation and request assistance for Student. (N.T. p. 32; P-5, P-7, P-10, P-36 pp. 1—7)

6. Student ultimately withdrew from the [redacted] class with a failing grade and completed the 2009/2010 school year with grades of C, B+ and D+ in academic courses. (S-14 p. 1)

7. Parents also became aware of Student's difficulties with a peer during the 2009/2010 school year. [Redacted]. (N.T. p. 33; P-3 p. 3)

8. The District investigated Parent's report that Student had [conflict with] another student but concluded that the conflict could be resolved by separating the students. (N.T. pp. 335—337, 382, 383)

9. In April 2010, at Parents' request, District staff met with Parents to discuss concerns about Student's academic progress and the peer issues that had occurred in the spring of 2010. The District offered instructional support services and suggested that Student be referred to the Student Assistance Program (SAP), a program designed to identify and address behaviors that interfere with academic or social development. The SAP interventions are available to all students enrolled in the District. Participation in the SAP program requires parental consent, which was provided. (N.T. pp. 455, 456, 459, 460, 464—466; S-17 pp. 1, 3, 4, 5)

10. The SAP coordinator, a counselor and social worker, met with Student several times between late April and June 2010. In addition to the concerns that prompted the meeting between Parents and District staff, the SAP coordinator had received a referral from a counselor [redacted] who had become aware of [conflicts between Student and another student]. Based upon representations, that Student could avoid the other student involved in the conflict [redacted], no action was taken. (N.T. pp. 338, 453, 460—469; S-17 p. 1)

11. Student did not subsequently report any continuing or new peer conflicts to District staff and the teaching and administrative staff received no indication that Student was

[1] Although Student's Mother was most directly involved with the District concerning the matters in dispute in this case, both Parents attended and participated in the due process hearing and have an equal interest in the issues. For that reason, the plural form, "Parents" is used throughout the decision.

experiencing social difficulties or anxiety previously or during the remainder of the school year. (N.T. pp. 468, 484, 494)

12. In March 2010, in response to Parents' request for services due to the possibility that the effects of Student's [redacted] injuries were adversely impacting academic progress and social functioning, the District provided Parents with a request for evaluation form as the first step in conducting an evaluation to determine whether Student was IDEA eligible. Parents returned it on May 20. (N.T. p. 109; S-1 p. 3)

13. Although the District sent Parents a Permission to Evaluate (PTE) form immediately and re-issued it several times, Parents did not return a signed PTE that allowed the District to proceed with an IDEA evaluation. The District took no additional action to procure consent for an evaluation. (N.T. pp. 110, 208, 209; S-2)

14. Parents provided the District with a letter dated June 3, 2010 from a doctor treating Student [redacted]. The letter noted possible effects [redacted] on cognitive functioning and behavior, and recommended that Student be provided with a §504 plan that included several suggested accommodations: extended time for tests and assignments; breaks in the nurse's office when needed; a check-in person to help Student with concerns that arose during the school day and no contact sports/activities.. (N.T. pp. 204—206; P-1)

15. The District responded to the request by re-issuing a PTE, which Parents did not approve. The District did not offer a Service Agreement as requested in the doctor's letter in the absence of Parents' consent to conduct an evaluation to determine Student's needs. (N.T. pp. 206, 207, 210, 211; S-2 pp. 3, 4)

16. No academic concerns or peer relationship issues concerning Student were brought to the District's attention between the beginning of the 2010/2011 school year and January 2011. (N.T. p. 337)

17. [Redacted], Student [did not attend school for a short period of time] at the beginning of 2011. [Redacted]. (N.T. pp. 36; P-1, S-9 pp. 40, 45)

18. Parents' account of the events immediately preceding Student's [redacted] Student denied problems with school and reported getting along well with teachers and peers. (N.T. p. 36; S-9 p. 41)

19. [Redacted]. (N.T. p. 76; S-9 pp. 43, 44)

