

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

Child's Name: S.H.

Date of Birth: [redacted]

Dates of Hearing:

January 12, 2012

January 13, 2012

January 19, 2012

February 2, 2012

February 10, 2012

CLOSED HEARING

ODR Case # 2420-1112KE

Parties to the Hearing:

Parents

Great Valley School District
47 Church Road
Malvern, PA 19355

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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March 9, 2012

March 27, 2012

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INTRODUCTION AND PROCEDURAL HISTORY

[Student] (hereinafter “student”)¹ is a [pre-teenaged] student residing in the Great Valley School District (“District”). The parties agree that the student is a protected handicapped student under the Rehabilitation Act of 1973 (specifically under Section 504 of that statute, hence the follow-on reference to “Section 504”) and Pennsylvania education regulations related to students with identified needs who are not eligible for special education (“Chapter 15”).² But the parties dispute whether the student is a student who should be identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations (“Chapter 14”).³

As a result, parents feel the District has not appropriately addressed the student’s emotional and behavioral needs in the educational environment. Therefore, parents argue, the District has denied the student a free appropriate public education (“FAPE”), failing to meet its obligations under IDEIA to identify the student as eligible under

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² 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 wherein Pennsylvania education regulations explicitly adopt the provisions of 34 C.F.R. §§104.1-104.61 for services to “protected handicapped students”.

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.164.

that statute and to provide special education and related services. Parents seek an award of compensatory education and tuition reimbursement for their unilateral private educational placement of the student, as well as reimbursement for fees associated with expert testimony at the hearing.

The District argues that it has provided a FAPE to the student under its obligations to the student arising from Section 504. But the District argues that it has no obligations to the student arising from IDEIA because the student does not qualify as a student with a disability under the terms of that statute. As such, the District feels that no remedy is warranted because it has not failed to provide a FAPE to the student wherever it had such an obligation.

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

ISSUES

Is the student eligible for special education and related services as a student with a disability under the terms of the IDEIA?

If so, has the District failed to provide the student with a FAPE, as required by IDEIA?

If so, is compensatory education owed to the student and/or tuition reimbursement owed to parents?

Did the District provide the student with a FAPE, as required by Section 504?

If not, is compensatory education owed to the student and/or tuition reimbursement owed to parents?

Are parents entitled, under Section 504, to reimbursement for fees associated with expert testimony at the hearing?

FINDINGS OF FACT

1. In 2001, the student was adopted by parents as an infant from [redacted]. The student was severely under-nourished at the time of adoption. (Notes of Testimony ["NT"] at 49-50).
2. In 2004, the student was referred for early intervention services due to difficulties in speech and language. The student was identified as a child with a speech and language impairment throughout the student's preschool years. (School District Exhibit ["S"]-1).
3. In Spring 2007, anticipating the 2007-2008 school year, the student was re-evaluated by the early intervention services provider because the student was transitioning from early intervention to school-age services. (Parents' Exhibit ["P"]-1, P-2; S-2.)
4. As a result of the transition from early intervention speech and language services to school-age services, the student was exited from early intervention, and the District performed an evaluation, finding that the student had met speech and language goals in the early intervention program and was not eligible as a student with a disability. (P-1, P-2, P-3; S-1, S-2).
5. In the 2007-2008 school year, the student did not enter the District. The student resided at home and attended a private school for kindergarten. (NT at 50).
6. In the 2008-2009 school year, the student continued to attend the private school for 1st grade. (NT at 54).
7. In February 2009, parents sought from the District a comprehensive District evaluation for academic concerns in language arts, speech and language, attention issues, and social-emotional issues. In May 7, 2009, the District issued its evaluation report ("ER"). (P-5; S-5).
8. The District's ER found that the student showed no significant discrepancies between intellectual ability and academic achievement. Therefore, it found the student to be

