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: X.C.

Date of Birth: [Redacted]

ODR No. 2637-11-12-KE

CLOSED HEARING

Parties to the Hearing:	Representative:
Parent	Dean M. Beer, Esquire McAndrews Law Offices 30 Cassatt Avenue Berwyn, PA 19312
School District of Philadelphia 440 North Broad Street, Suite 313 Philadelphia, PA 19130	Judith Baskin, Esquire Office of General Counsel 440 North Broad Street, Suite 313 Philadelphia, PA 19130
Dates of Hearings:	February 27, 2012; March 30, 2012
Record Closed:	April 20, 2012
Date of Decision:	April 30, 2012
Hearing Officer:	William F. Culleton, Jr., Esquire, CHO

INTRODUCTION AND PROCEDURAL HISTORY

The child named in the title page of this decision (Student) is a resident of the school district named in the title page of this decision (District). (S-4, 5.) The Student's Parent, named on the title page of this decision (Parent), requests compensatory education for Student. Parent asserts that, during the relevant period between August 15, 2009 and September 6, 2011, the District discriminated against Student on the basis of disability, contrary to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504). Specifically, Parent asserts that the District failed to evaluate Student appropriately, to identify all of Student's educational needs, to place Student in an appropriate placement, and to provide Student with a free appropriate public education (FAPE). The District denies these allegations and asserts that Parent obstructed its evaluations by limiting contact with Student's private therapist.

The hearing was concluded in two sessions, and the record was combined with the record for a companion matter also decided today, involving Student's sibling[1]. The record closed upon receipt of written summations. I conclude that the District is not required to provide compensatory education to Student.

ISSUES

1. Did the District appropriately evaluate Student pursuant to section 504, with regard to identification of Student's educational needs, for purposes of programming during the relevant period of August 15, 2009 to September 6, 2011?

2. Did the District provide an appropriate placement to Student during the relevant period pursuant to section 504?

[1] A combined transcript ("NT") was taken of testimony combined for both matters. Separate exhibit books were provided and separate exhibits were admitted into evidence for each sibling.

3. Did the District offer and provide a free appropriate public education to Student during the relevant period pursuant to section 504?

4. Should the hearing officer order the District to provide compensatory education to Student for all or part of the relevant period?

FINDINGS OF FACT

1. Student is not identified as a child with a disability. Student has no physical or academic disability. (NT 178-180; S-7, 17.)

2. During the 2009-2010 school year, Student had a significant number of absences. Student passed all of Student's courses and attained grades of "A" and "B" in many courses. Student's PSSA scores were Proficient in mathematics and writing, and Advanced in reading. (S-4, 5.)

3. In March 2010, Student witnessed an incident in which Parent became involved in an altercation with a police officer; Parent had been arrested and confined. (NT 116-118; S-7 p. 1, 15, 17.)

4. Student's psychiatrist sent a recommendation that Student needed to remain home due to illness, due to reported anxiety regarding contact with police officers and returning to school. In March 2010, the District approved Student for homebound services. The District continued the services based upon an administrative decision until the end of the 2009-2010 school year. (NT 46-49; S-7 p. 1, 15, 16 p. 16.)

5. Prior to the 2010-2011 school year, the District's school nurse in charge of approving homebound services reviewed a request by the Student's psychiatrist to extend homebound services, and in September and December 2010, the District renewed approval for homebound services for Student. It is unusual for the District to renew homebound services. (NT 49-56, 106-107; S-15, 16 p.1, 16.)

6. Homebound instruction is intended to be a temporary accommodation for students unable to attend school; typically, it provides two hours per week of teaching services for a period of ninety days, renewable upon receipt of a doctor's referral, and at the discretion of the District. (NT 105-106, 144; P-9.)

7. The District's nurse in charge of approving homebound services attempted to obtain further information from the behavioral health agency that provided psychotherapy to Student. From the beginning of homebound instruction, Parent restricted the District nurse's access to therapists and the psychiatrist, by insisting that any conversation with the therapists be conducted with Parent present. When a conversation occurred, Parent interfered with the District nurse's ability to discuss Student's return to school with the therapist. (NT 64-66, 69, 91, 107-110, 114-116; S-16 p. 11.)