20. On January 31, 2011 the District issued, and Parents signed, a §504 PTE. By February 14, the District completed the evaluation and offered a §504 Service Agreement that incorporated the recommendations from the June 2010 doctor's request for a §504 Plan. (N.T. p. 112; P-1, S-3 p. 5)

21. On February 17, 2011 the District also issued a PTE for a full psycho-educational evaluation to determine whether Student was IDEA eligible. Parents signed the PTE on

March 31, 2011 and returned it to the District on April 5. (N.T. pp. 113, 114, 253; S-4; S-5 p. 2)

22. Completion of the evaluation was delayed by Parents' questions concerning the assessments that the District intended to administer. Parents, in consultation with [redacted], concluded that no additional assessments of Student by the District were necessary because the report of an independent neuropsychological evaluation that Parents had obtained during the summer of 2010 contained sufficient information for the District to determine IDEA eligibility. (N.T. pp. 77, 78, 113, 114, 135—139, 253, 254; S-4 pp. 2, 3, S-5 p. 2, S-7, S-8)

23. The District ultimately agreed to accept the results of all the assessments completed in connection with that evaluation but continued to seek additional assessments of Student. (N.T. pp. 114, 136, 254, 255; S-9, pp. 5, 9—12, 21—35)

24. The evaluation was further delayed by Student's reluctance to participate in the evaluation assessments, but Student attended a testing session late in May 2011. (N.T. pp. 137, 138, 267--269; S-7 p. 1, S-8, S-9 p. 5)

25. [Redacted.] Upon returning to the District high school [redacted], Student reported feeling overwhelmed by the amount of work that had accumulated during [Student's absence] and needed to be made up. (N.T. pp. 117, 129, 258; S-4 p. 1, S-9 p. 1)

26. Parents withdrew Student from the District [redacted] in February 2011. After re-enrolling in the District, Student returned to the high school in [the spring], with some difficulty, to take the PSSA test [but a short time later,] Parents again withdrew Student and requested homebound instruction. (N.T. pp. 114—117, 188—191, 262, 276, 394)

27. After initially approving Parents' request, the District declined to provide homebound services [and Student returned to the District at the end] of the 2010/2011 school year. (N.T. pp. 115, 116, 195, 197, 394)

28. In mid-April 2011 Parents [redacted] learned for the first time that Student had reported two incidents of [previous conflicts with a peer]. (N.T. pp. 39, 40, 70, 72, 322; P-29[2])

29. Parents immediately contacted [redacted] the District to report the [conflicts]. [The District investigated the report.] (N.T. pp. 39, 40, 325—328, 424; P-29, S-6)

30. After also interviewing the other student, the District concluded that there was insufficient evidence [redacted] to proceed with disciplinary action against the peer [redacted]. That student graduated from the District in June 2011. (N.T. pp.187, 328—332; S-6 p. 2)

[2] P-29 was submitted by Parents as Student's unredacted written account of the incidents. The name of the other student was later redacted from the exhibit by the hearing officer

31. The District again offered SAP services to Student and provided a consent form, which Parents signed, but added the handwritten condition that all SAP records be available for review by Parents. Because the District did not agree to the condition, the SAP coordinator did not meet with Student. [Redacted]. (N.T. pp. 424—426, 470—475, 498, 499; S-10 pp. 2, 6)

32. [Redacted]. (HO-2)

33. The District's psycho-educational evaluation report (ER) issued in June 2011 recommended that Student be identified as IDEA eligible in the category of emotional disturbance (ED) based upon [redacted] Student's school functioning, including difficulties with organization skills, completing work, and indications that Student was exhibiting school-avoidant behaviors. (N.T. pp. 260—264; S-9 p. 14, S-10, S-16).

