

**BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION**



COMPLAINANT

v.

CASE NO. D12142017-09

School District

RESPONDENT

DECISION AND ORDER

INTRODUCTION

1. This is a proceeding pursuant to the Mississippi “State Policies”¹ Regarding Children with Disabilities Under “The Individuals with Disabilities Education Act Amendments of 2004” (collectively referred to as the Policies or the IDEA, herein), and involving a minor child (the Student or the Child, herein), initiated by the Parent² by the filing of a Complaint for Due Process received by the school district and the State Department of Education on December 14, 2017. The Parent acted pro se at all times relevant hereto.

¹Which Policies were adopted under the authority of “The Individuals with Disabilities Education Act (“IDEA”),” Public Law 101476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”),” Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300, and the Mississippi Standards and Procedures for the Education of Exceptional Children, Mississippi Code §§ 37-23-133 through -150. The hearing officer and the Mississippi Department of Education have jurisdiction over these proceedings pursuant to the statutes and code sections cited.

²Names of the Parties, the witnesses, and the School District are stated on a cover sheet to this document filed with the original of this document with the Mississippi Department of Education and are not stated within this document in order to protect the privacy of the minor child involved.

PARTIES

2. The Student is a [REDACTED] in the School District with a special educational eligibility ruling of emotional disability. The respondent is a Mississippi Public School District (District, herein) in which the Student is enrolled. The Student was enrolled in the District and a student in a District [REDACTED] school at the time the due process hearing request was filed.

ISSUES AND RELIEF REQUESTED

3. The Parent initially filed a 16 page complaint for due process received by the District and the Mississippi Department of Education on 14 December 2017 contending that the District had denied the Student a Free Appropriate Public Education ("FAPE") for a number of reasons, many of which were outside the scope of the IDEA.

4. During the course of a prehearing conference held on 12 January 2018, the parties agreed orally (which agreement was confirmed by letter of the hearing officer dated 15 January 2015) that the issues in the Complaint appropriate for consideration in the requested due process hearing were those set out as items 12-14 on page 14 of the complaint. Those issues, essentially, were whether

1. The Student's current Individualized Education Program (IEP) was inadequate due to the District's failure to include Physical Education (PE), Extra-Curricular Activities (EA) and non-academic settings, including related services, modifications, and supplementary aid (PE coach and nurse need to attend IEP), and consequently, should be revised to include the same;

³The Student's date of birth is [REDACTED]. Exhibit P-1, p.1. He was [REDACTED] at the time the request for a hearing was filed by Parent.

2. The Student's Individual Health Care Plan (IHCP) and Emergency Care Plan (ECP) should be revised with input from the Student's physician(s) and Parent(s), and included in the IHCP and ECP as part of the IEP; and

3. The circumstances of the case required that compensatory education or services be provided to the Student because of the District's alleged (a) violation of child find provisions, (b) failure to implement IEP, (c) failure to offer an appropriate IEP, and (4) failure to offer student appropriate related services.

5. Accordingly, those are the only issues that will be considered in this opinion and order.

6. The District committed in a document styled Settlement Agreement Reached through IDEA Resolution Session and dated 29 December 2017 [Exhibit D-2] to do essentially everything requested by the Parent in the issues presented for hearing except for providing compensatory services/education. Nonetheless, at the hearing the Parent was permitted to call all her witnesses and to examine them concerning all issues presented at the implement the IEP in all settings, and, consequently, this Decision and Order will address the same.

PROCEEDINGS

7. The due process hearing convened 24 January 2018 in the District Board Room and concluded the following day. The Parent called nine witnesses, including herself. Except for the Parent, all witnesses were District employees. Those persons were: the School Psychologist, the Positive Behavior Specialist (PBS), the Athletic Director (AD), the PE Teacher and Football Coach (PET or Coach), the Principal, the Special Education Director (SED), the School Nurse (Nurse), and the Special Needs Case Manager (CM). The District called no additional witnesses, but examined its own witnesses as they were called by the Parent.

APPLICABLE LAW

8. The IDEA requires each public school district in Mississippi to have in effect policies and procedures to ensure that all children with disabilities residing in Mississippi who are in need of special education and related services are identified, located, and evaluated.

§300.111 (a) (i).⁴

9. The statutory and regulatory framework defines the term “child with a disability” as a child having one or more of a number of conditions listed therein, including “a serious emotional disturbance,” also known as “an emotional disability” in the State Procedures, if, by reason of such condition, he “needs special education and related services.” §300.8 (a) (1). “Related services” includes “such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education,” including psychological services, counseling services (i.e., services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel), medical services for diagnostic or evaluation purposes, school health services, and school nurse services §300.34.

