

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

22739-19-20

Child's Name

O.B.

Date of Birth

Redacted

Parents

Redacted

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Hearing Officer

Cathy A. Skidmore, Esquire

Date of Decision

02/25/2020

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a (redacted) student residing in the Shaler Area School District (District). Student currently attends a private school at the Parents' election. In September 2019, the Parents filed a Due Process Complaint against the District contending that it did not comply with its obligations to Student pursuant to the Individuals with Disabilities Education Act (IDEA),² Section 504 of the Rehabilitation Act of 1973,³ and the Americans with Disabilities Act (ADA),⁴ as well as the federal and state regulations implementing those statutes.

¹ In the interest of 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. The federal regulations implementing the IDEA are codified in 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. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ 42 U.S.C. §§ 12101-12213.

The case proceeded to a due process hearing with the parties presenting evidence in support of their respective positions.⁵ The Parents sought to establish that the District failed to meet its child find obligations and provide appropriate programming to Student, and demanded reimbursement for tuition and related expenses for the private school from January 2019 through the end of the 2019-20 school year, as well as a prospective placement there for the 2020-21 school year. They also asserted disability-based discrimination. The District maintained that its educational programming was appropriate as it was implemented, and that no remedy was due.

For the reasons set forth below following review of the record as a whole, the claims of the Parents must be denied.

ISSUES

1. Whether the District violated its Child Find obligations to Student;
2. Whether the District's program as of the fall of 2018 was appropriate for Student;
3. If the District's program for Student as of the fall of 2018 was not appropriate, should the Parents be awarded reimbursement for private school tuition and related expenses for the second half of the 2018-19 school year and the entire 2019-20 school year;

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Email communications that followed the closing statements were compiled into Hearing Officer Exhibit (HO-) 1, a new exhibit that is hereby admitted. Citations to duplicative exhibits may not be to all. It should also be noted that references to Parents in the plural will be made where it appears that one was acting on behalf of both.

4. Whether the District should be ordered to fund Student's prospective placement at the private school for the 2020-21 school year; and
5. Whether the District discriminated against Student in relation to Student's disability?

FINDINGS OF FACT

1. Student is (redacted) and is a resident of the District. (P-31; S-19.)
2. Student was evaluated and determined to be eligible (redacted) in second grade (2010-11 school year). (P-5.)
3. Student began treating with a psychiatrist and a therapist in approximately the fall/winter of 2015 and that continues today. Student was diagnosed with anxiety and depression at that time and has taken medication. The Parents occasionally mentioned Student's mental health to District professionals during the 2015-16 and 2016-17 school years. In late May 2017, Student entered (redacted) (N.T. 381, 385, 388, 399, 403, 418, 430; P-10; P-14 at 6; S-2.)
4. Student had counseling services available at the high school during the 2017-18 and 2018-19 school years. (N.T. 149; P-17; P-22.)

2017-18 School Year (Ninth Grade)

5. Student entered ninth grade in the District at the start of the 2017-18 school year. (N.T. 267-68.)

6. Student was referred to the Student Assistance Program near the start of the 2017-18 school year because Student was earning failing grades in several classes, and to follow up on Student's mental health concerns the previous spring. After an interview with Student, receipt of input from the Parents and teachers, and other available school information, the team recommended continuation of private mental health therapy and some academic support for teacher monitoring and organization. (N.T. 118, 125-26, 129, 147-48, 153, 200-01, 389; S-3; S-4.)
7. The high school offers an academic support class that meets daily for teacher monitoring of work completion, organizational support, and any necessary tutoring. However, Student expressed a lack of interest in participating in that class so the supports were offered through other classes that Student was already taking during the 2017-18 school year. Specifically, a teacher conducted weekly monitoring of assignment completion with communication to the Parents and assisted Student with organization, all beginning by November 2017. (N.T. 133-35, 139-40, 142, 282-85, 287, 297, 307-08; S-13; S-14; S-15.)
8. An outside provider requested that some teachers complete Vanderbilt Assessment Scales (used to assess symptoms of Attention Deficit Hyperactivity Disorder (ADHD) and other behaviors) for Student in the fall of 2017, and they did so. The Parents also completed the forms. The Parents' rating scales reflected significantly more symptoms exhibited at home than those of the teachers at school. (N.T. 58, 77-78; S-6; S-7; S-12.)
9. Student was provided (redacted). (N.T. 267-69, 273 (P-22).)

