This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Student's Name: J. R.

Date of Birth: [redacted]

ODR No. 14898-13-14-KE

OPEN HEARING

Parties to the Hearing:	Representative:
Parent[s]	Charles E. Steele, Esquire Steele Schneider 428 Forbes Avenue, Suite 700 Pittsburgh, PA 15219
Propel Charter Schools 3447 East Carson Street, Su. 200 Pittsburgh, PA 15203	Jordan Lee Strassburger, Esquire Strassburger, McKenna, Gutnick & Gefsky Four Gateway Center, Su. 2200 444 Liberty Avenue Pittsburgh, PA 15222
Dates of Hearing:	July 23, 2014; July 24, 2014
Record Closed:	August 13, 2014
Date of Decision:	August 27, 2014
Hearing Officer:	William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student in this matter (Student)[1] is a rising third grader enrolled in the respondent Charter School (School). (NT 6-7, 9.) Student was identified previously as a child with a disability of Speech or Language Impairment pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA); however, the School exited Student from special education after a re-evaluation during Student's second grade year. (NT 7-8.) Before Student was exited, Student's parents (Parents) requested due process under the IDEA, alleging that the School had failed and was failing to comply with its "child find" obligation, and thus failed to provide Student with an appropriate educational program and placement during Student's first and second grade years.[2] Parents request an order that the School provide compensatory education to Student.[3] The School asserts that it met its "child find" obligation and that no compensatory education is due.[4]

The hearing was completed in two sessions, and the record closed upon receipt of written summations. I conclude that the School complied with its child find obligations, and that no compensatory education is due.

[1] Student, Parents and the respondent School are named in the title page of this decision; personal references to the parties are omitted in order to guard Student's confidentiality. Because the Student's mother engaged in many transactions with the School, she is referred to below as "Parent" in the singular.

[2] Parents filed two complaints requesting due process. The first complaint, filed in August 2012, was withdrawn in February 2014, by agreement of counsel in order to allow the parties time to try to resolve the matter. A dispute arose as to whether or not the matter was settled, and Parents' counsel filed a new complaint, re-asserting many of the same claims, on or about April 11, 2013.

[3] Parents assert that the issues raised in the December complaint were resolved partially on March 19, 2014, when the Parents and School entered into a Service Agreement pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504) and Chapter 15 of the Pennsylvania Code. Therefore, at the hearing, Parents withdrew their request for prospective relief and the only issue that remains is their request for compensatory education based upon the School's alleged violation of its child find obligation.

[4] Prior to the hearing, the School moved to dismiss the matter, asserting that the parties' Service Agreement was a complete settlement of all claims. At the outset of the hearing, I heard evidence and denied the School's motion. (NT 15-100; S1-22.)

ISSUES

1. Did the School comply with its child find obligation under the IDEA during the period of time from Student's first day of school in September 2012 to March 19, 2014?

2. Should the hearing officer order the School to provide compensatory education to Student for all or any part of the period of time from Student's first day of school in September 2012 to March 19, 2014?

FINDINGS OF FACT

1. Student received early intervention services from the local intermediate unit prior to kindergarten. (NT 119.)

2. While Student was enrolled in the local public school kindergarten, a private behavior health agency diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional-Defiant Disorder (ODD). This diagnosis was based in part on history, in part on Student's self-report of distractibility while in school, and in part on clinical observation of Student's fidgeting, shifting back and forth, playing with Student's shoes, and shifting posture while sitting. The clinician recommended a trial of stimulant medication for the diagnosed ADHD, as well as behavioral interventions to deal with Student's diagnosed ODD through a modified IEP. (NT 124; S 30.)

3. Prior to the 2012-2013 school year, Parents sought to enroll Student at the School. Immediately, there was not an opening; however, the School placed Student on a waiting list, and toward the end of September 2012, the School accepted Student into its first grade regular education class. (NT 105, 119-120.)

4. The School maintains universal screening procedures to identify students who need intervention due to possible disabilities. It has a response to intervention program, and monitors all students with a standardized developmental assessment instrument and other assessments. (S 25.)