10. A school district’s obligations under the IDEA do not end with academic subjects. A school district must make physical education (PE) available to children with disabilities if it offers PE to children without disabilities who are in the same grade. §300.108. A school district must also “must provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” §300.108.

⁴All section (§) references are to the Mississippi “State Policies Regarding Children with Disabilities Under ‘The Individuals with Disabilities Education Act Amendments of 2004 unless otherwise noted.

11. The State Procedures require a school district, prior to the initiation of special education and related services, to conduct a full and individual initial evaluation, in accordance with §§300.305 (Additional Requirements for Evaluations and Reevaluations) and 300.306 (Determination of Eligibility) of the Procedures. That evaluation procedures must include assessments addressing “specific areas of educational need.” § 300.304 (c) (2);

12. If, based on that evaluation, “a determination is made that a child has a disability and needs special education and related services, an IEP (*Individualized Education Program*) must be developed for the child in accordance with §§300.320 through 300.324. “ § 300.306 (c) (2). The IEP is drafted by the school’s IEP committee which is to include those persons specified at §300.321 (a) and must contained those items specified at §300.320.

FACTS

13. The Student moved with his parents and a sibling to the District from the family’s Former State of Residence in August 2015, just before the Student began his [REDACTED] grade year. He was [REDACTED] years old at that time. The Student has asthma and a number of food allergies. He takes some 22 medications prescribed for his medical diagnoses of mild major depression and full body hives triggered by heat, exercise, and emotional stress. In his Former State of Residence he had an IEP with a ruling of Emotional Disability.⁵ See §300.8 (c) (4) (i). That ruling, dated 22 May 2013, found that the Student:

(1) Exhibits pervasive sad affect, depression and feelings of worthlessness; cries suddenly or frequently;

⁵Exhibit P-1, p 1.

(2) Displays unexpected and atypical affect for the situation; [and]

(3) Excessive fear and anxiety”

14. The Former State of Residence ruling further determined that the Student’s “significant identifiable emotional disability” prevented the Student “from receiving reasonable benefit from general education alone.”⁶

15. The Former State of Residence IEP contained an acknowledgement that the Student had a “[l]ife threatening allergy to tree nuts and peanuts as well as other foods and environmental allergies” and had been diagnosed with “asthma, eczema, and anxiety,” and that his anxiety level had in the previous year “made him physically ill.” It is significant to note that, despite those physical health issues, the ruling in the Student’s Former State of Residence was an emotional disability ruling, only, and did not include an Other Health Impairment (OHI). See §308 (c) (9).

16. The Former State’s IEP indicated the Student was performing well academically, although his end of the year writing score was below goal (30, where the goal was 46). The IEP noted that Access Skills – Self Advocacy/Self Determination was an “Area of Need” for the student and set goals and objectives for the Student’s improvement in that area.

17. The evidence adduced at the hearing, including but not limited to the report of the School Psychologist [Exhibit P-1], indicates an evaluation of the Student was undertaken shortly after he enrolled in the District. The Positive Behavior Specialist performed a functional behavior assessment of the Student which resulted in a behavior intervention plan dated 1 September 2015. The entire evaluation process included interviews with the Student and Parent

⁶Exhibit P-6, p. 3.

as well as narratives from the Student's teachers. The School Psychologist's report indicates that at least four tests were administered.

18. The evaluation determined that the Student had "been diagnosed with an anxiety disorder which is often manifested in hives as a result of reactions to stress in his life. This frequently causes him to pull on his shirt collar and to rub his face. He frequently has to be removed from the classroom at such times, according to the classroom behavior observations. This, consequently, interferes in his classroom instruction." While the student's medical conditions were considered in the report of the School Psychologist, a formal health assessment was not undertaken. The Student, however, underwent regular physical examinations as requirements for his participation in football and basketball and was found physically fit for purposes of participating in those sports.

19. Testing indicated the Student to have "average intelligence and almost all his achievement standard scores are in the average range." The evaluation indicated "significant emotional problems" and the School Psychologist concluded the Student met the "criteria to continue his" special education eligibility "in Emotional Disability."