10. At Student's (redacted) meeting in early October 2017 attended by the Parents, the team discussed Student's lower than expected grades in some classes. (N.T. 274-76.)
11. Student at times failed to turn in assignments over the course of the 2017-18 school year, including those that could be completed in class, and Student's grades suffered as a result. Teachers at times reported missing assignments to the Parents. (S-3; S-5; S-14.)
12. The District evaluated Student beginning in November 2017 at the request of the Parents due to concerns with Student's attention at home. Student's teachers agreed that an evaluation was appropriate at that time because Student was not exhibiting motivation in school, not because of signs of attention difficulties. The Evaluation Report (ER) issued in early January 2018. (N.T. 38-39, 84, 126, 394-95, 400; S-6; S-8; S-10; S-11.)
13. Parent input into the ER reflected their concerns with attention and concentration, as well as Student's oppositional behavior at home and conflicts with siblings. (S-11; S-19 at 2-3.)
14. Teacher input into the ER reflected concerns with assignment completion and lack of motivation in some classes but not others. The school social worker also identified difficulty with organization and focus. At the time of the ER, Student had passing grades in all classes (C- or better). (S-19 at 3-5.)
15. The ER reported scores of cognitive ability (Wechsler Intelligence Scale for Children – Fifth Edition) in the average to extremely high average range across subtests and composites with the exception of the Picture Span subtest (below average range). Student's Full Scale IQ was reported to be (redacted). (S-19 at 6-8.)

16. Student's academic achievement scores for the ER (Wechsler Individual Achievement Test – Third Edition) similarly reflected scores in the average to very high range across the Reading and Mathematics subtests and composites. (S-19 at 9-10.)
17. The District school psychologist had Student complete BASC-2 rating scales for the ER, but not the Parents or teachers. Student's scales reflected a few at-risk concerns (Attitude to School, Locus of Control, Attention Problems, and Relations with Parents). The results of the Vanderbilt scales were considered by the school psychologist for the ER as providing the same information from the Parents and teachers. (N.T. 43, 61, 68-69; S-16; S-19 at 10-13.)
18. The District school psychologist was aware of Student's history of anxiety and depression but did not assess in those areas. She did consider the results of the Vanderbilt scales that did not reflect concerns at school with anxiety or depression symptoms, or with ADHD. (N.T. 45-46, 63, 86-87, 89-91; S-7.)
19. The ER concluded that Student had a disability (Other Health Impairment due to anxiety and depression diagnoses) but did not need specially designed instruction. Recommendations were made for high-interest activities, encouragement of and reinforcement for participation, asking open-ended questions, monitoring of tasks as compared to Student's abilities, and reminders of expectations. (S-19 at 15-18.⁶)

⁶ S-19 pp. 15 and 16 are out of order.

20. The District school psychologist spoke with one of the Parents by telephone after the ER was completed and summarized the results, but no meeting was held to review the ER. (N.T. 74, 87, 400, 416-17.)
21. The District issued a Notice of Recommended Educational Placement (NOREP) specifying that it was taking no action with respect to Student's educational program. The Parents did not return the NOREP. (N.T. 75-76, 248; S-20.)
22. Student had fewer missing assignments during the second and third quarters of the 2017-18 school year. However, the weekly monitoring ended in mid-February 2018 at the request of the Parents and Student's work completion decreased. (N.T. 288-89, 293, 319-20, 324, 330, 398; S-13 at 4, 7; S-14; S-21; S-22.)
23. In April 2018, the District sought and was given parental permission to obtain input from Student's outside providers about Student's disabilities. Student's therapist and psychiatrist provided information. Specifically, they noted Student's likely difficulty with organization for long-term projects, resistance to work completion, and lack of motivation. They made the following suggestions at school: encouragement and positive teachers/mentors, reminders of the value of task completion, creative approaches, academic support for assignment completion and accommodations (chunking material and extended time). (S-23.)

