

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

Student's Name: K.A.

Date of Birth: [redacted]

ODR No. 2705-11-12-KE

CLOSED HEARING

Parties to the Hearing:

Representative:

Parent

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Pen Argyl, PA 18072

Northampton Area School District
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Dates of Hearing:

March 23, 2012; June 6, 2012; June 8, 2012;
July 18, 2012; July 26, 2012; September 4,
2012; September 7, 2012; September 10,
2012

Record Closed:

September 14, 2012

Date of Decision:

September 23, 2012

Hearing Officer:

William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student named in the title page of this decision (Student) is an eligible resident of the school district named in the title page of this decision (District). Student presently attends a District high school, and is identified with Other Health Impairment and Specific Learning Disability pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 15-16.)

The Student's Parent, identified in the title page of this decision, requested due process under the IDEA, alleging that the District failed to provide a free appropriate public education (FAPE) and requesting both compensatory education and an order for prospective relief for the 2012-2013 school year. The District asserts that it has provided appropriate services, but that its efforts have been hampered by Parent's failure to cooperate in various respects.

The hearing was completed in eight sessions. I conclude that the District offered and provided a FAPE to student and that there is no basis for awarding compensatory or prospective relief.

ISSUES

1. Did the District fail to offer and provide Student with a FAPE from January 12, 2010 to the date of the last hearing session in this matter, September 10, 2012?
2. Should the hearing officer order the District to provide compensatory education to Student for all or any part of the period from January 12, 2010 to September 10, 2012?
3. Should the hearing officer order the District to provide a comprehensive transition assessment and plan, a functional behavioral assessment (FBA) and positive behavior support plan (PBSP), an assessment of reading, an appropriate individualized education program (IEP), one to one instruction in reading and mathematics, a one to one educational aide, or any other services needed by the Student?

FINDINGS OF FACT

1. Student suffers with a rare congenital disorder that affects [redacted]. This results in [redacted] and developmental delays, including, frequently, intellectual disability. (NT 426-428; J-16.)
2. District evaluations including cognitive test scores in 2001, 2002 and 2010 indicated extremely low to borderline intellectual functions, with uneven functioning in various sub-tests. Student's automatic cognitive processing is severely impaired. (J-16.)
3. Student's achievement in 2002 showed low average word reading skills, borderline reading comprehension skills, extremely low numerical operations skills, low average mathematics problem solving skills, low average spelling skills, and average written expression skills. (J-14.)
4. In 2010, achievement testing showed very low range skills in sight word recognition, phonics, and reading comprehension, very low mathematics calculation, fluency and reasoning, and very low writing skills. (J-16, 42.)
5. In 2010, the re-evaluation found that there was a significant discrepancy between Student's cognitive ability and achievement. The re-evaluation report concluded that Student's academic achievement testing reflected Student's cognitive weaknesses, particularly showing need in core curricular areas. (J-16.)
6. Emotional screening indicated that Student was experiencing some clinically significant emotional difficulties and was at risk for other emotional difficulties, and social skills testing showed average skills in communication, assertion, empathy and engagement. Social skills scores showed below average skills in cooperativeness, responsibility and self control. Student demonstrated moderately low adaptive skills. (J-14.)

ACADEMIC EDUCATION AND PLACEMENT (NEED FOR ONE TO ONE INSTRUCTION)

7. The Student's October 2009 IEP placed Student in supplemental learning support in the neighborhood school for research based programming in reading, writing, mathematics, science and social studies, with speech and language support, and related services of speech and language therapy and occupational therapy. (NT 1684-1686, 795-796; J-1.)
8. The Student's October 2009 IEP provided goals in word reading accuracy, reading comprehension, mathematics application and computation, and writing. (J-1.)
9. Specially designed instruction in the October 2009 IEP included modified curriculum, scribing answers in subjects other than writing, classroom positive reinforcement system, social skills intervention, and access to itinerant room for study hall. Specially designed instruction provided for extra time and other measures to accommodate any weakness or processing delays created by Student's congenital condition. (NT 828-829; J-1, 10.)

