

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

Pennsylvania Special Education Hearing Officer
Final Decision and Order

CLOSED HEARING
ODR File Number: 20136-17-18

Child's Name: S. S. **Date of Birth:** [redacted]

Dates of Hearing:
4/25/2018, 4/27/2018, 4/30/2018,
5/21/2018, and 5/22/2018¹

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[redacted]

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Hearing Officer: Cathy A. Skidmore, M.Ed., J.D. **Date of Decision:** 7/3/2018

¹ Originally, three full sessions were estimated to be sufficient to complete the testimony. The final two sessions were abbreviated but were added to accommodate schedules for witnesses whose testimony was not reached in the first three sessions.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)² is a late elementary school-aged student residing in the Coatesville Area School District (hereafter District) who attended its schools until transferring to a private school (hereafter Private School) in January 2018. Student is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)³ on the basis of a vision impairment, other health impairment, and specific learning disability. Student presents with very complex needs because of those disabilities, although Student also has a number of areas of strength.

Student's Parents filed a Due Process Complaint against the District shortly after the Private School enrollment, asserting that it had denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,⁴ as well as the federal and state regulations implementing those statutes, for the two year period preceding the date of the Complaint. The case proceeded to a hearing with the parties presenting evidence in support of their respective positions.⁵ The Parent sought to establish that the District failed to provide Student with FAPE throughout the time period in question; as remedies, they demanded compensatory education, tuition reimbursement, and reimbursement for two independent

² In the interest of confidentiality and privacy, Student's name, gender, and other personal information are not used in the body of this decision. All potentially identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

³ 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

⁴ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61.

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Citation to duplicative exhibits may not be to all. References to Parents in the plural will be made where it appears that one was acting on behalf of both, and to the singular Parent to refer to Student's mother who was more actively involved in the educational program during the time period in question. Hearing Officer Exhibit (HO-2) is hereby admitted by agreement of the parties.

evaluations they obtained. The District maintained that its special education program, as offered and implemented, was appropriate for Student, and that no relief was due.

For the reasons set forth below, the Parents' claims will be granted in large part but not in their entirety.

ISSUES

1. Whether the District offered and provided an appropriate program to meet Student's needs between January 2016 and January 2018 when Student enrolled in a private school;
2. If the District did not provide Student with an appropriate program, is Student entitled to compensatory education;
3. If the District did not provide Student with an appropriate program, are the Parents entitled to reimbursement for tuition and related expenses for the second half of the 2017-18 school year;
4. If the District did not offer Student an appropriate extended school year program during the summer of 2017, are the Parents entitled to reimbursement for tuition and related expenses for the Private School summer program; and
5. Whether the Parents are entitled to reimbursement for two private evaluations of Student?

FINDINGS OF FACT

1. Student is late elementary school-aged and is a resident of the District. Student is eligible for special education under the IDEA and has a disability for purposes of Section 504. (N.T. 25-26.)
2. Student has been diagnosed with oculomotor apraxia, a rare neurological disorder that causes difficulty with visual tracking and low muscle tone, among other things. Student also experiences spasms of the body due to visual fatigue but Student is not aware of the movements. The disorder can also seriously impact the body in other ways, some life-threatening. (N.T. 43, 745, 972-75, 1113, 1115.)

3. Student has also been diagnosed with a connective tissue disorder that causes weak joints and a lack of temperature control. Student's balance is impacted, and this disorder also causes fatigue for Student. Student also is very sensitive to noise. (N.T. 974-76.)
4. Student was diagnosed with Generalized Anxiety Disorder in the summer of 2015 and began private counseling. (N.T. 976; S-4 p. 2.)
5. Student's educational strengths include reading decoding and fluency, spelling, working memory, and long term retrieval. Student is very self- motivated and exhibits appropriate positive peer interactions. (N.T. 976; S-14 pp. 24-25.)

EDUCATIONAL HISTORY

6. Student was provided early intervention services and entered the District in Kindergarten. Student's early intervention services included vision support and orientation and mobility training. In the District, Student was provided with the same supports as well as occupational and physical therapy and a Personal Care Assistant (PCA).⁶ (N.T. 977-78, 1108-09; S-4 p. 2.)
7. An IEP developed in February 2015 (Student's first grade year) as revised in November 2015 identified needs in the areas of physical therapy (improving body strength, coordination, functional mobility, balance, and motor planning); occupational therapy (improving fine motor, motor planning, visual motor, and activities of daily living skills as well as self-regulation of the body); and vision and mobility (improving scanning skills and need for assistance/accommodations exiting the school bus and with tracking). Annual goals addressed vision support (gaining familiarity with a keyboard (limited to two rows due to Student's small size at that age)); orientation and mobility (navigating a local mall); physical therapy (improving strength, balance, coordination, and gross motor skills); and occupational therapy (copying sentences based on a handwriting rubric). (S-12.)
8. Program modifications/items of specially designed instruction in the February 2015 IEP as revised in November 2015 addressed: a PCA throughout the day including arrival and dismissal and when navigating the building; early transitions to avoid crowded hallways as needed; preferential seating for visual focus; use of a magnifier and slant board; monitoring of depth perception as needed; teacher use of highly contrasting chalk or markers to improve visibility; group community instruction for students with visual impairments; supervision on field trips and fire drills; transportation for orientation and mobility training; navigation assistance by an adult; test and assignment accommodations/modifications; PCA prompting to remain on task; access to manipulatives for mathematics; opportunities for breaks as needed for fatigue; modified physical education; and transportation considerations. Other provisions addressed home communication and awareness of Student's sensitivity to loud noises and other medical concerns. (S-12.)

⁶ This person was referenced by various titles throughout the hearing, including a one-on-one aide. The term PCA will be used for consistency since that is the title she gave herself during testimony at the hearing (N.T. 736-37).

9. The February 2015 IEP provided that Student qualified for Extended School Year (ESY) services in 2015. The Parents approved the Notice of Recommended Educational Placement (NOREP) for ESY. (S-12.)
10. Student's program in the February 2015 IEP as revised in November 2015 was for itinerant blind or visually impaired support. Occupational and physical therapy, vision services, orientation and mobility training, transportation, and the PCA were specified as related services. The Parents approved the February 2015 NOREP. (S-12.)
11. Progress monitoring reported on the March 2015 IEP through January 2016 reflected generally appropriate progress on: the vision goal vision support goals (mastery on gaining familiarity with a keyboard by November 2015 and maintenance or better in January 2016); the orientation and mobility goal (mastery on navigating a local mall by November 2015 and maintenance in January 2016); and the physical therapy goals (significant growth in improving strength, balance, coordination, and gross motor skills). Progress was reportedly more limited on the occupational therapy goal (anecdotal notes of improvement in copying sentences but no references to the handwriting rubric). (S-18.)

GENERAL EDUCATIONAL PROGRAMMING JANUARY 2016 THROUGH DECEMBER 2017

12. Student's PCA was the same from Kindergarten until Student left the District. (N.T. 739-40.)
13. The PCA helped to ensure that Student made all of the transitions necessary throughout the day, including meeting Student at the bus for arrival and dismissal and going to various therapy sessions. A vision support teacher who also provided orientation and mobility training to Student consulted with the PCA, providing training and ongoing consultation. The PCA also worked individually with Student to make up any work missed during therapy sessions. In addition, the PCA provided prompting and other assistance as needed, including taking breaks, and helped Student draft and edit written work. (N.T. 204, 206, 208, 248-50, 255-57, 299, 302, 306, 495-96, 612, 742-43, 748, 750, 752-58, 760-63, 769-72, 783, 785-86, 788, 791-92, 796, 798-99, 802, 847-48, 851, 888-89, 903-05, 1111-13, 1119-20.)
14. The PCA encouraged Student to independently perform tasks that Student was able to complete without assistance. Student became more independent as Student matured, relying less on the PCA, except when fatigued when Student required significantly more redirection and prompting. (N.T. 249-50, 746, 755, 757-58, 767-68, 795-96, 802, 804-06, 847-48, 1118-19.)
15. Student tended not to tell anyone when Student was fatigued or that Student needed to take a break. (N.T. 952-53, 976.)
16. Student has become fatigued at school and exhibited the spasms of limbs and torso. When that occurred, the PCA would generally touch Student and the movements would then stop. (N.T. 295-96, 486, 745, 746-47, 784-85, 873, 911.)