8. Student was not evaluated for special education while receiving homebound services or prior thereto. (NT 85, 91, 235-238.)

9. In February 2011, the Parent submitted a physician referral for continued homebound services. The treating psychiatrist recommended homebound educational services due to the Student's anxiety. (NT 62-63; S-15 p. 4.)

10. The District's nurse in charge of approving requests for homebound services believed that the Student was capable of returning to school with supports and accommodations. The nurse did not refer Student for evaluation under the IDEA or under section 504. (NT 67, 91.)

11. On March 31, 2011, the District denied the request for homebound services and terminated homebound, because there was not enough information in the doctor's referral to indicate why Student's had not progressed sufficiently under the psychiatrist's care to be able to return to school at least for partial days, and because the information available did not show a plan for Student's return. (NT 63-65, 69, 168; S-9, S-15 p. 9.)

12. The District planned for a transition of Student back to school, including supports in school, evaluation and a meeting after Student should return. (NT 124-129, 133, 193-194, 202-203; S-3 p. 2.)

13. Parent was not consulted in preparation of the transition plan for Student. (NT 231-232.)

14. District personnel advised Parent that there was no appeal from the District's denial of homebound services. (NT 100-101; S-9.)

15. Parent kept Student home and did not send Student back to school, from March 31, 2009 until September 6, 2011, when Parent enrolled Student in a cyber charter school. Student did not receive any educational services from March 31, 2011 until September 6, 2011. (NT 202; S-13.)

16. The District initiated truancy proceedings against Student in May 2011, and the court ordered Student to return to school in May 2011. (NT 112, 114; S-11, 16.)

17. The District nurse in charge of evaluating requests for homebound services had consulted with personnel with the Department of Education in January 2011, and had been advised to consider evaluation of Student due to Student's lengthy absence from school on homebound instruction. The District issued a permission to evaluate form to Parent. Parent completed a developmental history form in April 2011. It was apparent that a mental health professional had written some of the responses for Parent. The District issued its evaluation report in May, 2011. (NT 359; S-6, 7, 16 p. 23-24, 17.)

18. The District's psychologist is both certified as a school psychologist in Pennsylvania and licensed as a clinical psychologist in Pennsylvania, has a Ph.D. in educational psychology, and has 20 years' experience as a school psychologist. (NT 254-256.)

19. The school psychologist reviewed Student's District files and records. There was no classroom observation, since Student was not in school, and the psychologist did not consider this to have reduced the validity of the evaluation. The psychologist spoke with a former teacher, who was the special education liaison, and with Student's Parent.

Parent also filled out a developmental history form with the assistance of a person from the behavioral health agency that was treating Student. This person wrote parts of the Parent's answers in the form. (NT 356-364, 417-418; S-17.)

20. The school psychologist reviewed some, but not all of the referral forms that had been sent to the District in support of the Parent's requests for homebound instruction. This review took place in August 2011. (NT 393-398; S-7, S-15.)

21. The school psychologist did not speak to or obtain information from Student's homebound instructors, although some effort was made during the summer of 2011 to obtain recommendations from one of the homebound instructors, and the evaluator asked Parent to submit a behavior rating form to one of the homebound instructors, and Parent declined to do so. (NT 254-256, 263, 300, 323-324, 332-334, 358, 406-8; S-17.)

22. The school psychologist evaluated Student in a single lengthy session at Student's home. While the psychologist followed standardized procedures for testing, the environment was not appropriate for testing, with numerous distractions that could have reduced Student's performance on cognitive and achievement tests. (NT 360-362; S-17.)

23. The school psychologist solicited a behavior rating inventory form from Student, but the Parent tried to fill out the answers for Student, and subsequently returned an inventory that was invalid because not filled in by Student in the presence of the evaluator. (NT 365, 404; S-17.)