10. The District offered ESY services, six hours per week for six weeks, to concentrate upon word reading and reading comprehension skills. In April 2010, the IEP team increased the ESY services to add time for mathematics tutoring. (J-1, 10.)
11. In March 2010, the District offered modified goals in word reading, reading comprehension skills, mathematics computation and application, functional vocabulary and writing. The District added goals for reading fluency, banking, filling out a personal identification form, attention and classroom behavior. (J- 7.)
12. The District offered an IEP in October 2010 with placement in supplemental learning support for research based programming in core academics, with inclusion for electives with supplementary aids and services and related services including transportation, consultative occupational therapy and speech and language therapy. Services offered included ESY. (NT 1684-1686; J-19.)
13. The October 2010 IEP changed the benchmarks on the reading fluency goal, making them more incremental; reduced the achievement level for the writing goal; amended the mathematics computation and application goals; continued the same word reading, reading, comprehension skills, functional vocabulary, banking, personal identification form, behavior, attention goals; and added goals for personal responsibility and critical thinking. (NT 1694-1697; J-19.)
14. Specially designed instruction in the October 2010 IEP included direct instruction in reading, writing and mathematics, PBSP, instructional assistant in all classes and social skills intervention, and a second supplemental reading class each day. Specially designed instruction provided for extra time and other measures to accommodate any weakness or processing delays created by Student's congenital condition. (J-19.)
15. The October 2010 IEP was revised in March 2011 to change the reading comprehension and word reading goals to increase the grade level of reading material for reading probes to 5.6, due to Student's reaching the goals at the 3.5 and 4.0 grade levels. (J-26.)
16. The District offered an IEP in October 2011 that maintained Student's placement in learning support, research based specially designed instruction, related services and ESY services. Speech and language therapy services were doubled. Specially designed instruction provided for extra time and other measures to accommodate any weakness or processing delays created by Student's congenital condition. (NT 943, 946-948, 1684-1686; J-37.)
17. The October 2011 IEP increased the grade level of the reading comprehension [goal] to grade 7 from a baseline of grade 5.6; eliminated the word reading and fluency goals; increased the grade level of the application mathematics goal to grade 4, reformulated the writing goal; and continued the personal identification form, classroom behavior, on-task, and critical thinking goals. A social language goal was added. ESY was approved. Wilson reading instruction was offered and provided, and continues to be provided, in conjunction with a second program recommended by the Wilson program. (NT 1582-1583, 1667-1668, 1696-1697; J-37, S-45, 50.)

18. The IEP team met in January 2012 to revise the October 2011 IEP and revised the present levels of academic and functional performance. (NT 1684-1686; S-45.)
19. The District provided for supports and interventions as needed in response to [redacted] that might afflict Student during the school day. The District made efforts to obtain appropriate medical information about Student's condition, and at Parent's request, as well as in the course of its own management of the schools, it trained its staff regarding how to address [redacted] in the school setting. (NT 538-574; J-18, 42, S-36, 38, 41, 43, 48, 49, 59, 61, 62, 65, 69, 72, 73.)
20. Homework was not always sent home with reference to materials at Student's reading grade level; the teacher chose to send easier materials at times for reasons including the enhancement of motivation to attempt homework, and the need to build fluency through repetition. (NT 1643-1644.)
21. Student did not reach IEP word reading goals in the 2009-2010 school year; however, Student improved in reading comprehension skills, performing in most probes above the base line with third grade and 3.5 grade level materials read by teacher to Student. Student began reading 4.0 level reading materials at the end of the 2009-2010 school year or the beginning of the 2010-2011 school year. (NT 1397-1413, 1466-1467; J-1, 7, 8, 11, 13, 19.)
22. Student made progress in reading comprehension skills when material was read to Student, from January 2010 to June 2012. (NT 1697-1698; J-33, 37, S-18, 23, 24, 45, 50, 81.)
23. Student made progress in word reading from January 2010 to June 2012. (NT 1644-1645, 1664-1669, 1695-1700; J-7, 8, 13, 19, 26, 33, 37, S-20, 22, 23, 24, 40, 81.)
24. Student made progress in learning new functional vocabulary from January 2010 to [June 2010] in the 2009-2010 school year. (NT 1397-1413, 1466-1467, 1469-1475; J-1, 7, 11, 13, 26, S-11, S-20, S-24, 37.)
25. Student made limited progress in reading fluency from January 2010 to June 2010, and continued to make limited progress until June 2012. (NT 1663-1667, 1694-1697; J-19, 33, S-24, S-45.)
26. Student did not reach IEP mathematics goals in the 2009-2010 school year; Student made limited progress in mathematics computation and mathematics application at grade 4 level. (NT 805-817; J-1, 5, 8, 13.)
27. Student made some progress in computation and mathematics application between January 2010 and June 2012. (NT 818-820, 949-968, 979-990, 1009-1020; J-26, S-20, S-24, 26, 33, 40, 42, 45, 50, 80.)
28. Student made some progress in critical thinking in the 2010-2011 school year. (J-26.)

29. Student made some progress in functional vocabulary in the 2010-2011 school year. (J-26, S-24, 26.)
30. Student learned functional mathematical skills regarding personal banking. (J-19, 26.)
31. Student did not reach the IEP goal in writing in the 2008-2009 school year; Student made no progress or minimal progress in writing from January 2010 to October 2010. (NT 1645-1648; J-1, 13, 19, S-20.)
32. Student made limited progress in writing from January 2010 to June 2012. (NT 1646, 1702-1703, 1876-1884, 1930-31; J-13, 34, S-18, 24, 32, 40, 45, 50, 56.)

