

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 & Order

Child's Name: J. K.

Date of Birth: [redacted]

CLOSED HEARING

21805 18-19

Parent:

[redacted]

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

August 13, 2019

INTRODUCTION

Student (“student”)¹ is an elementary school student who formerly resided in the Wissahickon School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with autism.

Parent claims that the student was denied a free appropriate public education (“FAPE”) in the 2017-2018 and 2018-2019 school years related to allegations of deficiencies in programming for behavioral needs in the school environment. Parent seeks compensatory education as a remedy. Analogously, parent asserts these claims and request for remedy under the Rehabilitation Act of 1973, particularly Section 504 of that statute (“Section 504”), including allegations that the District discriminated against the student on the basis of disability.³

The District counters that it responded to the student’s needs in the educational environment and at all times provided FAPE to the student, and met all of its obligations to the student under both IDEIA and Section 504. As such, the District argues that the parent is not entitled remedy.

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

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

³ It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. *See also* 22 PA Code §§15.1-15.11 (“Chapter 15”).

For the reasons set forth below, I find in favor of the parent. There is, however, no remedy owed by the District.

ISSUES

Did the District deny the student FAPE
in the 2017-2018 and/or 2018-2019 school years?

If so, is the student entitled to compensatory education?

Did the District discriminate against the student,
with deliberate indifference, on the basis of disability?

FINDINGS OF FACT

2017-2018/3rd Grade

1. After attending private schools, the student enrolled in the District for the 2017-2018 school year (the student's 3rd grade year). (Parent's Exhibit ["P"]-29; School District Exhibits ["S"]-2, S-6, 8, S-9, S-79; Notes of Testimony ["NT"] at 59-248).
2. In registration paperwork, the student's mother reported a diagnosis of anxiety and potential medical rule-outs for autism, oppositional defiant disorder, and attention deficit hyperactivity disorder. (P-29; S-79; NT at 59-248).
3. The District school nurse testified that she was aware of what was reported but did not inform anyone in the District. (P-29; S-79; NT at 1176-1204).
4. Upon enrollment and through the fall of 2017, the student did not exhibit any problematic behaviors in school. (NT at 379-468).
5. In November 2017, the student voiced to the 3rd grade teacher that the student sometimes did not understand directions. The teacher contacted the District speech and language ("S&L") therapist for potential S&L needs, and the S&L therapist administered a screening instrument. On

the screening instrument, the student achieved age-appropriate scores. The student's teacher was informed, and the S&L therapist did not save the screening results. (P-1, p-31; NT at 337-367).

6. Over December 2017 and January 2018, the student's mother communicated with the District that there was a potential autism diagnosis. The District requested documentation and an outside counseling agency that was working with the student provided documentation of likely autism. But there was no formal medical diagnosis. (P-3, P-5; S-11, S-12, S-13, S-14, S-15, S-16, S-17, S-18, S-83; NT at 59-248, 250-332, 1004-1066).
7. In January 2018, the student's teacher and mother corresponded about the student's growing lack of focus and task-avoidance, and difficult peer interactions. (P-4; S-83).
8. In February 2018, the student's mother continued to voice concerns and provided input to the school's child study team, including a functional behavior assessment ("FBA") completed in the prior school year where the student was found not to be eligible for school-based behavior support. (S-19, S-20, S-22).
9. In March 2018, the District requested permission to evaluate the student. (S-25, S-26).
10. In April 2018, the student underwent a private psychiatric evaluation, an evaluation which was shared with the school's child study team in May 2018. The psychiatrist confirmed the earlier counseling-agency diagnosis of autism. (P-2; S-30; S-82).
11. Throughout the spring of 2018, the student continued to engage in problematic peer interactions. (S-83).
12. In May 2018, the District issued its evaluation report ("ER"). (P-6; S-32).
13. The May 2018 ER noted that the student was being referred "due to concerns regarding difficulty interacting socially and refusal behaviors", needs noted by his 3rd grade teacher over the latter half of the school year. (P-6; S-32; NT at 379-468).
14. The May 2018 ER found that the student had solidly average cognitive ability and exhibited no achievement difficulties, either on standardized achievement testing or through curriculum-based measures. (P-6; S-32).