24. A Section 504 Plan was drafted at the end of the 2017-18 school year in a meeting with the Parents and some District staff. The Plan provided for preferential seating away from distractions, extended time for tests and assignments, an academic support class, chunking of longer assignments, redirection as needed, and lack of access to distracting technology when possible. The Parents approved the Section 504 Plan. (N.T. 181, 182, 213, 419; S-24.)
25. Student's final academic grades for the 2017-18 school year were variable, from a low of 58 in (redacted) Forum to a high of 90 in a creative writing workshop. Several of Student's classes were subjects of interest to Student. (P-22; S-30 at 1.)

2018-19 School Year (Tenth Grade)

26. At the start of the 2018-19 school year, Student was in the academic support class. After the Parents expressed concerns with, and Student was resistant to, the class itself, the supports were again provided in classes that Student was already taking. (N.T. 184, 215, 297-99, 301-04, 325-26.)
27. Student's assignment completion was inconsistent through the fall of 2018. At the end of the first quarter of the 2018-19 school year, Student's grades ranged from a C+ (Chemistry) to F (World Cultures, Algebra 2, and the academic support class). Several of Student's classes were subjects of interest for Student. (P-22; P-37; S-30 at 8, 11-17.)
28. In the fall of 2018, Student's therapist wrote a letter expressing concerns with Student's lack of focus, inattention, and motivation at school and other environments; she also found that Student was emotionally immature in comparison to same-age peers. (P-33; S-25.)

29. In late October 2018, the Parents asked about mental health services at school. However, they decided to continue with the private therapy Student and the family were receiving. (N.T. 408; S-26 at 3.)
30. The Parents advised the District toward the end of December 2018 (on the last day of school before the winter break) that they were withdrawing Student to attend a private school (Private School) and would seek tuition reimbursement. (N.T. 234-35, 251, 445; S-27.)
31. At the time of withdrawal from the District, Student had improved the grades in psychology and the academic support class to passing or better. (P-38; S-30 at 8.)
32. The Parents obtained a private neuropsychological evaluation after Student withdrew from the District.⁷ (N.T. 425.)

The Private School

33. One of the Parents visited the Private School initially in mid-December 2018. (N.T. 347, 413.)
34. The Parents enrolled Student at the Private School in January 2019. (P-35 at 4.)
35. Student's final grades at the Private School at the end of the 2018-19 school year were all in the B range with the exception of a creative writing where Student earned an A grade. (P-35 at 7.)
36. There are twelve teachers at the Private School during the 2019-20 school year. All have at least a Bachelor degree in education and are certified by the state Department of Education. One special education teacher is available for all students. (N.T. 345, 356.)

⁷ No report of that evaluation was introduced at the hearing.

37. The Private School has approximately thirty-six students during the 2019-10 school year, with a maximum capacity of forty-five. (N.T. 344.)
38. Class sizes at the Private School are small with approximately three to five students in a class. The class periods are approximately fifty minutes over the course of a six hour day. (N.T. 344-45, 352, 353-54.)
39. There is a student support team at the Private School and a school psychologist is available for students needing counseling or similar services. (N.T. 356-57.)
40. Student first attended the Private School in January 2019 on the first school day of the calendar year. (N.T. 350, 449; S-28; S-29.)
41. Student remained enrolled at the Private School for the 2019-20 school year at the Parents' expense. (N.T. 450; P-35 at 9.)
42. Student's grades at the Private School at the end of the first marking period of the 2019-20 school year ranged from an A in creative writing and algebra/trigonometry to a D in U.S. History. (P-35 at 11.)
43. Student is not provided special education or related services at the Private School. (N.T. 367.)
44. Student is motivated to do well at the Private School and has done so overall, although Student does not always complete assignments. (N.T. 361-62, 371, 451.)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as essentially consisting of two elements: the burden of production and the burden of persuasion. Here,