5. After 4 to 6 weeks, Student began experiencing difficulties at school, and Student began to exhibit inappropriate behavior at school. Until April 2013, all behavior problems were addressed by the classroom teacher, and did not rise to the level that required them to be addressed by the assistant principal through the disciplinary process. Parent attempted to deal with problems through the classroom teacher, and was dissatisfied with the teacher's handling of Student's behaviors. (NT 128-130, 173-175.)

6. On October 4, 2012, Student was referred by the local behavioral health agency for a psychological evaluation to determine medical necessity for home behavioral health services. The evaluating psychologist noted a previous diagnosis of ADHD. Parent

provided a list of concerns about behavior at home and school, including inability to regulate emotions, defiance, rule breaking and angry behavior tantrums. Parent also reported that Student was aggressive at school with peers, resulting once in a suspension from school while Student was in kindergarten, and that Student had social difficulties at school, including being bullied. (NT 198-199; P 10.)

7. The evaluator utilized a child behavior checklist, which was completed by Parent only. There was no teacher input from the School. (P 10.)

8. The evaluation found medical necessity for behavioral services at home. The evaluator diagnosed Student with ADHD and ODD. The evaluator called for a re-evaluation in six months, and recommended that a behavior specialist observe Student in school and coordinate with school personnel. (P 10.)

9. The Parent did not provide the private psychological evaluation to the School. (NT 177, 185, 199-204, 209-210, 223-224; S 29.)

10. On October 8, 2012, the School received a copy of an IEP for Student that had been created in September 2011, when Student was enrolled in kindergarten at the local public school district. The IEP present levels of performance noted that Student's communicative functional performance was unremarkable at that time. Student was reported to demonstrate age-appropriate expressive and receptive language skills. The IEP noted that Student was kind, pleasant and cooperative. The only disability identified at that time was an articulation problem, which the IEP addressed through speech and language support services. (S 28.)

11. On October 22, 2012, the School offered an IEP to Parent providing only speech and language services for an articulation problem. Parent expressed no concerns about behavior at that time. (NT 161; S 26.)

12. On November 22, 2012, Parent signed a NOREP, approving Student's continued placement in speech and language support. No other services were offered. (S 29.)

13. Parent brought to the School's attention her concerns about the Student's behavior in school in or about April 2013. (NT 187-188, 211-214.)

14. Between April 18, 2013 and May 29, 2013, Student received at least seven disciplinary actions for aggressive or defiant behaviors. The School found that Student [engaged in threatening and aggressive behavior toward peers] and engaged in several incidents of defiant and disrespectful behavior toward adults resulting in formal discipline. (NT 225-228; S 25, 27.)

15. Student earned A's and B's in first grade. (S 25.)

16. Parent contacted the School's director of special education in August 2013, and requested intervention to deal with Student's behavior at school. (NT 256-257.)

17. On August 28, 2013, the School sent a permission to re-evaluate form to Parent, proposing to conduct an evaluation of Student's behavior and speech. Parent's signature

is dated September 5, 2013. The School's speech and language therapist received the document on October 1, 2013. (NT 257-259; S 32.)

18. On September 23, 2013, Student's speech therapist returned a teacher assessment scale as part of the School's re-evaluation of Student. The therapist reported no frequent negative behaviors, and reported that Student's classroom behavioral performance was average. These responses were based upon about 10 months of observation Student, largely in the previous school year, 30 minutes per week during speech therapy for articulation, which was conducted in sessions with the therapist and one other student. (S 31.)

19. On September 23, 2013, Student's teacher for second grade returned a teacher assessment scale as part of the School's re-evaluation of Student. The teacher reported very few kinds of frequent negative behaviors, but did report that Student frequently lost Student's temper, and that Student very frequently bullied, threatened or intimidated others. The teacher reported that Student's relationship with peers was problematic, but in other areas of classroom behavior, the teacher reported average behavior. (S 31.)

