

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: B.K.

Date of Birth: [redacted]

Dates of Hearing: 6/12/2015, 8/10/2015, 8/11/2015, 8/12/2015,
8/13/2015 and 10/14/2015

CLOSED HEARING

ODR File No. 16119-14-15AS

Parties to the Hearing:

Parents
Parent[s]

Local Education Agency
Wissahickon School District
601 Knight Road
Ambler, PA 19002

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney
Joseph W. Montgomery, Esquire
Montgomery Law, LLC
1420 Locust Street, Suite 420
Philadelphia, PA 19102

LEA Attorney
Scott H. Wolpert, Esquire
Timoney Knox, LLP
400 Maryland Drive
P.O. Box 7544
Fort Washington, PA 19034

November 9, 2015

November 25, 2015

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

INTRODUCTION AND PROCEDURAL HISTORY

The student (Student)¹ is an early elementary school-aged student in the Wissahickon School District (District) who has been identified as a Protected Handicapped Student. Student's Parent filed a due process complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under the Individuals with Disabilities Education Act² (IDEA) and Section 504 of the Rehabilitation Act of 1973,³ as well as the federal and state regulations implementing those statutes.⁴

The case proceeded to a due process hearing convening over six sessions, at which the parties presented evidence in support of their respective positions.⁵ The Parent sought to establish that the District failed in its IDEA obligations to identify Student as eligible under the IDEA and develop an appropriate program during the 2014-15 first grade school year. The District maintained that its determination that Student qualified as a Protected Handicapped Student whose needs could be addressed in its subsequent proposed Section 504 Plan was appropriate. A number of sub-issues developed further as the case proceeded to the final hearing session. For the reasons set forth below, I find in favor of the Parent on some issues and in favor of the District on others, and will order an appropriate remedy.

ISSUES

1. Whether the District violated its Child Find obligations in failing to identify Student as eligible for special education;
2. Whether the District's evaluation under Section 504 was appropriate;
3. Whether the District's educational programming was appropriate for Student with respect to all academic, social/emotional, behavioral, and executive functioning needs;
4. If the District failed in any of these obligations, is the Student entitled to compensatory education and/or any other remedy;
5. Whether the Parent should be reimbursed for an independent evaluation; and
6. Whether the Student is entitled to further independent evaluations.

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

² 20 U.S.C. §§ 1400-1482.

³ 29 U.S.C. § 794.

⁴ 34 C.F.R. § 300.1 *et seq.*; 22 Pa. Code §§ 14.101 – 14.163; 22 Pa. Code §§ 15.1 – 15.11. References to Section 504 Plans in this opinion will include Service Agreements under Chapter 15.

⁵ It also merits mention that several of the hearing sessions were half days only to accommodate witness availability. References to the record will be made as follows: Notes of Testimony (N.T.), Parent Exhibits (P), School District Exhibits (S), and Hearing Officer Exhibits (HO). References to duplicative exhibits may be to one or the other or both. This hearing officer also here reiterates the caution given to counsel at N.T. 683-84 regarding the unredacted names of other children in the record.

FINDINGS OF FACT

1. Student is an early elementary school-aged student who is a resident of the District. Student is eligible for a Section 504 Accommodation Plan. (N.T. 76-77)
2. Student attended a part-time kindergarten outside of the District before entering the District in April 2014 as a kindergarten student. The Parent had a discussion with someone at the District about the prior kindergarten, but wrote on a registration form that Student had not previously attended kindergarten. Student received a report card for the end of the 2013-14 kindergarten year reflecting that Student met expectations in all qualities of a learner, and performed in the proficient or advanced range in all subject areas. (N.T. 144, 1131-32, 1494-99; S-23)
3. The District has a Child Study Team (CST) process wherein Tier II level of interventions are considered for individual students who are experiencing difficulty. A student may be referred to the CST by a teacher, or when a parent requests an evaluation. CST meetings include the parents of students who are referred to it. The CST sets goals for students to address concerns and develops strategies to support the student and help them to meet the goals. (N.T. 163-66, 396; S-26 p. 31)

Beginning of 2014-15 School Year

4. Student was referred to the CST in December 2014 after the Parent requested an evaluation for special education and [redacted]. The team met, although the Parent was not able to attend, and set goals for Student with strategies to address concerns (initiating writing tasks and solving open-ended mathematics problems) while the evaluations were underway. Other noted behaviors were Student being off-task requiring redirection, failing to complete tasks, and interrupting others; Student also lacked organizational and social skills, and failed to keep Student's desk organized. The Parent was not seeing the same behavioral concerns at home. The District then simultaneously conducted two separate evaluations in February 2015 with the consent of the Parent. (N.T. 83-84, 86, 100, 140-42, 165-69, 188-89, 469, 677, 680, 704-05, 708, 742-43, 832-33, 1149-50, 1570-71; P-5, P-6, P-7, P-8 p. 2, P-12, P-13, P-35 pp. 28-29, 37; S-3, S-4, S-6, S-7, S-10, S-11, S-25 p. 38, S-27 pp. 51-65)
5. Student did not enjoy and had difficulty with writing tasks. Student was able to use a computer for writing assignments, and the teacher provided graphic organizers. (N.T. 630-35, 695, 737-38, 993-94)
6. The Parent expressed concerns with Student refusing to complete work and participate in class, as well as Student's mastery of grade level materials. She did not provide any written input into the evaluations other than completing behavior rating scales, but did speak with the District school psychologist before the evaluations. She also asked for information on the assessments that would be conducted. (N.T. 86-87, 142-43, 149-54, 159, 162, 169-71, 235; P-5; S-4, S-26 pp. 19-20)

