

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:

File No.23543-19-20

Child's Name:

K.W.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

September 3, 2020

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a mid-teenaged student who previously resided in the Chichester School District (District). Student currently is identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ Student attended school in the District during the 2016-17 school year and for a portion of the 2017-18 school year, but was not identified as eligible despite an evaluation.

In March 2020, Student's Parents filed a Due Process Complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504, as well as the federal and state regulations implementing those statutes.⁴ Specifically, the Parents contended that the District violated its child find obligation to Student in failing to identify Student as eligible under the IDEA while enrolled there. The District countered that its evaluation was appropriate and Student did not qualify during the relevant time period. The case proceeded to an

¹ In the interest of maintaining confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482; *see also* 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61, and the applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ According to the Complaint, the parties had entered into a tolling agreement. No challenge to the timeliness of the Complaint was raised.

efficient due process hearing which convened solely through virtual sessions.⁵

For the reasons set forth below, the claims of the Parents cannot be sustained and will be denied.

ISSUES

1. Whether the District violated its child find obligations to Student during the 2016-17 and 2017-18 school years; and
2. If the District did violate its child find obligations to Student, should Student be awarded compensatory education?

FINDINGS OF FACT

1. Student and Student's family resided in the District during the time period in question. Student is currently eligible for special education under the IDEA. (N.T. 291; S-22.)
2. Student previously attended a private parochial school beginning in kindergarten through fourth grade, and ended the fourth grade year in a public school outside of the District. (N.T. 292-93.)
3. The District's practice in responding to a serious infraction by a student is to refer the matter to the superintendent, who usually holds a pre-expulsion meeting that includes parents to determine the disciplinary action to be taken. (N.T. 138, 141, 505; S-14.)

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), the Joint exhibits that are marked with an "S" designation (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. References to the Parent in the singular are to Student's mother.

Fall of 2016-17 School Year

4. Student was enrolled in the District near but after the start of the 2016-17 school year. Student had not been identified with a disability prior to that enrollment. (N.T. 291, 335.)
5. Student's transition to public schools, including entry into the District, was difficult for Student in part due to larger size classrooms. (N.T. 292-94, 327-28, 332.)
6. Student sometimes slept at school during the 2016-17 school year, but exhibited very few problematic behaviors that fall. Student's grades did suffer because Student was missing instruction when sleeping. (N.T. 402, 207, 412-14.)
7. At the end of the first trimester, Student had an A- grade in science, a B+ grade in fitness/health, a C- in English, D grades in mathematics and reading, and a failing grade in social studies. (S-21 at 1.)

Spring of 2017

8. Student's attendance decreased significantly beginning in early 2017 with frequent tardiness and absences. (S-2.)
9. The District convened a truancy elimination plan meeting in January 2017 that the Parent did not attend. It also attempted to arrange other meetings with the Parent about matters such as Student's attendance. The Parent did not always respond to District communications or attend meetings. (N.T. 466-68, 470-72.)
10. Student exhibited an increase in problematic behavior in the second and third trimesters of the 2016-17 school year, including task refusal, exhibiting defiance and some aggression, and using inappropriate gestures and language. A team of teachers met several times each week to discuss students of concern, and Student was among them

during that time period. (N.T. 403-08, 427-29, 435-36, 462-63, 466, 512; S-24; S-25.)

11. The District contacted the Parent when Student engaged in problematic behavior throughout the 2016-17 school year. (N.T. 294-96, 466-68.)
12. As consequences for Student's problematic behavior, Student received a number of lunch detentions, teacher detentions, and Saturday detentions. Out of school suspensions during the 2016-17 school year were also imposed for a total of fourteen days for insubordination/disrespect, disruptive behavior, insubordination, profanity, being in a location without permission, cutting classes, and chronic tardiness. (S-24; S-25; S-26.)
13. In February of 2017, a family member was diagnosed with a serious medical condition. That diagnosis impacted all of Student's family. The Parent often stayed with that family member during hospitalizations, and then Student would stay with a relative. Student was frequently tardy to school during those periods. (N.T. 298-99, 338, 340, 411; S-24 at 24.)
14. The District referred Student to the Student Assistance Program (SAP) in March 2017. (N.T. 467, 486, 512.)
15. The Parent requested an evaluation of Student in March 2017 due to her concerns with Student's behavior, academics, and emotional status. The District responded by providing a Permission to Evaluate – Evaluation Request Form asking her to provide reasons for her concerns. The District followed up when that form was not returned. (N.T. 134-35, 348-49; S-4; S-27.)