- not eligible for a specific learning disability. (P-5 at pages 5-7, 14-15).
9. The District's ER found elevated ratings by both parents and by the student's private-school kindergarten teacher on the Conners Rating Scales (3rd edition) ("Conners"), an assessment primarily used for identifying needs associated with attention deficit hyperactivity disorder ("ADHD"), ratings that were especially elevated as reported by the teacher. But the overall conclusion of the evaluator was that the elevated ratings did not rise to the level where the student should be identified as a student with ADHD. (P-5 at pages 7-9).
 10. The District's ER utilized the Behavior Assessment System for Children (2nd edition) ("BASC") assessment for social, emotional and behavioral issues. On the student's self-report, there were certain individual responses of note but no elevated levels of concern. There were elevated ratings by parents, especially in the social/emotional realms (especially as reported by father more so than mother) in various social/emotional subscales. The student's private-school kindergarten teacher rated the student as age-appropriate across most social scales but reported elevated levels for social withdrawal and anxiety. (P-5 at pages 9-10).
 11. The Conners ratings and BASC scores, however, did not mirror each other. The elevated levels for sub-scales by the parents and teacher on the Conners for ADHD symptomology were not evident in the scores as reported on the BASC. (P-5 at pages 9-10).
 12. Overall, the District's evaluator found that the student's BASC results did not rise to the level where those scores exhibited problematic social/emotional issues. (P-5 at pages 10-11).
 13. The District's ER found that, as the result of multiple speech and language assessments, the student exhibited slightly below average, but still potentially problematic, expressive and receptive language skills. (P-5 at pages 11-14).
 14. Input in the District's ER from the private-school kindergarten teacher indicated that the student exhibited some immature behaviors and occasional emotional reactions, but generally the student exhibited age-

appropriate behaviors with peers and adults. The student's report card indicated that the student met expectations in all areas of social and behavioral domains. (P-5 at pages 15-16).

15. Overall, the District's evaluator found that, while formal assessments showed the potential for some social/emotional concerns, in and of themselves, those did not rise to the level that would support an identification of the student as a student with ADHD and/or social/emotional needs. This conclusion was supported by the anecdotal observation and input from home and school that seemed to point to largely age-appropriate social, emotional and behavior results. (P-5 at pages 18-19).
16. The District's ER, however, identified the student with a speech and language impairment. As part of this identification, the evaluator opined that any further move toward an identification as a student with social/emotional needs be deferred until speech and language issues could be addressed, to see if certain social and/or emotional reactions were language-related. (P-5 at 18-19).
17. In late May 2009, the student began to see a private psychiatrist. It is unclear whether this information was shared with the District, but its absence from the very thorough ER supports a finding. (P-16).
18. In June 2009, an individualized education plan ("IEP") was developed to address the student's needs in speech and language, with one goal each in expressive language and receptive language. (P-7).
19. In the 2009-2010 school year, the student did not enter District schools. The student continued to attend the private school for 2nd grade. The student received speech and language support at the private school from the local intermediate unit. (P-9; NT at 65).
20. In January 2010, based on a deterioration of social issues at the private school and concerns about the student's reading, the family decided that the student and the student's siblings would not continue to attend the private school in the following school year (2010-2011) based on a deterioration of social issues at the private school. (P-9; NT at 69-70).

21. In February 2010, the parents met with the District to discuss the transition of all the family's children to District schools the following school year. (NT at 74).
22. In the spring of 2010, the student's behaviors at home intensified and deteriorated, leading to tantrums at home.
23. In May 2010, the local intermediate unit performed a speech and language evaluation, finding that the student exhibited below average results on the Word-R test (particularly on the semantic absurdities subtest) and on the auditory reasoning subtest of the Test of Auditory Processing Skills (3rd edition). (P-51).
24. On June 3, 2010, the evening before a scheduled visit at the District school where the student and a sibling would attend, the student had a violent tantrum at home. (NT at 78-79).
25. On June 8, 2010, the student's IEP team met and developed an IEP based on the District's May 2009 ER, as well as updated information on the student's grades at the private school, an updated speech and language evaluation, and a private occupational therapy evaluation. (P-10).
26. The IEP indicated that parents' concerns indicated that the student "makes and keeps friends" and that the student "becomes upset" and that "frustration/anger can be addressed prior to a meltdown". But how the student's disability might affect the student's educational progress, and the student's needs as a result of disability, relate only to the student's speech and language needs. Additionally, when the IEP team confronted the question of whether the student exhibited behaviors that impeded learning or that of others, the answer was "no". (P-10 at pages 3, 8).
27. The IEP contained two goals, both for needs in expressive speech and language. The student's program modifications and specially designed instruction was entirely geared to speech and language services except for one, namely: "provide opportunities for [the student] to remove [the student at the student's discretion] from frustrating situations (examples: calming corner in a classroom, taking walks to the bathroom or water fountain, etc.); to provide opportunities for [the student] to express frustrating

situations to the teacher in order to cope with...feelings.” (P-10 at pages 12-15).

