

**This is a redacted version of the original hearing officer decision. Select details may 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

6791/06-07 LS  
File Number

MS, Student  
Child's Name

Xx/xx/xx  
Date of Birth

September 19 and October 3, 2006  
Dates of Hearing

Closed  
Type of Hearing  
For the Student:

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Dates of Hearing:	September 19 and October 3, 2006
Date of Receipt of Transcript:	October 8, 2006
Date Record Closed:	October 23, 2006
Date of Decision:	October 31, 2006
Hearing Officer:	Daniel J. Myers

## BACKGROUND

Student is a xx-year old resident with disabilities living within the Methacton School District (School District), who alleges that the School District has violated Student's Section 504 plan. Student has not graduated, she has not attended school in two years, and she does not now desire a School District-based education. Student seeks, rather, a very specific award of compensatory education in the form of a cosmetology kit and 774 hours of cosmetology classes at the [redacted] Career Center (Career Center). For the reasons described below, I conclude that Student was denied FAPE when the School District failed to implement one of the requirements of the Section 504 plan and prevented Student from attending school for 19 school days. I award Student 104.5 hours of compensatory education.

## ISSUE

Whether the School District has denied a free and appropriate public education to Student, entitling her to compensatory education in the forms of tuition at Career Center and a cosmetology kit?

## FINDINGS OF FACT

Student, whose date of birth is xx/xx/xx, is a xx year old resident of the School District with a written plan of accommodations (hereinafter "Section 504 plan") to address needs related to attention deficit disorder/hyperactivity, asthma and scoliosis that required eventual removal of ribs and placement of metal rods in Student's back. (N.T. 21, 89, 111; P 14, p.2; P 12, p.3)

### Sixth Grade, 1997-1998

Student first received a Section 504 plan in the Spring Semester of 1998. (N.T. 21, 89, 111; P 14, p.2; P 12, p.3)

### Seventh Grade, 1998-1999

In October 1998, Student's parents filed a complaint with the Pennsylvania Department of Education's Bureau of Special Education (Bureau). (P 19, p.2; N.T. 59-60) After an investigation, the Bureau ordered corrective action to address failures of the School District to complete a multidisciplinary education, as well as to provide parental access to educational records. (P 19, p.5)

On January 26, 1999, Hearing Officer Trent ordered the School District to reimburse Student's parents for the costs of a privately-secured Spring 1998 psychoeducational evaluation. (P 12, p.6) In his written decision, Hearing Officer Trent also remarked upon the acrimony and skepticism that he observed between the School District and Student's parents. (P 12, p. 5)

Around April 1999, Student underwent spinal fusion surgery. (P 13; P 18) Student then received homebound instruction for the remainder of that school year. (P 18, p.2) Student's parent testified that the School District made it difficult for student to receive

homebound instruction after surgery. (N.T. 57-58; P 18, p.2) Student's parent also alleged that, on the day she brought Student home from the hospital, she was fired from her School District job as a [redacted] simply because "I did not return back to school on that day." (N.T. 49-50, 73; P 14; P 18, p.3)

Around May 1999, Student's parents filed a complaint with the United States Department of Education's Office of Civil Rights (OCR), alleging that the School District illegally failed to implement Student's Section 504 plan, harassed Student in class, refused to consult with Student's parents, refused family medical leave to Student's mother, recorded previous evaluation reimbursement as income paid to Student's parents, and required Student's sister to be re-tested for special education services. (N.T. 41-43, 55; P 17) Apparently, the School District and OCR resolved the complaint without litigation. (P 16, p.1; P 10, pp.1-2)

#### Ninth Grade, 2000-2001, First Year of High School

For this school year, Student was absent 50 days and tardy 61 times. (S 11; S 16, p.1; N.T. 135, 180-181) As a result, Student often did not hand in assignments and did not perform well on tests. (S 5, pp.1, 2, 4) It appears that, by the end of this school year, Student received no higher than a 65% grade in any class, and she failed every academic class except Applied Math I. (S 16, p.1)

School District attendance policies require that, once a student acquires a 20% absenteeism rate for the school year, the student will be placed on "restricted status." Placement on "restricted status" means that, for the remainder of that school year, a student is permitted only two excused absences every 4 weeks without an accompanying doctor's note. Another way of stating this is that, every 4 weeks, any excused absences after the first two must be accompanied by a doctor's note. At some point during this school year, Student was placed on restricted status. (N.T. 170, 173, 181, 189-190)

In May 2001, Student, her parent and the rest of her Section 504 team met to discuss the effects of Student's absenteeism. (S 5, pp.3-4) The School District requested parental permission to evaluate Student, which parental approval was not provided. (N.T. 138, 140; S 5; S 6; S 7)