17. Student's fatigue resulted in Student not participating in various extracurricular activities, decreasing those activities over time throughout the relevant school years. (N.T. 990-91, 995-96, 999, 1006.)
18. Student was provided orientation and mobility vision support throughout the school years in question. (N.T. 1116-35.)
19. The District used AIMSweb probes to obtain data for progress monitoring of Student's mathematics goals. Scores were reported as percentages because District staff understood the Parents to have requested the scores in that format. The District did not use those results for comparing Student's scores to the national norms, but they were useful in identifying areas where Student exhibited difficulty. (N.T. 147-48, 153, 159-61, 460, 462-64, 472-74, 505-06, 550-51, 553, 587-88, 933-34)

2016 REEVALUATION

20. The District reevaluated Student in early 2016 (middle of second grade) with the consent of the Parents and issued a Reevaluation Report (RR) dated February 2, 2016. (S-4.)
21. Parent concerns at the time of the February 2016 RR were mathematics difficulties and a need for redirection to tasks at times; Student's anxiety was also noted along with Student's need for reassurance. (S-4 pp. 3-4.)
22. Cognitive assessment administered for the February 2016 RR (Kaufman Assessment Battery for Children, Second Edition) yielded overall below average range scores (at the 4th percentile on both the Fluid Crystallized Index and the Nonverbal Index) with relative strengths and weaknesses across subtests and clusters. No text was used for this instrument and no modifications for Student were needed. (S-4 pp. 32-34.)
23. Student's academic achievement was assessed for the February 2016 RR (Wechsler Individual Achievement Test – Third Edition (WIAT-III)), reflecting average range scores with the following exceptions: Student's scores on the Reading Comprehension subtest (14th percentile and just below the average range) and Mathematics and Math Fluency subtests and composites (all at or below the 12th percentile) were in the below average range). The only modifications for the WIAT-III administration were to enlarge the text and present a single row of text or mathematics symbols and numbers at a time. (S-4 pp. 34-37.)
24. Academic needs identified in the February 2016 RR were for reading comprehension skills (predicting, reflecting, and interpreting); mathematics skills (math facts, subtraction, explaining Student's thinking); and written expression (organization and sequencing). Student's tendency toward distraction and need for redirection were also noted. (S-4 p. 5.)
25. The District obtained rating scales (Behavior Rating System for Children – Second Edition (BASC-2)) to evaluate how Student's anxiety impacted Student at home and in school. All of the teacher ratings revealed no concerns with the exception of Attention

Problems (at-risk range) due to Student's distractibility; the Parents' ratings also endorsed one area of concern, Anxiety (at-risk range). (S-4 pp. 40-42.)

26. The February 2016 RR included a functional vision assessment that identified difficulties with ocular motor activities and needs for a magnifier and access to a keyboard. Orientation and mobility assessment was also conducted and recommended further development of skills needed to navigate various environments. (S-4 pp. 8-14.)
27. Speech/language assessment for the February 2016 RR, conducted due to teacher concerns with auditory processing and Student's underdeveloped skills in providing explanations, revealed slightly below average scores on the Comprehensive Evaluation of Language Fundamentals – Fifth Edition, but average to above average range scores on the Language Processing Test – Third Edition. Speech/language services were not recommended, but consultative language services were provided to assist Student with language-based strategies in the classroom. (N.T. 890-91; S-4 pp. 14-20, 29; S-13 p. 51.)
28. Occupational therapy assessment for the February 2016 RR revealed continued weakness with fine motor, visual motor, and visual perceptual skills. Direct and consultative occupational therapy were recommended. (S-4 pp. 20-25, 29.)
29. Physical therapy assessment for the February 2016 RR reflected continued need especially with respect to strength, motor planning, and upper limb and bilateral coordination. Direct and consultative physical therapy were recommended. S-4 pp. 25-26, 29.)
30. The February 2016 RR classified Student as eligible for special education on the bases of Visual Impairment, Other Health Impairment, and Specific Learning Disability (mathematics). (S-4 pp. 44-45.)
31. A meeting convened to review the February 2016 RR. (N.T. 985.)

FEBRUARY 2016 IEP

32. A new IEP was developed for Student in February 2016. That document was revised on several occasions (February, March, April, May, and August 2016). (S-13.)
33. The present levels section of the February 2016 IEP included a report of Student's performance on a mid-school year Developmental Reading Assessment (DRA). At that time, Student's oral reading fluency was independent at level 18, but instructional in comprehension including making predictions.⁷ The benchmark for a mid-second grade student was reported to be 20-24. (S-13.)

⁷ It is not necessary to obtain a baseline for both fiction and nonfiction texts for the Developmental Reading Assessment (DRA). A baseline obtained for either is used for both. (N.T. 188-89.)

34. The February 2016 IEP was revised in March and April 2016 to add recent assessment of Student's executive functioning skills, a completed Qualitative Reading Inventory (QRI), and an IU Central Auditory Processing Evaluation. (S-13; P-59; P-60.)
- a. Rating scales from the Behavior Rating Inventory of Executive Functioning (BRIEF) completed by the Parent, teacher, and PCA revealed clinically significant concerns with shifting (teacher), emotional control (PCA), and initiation (teacher). All other scales and composite scores were within the normal range and the results were considered to reflect age-appropriate executive functioning. (S-13 pp. 20-22.)
 - b. A completed QRI reflected that Student's oral reading accuracy was independent at a level 2, but comprehension was frustrational at that level. Student's comprehension was independent at a level 1 on both narrative and expository texts. Student's listening comprehension was instructional at level 1 and frustrational at level 2.⁸ Reading tutoring one day each week for a thirty minute period was added to the IEP to address reading comprehension (answering implicit questions). (N.T. 990; S-13 pp. 22-30; P-59 pp. 63, 74.)
 - c. The IU Central Auditory Processing evaluation results were normal for hearing sensitivity and middle ear functioning. Student did demonstrate a Central Auditory Processing Disorder with deficits indicative of an integration-type processing weakness which would impact Student at school. The IU audiologist made a number of recommendations for Student, including use of an FM system, preferential seating, strategies for providing directions and instruction, visual and tactile supports, and monitoring of note-taking. Audiology support was recommended at a consultative level. (S-13 pp. 51-59; S-43.)
35. Needs identified for the February/March/April 2016 IEP were those from the February 2016 RR: reading comprehension skills (predicting, reflecting, and interpreting); mathematics skills (math facts, subtraction, explaining Student's thinking); and written expression (organization and sequencing). Student's tendency toward distraction and need for redirection were also noted, as were continued needs in physical therapy (improving body strength, coordination, and motor planning); occupational therapy (improving fine motor, motor planning, visual motor, and visual perceptual skills, as well as writing speed and legibility); and vision and mobility (improving scanning skills and need for assistance/accommodations exiting the school bus and with tracking). (S-13.)
36. Annual goals in the February/March/April 2016 IEP addressed mathematics computation (solving second grade problems correctly on probes); mathematics application (solving second grade problems correctly on probes); reading comprehension (summarizing and interpreting text at independent level); vision support (improving keyboarding skills to type five words per minute); orientation and mobility (navigating local stores or a local

⁸ There are a number of exhibits that correlate reading levels among different publishers of leveled reading materials (S-19 pp. 21-22, S-27, S-56), but none include levels 1 or 2 for any grade beyond Kindergarten. A DRA administered in May 2016 identified Student's independent reading level for comprehension and passages at level 20, mid-second grade (P-6 p. 1; S-56).

mall); physical therapy (improving strength, balance, coordination, and motor planning); and occupational therapy (copying sentences based on a handwriting rubric). (S-13.)

37. Program modifications/items of specially designed instruction in the February 2016 IEP as revised through April 2016 addressed: a PCA throughout the day including arrival and dismissal and when navigating the building; early transitions to avoid crowded hallways as needed; preferential seating for visual focus and noise; use of a magnifier, slant board, highlighters, large print calculator, ruler, and bold lined paper as needed; monitoring of depth perception as needed; teacher use of highly contrasting chalk or markers to improve visibility; group community instruction for students with visual impairments; adjustments to computer screen as needed; limited visual scanning activities; supervision on field trips and fire drills; transportation for orientation and mobility training; navigation assistance by an adult; test and assignment accommodations/modifications; PCA prompting to remain on task; access to manipulatives for mathematics; writing supports such as graphic organizers; copies of materials viewed in class accompanied by verbalized information; computer practice for spelling; reduction in noise levels; repeated/rephrased instruction and discussions in class; checks for attention before instruction and comprehension; monitoring of note-taking; opportunities for breaks as needed for visual and other fatigue; visual and tactile supports; modified physical education with accommodations; use of an FM system during whole group instruction; and transportation considerations. Other provisions again addressed home communication and awareness of Student's sensitivity to loud noises and other medical concerns. (S-13.)
38. Student's program in the February/March/April 2016 IEP was for itinerant blind or visually impaired and learning support. Occupational and physical therapy, vision services, orientation and mobility training, transportation, and the PCA were specified as related services. The Parents approved the February 2016 NOREP. (S-13.)
39. The February/March/April 2016 IEP provided that Student qualified for ESY services in 2016 to address physical therapy and learning support (mathematics computation and applications and reading comprehension). The PCA and consultative vision support were also included. The Parents approved the NOREP for ESY. (P-59; P-60; S-13.)
40. The February/March/April 2016 IEP was again revised in May 2016 to provide an updated QRI reflecting that Student had attained a level 2 instructional level for comprehension. (S-13 pp. 59-61.)

2015-16 SCHOOL YEAR (SECOND GRADE)

41. A DRA at the start of the 2015-16 school year revealed an independent reading level of beginning second grade (DRA level 18) and an instructional reading level of mid-second grade. (P-6 p. 1; S-4 pp. 6-7.)
42. Student occasionally became overwhelmed or exhibited anxiety in second grade. Student also exhibited lack of focus and attention at times. (N.T. 767, 918, 954.)