7. The District school psychologist did not observe Student in the classroom, but obtained information from Student's two teachers. The teachers reported that Student had difficulty working independently (completing tasks) especially when writing was involved, and was frequently off task requiring redirection. Student's reading ability was reportedly above grade level, with mathematics another strength; written expression was a noted weakness. Student also reportedly had difficulty making and keeping friends. (N.T. 85-86, 179-82, 185-86, 312; P-8 p. 1-2; S-14 p. 1-2)
8. The District school psychologist conducted cognitive assessment using the WISC-IV (Wechsler Intelligence Scale for Children – Fourth Edition). Student achieved a Full Scale IQ score of 105 and a General Ability Index score of 115 (high average range) on the WISC-IV, with a relative strength in nonverbal ability, and a relative weakness with processing speed but the school psychologist believed this score to be an underestimate because of Student's focus on accuracy rather than on speed. She also administered the NEPSY-II (Neuropsychological Assessment, Second Edition) to examine Student's difficulties with attention and focus in the classroom, reporting weaknesses with auditory attention and inhibition. (N.T. 203-05; P-8 pp. 4-6; S-14 pp. 4-6)
9. Student was also administered the WIAT-III (Wechsler Individual Achievement Tests – Third Edition). Student attained scores in the average and high average range on all subtests and composites in the areas of reading, writing, and mathematics. (P-8 pp. 2-4; S-14 pp. 2-4)
10. BASC-2 (Behavior Assessment System for Children, Second Edition) rating scales were completed by the Parent and a teacher. Results indicated at-risk concerns of the teacher with respect to hyperactivity, attention problems, school problems, and adaptability, and no clinically significant scores. Results from the parent indicated a clinically significant concern with attention problems and at-risk concerns with aggression, conduct problems, and activities of daily living. (P-8 pp. 6-7; S-14 pp. 6-7)
11. The District school psychologist also obtained BRIEF (Behavior Rating Inventory of Executive Function) scales from the teacher and Parent. Those results suggested concerns at school in the areas of shifting, monitoring behavior, working memory, and organization; the parental report did not reflect concerns. The District school psychologist noted that, together, the BASC-2 and BRIEF indicated significant behavioral difficulties at home and at school, with the school behaviors more pronounced, identifying these weaknesses: shifting, initiating tasks, organizing materials, monitoring behavior, and working memory. (N.T. 214-15; P-8 pp. 7-8; S-14 pp. 7-8)
12. The District's school psychologist concluded, and reflected in the ER, that Student had a disability, Other Health Impairment (OHI), with attention related difficulties due to executive functioning weaknesses, but did not need specially designed instruction because Student's academic performance was not impacted by the OHI. A Section 504 Plan was recommended with these accommodations: frequent feedback of work progress to address inattention and motivation; a defined and structured instructional setting; adult eye contact and visual prompts when giving directions; collaborative goal setting for work completion and behavior expectations; preferential seating; and positive

reinforcement. The ER form contains a typographical error with respect to the box checked to reflect this conclusion. (N.T. 103-05, 125-26, 157-58, 160, 194, 320; P-8 pp. 9-10; S-14 pp. 9-10)

13. [Redacted.]
14. The Parent pointed out, via email, two errors in the District's evaluation reports: first, the District reported that Student began in the District in the fall of 2014 rather than the spring (kindergarten); and second, the District reported that Student did not speak a foreign language when Student did. She concluded her message by stating that, "Otherwise, I think all the reporting is dead on." The District school psychologist made the two corrections. (N.T. 220-21; S-25 p. 7)
15. The Parent expressed surprise at the procedural steps that the District was taking following the evaluations. She asked to "stop *everything*" (S-26 p. 6, emphasis in original), including a Section 504 Plan. However, the District school psychologist advised the Parent that, because Student was eligible under Section 504, the District was obligated to convene a meeting and develop a Section 504 Plan. The Parent asked for more time for two reasons: to better understand the process, and to address a health concern. The District convened the meeting in May as requested to discuss the proposed Section 504 Plan. (N.T. 230-34, 293-94, 510-13, 789-90; P-35 pp. 63-65, 67, 69-70, 98; S-21, S-26 pp. 1-7, 9)

End of 2014-15 School Year

16. The District issued a Notice of Recommended Educational Placement (NOREP) in March 2015 recommending that Student continue in regular education with a Chapter 15 - Section 504 Service Agreement. The Parent did not approve the NOREP, as she did not believe that the ER was sufficiently comprehensive or accurate, but did not provide a reason on the document itself. (N.T. 1575-76; P-9; S-13, S-15, S-20)
17. At the May 2015 meeting, the District school psychologist explained some of the evaluation results, and the participants reviewed the proposed Section 504 Plan and discussed the accommodations. The aids, services, and accommodations in that Section 504 Plan were:
 - Option to use a computer for writing assignments
 - Allow dictation of ideas for writing assignments
 - Use of positive task completion strategies
 - Frequent teacher feedback on work progress
 - Preferential seating (proximity to teacher and away from distractions)
 - Pairing of verbal and visual communication
 - Nonverbal signals for attention and focus
 - Small group and individual guidance counseling sessions
 - Communication between home and school
 - Opportunity for differentiated instruction

(N.T. 238-39, 1443-44, 1449; P-27; S-29)