POST SECONDARY TRANSITION

33. The District provided comprehensive vocational evaluation through the Wide Range Interest and Occupations test, a vocational interest survey, as well as various informal assessments and inventories, including a learning style inventory in September 2010 and a work interest survey in October 2010. (NT 1085-1128; J-7, 19, S-13, 16.)
34. The District offered a vocational assessment through the vocational school but Parent did not agree to it. (S-12.)
35. Student completed an inventory on a software program called Career Cruiser during the 2011-2012 school year. (S-27.)
36. The October 2011 IEP offered a program of evaluation for transitional purposes called Planning Alternative Tomorrows with Hope (PATH). (J-37.)
37. The District held a PATH meeting with Student in December 2011. The process listed Student's strengths, preferences and interests: Student's relevant independent living skills; needed employment and independent living skills; and needs for continuing education, related services, and community experiences. The PATH process provided a step by step plan for acquiring information and skills needed to attain Student's vocational and community living goals. (J-38.)
38. The District recognized Student's desire to go to college, possible future needs for assisted living, and need for vocational training. The District offered placement in a vocational technical school for vocational training. (J-7.)
39. The March 2010 and subsequent IEPs offered a goal of competitive employment, identified relevant secondary-level courses, and enrolled Student in a course providing social skills teaching and real world mathematics skills, as well as assessment of daily living, social and occupational skills. The District provided supportive services including touring the vocational training program, counseling by a representative of the state vocational agency, and learning how to complete a personal identification form with

name, address, and other information. The District also provided referral information to Parent for additional services and agencies. (NT 1155-1165; 1166-1186; J-7, 19, S-45.)

40. Student made progress in the banking task in the 2009-2010 school year, but did not reach the IEP goal. (J-13, 37.)
41. Student made some progress in the personal identification form task, but did not reach the IEP goal. Student was unable to fill in Student's address on the form. (J-13, 26, 37, S-18, 23, 40, 45.)
42. Parent forbade Student from meeting with a vocational expert to discuss vocational programming, refused to permit Student to attend the vocational school, and forbade District staff from discussing vocational programming with Student. (NT 1298-1300, 1310-1313, 1742; J-17, 19.)

ASSISTIVE TECHNOLOGY

43. The Student's October 2009 IEP provided for use of [redacted] for Student's use of the computer as needed. (J-1.)
44. The District provided various assistive technologies to Student from January 2010 to September 2011, addressing Student's difficulties with writing, utilizing a keyboard, and reading. These included [redacted], graphic organizers, a reading pen, speech to text software, iPad, laptop, email and bookshare accounts. The District supported these technologies with staff training and assistance as appropriate. (NT 1701, 1776-1778; J-19, 31, 32, S-28, 30, 33, 53, 54, 57 p. 8.)
45. The District provided assistive technologies according to plans developed by a team of educators. (NT 1125-1142; S-35, 37, 44.)
46. The District made efforts to assess the usefulness of technology provided. (J-31, S-45.)

BEHAVIOR

47. The Student's October 2009 IEP did not note behaviors interfering with learning in the previous school marking periods. Nevertheless, the IEP appended an FBA addressing ongoing withdrawal and refraining from speaking behaviors. (J-1.)
48. The IEP was revised to recognize behaviors that impede learning in March 2010, and subsequent IEPs recognized this need. (J-7, 19.)
49. The Student's October 2009 IEP provided for positive reinforcement for behavior through the classroom system, as well as a behavior sheet that doubled as a homework assignment report for Parent. (NT 1659-1661; J-1.)

50. From January 2010 to June 2012, the Student's teachers were filling out a behavior log sheet that recorded respectful, on task and refusal behaviors on a three point scale, reporting in up to nine time divisions per day. The log was used also to communicate Student's homework to the Parent and [as] a communication vehicle between teachers and Parent. (J-7, 8, 9, S-2.)
51. From January 2010 through June 2012, in the vast majority of time divisions, teachers reported acceptable behavior and adequate attention to task. (J-7, 8, 9, 11, 12, 14, 21, S-2, 34, S-80, 82, 87, 88.)
52. Student's behavior improved from January 2010 to June 2012, but continued at a frequency and intensity sufficient to impede Student's learning. (J-13, 19, 26, 37.)
53. The classroom system in 2010 through 2012 provided for credits for good behavior with which students purchased rewards including use of computer. (J-7.)
54. The District offered a Positive Behavior Support Plan (PBSP) in March 2010 that included goals for demonstrating respectful and positive behaviors and on task behavior, replacement behaviors, consequences and data gathering. It included a variety of rewards for good behavior and Student's teachers tried various interventions. (NT 1659-1661; J-7, 8, 19, 37, 50.)
55. The 2011 PBSP reformulated the behavior of concern, and changed the consequences for unwanted behavior. (J-37.)
56. Student's behavior improved from November 2009 to June 2012, although there were periods of regression, especially in December 2010 and April 2011; Student's grades fell dramatically between January and April 2011, due to failure to complete assignments. (NT 1656, 1669-1679, 1685; J-8, 28, 29, S-24, 40, 50)
57. From January 2010 to June 2012, Student was repeatedly late, sometimes missing significant instruction during first period. Student's lateness increased over time, sometimes including all of the first period and part of the second period. (NT 1648-1655, 1778-1779; J-19, 20, 25, 27, 30, 31, 37, 63, S-83, 85, 86.)
58. Student' lateness was not due to Student's medication needs or medical condition. (NT 1648-1655; J-42, 45.)