43. Student was occasionally fatigued at school in second grade. (N.T. 952, 959-60.)
44. Student had difficulty with mathematics in second grade, and the Parents arranged for weekly tutoring in that subject. (N.T. 984, 991.)
45. Student was provided with enlarged print for mathematics facts and limited the sets of problems provided at one time to accommodate Student's vision needs. (N.T. 894.)
46. Student was provided the Everyday Math program in second grade, a new program for the District and with which many students had difficulty. (N.T. 891-92.)
47. Everyday Math is a general education, spiraling mathematics curriculum that is designed to help students understand the process of the skills taught including basic operations. The students participate in whole group, small group, and individual work that includes the use of manipulatives. Students are graded on Everyday Math as meeting expectations (80-100%), approaching expectations (60-79%), partially meeting expectations, or not meeting expectations. There is also an option for not assessed. Students are given partial credit (partially meeting expectations), for making a reasonable attempt, and the grading is somewhat subjective. (N.T. 174-75, 200-04, 213, 215, 223-24, 225, 273-78, 282, 491, 511-13, 671, 857, 870-71, 953-54.)
48. As of January or February 2016, Student was provided learning support in mathematics for problem solving and calculation, thirty minutes daily, by a learning support teacher. This intervention essentially pre-taught, reinforced, and re-taught Everyday Math skills in a small group. (N.T. 912-13, 928-29, 947-48, 953, 989; P-59 p. 69.)
49. The AIMSweb probes in second grade for mathematics were untimed. (N.T. 939-40.)
50. By the end of second grade, Student was reading independently at a DRA level 20, mid-second grade level. (P-6; S-56.)
51. Student had orientation and mobility training for two hours a week and vision support thirty minutes each week in second grade. (N.T. 1111.)
52. Student did not fail to complete homework assignments in second grade. (N.T. 915.)
53. In the summer of 2016, Student participated in the District's ESY program. Student also had reading tutoring arranged by the Parents, but the mathematics tutoring was discontinued. (N.T. 992.)

INDEPENDENT EDUCATIONAL EVALUATIONS 2016

PRIVATE NEUROPSYCHOLOGICAL EVALUATION

54. The Parents obtained an independent neuropsychological evaluation (INE) of Student in the summer of 2016. That evaluation included an observation of Student in the classroom at the District. (N.T. 37, 77-78, 1022-23; P-44 pp. 1-2; S-5.)

55. Cognitive assessment for the 2016 INE (Wechsler Intelligence Scale for Children – Fifth Edition) yielded variable Index scores: in the average range on the Verbal Comprehension Index, in the borderline range on the Fluid Reasoning Index (with variability among its subtests), in the low average range on the Visual-Spatial Index (with variability among its subtests), in the borderline range on the Working Memory Index (with variability among its subtests), and in the low average range on the Processing Speed Index. (S-5.)
56. Assessment of academic achievement for the INE (Kaufman Test of Educational Achievement – Third Edition (KTEA-3)) revealed strengths in the areas of reading comprehension, reading decoding, and spelling (average range scores). Student earned scores in the borderline range in written expression and in the low average range on math computation. (S-5.)
57. Student’s learning and memory, including short term and long term semantic memory, were also assessed for the INE, revealing variability with deficits in semantic retrieval. (S-5)
58. Student’s emotional/behavioral and executive functioning were also assessed for the 2016 INE, including Parent rating scales. The results of those measures revealed difficulty with focusing/sustaining/shifting attention to tasks. (S-5.)
59. The private neuropsychologist concluded that Student met diagnostic criteria for a Specific Learning Disorder with impairment in written expression and mathematics and confirmed the previous ADHD, Anxiety, and medical diagnoses. (S-5 p. 7.)
60. The private neuropsychologist concluded that Student had a nonverbal learning disability that was more clearly manifested as Student progressed beyond the primary elementary grades and the material became more conceptual and abstract. Student’s ability to generalize was weak, based in part on deficits in retrieval skills. (N.T. 48-53, 58-59, 87-88, 99, 103.)
61. The private neuropsychologist recommended a specialized placement in a small, highly structured private school because of Student’s many areas of difficulty in accessing the general curriculum, including Student’s slow pacing, weak listening comprehension and verbal expression skills, fine motor and visual deficits, and nonverbal learning disability. She did not believe that Student would require a PCA or dedicated aide in such a setting. (N.T. 69-70, 90, 99-103; S-5.)
62. The private neuropsychologist further suggested assistive technology and speech/language evaluations, in addition to educational recommendations that included: a replacement mathematics curriculum; IEP goals and support for written expression; accommodations and modifications for assessments and assignments; chunking of material; identification of key concepts; visual cues; use of manipulatives; checks for comprehension; repetition and clarification of oral information; wait time during discussions; a second set of textbooks at home; preferential seating; visible schedule; notice of changes to schedule; instruction in learning and study strategies; and

encouragement to seek clarification and look to peers. There were also extensive suggestions for providing directions to Student (given in increments with voice inflection, reviewed with Student, concise, giving step-by-step guidance). (S-5 pp. 8-11.)

PRIVATE READING SPECIALIST EVALUATION

63. A private reading specialist conducted an evaluation in June 2016. (N.T. 1020; S-37.)
64. On the Woodcock-Johnson Diagnostic Reading Battery – Third Edition for the June 2016 private reading evaluation, Student’s scores were variable, but all standard scores were in the average to high average range. On a Standard Reading Inventory, Student’s independent reading level was judged to be at or below a first grade level because reading comprehension was weaker than word recognition skills; however, the instructional reading level was determined to be at a beginning third grade level. Phonological processing skills were determined to be average, and Student’s scores on the Gray Oral Reading Tests – Fifth Edition were in the average range. (S-37.)
65. The reading specialist made a number of recommendations to support Student’s reading skills including daily individual instruction in reading comprehension especially for drawing inferences and making predictions; a multisensory, phonics-based reading program; spelling instruction aligned with the reading program; repetition and modeling; sight word development; wait time; and repetition of mastered material. Speech/language and psychoeducational evaluations were also recommended. (S-37.)

PRIVATE AUDITORY PROCESSING EVALUATION

66. A private audiologist conducted an auditory processing evaluation in May and June 2016. (N.T. 1020; S-42.)
67. The private audiologist found a minimal sensorineural hearing loss as well as a word retrieval deficit in expressive language assessment. She also concluded that Student exhibited an Auditory Processing Disorder that was manifested through deficits in speech perception in noise and temporal processing speed. (S-42)
68. The private audiologist made a number of recommendations, including use of an FM system and programming suggestions for the classroom: test and assignment accommodations; preferential seating; calling on Student only when Student volunteered; class notes/outlines; unspecified language therapy; and a comprehensive reading evaluation. A re-assessment of auditory processing one year later was also proposed. (S-42.)

DISTRICT REEVALUATION JANUARY 2017

69. The District issued another RR in January 2017 to fully consider the independent evaluations (INE, auditory processing, and reading). This document summarized evaluations and other information obtained since the previous RR in February 2016, as well as a majority of the content of that prior RR. (S-6.)

70. Parent concerns at the time of the January 2017 RR were for a program that incorporated the recommendations of the several private evaluations (INE, [auditory processing], and reading); they also suggested that Student's eligibility classification should be revisited to include all of Student's disabilities. (S-6 p. 5.)
71. Updated teacher input into the January 2017 RR reflected that Student was approaching expectations in mathematics, and was slightly above grade level with spelling. Classroom observations by the school psychologist and special education teacher were also included. (S-6 pp. 16-21.)
72. The January 2017 RR provided an update on a more recent DRA in November 2016, with Student independent at an end of second grade level (level 28), and again in January 2017, when Student was independent at a beginning of third grade level (level 34). (S-6 pp. 28-38.)
73. The vision support and orientation and mobility assessments from the February 2016 RR were updated for the January 2017 RR, with Student demonstrating progress with keyboarding and certain mobility skills. (S-6 pp. 21-28.)
74. An audiologist at the local IU provided an update following a trial of an FM system beginning in May 2016. Use of that system was reportedly beneficial for Student. (S-6 pp. 38-39.)
75. A report of a speech/language evaluation in October 2016 was included in the January 2017 RR. Student reportedly exhibited a relative weakness in auditory memory but was still able to process information accurately. That evaluation found no speech/language impairment and such services were not recommended. (S-6 pp. 42-45.)
76. The January 2017 RR concluded that Student was eligible for special education under the primary category of Visual Impairment, and secondary categories of Other Health Impairment and Specific Learning Disability (mathematics calculation and problem solving). (S-6.)

2016-17 SCHOOL YEAR (THIRD GRADE)

77. The February 2016 IEP was revised in August 2016 to provide information on the summer 2016 private evaluations. The results of those were included in the revision, and the IU audiologist provided an update on the trial of the FM system, which had been successful in whole group instruction and was recommended to continue. The mathematics computation goal was also revised to reflect third grade probes. (S-13.)
78. The IEP team also determined in the August 2016 meeting that Student's reading support should increase to thirty minutes per day, which would also help Student with word problems in mathematics. The team also decided to decrease the mathematics support to one thirty minute period twice per week for pre-teaching and to address concepts with which Student struggled. (N.T. 443-44, 48-909; P-62 p. 58.)