20. The District held an IEP Committee meeting on November 17, 2015, which resulted in the Student's first IEP in the District.⁷ All persons required by § 300.321 of the Policies were present. The IEP Committee found that the student "enjoys school and reading is an area of strength. He is athletic and enjoys playing football for [the School athletic program]. He has a great attitude and always puts his best effort into his work. [H]e is in inclusion classes for Language Arts and Math." Although the District had not undertaken a formal health

⁷Although the issues agreed upon at the Prehearing Conference concerned the current IEP, only, all IEPs are reviewed here for background purposes. The Parent testified at the hearing that, in her opinion, all District IEPs were inappropriate in the same respects.

assessment, the School's IEP committee did have before it letters concerning the Student's health from health care professionals, a list of the Student's medications, and an Asthma Action Plan for dealing with the Student's asthma.⁸

21. The IEP Committee noted in its description of the impact of the Student's disability that his "emotional disability interferes in his education because he has little or no interaction with teachers during typical classroom situations and will not always ask for assistance when he needs it. He is overly critical of himself and his abilities. He demonstrates phobic-type reactions like fear of school; is uncomfortable with new situations; complains of not feeling good [sic] to keep from going to school. [His] excessive absences effect [sic] his ability to learn the information being taught in class and will eventually make him fall behind. As of 12/10/15, [he] has been absent 15 days."

22. The 2015 IEP noted that the Student at that time, although a sixth grader, was reading at a 3.9 grade level.

23. The Committee set two "measurable annual goals" for the Student. Goal #1 provided that "[w]hen anxious [the Student] will request assistance when needed 60% of the time during a 27 week period." Goal #2 related to academic performance and is not relevant to this decision. In his evaluation dated 17 November 2015, the School Psychologist noted that, as of 15 September 2015, the Student was requesting assistance when needed only 33% of the time.

24. The IEP also included the Parent's comments to the effect that the Student "shows severe anxiety at home on a daily basis"; that "every day is a battle to get him motivated"; "that he does not like anything out of routine[, which] may cause him to be very anxious and break out

⁸Exhibit P-16.

in hives and then will shut down in school”; that “he is taking 20 medications prescribed for his medical diagnosis of mild/major depression and cholinergic urticaria which is essentially full body hives that are triggered by heat, exercise and emotional stress.” The IEP also stated that in “[t]he complete list of medications and doctors notes are attached behind the IEP.”

25. Another IEP meeting was held on 17 May 2016 to prepare an IEP for the Student’s seventh grade year, the 2016-2017 academic year. Again, the Parent was in attendance. The IEP Committee’s description of the impact of the Student’s disability was similar to that noted on the 17 November 2015 IEP: his “emotional disability interferes in his education because he has little or no interaction with teachers during typical classroom situations and will not always ask for assistance when he needs it. He is overly critical of himself and his abilities. He demonstrates phobic-type reactions like fear of school; is uncomfortable with new situations; complains of not feeling good [sic] to keep from going to school. [His] excessive absences effect [sic] his ability to learn the information being taught in class and will eventually make him fall behind. As of 3/19/16, [he] has been absent 31 days.” The IEP also noted that his reading scores had improved, moving from a 3.9 level at the beginning of the year to grade level.

26. The IEP committee met 25 May 2018 to consider an IEP for the Student’s [REDACTED] grade year, the [REDACTED] school year. The Student’s current (as of the time of the filing of the Complaint) IEP resulted from that meeting. The Parent was present for this meeting as for the preceding IEP meetings. The IEP drafted by the Committee noted that the Student “is a very shy, but sociable [REDACTED] grade student who has gradually made improvements on communicating with his teachers and peers.” As it had in developing the previous IEPs, however, the Committee found that the Student’s “emotional disability interferes in his education because he has little or

no interaction with teachers during typical classroom situations and will not always ask for assistance when he needs it. He is overly critical of himself and his abilities. He demonstrates phobic-type reactions like fear of school.” Rather than saying the student “is uncomfortable with new situations,” however, the Committee changed its descriptor to “can become uncomfortable with new situations.” The Committee also found the Student had “made significant improvements academically as of the previous [REDACTED] school year. He will answer questions in class when asked, participate in group work , and request assistance from a teacher he trust [sic] and feels he is comfortable with.” Still, the Committee found that the Student’s “medical issues often prevent him from attending school regularly” Rather than predicting he eventually would fall behind because of his absences, however, the IEP for [REDACTED] stated that he would “need to be monitored . . . to insure that his academics do not fall behind.” The Committee noted that the Student’s most recent test scores indicated that he was performing on grade level in Math and Language Arts.

27. The goal established by the IEP Committee for the Student to address his self-advocacy issue called for the Student to request assistance when he becomes anxious 80% of the time over a 36 week period.