34. After reviewing the evaluation results, the parties met in June 2011to develop an IEP for the 2011/2012 school year. (N.T. pp. 146, 147)

35. The proposed IEP provided for Student's return to regular education classes at the high school for academic instruction, with itinerant emotional support services. (S-10 pp. 11, 32, 33, 35)

36. The two goals in the IEP were directed toward Student identifying, learning and applying adaptive responses to situations that create frustration and anxiety in the school setting and improving organization for academic tasks and compliance with classroom requirements such as homework. (N.T. pp. 148, 149; S-10 pp. 25, 26)

37. In addition to one period of instruction in a special education classroom daily, the IEP provided for a 20 minute period of monthly counseling services, the opportunity to visit the nurse for 10 minutes daily, and the opportunity to participate in high school support groups. Parents did not sign the NOREP approving implementation of the IEP, citing the absence of provisions to address [specific concerns] and requesting modifications to graduation requirements, including acceptance of a specific graduation project. (S-10 pp. 9, 30, 32)

38. At an August IEP meeting, the District provided additional information concerning the emotional support services, changes to Student's class schedule and an additional program was added to the transition plan. (N.T. pp. 150—156; S-10 p. 21)

39. Parents, however, again refused to approve the IEP, returning a NOREP in early September 2011 in which they disagreed with the District's proposed program/placement and again requested homebound services. In prior e-mail messages, Parents had requested and suggested other alternatives to returning to the high school, noting Student's continuing reports of [concerns] at the high school. (N.T. pp 158—161; S-10 pp. 1—3, 6, 9, 12, S-12 p. 1)

40. Parents later provided a prescription for homebound instruction and further explanation of their suggested alternatives. The District rejected all of Parents' proposals. (N.T. pp. 169, 170; S-11, S-12)

41. Parents filed their due process complaint a few days later. (HO-3)[3]

42. Student did not return to the District high school [redacted] during the 2011/2012 school year. (N.T. pp. 528—530; P-16)

43. For a time at the beginning of the current school year, the District believed that Student would enroll in a cyber charter school, and the District knew that Student was receiving instruction at Parents' expense through a private cyber learning program that could be used to complete graduation requirements. (N.T. pp.521, 524, 525, 530, 539; S-11)

44. The parties met again in November 2011 to further discuss and amend the transition plan in the proposed IEP. The District also proposed to initiate an assessment for Student's participation in a school refusal program operated by the local Intermediate Unit (IU). Discussions between the parties concerning that program had begun in mid-October, but could not be implemented without an evaluation by the IU school psychologist, as well as a functional behavioral assessment (FBA) conducted in the home. (N.T. pp. 174, 176—179, 544; S-16 p. 21)

45. Although the District did not intend to initiate the referral to the IU program until Parents approved the NOREP for the updated IEP, the District's contact with IU staff to assure that the program would be available to Student if Parents signed the NOREP resulted in the IU sending a PTE, which Parents signed, allowing the evaluation to be scheduled. (N.T. pp. 182, 183)

46. The IU school refusal program staff attempted to initiate the part of the evaluation that involved administering standardized assessments to Student, but Parents believed the timing would create additional stress for Student and requested a delay in that part of the evaluation. Due to scheduling issues with the IU staff, the assessments could not be completed until February 2012. Completing the second part of the required evaluation, the home-based FBA, was delayed by the inability of Parents and the IU staff to agree upon a date for that part of the evaluation, which had not been completed by the end of the due process hearing in this matter. (N.T. pp. 184, 185, 602, 632—639; S-18 p. 1)

[3] Parties to a due process hearing often include the due process complaint as an exhibit and it is entered into evidence in order to assure that the complaint is part of the record. In this case, since neither party marked the due process complaint as an exhibit and offered it into evidence, and since the District argued that issues beyond the scope of the claims asserted in the due process complaint were permitted to be included in the hearing, it is admitted as Hearing Officer Exhibit 3.

DISCUSSION AND CONCLUSIONS OF LAW

Parents in this case identified three distinct classes of issues concerning Student's education at the District high school, roughly corresponding to three different time periods. With respect to the 2009/2010 school year, Parents alleged that Student experienced academic problems and difficulties with peer relationships that the District failed to appropriately and adequately address.