79. The Parents and Student applied to and visited the Private School recommended by their private neuropsychologist in the fall of 2016. They also investigated the other recommended private schools. (N.T. 1025-26, 1047-48; S-48 pp. 8-12, 20-23.)
80. The Parents told the IEP team at several meetings in the fall of 2016 that they were considering the Private School. (N.T. 1025-26, 1046-47.)
81. Student's third grade class had twenty three students. The teacher provided clear expectations to the students. (N.T. 246, 288.)
82. Students in third grade began the school day at 9:15 a.m. with a period of transition, and ended the day at 3:40 p.m. (N.T. 230-31, 243, 760.)
83. Student used an FM system in third grade and Student expressed that it was helpful. (N.T. 267-68.)
84. Student did not exhibit inappropriate behaviors in third grade. Student could be distracted especially with non-preferred tasks but was easily redirected. (N.T. 246, 291-92.)
85. Student occasionally became overwhelmed or exhibited anxiety in third grade. Student would take a break if needed. (N.T. 514-15, 600, 777-79.)
86. Student performed better in small groups than in large groups in third grade. (N.T. 254.)
87. Student exhibited good social and self-advocacy skills in third grade. (N.T. 488, 600.)
88. When Student was fatigued during third grade, Student would at times take a break, and those sometimes did and sometimes did not benefit Student. (N.T. 270-71, 507-08, 594, 779-80.)
89. Student had a thirty minute reading intervention period for one half hour each day in third grade until April 2017. Student missed twenty minutes of Language Arts class and ten minutes of Mathematics class for that intervention period. (N.T. 232, 494-95; S-26.)
90. Student had vision therapy one day each week for a thirty minute period in third grade. Student missed twenty minutes of Mathematics class and ten minutes of Social Studies/Science class for that therapy. (S-26.)
91. Student had physical therapy one day each week for a thirty minute period in third grade. Student missed thirty minutes of Language Arts class for that therapy. (S-26)
92. Student had orientation and mobility training one day every other week beginning at 8:00 a.m. for a two hour period in third grade. Student missed twenty minutes of a special class for that training, but the decision to provide the majority of that training before school was to limit the amount of missed instructional time with peers. (N.T. 268, 1148; S-26.)

93. Student had occupational therapy one day each week for a thirty minute period in third grade. Student missed thirty minutes of Language Arts class for that therapy. (S-26).
94. Student had a thirty minute, one-on-one mathematics intervention with a special education teacher in third grade two days each week for pre-teaching, re-teaching, and other support as well as progress monitoring. (N.T. 490-91, 519-22, 530.)
95. Early in the third grade school year, the Parents asked that the AIMSweb probes be untimed for Student, and the District agreed. Student typically took approximately ten to no more than fourteen minutes to complete the probes rather than the eight minute time limitation imposed by the publisher. (N.T. 145, 172, 473, 475, 504, 506, 523-24, 551, 587-88).
96. The third grade teacher provided a twenty five minute Word Study block focused on spelling at the individual students' levels. There was small group instruction based on the students' levels. (N.T. 234, 247-48; S-26 p. 2.)
97. Student was provided the Everyday Math program again in third grade in a ninety minute block. (N.T. 201, 273-74; S-26.)
98. Student had difficulty with subtraction with regrouping and with multi-step mathematics word problems in third grade. Student also struggled with explaining the process of arriving at an answer to mathematics problems, which was not unusual for students of Student's age and grade level. (N.T. 281-82, 488, 490, 511-12, 596.)
99. Student did not always complete and turn in mathematics homework in third grade. (N.T. 283-84.)
100. Student took mathematics assessments in third grade in a separate room. The PCA accompanied Student to the room but Student worked independently without her assistance, except that sometimes questions were read to Student. (N.T. 767-69.)
101. Progress monitoring on the February 2016 EP through November 2016 reflected near mastery of the vision support goal for typing; mastery of the orientation and mobility goal for using maps and directories in navigating a store or mall; overall progress on physical therapy goals; near mastery of the occupational therapy goal for writing sentences based on a rubric; unknown progress on the mathematics computation and application goals (the progress reports provided averages rather than the data the goal was to measure); and near mastery of the reading goals that were attained in January 2017. (S-19.)
102. Student began attending a lunch group counseling session one day each week beginning in approximately December of third grade for social skills. (N.T. 236-37, 526.)
103. A meeting to discuss the results of the INE and other evaluations was scheduled for December 1, 2016. At that meeting, the District postponed that discussion until a complete reevaluation could be completed. (S-16.)

104. In January 2017, Student began individual counseling twice per month to develop self-advocacy and coping skills in order to manage frustration and maintain a positive self-esteem. That addition to the IEP was made at the request of the Parents and without a meeting by agreement. (N.T. 136-37; P-72; P-74; S-6 pp. 6, 21; S-16.)
105. An assistive technology (SETT framework⁹) meeting occurred in February 2017. The team pursued trial of an iPad with a keyboard with specific applications and support of vision and assistive technology professionals to provide large print and support written expression. (S-8 pp. 55-60; S-14 p. 23.)

FEBRUARY 2017 IEP

106. A new IEP was developed for Student in February 2017 over two meetings. (S-14.)
107. The present level section of the February 2017 IEP included a report of Student's performance on a mid-school year DRA. At that time, Student's oral reading fluency and comprehension were independent at level 30, and instructional at level 34 (mid-third grade level). Student's spasms/tremors were reportedly increasing. (S-14.)
108. Needs identified for the February 2017 IEP were: mathematics problem-solving and calculation; written expression (improving skills); physical therapy (improving gross motor skills requiring coordination and motor planning); occupational therapy (improving fine motor skills); and vision and mobility (continued need for assistance/accommodations exiting the school bus, community travel skills, typing skills, and accommodations in the classroom). (S-14.)
109. Annual goals in the February 2017 IEP addressed mathematics computation (solving third grade problems correctly on probes); mathematics application (solving third grade problems correctly on probes); written expression (sequencing writing in response to a prompt); vision support (typing passages on a keyboard, and explaining Student's visual impairment); orientation and mobility (analyzing intersections and drawing maps); physical therapy (improving coordination, motor planning, and motor control); and occupational therapy (improving fine motor and visual motor skills to include drawing shapes, tying shoes, and writing sentences). (S-14.)
110. Program modifications/items of specially designed instruction in the February 2017 IEP addressed: a PCA throughout the day including arrival and dismissal and when navigating the building; early transitions to avoid crowded hallways as needed; preferential seating for visual focus and noise; use of a magnifier, slant board, highlighters, large print calculator, ruler, and bold lined paper as needed; trial of a weighted lap pad; monitoring of depth perception as needed; teacher use of highly contrasting chalk or markers to improve visibility; group community instruction for students with visual impairments; adjustments to computer screen as needed; limited visual scanning activities; supervision on field trips and fire drills; transportation for orientation and mobility training; navigation assistance by an adult; test and assignment

⁹ The SETT process or framework focuses on the Student, Environment, Task, and Tools.

accommodations/modifications; PCA prompting to remain on task; access to manipulatives for mathematics; writing supports such as graphic organizers; copies of materials viewed in class accompanied by verbalized information; computer practice for spelling; reduction in noise levels; repeated/rephrased instruction and discussions in class; checks for attention before instruction and comprehension; opportunities for breaks as needed for visual and other fatigue; visual and tactile supports; modified physical education with accommodations; use of an FM system during whole group instruction; a small reading support class; a co-taught mathematics class with small group instruction; daily mathematics intervention; completion of the SETT process; and transportation considerations. Other provisions continued to address home communication and awareness of Student's sensitivity to loud noises and other medical concerns. (S-14.)

111. Student's program in the February 2017 IEP was for itinerant blind or visually impaired and learning support. Occupational and physical therapy, vision services, orientation and mobility training, transportation, the PCA, speech/language consultation, and counseling services were specified as related services. The Parents consented to services as outlined in the February 2017 IEP but indicated specific disagreement with the NOREP and IEP. (S-14.)
112. The February 2017 IEP provided that Student qualified for Extended School Year (ESY) services in 2017 to address occupational and physical therapy as well as mathematics applications and computation. The PCA and counseling were also included in addition to consultative vision support, orientation and mobility, and speech/language services. The Parents did not approve or disapprove the NOREP for ESY. (S-14.)

ADDITIONAL EVALUATIONS SPRING 2017

113. An audiological evaluation in March 2017 by the local IU was conducted to determine if Student had hearing loss. Results reflected that Student had difficulty understanding speech among background noise, and continuation of the FM system was recommended. (S-7 pp. 43-45.)
114. A functional behavioral assessment (FBA) was conducted in April 2017 by a Board Certified Behavior Analyst (BCBA) with the local IU. The targeted behavior was defined as not remaining in assigned area, not engaging with assigned task demand, not responding to teacher question/comment, or not completing an adult-directed task demand (although the teacher did not report this behavior as impeding Student's performance). The hypothesis of the function of the behavior was identified as attention and adult assistance in addition to postponing tasks. The BCBA made a few recommendations, particularly for fading the PCA support when possible. (S-7.)
115. The District issued another RR in April 2017 to incorporate the FBA, March 2017 audiology evaluation, and assistive technology process. Information was also added about Student's then-current progress on IEP goals (mathematics applications, mathematics computation, mathematics assessments with open-ended questions, and written expression). Student's progress on the mathematics application goal remained at an average of approximately 50% from November 2016 to March 2017 (providing

insufficient information on the goal of 75% accuracy on three consecutive weekly assessments); on the mathematics computation probe goal, Student was at an average of 71% (again providing insufficient information on the goal of 95% accuracy on three consecutive weekly probes); the open-ended mathematics questions and written expression goals were newly added. An updated QRI reflected that Student was independent at a level 34 on the DRA at grade level, but that reading comprehension was instructional at a level 3 with lookbacks depending on the subject matter of expository text. Student was learning to use the iPad. (S-8.)