18. The District offered to conduct a Functional Behavioral Assessment (FBA) during the meeting, not because its representatives thought one was necessary but as an effort to cooperate with the Parent. The District representatives believed it already had information on frequency, timing, and location of the concerning behaviors (attention and focus, initiating and completing tasks, remaining on task, staying organized, and some difficulties making and keeping friends). Because of the timing of the meeting, the District proposed conducting the FBA at the start of the 2015-16 school year. The Parent did not agree to this offer. (N.T. 247-49, 296-97, 333-34, 361-62, 363-66, 377, 513, 659, 688, 806-07, 839-40, 1434-35, 1737; P-13 pp. 8-9)
19. The Section 504 Plan included 24 sessions of small group and/or individual counseling. This accommodation was less than the 45-minute weekly sessions that the Parent requested. (N.T. 515-18, 802-03, 818-19, 1445-47)
20. At that May 2015 meeting, the Parent asked that Student be placed in a different school district. The District did not accede to this request. (N.T. 246-47, 803-04, 1442)
21. The Parent also asked at the meeting that Student be placed in a different grade for reading instruction. The District also did not agree to that request, but offered to and did provide Student with additional reading lessons with a different group of students. (N.T. 519-20, 625, 627-30, 659-60, 804-05, 1447-48, 1452-53, 146)
22. The Parent further asked at the meeting that Student resume using a color-based class-wide behavior plan. The teacher agreed and returned to that plan with Student in addition to the chip system. (N.T. 621)
23. The Parent did not approve the Section 504 Plan. (N.T. 160, 818)
24. Student's report card for the end of first grade reflected that Student met or was approaching expectations for qualities of a learner; and Student performed in the proficient or advanced range in all subject areas with the exception of some writing and library skills where Student was at the basic level. (N.T. 645-48, 739; S-28)

Bullying and Related Programs in the District

25. The District implements the Olweus Bullying Prevention Program. Classes meet weekly with scripted lessons and open discussions. (N.T. 540-42, 639-40, 715-17)
26. The District's policy when a child makes an accusation of bullying is to conduct an investigation and write a report. All students who were allegedly involved and their families are notified of the reports and findings. (N.T. 780-81)

27. The guidance counselor met with Student individually during the 2014-15 school year, as she does with all students. (N.T. 538-39)
28. Because students of Student's age sometimes play together too roughly at recess, and fail to keep their hands to themselves and respect the personal space of others, District staff work with the students to teach them to play together appropriately and to respect personal space of others. (N.T. 527-29, 540, 543, 604; P-35 p. 97)
29. The teachers in the first grade classroom work on social interactions throughout the day, and work on skills such as taking turns, raising hands to speak in class, listening to others, lining up, and working in groups. (N.T. 710-14)

Behaviors and Behavioral Interventions

30. Student's first grade teacher for the first half of the school year had several class-wide behavior systems where students earned rewards for positive behaviors (e.g., completing tasks and participating in class). She created a behavior chart in approximately October 2014, where students began at the green level and would move down to other colors for inappropriate behavior; and the teacher talked with students when their color changed. She also created a behavior chart for Student where Student earned smiley faces for completing work throughout the school day, leading to rewards; and she sent those charts home each day for the Parent to sign. The teacher discontinued the individual behavior charts because Student became upset with their use. (N.T. 682, 693, 718-26, 729-30, 732, 734; P-35 pp. 34-35; S-33)
31. Student was involved in a few incidents in the fall of 2014 involving aggression toward peers (kicking a student who was walking by, pulling on another's clothing). Student at times was not truthful with the Parent about these incidents. (N.T. 733; P-35 pp. 7-8, 11, 13, 16-17, 18, 48; S-27 pp. 13, 91-92, 99-100)
32. Student attended a foreign language class at another location four days a week with another student. In October 2014, Student expressed a concern about other students on the van to the other location, and the first grade teacher spoke with the students. (N.T. 652-53, 1563-64; P-35 p. 13)
33. Student's first grade teacher for the second half of the school year noticed that Student failed to complete assignments including writing tasks, called out in class, lacked organization, and sometimes failed to keep Student's hands to self. The teacher redirected Student to complete tasks. Student's difficulties interacting with peers were more frequent at lunch and recess than other times of the school day. (N.T. 566, 569, 583, 597, 621-23, 633, 641-44, 655-56)
34. The second first grade teacher implemented several behavioral strategies to address Student's conflicts with other students. There was a class-wide plan where each student moved along a spectrum of colors based on appropriate behavior. In March, Student had an individual behavior chart, wherein Student earned stars by completing assignments on time, raising Student's hand before speaking, and keeping hands to self, throughout the

day; the stars were recorded on a daily sheet sent home each day. Student also noted whether Student was organized on the same daily sheet, for which Student earned chips. Student chose rewards based on the stars earned using the individual behavior chart. By May, the teacher only tracked assignment completion since Student was successfully demonstrating the other behaviors; Student earned chips rather than stars, and the teacher reported on this behavior weekly to the Parent. (N.T. 570, 573-75, 578, 597-615, 617-19, 620-21, 657-58, 661; P-35 p. 60; S-22, S-25 pp. 13-14, S-32)