Specifically, Parents argue that the District was aware of [conflicts between Student and peers] but refused to take those matters seriously [redacted]. (FF 7, 8, 10, 18) Parents contend, generally, that the District should have made far more significant efforts to support Student with respect to both academic issues and [other] concerns during the 2009/2010 school year. Finally, Parents fault the District for failing to provide a §504 plan in June 2010 as recommended by a doctor who had treated Student for head injuries. (FF 14)

With respect to the 2010/2011 school year, Parents contend that the District failed to provide an effective plan to ease Student's transition back to the high school after a brief [absence], allowing Student's workload at school to become overwhelming, resulting in [redacted] and affected later unsuccessful attempts to return to the District high school.

Parents also argue that the District did not properly investigate [previous peer conflicts revealed in] January 2011. (FF 28, 29, 30) Parents appear to contend that the District's response to the [conflicts] continued its failure to address Student's legitimate concerns [with] the high school.

Finally, with respect to the 2011/2012 school year, Parents contended that the District refused to provide appropriate and timely services to assure that Student could complete all

educational requirements after it became obvious during the early part of the school year that Student would not return to the high school.

Although the foregoing issues fairly raise a child find claim and claims that the District's actions violated both IDEA and §504 of the Rehabilitation Act of 1973 in other ways, Parents' presentation of evidence and argument throughout the hearing revealed that many of their allegations were not directly related to special education issues implicated by either IDEA or §504. For example, in attempting to support their request for production of documents by the District relating to other students [redacted] *e.g.*, Parents argued that the evidence was needed to demonstrate flaws in the District's policies [redacted] and other general policy issues. *See, e.g.*, HO-1 pp. 1—3 As noted in the ruling on that request for evidence, issues of District policies that impact the regular education population are not matters within the jurisdiction of a special education due process hearing officer. (HO-1 pp. 1, 2)

In addition, it appeared at times that Parents were suggesting that the District policies of which they complained caused or contributed to the development of Student's emotional disturbance disability, exacerbated the disability or were simply complaints about the District's unsympathetic treatment of Student both before and after Student was determined to be IDEA eligible.

Although Parents were permitted considerable leeway to make such arguments in the face of the District's objections, a review of the full record establishes that most such contentions had no bearing on the District's obligation to provide Student with a free, appropriate public education (FAPE). The only appropriate subjects for decision are when the District should have developed a reasonable suspicion that a disability was adversely affecting Student's school functioning, and once a disability was identified, whether the District offered an appropriate

program and placement to address the effects of the disability as manifested in the school setting by academic, social, behavioral or other school-related problems. Consequently, arguments concerning the District's purported disinterest in Student's difficulties cannot independently support either an IDEA or §504 violation, and were considered only in the context of the whether the District's conduct supported a child find violation prior to the determination that Student is IDEA eligible, and whether the District subsequently failed to offer a FAPE.

Child Find

The IDEA statute and federal regulations require states to identify, locate, and evaluate all potentially disabled children, including those who may be "advancing from grade to grade.". 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a), (c)(1); *G.D. v. Wissahickon School District,* 2011 WL 2411098 (E.D.Pa 2011) at *6. In Pennsylvania, that obligation is fulfilled by school districts in compliance with 22 Pa. Code §§ 14.121–14.125 (2008).

Within a reasonable time after a district is on notice of facts likely to indicate a disability, it must "conduct an evaluation of the student's needs, assessing all areas of suspected disability," *P.P. v. West Chester Area School District,* 585 F.3d 727, 730 (3d Cir.2009) (*citing* 20 U.S.C. § 1414(b); *O.F. v. Chester Upland Sch. Dist.,* 246 F.Supp.2d 409, 417 (E.D.Pa.2002) *citing W.B. v. Matula,* 67 F.3d 484, 501 (3d Cir.1995). "Failure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." *N.G. v. District of Columbia,* 556 F.Supp.2d 11, 16 (D.D.C.2008), *quoted in G.D. v. Wissahickon School District* at *6.