END OF 2016-17 SCHOOL YEAR

116. At some point by the spring of third grade, the Parents asked that Student be provided with a replacement mathematics program. The team discussed Student moving to a co-taught class for Everyday Math on several occasions. (N.T. 455-56, 517-18, 997-98.)
117. Student transitioned to a co-taught Mathematics class in April 2017 for a ninety minute period. The students were provided whole-group instruction, then Student worked in a small group with the special education teacher for re-teaching. (N.T. 281, 584-85, 595, 598; S-16 p. 1; S-26.)
118. In April 2017, Student began an intervention in mathematics, specifically for multiplication and division as well as fractions, using the Do the Math curriculum. The curriculum is research-based and provides a multi-sensory approach that includes manipulatives and focuses on foundational mathematics skills. Student worked individually with the special education teacher for a forty minute period. That intervention was initially provided during a special class for a period of time, then changed to the afternoon Social Studies/Science class. The change was made because Student was becoming fatigued due to missing the special classes and having more than two hours of mathematics instruction each morning. That intervention was one-on-one. (N.T. 164-65, 177-78, 236, 237-38, 241, 271, 532-35, 538-39, 542-43, 589-90, 594, 777-78, 999-1000, 1002; S-26.)
119. The schedule change for the Do the Math intervention did not result in less fatigue for Student, who was exhausted by the end of the school day when that intervention began. (N.T. 241-42, 1002-03.)
120. Also beginning in April 2017, Student had a thirty minute written expression intervention period two days per week one-on-one with a special education teacher. On the other days, Student participated in a guided reading small group that addressed comprehension at each student's reading level. (N.T. 558-61, 582-83, 599.)
121. After April 2017, Student participated in a small group reading intervention with the special education teacher three days per week for thirty minutes. Student missed thirty minutes of Mathematics class on those days. (N.T. 495; S-26 pp. 1-2.)
122. The Parents obtained a private speech/language evaluation in the spring of 2017. Based on Student's performance on the Test of Language Development – Fourth Edition and

Test of Narrative Language, that speech/language pathologist recommended direct services twice each week. (S-9.)

123. Direct speech/language services were added to Student's IEP in May 2017 for 120 minutes each month, or thirty minutes per week¹⁰ in a small group. (N.T. 718, 721-22, 727, 1005, 1033; P-15.)
124. In June 2017, following another observation of Student at school, the private neuropsychologist provided an update to her previous report by administering select subtests of the KTEA-3. Student's standard scores on that measure in Spelling and Written Expression increased, suggesting that Student made more than one-year's growth between administrations;¹¹ Student's standard scores in Letter-Word Recognition, Math Computation, and Math Concepts/Applications remained consistent, suggesting that Student made approximately one year of growth in that ten month period; and Student's standard score in Reading Comprehension decreased, suggesting that Student did not make as much progress over that ten month period as expected. (P-44 pp. 1-2; S-10.)
125. Student attended the Private School's summer program in 2017. That four-week program provided academic instruction (two hours per day) in mathematics, reading (Wilson program) and writing, and several hours of camp experience, to include physical activities and social interactions. Student reportedly made gains in mathematics operations, telling time, reading, and writing skills, as well as self-confidence in those areas. (N.T. 387, 416, 1010, 1051-52; S-48 pp. 29-31, 137.)
126. The Parents made the decision that Student would attend the Private School for the summer of 2017 in early June of that year, and requested that the District provide funding. The Parents notified the Private School administrators that payment would not be made until June 20, 2017 to provide the District with ten days' notice. The District did not agree to fund that summer program. (N.T. 182-83; P-17; P-63; S-48 pp. 168, 184.)

MAY 2017 IEP

127. A new IEP was developed in May 2017 and revised in August and October 2017. (S-15.)

¹⁰ Those services on the schedule at S-26 are incorrect (N.T. 727).

¹¹ As the private neuropsychologist noted in her initial report (S-5 pp. 3, 19), grade equivalency scores may perhaps be useful for estimating growth over time; but they must be interpreted with caution. This is because grade-level equivalents are derived scores computed from average raw scores (which the private neuropsychologist also explained should not be interpreted (S-10 p. 2)) and do not equate to actual grade level; thus, grade equivalent scores can be misleading for this and many other reasons. *See, e.g.,* Salvia, J., Ysseldyke, J., & Bolt, S., *Assessment in Special and Inclusive Education* (11th ed. 2010) at 40-41; Sattler, J. M., *Assessment of Children: Cognitive Applications* (5th ed. 2008) at 104-106; *see also* S-37 p. 1 (report of the Parents' private reading specialist) In any event, the comparison of Student's performance on the KTEA-3 in June 2017 to that in August 2016 is but one data point for gauging Student's progress.

128. The present level section was updated in the May 2017 IEP and included a review of the independent speech/language evaluation that spring. The IU audiological evaluation from March 2017 and the April 2017 FBA were also included. (S-15.)
129. Needs identified for the May 2017 IEP were the same as in the February 2017 (mathematics problem-solving and calculation; written expression (improving skills); physical therapy (improving gross motor skills requiring coordination and motor planning); occupational therapy (improving fine motor skills); and vision and mobility (continued need for assistance/accommodations exiting the school bus, community travel skills, typing skills, and accommodations in the classroom) with the addition of speech needs (expressive language organization and multiple meaning words). (S-15.)
130. Many of the annual goals in the May 2017 IEP were the same as the February IEP, addressing mathematics computation (solving third grade problems correctly on probes); mathematics application (solving third grade problems correctly on probes); orientation and mobility (analyzing intersections and drawing maps); physical therapy (improving coordination, motor planning, and motor control); vision support (typing passages on a keyboard, and explaining Student's visual impairment); and occupational therapy (improving fine motor and visual motor skills to include visual closure skills, tying shoes, and writing sentences). The written expression goal was revised to provide for use of a graphic organizer to compose organized and sequential responses to a prompt and incorporated a rubric. New goal addressed mathematics word problem solving (answering open-ended questions) and speech/language (explaining two meanings for multiple-meaning words and defining words with synonyms or descriptions). (S-15.)
131. A few new program modifications/items of specially designed instruction in the May 2017 IEP provided for monitoring of Student's need for prompting to remain on task (to promote independence), digital versions of all textbooks and workbooks, and the ability to take the iPad home for practice. Those from the February 2017 IEP essentially remained unchanged (a PCA throughout the day including arrival and dismissal and when navigating the building; early transitions to avoid crowded hallways as needed; preferential seating for visual focus and noise; use of a magnifier, slant board, highlighters, large print calculator, ruler, and bold lined paper as needed; trial of a weighted lap pad; monitoring of depth perception as needed; teacher use of highly contrasting chalk or markers to improve visibility; group community instruction for students with visual impairments; adjustments to computer screen as needed; limited visual scanning activities; supervision on field trips and fire drills; transportation for orientation and mobility training; navigation assistance by an adult; test and assignment accommodations/modifications; PCA prompting to remain on task; access to manipulatives for mathematics; writing supports such a graphic organizers; copies of materials viewed in class accompanied by verbalized information; computer practice for spelling; reduction in noise levels; repeated/rephrased instruction and discussions in class; checks for attention before instruction and comprehension; opportunities for breaks as needed for visual and other fatigue; visual and tactile supports; modified physical education with accommodations; use of an FM system during whole group instruction; a small reading support class; a co-taught mathematics class with small group instruction; daily mathematics intervention; completion of the SETT process; and transportation

considerations; home communication; and awareness of Student's sensitivity to loud noises and other medical concerns). (S-15.)

132. Student's program in the May 2017 IEP was for itinerant blind or visually impaired and learning support. Occupational and physical therapy, vision services, orientation and mobility training, transportation, the PCA, speech/language consultation and therapy, and counseling services remained specified as related services. The Parents consented to services as outlined in the February 2017 IEP but indicated specific disagreement with the NOREP and IEP. (S-15.)
133. The May 2017 IEP provided that Student qualified for ESY services in 2017 to address occupational and physical therapy; mathematics applications and computation; mathematics problem solving; written expression; and speech/language. The PCA, counseling, and speech/language were provided as well as consultative vision support, orientation and mobility, and hearing support services. The Parents did not approve the NOREP for ESY. (P-63 pp. 6-8; S-15.)

2017-18 SCHOOL YEAR: FOURTH GRADE

134. An August 2017 RR was completed following the recent update by the private neuropsychologist and the private speech/language evaluation. Results of those evaluations were summarized, and an additional eligibility category of Speech/Language Impairment was also included with a recommendation for direct services in that area. New needs compared to the previous RR in expressive language, multiple meaning words, and reading comprehension were also identified, with recommendations for learning support in mathematics calculation, mathematics problem solving, reading comprehension, and written expression. (S-11.)
135. The team updated the May 2017 IEP in August 2017. An October 2017 revision to that IEP substituted the previous vision goal to touch typing at twenty words per minute; it added direct services in and baselines for Student's speech/language goals (addressing providing multiple meanings of words and defining words using synonyms or descriptions); and some scheduling changes were made. (S-15.)
136. Students in fourth grade began the school day at 9:15 a.m. with a period of transition to approximately 9:45 a.m., and ended the day at 3:40 p.m. Student generally arrived at school at 9:15 a.m. in fourth grade. (N.T. 618, 627, 820-21.)
137. Student was very fatigued by the end of the school day throughout fourth grade in the District. (N.T. 1005-06)
138. Student used an FM system in fourth grade. (N.T. 671-72, 863)
139. Student had the Do the Math program again in fourth grade, starting approximately where Student had stopped in third grade. That daily, individual thirty minute intervention began at Student's arrival until approximately 9:45 a.m. and included pre-teaching of skills. (N.T. 620-21, 627, 628, 655-56, 658-59, 834.)