20. On September 23, 2013, Student's teacher for art class returned a teacher assessment scale as part of the School's re-evaluation of Student. The teacher reported that Student exhibited frequent difficulty sustaining attention to tasks or activities, apparently not listening frequently, leaving Student's seat frequently, difficulty in playing or engaging in leisure activities quietly, very frequent blurting out of answers, frequent interruption or intruding on others, and very frequent losing temper, defining or refusing to comply with requests or rules, anger and resentfulness, spitefulness and vindictiveness. The teacher reported problematic relationships with peers and problematic disrupting of the class, as well as somewhat problematic following directions. The report was based upon approximately one month of experience with Student in art class. (S 31.)

21. On September 30, 2013, Parent signed a release form authorizing the private behavioral health agency to release outpatient records to the School for the 2013-2014 school year. (S 30.)

22. On October 8, 2013, a social worker at a private behavioral health service sent the School a report from the clinician at the service that diagnosed Student with ADHD. (S 30.)

23. Between October 4, 2013 and June 6, 2014, Student received more than 13 disciplinary actions. The School found that Student [engaged in disruptive and aggressive behavior toward others] and engaged repeatedly in disrespectful behavior. (NT 225-228; S 25, 27.)

24. On October 21, 2013, the School provided an amended permission to re-evaluate form to Parent, proposing to conduct a psychological evaluation, observation, review of academic and other records, parent input and teacher input, behavior data collection, a Functional Behavior Analysis (FBA), and a speech and language evaluation. Student's speech and language therapist received the form with signature dated November 4, 2013, on November 8, 2013. (S 33.)

25. Parent did not return the parent input form sent to her as part of the re-evaluation. (NT 237-238; S 25.)

26. On January 6, 2014, the School issued a re-evaluation report. (S 25.)

27. The re-evaluation included standardized cognitive and achievement testing, standardized developmental measures, a general behavior rating inventory with both parent and teacher input, a behavior checklist addressed to inattention issues, a behavior analysis addressing the functions of Student's unwanted behaviors, several brief classroom observations, teacher input and parent input. (S 25.)

28. The re-evaluation concluded that Student's cognitive functioning was at a low average range compared with same age peers. Academic performance was commensurate with cognitive ability. The evaluator found well-developed verbal comprehension in general reasoning ability. Evaluator found below average non-verbal reasoning. The evaluator did not find evidence of attention deficits, based on standardized testing. Evaluator found that Student's behavior would generally inhibit meaningful, normative growth and development. The evaluator noted behavior that disregards or defies authority and refuses to meet minimum standards of conduct required in regular schools and classrooms. The evaluator characterized this behavior as social maladjustment, and ruled out an emotional disturbance as defined in the IDEA. (NT 218-221; S 25.)

29. The re-evaluation report recommended consideration of a service agreement under section 504 and Chapter 15. (S 25.)

30. Based upon teacher reports, the re-evaluation report noted that the School had made a number of modifications to its general education programming, specifically for Student. These modifications included development of a plan to increase Student's attention to task; an increased number of opportunities to respond in class; increased direct instruction time with the teacher, including one-on-one teaching; regrouping to ensure small-group instruction and a lower student-teacher ratio; extra practice; and supplemental materials. The report concluded that, with these changes to the general education program, Student's behaviors did not impede Student's learning. (S 25.)

31. The reevaluation report noted that Student's progress is monitored weekly in reading and mathematics through weekly assessments and quarterly reporting of grades to Parents. (S 25.)

32. On March 19, 2014, Parent signed a NOREP exiting Student from special education for speech or language impairment. (S 24.)

33. On March 19, 2014, the School and Parent signed a Service Agreement pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504) and Chapter 15 of the Pennsylvania Code. This agreement acknowledged that Student was disabled pursuant to section 504, and that Student was in need of accommodations within the school setting. (NT 69-70; S 23.)