16. The Parent did not sign and return the March 2017 form. It likely arrived during a period of the family member's hospitalizations. (N.T. 302-03, 315-26.)
17. A District guidance counselor conducted a brief observation of Student in March 2017. Student required redirection during that observation but was still on-task less than 67% of the time. (S-7 at 6.)
18. Student's teachers and other professionals did not suspect that Student had a disability during the 2016-17 school year. (N.T. 412, 415-16, 418-19.)
19. The District did not provide any regular education Response to Intervention and Instruction or Multi-Tiered System of Support services to Student. (S-31 at ¶ 1.)
20. In June 2017, Student engaged in physical aggression against a peer and, ultimately, a teacher. Student served five days of out of school suspension after that incident. (S-12; S-26 at 9-10.)
21. Student was not expelled as a result of the June incident. (N.T. 146.)
22. Student earned poor grades through the second and third trimesters of the 2016-17 school year, with passing grades only in science, health, computer skills, arts and humanities, life skills, and music. Student also scored well below expectations on benchmark, summative, and other assessments in the areas of reading and mathematics. (S-2; S-7; S-21.)

Summer 2017

23. A pre-expulsion meeting convened in mid-August 2017 based on the June 2017 incident with the Parent, superintendent, and other staff. The Parent shared information about difficulties family members were experiencing. The District recommended a diagnostic placement of

Student in a program operated by the local Intermediate Unit (IU).
(N.T. 143-45, 351-53; S-13; S-15.)

24. The Parent did not express any objection to a diagnostic placement at the pre-expulsion meeting, although she did not fully understand how it differed from the District middle school until a tour on the first day that Student attended there. The Parent understood that, if Student did not attend the diagnostic placement, Student would be expelled. (N.T. 144-45, 308, 310-11, 352-53, 355-56, 385.)
25. The Parent signed a Prior Written Notice form at the pre-expulsion meeting consenting to an evaluation of Student, and also signed the March 15, 2017 form noting concerns with Student's academic, emotional, and behavioral functioning. (N.T. 145-46, 304-05, 474-75; S-4; S-6.)
26. The Parent also signed agreement with the diagnostic placement at the pre-expulsion meeting. That agreement contained waiver provisions and requirements for Student to return to the District. (S-16.)
27. Following the decision on a diagnostic placement, the District provided a referral to the IU for an evaluation. Student was accepted into the IU program. (S-9; S-10; S-11.)

2017-18 School Year

28. Student was in the diagnostic placement at the start of the 2017-18 school year. (N.T. 122.)
29. A psychiatric evaluation of Student was conducted in early September 2017. At that time, Student reported experiencing difficulty managing anger as well as with maintaining focus and attention particularly when distractions were present. (S-28 at 2-3.)

30. The psychiatric evaluation resulted in diagnoses of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, and Attention-Deficit/Hyperactivity Disorder. Recommendations included continuation of the diagnostic placement with individual and group counseling. (S-28 at 3-4.)
31. A Mental Health Treatment Plan followed the psychiatric evaluation. That Plan maintained the recommendations of the evaluation with a focus on developing coping skills and strategies and ongoing counseling sessions. (S-28.)
32. The diagnostic placement program provided emotional support, and Student was in a small classroom for instruction. All students participated in individual and group counseling sessions. (N.T. 120-21, 210, 211.)
33. Student did engage in task avoidance at the diagnostic placement, including sleeping during the school day. Student was, however, highly motivated to return to the District, and generally completed all required work and maintained good attendance until mid-November 2017. (N.T. 237-38, 257; S-1; S-28.)