#### Second Year of High School, 2001-2002

Because she had failed most of her classes the previous school year, Student took 9th grade level classes again. (N.T. 128-129; S 16) In comparison to the previous school year, Student's grades had improved. For this school year, Student received 83% in Biology, 73% in English, 71% in Applied Math II, and 70% in World Cultures, and it does not appear that she failed any classes. (S 16, p.1)

This school year, Student was absent 36 days and tardy 29 times. (S 16, p.1) Once again, Student was placed on "restricted status." (N.T. 181)

### Third Year of High School, 2002-2003

As part of her high school program, Student began splitting her school day between academic courses at the high school and cosmetology courses at the Career Center. (N.T. 296; S 16, p.2)

Career Center services five public school districts and several private and alternative schools. (N.T. 298) Career Center tuition is paid either: a) by the student's public school district if the school district is responsible for the student's education; or b) by the Student him/herself if the Student is an adult to whom the School District does not have an educational responsibility. (N.T. 300, 304, 306-307) One of the five school district serviced by Career Center is the School District. Career Center does not service the Norristown School District, which is serviced by a different vocational technical school. (N.T. 308)

This school year, Student was absent 38 days and tardy 10 times. (S 16, p.2) Student received 81% grades in "US & PA", "Ocean" and Cosmetology. She appears to have failed English 10 and Vocational Communication. (S 16, p.2)

### Fourth Year of High School, 2003-2004

By August 2003, Student, her parent, and the School District had met and agreed that Student would not have sufficient academic credits for graduation with the Class of 2004. They agreed that, after the current 2003-2004 school year, Student would return to Career Center for completion of her graduation requirements and that she would be targeted for graduation with the Class of 2005. (S 19)

Over the course of this school year, Student was absent 70 days and placed on restricted status. (N.T. 171, 181, 280; S 9; S 16) On or about January 16, 2004, the daily attendance sheet contained the following typewritten entry:

The [Student's Family] Saga (for those interested...) Both girls arrived at 7:53, excused lates. Both girls had early dismissals – [Student's sister] sent home by nurse at 9:36. [Student] had an appointment and left a [sic] 9:40. [Student] returned at 11:33 and went on to Vo-Tech (yeah, I can't believe it either!) (N.T. 28, 155; P 5, p.5)

School District personnel testified that this message was created by an employee in the School District's attendance office who no longer works there, and that no one has ever seen similar notes on any other attendance list. (N.T. 155, 193-195)

In addition to monitoring attendance, the School District's attendance officer, Ms. J, also investigates the residency status of students. (N.T. 169) During this school year, Ms. J investigated a report that Student and her parent were living full time in the Norristown School District. (N.T. 176) On March 26, 2004, the School District informed Student's parent that, because she now lived in Norristown, she must disenroll Student from the School District and enroll Student in the Norristown School District. (N.T. 21; P 1)

On or about April 13, 2004, when Student's parent had not voluntarily disenrolled Student, Student was involuntarily disenrolled by the School District. (N.T.196; S 12) On or about April 19, 2004, Student's parent filed an Emergency Petition for Special Injunction in the local Court of Common Pleas to get Student re-enrolled in the School District. (P 2; N.T. 23, 81-82) Just before the injunction hearing, the parties reached an agreement and the School District re-enrolled Student pending a School District residency hearing. (P 3; S 13; N.T. 25) As a result, Student was disenrolled for six school days, from April 14 through April 21, 2004. (N.T.184, 196, 278; S 20)

When Student returned to the high school on April 22, 2004, she was inexplicably told to leave school. She then obtained a ride to Career Center, where she discovered that her locker had been cleaned out and her books, a coat, a sweatshirt, and her cosmetology kit were missing. (N.T. 24, 26, 101) Student then received a three day suspension, apparently for having left the high school's premises in the first place. As a result, Student was suspended for three school days from April 23 through April 27, 2004. (N.T. 24, 26, 81, 100-101, 184, 283; S 20; P 4)

Upon returning after the three day suspension, Student's vo-tech teacher permitted Student to use supplies from the classroom because Student no longer had a cosmetology kit. (N.T. 121)

On or about June 1, 2004, the School District again involuntarily disenrolled Student after conducting a School District residency hearing. (N.T. 144, 185; S 14; S 20; P 6) Accordingly, Student was again disenrolled for ten school days, from June 1 through June 14, 2004. (N.T. 33-34, 185-186, 196, 278-279)

Student never received a report card from the School District for the last marking period of the 2003-2004 school year. (N.T. 105-106) The School District's attendance officer sent Student's educational records to the Norristown School District. (N.T. 183) Student's parent alleges that a Norristown school district official told her that it was absurd to expect Norristown to educate Student for the last two weeks of school of the school year. (N.T. 32) While Methacton School District policy does permit non-residents to pay tuition so that out-of-district children may finish out their school year even after moving out of the School District, Student's parent never requested such an arrangement. (N.T. 159-160, 165-166)