35. Student was involved in several behavioral incidents in April and May 2015:

- a. One day at recess in April 2015, a peer bit Student. The guidance counselor spoke with both children several days after the incident to make sure that they were staying away from each other. Student reported that the two were staying away from each other. (N.T. 479-82, 499-500; P-28)
- b. Within 10 days of the April 2015 biting incident, two more incidents occurred, one involving another peer biting Student, and one wherein Student was pinched. (P-28, P-29 pp. 3-4)
- c. In early May 2015 an incident occurred wherein a peer pulled at Student's hair.⁶ The guidance counselor and the teacher each spoke with Student and the peer. (N.T. 493, 525-27, 581, 590, 1159-60; P-35 p. 75; S-35 p. 10)
- d. In separate incidents in the middle of May 2015, Student had a disagreement with another peer about lining up in the classroom and also engaged in aggressive play at recess. The teacher spoke with the students involved when these incidents occurred. (P-29 pp. 5-6, P-35 p. 72; S-35 pp. 18-19)
- e. In an incident in late May 2015, Student and a peer engaged in conflict that involved name calling and one student blowing in another child's face. The teacher spoke with both children about this incident, and the peer apologized to Student. (N.T. 590-92; P-35 pp. 73-74; S-35 p. 29)
- f. Also in late May, another student removed an item of Student's clothing at recess. The teachers instructed the other student to return the item and he or she did. (N.T. 585-86, 654; S-35 p. 18)
- g. In two additional incidents at recess in late May 2015, a peer pulled at Student's clothing; one week later when Student was playing with that peer, Student appeared to act aggressively by pulling at that child's arm and dragging that child along the ground. The guidance counselor who observed both incidents did not believe the children were acting aggressively in an intentional manner, but spoke with Student and the peer about their actions and how to play appropriately. (N.T. 501, 503-05, 527-29; S-35 pp. 29-30)

⁶ This incident is described at N.T. 1158-60, P-35 p. 75, and S-35 p. 10, but the details are omitted here to avoid inclusion of personally identifiable information.

36. In April 2015, the Parent reported that Student had some concerns regarding peers and wanted to talk to someone at the District. The principal and guidance counselor spoke with the Parent about the concerns, and explained that Student had never reported bullying to any District staff, and that the biting incidents had been addressed as disciplinary matters. The guidance counselor offered to meet with Student on a regular basis, and the Parent agreed. (N.T. 494-96, 1165-66; S-35 p. 13)
37. The first grade teacher held class meetings beginning in May to talk about positive interactions at lunch and recess and to address any concerns with those periods. (N.T. 638-40)
38. In May 2015, the Parent asked the teacher to help Student understand bullying in light of the several recent incidents of aggression toward Student (two incidents of biting, one of pinching, and one of verbal remarks by peers) as Student apparently misunderstood some of the District's teachings on this topic. (P-35 p. 76)
39. In June, at the Parent's request, the first grade teacher had students volunteer to sit with Student at lunch or play with Student at recess. This information was also provided to the Parent along with assignment completion for that particular month. (N.T. 616-17)

Private Evaluations and Summer 2015

40. Student was privately evaluated by a neuropsychologist in May 2015. He issued a Neuropsychological Evaluation Report (NER) in June in draft form that was provided to the Parent, and subsequently issued a final version that included a much more thorough and detailed summary and recommendations with an additional Appendix that listed considerations for executive functioning weaknesses. (N.T. 857-58, 1004-06; P-16, P-37)
41. The NER summarized background information including a report from a private psychologist who evaluated Student previously; the Parent did not provide input, however. He also obtained input from Student's first grade teachers, who reported strengths in reading fluency and mathematics and a weakness in writing; they also noted difficulty completing tasks, questioning of the teacher when given directions or demands, and Student's off-task behavior requiring redirection. Student reportedly worked well with peers but sometimes required prompting, and Student exhibited difficulty making and keeping friends and understanding social cues. The private neuropsychologist observed Student in the classroom and at recess and summarized those observations with data on Student's adaptive and problem behaviors, some of which the teacher had not previously seen. (N.T. 864-65, 870-71, 904-09, 924-28, 1078-81, 1089; P-37)
42. The private neuropsychologist conducted cognitive assessments using the Woodcock-Johnson Test of Cognitive Abilities Third Edition, obtaining a high average Brief Intellectual Ability score. Other related measures reflected relative strengths in verbal reasoning and processing skills and relative weaknesses in visual memory. (P-37)

43. Rating scales and other measures were administered to assess, among other things, Student's attention and executive functioning abilities, behavioral and social-emotional functioning, social perception. The private neuropsychologist concurred with the District that Student met the criteria for OHI on the basis of an executive function disorder, but concluded that Student's disability was specific to visual attention and emotional regulation weaknesses that impacted Student's social-emotional functioning rather than academic performance. He found no indications of depression, but noted that Student's emotional regulation negatively affected Student's social perception and social relationships. (P-37)
44. The private neuropsychologist concluded that Student was eligible for special education under the IDEA, and made recommendations for Student's educational program including behavioral goals for on-task behavior, visual attention, and social skills; an occupational therapy consultation; a speech/language therapy consultation; social skills training; interventions to address emotional dysregulation; pairing verbal with visual learning; and parent training. Considerations for executive functioning interventions were also provided. (P-37)
45. Student also underwent a neurophysiological assessment (Quantitative EEG) at the time of the neuropsychological evaluation. EEG biofeedback training was recommended following that assessment. (N.T. 1321, 1342; P-18)
46. Student attended a private summer camp in 2015. (N.T. 1520-21)
47. The Parent arranged for a private FBA at the summer camp. The Board Certified Behavior Analyst (BCBA) who conducted the FBA observed Student for a three hour period, without having reviewed records about Student in order not to be influenced by others, but did speak to the Parent prior to the observation. The behaviors of concern that she observed were inappropriate crossing of physical boundaries; walking away from someone speaking to Student or the group; and appearing off-task/looking away from a speaker; but not aggression or self-injurious behaviors. However, the demands placed on Student at camp were generally preferred activities. This BCBA made recommendations for addressing Student's behaviors but emphasized the need for a new FBA in the school environment. (N.T. 1184-86, 1189, 1192-95, 1199-1203, 1217-18, 1245-46, 1250, 1296; P-39)
48. The BCBA interviewed several counselors at the camp. The Parent did not complete the functional assessment screening tool that the private BCBA gave her to complete, but she did speak with the BCBA about that form, and the BCBA filled in the Parent's answers. (N.T. 1245-47, 1256-57, 1279, 1281-83, 1286-87)
49. The Parent arranged for a private occupational therapy evaluation in June of 2015. The report of this occupational therapist suggests that Student exhibits deficits in sensory processing, self-regulation, auditory processing, visual processing, and other related areas. She recommended direct occupational therapy and a variety of interventions. (P-38)