Evaluation

34. The IU completed its evaluation of Student in mid-October 2017 and issued an Evaluation Report (ER). (S-1.)
35. The ER summarized the psychiatric evaluation and noted that the IU school psychologist spoke with the Parent and with Student. The school psychologist also conducted a classroom observation during which Student was on-task throughout and complied with all directives. (S-1 at 1-3.)
36. On a measure of cognitive assessment for the ER (Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition), Student attained a low

average range General Intelligence Ability score and low average to average range scores across tests. Additional assessment of verbal abilities indicated possible weaknesses, and a speech/language screening was recommended. (S-1 at 6-7.)

37. Assessment of academic achievement (Woodcock-Johnson Tests of Achievement, Fourth Edition) yielded average range scores on the reading, mathematics, and written language clusters. Student did score in the low average range on three subtests (word attack, passage comprehension, and mathematics calculation). (S-1 at 8-9.)
38. Social/emotional assessment for the ER included rating scales completed by the Parent and special education teacher. The Parent's results indicated at risk concerns with attention problems and adaptability; the teacher's ratings raised at-risk concerns with somatization, withdrawal, and social skills. Neither rated any clinically significant concerns. (S-1 at 10-12.)
39. The ER used two instruments to gauge Student's attention/focus/concentration. Some areas of concern were noted in the home or school environment or both: impulse control, inhibition, inattention, hyperactivity/impulsivity, executive functioning, defiance/aggression, and peer relations. (S-1 at 10, 12-18.)
40. Assessment of Student's visual motor skills for the ER did not reveal any weaknesses. (S-1 at 9.)
41. The speech/language screening conducted as part of the ER did not yield deficits or further assessment. (S-1 at 7-8.)
42. A Functional Behavioral Assessment (FBA) was attempted for the ER. Student did not exhibit interfering behaviors during the FBA and the teacher did not report any, nor were any revealed during a series of observations. (S-1 at 18-20.)

43. The results of the ER indicated continued need for counseling and social skills. Private counseling was also recommended. (S-1 at 12, 17, 22.)
44. The ER determined that a significant discrepancy between ability and achievement did not exist, and concluded that Student did not have a disability and was not eligible for special education or demonstrate a need for a Section 504 Accommodation Plan. (S-1.)
45. The IU school psychologist recommended that the District conduct a Functional Behavioral Assessment upon Student's return to that setting, as well as provide counseling and coping strategies. (N.T. 242; S-1 at 22.)
46. No meeting convened with the Parents to review the ER, and the District did not issue a Notice of Recommended Educational Placement. (N.T. 187, 205-06, 313.)
47. Student's mental health diagnoses did not manifest in the IU environment as impeding Student's learning. (N.T. 256-60.)

Disenrollment from District

48. The District dis-enrolled Student in the November 2017 because Student and the family no longer resided within its boundaries. (N.T. 123, 125-26, 314-16, 358; S-8 at 1; S-17.)
49. The family did not appeal the dis-enrollment decision but had notice of it. (N.T. 130-31, 363-64.)
50. Student enrolled in a different school district after leaving the District boundaries. (N.T. 319-20.)

2019-20 School Year – Other District

51. The other school district conducted an evaluation of Student in the fall of 2019 at the request of the Parent. (S-22.)

52. Several of Student's teachers at the time of the other district's evaluation reported concerns with Student's attendance, attention, motivation, compliance, organization, preparation and work completion, peer relationships, and academic performance. (S-22 at 3-5.)
53. Cognitive assessment for the other district's evaluation using several different instruments reflected overall average range scores with some variability. A relative weakness was identified with respect to processing speed. (S-22 at 9-13.)
54. Assessment of academic achievement for the other district's evaluation yielded results somewhat disparate from those in the District's ER. For the more recent evaluation, Student demonstrated deficits in academic achievement in the areas of reading comprehension and reading fluency/accuracy; listening comprehension; mathematics computation, fluency, and problem-solving; and written expression. (S-22 at 13-15.)
55. Assessment of social/emotional functioning by the other district for its evaluation through a variety of measures reflected a number of areas of concern, particularly for attention problems, learning problems, adaptability, resiliency, and executive functioning skills. (S-22 at 18-26.)
56. The other district's evaluation reached a conclusion that Student was eligible for special education on the basis of a specific learning disability (mathematics and written expression), but did note that Student's poor attendance likely impacted Student's access to appropriate reading and mathematics instruction. That evaluation provided recommendations for Student's educational program including a behavior plan for task completion and compliance. (S-22.)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In law, the burden of proof is considered to have two elements: the burden of production and the burden of persuasion. It should be recognized at the beginning of the analysis that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The burden of persuasion in this case must therefore rest with the Parents who filed the Complaint. Application of this principle, however, determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, in the role of the finders of fact, also bear the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them. All of the witnesses, understandably, had lapses in memory largely because of the length of time that passed between the time period in question and the hearing sessions. In addition, several people who were involved during the relevant school years are no longer with the District, adding to gaps in the testimonial evidence. Thus, significant weight was accorded to the documentary evidence.

