

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 Final Decision and Order

CLOSED HEARING

ODR File Number:

22366-18-19

Child's Name:

D.W.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

December 19, 2019

BACKGROUND

The parents filed a due process complaint alleging that the school district denied a free and appropriate public education to the student for the 2017 – 2018 and the 2018 – 2019 school years, based on substantive and procedural claims. In addition, the parents allege that the school district denied the student a free and appropriate public education because it improperly graduated the student and exited the student from special education. I find that the parents have not proven that the school district denied a free and appropriate public education to the student for the 2017 – 2018 and 2018 – 2019 school years, and I find that the parents have not proven that the school district denied a free appropriate public education to the student by graduating the student and exiting the student from special education.

PROCEDURAL HISTORY

The parties compiled a large record. The parties presented the testimony of 12 witnesses over two days of hearing. In addition, 25 exhibits were admitted on behalf of the school district and 26 exhibits were admitted on behalf of the parents. Counsel for the parties failed to enter into any stipulations of fact, partly explaining the very large administrative record in this case.

After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented

herein. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

Counsel were asked prior to the hearing to provide a bulleted list of issues. Counsel for each party complied. The following issues were presented by this complaint:

1. Whether the parents have proven that the school district denied a free and appropriate public education to the student for the 2017 – 2018 and 2018 – 2019 school years?
2. Whether the parents have proven that the school district denied a free and appropriate public education to the student by graduating the student and exiting the student from special education?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact:¹

1. The student's date of birth is [redacted]. (P-1)
2. At the time of the hearing, the student had completed the student's 12th grade school year during the 2018 – 2019 school year at a high school in the district. (P-1)

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

3. The student has a specific learning disability in the areas of reading, writing and math. The student has issues with executive functioning and working memory. A deficit in working memory means that the student will struggle with information in the short term, but not in the long term, after the student has had a chance to encode the material. (S-1;S-6; NT 173, 254 – 256, 720 – 723)
4. During the 9th through 12th grades, the district provided the student with the Wilson reading program, a research-based reading program. The student received Wilson instruction one on one with a certified instructor. The student did very well in the Wilson reading program, meeting the requirements to complete the program. (S-13; S-24; NT 516 – 520, 525 – 528)
5. The student and the student's Wilson reading instructor had a good rapport. The student told the Wilson reading teacher that the student desired to go to college to become a medical examiner. The student also told the Wilson reading teacher at least six times that the school district was going to pay for the student's college education. (NT 537 – 554)
6. The student had an independent neuropsychological evaluation from March 13 through May 10, 2017. The evaluator found that the student met the criteria for specific learning disability in reading. The evaluator found that the student did not meet the criteria for other health impairment. The evaluator also found that the student has an unspecified anxiety disorder. The evaluator recommended that the student continue to receive specially designed instruction and academic executive function support. The evaluator recommended intervention in reading. The evaluator recommended instruction to improve the student's writing skills. The evaluator also made

recommendations for the family involving tutoring, private therapy, and a follow-up with an ophthalmologist. (P-15)

7. On March 15, 2017 an individualized educational plan was developed for the student's 11th grade school year which contained measurable goals for reading and writing and contained transition goals and services aimed at assisting the student to attend a four-year college program and pursue study as a medical examiner. The student was in the general education classroom approximately 83% of the school day. The student's IEP also provided the student with numerous specially designed instruction relating to auditory processing, executive functioning, working memory, reading and writing. (S-5; NT 256 – 257)
8. The student's IEP was revised on May 16, 2017 and October 31, 2017. (P-7; P-6)
9. Each year, the student's teachers at the high school recommended that the student be placed in college prep or honors courses. (S-21; NT 631 – 635)
10. The student's teachers did not make any modifications to the curriculum or the course requirements for the student. The student used the same course materials and took the same curriculum as all other students. (NT 415, 560, 573 – 574, 607, 699 - 701)
11. The student's teachers implemented the student's IEP in all material respects. The student's teachers provided the specially designed instruction and accommodations called for by the student's IEP. (NT 443-454, 565 – 566, 575 – 586, 612 – 613, 706 – 707; S-6; S-8)
12. On some occasions, the student would refuse an accommodation or specially designed instruction, for example, when the student refused to do examinations on different colored paper as required by the

student's IEP. The student's refusal of the student's IEP components generally ceased after the fall of the student's 11th grade school year. (S-19; NT 157-160; 584, 639, 641 – 643)