24. Student's test performance disclosed no significant discrepancy between ability and performance. Student's processing speed was a weakness, and this was reflected in lower scores in math fluency; however, this did not merit identification as a child with a disability, or a section 504 plan, because it could be accommodated by extra time in regular education, which the evaluator recommended. (NT 369-371, 377; S-17.)

25. Student's Parent's behavior inventory did not disclose any emotional difficulties that would require identification as a child with a disability. (NT 374; S-17.)

26. Pursuant to a release requested on June 29, 2011 and signed by Parent on July 8, 2011, District personnel were able to obtain a psychosocial evaluation from the behavioral health agency that provided treatment services to Student, for purposes of re-evaluation. (NT 265-267, 351-354, 379; S-14.)

27. Full documentation from the behavioral health agency was not received until August 2011, and the District's evaluator was given the impression that Parent was sensitive to any communication that might exceed Parent's permission as given to the District, and that permission had been limited to review of records and did not include conversations with staff the behavioral health agency. (NT 120, 260-262, 265-266; S-16 p. 77, 17.)

28. After review of the agency documents in August 2011, the District recommended additional supports by way of a section 504 plan, solely to address Student's emotional needs while transitioning back to school. The report continued to conclude that the

Student did not have emotional needs that would interfere with Student's learning. (NT 379-381, 389, 397, 410-412; S-17.)

29. The psychosocial evaluation from the behavioral health agency did not support a need for homebound services. (NT 121.)

30. In August, 2011, the District transferred Student to another school that District personnel considered more accessible for Student's sibling because it has an elevator. Parent requested that the siblings be assigned to the same school. (NT 426-427, 450-451, 454; S-15, S-16 p. 88.)

31. The Parent requested homebound instruction for Student for the 2011-2012 school year. The District denied this request. (NT 96; S-18 p. 13, S-16 p. 81-86.)

32. On September 6, 2011, Parent advised the District that Student had been accepted into a cyber charter school. This was verified on September 14, 2011. (S-16 p. 88, P-7.)

33. The District was prepared also to produce a section 504 plan, but Parent withdrew Student from the District before the start of the school year. (NT 442.)

DISCUSSION AND CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations, the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact.[2] In Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence[3] that

[2] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

[3] A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810.

the moving party is entitled to the relief requested in the Complaint Notice. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)[4]

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in Schaffer called "equipoise". On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See Schaffer, above.

In the present matter, based upon the above rules, the burden of persuasion rests upon the Parent, who initiated the due process proceeding. If the Parent fails to produce a preponderance of the evidence in support of Parent's claim, or if the evidence is in "equipoise", the Parent cannot prevail under section 504 or the Pennsylvania Code provisions that implement section 504 in Pennsylvania.

CHILD FIND UNDER SECTION 504

The Rehabilitation Act of 1973, section 504, provides:

> No otherwise qualified individual with a disability … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance … .

29 U.S.C. §794. Federal regulations implement this prohibition in school districts receiving federal financial assistance.[5] 34 C.F.R. §104 et seq. These regulations require school districts to

[4] Although Parent brings this matter solely under section 504, the Supreme Court's analysis in Schaffer was based upon basic principles in the common law and in administrative law. I see no reason to deviate from this analysis under section 504. Moreover, the Third Circuit Court of Appeals has recognized that the two statutes are unusually similar with regard to the rights that they protect, and that at least one procedural requirement of the IDEA should be applied in section 504 cases. P.P. v. West Chester Area School District, 585 F.3d 727, 736 (3d Cir. 2009)(applying the IDEA statutory limitation of actions to section 504 cases).

provide a FAPE to qualified handicapped children, but that obligation is defined differently than under the IDEA. Districts must provide "regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy" the procedural requirements of the Act. 34 C.F.R. §104.33.