34. The Service Agreement provided 11 categories of accommodations, including preferential seating: verbal prompting and redirection; rewording of directions; study guides to be shared with parents; use of peer assistants; breaking tasks into smaller units; scheduled breaks; five minute cool-down to allow for de-escalation; teaching of

acceptable social behavior for conversations, class behavior and interaction with peers; and journaling by Student. (S 23.)

35. In second grade, Student received all A's and B's in Student's academic subjects and one special. (S 34.)

DISCUSSION AND CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations: the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact (which in this matter is the hearing officer).[5] In Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence[6] that the other party failed to fulfill its legal obligations as alleged in the due process complaint. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006).

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in Schaffer called "equipoise". On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See Schaffer, above.

[5] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact.

[6] A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. See, Comm. v. Williams, 532 Pa. 265, 284-286 (1992). Weight is based upon the persuasiveness of the evidence, not simply quantity. Comm. v. Walsh, 2013 Pa. Commw. Unpub. LEXIS 164.

In this matter, Parents requested due process and the burden of proof is allocated to Parents. Parents bear the burden of persuasion that the School failed to comply with its obligations under the IDEA. If Parents fail to produce a preponderance of evidence in support of Parents' claims, or if the evidence is in "equipoise", then Parents cannot prevail.

CREDIBILITY

It is the responsibility of the hearing officer to determine the credibility of witnesses. 22 PA. Code §14.162 (requiring findings of fact); A.S. v. Office for Dispute Resolution, 88 A.3d 256, 266 (Pa. Commw. 2014)(it is within the province of the hearing officer to make credibility determinations and weigh the evidence in order to make the required findings of fact). In this matter, I conclude that certain testimony by the Parent is inaccurate and I therefore make certain findings about important factual issues contrary to Parent's testimony. I do so pursuant to my legal responsibility set forth above.

PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION

The IDEA requires that a state receiving federal education funding provide a "free appropriate public education" (FAPE) to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). School districts and local education agencies provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan ("IEP"). 20 U.S.C. § 1414(d). The IEP must be "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." Shore Reg'l High Sch. Bd. of Ed. v. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182-85 (3d Cir.1988)); Mary

Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3rd Cir. 2009), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009).

"Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child's IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a "trivial" or "de minimis" educational benefit. M.C. v. Central Regional School District, 81 F.3d 389, 396 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 (3rd Cir. 1988).

A school local education agency is not necessarily required to provide the best possible program to a student, or to maximize the student's potential. Ridley Sch. Dist. v. MR, 680 F.3d 260, 269 (3d Cir. 2012). An IEP is not required to incorporate every program that parents desire for their child. Ibid. Rather, an IEP must provide a "basic floor of opportunity" for the child. Mary Courtney T. v. School District of Philadelphia, 575 F.3d at 251; Carlisle Area School District v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. Carlisle Area School v. Scott P., 62 F.3d 520 (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) Its

appropriateness must be determined as of the time at which it was made, and the reasonableness of the local educational agency's offered program should be judged only on the basis of the evidence known to the agency at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010); D.C. v. Mount Olive Twp. Bd. Of Educ., 2014 U.S. Dist. LEXIS 45788 (D.N.J. 2014).

CHILD FIND UNDER THE IDEA

The IDEA requires local educational agencies[7] to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a). This obligation extends to children who are "suspected of being a child with a disability … and in need of special education … ." 34 C.F.R. § 300.111(c) (1). The Third Circuit Court of Appeals has construed these statutes and regulations: "[Local education agencies] have a continuing obligation under the IDEA … to identify and evaluate all students who are reasonably suspected of having a disability under the statut[e]." Ridley Sch. Dist. v. M.R., 680 F.3d 260, 271 (3d Cir. 2012)(citing P.P. v. West Chester Area School District, 585 F.3d 727, 738 (3d Cir. 2009)). The Pennsylvania Code makes it clear that charter schools are subject to this obligation. 22 Pa. Code §711.21 (requiring charter schools to have "child find" policies in place); see generally, 22 Pa. Code §14.121-125 (school district obligations).