In August 2004, Student's parent requested due process hearings on behalf of both Student and her sister. (P 8; P 15, pp.2-3; P 16; N.T. 34, 51) Apparently, although Student and her sister had separate educational needs, their due process hearing requests were consolidated and assigned one file number by the Office for Dispute Resolution (ODR). (HO 3) On September 1, 2004, Hearing Officer Stengle granted the School District's motion to dismiss, finding that Student's parent was simply seeking to have a special education hearing officer render a residency decision that had already been finally determined in a local agency hearing. (HO 3)

Fifth Year of High School, 2004-2005

In September 2004, Student's Parent sought to enroll Student and her younger sister into a parochial school. (N.T. 84, 108) Officials of that parochial school warned that, because Student needed two years' worth of course credit before she could graduate from the parochial school, Student would be 19 or 20 years old by graduation, and this might be emotionally painful to Student. (N.T. 35-36, 38, 107) Student chose, therefore, not to enroll in the parochial school. (N.T. 107)

On October 15, 2004, a Special Education Appeals Panel issued separate decisions for Student and her sister. (N.T. 35; P 8) The Appeals Panel reversed hearing officer Stengle's decision regarding Student's sister, holding that she was, in fact, a resident of the School District. (In Re K.S. and the Methacton School District, Special Education Opinion No. 1531-B (2004); P 8) The Panel dismissed Student's appeal without prejudice, holding that the Appeals Panel lacks jurisdiction to review a Section 504 case. (In Re M.S. and the Methacton School District, Special Education Opinion No. 1531-A (2004))

Thinking that the separate appeals panel decisions meant that only Student's sister, and not Student, was entitled to attend the School District's schools, Student's parent re-enrolled Student's sister, but not Student. (N.T. 35, 84, 147-148, 186-187) Because Student was no longer of compulsory school age, the School District's attendance officer did not follow up to determine whether or not Student intended to enroll in the School District's schools. (N.T. 198-199)

During this school year, Student worked rather than attending school. On June 30, 2005, Student gave birth to a child. (N.T. 65, 83, 112)

On July 20, 2005, Commonwealth Court issued a decision affirming the Appeals Panel's decision in Student's sister's case. The court further determined that, because the School District's Board of Directors had never entered a final residency adjudication regarding Student and her sister, Hearing Officer Stengle had incorrectly granted the School District's motion to dismiss. (P 9; S 17)

One year later, in July or August 2006, Student's parent requested this due process hearing. (S 15; N.T. 40)

#### The (17) Section 504 Plan Requirements

Student's Section 504 plan had not been revised since October 1999. Thus, throughout the high school years at issue in this case, the 17 requirements of the Section 504 plan have remained the same. (P 10)

(1st) Student's Section 504 plan requires that, "on some occasions," teachers will make a copy of lecture notes "per [Student's] request and when the teacher feels it will be an important part of an upcoming test, quiz or project." (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he gave Student either his personal lecture notes or the class notes of another student when he felt they were necessary to permit Student to perform well on the test. (N.T. 222-223)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she provided Student with another student's photocopied class notes when Ms. L-2 felt that her lecture outline was not sufficiently detailed. (N.T. 241, 247-248)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that her class did not utilize lectures, relying instead upon worksheets that students completed on their own in class. (N.T. 264, 270) She ensured that, when Student missed class, extra copies of the class worksheets were put into Student's folder to be worked on when Student next attended class. (N.T. 277)

Student's 2003-2004 Social Studies teacher, Mr. D, credibly testified that he gave Student copies of the power point presentations that he used for each class. (N.T. 252-254; SD 24)

Student corroborated teacher testimony when she complained that, when she would ask for class notes, her teachers would tell her to get them from somebody else in the class. (N.T. 75, 91, 94)

(2nd) Student's Section 504 plan requires that she be provided with an extra set of books at home and in the classroom and that, if Student forgets a book, another will be made available without consequence. (P 10, p.5)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she kept an extra set of textbooks in her classroom and that Student was given extra set of textbooks for use at home. (N.T. 242)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, and her Social Studies teacher, Mr. D credibly testified that their classes did not utilize textbooks, so there was no need for additional sets of textbooks. (N.T. 254, 264, 270)

Student's testimony that her teachers always gave her a hard time if she forgot to bring a book is not credible because she was unable to identify a single teacher who gave her a hard time. (N.T. 94, 102-103, 318)

(3rd) Student's Section 504 plan requires that she be provided extended time to complete all assignments, tests and quizzes. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he never assessed a penalty for missing assignments, apparently equating this to the provision of extended time to complete assignments. (N.T. 223)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she provided extra time, but that Student sometimes did not hand in assignments even with the extra time. (N.T. 242)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that her class schedule included class days dedicated to catching up on work. (N.T. 280-281)