13. During the 11th grade, the student expressed a belief that the student no longer needed a writing support course. The school district administered the test of written language (TOWL) to determine whether the student still needed special education instruction in writing. TOWL uses grade-based norms. It measures grammar, punctuation, spelling and all components of written expression. The student earned average scores on all composites of the TOWL except for punctuation, where the student's score was one point below the average range. The student's composite score was 106, which is a standard deviation higher than the score of 84 that the student received on the test in 2016. (S-16; S-1; S-5; P-6; NT 271 – 273, 299, 685 – 687; 726-732)
14. The student informed the student's guidance counselors and teachers in 9th or 10th grade that the student wanted to become a medical examiner when the student graduated from college. The student's counselor for 11th and 12th grade frequently strategized with the student concerning how best to reach the student's goal of becoming a medical examiner. (NT 624-626; S-6)
15. The student's 11th grade physics teacher recommended that the student take honors level anatomy and physiology for the student's 12th grade science course because he was aware of the student's interest in becoming a medical examiner. (NT 587 – 590)
16. In March of 2018, the student's counselor asked the student for a list of colleges that the student was considering attending, and the

counselor provided a list of the Office of Disability Services available at each of those colleges. (NT 626 – 628)

17. On March 13, 2018, an IEP meeting was held and an IEP was developed for the student's 12th grade school year, the 2018 – 2019 school year. The IEP team discussed the student's transition goals, including the student's goal to become a medical examiner and the steps and schooling necessary to achieve the student's transition goal. (S-6; NT 627)
18. The student's IEP for the 12th grade school year contains measurable goals for reading and written expression, as well as numerous accommodations and specially designed instruction. The student was in the general education environment for approximately 89% of the school day. (S-6)
19. The student's IEP team recommended that the student use an FM system to improve listening and focus/attention on verbal instruction in the classroom setting. The school district made an FM system available to the student and trained the student in its use. The student told the school district staff that the student did not need to use the FM system in most of the student's classes. (S-6; NT 130 – 131)
20. The student struggled with a paper on Communism for English class in January and February 2019. [redacted] The student's English teacher helped the student complete the paper by using a series of guided questions. (P-24; S-25; S-20; NT 427-432, 58-82, 108-113)
21. During the student's 12th grade school year, the student's case manager checked the student's progress in all courses. The student's writing skills were appropriate and on par with a 12th grade student transitioning to college. None of the student's teachers expressed

- concerns about the student's progress. The student had made progress on IEP goals in high school. (NT 681 – 690; S-7; S-13; S-15)
22. During the 12th grade, the student attended an organization lab course. This course functioned as an executive function class, taught by a learning support teacher. In the class, students worked on completing course materials and on organization. The organization lab teacher did not have any concerns concerning the student's ability to meet the student's course requirements or the student's ability to read and write. (NT 269, 682 – 683)
 23. The student earned proficient scores on the Keystone exams for algebra, biology, and literature. (S-9; NT 442 – 443)
 24. The student's case manager met with the student during the 12th grade year to review and prepare the student's senior summary of academic performance. The student did not express to the case manager any concerns about graduating or feeling unprepared for college. (NT 680 – 682; P-1)
 25. An IEP meeting was held for the student on March 6, 2019. The student was then scheduled to graduate in June of 2019, and neither the parent nor the student discussed any concerns about the student graduating in June. (S-9; NT 279)
 26. The student passed all of the classes that the student took in high school. In 11th grade, the student received grades of A in Algebra III, Trigonometry, Dance, Developmental Literacy, Digital Photography and Physics. The student received B grades in U.S. History and Peace and Conflict. The student received a C grade in [foreign language] and a grade of P in Writing Foundations Lab. In 12th grade, the student received A grades in Developmental Literacy, Dance, and Art Major. The student received a B grade in 12th grade English. The student

received C grades in Probability/Statistics, Honors Anatomy and Physiology, and American Government/ Sociology. The student received P grades in Organization Lab and Graduation Project. (S-12)