15. The May 2018 ER included social/behavioral/attention assessments. The parent's scores were, overall, disparate from those of the student's 3rd grade teacher. But multiple school-based social and behavioral scores were elevated or clinically significant, mirroring the concerns that the teacher had shared elsewhere in the ER—the student struggled with social interaction, perspective-taking, aggression, and task avoidance. (P-6; S-32).
16. The May 2018 ER contained a FBA, identifying behaviors of concern as being off-task (disregarding adults, ignoring directions) and invasion of personal space (closely following peers, getting face-to-face with peers, inability to read social cues regarding uncomfortable personal-space issues). The behaviors were noted as occurring daily. (P-6; S-32).
17. Having identified the behaviors of concern, their antecedents and the consequences of the behaviors, the FBA evaluator inexplicably determined that a positive behavior support plan (“PBSP”) was not warranted. Still, the author of the May 2018 ER (an individual different from the author of the FBA) recommended positive reinforcement strategies. (P-6; S-32).
18. The May 2018 ER concluded that the student qualified for special education as a student with autism with needs in organization skills/task-approach, social skills/peer relations, and distractibility/inattention. While not identified with a specific learning disability, the ER recommended academic support in written expression. (P-6; S-32).
19. In June 2018, the student's individualized education program (“IEP”) team met to discuss the student's IEP. (S-36).
20. The June 2018 IEP indicated, in its special considerations section, that the student does not exhibit any behaviors that impede the student's learning or that of others. (S-36).
21. A District special education teacher, the scribe of the IEP, testified that it was her view that the question for special consideration ‘does the student exhibit behaviors that impede the student's learning or that of others’ can only be answered “yes” after a FBA and PBSP have been conducted and implemented. A second District special education teacher endorsed that view. (NT at 731-732, 933-1002).
22. The June 2018 IEP adopted verbatim the conclusion of the May 2018 ER as to the student's needs. (See Finding of Fact 18 above). (S-36).

23. The June 2018 IEP contained two goals, one for written expression and one for behavior. (S-36).
24. The June 2018 IEP contained specially-designed instruction, much of it to address the student's behavior and social skills. (S-36).
25. The June 2018 IEP called for the student to spend nearly all of the school day (98%) in regular education. (S-36).
26. In July 2018, the student's IEP team met again, and the parent approved the proposed IEP and placement. (S-35).

2018-2019/4th Grade

27. The student began 4th grade with the June 2018 IEP.
28. In September 2018, the student began to receive social skills instruction from a District special education teacher. (S-76, S-80, S-83; NT at 933-1002).
29. In early October 2018, both goals in the student's IEP were slightly revised after a phone conference with the student's mother. (S-40, S-41).
30. In October 2018, District personnel were reporting to each other problematic behaviors in the cafeteria and at recess. (S-83).
31. On October 30, 2018, the student was engaged in a confrontational episode at recess involving other students and a playground aide. The student was defiant when directed to return to the school building. Once inside the school building, the student acted out and attempted to elope from the room. [redacted]. (S-42).
32. Because of the self-injurious behaviors, District personnel employed a standing restraint and a sitting restraint, each of approximately 5 minutes. (S-43; NT at 693-785).
33. On November 5, 2018, as a result of the October 30th behavior incident, the student's IEP team met and revised the student's IEP regarding support during recess. The District also requested permission to perform a FBA based on the behavior exhibited in the October 30th incident. (S-45, S-46, S-47).
34. In the days after the November 5th IEP meeting, the student's mother filed a personnel complaint against the special education

administrator who was involved in the handling of the October 30th incident and November 5th IEP meeting. (P-9, P-30).

35. On mid-November 2018, the student was involved in two incidents on the school bus. (P-12; S-49).
36. In late November 2018, the student's mother granted permission to conduct the FBA. (S-47).
37. In late November 2018, the District implemented a more detailed recess support plan. (S-83 at pages 55-59; NT at 588-690, 693-785).
38. In early December 2018 the student was seen by county-based mobile-crisis intervention outside of school. (S-83 at pages 63-64).
39. In early December 2018, the District revised the student's IEP to indicate that when the student required intensive behavioral support (referred to in testimony as the "crisis plan"), it would take place outside of the regular education setting. (P-16, S-52; NT at 588-690, 693-785).
40. On December 13, 2018, the student was involved in a wide-ranging behavior incident that began at approximately 11 AM and ended at approximately 2 PM. (S-57).
41. The event took place in different locations (classrooms both with and without fellow students, on the playground at recess, in the cafeteria, in a school hallway) as the student was transitioned to environments when the student's behavior moderated or where staff felt that could be attempted more effectively. (S-57).
42. The event included non-compliance with staff requests, elopement from spaces and from the building, defiance toward staff, aggression toward staff and peers, physical contact with staff and peers, property destruction, and mess-making with food. (S-57).
43. At one point, as the student was being escorted from a classroom to a conference room in the school building, the student was exhibiting threatening behavior toward staff and attempting to elope. Younger students were in the hallway and the student was attempting to move into that area. At that point, District staff employed a transport restraint—blocking movements with their bodies and positioning themselves to move the student from the hallway to the conference room. (S-56, S-57, S-58; NT at 588-690, 933-1002).
44. The December 13th incident was precipitated with implementation of the behavior support plan for recess (which included choice-making by

the student which the student was unhappy about). After the incident, the District revised the support plan, including choice-making that involved the input of the student and a different District staff member overseeing it. (S-83; NT at 470-540).