it should be recognized that the burden of persuasion lies with the party seeking relief, the Parents. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Application of this principle, however, only determines which party prevails in those rare cases where the evidence is evenly balanced or in “equipoise.” *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of fact-finders, are also charged with 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, and their testimony overall was essentially consistent with respect to the issues to be decided. There were, understandably, gaps in recall of the various witnesses. The testimony was not accorded equal weight, however; that of the District professionals who observed and worked with Student at school was deemed to be more persuasive and probative than those whose understanding was not based on first-hand knowledge. The testimony of the experienced school counselor who knew Student during the relevant time period and did not have concerns with Student’s emotional well-being at school (N.T. 146-228) was particularly convincing. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered in issuing this decision, as were the parties’ closing statements.

General IDEA Principles: Substantive FAPE

Evaluations, Eligibility, and Child Find

The IDEA and state and federal regulations obligate local educational agencies (LEAs) 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 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).

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child’s disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3).

The obligation to identify eligible students is commonly referred to as “child find.” 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 such as school districts are required to consider identifying a student as eligible for special education services within a reasonable time 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).

In conducting an evaluation or reevaluation, the law imposes certain requirements on LEAs to ensure that sufficient and accurate information about the child is obtained, including a variety of assessment tools for gathering relevant data about the child’s functional, developmental, and academic strengths and weaknesses. 34 C.F.R. §§ 300.304(b); *see also* 34 C.F.R. § 303(a). 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).

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). The U.S. Department of Education has explained that, although “[t]he eligibility group should work toward consensus, [] under §300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability.” 71 Fed. Reg. 46661 (August 14, 2006).

Free Appropriate Public Education

The IDEA further mandates that states provide a “free appropriate public education” (FAPE) to children who qualify 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. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed.

An LEA meets the obligation of providing FAPE to IDEA-eligible students through development and implementation of an Individualized Education Program (IEP) which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted); *see also Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have “a significant role in the IEP process.” *Schaffer, supra*, 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); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010).

General Section 504 and ADA 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).

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, “an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of” the related subsections of that chapter, 34 C.F.R. §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b). The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood, supra*, 172 F.3d at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). Further, the standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012). Significantly, “[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 order to establish a violation of § 504 of the Rehabilitation Act, the filing party must prove that:

1. He is "disabled" as defined by the Act;
2. He is "otherwise qualified" to participate in school activities;
3. The school or the board of education receives federal financial assistance; and
4. He was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

By contrast, intentional discrimination under Section 504 requires a showing of deliberate indifference, which may be met only by establishing "both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge." *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). However, "deliberate choice, rather than negligence or bureaucratic inaction" is necessary to support such a claim. *Id.* at 263.

The Parents' Claims

The first issue is whether the District violated its obligations under the principles of Child Find under the IDEA. Here, the Parents have failed to meet their burden of establishing that Student has a disability and, by reason thereof, requires specially designed instruction.

The Parents contend that the District should have evaluated Student sooner than November 2017 and that the evaluation was substantively inadequate.⁸ However, as the *D.K.* Court observed, there is no mandate for an evaluation at the first sign that one may be needed. Student was out of the District in a partial hospitalization program at the end of the 2016-17 school year, and returned to the District in the fall with a prompt referral to the Student Assistance Program. It was certainly reasonable for the District on these facts to wait some period of time to allow Student to be re-acclimated to school and assess how Student was faring rather than automatically conduct an evaluation which, in any event, would not have been completed until well into the fall under the state regulations. This hearing officer cannot conclude that the issuance of a Permission to Evaluate form in early November 2017, at which time Student was exhibiting a lack of motivation and inconsistent completion of assignments at school, constitutes an undue delay.