27. The student's teachers, counselors, and case manager did not observe any behavioral issues that would hinder the student at college. The student had become a good self-advocate over the course of the student's time in high school. (NT 542 – 543, 642 – 644, 689 – 690)
28. The student's reading teacher reviewed a number of the student's writing assignments and believes that the student is capable of doing any writing assignment the student would need to do in college. The student's reading teacher found that the student's difficulties with writing had more to do with the student's lack of interest in the topic about which the student was writing rather than the student's writing ability. (NT 547 – 549)
29. The student's teachers, counselors and case manager agreed that the student was ready to graduate. The student is intelligent, performed well academically in difficult classes and mastered IEP goals. (S-12; NT 564 – 565, 676 – 680, 689 – 691, 708 – 709, 743 – 745)
30. On May 24, 2019, the school district issued a Summary of Academic Achievement and Functional Performance to the student. The summary included the student's academic achievement in the accommodations that the student received, as well as a listing of the student's grades and Keystone test scores. The document includes recommended accommodations for post-secondary education, as well as the names, addresses and contact information for the disability services offices, as well as the directors of those offices, at both of the colleges to which the student was accepted. The student's case manager discussed the summary with the student. (P-1; S-12; NT 679 – 680)

31. On May 24, 2019, an IEP meeting was held to discuss the student exiting special education and graduating. The mother raised a concern that the student might not get along with tutors provided by a college. The mother also raised concerns about the student not having a support system in place at a college. The student's counselor informed the mother at the meeting that supports would be available to the student at a college through the college disability office that the counselor had previously identified for the student and parents. (S-9; NT 456, 659)
32. Shortly after the May 24, 2019 IEP meeting, the student told the student's English teacher that the student's parents wanted the school district to pay for tutoring for the student while the student attended college. (NT 443 – 444)
33. On May 29, 2019, the school district issued a Notice of Recommended Educational Placement stating that the student will graduate with the student's classmates in June 2019. The document states that the student had met all graduation requirements and IEP goals and that there are no new areas of need identified through progress monitoring data, and therefore, a 13th year of education is not warranted. The student was eligible for a regular diploma. The team recommended that the student graduate on June 6, 2019. (S-9)
34. The student was accepted by one college and placed on a wait list for a second college. Later, the wait list designation was changed to undecided, which means that the student would be admitted to the second college but not necessarily in the student's choice of major. (NT 30 – 33)

35. The Office of Disabilities at the two colleges to which the student was accepted offered numerous accommodations to address the student's disabilities. (NT 313 – 314)
36. The student was assessed by Lindamood Bell on August 1, 2019. The evaluator used version number 3 of the Woodcock Reading Mastery test, which is outdated and has been replaced by a later version. The results of that assessment are not reliable or valid. The evaluator administered the Gray Oral Reading Test. The scores on the GORT test are reported incorrectly, raising questions about the reliability and validity of the results. The parents did not share the Lindamood Bell evaluation report with the school district until after the due process complaint had been filed. (P-14; NT 351, 733-740, 743-746)
37. The student's IEPs were reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. (record evidence as a whole)

CONCLUSIONS OF LAW

Based upon the arguments of parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereinafter sometimes referred to as "FAPE") to a student with a disability. There must be:
 - i. a determination as to whether the school district has complied with the procedural safeguards as set forth in IDEA, and
 - ii. an analysis of whether the individualized educational plan is reasonably calculated to enable the child to make progress in

light of the child's circumstances. *Andrew F by Joseph F v. Douglass County School District RE-1*, 580 U.S. _____, 137 S. Ct. 988, 69 IDELR 174 (2017); *Board of Educ, etc. v. Rowley*, 458 U.S. 178, 553 IDELR 656 (1982); *KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District*, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