SOCIAL SKILLS

59. The Student's October 2009 IEP provided for social skills intervention as a specially designed instruction. (J-1, 7.)
60. Student experienced increasing social difficulties from January 2010 to June 2012. (J-11, 12, 17, 22, 23, 24, 25, 27, 30, 31, 37, S-43.)

61. District educators addressed these difficulties by direct teaching of problem solving steps and discussion and development of “social stories” or “scripts” with Student’s participation, including this teaching as a specially designed instruction in the revised October 2011 IEP. (S-40, 45, 71.)
62. Student has demonstrated some progress in learning the skills of problem solving and social communication. (S-45, 50, 51.)

PARENTAL PARTICIPATION AND COOPERATION

63. The 2010 evaluation results were provided with some caution, especially regarding emotional screening, because Parent did not return questionnaires, including the emotional functioning protocols, and thus provided no input into the re-evaluation. (J-14, 19, S-9, 10.)
64. Parent missed IEP and other planning meetings, which were held without Parent on some occasions. (NT 1124; J-7, 8, 32, S-21, 31, 67.)
65. For several years, Parent indicated to school personnel that Student’s frequent lateness was due to the schedule for administering medication. In December 2011, Student’s neurologist indicated in a note that there was no medical reason for Student’s lateness. (J-42.)
66. Parent often returned behavior logs or wrote messages with accusations that District personnel were not treating Student fairly or were failing to respond appropriately to Student’s alleged complaints and needs. Many of these accusations were based upon what the Student had told Parent. Some comments questioned staff competence; some challenged school rules. In most cases, District staff followed up on Parent’s accusations and responded in writing, finding that the allegations were untrue. (NT 1677, 1752, 1757-1758; J-3, 4, 9, 11, 12, 17, 21, 22, 24, 27, 30, S-34, 43, 57 p. 14-20, 79, 80, 169, S-72, 73, 83 p. 32, 34.)
67. Parent often delayed returning signed papers as requested by Student’s teachers. (NT 1730-1731; J-9, 11, 12, 17, 22, 23, 24, 25, 27, 30, 31, S-34, 57.)

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 (which in this matter is the hearing officer).¹ 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 evidence² that the other party failed to fulfill its legal obligations as alleged in the due process complaint. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006).

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 this matter, the Parent requested due process and the burden of proof is allocated to the Parent. The Parent bears the burden of persuasion that the District failed to comply with its obligations under the IDEA. If the Parent fails to produce a preponderance of evidence in support of Parent’s claims, or if the evidence is in “equipoise”, then the Parent cannot prevail.

FREE APPROPRIATE PUBLIC EDUCATION - LEGAL STANDARD

The IDEA requires that a state receiving federal education funding provide a “free appropriate public education” (FAPE) to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). School districts provide a FAPE by designing and administering a program of

¹ 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.

² 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.

individualized instruction that is set forth in an Individualized Education Plan (“IEP”). 20 U.S.C. § 1414(d). The IEP must be “reasonably calculated” to enable the child to receive “meaningful educational benefits” in light of the student's “intellectual potential.” Shore Reg'l High Sch. Bd. of Ed. v. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182-85 (3d Cir.1988)); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3rd Cir. 2009), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009).

“Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a “trivial” or “de minimis” educational benefit. M.C. v. Central Regional School District, 81 F.3d 389, 396 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 (3rd Cir. 1988).

Under the Supreme Court’s interpretation of the IDEA in Rowley and other relevant cases, however, a school district is not necessarily required to provide the best possible program to a student, or to maximize the student’s potential. Rather, an IEP must provide a “basic floor of opportunity” – it is not required to provide the “optimal level of services.” Mary Courtney T.

v. School District of Philadelphia, 575 F.3d at 251; Carlisle Area School District v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. Carlisle Area School v. Scott P., 62 F.3d 520, (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) Its appropriateness must be determined as of the time it was made, and the reasonableness of the school district's offered program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010).