Student's testimony that her teachers never gave her extra time for assignments, tests and quizzes is not credible because she does not identify a single teacher who failed to implement this requirement. (N.T. 95)

(4th) Student's Section 504 plan requires that teachers take measures to insure that

Student understands all directions and instructions. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he periodically went over to Student to make sure that she was on task. (N.T. 224)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that Student was diligent, focused, on task, and productive when she was in class. (N.T. 270-271)

Student's testimony that her teachers never took extra measures to ensure that Student understood directions and instructions is not credible because she does not identify a single teacher who failed to implement this requirement. (N.T. 95)

(5th) Student's Section 504 plan requires that teachers provide or help Student develop timelines for long range projects, with such projects broken down into smaller tasks. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he gave to Student long-range time-lines for a cultural movie project, for a current events project on Africa, and for a travel brochure project. (S 25; N.T. 214-216)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that she handed out timelines each month to show students what was going to be accomplished day by day. (N.T. 264, 271)

Student's 2003-2004 Social Studies and Math teachers credibly testified that their classes did not include long range assignments. (N.T. 242, 255)

Student's testimony that she never received timelines for long range projects is not credible because she does not identify a class, teacher or project for which this requirement was not implemented. (N.T. 95)

(6th) Student's Section 504 plan requires that teachers review school assignments and make corrections as necessary. (P 10, p.5) There is no specific allegation that this requirement was not implemented, nor is there evidence from either party regarding this provision.

(7th) Student's Section 504 plan requires that Student's homework load be adjusted at parental discretion, as noted by Student's parents in her assignment book, for the purpose of allowing completion of homework in reasonable time periods. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that Student's parent never asked for a homework adjustment and Student kept up with homework fairly well. (N.T. 224)

Student's 2003-2003 Math, Social Studies and Vocational English seminar teachers credibly testified that their classes did not require homework. (N.T. 243, 256, 264, 270)

(8th) Student's Section 504 plan requires that teachers will schedule after school additional help when needed. (P 10, p.5) There is no specific allegation that this requirement was not implemented, nor is there evidence from either party regarding this provision other than Student's own testimony that she received after-school help a couple of times. (N.T. 94, 96, 98)

(9th) Student's Section 504 plan requires that Student will have the opportunity to ask



questions and clarify directions or information. (P 10, p.5) Student complained that she was being looked down upon by everyone, as if they did not want to help her at all. (N.T. 104-105) Student also felt uncomfortable approaching teachers for help, feeling as if she was bothering them. (N.T. 99) Despite Student's subjective feelings, there is no evidence in the record that any teacher actually failed to implement this Section 504 plan requirement.

(10th and 14th) Student's Section 504 plan requires that Student, her teachers, and her parents will use an assignment book, with assignments faxed to Student's parents when Student is absent, and with missing assignments noted in the assignment book. It further requires that teachers note whether upcoming tests, quizzes, assignments and projects are properly written into Student's assignment book. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he regularly sent information to Student's parent relating to missed homework, missed tests, and test scores. (N.T. 217-218)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she gave Student an assignment book at the beginning of class, but she cannot remember why Student, her parent and Ms. L-1 stopped using it. (N.T. 244)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that she doesn't recall ever using an assignment book, but that she did use a monthly calendar for the same purpose. (N.T. 272) She also testified that the School District's former Supervisor of Special Education told her that she did not have to worry about an assignment book unless Student asked to use one. (N.T. 278)

Student's 2003-2004 Social Studies teacher, Mr. D, credibly testified that he could not recall whether or not he signed an assignment book, but it would not have been necessary in any event because his class did not have assignments. (N.T. 256)

Student testified that she would ask for homework assignments upon return from absences, and teachers would not give her homework assignments. (N.T. 92) This testimony is too vague for me to find credible because Student does not refer to any particular teachers or classes in which her requests were refused. In addition, the credible testimony of the teachers who did testify convince me that they would, and did, positively respond to Student's requests for assistance.

Student and her parent also testified that Student's teachers: 1) did not contact Student's parent when assignments were missed; 2) never told Student's parent of the need for make up assignments; and 3) assignment books were only provided for one year in middle school. (N.T. 53, 97) This testimony is credible based upon the facts described in paragraphs a-e above. Other than Student's World Cultures teacher Mr. S, no other teachers testified that they kept Student's parent informed of Student's missed assignments, and all teachers testified that they did not communicate with Student's parent through an assignment book.