2. In order to provide FAPE, an IEP must be reasonable, not ideal. *KD by Dunn v. Downingtown Area School District, supra*.
3. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined as of the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; it requires an educational plan that provides the basic floor of educational opportunity. *Ridley School District v. MR and JR ex rel. ER*, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); *DS v. Bayonne Board of Education*, 602 F.3d 553, 564, 54 IDELR 141 (3d Cir. 2010)
4. For a procedural violation to be actionable under IDEA, the parents must show that the violation results in loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. *Ridley School District v. MR and JR ex rel. ER*, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a)
5. To prevail in a claim of failure to implement an IEP, the parents must show that the school district failed to implement substantial or material provisions of the IEP. *Melissa S by Karen S v. School District of Pittsburgh*, 106 LRP 34297 (3d Cir. 2006); *School District of Philadelphia v. Williams ex rel. LH*, 66 IDELR 214 (E.D. Penna. 2015);

see, *Vanduyyn v. Baker School District*, 481 F.3d 770, 47 IDELR 182 (9th Cir. 2007).

6. The obligation of a school district to provide a free and appropriate public education to a student with a disability does not apply to students who graduate from high school with a regular diploma. 34 C.F.R. § 300.102(a)(3)(i); see, *Fisher v. Friendship Public Charter School*, 857 F. Supp.2d 64, 59 IDELR 9 (D.C. 2012)
7. IDEA requires that the IEP of a student with a disability beginning not later than the first IEP to be in effect when a child turns 16 include post-secondary goals and transition services. Transition services are a coordinated set of activities designed to be a results-oriented process focused on improving academic and functional achievement of the child to facilitate movement from school to post-school activities. 34 C.F.R. § 300.320(b), 300.43. See, *Questions and Answers on Secondary Transition*, 57 IDELR 231 (OSERS 2011).
8. The IEPs developed by the school district for the student for the 2017 – 2018 and 2018 – 2019 school years were reasonably calculated to provide benefit appropriate in the student’s individual circumstances and provided a free and appropriate public education to the student.
9. The district did not commit any actionable procedural violations that denied a free and appropriate public education to the student.
10. The school district appropriately implemented all material aspects of the student’s IEP. The transition plan in the student’s IEPs was appropriate.
11. The school district properly graduated the student and exited the student from special education after the student was eligible to receive a regular high school diploma.

DISCUSSION

Whether The Parents Have Proven That The School District Denied A Free And Appropriate Public Education To The Student For The 2017 – 2018 And 2018 – 2019 School Years?

The parents in this case raise both substantive and procedural FAPE issues. Concerning the substantive issue, it is clear from the evidence in the record that the student's IEPs during the relevant period were reasonably calculated to confer educational benefit consistent with the student's individual circumstances. The student's mother testified that the school district watered down the class requirements for the student. The mother's position with regard to this point is contradicted by the credible and persuasive testimony of the student's teachers that the curriculum for the student was exactly the same as it was for every other student in the class. There were no modifications to the curriculum or examinations. It is significant that the student, who was mostly in general education classes, passed all of the student's classes without any modifications. In addition, the student scored in the proficient range on the PSSA exams. The student also earned average scores on the composites of the test of written language. Importantly, the student mastered the student's IEP goals, including writing and reading.

The parents submitted a report from an outside agency, Lindamood Bell, to try to contradict the district's evidence as to these points. One of the tests administered by the outside agency is no longer a valid assessment. In addition, the scores on the assessment in this report were reported incorrectly without any data concerning how the tests were administered. The student's mother conceded on cross examination that the parents had not provided this evaluation report to the school district prior to the due

process complaint, The Lindamood Bell evaluation is accorded little weight. In contrast, an evaluation given appropriately by an independent evaluator submitted by the student showed the student's reading and writing scores to be in the average range across most scales.

The student showed improvement on the Test of Written Language from a composite index of 84 in the below average range when the student took the test in 2016 to a composite score of 106 at the end of 11th grade during the 2017 – 2018 school year, a standard deviation higher than the previous result and in the average range.