Districts are obligated to "[u]ndertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education … ." Thus, section 504 imposes a "child find" obligation on school districts analogous to that which they shoulder under the IDEA. 34 C.F.R. §104.32(a). This includes the obligation to evaluate children within their jurisdiction appropriately to determine whether or not they are qualified handicapped persons. The District must evaluate "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 must establish procedures for evaluation that ensure the use of valid tests and other materials, administered by trained personnel in accordance with the publisher's instructions. 34 C.F.R. §104.35(b)(1). Evaluations must include tests or procedures that are tailored to assess specific areas of educational need, not just general intelligence tests. 34 C.F.R. §104.35(b)(2). Tests must not be rendered invalid because affected by the child's disability. 34 C.F.R. §104.35(b)(3). The evaluation must be based upon a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. 34 C.F.R. §104.35(c)(1).

[5] I take administrative notice that the School District of Philadelphia receives federal financial assistance within the meaning of section 504, because the District is bound by the IDEA, which is a federal funding statute. The District has not denied this criterion of section 504 applicability.

Parent asserts that the District violated the above standards. The District admittedly did not evaluate Student either before or during the approximately thirteen months in which Student was on homebound instruction. (FF 1-8.) The District allegedly failed to provide the two hours per week that its own policies provide for homebound instruction, and there was no special education plan incorporated in the homebound instruction plan. (FF 17.) Parent argued that Parent's refusal to return Student to school was due to the lack of an evaluation and transition plan at the time that the Student was denied homebound services.

I conclude that the District did fail to evaluate in a timely fashion, but that this failure to evaluate did not cause a deprivation of a FAPE to Student. I conclude that the District's evaluation was appropriate under the circumstances. I conclude that the District's failure to evaluate in a timely fashion did not cause Parent to retain the Student at home for months after the District terminated homebound services; on the contrary, Parent was actively advocating to keep Student on homebound status – Parent kept Student home because Parent wanted to do so, not because Parent was deprived of a reasonable transition plan. (FF 11-15.)

It is undisputed that the District knew of Student's diagnosis of mental illness when it approved Parent's initial request for homebound instruction. The request and approval were based upon that diagnosis. (FF 4.) Thus, the District was on notice that Student might at some point be so affected by a mental disorder that it would qualify Student for services under section 504.[6]

At what point in time did the District have enough information to place it on notice that the Student's diagnosed mental illness created a "substantial" limitation on the Student's

[6] The section 504 regulations define a qualified handicapped individual as a person with a physical or mental impairment which substantially limits one or more major life activities. 34 C.F.R. §104.3(j)(1). Any mental disorder meets the definition of impairment, 34 C.F.R. §104.3(j)(2)(i)(B), and learning is a major life activity. 34 C.F.R. §104.3(j)(2)(ii). Thus, the District knew that Student was suffering from an impairment that limited learning. The only question that the District could have had is whether this limitation was "substantial."

learning? I do not conclude that the District was on notice as soon as it learned that Student had a diagnosis of mental illness, on the present record. This was a child who never had been suspected of having a mental or emotional disorder during several years of schooling in the same District elementary school. (FF 2.) The initial diagnosis, moreover, was, by definition, a temporary disorder. (FF 4, 25.) Thus, the District reasonably could have concluded that the Student was suffering from a temporary emotional disorder that would soon subside enough that the Student could return to school and full time learning.

The Student, moreover, had been a competent and successful learner; the District reasonably could have concluded that homebound instruction for this child would be no more disruptive to learning than it would be for any other student for whom such a temporary disruption becomes necessary due to a temporary condition. There is no evidence of any complaint during the first period of homebound that suggested that the Student was unable to learn at home.

Thus, the District reasonably could have concluded that any limitation on learning inherent in the homebound instruction service was not "substantial" within the meaning of section 504. Therefore, I conclude that the District was not obligated to evaluate Student under section 504 when it first received the diagnosis and request for homebound instruction.