45. The student's IEP team was scheduled to meet on December 19, 2018 to discuss revisions to the student's IEP in light of the December 13th incident. (S-82 at page 87; NT at 59-248, 588-690).
46. On the morning of December 18th, the student was involved in a behavior incident from approximately 10 AM – noon. (P-20).
47. The event took place in different locations (a classroom, in a school hallway, an administrator's office) where staff felt that could be attempted more effectively. (P-20).
48. The event included non-compliance with staff requests, elopement from spaces, defiance toward staff, aggression toward staff and peers, physical contact with staff (including punching, hitting, and kicking, and a forceful head butt to the abdomen of a staff member), attempted flooding of a bathroom, and attempted elopement through a window. (P-20; NT at 250-332, 888-923).
49. Due to the aggression toward, and physical contact with, District staff, and attempted aggression toward peers, the District summoned community police. (P-20).
50. The student's mother was also summoned, and after she arrived, the student de-escalated and was removed from home. The student was given a two-day suspension. (S-64; NT at 59-248).
51. The student did not return to the District after the December 18th incident. (NT at 59-248).
52. On December 19, 2019, the student's IEP team met to revise the student's IEP, including an updated crisis plan, revised behavior goal, and eligibility for extended school year services. (S-67).
53. Following a report by the student's mother to the student's private counselor, the counselor contacted child protective services about purported mistreatment of the student at the hands of District personnel. The report was unfounded. (S-69; NT at 933-1002, 1004-1066).
54. On January 7, 2019, the student was withdrawn from the District. (S-83 at page 93; NT at 59-248).

55. In February 2019, the parent filed the special education due process complaint which led to this proceeding. (Hearing Officer Exhibit-1).
56. In March 2019, a private evaluator issued a report based on records-review. (P-27).
57. In the March 2019, the private evaluator made recommendations for the student's educational programming. (P-27).
58. A private board certified behavior analyst ("BCBA") testified that had a positive behavior support plan in place at some point in the 2017-2018 school year (3rd grade), that plan would have needed to be revised given the new, acting-out behaviors being exhibited by the student in October – December 2018 (the fall of 4th grade). (NT at 1079-1127).
59. The student has enrolled in an out-of-state school district where the student is making progress under the terms of an IEP. (NT at 108-109).

DISCUSSION AND CONCLUSIONS OF LAW

FAPE

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis* or minimal education progress.

(Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, F.3d (3d Cir. at No. 17-3605, September 18, 2018)).

Restraint. An aspect of the parent’s claim is that the District employed impermissible restraints in responding to the October 2018 and December 2018 behavior incidents. Positive behavior support in Pennsylvania, and as part of that the cautions over, limits of, and prohibitions on the use of restraints, is governed by 22 PA Code §14.133 (“Section 14.133”). The provisions of Section 14.133 require generally that positive, rather than negative, behavior support be utilized and specifically requires that “(w)hen an intervention is needed to address problem behavior, the types of intervention chosen for a particular student...shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques....”. 22 PA Code §14.133(a).

A “restraint” is defined, among other non-applicable situations, as “(t)he application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student’s...body”. 22 PA Code §14.133(b). Additionally, “(r)estraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have

proven to be or are less effective”. 22 PA Code §14.133(c). Below, these provisions play a role in parsing the legal reasoning of this decision.

Here, the first issue, quite straightforward and clear on this record, is that the District has not inappropriately employed restraints with the student. The restraints were always employed when the student’s behavior was exhibiting self-harm or aggression toward others; indeed, in both cases where the restraint was employed, the behavior incident unfolded over a long period of time and the restraints were employed toward the end of the each episode, and only under the very specific circumstances enumerated in the regulations.

In terms of the issue of alleged restraint, then, the evidence weighs in favor of the District. It is the considered opinion of this hearing officer that the episodes of October 2018 and December 2018 did not involve impermissible restraints in violation of 22 PA Code §14.133.