To the extent that the credibility of the mother, the student and the parents' witnesses is inconsistent with the testimony of school district staff, it is concluded that the testimony of school district staff was more credible and persuasive due to the demeanor of the witnesses, as well as certain other factors. Among the other factors is the fact that the student made a number of statements to the district's reading specialist that the student's mother was going to bring a due process hearing in order to require the school district to pay for the student's college education. The student denied having made these statements during the testimony of the student, but the student's denial is not credible or persuasive. Indeed, because the student and parent apparently view the due process system as a funding mechanism for the student's postsecondary education, their testimony is given little weight.

The IEPs developed for the student for the 2017 -2018 and 2018-2019 school years were reasonably calculated at the time that they were written to provide benefit appropriate in view of the student's circumstances.

Moreover, although IDEA does not require a particular result, the student in fact made great progress on the student's IEP goals. An additional indicator of the student's academic progress is the fact that the student was

accepted to colleges as a result of the student's efforts under the student's IEPs. It is concluded that the parents have not proven that the IEPs provided by the school district to the student during the 2017 – 2018 and 2018 – 2019 school years were inappropriate.

The parents also raise procedural FAPE concerns – alleging violations concerning IEP goals, IEP implementation, and postsecondary transition.

The parents argue that the student's writing goal was inappropriate. The goal is measurable, and it is clear that the student made great progress in writing, as indicated by the TOWL assessments. The student's writing goal was appropriate to meet the student's needs. The parents' argument that the student's handwriting is difficult to read does not support an argument that the student's writing goal was inappropriate. However, even assuming *arguendo* that the writing goal was not appropriate, the student nonetheless made excellent progress with regard to the student's writing skills, and the parents' participation rights were not impaired, rendering any procedural violation concerning the writing goal harmless.

The parents also attack the fact that there was no goal in the student's IEP for anxiety or coping skills. There is no evidence in the record, however, that the student's anxiety or problems with coping were impacting the student's education or interfering with the student's learning or the learning of other students. It is clear that the student did not require an IEP goal concerning anxiety or coping strategies. However, even if there was a procedural violation concerning the lack of such a goal, it is again harmless because there was no impact upon the student's education or upon the parents' participation rights.

The parents also allege a procedural violation concerning failure to implement the student's IEP. In particular, the mother and the student testified that the student's teachers did not implement certain specially

designed instruction on the student's IEPs. The student's teachers, however, testified that the specially designed instruction was implemented with fidelity. The testimony of the mother and the student is less credible and persuasive than the testimony of the school district staff concerning this issue because of the demeanor of the witnesses, as well as certain additional factors: including the unrefuted evidence in the record that the student refused certain colors of paper for examinations, even though the student's IEP required the teachers to use those colors. In addition, the student testified under direct examination that some teachers were very abrasive about implementing the specially designed instruction. On cross-examination, the student denied saying that teachers were abrasive and later testified that the student could not remember any teachers being abrasive.

It is concluded that the school district staff properly implemented the student's IEP with fidelity in all material aspects. However, even if there was a procedural violation concerning failure to implement, it is again harmless because there was no impact upon the student's education or upon the parents' participation rights.

The parents also assert a procedural violation with respect to the transition services given to the student. In support of this argument, the student testified that the student did not feel ready for college. The student also testified that the school district personnel had never walked the student through the steps that the student would need to take in order to pursue the student's career goal to become a medical examiner.

The transition plan which was part of the student's IEP in this case was well designed to provide the student with appropriate transition services and contained appropriate goals. The transition activities offered to the student by the school district were appropriate.

To the extent that the testimony of the student and the student's mother is inconsistent with the testimony of the school district staff, the testimony of the school district staff is more credible and persuasive with regard to this point because of the demeanor of the witnesses, as well as additional factors. In particular, the student's testimony concerning failure of the school district to talk the student through the steps necessary to becoming a medical examiner is contradicted by the very credible and persuasive testimony of the student's counselor for 11th and 12th grade that the counselor had numerous meetings with the student to discuss the requirements, next steps, etc. for the student to pursue a career as a medical examiner.