ACADEMIC EDUCATION AND PLACEMENT (NEED FOR ONE TO ONE INSTRUCTION)

I conclude that the District offered and provided educational programs that meet the above requirements of the IDEA. All of the IEPs during the relevant period, January 2010 to September 2012, provided for research based programming to address the Student's educational needs as identified in the most recent evaluation report. (FF 7-18.) These educational plans addressed Student's reading decoding, fluency and comprehension needs. They addressed functional vocabulary. They addressed mathematics calculation and application of skills to real world problems. They provided for teaching of functional mathematics skills. They addressed writing. They addressed Student's social skills, both in terms of speech pragmatics and higher level problem solving and relationship building. They addressed post secondary transition. In short, these educational plans and the programs that implemented them took on a broad range of educational needs.

The District provided Student with special education and related services that were reasonably calculated to provide Student with a basic floor of opportunity to benefit from the District's curriculum at grade levels appropriate to Student's abilities. (FF 9, 12, 14, 16, 17, 19.) These included learning support classroom programming for most of Student's school day, with specially designed instruction that included curriculum modification, modified techniques of delivering instruction that were individualized to Student's specific needs, and supplementary aids and services provided in general education classes to allow for meaningful inclusion in general education.

The District utilized the full range of educational programming and supports available. It provided qualified and state certified teachers with extensive experience and learning in special education techniques, who repeatedly utilized those techniques in the classroom for Student's benefit; speech and language services that provided direct and small group instruction in vocabulary, problem solving, critical thinking and social communication; and assistive technology systematically introduced and assessed for effectiveness.

The District made a reasonable effort to address any needs arising from [redacted] that Student might be experiencing, as well as needs arising from medication side effects or health disturbances caused by Student's congenital condition. (FF 1-6, 19.)

Although as noted above, lack of progress does not necessarily prove a failure to provide a FAPE, Parent argues that the District did not provide a FAPE because Student did not make meaningful progress during the relevant period between January 2010 and September 2012. I conclude to the contrary: by a preponderance of the evidence, Student did make meaningful progress in all areas of educational need during that time period.

The record shows preponderantly that Student made progress in all core academic areas – reading, writing and mathematics. (FF 21-32.) This progress, especially in Student’s 2009-2010 school year, was very limited; in all these areas, progress was either non-existent or minimal in the first half of the year, but then began to emerge according to the data as the year progressed. The record shows more palpable evidence of progress in the next two years, although Student continued to achieve far below the achievement of age level peers. I conclude that this plainly modest degree of progress was meaningful for this Student.

In reaching this conclusion, I keep in mind that Student’s level of cognitive ability was very low, due to Student’s congenital [redacted] condition. (FF 1-6.) As noted above, progress is to be judged under the IDEA in view of the child’s level of ability. Here, that level is very low, and Student’s rate of acquisition of knowledge and skill can be expected to be very low as well. Even Student’s long time neurologist suggested that it is appropriate to refrain from holding Student to excessively high expectations. Thus, it is reasonable to expect modest progress, and unreasonable to hold the District to a standard requiring them to close the achievement gap rapidly in terms of grade levels of competence. In sum, I conclude that Student’s modest growth during the relevant period was meaningful, both to Student and in terms of assessing whether or not the District has met its obligations under the IDEA.

I also take into consideration that Student had entered the high school only recently when the relevant period began, and that staff and Student needed some time to become familiar with each other. This was especially a problem for Student because Student exhibited behaviors including times when Student would simply stop functioning unexpectedly and not respond to any entreaties from teachers or other staff. (FF 47, 48, 50, 51.) Student’s behaviors also included chronic lateness, which seriously impeded progress by rendering Student unavailable

for instruction for cumulatively large amounts of time. (FF 57.) With these behaviors interfering with Student's educational progress, I conclude that progress was delayed despite the appropriateness of the District's program.

This behavior of Student had not been considered severe enough to interfere with educational progress, so District programming in response to it could not have been expected at the outset of 2009-2010 school year. (FF 47.) As noted above, the District's provision of services is to be judged as of the time – and considering the information available to the District at the time – of the offer of special education services. I conclude that the educational plan met the IDEA's standards as of the time of its creation and inception in the classroom.

I also find that the District responded to new experiences – including Student's "shut down" behaviors – in a reasonable fashion and without undue delay. Within the first IEP period in that year, the District conducted a functional behavioral assessment and put in place an individualized behavior plan for Student – in addition to the class-wide behavior system already in place for all students in the learning support classroom where Student spent most of the school day. (FF 48.) The District also responded to the chronic lateness, attempting various strategies, including positive, motivational approaches. (FF 50, 51, 57, 58.) In consequence, I conclude that any slowness of progress in that year was attributable, not to programming defects, but to the evolving challenges posed by Student's limited cognitive ability in combination with Student's increasing behaviors that impeded learning.

I also consider the persuasive evidence that the District's efforts were impeded by Parent's substantial lack of cooperation and problematic level of defensiveness regarding the District's efforts to address Student's behaviors. Parent missed meetings or caused delays in scheduling, and often failed to return documents calling for Parent's signature to such an extent

that the delays impeded the District's efforts to deal with Student's behaviors. (FF 63, 64, 67.) Parent contributed to a growing adversarial atmosphere as time unfolded, sending numerous messages suggesting that the Student's special education teacher was inadequately skilled or needed micro-management with regard to Student by the Parent, who has not established any evidence of educational experience or expertise sufficient to justify such intervention. (FF 50, 51, 66.)