50. The parties reviewed a revised Section 504 Plan at the end of August 2015. That meeting was attended by the private BCBA and private neuropsychologist. The revised Plan contained the following aids, services, or accommodations:

- Visual reminders of work to be completed
- Frequent teacher feedback on work progress
- Positive reinforcement for on-task behavior
- Preferential seating (proximity to teacher and away from distractions)
- Pairing of verbal and visual communication
- Nonverbal signals for attention and focus
- Small group and individual guidance counseling sessions
- Communication between home and school
- Opportunity for differentiated instruction
- Self-monitoring system for self-awareness
- Choices on completing writing assignments

(N.T. 1740, 1745-46, 1748-49, 1824; S-38)

51. Before and after the August 2015 meeting, the District sought permission to evaluate Student based on the new private evaluation reports (neuropsychological, speech/language, occupational therapy, and one other consultation), and to conduct its own FBA, occupational therapy, speech/language, and functional vision evaluations, and updated behavior rating scales. (S-37, S-40)

52. The Parent did not approve the revised Section 504 Plan; and will not consent to any further evaluations by the District unless they are medically required and conducted by professionals who are more qualified than her private evaluators. (N.T. 1763, 1828-29)

53. Following this hearing officer's denial of a request for an order for homebound instruction, Student began the 2015-16 school year on home schooling approved by the District. (N.T. 1786, 1826; HO-2)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize 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). Accordingly, the burden of persuasion in this case rests with the Parent who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where

the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as 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 to be generally credible, although their recollections varied at times. The testimony of the Parent was credible in conveying her perspective that appeared to be to some extent a product of frustration with the District; and she presented as a very devoted and passionate advocate for Student. However, her testimony was accorded less weight for two important reasons; the first is that her demeanor, particularly on cross-examination, was unresponsive at times and rather confrontational at others, diminishing the probative value of her sworn account; and, further, her understanding of what transpired during the school day was based almost exclusively on reports from Student and differed from the views of the District personnel who were present. The testimony of the District’s school psychologist and the private neuropsychologist were accorded significant weight; those witnesses together provided a comprehensive picture of Student’s strengths and needs, despite their differences of opinion on, for example, the value of certain assessment instruments. Indeed, these two witnesses and their respective reports were in essential agreement on many areas of Student’s academic, behavioral, and social/emotional functioning, and their differences may be attributed at least in part on the timing of their evaluations and the information each had available; divergences are discussed further below as necessary.

All of the District professionals, and the experts and advocate employed by the Parent, presented as qualified in and dedicated to their fields and with a desire to ensure that Student was provided with an appropriate education. Nevertheless, I do note that some of the evidence was of limited value, including the private FBA conducted at the summer camp, due to the timing of the observations and report, as well as the fact that it was conducted in an environment that is significantly different from the school setting, as noted by the District’s BCBA (N.T. 1639-42).

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, as were the parties’ exhaustive and detailed Closing Arguments.

Section 504 Principles

Section 504 specifically 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, §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b). This FAPE obligation includes the duty of Child Find under Section 504. 34 C.F.R. § 104.32; *Ridgewood* at 253. As explained in an analogous context, local education agencies are required to fulfill the Child Find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 484 (3d Cir. 1995).

The applicable regulations implementing Section 504 further require that an evaluation shall be conducted “before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.” 34 C.F.R. § 104.35. An initial evaluation under Section 504 must assess all areas of educational need, be drawn from a variety of sources, and be considered by a team of professionals. *Id.*

General IDEA Principles

The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services, another aspect of Child Find. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. School districts are required to identify a student 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 required to identify a disability “at the earliest possible moment.” *Id.* (citation omitted). Nevertheless, when a school district has reasonable suspicion of a disability, the obligation is triggered. *P.P. v. West Chester Area School District*, 585 727, 738 (3d Cir. 2009). Child Find is an ongoing requirement. *Id.*

The IDEA 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). With respect to the second prong of IDEA eligibility, “special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). Further,

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). “There is no precise standard for determining whether a student is in need of special education, and well-settled precedent counsels against invoking any bright-line rules for making such a determination.” *Chelsea D. v. Avon Grove School District*, 2013 U.S. Dist. LEXIS 98125 *24 (E.D. Pa. July 15, 2013) (quoting *West Chester Area School District v. Bruce C.*, 194 F. Supp. 2d 417, 420 (E.D. Pa. 2002)).

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this 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. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). Local education agencies (LEAs) meet the obligation of providing FAPE to 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).

An LEA “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity.’” *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995) (quoting *Rowley*, *supra*, at 201); *see also Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Nevertheless, the U.S. Supreme Court over thirty years ago recognized that a child with a disability who is “advancing from grade to grade” is not necessarily a child who has been provided with an appropriate education. *Rowley*, *supra*, at 203 n.25; *see also* 34 C.F.R. § 300.101(c)(1) (“Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”) An appropriate education, thus, encompasses all domains, including behavioral, social, and emotional. *Breanne C. v. Southern York County School District*, 732 F.Supp.2d 474, 483 (M.D. Pa. 2010) (citing *M.C. v. Central Regional School District*, 81 F.3d 389, 394 (3d Cir. 1996)). Moreover, a child’s educational performance can be affected in ways other than achieving passing grades, such as by an inability to engage in appropriate social relationships with peers.