Moreover, the fact that the student was accepted to colleges demonstrates that the school district's transition program for the student was appropriate. It is concluded that the district developed an appropriate transition plan for the student. However, even if there was a procedural violation concerning transition, it is again harmless because there was no impact upon the student's education or upon the parents' participation rights.

It is concluded that the IEPs developed by the school district for the student during the 2017 – 2018 and 2018 – 2019 school years were reasonably calculated to and did confer benefit appropriate given the student's individual circumstances. In addition, it is concluded that the school district did not commit any procedural violations of IDEA, and that even assuming *arguendo* that there were procedural violations, such violations were harmless.

Have The Parents Proven That The School District Denied A Free And Appropriate Public Education To The Student By

Graduating The Student And Exiting The Student From Special Education?

The parents contend that the student should not have been graduated by the school district. The record evidence indicates, however, that the student met all requirements for graduation, that the student passed all of the student's classes and that the student had made significant progress under the student's IEPs. The district correctly issued a prior written notice, or Notice of Recommended Educational Placement, to the student stating that the student would be graduating and exiting special education. Because the student was eligible to graduate with a regular diploma, the school district no longer had a duty to provide the student with a free appropriate education.

The parents contend that the school district should not have graduated the student because the student had not made progress on the student's writing goal. The discussion from the prior section concerning the student's progress in writing is incorporated herein by reference. The parents' argument is rejected.

In the parents' post-hearing brief, the parents highlight one paper that was written by the student in English class concerning Communism. The parents object to the fact that the student received help from the student's teacher in beginning the process of organizing this project. The brief also points to one sentence from the paper in an effort to show that the student lacked writing skills.

The parents' argument is rejected. The parents cannot demonstrate that the student failed to make sufficient progress to graduate by going into detail with regard to a single paper written by the student in one of the student's classes. It should also be noted that the student was distraught and had frequent absences from school during this period of time [redacted].

It is highly unfair for the parents to object to the English teacher giving the student assistance on this writing assignment under these circumstances.

The decision by the school district to permit the student to graduate and exit special education was appropriate. The school district considered all of the available data in making the decision, including: assessment data, school transcripts, IEP progress monitoring and teacher observations. The student's teachers and counselor testified that the student was ready for graduation. The student's counselor testified that the student had become a great self-advocate during the latter part of the student's 11th grade year and throughout the student's 12th grade year.

Indeed, the appropriateness of the decision by the district to graduate the student from high school was validated by the fact that the student was accepted by two colleges thereafter. The parents have not proven that the school district denied a free appropriate public education to the student by graduating the student and exiting the student from special education.

Concerning the graduation argument, the parents cite a basic education circular by the State Department of Education in the parents' post-hearing brief. This document was not in the evidence submitted by the parties during the hearing and is, therefore, outside the record. The circular was not considered with respect to this decision.

The parents' post-hearing brief refers to certain state statutes concerning procedural graduation requirements, some of which apparently have not yet been funded. It appears from the evidence in the record that the district has complied with the cited state statutes concerning graduation requirements and academics standards. However, assuming *arguendo* that the district has not complied with the cited state statutes, the parents have not shown any harm to the student's education or to the parents' participation rights with respect to the alleged violations of the state

statutes. Therefore, to the extent that the school district may have violated the state statutes cited, any violation would be a harmless procedural violation. See, *AM ex rel. EH v. NYC Department of Education*, 845 F.3d 523, 69 IDELR 51 (2d Cir. 2017).

To the extent that the testimony of the student and the parents was that the student was not ready for graduation is contradicted by the testimony of the school district staff, the testimony of the school district staff is more credible and persuasive due to the demeanor of the witnesses, as well as the factors previously outlined herein.

It is concluded that the parents have not proven that the school district has denied FAPE to the student by graduating the student and exiting the student from special education.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that all relief requested in the due process complaint is hereby denied. The complaint is dismissed.

It is so ORDERED.

ENTERED: December 19, 2019

James Gerl

James Gerl, CHO
Hearing Officer