While the approval of homebound instruction for a temporary mental disability did not reach that threshold in my view, the request to extend homebound services for an additional ninety days, based upon a still-present mental disorder, should have raised a red flag for all District personnel involved in this matter. At this point, I conclude, the District was on notice that the Student's mental disorder was durable over time and was seriously interfering with Student's learning – if only because it was keeping Student out of school for more than ninety

days. (FF 5, 10.) The District's nurse in charge of approving homebound services admitted that it was highly unusual to extend homebound for an additional ninety days. (FF 5, 6.) Moreover, under the District's own policies, it should have convened a CSAP team by this time to evaluate the situation from a regular education point of view. (P-9.) There is no evidence that it did so.

Thus, by August 12, 2010, when it received the request for extension of homebound, the District should have suspected that Student's mental disorder constituted a disability that substantially limited Student's major life activity of learning. At that point, the District should have initiated a permission to evaluate form. If the District had done so, it is reasonable to conclude that it could have provided an evaluation report within sixty days of the first day of the 2010-2011 school year, or approximately November 1, 2010.

The preponderance of the evidence shows that the District should have initiated an evaluation within the time frame set forth above, and therefore failed to perform its duty to Student under section 504's child find and evaluation provisions. However, I conclude that the record, taken in its entirety, fails to prove that the Student was deprived of a FAPE under section 504 as a result of the District's failure to evaluate in a timely fashion. I base this conclusion upon three considerations.

First, the evidence is preponderant that the Parent was resisting the efforts of District officials to communicate with the behavioral health agency that was providing the psychiatric justification for Parent's request to extend homebound services. (FF 7, 13-16, 17, 19, 21, 22, 23, 25, 26, 27, 29.) Under these circumstances, I cannot take an inference that Parent would have consented to evaluation in August 2010. I note that Parent did consent to evaluation later, sometime after January 1, 2011. (FF 17.) However, weighing the evidence, I conclude that it is as likely as not that the Parent's consent to evaluate was for the purpose of bolstering Parent's

desire for a third extension of homebound services, at a time when the District was overtly considering terminating Student from homebound services. There is preponderant evidence that the Parent actively interfered with the evaluation, and limited contact with the behavioral services agency, when the evaluation was being done. An inference arises that the Parent was attempting to shape the evaluation to prove the need for a continuation of homebound services. This resulted in lengthy delays in the District's receipt of information needed to complete the evaluation. (FF 17, 26, 27.) Given this subsequent history of parental interference and attempted shaping of the evaluation eventually conducted by the District, I cannot conclude that the evaluation would have been completed by November 1, 2010, if a permission to evaluate had been sent to Parent in August.

Second, if the evaluation had been completed early, the record is preponderant that the same result would have obtained: ultimately, the Student was found not to have a disability that substantially interfered with Student's learning. The evaluation report of May 2011 so concluded. (FF 17, 22, 24, 25, 28, 29.) It was not until August 2011 that the District's evaluator revised the evaluation report based upon new information and recommended consideration of a section 504 service agreement for the sole purpose of addressing the Student's anxiety related to returning to school after a protracted absence. (FF 28.) If the evaluation report had been completed in November 2010, it is as likely as not that the conclusion would have been that there was no disability and that there was no need for a transition plan, since the period of absence from school would have been much smaller. I do not reach a conclusion that this would have been the result; I merely conclude that the evidence is not preponderant one way or the other, and that I cannot conclude that an earlier evaluation report would have resulted in section 504

eligibility. Thus, the Parent's assertion of causality - that delay in the evaluation resulted in a denial of FAPE - is not supported by a preponderance of the evidence on the complete record.

Third, there is no evidence at all that the Student's disability interfered with Student's ability to learn in the home setting, thus limiting Student's ability to benefit from the homebound services that are available to any District student upon the same criteria as applied to Student in this matter. The only need identified in the evaluation was the need for supports upon transition back to school. (FF 28.) Thus, there is no evidence that the delay in evaluation was in itself a failure to provide a FAPE. Any loss of educational services was caused, not by that delay, but by the Parent's vigorous pursuit of homebound instruction for Student over a lengthy period of time. (FF 4, 5, 7, 9, 14-16, 31, 32.)