Parent told the District that Student's chronic lateness was caused by a necessary schedule of medicating Student as ordered by Student's neurologist. (FF 65.) While the District attempted to communicate with the neurologist, there was no communication until the neurologist sent two notes, one of which stated that the Student should be expected to attend school on time, thus undercutting the Parent's previous assertions. When confronted with this, Parent then began to assert that the Student was late because Student did not want to go to school, due to the negative atmosphere there. This sequence of events is an example of how Parent's lack of cooperation delayed or reduced the effectiveness of the District's efforts to address Student's behaviors that impeded learning.

Parent asserts that the District was at fault for Student's slow progress; however, Parent did not present sufficient persuasive evidence to prove that assertion by a preponderance of the evidence of record. Parent's evidence consisted of Parent's testimony, that of Student, and a large volume of documents including the Student's educational record and additional correspondence, work sheets, and other information. I listened to the testimony, reviewed all of the documents, and carefully reviewed progress reports in light of the District's expert educators' explanations and characterizations of their meaning. I am not persuaded by Parent's arguments.

Parent also argued that Student received little homework and was unable to do the homework received; Parent concludes from the latter that Student was being instructed at a grade level far above Student's capability, causing Student frustration and consequent escalation in "shut down" behavior. This, Parent argues, is what caused the slow progress.

In evaluating these assertions, I considered the credibility of the witnesses. As discussed above, I find that the first pillar of Parent's case, Parent's testimony itself, is to be accorded reduced weight – that is, it is of limited persuasiveness. Parent's own actions, in particular with regard to the cause of Student's lateness, demonstrated that Parent's personal attestations are to be viewed with some caution. In addition to the reasons given above, I also note that most of Parent's conclusions were reached on the basis of Student's statements at home as Parent reviewed various incidents with Student. Parent did not exercise measured judgment as to the weight to be accorded to such hearsay from a child in Student's circumstances; rather, Parent simply took the part of Student in disputes with Student's teachers. This detracts from my confidence in the reliability of Parent's testimony.

Similarly, the Student's testimony must be given reduced weight, due to Student's age, cognitive limitations and history of manipulative behavior as proved in this record. The record reflected that Student is not always a reliable historian of events, often if not always through no fault of Student's own.

The documentary evidence provided ample evidence contrary to Parent's assertions. As noted above, careful review of the progress record discloses modest progress in all areas addressed by the IEP, thus corroborating the District's witnesses' more subjective opinions that Student made progress in the relevant period. I read the documents and statistics in this light. They corroborate and confirm the reliability of the witnesses' unanimous opinions in the record

to the effect that Student made progress in all areas, albeit modest and uneven progress during the relevant period of time. Moreover, the evidence corroborates District testimonial evidence across the board, regarding the efforts of the educators to address Student's educational needs.

In sum, I credit and find persuasive the evidence that the District provided a plan and services reasonably calculated to provide Student with meaningful educational benefit. In contrast, the Parent's many assertions as to deficiencies in the District's plan and its implementation, are either unpersuasive or positively contradicted. I so conclude with regard to Parent's assertions that: homework assignments were inappropriate, (FF 20), classroom instruction was at an inappropriate grade level of difficulty, teachers failed to provide Student with a "jump start" to begin work (needed due to Student's slow processing speed), there was too much repetition and too little new material or programming (leading to Student boredom and bad behavior), instruction was not research based, dictation was substituted for teaching Student to write, occupational therapy was delayed, contributing to Student's delayed writing, reading to Student for comprehension skills purposes inappropriately compromised word reading accuracy and fluency, Parent was not informed of Student's classroom program and progress, reading materials were at an inappropriately low level of difficulty, there was inadequate one to one educational aide service and one to one instruction, Wilson services were delayed too long, teachers were unresponsive to Parent's and Student's requests for help or information, ESY reading curriculum was inappropriately low in difficulty, and extra time was not given for writing.

TRANSITION

Parent argues that the District's efforts depicted above failed to provide a FAPE because the District failed to include in the IEP an appropriate post secondary transition plan. Although this allegation on its face may be characterized as asserting a procedural deficiency in the IEP, I find it unpersuasive based upon the entire record, both as to the content of the IEPs in the relevant period, and also as to the actual provision of services. I conclude that the Student's IEPs and the District's services met the standards of the IDEA.