The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood*, *supra*, at 253; *Lower Merion*, *supra*.

The Parent’s Claims

Child Find

The first issue is whether the District inappropriately failed to identify Student as eligible for special education under the IDEA. The Parent points to information in the fall of 2014 that

Student engaged in problematic behavior and exhibited organizational difficulties, asserting that the District failed to suspect that these characteristics might be related to a disability. She also contends that the District's decision to convene the CST, and to require a signed Permission to Evaluate form, contributed to the delay in the evaluations.

As noted, case law interpreting both the IDEA and Section 504 require a local education agency to act within a reasonable time after suspecting that a child has a disability. As the Parent observes (Parent's Closing Argument at 13), the Office of Special Education Programs has provided policy guidance that cautions agencies to avoid using Response to Intervention approaches to delay an evaluation for special education.⁷ It is important to recognize, however, that in the fall of 2014, Student was a first grade student who was, like many other children at that age, learning to adjust to the school environment including how to behave in the classroom and how to interact with peers. Certainly not every sign of disorganization or peer conflict at that young age warrants an evaluation; indeed, the Parent's private neuropsychologist opined that in the fall of 2014, there was no need for the District to "rush to testing" (N.T. 933), even considering, in hindsight, all available information on Student's off-task and other behaviors. (N.T. 932-35)

This hearing officer concludes that the individualized and class-wide interventions implemented by the first grade teacher for the first half of the 2014-15 school year and referral to the CST were wholly reasonable and appropriate for Student at the time. Further, the proposal to address Student's identified needs via accommodations in a Section 504 Plan, particularly in light of Student's age and continued academic success, was not so unreasonable as to constitute a Child Find violation as the team proceeded to a meeting in early May of 2015. Specifically, the plan proposed in May 2015 addressed needs with respect to writing assignments, attention and focus, task completion, differentiated instruction, and social skills; all of these accommodations were directly responsive to the recommendations in the March 2015 ER. Moreover, the first grade teacher's various approaches to Student's behaviors in the second half of the 2014-15 school year were largely effective in the classroom.

The Parent also contends that the District delayed the evaluation that was completed in March 2015 because it waited until it had a signed Permission to Evaluate form despite the Parent having made the request for the evaluation in writing. (Parent's Closing Argument at 5) Even assuming that the District should not have imposed a requirement for her to sign a Permission to Evaluate Form (22 Pa. Code § 14.123(b)), there is no reason to suspect that under the circumstances wherein the Parent needed additional time before the Section 504 meeting, the team could have met earlier in the spring. Thus, even if this circumstance might be construed as a procedural violation, it did not cause any substantive harm to Student's educational program.

District ER

In a related issue, the Parent challenges the District's ER. Because that evaluation was conducted pursuant to the IDEA, and not Section 504, it will be considered within that context.

⁷ Memorandum to State Directors of Special Education 11-07, 56 IDELR 50 (OSEP 2011).

Specifically, the law imposes certain requirements on local education agencies to ensure that sufficient and accurate information about the child is obtained in conducting an evaluation.

Conduct of evaluation. In conducting the evaluation, the public agency must—

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - (i) Whether the child is a child with a disability under § 300.8; and
 - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b). 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). Assessments must be used for the purposes for which the instruments are valid and reliable, and be administered by trained and knowledgeable personnel in accordance with the test-maker’s instructions. 34 C.F.R. § 300.304(c)(1).

The ER met all of these requirements based upon the information available to the District as of March 2015. The ER included input from the teachers and Student’s educational records, and from the Parent to the extent she provided information. Although the Parent contended throughout the hearing that an FBA should have been made part of that evaluation, my review of the record as a whole compels the conclusion that in early 2015, halfway through the first grade year, and given the information that the team already had available, a formal FBA was not required. The District school psychologist, who is clearly qualified and trained, conducted assessments of Student’s cognitive ability and academic achievement, and obtained behavioral information. The assessment instruments are well known and widely regarded as technically sound. The District school psychologist did not rely on any single measure, but synthesized and summarized the variety of input and assessment results she obtained to reach a conclusion on Student’s IDEA eligibility. Although she did not observe Student in the classroom, she had more than adequate information to provide a comprehensive ER. In short, the District’s evaluation was appropriate under the law.

The record does, however, support a conclusion that by May 2015, when incidents involving Student's and peers' behaviors had significantly increased and had become more physical in nature, additional interventions to address Student's deteriorating ability to engage in appropriate social interactions at school warranted further consideration. The question, though, is whether the District's suggested accommodations were appropriate to address these concerns at the time the action was proposed. After careful review of the record, I find that the District did not unreasonably delay in responding to the various new behavioral manifestations that appeared rather suddenly in April and May, including those observed by the private neuropsychologist (N.T. 906-07), as the school year was ending, particularly since Student's teacher was not seeing those specific behaviors (*id.*). As noted by the private neuropsychologist, the newly exhibited behaviors suggested a need for further investigation if they continued (N.T. 910), and with the school year ending, it was eminently reasonable to plan for an FBA in the fall since no such assessment could have been completed before the 2014-15 school year ended.