A similar requirement is imposed by the federal regulations implementing §504 of the Rehabilitation Act of 1973:

> A recipient that operates a public elementary or secondary education program or activity shall annually:
> (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

34 C.F.R. §104.32

The initial question in this case, affecting claims relating to the 2009/2010 and 2010/2011 school years, centers on when the District should have noticed that Student might be either IDEA eligible or a protected handicapped student under §504 and taken steps to provide services. Parents contend that the District had sufficient notice that Student had significant difficulties beginning in the 2009/2010 school year, citing Student's falling grades and [conflicts with] peers. Those contentions, however, are not supported by the facts or the applicable law.

First, with respect to the early part of the 2009/2010 school year, the academic difficulties that Student was exhibiting, [redacted], viewed objectively, were not so significant that the District should have reasonably suspected a disability. (FF 6) Parents pointed to the print-out of grades on every assignment, test and quiz available through the District's website. (P-36 pp. 1-7) Out of over 270 component grades listed for the 2009/2010 school year in all of Student's classes, there were fewer than 70 grades below "C." Approximately 25% of Student's grades on all tests and assignments, therefore, fell below the average range. It is not objectively reasonable to consider an academic record of that type as an indication of significantly low academic progress and suggesting that a disability is interfering with Student's ability to make satisfactory progress in the general education curriculum.

Moreover, the District's knowledge of [conflicts with] peers as established by the record in this case, did not provide a reasonable basis for the District to suspect that Student had a disability [redacted] as to interfere with school functioning. In this case, there were only two incidents cited in the record suggesting that Student had difficulties with peers (FF 8, 9, 10, 11) Despite Parents' repeated references to Student's [difficulties at] school, there is little objective

evidence to corroborate that claim. [Redacted.] In addition, Student never mentioned school difficulties at all in two independent evaluations. *See, e.g.,* N.T. pp. 425, 443, 482, 483; S-9 pp. 21—51; FF 11.

The only evidence that corroborated Parents' assertions concerning Student's [difficulties with] the District high school was the portion of the school refusal evaluation that has been completed. (FF 46; P-31 pp. 5-8) That information, however, cannot be applied retroactively to establish a child find violation. Assuming the [concerns] Student expressed to the evaluator and reported are entirely real, there is no evidence that the District had any way of suspecting those [concerns] during the 2009/2010 school year when Student had never mentioned them to anyone in the District.

Although Student's [concerns] as described by Parents were not displayed in the school setting, and the academic issues that so concerned Parents were not objectively significant during the 2009/2010 school year, the District took steps to address Parents' concerns via regular education interventions available to all students. It investigated reports of peer difficulties, referred Student to SAP and offered instructional support services. (FF 8, 9, 10) Parents obviously believe that the District's response was insufficient, but the District's response was objectively reasonable in light of the information it had at the time issues first arose during the 2009/2010 school year, providing no basis for a child find violation under either IDEA or §504 through March 2010.

In March of the 2009/2010 school year, Parents specifically raised the possibility that Student may have a disability, and the District's response was entirely appropriate under the applicable law: The District responded by seeking Parents' consent to evaluate Student on several occasions in response to both Parents' concerns and the physician letter they presented in

June 2010 requesting a §504 plan. (FF 12, 13, 14, 15) It is unfortunate that Parents apparently did not recognize that the District was acting appropriately and in full accordance with special education law, and that they did not understand why the District refused to take any action with respect to providing Student with special education services or accommodations under §504. The legal propriety of the District's actions, however, is not altered by the level of Parents' independent knowledge and understanding. Parents were certainly free to question the District on those matters, as they did the following year when they consented to an evaluation. (FF 22), but they cannot support claims for either an IDEA or §504 violation because they had little or no understanding of the §504 and IDEA legal requirements. Parents are professionals who presented themselves very well in a new and difficult situation. There is no reason to believe that they could not have acquired more information from the abundant sources available to anyone with access to a computer and the internet.