(11th) Student's Section 504 plan requires that teachers will cue Student to prioritize and complete classroom assignments. (P 10, p.5)

Student's 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that she gave Student monthly timelines with upcoming day by day classroom assignments. (N.T. 271)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she occasionally sat down with Student if she had been absent and helped her prioritize the assignments that were due. (N.T. 244)

(12th) Student's Section 504 plan requires that Student's tests will be shortened to no more than 10 items per test. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, her 2003-2004 Vocational English seminar teacher, Ms. L-2, and her 2003-2004 Social Studies teacher, Mr. D, all credibly testified that Student was only required to answer 10 items per test, although Student often voluntarily answered more than 10 questions. (N.T. 225, 257, 274)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she allowed Student to circle the 10 test items Student wanted to answer. (N.T.245)

(13th) Student's Section 504 plan requires that teachers will use alternative forms of assessment, including verbal responses, and that the Section 504 team will meet to assess different teaching strategies if consistent failures occur. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, Student's 2003-2004 Social Studies teacher, Mr. D, and her 2003-2004 Vocational English seminar teacher, Ms. L-2, credibly testified that they provided alternative assessments, usually in the forms of verbal questions and answers. (N.T. 225-226, 257, 274)

(15th) Student's Section 504 plan requires that teachers inform Student's parents of failing test and quiz grades by writing such grades in Student's assignment book within 3 school days. (P 10, p.5)

Student's 2001-2002 World Cultures teacher, Mr. S, credibly testified that he notified Student's parent after every assessment, and not just after failed tests and quizzes. (N.T. 218)

Student's 2003-2004 math teacher, Ms. L-1, credibly testified that she sent mailed test and quiz information to Student's parent. (N.T. 246)

Student's 2003-2004 Social Studies teacher, Mr. D, credibly testified that there were no failing test and quiz grades of which Student's parent needed to be informed. (N.T. 257)

As noted in Finding of Fact 41 above, all teachers testified that they did not communicate with Student's parent through an assignment book.

(16th and 17th) Student's Section 504 plan requires that substitute teachers be informed of Student's needs, and that the Section 504 plan be reviewed at any time, at the request of parents or team members. (P 10, p.5) There are no specific allegations that these requirements were not implemented, nor is there evidence from either party regarding these provisions.

#### Credibility Determinations

With the exception of the School District's failure to utilize an assignment book, every factual allegation of Student and her parent regarding the School District's failure to implement the Section 504 plan lacks credibility, either because the allegation itself is vague or because the record lacks corroboration of the allegation.

Student's allegations contained broad general assertions that were contradicted by her own testimony. Despite alleging that only one teacher ever provided Section 504 accommodations in high school, neither Student nor her parent could remember that particular teacher's name or even which course he or she taught. (N.T. 78-80, 91) Further, Student herself contradicted this allegation by complaining that she received shortened tests only in her math and 9th grade history classes, that only 2 or 3 teachers gave her an extra set of books, and that she only received after-school help a couple of times. (N.T. 94, 96, 98)

Student's 2001-2002 World Cultures teacher, Mr. S, wrote a letter in February 2002, to the School District's Supervisor of Special Education memorializing their discussion regarding how Mr. S should implement Student's Section 504 plan. (P 11, p.1; N.T. 212) Mr. S wrote, among other things, that "Teacher has no obligation to give lecture notes." (P 11, p.1) At the due process hearing, Mr. S reluctantly acknowledged that this sentence could be interpreted to mean that Mr. S believed he had no obligation, at all, ever to give lecture notes to Student. (N.T. 236) He testified that this sentence is intended to mean that the Section 504 plan required lecture notes to Student on an "as needed," rather than daily, basis. (N.T. 229) He contended that this distinction is clear when his letter is read in conjunction with the Section 504 plan. (N.T. 236) I find Mr. S's testimony to be credible. His demeanor at hearing was open, professional, sincere and non-defensive. At the time that he wrote this letter, he was in either his first or second year teaching for the School District. (N.T. 209-210) There is no evidence that Mr. S, in fact, did not provide lecture notes to Student. Rather, the evidence is that he gave Student either his personal lecture notes or the class notes of another student when he felt they were necessary to permit Student to perform well on the test. (N.T. 222-223)

Student's Vocational Seminar (English) teacher, Ms. L-1, testified that Student may have perceived Ms. L-1's behaviors as giving Student a hard time. (N.T. 288) This class, with 50% special education students and 50% regular education students, was co-taught by Ms. L-1, a certified English teacher, and a certified special education teacher. (N.T. 263) It was highly structured, with monthly timelines and daily worksheets to be completed in class and kept in student folders in the classroom. (N.T. 264, 270-271) I find Ms. L-1's testimony to be credible, including her speculation that her structure may have been perceived, incorrectly, as giving Student a hard time. I further find, however, that Ms. L-1 did not fail or refuse to implement Student's Section 504 plan (with the exception, of course, of the assignment book requirement.)