140. The District timed the AIMSweb probes for Student in fourth grade for mathematics (limited to eight minutes). (N.T. 621-22, 624, 637-38.)
141. Student was in a co-taught mathematics class in fourth grade using the Everyday Math curriculum. The students were provided whole-group instruction supported by the special education teacher, then Student worked in a small group with the special education teacher for re-teaching and additional support as needed for independent work. The class was a one hour and forty minute block. (N.T. 656-57, 660, 822-23, 855-56; S-26 p. 5.)
142. Student's assessments in mathematics were modified in fourth grade. (N.T. 826-29.)
143. Student continued to demonstrate difficulty with subtraction involving regrouping in fourth grade. Student also continued to struggle with explaining the process of arriving at an answer to mathematics problems, which was not unusual for students of Student's age and grade level. (N.T. 651, 657, 669, 843, 854-55.)
144. Student had a co-taught reading class in fourth grade that focused on independent reading and comprehension of grade-level materials. The students were provided whole-group instruction supported by the special education teacher, then Student worked in a small group with the special education teacher for additional support as needed. That class also addressed written expression but the special education teacher was not always present for that portion of the class. (N.T. 661-62, 664, 666-67, 683, 685.)
145. The English/Language Arts teachers provided writing instruction when Student was in that class in fourth grade. Student had difficulty with writing assignments but graphic organizers and discussion with an adult helped Student be successful in completing them. (N.T. 655, 819-20, 831-32, 834-35, 846, 868.)
146. Student had orientation and mobility training in fourth grade one day each week. Student arrived for physical therapy for thirty minutes, missing ten minutes of English/Language Arts class. (N.T. 834, 1005; S-26 pp. 4-5.)
147. Student went to physical therapy one day each week for a thirty minute period in fourth grade, missing ten minutes of English/Language Arts (interactive reading aloud and writing) class. (N.T. 834; S-26 pp. 4-5.)
148. Student sometimes did not complete homework in fourth grade, and the Parents would write a note explaining Student's difficulties attempting to complete it. (N.T. 841-42, 1005-06.)
149. The District provided accommodations for Student's visual disability on some assessments, such as enlarging or highlighting font and placing a formula that was visible elsewhere in the classroom directly on the test paper. (N.T. 861-63.)
150. Student exhibited good social skills in fourth grade. (N.T. 673-74, 867.)

151. Student had a Reading Workshop class in fourth grade. The students read independently and the focus was on comprehension. Student was reading at an end of third grade to beginning fourth grade level (DRA level 38) at the time Student enrolled in the Private School, an increase from DRA level 34 in September 2017. (N.T. 662, 848-50; S-21 p. 47; S-56.)
152. Progress monitoring reported on the May 2017 IEP as revised in October 2017 reflected unknown progress over time on the mathematics computation and applications goals for solving third grade problems correctly on probes (the progress reports again provided averages rather than the data the goal was to measure); inconsistent but overall slight progress on the goal for mathematics word problem solving in answering open-ended questions; progress on the orientation and mobility goals for analyzing intersections and drawing maps; maintenance on the vision support goal for typing passages on a keyboard and mastery of the vision support goal for explaining Student's visual impairment; progress on the physical therapy goals for improving coordination, motor planning, and motor control; and progress on the occupational therapy goal for improving fine motor and visual motor skills to include visual closure, tying shoes, and writing sentences; maintenance of skills on the written expression goal for use of a graphic organizer to compose organized and sequential responses to a prompt and incorporated a rubric; and progress on the new speech/language goals for explaining two meanings for multiple-meaning words and defining words with synonyms or descriptions. (S-21.)
153. Student was withdrawn from the District on December 22, 2017. (P-65.)

THE PRIVATE SCHOOL

154. Student was accepted at the Private School in November 2016, and again in November 2017 to begin in early January 2018. The Parents made the decision to send Student to the Private School in early October 2017 and signed an enrollment contract on December 15, 2017 with a deposit. (N.T. 104, 1049; P-27; P-28; S-48 pp. 32, 198.)
155. The Private School is a college preparatory school that serves students with learning differences in Kindergarten through eighth grade. (N.T. 326, 329, 366, 369.)
156. The Private School keeps class sizes to a maximum of fourteen students with two teachers who co-teach and provide individualization and differentiation of instruction and supports. Class periods were between thirty and forty-five minutes in length. (N.T. 328, 343-44, 349-50, 351-52, 393-97.)
157. The Private School provides clear expectations of its students. (N.T. 347-48.)
158. Students at the Private School are provided individual laptops at school, and a SMARTBoard is used in each classroom. (N.T. 331-32.)
159. The Private School offers extra-curricular opportunities. (N.T. 340.)
160. Students practice social skills at the Private School throughout the day. (N.T. 342)

161. The Computer-Assisted Learning period at the Private School provided practice with reading comprehension, mathematics facts, and keyboarding skills. (N.T. 332.)
162. The Private School uses an integrated approach to teaching social-emotional skills along with academic skills. The approach includes daily morning and closing meetings, role-modeling, and interactive group activities. (N.T. 322-23.)
163. The Private School models executive functioning skills, including time management, organization, and task initiation, and provides support for all students in Kindergarten through fifth grade. There is also a metacognition class in later grades. (N.T. 354-55.)
164. The Private School has a school counselor responsible for students who are in Kindergarten through sixth grade. The counselor provides a guidance lesson to the classrooms twice a week and also works with students individually and in groups as needed to address emotional or other needs. (N.T. 324-26, 347-48, 428-29.)
165. The Private School does not have any social workers, occupational therapists, or physical therapists on its staff. (N.T. 364-65.)
166. Students and families who desire to visit and tour the Private School are required to make an application for admission. (N.T. 424.)
167. The Private School Admissions teams conducts a testing review when considering whether to admit a student to determine whether his or her needs can be met. (N.T. 383-85, 412.)
168. The Private School develops a learning profile for each student that are updated as student strengths and needs change. The learning profile includes instructional strategies and recommendations. (N.T. 358-60, 382-83, 389.)
169. Student's initial learning profile was developed in December 2017 after Student was accepted but before attending the Private School. It was updated in April 2018. (N.T. 379-82; P-81; S-48 pp. 25-28.)
170. The Private School assessed Student with the Wilson Assessment of Decoding and Encoding (WADE) in December 2017. (N.T. 373, 374, 406; S-48 pp. 75-85.)
171. During the 2017-18 school year, Student was in a fourth grade class of five students. The teacher was certified at Level One in the Wilson reading program. (N.T. 328-29.)
172. Student had Wilson Reading with a certified special education teacher who also has a Level One Wilson certification. There were four students in that group. (N.T. 333-34, 375-76.)
173. In addition to Wilson Reading, Student's schedule at the Private School provided for another reading class as well as mathematics, writing, Language Arts, Science/Social Studies, and special classes. (P-70.)

174. Student had a mathematics class in a small group of six students. The spiraling mathematics curriculum is concrete and research-based. (N.T. 336-38.)
175. Student had a writing class daily that is run like a workshop, allowing for practice of skills and individualization of feedback from the teacher. The writing groups are leveled according to need. (N.T. 339, 345-46, 412-13.)
176. Student had Science and Social Studies classes using commercial curricula at the Private School. (N.T. 340.)
177. At the Private School, Student had speech/language therapy and vision support during the guidance period or Computer-Assisted Learning. Student also had weekly orientation and mobility training during lunch and recess. (N.T. 330-31, 415-16, 1056-57; P-70.)
178. The vision support and orientation and mobility training at the Private School were provided by staff of a local school for the blind. The Parents were funding those services in the spring of 2018. (N.T. 331, 414, 1056; P-37.)
179. The Parents have privately arranged for physical and occupational therapy for Student since enrolling in the Private School. Those therapies are provided outside of the school day and are covered by the Parents' medical insurance. (N.T. 1010-11, 1056.)
180. Student was provided with a slant board and magnifying glass at the Private School. Teachers also enlarged print for Student. (N.T. 391, 430.)
181. Student was performing on grade level in all subjects at the Private School in April 2018 and was developing or had attained competency on skills assessed in each subject area. (N.T. 413; P-77.)
182. Student was able to successfully navigate the Private School building and the bus with adult support. (N.T. 376-77, 390-92, 431-32.)
183. The Private School did not implement an IEP for Student. (N.T. 371, 379.)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. At the outset of the discussion, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly,

the burden of persuasion in this case must rest with the Parents who requested this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in “equipoise.” *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Special education hearing officers, in the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible, testifying to the best of his or her recollection from his or her perspective; and the testimony as a whole was essentially quite consistent to the extent necessary to decide the issues presented. With the exception of the private neuropsychologist as discussed further below, no witness’ testimony was accorded significantly greater weight than others.

In reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered in issuing this decision, as were the parties’ closing statements.