Evaluation Requirements

It is difficult to identify anything more important to furthering the purposes of the IDEA than a thorough evaluation designed to determine eligibility and/or to provide sufficient information concerning a potentially eligible student's needs and how to meet them. The IDEA regulations define "child with a disability" as one who has been "evaluated in accordance with §§ 300.304 through 300.311." 34 U.S.C. § 300.8(1). Moreover, the IDEA requires an evaluation conducted in accordance with accordance with §§300.505 and 300.506 before special education services may be provided to a child with a disability. 34 U.S.C. §300.301(a). An appropriate evaluation, therefore, is the absolutely essential foundation upon which FAPE rests.

Similarly, the federal regulations implementing §504 of the Rehabilitation Act of 1973 with respect to public school education require an evaluation before a school district begins to provide services to a protected handicapped student:

> Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

34 C.F.R. §104.35(a)

The District, however, was not required to take any affirmative steps to obtain parental consent for an evaluation. As noted in a recent court decision citing to the applicable regulations:

> The IDEA states that the District is required to obtain parental consent prior to any [re-]evaluation. If the parent refuses consent, as Zhou did here, "the public agency *may, but is not required to,* pursue the reevaluation by using the consent override procedures" such as a due process hearing or mediation. 34 C.F.R. § 300.300(c)(i) (emphasis added).

Zhou v. Bethlehem Area School District, 2012 WL 935859 at *2 (E.D. Pa. 2012).

Based upon the record of this case and the applicable legal standards, Parents have not established that the District violated either IDEA or §504 of the Rehabilitation Act during the 2009/2010 school year or the beginning of the 2010/2011 school year, September 2010 to December 2011. Parents, indeed, presented no testimony or documents concerning the first part of the 2010/2011 school year that they contend violated special education requirements. Presumably claims for that period rest upon the District's refusal to develop a §504 plan in response to the June 2010 letter from Student's doctor. (FF 14, 15) As discussed previously, however, the District was under no obligation to proceed without an evaluation or to take

measures beyond issuing a PTE to initiate an evaluation under either §504 or IDEA when Parents did not consent to an evaluation.

Transition [upon Return to District]

The next period that could support a District violation of special education law began with Student's [return after an absence] in early 2011. (FF 17) Parents contend that the District did not provide sufficient supports to ease Student's re-entry into the high school setting. Again, however, the District acted appropriately by issuing PTEs for both a §504 evaluation and an IDEA psycho-educational evaluation, completing the §504 evaluation within a short time after receiving Parents' consent, and by putting a §504 Service Agreement in place, based on the June 2010 doctor's recommendation. (FF 20, 21) Parent did not identify any specific supports that the District should have provided for Student, citing only to an English Department policy regarding a limited time for making up work that presumably contributed to Student's feeling of being overwhelmed by the volume of school work that needed to be completed. (FF 25)

It must be noted, however, that Student had not yet been identified as a protected or eligible student under §504 or IDEA, and, therefore, was not entitled to accommodations or alterations of regular education requirements based upon a disability. As stated, the District's actions must always be viewed in light of the circumstances that existed when actions were taken, not in light of all of the information available at a later point. Although Parents may be justified in feeling, on a personal level, that greater sensitivity to Student's needs in January and February 2011 might have prevented later difficulties, the District violated no legal requirements in that period. School Districts are always entitled to a reasonable time to initiate an evaluation after becoming aware of a potential need for special education or accommodations for a disability. *Ridley S.D. v. M.R.*, 2012 WL 1739709 (3rd Cir. 2012); *M.C. v. Central Regional*

School District, 81 F.3d 389 (3rd Cir. 1996).

[Redacted.] For all of the foregoing reasons, Parents have not established a claim for either a §504 or IDEA violation [redacted]. (FF 25, 26)

Denial of FAPE/ Appropriateness of Services After IDEA Identification

As the parties were planning for the current school year with IEP meetings in June and August 2011, the District maintained that an appropriate program for Student could and should be delivered in the regular high school setting with emotional support services to directly address Student's school-related anxiety, as well as to assist Student in developing organizational skills. (FF 35, 36, 37) The District maintained throughout the hearing that the IEP it had offered for the current school year was the only means of assuring that Student received a free, appropriate public education in the least restrictive environment.