28. In a document styled Settlement Agreement Reached through IDEA Resolution Session [Exhibit D-2] and dated the District committed to do implement the IEP in all settings, that the School Nurse and Coaches would attend IEP meetings, that medical consent forms with all [the Student’s] diagnoses would be given to all teachers and coaches, that Athletics would come up with an alternate meal plan to address allergies, that coaches and teachers will be given

a file they will sign for all of [the Student's] IEP accommodations and health care plan; and the Student's health care plan will be updated annually.

DISCUSSION OF ISSUES

29. A hearing officer's role is not to second guess state and local policy decisions, but to determine whether school officials have complied with applicable law, and if not, what the proper remedy should be. *Flour Bluff Independent School. Dist. v. Katherine M.*, 91 F.3d 689, 693 (5th Cir. 1996). The law does not require that a school district provide the best education possible. Rather, the law requires only that a district provide access to public education "sufficient to confer some educational benefit upon the handicapped child." *Houston Independent School District v. Bobby R.*, 200 F. 3rd 341, ¶ 28, 31 IDELR 185 (5th Cir. 2000). That benefit must not be of a mere *de minimis* nature, but likely to result in progress, rather than "regression or trivial educational advancement." *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, ¶ 4 (5th Cir. 1997).

30. The Parent, as challenger of the District's actions in this case, has the burden of proof as to all issues presented in this matter. *See, Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 808 (5th Cir. 2003).

31. In deciding whether the requirements of the IDEA have been met, the first question to consider is whether the school district complied with the procedures of the IDEA. *Buser v. Corpus Christi Independent. School District*, 51 F.3d 490, 492 (5th Cir. 1995). Procedural violations, in and of themselves, do not amount to a denial of a free appropriate public education [FAPE] unless the violations result in the loss of educational opportunity to the student or seriously infringe upon the parents' opportunity to participate in the provision of

FAPE to the student. *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); State Policies, § 300.513;

32. Second, the hearing officer asks a substantive question: was the IEP “reasonably calculated to enable the child to receive educational benefits.” *Buser v. Corpus Christi Independent School District*, 51 F.3d 490, 492 (5th Cir. 1995)., citing *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). Fundamental to that question is whether the District, through the implementation of the student’s IEP, provided a free appropriate public education (FAPE) to the student.

ISSUE ONE: Whether the Student’s current Individualized Education Program (IEP) is inadequate due to the District’s failure to include Physical Education (PE), Extra-Curricular Activities (EA) and non-academic settings, including related services, modifications, and supplementary aid (PE coach and nurse need to attend IEP).

33. The Parent’s issues pose both procedural and substantive issues. The Parent argues that the PE Teacher and the School Nurse should have attended IEP meetings. The persons required to attend an IEP meeting, unless excused in the manner provided by §300.321 (e), are the

- (1) The parents of the child;
- (2) Not less than one general education teacher of the child (if the child is, or may be, participating in the general education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) above through (a)(6) below;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

34. The IEPs do not indicate that the School Nurse was a member of the IEP committee and there is no requirement in law that she be unless she falls into category six, above. It does not appear from the evidence that, prior to the initiation of this complaint process, any party requested the presence of the School Nurse at an IEP Committee meeting. Accordingly, her absence from such meetings is not a violation of §300.321 (e). Moreover, the District as committed [see Exhibit D-2] to have the School Nurse present at IEP meetings, which renders this issue moot.

35. The PE Teacher was listed as part of the IEP meeting for May 11, 2017, and was not in attendance; neither was he excused in compliance with §300.321 (e), which constituted a violation of that section. The PE Teacher testified that he could not attend because he was out of town and that he was subsequently briefed on the meeting.

36. The evidence does not demonstrate that the PE Teacher's absence resulted in the loss of educational opportunity to the student or seriously infringed upon the parents' opportunity to participate in the provision of FAPE to the student. Neither does it otherwise indicate that his absence impeded the Parent or Student's rights under the IDEA or caused a deprivation of any educational benefit. *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); State Policies, § 300.513. The District also has committed to having coaches present at IEP meetings, which moots this issue.

37. Finding no procedural violations amounting to a denial of FAPE, we move to the substantive issues related the Student's IEP.

38. In *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997), the Fifth Circuit Court of Appeals set out four criteria to be considered in determining the adequacy of an IEP, i. e., whether the IEP was reasonably calculated to confer educational benefit:

- (1) Was the IEP individualized on the basis of the student's assessment and performance.
- (2) whether the program was administered in the least restrictive environment;
- (3) whether the services were provided in a coordinated and collaborative manner by the key stakeholders; and
- (4) whether positive academic and non-academic benefits were demonstrated.