Parent argues that the District's evaluation was inappropriate under the standards for evaluations set forth in the section 504 regulations. Parent points out that there were a number of flaws in the evaluation process. The evaluator did not consult Student's homebound teachers. (FF 212.) The evaluator did not have all of the psychiatric referral forms with medical information on them at the time of the first evaluation report in May 2011 (nevertheless the evaluator had reviewed one or more of those referrals, and was aware that Student had been diagnosed recently or contemporaneously with a mental disorder). (FF 20.) There was no classroom observation, though the evaluator did observe Student in the environment in which homebound services had been provided. (FF 19, 22.) The District did not have a section 504 plan in place for Student after it issued its evaluation report. (FF 33.)

In weighing all of the evidence, I must consider not only these flaws but also the circumstances under which the evaluation occurred. In particular, the Parent's interference with

the evaluator's efforts resulted in the evaluator's inability to obtain teacher feedback[7]. (FF 21.) Since homebound services had been stopped at the time of testing, the evaluator could not have observed Student being instructed in the home. Parent also precluded the development of a section 504 service agreement by withdrawing Student from the District prior to the 2011-2012 school year, and by failing to respond to requests for a transition planning meeting. (FF 32, 33.) Thus, I conclude that the asserted flaws in the evaluation were not due to negligence or lack of skill in performing an initial evaluation.

Moreover, I conclude that, despite these flaws, the evaluation fulfilled the requirements of the section 504 regulations summarized above. The evaluation was conducted by an experienced, trained and very qualified school psychologist. (FF 18.) There was no evidence that the evaluator failed to utilize valid test instruments or failed to administer them according the publisher's instructions. (FF 22.) The evaluation included a review of pertinent school and clinical records, interview with and written submissions by Parent, cognitive testing, achievement testing and partial[8] administration of a behavior inventory. (FF 19-28.) Testing was designed to assess specific areas of need in addition to assessment of Student's Intelligence Quotient. (FF 24.) Student was observed during a lengthy testing session. (FF 22.) Reasonable efforts were made to obtain input from teachers. (FF 21.) While adaptive behavior was not tested formally, the evaluator obtained information on Student's adaptive behavior through interviews with Parent and review of documentation. (FF 19, 20, 25, 26.) I conclude that the evaluation was appropriate under section 504.

[7] The evaluator did interview a former teacher who had some knowledge of Student several years before the evaluation, and tried to get feedback from the homebound teachers. (FF 19, 21.)
[8] The evaluator attempted to administer the full behavior inventory, but Parent blocked this attempt. (FF 23.)

CONCLUSION

I conclude that the District failed to comply with its child find obligations under section 504, by inappropriately delaying its evaluation of Student until after homebound services were discontinued. However, I conclude that this failure did not deprive Student of a FAPE, and that no compensatory education is due. I conclude that the District's evaluation was appropriate under section 504 standards. Any claims regarding issues that are not specifically addressed by this decision and order are denied and dismissed.[9]

ORDER

1. The District appropriately evaluated Student pursuant to section 504, with regard to identification of Student's educational needs, for purposes of programming during the relevant period of August 15, 2009 to September 6, 2011.

2. The District did not provide an inappropriate placement to Student during the relevant period pursuant to section 504.

3. The District offered and provided a free appropriate public education to Student during the relevant period pursuant to section 504.

4. The hearing officer will not order the District to provide compensatory education to Student for all or part of the relevant period.

William F. Culleton, Jr. Esq.

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WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

April 30, 2012

[9] Parent argues that the provision of homebound services was deficient in several respects, including the failure to provide the full two hours per week of instruction that the District's policies require, the failure of the homebound teachers to return any progress notes or grades, and an alleged failure to provide a timely [plan for transition back to school. In light of my conclusion that the District did not deny Student a FAPE under section 504, these alleged failures in the provision of homebound services do not implicate the hearing officer's jurisdiction, inasmuch as they are deficiencies in a regular education service.