Student's parent complains that the School District's attendance officer, Ms. J, was always following Student and picking on her. She suggests that Ms. J harassed Student and her parent by checking on attendance when Student and her parent were at the hospital for medical appointments. She also accuses Ms. J of laughing at Student's parent on the telephone. (N.T. 27, 75-76) To corroborate these suggestions, Student and her parent refer to the January 16, 2004, daily attendance sheet containing the following:

The [Student's Family] Saga (for those interested...) Both girls arrived at 7:53, excused lates. Both girls had early dismissals – [Student's sister] sent home by nurse at 9:36. [Student] had an appointment and left a [sic] 9:40. [Student] returned at 11:33 and went on to Vo-Tech (yeah, I can't believe it either!) (N.T. 28, 155; P 5, p.5)

Ms. J credibly testified that she did not know about this statement on the attendance sheet and that she had never seen similar statements on School District attendance sheets. (N.T. 195-196) This message was created by an employee in the School District's attendance office who no longer works there, and there is no evidence that links it in any way to Ms. J. (N.T. 155, 193-195)

I further find the allegations that Ms. J harassed Student and laughed at or ridiculed her parent to be not credible. Ms. J's demeanor at the hearing was professional and non-defensive. Student and her parent naturally crossed paths with Ms. J in uncomfortable circumstances because Ms J placed Student on restricted status each year in high school. Student was absent between 36 and 50 school days for each of the 2000-2001, 2001-2002, and 2002-2003 school years, and she was tardy between 10 and 61 times for each of those school years. (S 11; S 16, p.1, 2; N.T. 135, 171, 176, 180-181, 280) In addition, Ms. J was simply doing her job when she investigated a report that Student and her parent were living full time in the Norristown School District. (N.T. 176)

#### This Due Process Hearing

In July or August 2006, Student's parent requested this due process hearing contending that, if the School District had complied with Student's Section 504 plan and had not disenrolled Student, then Student would have been able to graduate from the School District and obtain the training hours that she needs to sit for her cosmetology license exam. (S 15; N.T. 40, 63)

Student and her parent ask that the School District be ordered to pay for Student's tuition at Career Center to enable her to acquire the 774 cosmetology hours that Student needs (when combined with the 476 hours that she already has accumulated) to satisfy the 1,250 hours necessary to sit for the State Board of Cosmetology exam. (N.T. 298, 303) They further ask that Student not be required, as part of re-enrollment, to complete any remaining secondary education requirements that may be necessary to obtain a School District high school diploma. (N.T. 61, 63-64, 83, 108-109, 122)

At this time, all but one of Career Center's cosmetology students are high school students whose tuitions are paid by local school districts. (N.T. 300) Currently, Career Center is not accepting into its cosmetology program any non-school district sponsored adult students because its roster is full. (N.T. 300-301)

A due process hearing was conducted in this matter on September 19 and October 3, 2006.

Student requested that witnesses be sequestered because she had chosen a closed hearing and there was no need for witnesses to be present other than while testifying. The School District objected to the request. I denied the request. (N.T. 9-10)

School District exhibits 1, 3-8, 11-14, 16-17, 20, 22-25 were admitted into the record without objection. (N.T. 327) Although the transcript indicates that there was an objection to these exhibits, the transcript should state “no objection” rather than “an objection.” (N.T. 324)

Parent exhibits 1 – 17, 20 and 21 were admitted without objection. P 18 was withdrawn from the record, and P 19 was admitted over objection. (N.T. 321-323)

Exhibits

Withdrawn

Admitted without objection

Admitted over objection

S 1

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S 2

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S 3 – S 8

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S 9 – S 10

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S 11 – S 14

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S 15

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S 16 – S 17

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S 18 – S 19

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S 20

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S 21

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S 22 – S 25

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P 1 – P 17

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P 18

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P 19

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P 20 – P 21

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#### DISCUSSION

The United States Supreme Court has held that the burden of proof in an administrative hearing challenging a special education IEP is upon the party seeking relief, whether that is the disabled child or the school district. *Schaffer v. Weast*, \_\_\_ U.S. \_\_\_, 126 S.Ct. 528

(2005); In Re J.L. and the Ambridge Area School District, Special Education Opinion No. 1763 (2006) No similar case law has yet been issued with respect to Section 504 cases.