39. The Parent's first issue is in essence a contention that criteria one has not been satisfied; that the Student's IEP was not individualized on the basis of the student's assessment (in this case, the allegation is that the assessment was incomplete) and performance. The Student entered the District with a ruling of Emotional Disability, which ruling was continued by the

District following its evaluation. Neither the District nor the Previous State of Residence found that the child had any other disability other than a emotional disability. Each IEP, including the current one, has recognized that the Student “will not always ask for assistance when he needs it.” Based on this perceived issue, the IEP Committee established goals designed to help the Student with self-advocacy. In the case of the current IEP, that goal called for the Student called for the Student to request assistance when he becomes anxious 80% of the time over a 36 week period. The IEP committee, of which the Parent was a member, set no other goals for the student and listed no related services addressing mental or physical health issues or medical needs.

40. A major complaint voiced by the Parent in the course of these proceedings was that District personnel (e. g., the School Nurse) should have been administering medicines to her child during school and extra-curricular activities. Certainly “school health services and school nurse services” fall within the related services to be made available to a child with a disability if those services are “required to assist a child with a disability to benefit from special education.” See 300.34 (a). The IEP Committee made no finding on its IEP that school nursing or health services were required to assist the Student to benefit from special education, and, there is no testimony from a health care provider or other health care professional in evidence to the contrary. Without such evidence, I decline to substitute my judgment on this issue for that of the IEP Committee. *Flour Bluff Independent School. Dist. v. Katherine M.*, 91 F.3d 689, 693 (5th Cir. 1996).

41. In any event, any omission on the District’s part in providing nursing or health services in this case appears to have been because school employees (including the principal and the football coach, who is also the PE Teacher) understood that the Parent wanted to tend to the

student's health needs herself. The PE Teacher/football coach testified that special permissions were given to the Parent in response to her requests to attend to needs of the Student during school and extracurricular activities. For instance, she asked the Coach for permission to be close to the Student during workouts, practices, and games, which the Coach testified that understood to be for the reason that she wanted to tend herself to any medication needs of the Student.

42. The Parent, in her testimony, complained of the lack of accommodations and related services in the IEP, but has failed to offer testimony other than her own to support her contention that the IEP is inappropriate or inadequate in that regard. Under the circumstances, I find that, while the IEP may not have been perfect in respect to criteria one, it was individualized on the basis of the student's assessment and performance, and that the parent has not met her burden of proving otherwise.

43. The second criterion considers whether the program was administered in the least restrictive environment. The Student being in general education classes and extra-curricular activities, that is not an issue in this case.

44. Third, a review of an IEP considers whether the services were provided in a coordinated and collaborative manner by the key stakeholders. Having discussed above the Parent's contention that the School Personnel should have been administering the health care she was administering to her child at school and at extracurricular activities, I will not repeat that discussion here. The Parent also complained that the District is not providing "school health services" and "counseling services."

45. The Parent contended that the IEP was inadequate for failure to include mental health or counseling services but offered no expert testimony or evidence as to what counseling

or mental health or psychological services were required and should be included in the IEP. The School Psychologist testified that counseling and mental health services “are provided through the behavior specialist (the PBS, who has a degree in psychology) and . . . in some cases the school counselor.” The PBS also testified that counseling services were available to the Student.

46. The overwhelming weight of the testimony establishes that the District faculty and staff have fully cooperated with the Parent in serving the Student. According to the testimony of the Principal and the PBS, the District has never denied any accommodation requested by the parent, and both have provided the Parent with their cell phone numbers. Given the foregoing, I find that criterion three is satisfied in this case.

47. The final criterion asks whether positive academic and non-academic benefits were demonstrated. Both parties agree the Student is doing well academically and that the academic aspects of his current IEP (or any of the previous ones) are not in question. The only question is whether non academic benefits have been demonstrated. The answer to that question must be in the affirmative. His emotional disability, according to the Parent is that he “doesn’t self-advocate and suffers from severe anxiety.” Certainly there has been improvement in that regard. The PBS testimony was significant. She testified that the Student has “made tremendous strides. . . . He’s made lots of friends. He enjoys sports, obviously. He has become more comfortable asking teachers for things [He d]oesn’t always do it, but he has become more comfortable with that and he does a great job” She further testified that the Student’s goal for self-advocacy has been raised annually as the student improved and that during the 2016-

2017 he reached 85% of his goal. His progress report for the week preceding the hearing indicated that he had attained 98% of his current self-advocacy goal.