A brief discussion of the District's ER is warranted here. The ER included input from the Parents and teachers as well as measures of cognitive ability and academic achievement. There is, however, a questionable aspect of that evaluation, namely the decision to provide the BASC-3 rating scales only to Student.⁹ It is also concerning that the District did not seek to reach a consensus with the whole team including the Parents on Student's eligibility, which is a procedural violation. However, the record

⁸ The parties' communications about this contention are memorialized in HO-1. However, even though relief was not specifically requested with respect to the ER, it provides a basis for understanding how Student presented at school and what the District did in response, putting the remaining claims in context.

⁹ The BASC-3 is an instrument that typically seeks the perspective of a child from a variety of informants and is a broad assessment of behavior.

is preponderant that the District professionals familiar with Student did not observe difficulties with attention, as the Parents reportedly did, nor did Student demonstrate other social/emotional/behavioral needs at school. In addition, at the time of the issuance of the ER, Student had average or better grades in all classes. The fact that Student presented much differently at home than at school does not establish unmet education-related needs. As such, the procedural violation was not significant or prejudicial.

On the contrary, although Student has mental health diagnoses, the evidence is insufficient to lead to a conclusion that Student requires adaptations of the content, methodology, or delivery of instruction because of a disability. IDEA eligibility, again, is a two-part test, and the existence of a disability standing alone does not satisfy both prongs. Still, Student was a qualified student under Section 504, leading to the next issue of whether the District deprived Student of FAPE in the fall of 2018 prior to disenrollment.

Student did reportedly lack motivation in some classes at times and did not consistently complete assignments during the two school years prior to Student's withdrawal. Student was referred to the Student Assistance Program early in the 2017-18 school year and recommendations for monitoring and organization were implemented in accordance with the Parents' and Student's wishes, and was successful until it ceased at the Parents' request. At that point in time, the District moved to develop a Section 504 Plan to address the difficulties Student was exhibiting at school in accordance with recommendations of Student's private therapist and psychiatrist. This Section 504 Plan was reasonably responsive to Student's disability-related needs as manifested in the school environment.

Student's performance at school in the fall of 2018 did begin with inconsistency in completing assignments, as reflected by Student's grades and teacher comments. The District, however, appropriately addressed Student's resistance to the support then provided by revising how the

accommodations would be implemented, and the failing grades began to improve. It is unknown how successful (or unsuccessful) Student would have been during the second quarter of the 2018-19 school year, because Student was withdrawn and enrolled in the Private School. Had Student's performance remained concerning into the second quarter after the support changes were implemented, it may have been necessary for the District to take additional steps. However, this hearing officer simply cannot conclude on this record that the Parents established a denial of FAPE to Student. Similarly, the record does not evidence any discrimination under Section 504 in any respect.

The Parents, quite understandably, want what is best and have high expectations for Student, and are clearly disappointed with Student's success in the District in recent years. But educational programs are not required to be optimal, and LEAs must be afforded reasonable time to try interventions, including regular education supports, and evaluate whether or not they are working; and, if not, to respond appropriately. Unlike in *Molly L., supra*, 194 F.Supp.2d at 428-29 (predating *Schaffer, supra*, 546 U.S. 49), it is the Parents who bore the burden of proof, and the evidence of record does not support their claims in this case.

Having found no violations of the IDEA or Section 504, there is no need to consider the demands for tuition reimbursement or prospective placement at the Private School.

CONCLUSION

The District did not fail to comply with its obligations to Student under the IDEA or Section 504, and no remedy is due or ordered.

ORDER

AND NOW, this 25th day of February, 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. Jurisdiction is relinquished.

Cathy A. Skidmore

Cathy A. Skidmore, M.Ed., J.D.

HEARING OFFICER

ODR File No. 22739-19-20