IDEA Eligibility

With respect to whether Student is eligible for special education under the IDEA, the evidence is preponderant that, as of the summer of 2015, Student had a disability, an OHI, that impacted Student's social, emotional, and behavioral functioning and required specially designed instruction. Student clearly demonstrates significant and increasingly more apparent social skills deficits, including Student's perception of peer interactions, that require intensive intervention to include counseling. The private neuropsychological report, which the District did not have until the due process hearing was underway, provides a comprehensive and persuasive picture of Student's executive functioning needs, aptly summing up Student's executive functioning deficits with respect to visual attention and emotional regulation that negatively impacts Student's social perception and socialization skills as well as task resistance. (P-37 pp. 29-31) The testimony of this witness and the private BCBA reflect alarming behavioral manifestations not seen at the time of the March 2015 ER, and, when combined with the numerous behavioral concerns involving peers during unstructured times in April and May, underscores the inescapable conclusion that Student's social and emotional functioning deficits cannot adequately be met in the regular education environment without special education support. Further compounding these needs is Student's apparent fear of returning to the school environment (HO-2), which will require careful attention through a specific plan of transition to include a coordination of school-based and private counseling beginning before that change may occur.

This conclusion, however, does not mean that the District failed in its Child Find obligations. Again, based on what the District knew and had reason to know throughout the 2014-15 school year, including its ability to respond to the changed manifestations at the end of that year, I cannot conclude that the District failed in this regard. Thus, the Parent's claim that the District failed to timely and appropriately respond to Student's needs must be rejected. Nevertheless, the District will be ordered to convene a meeting to discuss all of the current evaluations and determine whether any further evaluations are warranted, and thereafter convene an IEP team meeting to develop a program that responds to all of Student's needs, including a plan to provide for Student's transition back to the school environment.

The Parent also asserts that the District failed in its obligations to Student because it did not respond appropriately to various incidents with peers that she characterizes as bullying.⁸ There can be no question that bullying has become a grave concern in our nation. As the U.S. Department of Education recognized, “Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential.”⁹ Bullying may provide the trigger for a child find obligation under the IDEA.¹⁰ “Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA[.]”¹¹ “Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.” *Id.*

Our own Third Circuit has recognized that a student who is the victim of bullying and whose education is adversely impacted as a result can be denied FAPE. *Shore Regional High School v. Board of Education*, 381 F.3d 194 (3d Cir. 2004). A New York District Court more fully addressed a claim that a school district deprived a student of an appropriate special education program because it did nothing to prevent bullying of the student by other students, thereby negatively affecting the student's opportunity for an appropriate education. *T.K. v. New York City Department of Education*, 779 F.Supp.2d 289 (E.D.N.Y. 2011). In an extensive analysis of what bullying is and how it is manifested in today's youth society, the Court noted that “[e]very disagreement among children does not amount to bullying.” *Id.* at 300. “What distinguishes bullying from other forms of childhood aggression, whether a hard-fought basketball game or rough-and-tumble play, is unequal and coercive power.” *Id.* (citation omitted). “Increased power need not be actually present, but there must be at least a perceived advantage for the bully either physical or psychological.” *Id.* (citation omitted). Bullying is generally viewed as a pattern of negative acts committed over time. *Id.* at 298.

The *T.K.* Court also recognized that students with disabilities are at a greater risk of bullying. *Id.* at 303. Local education agencies must investigate and respond appropriately to allegations of harassment of a child with a disability. *Id.* at 316-17 (citations omitted). “Where bullying reaches a level where a student is substantially restricted in learning opportunities [he or she] has been deprived a FAPE.” *Id.* at 318. This is a question of fact. *Id.*

In this matter, there were a few instances in the fall of 2014 that suggested potential peer difficulties; and the frequency of such incidents increased dramatically in April and May 2015. The parties disagree on whether the occurrences are bullying or something else, but on this

⁸ The District observes, correctly, that the term “bullying” was not used in the Due Process Complaint (S-1). (District's Closing Argument at 3-4, 7-9) Nevertheless, the Complaint did allege a failure to address Student's difficulties with peer relationships (*Id.* at 5 ¶ 16); and, this issue was raised in the opening statement (N.T. 25-28) and became a clear focus of the evidence presented over the course of the hearing.

⁹ U. S. Department of Education, Office of Civil Rights, Dear Colleague Letter: Bullying and Harassment, at 1 (October 26, 2010).

¹⁰ U.S. Department of Education, Office of Special Education and Related Services, Dear Colleague Letter, 61 IDELR 263 (2013).

¹¹ U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000).

record cannot be viewed as disability-based harassment of Student. Nevertheless, the District had in place a school-wide program to address bullying; and, each time an incident occurred, District staff spoke with the students involved. In Student's grade, teachers provided instruction on social skills and interactions, including how to play appropriately and respect the personal space of others. There is no suggestion that the District failed to provide teacher supervision of students during unstructured times such as recess, when the majority of the incidents involving Student occurred. The record demonstrates that the District appropriately investigated and responded to each of the incidents involving Student. Whether viewed individually or collectively, and despite Student's perceptions, or stated perceptions, of the conduct of the other children, the evidence simply does not establish that the District permitted Student to be bullied, or that the incidents with the other students amounted to an educational deprivation to Student.¹²

Independent Evaluations

Lastly, the Parent contends that the District should provide reimbursement for and/or fund further private evaluations. When parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b).

In this claim, the Parent first seeks reimbursement for the evaluation conducted by the private neuropsychologist. This report must be viewed in the context of the District's ER (already determined to be appropriate) as well as the extensive testimony presented both by that witness and the District school psychologist.