28. On June 13, 2010, the District issued a notice of recommended educational placement (“NOREP”), recommending that the student receive special education and related services for speech and language needs. (P-11).
29. Mother testified that the June 2010 IEP did not feel that the IEP met the student’s needs. The District school counselor testified, however, that at the IEP meeting, there was no parental disagreement with the June 2010 IEP or its conclusions. (NT at 80-87, 952-954).
30. On June 22, 2010, the student had a violent tantrum at home that eventually ended with police involvement and a visit to a hospital. The student was released to home with the parents. The next day, in the late afternoon of June 23, 2010, the student again had a violent tantrum at home, culminating in [redacted]. The student was admitted to a local mental health treatment facility in the early morning hours of June 24, 2010. (P-13 at pages 20-28; NT at 87-91).
31. In July 2010, for insurance purposes, the parents obtained a letter from the student’s private psychiatrist. It is unclear whether the letter was ever shared with the District, but parent credibly asserted that the District was aware of June 2010 at-home tantrums. The District was also advised that the student was receiving medical and psychiatric services in the summer 2010. (P-16, P-50 at pages 2-3; NT at 761-763).
32. In July 2010, contemporaneously with the issuance of the private psychiatrist’s letter, the student began to see a new private psychiatrist. (P-19 at 10-11; NT at 162-163).
33. In August 2010, the parents and District corresponded about a period in the first 2-3 weeks of the 2010-2011 school year to gauge the student’s transition to the District. This was acceptable to parents. On September 16, 2010, the student’s IEP team met and decided that the student’s June 2010 IEP did not need to be revised. Parents agreed with the District’s recommendation, indicating so by signing and returning the June 2010 NOREP. (P-11, P-50 at pages 4-5).

34. In September 2010, the student began to receive in-home community-based mental health services.
35. Over the period of September-November 2010, the student engaged in multiple in-home tantrums. Parents shared with District employees (the student's teacher, school counselor and/or principal) reports of some of these in-home tantrums, with varying degrees of detail. (P-38 at pages 1-4; P-50 at pages 6-26; P-57 at pages 1-2).
36. In November 2010, the student had an emotional interaction in school with a student during recess. (P-50 at 23-24).
37. In December 2010, another child moved into the student's neighborhood and became a member of the student's class. In December 2010 and January 2011, the new child, the student, and another child in the class became involved in a "social triad". The student exhibited jealous behavior as the three children negotiated paying-attention and friend-sharing issues with each other. The social triad situation led to at-home tantrums. (P-38 at 3-4; NT at 23-24, 27-42).
38. Not surprisingly, the social triad situation was most problematic during recess, when the students were in an unstructured, highly social setting. In January 2011, a recess plan was developed to give the student a strategy for spending time at recess and ideas for different play options. Tantrums related to the social triad occurred at home. (P-15, P-38 at pages 3-4, P-50 at 27-42, P-57 at 1-2; NT at 111-112).
39. There was also an incident involving the social triad in gym class, another somewhat unstructured, highly interactive setting. (P-50 at 38-42).
40. On January 11, 2011, when the parents attempted to speak with the student about the social triad situation, the student had a violent tantrum at home. (P-38 at 3-4, P-57 at page 2; NT at 115-121).
41. In February 2011, the social triad issue continued. (P-50 at 42-43).