GENERAL IDEA PRINCIPLES: FREE APPROPRIATE PUBLIC EDUCATION

The IDEA and the implementing state and federal regulations obligate local education agencies (LEAs) to provide a “free appropriate public education” (FAPE) to children who are eligible for special education. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this

requirement is met by providing personalized instruction and support services that are reasonably calculated to permit the child to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). LEAs meet the obligation of providing FAPE to eligible students through development and implementation of an IEP that is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).

Quite recently, the U.S. Supreme Court was called upon to consider once again the application of the *Rowley* standard, and it then observed that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA[.] * * * A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA.

Andrew F., ___ U.S. ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 349-50 (2017)(citing *Rowley* at 206-09)(other citations omitted). The Court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352. This standard is not inconsistent with the above longstanding interpretations of *Rowley* by the Third Circuit.

As *Andrew*, *Rowley*, and the IDEA make abundantly clear, the IEP must be responsive to the child’s identified educational needs. *See* 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, an LEA is not required to provide the “best” program, but rather one that is appropriate in light of a child’s unique circumstances. *Andrew F.*, *supra*; *Ridley*, *supra*; *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). In addition, an IEP must be judged “as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993); *see also D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same). Nevertheless, the educational professionals must monitor whether or not a child’s program is providing FAPE, and make changes to the program as needed.

GENERAL SECTION 504 PRINCIPLES

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

An LEA’s obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood*, *supra*, 172 F.3d at 253; *see also Lower Merion School District v. Doe*,

878 A.2d 925 (Pa. Commw. 2005). Accordingly, the FAPE claims under both the IDEA and Section 504 shall be addressed together.

THE DISTRICT'S PROGRAMMING FOR STUDENT

The first issue is whether the District failed in its obligation to provide Student with FAPE between January 2016 and January 2018. The Parents challenge a variety of aspects of what Student's program did and did not provide, including executive functioning, speech/language, reading, mathematics, social skills, and written expression. There are also a number of areas that the Parents do not contend were inappropriate for Student, such as orientation and mobility training, vision support, and occupational and physical therapy. The asserted denial FAPE claims will be addressed in chronological order.

The evidence regarding the spring semester of the 2015-16 school year is relatively scant. The February 2016 RR achievement testing results reflected deficits in reading comprehension, mathematics, and written expression; support for Student's vision impairment and occupational and physical therapy needs were also identified. It merits mention that the Parents do challenge the District's classification of Student's disabilities for purposes of special education programming; however, it is the programming that is developed and implemented to address identified needs that is critical rather than particular labels. There were no speech/language therapy needs identified at that time, but the District did agree to provide consultative services to assist with Student's underdeveloped language skills. As discussed more fully below, this hearing officer finds the February 2016 RR was appropriate under the IDEA and provided sufficient information to guide the IEP team.

The IEP that was developed after that RR directly responded to each of Student's identified needs and was revised over the course of that spring as new information became

available. As of February 2016, Student was close to benchmark level in reading. Executive functioning weaknesses were not determined to be significantly discrepant from same-age peers, and the RR provides an explanation for concluding that the concerns that were raised required monitoring only. Student was also not exhibiting social skills needs at the time. The February/March/April 2016 IEP provided annual goals and program modifications/items of specially designed instruction that followed the recommendations of the RR and IU auditory processing evaluation in each area of need. Student began to receive learning support for mathematics that included re-teaching of the new regular education curriculum for that subject and with which all students were experiencing some level of difficulty. Simply put, there is insufficient evidence to conclude that the District's programming was deficient in any meaningful respect for the second half of the 2015-16 school year.

The Parents obtained and provided new evaluations from the summer of 2016, which Student's IEP team considered before the 2016-17 school year began. The INE identified needs in mathematics and written expression, just as the District's most recent RR had done. Notably, neither the private neuropsychologist nor the private reading specialist found significant deficits in Student's reading skills, although the latter suggested that more intensive and individualized intervention should be implemented. Student's IEP was revised to increase the level of reading support and provide more targeted but less frequent mathematics support in response to all of the then-current information available.

From the start of, and throughout, the fall of 2016, however, Student was missing significant periods of instructional time and integration with peers as a result of the many forms of therapy and interventions that could not be provided in the classroom. Student's mathematics difficulties became much more pronounced, and counseling was added for social skills and to

help Student with self-advocacy and coping skills. It is also wholly unclear why it was not until February 2017 that the IEP team reconvened with the benefit of the INE and its insight to Student's increasing struggles with meeting expectations. In any event, no later than the time of the January and February 2017 RR and IEP meetings, it was obvious that Student's program was not appropriately meeting all of Student's needs and was, in a word, unworkable. The decision to provide an additional mathematics intervention, while perhaps reasonable for a child who had time in the day and stamina for more intensive programming in that subject, was unsuccessful at best. The addition of a written expression intervention and speech/language therapy further compounded the many challenges in attempting to address Student's complex needs. While one cannot fault the District for recognizing and providing programming for newly identified deficits, and there can be no doubt that addressing all of Student's needs was challenging to even the experienced and dedicated professionals involved, Student's extreme and continual fatigue was quickly apparent, and scheduling changes did nothing to minimize the impact of the daily demands on Student, who was exhausted by the end of the afternoon and no doubt unproductive. Here, there is also no concrete indication of oversight of the global effectiveness of the myriad of interventions and therapies that Student needed in a given week. Also in the spring of 2017, the BCBA recommended fading of the PCA support, whose assistance was needed more when Student was fatigued and therefore increased rather than diminished, undermining goals for a higher level of independence. All of these circumstances amount to a denial of FAPE.

Moreover, the progress monitoring on Student's mathematics goals that was sent home to the Parents did not measure the criteria that the goals specified for mastery. One simply cannot assess whether and how Student might have made gains in areas of mathematics weakness over the course of the 2016-17 school year, particularly when those gains or lack of gains were

coupled with the subjective assessments in Everyday Math. While this hearing officer cannot conclude that the District's use of AIMSweb probes was inappropriate as a tool for identifying areas of weakness, the decision to provide a combination of two very different programs is perplexing, even setting aside the time factor. There was apparently little if any consideration given to the recommendation of the private neuropsychologist for a replacement mathematics curriculum, and her explanation that the chosen regular education program in that subject is language-oriented requiring students to draw inferences (N.T. 71-72; S-5 p. 8) was persuasive in understanding the foundation for that very reasonable suggestion in light of Student's deficits in those areas, *i.e.*, based on Student's individual circumstances. *See Andrew, supra*, 137 S. Ct. at 1001, 197 L.Ed.2d at 352.

The same flaws in mathematics programming for the fall of 2017 remained, except that the probes were timed in contradiction to specially designed instruction in the IEP. Student began to not complete homework, and the significant fatigue from the prior school year did not abate with continuation of the intensive schedule and attendant reliance on the PCA. The record also lacks evidence that the provision for monitoring Student's need for prompting to remain on task in order to promote independence was truly undertaken. In sum, Student's program as provided during the fall of 2017 was not appropriate for Student in many respects. Furthermore, Student's complex and varied needs that required a full daily schedule with continual missed instruction in the public school setting could not be maintained, but there was also no evidence of meaningful consideration of how Student's intensive and varied programming could be revised for the fall of the 2017-18 school year.

Lastly, the ESY program offered by the District for 2017 must be addressed separately. This FAPE requirement extends to provision of ESY services as necessary for the child. 34

C.F.R. § 300.106(a)(1). Pennsylvania sets forth a number of criteria that IEP teams must consider to determine whether a student is eligible for ESY. 22 Pa. Code § 14.132(a)(2). If the student is eligible, the team must also determine the services to be provided. 22 Pa. Code § 14.132(a)(1). In determining whether a proposed ESY program is appropriate, the general principles applicable to special education must be applied, since ESY services must be provided in accordance with the child's IEP. 34 C.F.R. § 106(b).

On the one hand, the record cannot support a conclusion that Student's needs for occupational and physical therapy, vision support, counseling, and speech/language therapy, which were largely unchallenged in this proceeding, would not have been appropriate in the summer of 2017. Nevertheless, the same flaws that were discussed above with respect to mathematics in the spring and fall of 2017, including scheduling, would undoubtedly have continued into that ESY program, and rise to the level of a denial of FAPE for identical reasons. Accordingly, this hearing officer concludes that the District's proposed ESY program for 2017 was not appropriate for Student.

REMEDIES

COMPENSATORY EDUCATION

As one remedy, the Parents seek compensatory education, which is an appropriate form of relief where an LEA knows, or should know, that a disabled child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy the deficiencies in the program. *M.C.*, *supra*, 81 F.3d at 397 (3d Cir. 1996). This remedy may compensate the child for the period of time of the deprivation of educational services, but omitting a reasonable period of time for LEA to resolve the deficiencies. *Id.* The Third Circuit has more recently also endorsed an alternate approach, sometimes described as a

“make whole” remedy, where the award of compensatory education is designed “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005) (adopting a qualitative approach to compensatory education as proper relief for denial of FAPE); *J.K. v. Annville-Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014) (accepting the *Reid* Court’s more equitable, discretionary, and individually tailored calculation of this remedy). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

As discussed above, the District did deny Student FAPE beginning with the second half of the 2016-17 school year and through the first half of the 2017-18 school year until Student’s withdrawal from the District. There was no evidence presented in this case that would guide or support a “make whole” compensatory education award; thus, the *M.C.* standard must be the basis for this remedy. The starting point for compensatory education shall be the first day of the second semester of the 2016-17 school year, which equitably accounts for the delay in considering the private evaluations until after December 1, 2016; had that discussion occurred at that time as scheduled, it is reasonable to conclude that the recommendations to which the team agreed would have been ready for implementation by the start of the next semester and that there would have been opportunities to make any necessary revisions if (or when) scheduling and the programming itself became too demanding for Student without running into late spring 2017.