The above findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited.

However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.⁶

General IDEA Principles: Substantive FAPE

The IDEA requires states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some time ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with procedural obligations in the Act.

Substantive FAPE: Child Find and Evaluation Requirements

The IDEA and state and federal regulations further obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C. §1414(a)(1)(C)(i).

The obligation to identify students suspected as having a disability is commonly referred to as "child find." Local Educational Agencies (LEAs) are required to fulfill the child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). More specifically, LEAs are required to consider evaluation for special education services within a reasonable time

⁶ The Parents' closing did not comport with certain directives (N.T. 526) but no objection thereto was raised.

after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). School districts are not, however, required to identify a disability “at the earliest possible moment.” *Id.* (citation omitted). However, when a parent makes a verbal request for an evaluation, the LEA must respond with a Permission to Evaluate form within ten calendar days. 22 Pa. Code § 14.123(c).

The IDEA further defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a). “Special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). More specifically, “specially designed instruction means adapting, as appropriate to the needs of an eligible child [], the content methodology or delivery of instruction.” 34 C.F.R. § 300.39(a)(2).

Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

- (i) whether the child is a child with a disability; and
- (ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education

curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(a).

In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child

determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1). With respect to a specific learning disability, however, a child who has not had appropriate instruction in reading or mathematics is not eligible if that circumstance is a determining factor. 20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b).

A child who has not been evaluated and determined to be eligible for special education may nonetheless be entitled to IDEA protections under certain circumstances. Those include a request by a parent for an evaluation. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534. Children with disabilities or those who meet the criteria of suspected of having a disability, however, may nonetheless be subject to a 45-day alternative placement for certain conduct including causing serious bodily injury to another. 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).

Substantive FAPE: Least Restrictive Environment

Another important premise in the IDEA is the obligation that eligible students be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); see *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993). However, FAPE and LRE are related, but separate, concepts; indeed, an LEA can be in noncompliance with the LRE mandate but still provide FAPE. *A.G. v. Wissahickon School District*, 374 Fed. App'x 330 (3d Cir. 2010) (citing *T.R.*, *supra*, at 575, 578); see also *H.L. v. Downingtown Area School District*, 624 Fed. App'x 64 (3d Cir. 2015).

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family plays a meaningful role in special education. *Schaffer, supra*, 546 U.S. at 53. Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they resulted in "significant impediment" to parental participation, or in a substantive denial of FAPE. 20 U.S.C. § 1415(f)(3)(E).

General Section 504 Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she "has a physical or mental impairment which substantially limits one or more major life activities," or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). "Major life activities" include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). Significantly, however, "[t]here are no bright line rules to determine when a school district has provided an appropriate education

required by § 504 and when it has not.” *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002). In this case, the coextensive Section 504 claims that challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

The Parents’ Claims

The Parents contend that the District violated its child find responsibilities to Student over the 2016-17 and 2017-18 school years. The preponderant evidence, however, does not support those assertions.

Student began the 2016-17 school year with a difficult transition. Still, Student did not engage in a troubling degree of problematic behavior in the fall, and maintained overall grades that were somewhat variable but not a cause for concern under the circumstances. One failing grade does not necessarily mean that a student should be suspected of having a disability. There is no reason on this record that continuing with regular education interventions and strategies was inappropriate in the fall of 2016.