42. In the afternoon of February 16, 2011, the student had a violent tantrum at home. The tantrum resulted in an inpatient admission to a community-based mental health facility. (P-13 at pages 1-7, P-57 at page 3).
43. The hospitalization continued through March 15, 2011. The parents communicated with the District about the hospitalization. (P-13 at pages 12-19; P-50 at 44-46).
44. In March 2011, the parents and District met to coordinate the student's return to school, including convening the IEP team which met on April 13, 2011. (P-50 at pages 47-53; S-17).
45. At the April 2011 IEP meeting, the parents and District disagreed over the student's needs. Parents felt that the student should be identified as a student who required social, emotional and/or behavioral supports through the IEP. While being aware of the social, emotional and/or behavioral issues in the student's life, the District felt that those issues were not surfacing in the school environment to the extent that the issues needed to be addressed in the IEP. (P-14, S-18; NT at 141-148).
46. In late April 2010, the family requested a District in-home assessment of the student. Shortly thereafter, the parents requested an IEP team meeting and informed the District that they were seeking a private placement at public expense. (P-50 at pages 54-56, 63-64; S-19).
47. The District denied the parents' request for an in-home assessment. On May 11, 2011, the District issued a permission to evaluate the student, seeking to gather more data to update data regarding the student. On May 12, 2011, the District issued a NOREP, recommending that the student continue to be identified as a student with a speech and language impairment. The parents disagreed with the recommendation. On May 16, 2011, the parents granted permission to the District to evaluate the student. (P-18; P-50 at page 87; S-23; NT at 150-154).
48. On May 11, 2011, the District received a private evaluation from the student's private psychiatrist. (S-21).
49. In late May 2011, an interagency meeting was held, bringing together parents, parents' education advocate,

- District personnel, community-based mental health services, and others. The student had approval through the community mental health system for admission to a residential treatment facility. (P-20; S-26; NT at 328-330).
50. Part of the District’s re-evaluation process included a functional behavior assessment (“FBA”), assessing two behaviors of concern—tantrums and emotionality over the social triad. As part of the FBA, over the course of late May into early June, parents recorded multiple problematic behaviors and tantrums at home. As part of the FBA, over the first week of June 2011, the District school counselor observed the student eight times in the school environment. As part of the FBA, over the end of May and into early June, there was no report of either of the two problematic behaviors from any school-based IEP team member. (P-21, P-22, P-29 at pages 13-19, P-31; NT at 969-979).
51. In early June 2011, community-based mental health services began a process to secure a placement for the student at a residential treatment facility. Over the course of that process, parents did not find any of the placements to be acceptable to them. (P-23, P-58; NT at 344-352).
52. Over the period from the student’s return to the District in mid-March 2011 through the end of the 2010-2011 school year in early June 2011, the student continued to experience tantrums at home. (P-38 at pages 5-13, P-57 at pages 3-6).
53. At the end of the 2010-2011 school year, the student’s 3rd grade report card exhibited no academic difficulties in any class. In the second marking period (where the social triad issues began and were most pronounced), the report card indicates for physical education: “(The student occasionally has difficulty in dealing with others in small group situations.” The same teacher opined in comments in the third, and final, marking period: “(The student) has shown better self-control this marking period, and is cooperative with others most of the time.” (S-28 at pages 1-3).
54. The student made progress on speech and language goals in the 2010-2011 school year. (S-28 at pages 4-11).

55. The student scored in the proficient range in mathematics and reading on the Pennsylvania System of School Assessment for 3rd grade. (S-28 at pages 13-15).
56. In late June 2011, the student underwent a private neuropsychological evaluation. The evaluator concluded that the student qualified for special education as a student with a serious emotional disturbance. The evaluator's recommendations, among others, included a placement that utilized the neurosequential model of therapy/intervention ("NMT"). Parents shared this private evaluation with the District. (P-24; S-30; NT at 352-353).
57. Parents had identified, in April 2011, a private therapeutic facility in New Mexico that utilized NMT approaches and provided an educational component through an affiliated private school. (NT at 353-361).
58. On June 22, 2011, parents informed the District that they were unilaterally placing the student at the New Mexico facility and would seek reimbursement from the District for the placement. (P-50 at pages 111-120).
59. In July 2011, the student enrolled in, and began attending, the New Mexico facility. (P-36, P-37; NT at 363-366).
60. In August 2011, the District contacted the parents about the availability of the student for testing in the District to complete the evaluation for which parents had given permission on May 16, 2011. Parents objected to returning the student to the District for testing; parents offered to have the New Mexico facility administer the District's assessments or to have District personnel travel to the New Mexico facility to administer the assessments. Communication between both parties ensued regarding the testing requested by the District for its re-evaluation. In September 2011, parents made arrangements for the student to return to the District for testing. (P-50 at 121-129; S-55, S-56, S-57, S-58, S-59; NT at 376-379).
61. The District issued its re-evaluation report ("RR") on October 5, 2011. (P-29).
62. The RR included information from numerous sources: parental input, input from the student's teachers at the New