Local educational agencies are required to fulfill their child find obligation within a reasonable time after notice of behavior that suggests a disability. D.K., 696 F.3d above at 249 (if a district should have known of an educational deficiency through compliance with its

[7] The School is a local educational agency under Pennsylvania law, with all of the responsibilities of a Pennsylvania school district, including the "child find" obligation. 22 Pa. Code §711.3(a), (b)(23).

statutory duties, student may be entitled to compensatory education) (citing W.B. v. Matula, 67 F.3d 584, 501 (3d Cir. 1995)).

FIRST GRADE

In the present matter, I conclude that the School fulfilled its child find obligation under the IDEA in the Student's first grade year. The evidence is preponderant that the School maintained universal screening procedures that did not identify Student for intervention. It also maintained various behavior management procedures in regular education, and there was no evidence suggesting the need for more until the end of Student's first grade year. The District was not notified that Student had a diagnosed disability; on the contrary, available prior documentation indicated that Student had no disabilities that affected Student's learning, and that Student's behavior had been good in previous schools.

There is undisputed documentary evidence that the School maintained universal screening procedures reasonably calculated to identify children whose educational performance might be impeded by disabilities. The School also maintained general education best practices reasonably calculated to address behavioral issues that are well known to arise often in the early elementary years. These practices included in-classroom behavior management programming, flexible grouping of students to account for attention and hyperactivity concerns, and other behavior management procedures in the regular education setting. There was a referral procedure pursuant to a response to intervention process, as well. Student was not referred for either intervention or evaluation through these procedures. There is no evidence raising even an inference that these procedures were not implemented reliably by the School.

The evidence is preponderant that, from Student's first day of school in September 2012 until the end of May 2013, the School had no information to indicate that Student's behavior might impede Student's learning. The School knew that Student had received early childhood services for speech articulation. There is no preponderant evidence that the School had any information that Student had a diagnosed disability of any kind other than the speech articulation problem, which was being addressed. Student was achieving at an average or above average level, ultimately finishing the year with A's and B's.

There were no disciplinary referrals or actions until April 2013. After that, the Student engaged in a string of student code of conduct violations that repeated frequently until the end of the school year. There is no reason to infer that the School was on notice of a potential disability affecting behavior at the point of the first incident in April; indeed, a pattern began to emerge only after the first several incidents in the Spring of 2013. I therefore conclude that the District was on notice that Student was exhibiting behavior potentially interfering with learning only by the end of the Student's first grade year, in light of the frequency of serious incidents and their severity, as described in the uncontradicted documentary record.

Parent asserted in sworn testimony that she sought a private evaluation in preparation for an October 2012 IEP meeting, after the School's speech and language therapist advised her that this was the way to get Student's behavioral issues addressed. She testified that she personally provided forms to School staff as requested by the private evaluator, and asked them to return those forms to the evaluator. She testified that she made sure that the completed evaluation was sent to the School. I conclude that these statements were not accurate, and I accord reduced weight to the testimony of Parent regarding the School's knowledge of Student's behaviors and diagnosed disabilities during the 2012-2013 school year.

The evaluation report itself, which was written shortly after the events in question, contradicts Parent's account. In addition, School personnel also contradicted Parent's account, and I conclude that their testimony was credible. The private evaluation report by a psychologist in 2012 contradicts Parent's testimony that Parent sought the evaluation for purposes of school programming. On the contrary, it states that the Parent was referred to the private psychologist by the local behavioral health agency for purposes of obtaining a determination about the medical necessity for home behavioral health services.

In addition, the report raises an inference, to which I accord weight, that the private psychologist did not solicit any questionnaires, inventories or other forms from school personnel, again contrary to Parent's testimony. The report contains no reference to any such solicitation; in its recitation of the data that forms the basis of the report, the report makes no reference to any information from School personnel.[8] There is no information from the School; although there is reference to Student's behavior in school, the evidence is preponderant that the information about that came only from Parent. The report makes no recommendations for school programming, although it does recommend coordination with the School.