The United States Court of Appeals for the Third Circuit, however, has held that there is no substantive distinction between Section 504's prohibition against discrimination on the basis of handicap and a School District's affirmative duty under the Individuals with Disabilities Education Improvement Act (IDEIA) to assure that eligible students with disabilities receive a free and appropriate public education (FAPE). *Ridgewood Board of Education v N.E.*, 172 F.3d 238 (3rd Cir. 1999) In fact, when a school district provides services under IDEIA to an eligible student, it fulfills its Section 504 obligation. In *Re P.M. and the Bristol Township School District*, Special Education Opinion No. 1749 (2006)

I conclude that the general legal principle of *Weast*, i.e., that the party seeking relief bears the burden of persuasion, should apply in this case. This is because the U.S. Supreme Court applied that general legal principle to IDEIA cases, and the 3rd Circuit finds IDEIA and Section 504 cases to be similar in many respects. Thus, I shall apply to this Section 504 case the same burden of persuasion that applies in IDEIA cases, and I shall require that Student and her parent bear the burden of persuasion.

The dispute in this case is limited to the implementation of the Section 504 plan that had been in place throughout high school. Frankly, I question the appropriateness of the Section 504 plan in light of Student's apparent needs in the areas of attendance, self-esteem and self-advocacy.

This issue, however, cannot be raised *sua sponte*, and is not within my purview to decide. In *Re L.D. and the Marple Newtown School District*, Special Education Opinion No. 1776 (2006)

With regard to implementation of the Section 504 plan, I find two things. First, there was no compliance with the 10th and 14th paragraphs of the plan regarding the use of an assignment book. Second, the School District failed to implement the Section 504 plan when it disenrolled and suspended Student during her last year in the high school.

#### Paragraphs 10 and 14 of the Section 504 Plan

Student's Section 504 plan requires that Student, her teachers, and her parents will use an assignment book, with assignments faxed to Student's parents when Student is absent, and with missing assignments noted in the assignment book. It further requires that teachers note whether upcoming tests, quizzes, assignments and projects are properly written into Student's assignment book. (P 10, p.5) All of the School District teachers who testified at hearing admitted that they did not utilize the assignment book. Ms. L-1 gave Student an assignment book at the beginning of class, but she cannot remember why Student, her parent and Ms. L-1 stopped using it. (N.T. 244) Neither Ms. L-2 nor Mr. D could recall ever using an assignment book. (N.T. 256, 272) Ms. L-2 further testified that the School District's former Supervisor of Special Education told her that she did not

have to worry about an assignment book unless Student asked to use one. (N.T. 278)

All teachers at the hearing credibly described systems that they used in place of the assignment book. Mr. S regularly sent information to Student's parent relating to missed homework, missed tests, and test scores. (N.T. 217-218) Ms. L-2 used a monthly calendar for the same purpose. (N.T. 272) Mr. D's class did not have assignments, so an assignment book was unnecessary. (N.T. 256) This is not, however, sufficient to support a finding that these requirements of the Section 504 plan were implemented.

I infer that there were two reasons for the assignment book: 1) to keep Student apprised of her assignments; and 2) to keep Student's parent apprised of Student's assignments. Student and her parent testified that Student's teachers: 1) did not contact Student's parent when assignments were missed; 2) never told Student's parent of the need for make up assignments; and 3) assignment books were only provided for one year in middle school. (N.T. 53, 97) Other than Student's World Cultures teacher Mr. S, no other teachers testified that they kept Student's parent informed of Student's missed assignments, and all teachers testified that they did not communicate with Student's parent through an assignment book. (N.T. 217-218) Thus, it is clear that the School District did not implement numbered paragraphs 10 and 14 of Student's Section 504 plan.

#### Disenrollment/Suspensions

Student was involuntarily disenrolled by the School District for six school days, from April 14 through April 21, 2004, and again for ten school days, from June 1 through June 14, 2004. (N.T.23, 25, 33-34, 81-82, 184-186, 196, 278-279;S 12; S 20) In addition, when Student returned to the high school on April 22, 2004, after the first involuntary disenrollment, she was inexplicably told to leave school, and then received a three day suspension from April 23 through April 27, 2004, apparently for having left school. (N.T. 24, 26, 81, 100-101, 184, 283; S 20; P 4)

None of these denials of education is justified in light of the Commonwealth Court's subsequent holding that the School District's Board of Directors had never entered a final residency adjudication regarding Student and her sister. (P 9; S 17) Obviously, the School District did not implement Student's Section 504 plan for the 19 school days during the 2003-2004 school year when she was either involuntarily disenrolled or suspended.

Student and her parent also contend that the School District should be considered responsible for Student's decisions not to pursue further education during subsequent school years. I reject this contention. In September 2004, Student chose not to enroll in a parochial school with her younger sister, and then she did not re-enroll into the School District with her sister after the Appeals Panel's October 2004 decision. (N.T. 35-38, 84, 107, 147-148, 186-187) Because Student was no longer of compulsory school age, the School District had no obligation to follow up to determine whether or not Student intended to enroll in the School District's schools. (N.T. 198-199) Further, Student and her parent waited an entire year after the Commonwealth Court's July 2005 decision



before filing for due process. (P 9; S 15; S 17; N.T. 40) Thus, any lack of education suffered by Student after her last involuntary disenrollment is attributable to behaviors of Student and her parent, not to the School District.