Mexico facility, input from the student's 3rd grade teacher, input from the student's speech and language pathologist at the District, information from the SD's May 2009 ER, the May 2011 private evaluation from the student's private psychiatrist, the June 2011 private neuropsychological evaluation, review of academic assessments, updated speech and language testing performed in the fall of 2011, occupational therapy assessment results, the results of the FBA performed in late May/June 2011, the evaluator's observation of the student's behavior and informal interview results, the results of cognitive and achievement testing, the results of attention/concentration/executive functioning testing, Conners testing results, BASC testing results, and the results of a June 2011 District psychiatric evaluation. (P-29).

63. The speech and language evaluator concluded that the student had met IEP goals in speech and language. Standardized speech and language assessments were also, except for one subscore, within the average range or above. As a result, the evaluator concluded that, while the student should receive regular education support for mild articulation issues, the student no longer required specially designed instruction through an IEP for speech and language needs. (P-29 at pages 10-12).
64. On the Conners testing, there were elevated levels on the parents' ratings and the student's self-report. Ratings from the student's "house parent" at the New Mexico facility showed certain elevated ratings but less in number and intensity than parents. Ratings from the student's teacher from the New Mexico facility and the student's 3rd grade teacher did not indicate any elevated levels in their classrooms. (P-29 at 25-28).
65. On the BASC testing, parents reported consistently elevated ratings in most areas. The student's self-report showed some elevated ratings in most areas, including some school-related measures. The house parent at the New Mexico facility reported some elevated ratings in the residential setting but less in number and intensity than parents. Both teachers reported no elevated ratings in the classroom setting (although the teacher from the New Mexico

facility indicated that the student sometimes eats too much).⁴ (P-29 at 28-30).

66. The RR concluded that the student no longer qualified as a student with a speech and language impairment. Additionally, while recognizing that the student had issues related to social/emotional issues, those issues did not manifest themselves in the school environment such that there was interference with the student's education or the education of others. Therefore, the RR concluded that student did not qualify as a student with an "other health impairment" for ADHD, and that the student did not qualify as a student with an emotional disturbance. (P-29 at 34-35).
67. The RR concluded, however, that the student had medical diagnoses that would qualify [the student] as a student with a disability under Section 504. (P-29 at pages 34-35).
68. On October 7, 2011, the District issued a NOREP recommending that the student be exited from special education for speech and language. (P-33).
69. The October 7th NOREP also recommended that the student receive services to address speech, the student's speech and language articulation issues and to address the student's needs to regulate emotions in the school environment. In that regard, the District also proposed a Section 504 plan/Chapter 15 service agreement to address these concerns. Parents do not believe the Section 504 plan meets the student's needs. (P-32, P-33; S-39; NT at 383-386).
70. The student's mother testified credibly. (*See generally* NT at 49-157, 295-397, 730-921).
71. The District witnesses who worked directly with the student testified credibly. (*See generally* NT at 924-981, 988-1236, 1242-1520).
72. The witnesses from the New Mexico facility who worked directly with the student testified credibly. (*See generally* NT at 404-721).

⁴ The house parent reported in the same measure that student sometimes ate too little. (P-29 at page 29).

73. The student's private psychiatrist testified credibly as an expert witness. His testimony, however, is accorded less weight than that of the parent, and those witnesses who worked with the student in an educational environment, namely District witnesses who worked directly with the student, and witnesses from the New Mexico facility who worked directly with the student. (*See generally* NT at 157-295).

74. A District special education administrator testified credibly. Her testimony, however, is accorded less weight than that of the parent and those witnesses who worked directly with the student, namely the private psychiatrist, District witnesses who worked directly with the student, and witnesses from the New Mexico facility who worked directly with the student. (*See generally* NT at 1520-1597).

75. A business administrator from the New Mexico facility testified credibly. His testimony, however, is accorded less weight than that of the parent and those witnesses who worked directly with the student, namely the private psychiatrist, District witnesses who worked directly with the student, and witnesses from the New Mexico facility who worked directly with the student. (*See generally* NT at 1751-1755).