At the start of 2017, Student’s behavior deteriorated significantly and attendance was poor. The District responded by attempting to convene a meeting with the Parent about attendance, and Student was also one of the students discussed at team meetings. In February 2017, a likely source of Student’s new and increasing difficulties was revealed to the District. It may be that some type of response to intervention would have been helpful to some degree, but no District professionals had a suspicion that Student had a disability until the Parent asked about an evaluation in March. It is at this point that the District had reason to consider a disability, and it made a SAP referral. The District also responded with a form relating to an evaluation and followed up when none was returned, but the Parent’s wholly

understandable focus on another family member with a serious illness did not permit the initiation of an evaluation in the spring of 2017.

It is true that the form the District provided did not actually seek permission to conduct an evaluation.⁷ Had the form included such language, however, the District would have had sixty calendar days (excluding summers) after receipt of the Parents' consent to complete the evaluation. The Parent's failure until August to sign the form in March⁸ that was provided is strongly indicative that consent would not have been provided in the spring, thereby effectively extending the timelines into the fall of 2017. That is precisely what happened here.

The evaluation that was conducted included conversations with the Parent and Student and input from teachers. A number of assessment tools, strategies, and instruments were administered in order to gather relevant functional, developmental, and academic information about Student related to the concerns expressed by the Parent. The ER summarized anecdotal information and included a classroom observation, reported on assessment of Student's current cognitive ability and academic achievement, and included measures of Student's social/emotional/behavioral functioning. Student's mental health diagnoses were noted. A screening of Student's speech/language skills as recommended did not reveal any deficits. Unlike in the fall of 2019, Student did not manifest any meaningful discrepancy between cognitive ability and achievement.

All of this evidence together preponderantly supports the conclusion that the fall 2017 evaluation was sufficient to meet IDEA criteria. *Lauren G. v. West Chester Area School District*, 906 F.Supp.2d 375 (E.D. Pa. 2012), on

⁷ The form specifically required by the regulations does not appear to be on the website of the Pennsylvania Training and Technical Assistance Network. The current most similar form was last revised in 2015.

⁸ Again, this is perfectly understandable under the circumstances and did not result in any substantive IDEA or Section 504 violation.

which the Parents rely, is easily distinguishable from this matter. There, the District was aware of the student's mental health diagnoses and other relevant factors but failed to consider them. In this case, such diagnoses were not made until the time of the fall 2017 ER and they were considered; other factors ignored in *Lauren G.* were not relevant. The record also fully supports the conclusion that Student was not eligible for special education in the fall of 2017.

On the other hand, whether a Section 504 Plan would have been appropriate is a closer question. In a regular education setting such as Student was in at the District, Student very likely would have required accommodations and counseling as of the fall of 2017. Student was not at the time in a regular education setting, however, and it is unknown how the District may have responded if Student returned and what needs Student might then have.

The District and the IU did fail to convene a meeting so that a group of qualified individuals could discuss and reach the conclusions set forth in the ER as required. That failure amounted to a procedural violation that did not result in any substantive harm to Student. Moreover, even if Student should have been deemed eligible under the IDEA and/or entitled to Section 504 protections,⁹ Student and the family left the District shortly after completion of that evaluation, so any possible denial of FAPE would have been *de minimis*.

The Parents also challenge the District's disciplinary action when Student was entitled to IDEA protections while the outstanding evaluation was pursued. The record does not include sufficient information to determine whether a 45-day alternative educational placement would have

⁹ The other district's evaluation was somewhat equivocal on a specific learning disability, and it merits noting that it was completed two years after the ER in question here.

been warranted. In any event, the services that Student did receive by the IU in the smaller diagnostic placement focused on Student's mental health diagnoses that were clearly impacting Student, and those services were much more intensive than school-based counseling could be. While the IU program was more restrictive than that during the 2016-17 school year, it was not inappropriate. Moreover, even assuming that Student should have been eligible for an IEP or Section 504 Plan, the services provided in the IU program were entirely appropriate and responsive to Student's needs.

The family certainly was presented with difficult challenges following the February 2017 diagnosis with which anyone can sympathize, as this hearing officer does. That Student was profoundly impacted thereby is unfortunate, but the evidence in this case simply does not support a conclusion that the District substantively violated any IDEA or Section 504 obligations during the relevant time period. The Parents' claims must therefore be denied.

ORDER

AND NOW, this 3rd day of September, 2020, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the Parents' claims are DENIED in their entirety.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER
ODR File No. 23543-19-20