### Compensatory Education

The Third Circuit Court of Appeals has suggested that compensatory education should be awarded on an hour-for-hour basis for the amount of the deprivation, less any time for the school district to rectify the problem. *M.C. v. Central Regional School District*, 81 F.3d 389 (3d Cir. 1996) Recently, however, the Commonwealth Court explicitly rejected this hour-for-hour calculation of compensatory education awards, holding that a student is entitled to an amount of compensatory education reasonably calculated to bring him/her to the position that s/he would have occupied but for the school district's failure to provide a FAPE. *B.C. v. Penn Manor School District*, \_\_\_ A.2d \_\_\_, Dkt. No. 1150 C.D. 2005 (Pa. Comwlth. Ct. 2006); *In Re A.J. and Methacton School District*, Special Education Opinion No. 1766 (2006)

I have already concluded above that the School District failed to implement Student's Section 504 plan in two ways: First, regarding the use of an assignment book; and Second, for the 19 school days during the 2003-2004 school year when Student was involuntarily disenrolled/suspended. Using the rubric recommended by the Commonwealth Court, I award no compensatory education for the first Section 504 implementation failure, and 104.5 hours of compensatory education for the second.

With respect to the School District's failure to use an assignment book, I noted above that there were two reasons for the assignment book: 1) to keep Student apprised of her assignments; and 2) to keep Student's parent apprised of Student's assignments. Student's teachers kept Student adequately informed of her assignments, even without the use of an assignment book. (N.T. 217-218, 256, 271-272, 274) Thus, Student's educational position would not have changed if an assignment book had been utilized. Further, with respect to teacher/parent communications, there is nothing in the record that even suggests that Student's educational position would have been any different if an assignment book had been utilized for parent/teacher communications.

At the time, both Student's teachers and her parents were aware of the Section 504 assignment book requirement, yet neither party complained about the lack of an assignment book. I have no basis in the record, therefore, for concluding that Student's educational position would have been any different if an assignment book had been used for teacher/parent communications. Neither teachers nor parents contend that there was communication that might have occurred, but did not occur, because the assignment book was not utilized. Accordingly, I will award no compensatory education for this School District implementation failure.

With respect to the 19 school days during the 2003-2004 school year when Student was either involuntarily disenrolled or suspended, there is evidence in the record indicating that Student's educational position would have been different if the School District had

complied with the law. Despite her spotty attendance record, Student was accumulating training hours toward her 1,250 hour requirement. (N.T. 298, 303) In fact, when Student returned to the high school after her first involuntarily disenrollment in April 2004 and was inexplicably told to leave school, she did not go home, but rather she obtained a ride to Career Center, presumably to get in some cosmetology training hours. (N.T. 24, 26, 81, 100-101, 184, 283; S 20; P 4) This provides an evidentiary basis for my conclusion that, had the School District not illegally prevented Student from attending school for 19 days in 2004, Student's educational position would have been different.

The regulatory school day for a high school student is a minimum of 5.5 hours per day. 22 PA Code §11.3; In Re A.J. and Methacton School District, Special Education Opinion No. 1766 (2006) Student was denied an opportunity to accumulate up to 104.5 hours of additional cosmetology training hours and, in fact, she undoubtedly would have accumulated additional cosmetology training hours during the 19 school days when she was involuntarily disenrolled/suspended. Accordingly, I will award 104.5 hours of compensatory education in the nature of additional cosmetology training hours.

Student's prayer for relief includes the award of a cosmetology kit, because her previous cosmetology kit was removed from her locker and never returned when she was involuntarily disenrolled and suspended. When Student returned from her disenrollment and suspension, however, her vo-tech teacher permitted Student to use supplies from the classroom. (N.T. 121) Thus, Student suffered no educational loss in this regard and I will not order another cosmetology kit as compensatory education. Of course, the School District's provision of 104.5 hours of compensatory education must include any supplies necessary for genuine and meaningful cosmetology training.

## CONCLUSION

Student is a xx-year old resident with disabilities living within the Methacton School District (School District), who alleges that the School District has violated her Section 504 plan. For the reasons described above, I conclude that Student was denied FAPE when the School District failed to implement the assignment book requirement of the Section 504 plan and when it prevented Student from attending school for 19 school days. I will award Student 104.5 hours of compensatory education.

## ORDER

For the reasons described above, I ORDER that:

The School District shall provide to Student 104.5 hours of compensatory education in the nature of additional cosmetology training hours.

As part of providing compensatory education to Student, the School District shall ensure that Student has any supplies necessary for genuine and meaningful cosmetology training.

Daniel J. Myers  
Hearing Officer