DISCUSSION AND CONCLUSIONS OF LAW

Eligibility under IDEIA/Chapter 14

A student qualifies as an eligible student under IDEIA as a student with a disability by meeting two qualifying criteria: (1) the student is identified as a student with one or more enumerated disabilities that (2) require specially designed instruction as a result of that disability.⁵ A student who does not have a qualifying disability is not eligible as a student with a disability under IDEIA. Likewise, a student who has a

⁵ 34 C.F.R. §300.8(a).

qualifying disability, but does not require specially designed instruction as a result of that disability, is not eligible as a student with a disability under IDEA. In the instant case, the record presents a student who may qualify as a student who potentially qualifies in three IDEA eligibility categories: speech and language impairment, emotional disturbance, and/or other health impairment (through a medical diagnosis of ADHD).⁶ (FF 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23).

Speech and Language. The student has been long-identified as a student with a speech and learning needs. (FF 2, 3, 4, 7, 13, 16, 18, 23, 25, 27, 28). Indeed, the student received specially designed instruction from the District for that impairment in the 2010-2011 school year. (FF 25, 27, 28, 71).

By the end of the 2010-2011 school year, however, the student had made significant progress on the speech and language goals in the April 2010 IEP. (FF 5). Moreover, the speech and language evaluation data in the October 2011 RR and the testimony of the District's speech and language therapist fully support a finding that, by the fall of 2011, the student did not require specially designed instruction in speech and language. (FF 63, 71). Therefore, the District's conclusion that the student did not qualify as a student with a speech and language

⁶ 34 C.F.R. §300.8(c)(4, 9, 11).

impairment, and consequent recommendation that the student be exited from special education, is supported by the record. (FF 66, 68).

Therefore, the record in its entirety supports a finding that the student does not qualify under the IDEIA as a student with a speech and language disability.

Emotional Disturbance. To qualify under the IDEIA as a student with an emotional disturbance, a child must exhibit:

one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors, (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers, (C) Inappropriate types of behavior or feelings under normal circumstances, (D) A general pervasive mood of unhappiness or depression, (E) a tendency to develop physical symptoms or fears associated with personal or school problems.⁷

In the instant case, there is no doubt whatsoever that the student has multiple mental health diagnoses and exhibits significant social, emotional, and behavioral outbursts at home. (FF 7, 9, 10, 11, 12, 14, 17, 20, 22, 24, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 48, 49, 50, 51, 52, 56, 62, 64, 65, 66, 70, 72, 73). But the record is consistently clear that the student did not exhibit any significant social, emotional, and behavioral outbursts in the educational environment at

⁷ 34 C.F.R. §300.8(c)(4)(i).

the District such that there was any adverse effect on the student's educational performance. (FF 25, 26, 27, 28, 29, 33, 44, 45, 49, 50, 61, 62, 64, 65, 66, 71).

To be sure, there were some emotional and behavioral issues that manifested themselves in the educational environment at the District, but those manifestations, on this record, did not rise to a level of significance, did not interfere with the student's learning or that of others and did not require specially designed instruction. (FF 33, 36, 37, 38, 39, 41, 45, 50, 53, 55, 61, 62, 64, 65, 66, 71.) Therefore, the District's conclusion that the student did not qualify as a student with an emotional disturbance is supported by the record. (FF 66, 68).

Again, nothing in this decision should be read to discredit the notion that the student has significant social, emotional, and behavioral needs. But under the terms of the IDEIA, the record supports the finding that the student does not qualify under the IDEIA as a student with an emotional disturbance or speech and language disability.

Other Health Impairment. To qualify under the IDEIA as a student with an emotional disturbance, a child must exhibit:

limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette

syndrome; and (ii) adversely affects a child's educational performance.⁸

In the instant case, the student has been medically diagnosed with ADHD and exhibited some attentional issues while attending a private school before entering the District. (FF 7, 9, 10, 11, 14, 15, 45, 48, 56, 73). But behaviors associated with an other health impairment as the result of ADHD were not exhibited at any time in the educational environment while at the District. (FF 26, 33, 45, 50, 61, 62, 64, 66, 71).

Therefore, the record in its entirety supports a finding that, while the student has a medical diagnosis of ADHD, the student does not qualify under the IDEIA as a student with an other health impairment.