IEP. There are two aspects of the IEP which are inappropriate: the lack of a social skills goal and the District’s faulty understanding of how to gauge problematic behaviors in light of the programming contained in an IEP.

First, the student’s needs require a social skills goal in the IEP. The District witnesses made the point at the hearing that the student’s social skills needs were addressed through specially-designed instruction. That is true—there are elements of such instruction in the IEP. But that instruction is not goal-based instruction. With the level of peer socialization issues presented in the record, the lack of a social skills goal is a prejudicial flaw in the IEP and a

denial of FAPE. As set forth more fully in the *Compensatory Education* section below, however, there is no remedy owed for this denial of FAPE.

Second, the District’s understanding of how behaviors that impede learning, in the context of the design of an IEP, is also flawed. Two District witnesses indicated that the special consideration in an IEP of whether behaviors impede the learning of a student, or of others, must always be answered “no” unless and until a FBA is conducted and a PBSP is in place. At that point, in the view of the District, the answer to the question is then, and only then, changed to “yes”. This is exactly backwards—the point of the question is whether educators are seeing behaviors that impede the learning of a student, or others...right now, “yes or no”. That is a question that can, and must, be answered at the outset. Indeed, it is why that question, along with a series of questions regarding other special considerations (including visual impairment/blindness, deafness/hard-of-hearing, communication needs, assistive technology needs, and limited English proficiency), are presented as the very first substantive content of an IEP—these types of considerations must inform every aspect of the content of an IEP thereafter.

If the answer is yes, the IEP document instructs the IEP team as to what happens next: There must be a FBA undertaken, which will be the basis of a PBSP. Now, in practice, this is almost always done before the IEP meeting takes place—as the IEP team convenes, a FBA and PBSP are in hand. Why? Because everyone educating the child knows the answer to the question “does the

student exhibit behaviors that impede his/her learning or that of others?” is “yes”. So the appropriate educational responses have already been undertaken.

It is a procedural error (and a denial of reality) to operate under the assumption that any student exhibiting behaviors that impede his/her learning, or that of others, must be considered as not having such an impeding condition until after both a FBA and PBSP are in hand. That is the case here. No one can read this record without recognizing that, in the spring of 2018, the student was engaging in behaviors that impeded the student’s learning, or that of others. The District itself recognized it by performing a FBA in May 2018 and, having identified problematic behaviors that any educator would recognize as interfering with learning of a student or his/her peers (see Findings of Fact 16 and 17). Inexplicably, the evaluator did not recommend that a PBSP be developed to address the behaviors of concern. And, in the view of the District through its witnesses, that required the answer “no” to the question “does the student exhibit behaviors that impede the learning of self or others?”. To reach such a conclusion on this record is folly, and it is rooted in a flawed procedural understanding by the District of how the special consideration questions at the outset of an IEP are to inform the content of an IEP and the deliberations of an IEP team.

Given all of this, a reader will rightly question how such a flawed procedural understanding cannot support a remedy. The short answer is that the procedural flaw, in this case, did not lead to a denial of FAPE. (See 34 C.F.R. §300.513(a)(2)). This conclusion is explored more fully in the

Compensatory Education section below. But no one should read this decision and take from it the conclusion that mis-understanding the role of special considerations for a student and his/her IEP is a “mere” procedural error. A school district courts disaster in not understanding how something like visual impairment, or communication needs, or limited English proficiency, or problematic behaviors impact a student’s learning and, thereupon, not making it a substantive part of the IEP, and the IEP team’s deliberations. Here, however, the mosaic of events supports a conclusion that the District’s flawed procedural mis-step did not deny the student FAPE. Again, this is set forth more fully in the *Compensatory Education* section below.

Accordingly, the District denied the student FAPE by not including a social skills goal in the IEP and committed a procedurally-flawed error in its understanding of the impeding-behaviors question in the IEP.

Section 504/Chapter 15

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §15.1).⁴ The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly

⁴ Pennsylvania’s Chapter 14, at 22 PA Code §14.101, utilizes the term “student with a disability” for a student who qualifies under IDEIA/Chapter 14. Chapter 15, at 22 PA Code §15.2, utilizes the term “protected handicapped student” for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term “student with a disability” will be used in the discussion of both statutory/regulatory frameworks.

analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (See generally P.P. v. West Chester Area School District, 585 F.3d 727 (3d Cir. 2009)). Therefore, the foregoing analysis is adopted here— the lack of an IEP goal for social skills is a denial of FAPE and the District holds a procedurally flawed understanding of the role of the impeding-behaviors question for special consideration by an IEP team.