As for the amount, a conclusion cannot be reached that Student gained no meaningful educational benefit throughout the time period at issue. But Student was clearly significantly fatigued each school day that was 6.5 hours in length according to the most recent IEPs (S-15; S-16) in large part due to the approximately 2.25 hours of mathematics instruction and intervention

throughout the relevant time period. Student shall therefore be provided 2.25 hours of compensatory education for each school day that was in session for the second semester of the 2016-17 school year and the first semester of the 2017-18 school year through the date of withdrawal from the District.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's educational and related services needs. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District to assure meaningful educational progress should Student return to its rolls. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty one (21). Financial considerations will be included in the attached order.

PRIVATE PLACEMENT AND TUITION REIMBURSEMENT

Where, as here, parents contend that the LEA has not offered FAPE to their child, they may unilaterally place him or her in a private school and thereafter seek reimbursement for tuition. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Private school tuition reimbursement is an available remedy for parents to receive the costs associated with their child's private placement where it is determined that the program offered by the LEA did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985);

Mary Courtney T., *supra*, 575 F.3d at 242. Equitable principles are also relevant in deciding whether reimbursement for tuition is warranted. *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009) (explaining that a tuition reimbursement award may be reduced on an equitable basis such as where parents fail to provide the requisite notice under 20 U.S.C. § 1412 (a)(10)(C)(iii)); *Carter*, *supra*; *C.H. v. Cape Henlopen School District*, 606 F.3d 59 (3d Cir. 2010). A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter*, *supra*, at 13.

It has already been determined that the District’s program in the spring and fall of 2017 was not appropriate to meet Student’s needs and that major change was needed. The private neuropsychologist provided compelling testimony on the reasons for a specialized placement that could meet Student’s needs (especially slow pacing, weak listening comprehension and verbal expression skills, fine motor and visual deficits, and nonverbal learning disability characteristics, described above in connection with her INE) where the District could not.¹² The next question, then, is whether the Private School is appropriate for Student based on the applicable law. The record is more than preponderant that it is.

The Private School is a college preparatory school that serves students with learning differences. It maintains small classes with two teachers who co-teach and provide individualization and differentiation of instruction and supports. The Private School provides clear expectations of its students, a recommendation that was made for Student. A school

¹² It is true, as the District observes, that the Parents expressed on more than one occasion that it provided “everything [they] asked for.” (S-48 p. 101; *see also* (N.T. 84.) Nevertheless, “a child’s entitlement to special education should not depend upon the vigilance of the parents[.]” *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). And, as has previously been explained by the U.S. Department of Education, “The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE).” *Letter to Richards*, 55 IDELR 107 (OSEP 2010); *see also* 64 Fed. Reg. 48 at 12472 (1999) (same). Here, despite the continuous collaboration of the parties throughout the time period in question, Student’s needs increased to the point that the District was no longer able to meet them.

counselor provides guidance lessons and meets with students as needed. Students at the Private School are provided with technology and extra-curricular opportunities. The Private School also provides exposure to executive functioning skill development and instruction, additional needs for Student.

Although the Private School did not implement an IEP for Student, it developed a learning profile with individualized instructional strategies and recommendations for Student. During the 2017-18 school year, Student had Wilson Reading instruction, another reading class, mathematics, writing, Language Arts, Science/Social Studies, and special classes. Student was provided with speech/language therapy, vision support, and orientation and mobility training at its facility. Finally, Student developed or attained competency on skills assessed in each subject area as of the time of the due process hearing. The two hours of academic programming in the summer of 2017 provided Wilson reading, mathematics, and written expression, areas which even the District proposed for Student for its ESY offering, and Student made gains in that summer program as well. The summer 2017 program must also be considered appropriate.

The District argues against the appropriateness of the Private School, in part because it does not provide the vision support, orientation and mobility training, and physical and occupational therapy. As reflected above, however, a private placement need not meet all of the requirements imposed on LEAs by the IDEA and Section 504. Given Student's complex and widely varied needs, it is not surprising that the Parents have had to make outside arrangements for the vision support and orientation and mobility training which are central to Student's functioning in the school and community now and into the future. Nevertheless, this hearing officer concludes that it would not be justifiable to order the District to reimburse the Parents for

the related services that the Parents' insurance is paying that are provided outside of the school day, to the extent that the Parents are making such a claim.

The last prong for reimbursement, any equitable considerations, permits reduction for reasons such as a failure to provide the District with the ten day notice required by the statute. In this case, the Parents made the decision to place Student in the Private School in October 2017, signed a contract with a deposit on December 15, 2017, and withdrew Student on December 22, 2017. This circumstance merits an equitable reduction in the amount of tuition reimbursement only which this hearing officer concludes in light of the record as a whole, including the District's awareness as far back as the fall of 2016 that the Parents were considering the Private School, should be 10%. The award shall include the total amount of all related transportation and other expenses.

Finally, having also found the District's proposed ESY program for 2017 not appropriate, and that the academic portion of the Private School program in 2017 was, the same conclusion on the equities applies due to the very similar circumstances regarding notice. The District will be ordered to reimburse the Parents for the cost of the academic portion of the 2017 summer program, less a reduction of 10% for the equities, as well as transportation expenses.

REIMBURSEMENT FOR INDEPENDENT EDUCATIONAL EVALUATIONS

The final issue is whether the Parents should be reimbursed for the INE and the private auditory processing evaluation. When parents disagree with a school district's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Ordinarily, following a parental request for an IEE, the LEA must either file a request for a due process hearing to establish that its evaluation was appropriate, or ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). Here, the Parents did not make

any such request of the District, but rather obtained the private evaluations and sought reimbursement after the fact. In this circumstance, the analysis of the appropriateness of the District's evaluation is essentially the same. In conducting the evaluation, the law imposes certain requirements on LEAs to ensure that sufficient and accurate information about the child is obtained:

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

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b). The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§

304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1).

This hearing officer concludes that the District’s February 2016 RR met all requisite criteria, including, *inter alia*, using a variety of assessments of all areas of suspected disability to comprehensively provide relevant information about Student. After careful consideration, however, given the wealth of additional and valuable expertise provided in the private neuropsychological evaluation, and despite this hearing officer concluding that the District’s RR was appropriate under the law, the District shall nonetheless be required to reimburse the Parent for the 2016 INE and its 2017 update. A thorough understanding of the complexity of Student’s varied strengths and needs described in the INE was and is necessary, particularly as Student matured, educational instruction and materials became more difficult, and Student began exhibiting the more significant fatigue as the 2016-17 school year got underway. In addition, the INE was shared with the District as part of the process of its development of an IEP for Student, well before the Parents decided upon the move to the Private School. *Cf. L.M. ex rel. M.M. v. Downingtown Area School District*, 2015 U.S. Dist. LEXIS 49336 *75, 2015 WL 1725091 (E.D. Pa. 2015) (denying reimbursement of an IEE that was not pursued as part of the collaborative IEP process but conducted after enrollment in the private school).

The same conclusion cannot be reached for the private auditory processing evaluation. The majority of the recommendations in that report were consistent with those of the IU auditory processing evaluation, with the exception perhaps of unspecified language therapy, and already

part of Student's IEPs. Finding no basis for awarding reimbursement for the private auditory processing evaluation, that request must be denied.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District did deny FAPE to Student for a portion of the time period in question and that Student is entitled to compensatory education. The Parents are entitled to reimbursement for a portion of tuition to Private School, the total costs of related expenses at the Private School, and for one private evaluation.

ORDER

AND NOW, this 3rd day of July, 2018, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's program did not deny Student FAPE between January 2016 and December 2016.
2. The District's program denied Student FAPE during the second semester of the 2016-17 school year and the first semester of the 2017-18 school year through Student's withdrawal from the District.
3. Student is awarded 2.25 hours of compensatory education for each school day that was in session for the second semester of the 2016-17 school year and the first semester of the 2017-18 school year through the date of withdrawal from the District.
 - a. The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's educational and related services needs. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District to assure meaningful educational progress should Student return to its rolls.

- b. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty one (21).
 - c. The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. The cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.
4. The Parents are entitled to, and the District is ordered to provide, reimbursement for 90% of Student's prorated tuition for Private School for the 2017-18 school year, together with the total costs to the Parents of transportation, vision support, and orientation and mobility training, as set forth in the record. The District shall issue reimbursement consistent with this paragraph within thirty calendar days.
 5. The Parents are entitled to, and the District is ordered to provide, reimbursement for 90% of Student's tuition for the academic portion of the 2017 Private School summer program, together with the total costs to the Parents of transportation. The District shall issue reimbursement consistent with this paragraph within thirty calendar days of receipt of an itemized statement from the Private School setting forth those academic costs and any needed documentation from the Parents on transportation.
 6. The Parents are entitled to, and the District is ordered to provide, reimbursement for the 2016 INE and 2017 update as set forth in P-35. The District shall reimburse the Parents the total amount paid in P-35 within thirty calendar days of the date of this order.

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

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER
20136-1718KE