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Accordingly, the record in its entirety supports the finding that the student does not qualify as a student with a disability under the terms of the IDEIA. The student is not a student with a speech and language impairment that requires specially designed instruction, and the District's recommendation that the student be exited from special education for speech and language services. Additionally, the student is not a student with an emotional disturbance and/or an other health impairment that require(s) specially designed instruction.

⁸ 34 C.F.R. §300.8(c)(9).

Denial of FAPE under IDEIA/Chapter 14

The student was appropriately identified as a student with a speech and language impairment who required specially designed instruction. (FF 7, 13, 18, 25, 27, 28, 33). The student received appropriate instruction toward speech and language goals and made meaningful education progress toward those goals in the 2010-2011 school year. (FF 27, 33, 54, 71). The District appropriately concluded that, by October 2011, the student no longer required specially designed instruction for speech and language impairment and appropriately exited the student from special education. (FF 54, 63, 66, 68, 71). Therefore, the District met its obligations to the student under the IDEIA regarding speech and language needs.

On this record, the student does not qualify under the IDEIA as a student with an emotional disturbance and/or an other health impairment. (See Eligibility under IDEIA/Chapter 14 above at subsection “Emotional Disturbance”). On this record, the student does not qualify under the IDEIA as a student with an other health impairment. (See Eligibility under IDEIA/Chapter 14 above at subsection “Other Health Impairment”).

Accordingly, the District has met its obligations to the student under IDEIA. There has been no denial of FAPE and no remedy is owed.

Denial of FAPE under Section 504/Chapter 15

The parties do not dispute the student's eligibility under Section 504/Chapter 15. In the 2010-2011 school year, the District provided appropriate services to the student based on the student's speech and language impairment. (See Denial of FAPE under IDEIA/Chapter 14 above).

In the 2010-2011 school year, the District recognized that the student was experiencing social, emotional, and behavioral issues at home, including tantrums that resulted in hospitalizations. (FF 25, 26, 27, 31, 33, 35, 37, 38, 39, 41, 43, 44, 45, 48, 49, 50, 52, 70, 71). Where the student exhibited social and emotional issues in the educational environment at the District, the District's response was appropriate and addressed the issues. (FF 25, 26, 27, 28, 29, 33, 36, 37, 38, 39, 41, 44, 45, 49, 50, 53, 71). The student made meaningful educational progress in the 2010-2011 school year without any discernible impact on learning. (FF 53, 54, 55, 71). Therefore, the District did not deny the student FAPE under Section 504/Chapter 15.⁹

The District's October 2011 RR was comprehensive. (FF 47, 49, 50, 60, 61, 62, 63, 64, 65, 66, 67). The District's conclusion in the RR was appropriate that, even though the student did not qualify under the IDEIA, the student had medical diagnoses, and social, emotional, and behavioral issues in the educational environment, that required a Section

⁹ 34 C.F.R. §§104.1-104.61.

504 plan/Chapter 15 service agreement. (FF 61, 62, 63, 64, 65, 66, 67, 68, 69, 71). The Section 504 plan/Chapter 15 service agreement proposed by the District appropriately addressed the student's needs and was reasonably calculated to allow the student to make educational progress. (FF 67, 69, 71). Therefore, the District met its obligations to the student in its proposed programming for the 2011-2012 school year.¹⁰

In sum, then, the District provided FAPE to the student in the 2010-2011 school year and was prepared to offer FAPE to the student in the 2011-2012 school year. Therefore, no remedy is owed for denial of FAPE under Section 504, including reimbursement for fees associated with expert testimony at the hearing.

CONCLUSION

The parents' suffering as a result of, and patient engagement with, their child's mental health needs is genuine and palpable. Let there be no doubt of their caring for, and devotion to, the needs of their child. They have made their claims in good faith. Likewise, the District has, at all time, acted toward the family in good faith and with due regard for the student's needs in the educational environment. While the family's experiences with the student's social, emotional, and behavioral needs at home are compelling, it is clear on this record that those needs did not manifest themselves in the educational environment at the District such

¹⁰ *Id.*

that those needs should be addressed through specially designed instruction. The District has met its obligations to the student under the terms of IDEIA and Section 504.

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ORDER

The Great Valley School District has met its obligations to the student under terms of IDEIA and Section 504. No remedy is owed to the student or parents.

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

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

March 27, 2012