Procedurally, the IDEA requires that every IEP of a child of designated age must include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills." 20 U.S.C. §1414(d)(1)(A)(i)(VIII)(aa). The IEP must also include "the transition services ... needed to assist the child in reaching those goals" 20 U.S.C. §1414(d)(1)(A)(i)(VIII)(bb). The IDEA specifies that this requirement does not require an IEP team to repeat any information in the IEP in any transition section of the IEP. 20 U.S.C. §1414(d)(1)(A)(ii). In Pennsylvania, transition services must begin at age 14. 22 Pa. Code §14.131(a)(5).

Transition services must be coordinated activities designed to be within a results oriented process that is focused on improving the child's academic and functional achievement and that facilitate the child's movement from school to the community. It must be based upon the child's individual needs, taking into account the child's strengths, preferences and interests. 34 C.F.R. §300.43. Services may include instruction, related services, community experiences, development of employment objectives or other post- school objectives and daily living skills. Ibid. The transition plan is not required to drive the goals in the rest of the IEP, nor must it guarantee a vocational result; rather, it is meant to provide the child with an opportunity to

advance toward desired post-secondary goals. High v. Exeter Twp. Sch. Dist., 2010 WL 363832 (E.D. Pa. 2010).

The District's IEPs after 2009 met these standards. Contrary to parent's argument, the District provided extensive and comprehensive assessment of Student's post secondary transition needs, measurable goals and services and activities to help Student attain the goals. (FF 33-42.) Therefore, there was no denial of a FAPE.

The March 2009 IEP appears not to have fulfilled all of the procedural requirements of the IDEA. However, I was not asked to reach a conclusion on the appropriateness of the 2009 IEP on its face, since it occurred prior to the start of the relevant period, and I reach no conclusion on the question. I do conclude, nevertheless, that any procedural deficiency in the 2009 transition plan had no impact upon the provision of appropriate transitional services during the January 2010 to June 2010 period of time, nor did any such deficiency deprive Student of a FAPE.

The March 2010 IEP, by contrast, complied with the IDEA's procedural requirements. It listed Student's general post secondary goals; incorporated the measurable goals of the rest of the IEP as part of the plan; and listed transitional activities, including a transitional course with instruction in pragmatic academic and developmental skills, and concrete steps to explore vocational training. This present levels section of the IEP showed that these activities were based upon a Wide Range Interest and Occupation Test given to Student before March 2010, as well as an offer of a vocational screening offered by the local vocational school, both reflected in the March 2010 IEP; this fulfilled the IDEA requirement of a comprehensive assessment.

The October 2010 IEP reflected additional informal vocational assessments and their results. It incorporated Student's vocational goals and offered vocational programming at the

vocational school. It listed action steps to be taken, including continued enrollment in the transitional class at the high school.

The January 2012 IEP revision reflected Student's enrollment in a culinary arts course, continued participation in the transitional course, goals related to transitional activities, additional assessments and inventories, and engagement in a vocational assessment and planning process. Again, the District offered and provided comprehensive assessment and services directed at employment and functional needs.

In addition to procedural compliance during the relevant period, as depicted above, the District provided substantive services that meet the above standards. It offered a series of vocational interest and aptitude instruments within the relevant period of time. It incorporated by reference academic and functional goals related to Student's vocational goals and future community living needs. It provided a list of services and activities in furtherance of the Student's goals. Programming was coordinated through the vocational class in which Student participated. Thus, the District offered a comprehensive transitional program to Student and it did not deny FAPE to Student or to Parent.

ASSISTIVE TECHNOLOGY

Parent asserts that the District failed to provide Student with a FAPE because it did not provide appropriate assistive technology. Parent asserts that there was no appropriate assessment or plan, that the technology tried did not help Student, that there was no technology to help Student with reading, and that trials of devices were inadequate to test their efficacy.

I conclude that the District did not fail to provide a FAPE due to a failure to provide assistive technology. The IDEA requires an educational plan to include the use of assistive

technology, and it sets standards for how technology is used. 34 C.F.R. §300.105; 34 C.F.R. §300.5; 34 C.F.R. §300.6. The District was obligated to evaluate Student's need for assistive technology, provide and customize the device to Student's needs, coordinate its use with other services, and support its use through training Student, Parent or staff as necessary. 34 C.F.R. §300.106. The District did these things.

The record is preponderant that the District assessed Student's need for assistive technology and acquired devices aimed at helping to accommodate Student's disabilities in the school setting. (FF 43-46.) For reading, the District provided a reading pen, as well as electronic sources of reading material. For writing, the District provided speech to text devices and software, as well as an iPad. Various educational software products were provided for motivational and educational purposes.

Parent argues that the District did not engage in an adequate assessment and planning process. The record shows that there was an assessment and planning process; the IDEA does not prescribe in detail how this is to be done, and the record does not establish preponderantly that the District's process was inadequate.

The Parent argues that the assistive technology provided did not help Student, and that trials were inadequate. The IDEA does not specify that trials must be successful or that trials must be for a specified length of time. Indeed, several devices did not help because Student chose not to utilize them. Educators made judgments about the length and intensity of the trials and the record discloses no reason to question those judgments.