Additionally, the provisions of Section 504 bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program or otherwise discriminated against on the basis of disability, has been subject to disability discrimination in violation of Section 504 protections. (34 C.F.R. §104.4; S.H. v. Lower Merion School District, 729 F. 3d 248 (3d Cir. 2013)). A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district in its purported acts/omissions. (S.H., *id.*).

Here, the District did not act with deliberate indifference toward the student. Even with the denial of FAPE and the procedurally-flawed misunderstanding of the impeding-behaviors question, both outlined above, the record is clear that the District has always sought to understand and to program effectively for the student. While those efforts may not have always been reasonably calculated to yield meaningful education benefit in light of the

student's unique needs, there was never any indifference toward the student, deliberate or otherwise, on the part of the District.

Accordingly, under the provisions of Section 504, the District has denied the student FAPE but has not acted with deliberate indifference toward the student.

Compensatory Education

Where a school district has denied FAPE to a student under the terms of IDEA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). The award of compensatory education accrues from a point where a school district knows, or should have known, that a student was being denied FAPE, accounting for a reasonable rectification period to remedy the proven denial-of-FAPE.

(Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999), M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Additionally, compensatory education may be sought and calculated utilizing one of two methods. One method is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. The second method is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a qualitative determination where the

compensatory education remedy is gauged to place the student in the place where he/she would have been absent the denial of FAPE. (G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir. 2015)).

In this case, the lack of any compensatory education award rests on two distinct lines of reasoning for each of the denial-of-FAPE findings in the *FAPE* section (*IEP* sub-section) above. One line of reasoning involves the qualitative compensatory education sought by the parent; the other line of reasoning involves the absence of a denial of FAPE from the District's misguided procedural understanding.

First, as to the compensatory education remedy, parent seeks a qualitative compensatory education remedy. (NT at 40-42). That is, parent seeks an award of compensatory education to restore the student to the place the student would have been, absent the denial of FAPE. (G.L. at 625-626). Here, there was no evidence presented by parent as to what a make-whole compensatory education remedy would look like. Neither the private school psychologist (NT at 790-886) nor the private BCBA (NT at 1079-1127) who testified on behalf of the parent offered any opinion or evidence as to where the student should be, educationally or developmentally, at this point in the student's education. The only evidence in the record about the student's current educational/developmental condition came from the student's mother, who testified—by affect at the hearing—to the satisfaction and progress of the student in the student's current educational program/placement in the state to which the family had moved. (NT at 108-109). Therefore, while the lack of a

social skills goal in the June 2018 IEP was a denial of FAPE, there is no basis for awarding a make-whole compensatory education remedy.

Second, as to the lack of denial of FAPE due to the District's flawed understanding of the special consideration of impeding-behaviors, even if a PBSP had been in place when the student began 4th grade, the private BCBA testified that it would not have addressed, or been effective for, the severe acting-out behaviors that the student began to exhibit in the fall of 2018 (specifically, with the incident in late October 2018). The record is clear that the acting-out behaviors which the student exhibited in the fall of 2018 were entirely new for the student and were certainly not the off-task and personal-space issues identified as behaviors of concern in the District's May 2018 FBA.

Thus, the District's procedurally flawed understanding of the impeding-behaviors question in the IEP had no bearing on the need for a subsequent FBA and PBSP in light of the acting-out behaviors which the student began to exhibit with the October 30, 2018 incident.⁵ Therefore, there is no denial of FAPE attributable to the District's flawed procedural understanding of the special consideration question about impeding-behaviors in the student's IEP. (34 C.F.R. §300.513(a)(2)).

Accordingly, there is no compensatory education award.

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⁵ Following the October 30, 2018 incident, at the November 5, 2018 IEP meeting, the District requested permission to perform a FBA. The District did not receive permission to conduct the FBA until November 27, 2018 and only three weeks later—following the December 13, 2019 and December 18, 2018 incidents—the student stopped attending school. Therefore, the District was in the midst of the FBA process when the student was no longer available for that process.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District denied the student FAPE in not having a social skills goal as part of the student's June 2018 IEP. There is no evidence, however, that this denial of FAPE has placed the student in a position where the student must be made whole through compensatory education. Furthermore, the District's misguided procedural understanding of the special consideration question on the student's June 2018 IEP did not result in the denial of FAPE.

Additionally, the District did not act with deliberate indifference toward the student on the basis of the student's disability.

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

The undersigned hearing officer hereby relinquishes jurisdiction in this matter.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

August 13, 2019