Both of these professionals concluded that Student had an OHI based on deficits in executive functioning. The differences in their opinions cannot [be] resolved by making a credibility determination; both witnesses testified with confidence and assurance, and elaborated on the reasons for their understanding of Student's needs based on the various assessments. For example, there is a conflict in their viewpoints on specific aspects of Student's executive functioning abilities. (*See, e.g.*, N.T. 206-07, 890-98, 1065-66, 1699-1700) Evaluating their equally persuasive testimony is complicated by a recognition that the District's evaluation was conducted with more of a focus on Student's functioning at school, while the private neuropsychological evaluation was much broader and, arguably, more comprehensive. The District presents a number of arguments against granting reimbursement in this case, including the Parent's essential initial agreement with the ER, inclusion in the NER of information not provided to the District, and the absence in the NER of some school-related information. (District's Closing at 46-64)

After careful consideration, given the wealth of additional and valuable expertise provided in the private neuropsychological evaluation, and despite this hearing officer concluding that the District's ER was appropriate under the law, the District shall nonetheless be

¹² What is concerning, however, is that Student's apparent perceptions of the actions of peers are not wholly accurate, and that Student is not showing growth and maturity in the area of social skills and social relationships. This observation ties directly into the discussion above regarding the private neuropsychologist's conclusion of how Student's executive functioning weaknesses impact Student at school that now require specially designed instruction.

required to reimburse the Parent for that specific IEE. The differences in opinion of that expert and the District's school psychologist serve to highlight the complexity of Student's cognitive, social, and behavioral strengths and needs that are necessary to understand in order to develop an appropriate special education program. This determination is also based on a consideration that Student began exhibiting new and increasingly more concerning behaviors at the end of the 2014-15 school year, long after the District's ER had been completed, and that the private evaluator was therefore in a position to explore in detail those aspects of Student's functioning that the District could not. From an equitable standpoint, the District will, thus, benefit substantially from this evaluation in its future obligations to develop and implement a program that meets Student's unique needs, assuming the Parent elects to return Student to school.

I do not reach the same conclusion with respect to the request to order a private FBA, such as that conducted over several hours at Student's summer camp.¹³ The District is, of course, required to consider the report of that brief assessment regardless of its value to school-based behavior programming. The law imposes an obligation on school districts and other local education agencies to evaluate students in all areas of suspected disability, and in this case, an FBA at school is necessary to adequately inform the professionals who will need to address Student's behaviors as they are presented in that environment at the time that Student does return to school. Moreover, the law is specific as to when independent evaluations at public expense are permitted; here, there is no FBA conducted by the District with which the Parent disagrees. Furthermore, despite the concerns expressed by the Parent, the record is not persuasive that only someone other than a qualified District BCBA can provide an unbiased and thoughtful assessment of this type.¹⁴ Because an FBA will be crucial to Student's special education programming needs, the District will be permitted to conduct it without consent of the Parent if Student returns to school.

This hearing officer offers the following observations. It is clear that the parties' relationship is something less than fully trusting, which is an extremely unfortunate circumstance given Student's very young age. The IDEA is premised upon a collaborative decision making process, and the parties may wish to consider including a facilitator at future meetings as they begin to work together again to address how to meet Student's needs. It is respectfully suggested that the parties set aside their differences and look toward the future, not the past, so that they may return to the level of mutual cooperation they previously enjoyed.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District did not fail in its Child Find obligations, but based on the most current information, Student is eligible for special education under the IDEA. The District shall reimburse the Parent for the cost of the private neuropsychological evaluation and convene meetings to consider all available information and develop an IEP for Student.

¹³ The Parent did not mention a private occupational therapy evaluation in the Due Process Complaint or opening statement. (N.T. 14-36; S-1)

¹⁴ The Parent is free, of course, to obtain an independent FBA in the school environment that must be considered by the IEP team.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not fail in its Child Find obligation during the 2014-15 school year.
2. Student is currently eligible for special education with a need for specially designed instruction on the basis of OHI.
3. Within 21 calendar days of the date of this Order, the District shall convene a meeting with the Parent and all other individuals who are appropriate members of Student's IEP team to develop an IEP for Student to include a Positive Behavior Support Plan (PBSP).
 - a. The team shall consider all information available from the evaluations to date, and to determine whether any further evaluations are necessary.
 - b. Any additional evaluations, with the exception of an FBA, shall be completed within 30 calendar days of the date of that meeting with written consent of the Parent.
 - c. The team shall develop a plan to begin Student's transition back to school at a District building to be determined by the team. A District BCBA shall begin to gather information for the purpose of conducting an FBA upon Student's return, and the team shall agree on the timelines for completing the FBA. If there is no such agreement, the FBA shall be completed within 10 calendar days of Student's return to school, with or without the consent of the Parent.
 - d. Within 10 days of completion of the FBA, Student's IEP team shall reconvene to revise Student's IEP and PBSP as necessary.
4. If the Parent declines to participate in the meeting described in ¶ 3, and/or conveys her written election to continue home schooling Student, the provisions in ¶ 3 will be suspended unless and until she provides written notice of her intention to return Student to a District school during the 2015-16 school year.
5. Within 10 days of presentation of an itemized invoice from the private neuropsychologist for the evaluation conducted and summarized in P-37, the District shall directly pay such invoice (if unpaid) or reimburse the Parent (if paid) for the cost of the evaluation. This obligation does not extend to any services provided beyond conducting the neuropsychological evaluation and authoring the report at P-37.

6. Nothing in this Order precludes the parties from mutually agreeing to alter any of the directives, including the timelines, herein.

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

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: November 25, 2015