Although Parents did not disagree with the goals and services proposed in the IEPs offered for the current school year, they rejected the placement specified in the accompanying NOREPS based upon expressed concerns about Student's [redacted] returning to the District high school. *See* S-10 pp. 3, 9. When the District refused to provide homebound instruction and rejected Parents' other proposals for providing Student with academic instruction, Parents filed a due process complaint in mid-September 2011 seeking alternatives to services delivered at the high school that would enable Student to complete all graduation requirements, as well as a compensatory education fund for the 2010/2011 and 2011/2012 school years. *See* Due Process Complaint, HO-3 pp. 2, 3

The emotional support services and support for improving Student's organizational skills specified in the District's IEP proposals were reasonably calculated to meet Student's identified needs. The IU school psychologist who completed part of the school refusal evaluation made

similar recommendations. *See* N.T. 587, 588. Moreover, as noted above, Parents have never contended that the emotional support services the District proposed were insufficient, would not have met Student's needs, would not have provided a meaningful educational or were otherwise inappropriate.

The entire controversy with respect to the current school year, therefore, centered on delivery of the services at the District high school, requiring Student to attend in order to receive the IEP services, or, indeed, any kind of instruction. Parents' contentions with respect to why the proposed location of services was inappropriate changed somewhat during the most recent period in dispute. During the summer prior to the beginning of the school year, Parents maintained the position that the District should have taken into account their concerns about Student's [school difficulties]. *See* S-10 pp. 3, 6, 9, 12. Parents contended that [these concerns] should have been accommodated by providing educational services by a means other than requiring Student to go to the high school.

Later, however, in comments on the record, it appeared that Parents' position had shifted, at least to some degree, to the contention that the District failed to appropriately, and timely, address Student's refusal to attend school [redacted] by initiating the school refusal program earlier. Parents' reference to the District's delay in initiating the school refusal program is, at the least, an implicit recognition that issues other than reasonable concerns about [school difficulties] prevented Student from returning to the District high school. If [school difficulties] remained as the primary reason that Student is not attending high school, it is difficult to understand why Parents later suggested that the District should have initiated the IU school refusal program earlier, since it is explicitly directed toward returning a reluctant student to full school attendance.

Although Parents' claim that the District failed to propose an appropriate setting for delivering IEP services during the current school year because Student would not attend the high school presents a closer question, than the issues involved in the prior two school years. (FF 42) Nevertheless, the record does not support the conclusion that the District was unreasonable in maintaining the position that the IEP should be implemented in the District high school. This case did not present a situation where the District, in essence, gave up on Student and the family, although there is no doubt that the family believes that to be the case. The District made reasonable, if ultimately unsuccessful, efforts to deliver the appropriate services it proposed in the regular high school setting, which is the least restrictive environment.

This case also presented significant issues of delay on the part of Parents going back to the spring of 2010 with Parents' refusal to consent to an evaluation that may have led to either protection under §504 and a §504 Agreement, or a an earlier identification of Student as IDEA eligible and an IEP. Parents' beliefs concerning the breadth of the District's special education obligations under either IDEA or §504 were unsupported by the applicable legal standards. Having proposed an appropriate IEP in June, August and November 2011, the District was under no obligation to search for other alternatives as Parents requested. It was not unreasonable for the District to propose the IU school refusal program several weeks after it became obvious that Student was highly unlikely to return to the school. Consequently, Parents' claims for compensatory education will be denied for the current school year as well as for the 2009/2010 and 2010/2011 school years.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, is hereby **ORDERED** that the Avon Grove School District committed no violations of law in this matter, and, therefore, Parents' claims are **DENIED,** including any and all issues or claims not specifically addressed by this decision and order.

Anne L. Carroll

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Anne L. Carroll, Esq.
HEARING OFFICER

May 24, 2012