BEHAVIOR

As discussed above, I conclude that the District addressed Student's behaviors that impeded learning with appropriate interventions. (FF 47-58.) Parent argues that those interventions were inappropriate. I conclude to the contrary.

Parent argues that the District's personnel took a predominantly negative approach to Student's behaviors. I find that parent's evidence on this was not preponderant or convincing. Parent's evidence consisted of Parent's and Student's testimony, which I accord limited weight for reasons set forth above. Parent's opinions were based upon Parent's own subjective interpretation of words and phrases that were used by educators in the behavior logs to characterize Student's behavior for purposes of reporting to adults. I do not find these parental interpretations to be persuasive. To the extent that the language in these logs was communicated to Student, Parent's characterization provides no persuasive basis to conclude that the educators were undermining the effectiveness of their own positive behavior support plans by communicating negative concepts of emotions to Student. Thus, the record supports the efficacy of the District's behavioral interventions, based upon the expert opinion of the educators who implemented those plans, and corroborated by documentary evidence. Parent has failed to prove such undermining by a preponderance of the evidence.

Parent argues that the District's educators further undermined the efficacy of their behavioral interventions by unnecessary concerns about Student [redacted] at school. On the contrary, I find that the educators made reasonable efforts to obtain relevant medical information and advice about Student specifically, and trained the staff working with student appropriately. Interventions based upon [redacted] were performed according to protocols and sound practice. Again, Parent has failed to prove any deficiency in the District's interventions.

Parent argues that the District failed to intervene effectively to curb Student's lateness. As discussed above, I conclude that the District made reasonable efforts, including motivational efforts, to address this. I also find that Parent's own behavior impeded the District's efforts, as discussed above. Therefore, Parent has failed to prove that Student's lateness was the direct and substantial result of any deficiency in the District's interventions regarding lateness.

Parent argues that the District failed to provide appropriate FBA and PBSP during the relevant period. Again, I find that the record is to the contrary. The District provided more than one FBA, and it adjusted the wording in the second one; thus, the record does not support Parent's allegation that the same FBA was continued from year to year without change in the face of ineffectiveness. While data keeping was not facially state of the art, it permitted meaningful charting of the frequency of Student's behaviors over time – enough to show some improvement and point to areas that needed to be addressed further. Moreover, I find that the District's interventions were at least partially effective, in that Student's behaviors did improve somewhat, though not to the extent desired. On balance, the record does not sustain Parent's argument for deficient behavioral planning by a preponderance of the evidence, because the District's program was somewhat effective, in the face of notable difficulties engendered in part by Parent's behavior.

Parent argues that the District's program was ineffective because Student did not understand the rewards available for good behavior. The record disproves this allegation preponderantly. Student knew what the rewards were and actively sought them out.

Parent argues that student's behavior is caused by Student's cognitive deficiencies – that all shut down behavior is the product of Student's slow processing speed. Parent's own beliefs in this regard are unpersuasive; thus, Parent has failed to prove this argument. Moreover, the

District presented expert evidence that, as a general matter, Student's neurological condition should not be expected to cause refusal and lack of cooperation. District educators, who know the Student, proffered the opinion that Student's behaviors were not the product of Student's neurological condition. In sum, the evidence is not preponderant that the District's interventions were misdirected because they mistook the causes of Student's behavior³.

SOCIAL SKILLS

Parent argued that the District denied Student a FAPE by failing to provide appropriate services to address Student's needs in the areas of social communication and social skills. Again, I find Parent's evidence on this allegation to be unpersuasive. Clearly, the preponderance of the evidence is to the contrary. (FF 59-62.) The District provided explicit, individual and small group teaching of social communication and pragmatics, and Student showed some progress. It intervened in social problems between Student and peers by helping Student learn to address Student's behaviors in social situations. There is no evidence that the District denied Student a FAPE with regard to social skills.

CREDIBILITY

The above findings and conclusions are based in part on my assessment of the reliability of the witnesses and the weight to be accorded to their testimony. For the most part, I also found the witnesses reliable, except where noted above.

³ Parent's argument is undermined further by the fact that Student's behaviors evolved from simple refusals and "shut down" behaviors to oppositional and disrespectful behaviors. Parent failed to show how such disrespectful behaviors might have been linked to processing speed.

CONCLUSION

In sum, I conclude that the District did not fail to provide Student with a FAPE during the relevant period of time. Therefore, no compensatory education is due, and an order for prospective relief is not necessary or appropriate. Any claims regarding issues that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. The District did not fail to offer or provide Student with a FAPE from January 12, 2010 to the date of the last hearing session in this matter, September 10, 2012.
2. The hearing officer will not order the District to provide compensatory education to Student for all or any part of the period from January 12, 2010 to September 10, 2012.
3. The hearing officer will not order prospective relief.

William F. Culleton, Jr. Esq.

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

September 23, 2012