Parent testified that she conveyed the report with Student's diagnoses to the School, or arranged to have it conveyed; however, the preponderant evidence is to the contrary. The October 2012 IEP does not mention receipt of such a report or any parental concern with Student's behaviors. District witnesses credibly testified that they had never seen the report. Although Parent's counsel argues that the report could have been received and then lost by office

[8] Based upon my experience from hearing scores of special education cases, I find it unlikely that an evaluator would have sought input from teachers for a medical evaluation like this. Even if such a request were made, it is unlikely that the resulting report would not mention either the information received from the school or the failure of school personnel to respond to such a request for information.

personnel, there is no evidence that this possibility actually occurred; I conclude that it is much more likely that the School never received the report.

Parent asserted that the School's speech and language therapist put her off at the October 2012 IEP meeting by stating that the meeting was only about speech articulation, and that the School would address behavior later. The therapist credibly denied that Parent raised behavioral concerns at the meeting, thus contradicting Parent's account of the events. Weighing this contradictory evidence, I conclude that the Parent did not raise the subject at the meeting, and thus was not put off by the therapist.

Weighing all of the evidence discussed above, I conclude that the preponderant evidence shows that the School had no notice that Student was at that time suffering from a disability interfering with Student's learning, or that Student's behavior prior to April 2013 was interfering with Student's learning or that of others. Therefore, there was not preponderant evidence that the District failed to fulfill its child find obligation during Student's first grade year.

SECOND GRADE

Likewise, the evidence is preponderant that the School fulfilled its child find obligation in the Student's second year. When Student's behavioral problems became evident by the end of the 2012-2013 school year, the School took reasonable action to evaluate Student, and made changes to its behavioral interventions in the regular education setting. Considering that Parent delayed in returning requested permission to evaluate forms, the District completed its evaluation within a reasonable time. While it concluded that Student was not eligible for special education, the Parent failed to introduce a preponderance of evidence that the conclusions of the re-evaluation were incorrect.

It is true that the Parent took the initiative to advocate for Student at this juncture. Parent called the School's director of special education to complain about a host of concerns, many of which involved Parent's disagreement with the School's use of disciplinary procedures to address Student's behavior. The record is preponderant that the director took swift action to investigate at that point. The documentary record shows that, after the director conversed with the principal and Student's first grade teacher, the School sent a permission to evaluate form to Parent.

Parent returned the signed permission form on October 1, 20113. Meanwhile, the School collected extensive data from teachers and the behavioral health agency that was providing home services to Student. Also during this time, the Student's disruptive and aggressive behaviors continued to reach the level of disciplinary action. Twenty days after receiving the first permission form, the School sent a new one, which proposed a much more extensive evaluation. Parent returned the second form on November 8. The evaluation was completed by January 6, 2014, within the 60 days allowed for evaluations, based upon the second return date of the permission to evaluate. Meanwhile, the evidence shows that the Student's teachers were modifying Student's regular education programming to deal with Student's behaviors. Student finished the year with A's and B's.

I have considered whether or not the School's two-step evaluation authorization process might constitute a child find violation, and I conclude that it was not a violation. Even if the evaluation should have been provided within 60 days of the first returned signed permission form, the evaluation proposed in that first form was not as extensive as that proposed in the second form, and clearly on this record, a more extensive, thorough evaluation was called for at that time. The procedure of issuing a second permission form at most delayed the evaluation

report by twenty days, plus the considerable additional time that it took for Parent to return it. The ultimate conclusion, against which Parent has presented no preponderant evidence, was that Student was not eligible under the IDEA. This record does not show a substantial denial of educational opportunity or meaningful benefit because of any delay in the delivery of the report. After that, the parties negotiated a section 504 Service Agreement, mooting any further issues for due process.

CONCLUSION

I conclude that the School did not fail to perform its child find obligations to Student during the relevant period of time. Therefore, I will not order the School to provide Student with compensatory education.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the Parents' requests for relief are hereby **DENIED** and **DISMISSED**. It is **FURTHER ORDERED** that any claims that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

William F. Culleton, Jr. Esq.

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WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

August 27, 2014