48. Accordingly, I find the Parent has not met her burden of proof regarding her allegation that the Student's current Individualized Education Program (IEP) was inadequate for the reasons stated.

ISSUE TWO: Whether the Student's Individual Health Care Plan (IHCP) and Emergency Care Plan (ECP) should be revised with input from the Student's physician(s) and Parent(s), and included in the IHCP and ECP as part of the IEP.

49. The terms "Health Care Plan" and "Emergency Care Plan" are not defined in the Mississippi Policies. That said, it is clear from the Policies that an IEP is to include "[a] statement of the special education and related services and supplementary aids and services . . . to be provided to the child" §300.320 (B) (4). Certainly any accommodations or health care needs of the Student would be appropriately organized into a "Health Care Plan" and/or an "Emergency Care Plan" and included in the IEP under the requirements of §300.320 (B) (4) and, indeed, should be included in the IEP. Key to this issue is the phrase "input from the Student's physician(s)." There being no testimony from the Student's physician(s) or other health care professionals adduced at the hearing, I cannot determine what revisions, if any, are needed to meet the needs of the Student as mandated by the IDEA. Accordingly, I find the proof does not establish any violation on the part of the District or denial of FAPE as to this issue, and, accordingly decline to order any relief regarding the same.⁹

⁹It should be noted that District Exhibit-9 establishes that, in the wake of the commitments undertaken by the District in the 29 December 2017 document, the IEP committee, which now is to include the School Nurse and coaches, already has begun the process of reviewing the Student's IEP with special attention to medication and Health Care issues.

ISSUE THREE: Whether the circumstances of the case require that compensatory education or services be provided to the Student because of the District's alleged (a) violation of child find provisions, (b) failure to implement IEP, (c) failure to offer an appropriate IEP, and (4) failure to offer student appropriate related services.

50. The evidence as discussed above establishes that the Student was identified as special education eligible and offered an appropriate IEP. The Parent has failed to prove otherwise. Neither has the Parent proved that the District failed to offer the Student any appropriate related services required by the IDEA. It is not necessary to discuss those points again. Moreover, even if the Parent had established some denial of FAPE, she failed to provide evidence of the need for compensatory services or of the nature of the compensatory services required. The evidence, in fact, establishes that the Student is succeeding in school in all areas. That he is receiving the educational benefit the IDEA is designed to insure is clear from the record. Accordingly, the Parent has failed to meet her burden of proof as to this issue.

OTHER ISSUES

51. This decision does not address issues raised at the hearing but not included in the issues designated and agreed upon for hearing at the prehearing conference. That said, the evidence taken as a whole, whether specifically addressing an issue designated for hearing or otherwise, fails to establish any denial of FAPE to the student. Accordingly, the Parent has failed to sustain her burden of proof as to all issues she raised.

CONCLUSION

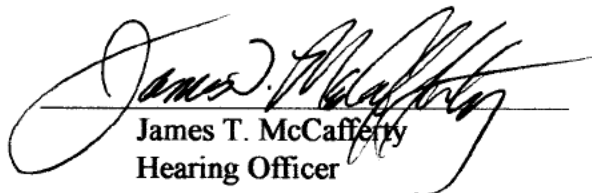
52. The Parent's witnesses, with the exception of herself, were District Employees. None of the District's professionals gave any evidence establishing that the Student's IEPs were

inappropriate or that the Student was in any way denied FAPE. To the contrary, the evidence presented by the District indicated the student was improving in his self-advocacy skills, and was successful socially, athletically, and academically. What is more, the District, in an agreement signed by the Parents, has committed to most of what the Parent requested and, in fact, had begun implementing that agreement as of the date of the hearing.

53. Having considered the Parent's allegations, the evidence presented at the hearing, and the arguments of the Parties, the hearing officer finds that the IEP for the ██████████ school year (and the two preceding IEPs) was calculated to confer the requisite educational benefit and that the Student did in fact receive such benefit. Moreover, the District, in a document signed and agreed to by both the Student's parents, has committed to do much of what the Parent has demanded in the issues presented for hearing.

54. There being no denial of FAPE, compensatory services (or compensatory education) are not warranted. Accordingly, the Parent's requests for relief are denied and the complaint is dismissed.

So ordered, this the 2nd day of March, 2018


James T. McCaffery
Hearing Officer