

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

Pennsylvania

Special Education Hearing Officer

DECISION

ODR No. 15555-1415AS
15574-1415AS

Child's Name: M.F.

Date of Birth: [redacted]

Dates of Hearing: 2/27/15, 3/16/15, 4/27/15, 4/29/15

CLOSED HEARING

Parties to the Hearing:

Parents
Parent[s]

School District
Wissahickon
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Ambler, PA 19002

Date Record Closed:
Date of Decision:

Hearing Officer:

Representative:

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June 17, 2015
June 24, 2015

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

The issues in dispute in this matter arose from due process complaints submitted, first, by the District to support the appropriateness of its May 2014 reevaluation, consisting of a review of records, including private evaluation reports provided by Parents. The District initiated its process complaint after denying Parents' request for an IEE.

Although Student is still in the early elementary school years, Parents became concerned about Student's academic progress, apparent inability to retain and apply skills learned in the classroom to homework and the potential for more serious problems as the difficulty of school work increases. Parents believe that additional information concerning Student's neuropsychological processes in the educational context, visual processing, sensory integration and language issues will lead to better strategies to address Student's learning needs. Parents also submitted their own due process complaint a few days after the District's complaint, alleging that the District failed to provide Student with appropriate IEPs from the time Student was identified as IDEA eligible in the 2012/2013 school year, and failed to offer an appropriate IEP for the 2014/2015 school year. For those alleged violations, Parents request full days of compensatory education from November 2012 through the end of the 2013/2014 school year, and tuition reimbursement for the private school placement they selected for the 2014/2015 school year.

Because the issues in dispute were so closely connected, the complaints were consolidated for hearing and decision. The due process hearing for the consolidated complaints was held over four sessions from late February to late April 2015. For the reasons that follow, Parents' claims are denied.

ISSUES

1. Has the School District appropriately evaluated/reevaluated Student by conducting sufficient appropriate assessments in all areas related to Student's suspected disabilities in order to sufficiently identify all of Student's needs?
2. If not, should the School District be required to provide a publicly funded independent educational evaluation (IEE) that includes the following components: An educational neuropsychological evaluation; a speech and language evaluation; an occupational therapy (OT) evaluation focused on sensory integration issues and a vision evaluation?
3. Did the School District provide a free, appropriate, public education (FAPE) to Student during the two years following receipt of the initial evaluation report, and development of an IEP in November, 2012 and subsequent IEPs/revisions through the end of the 2013/2014 school year?
4. If not, should the School District be required to provide Student with compensatory education?
5. If compensatory education is due, in what form, in what amount, and for what period(s) should it be awarded?
6. Did the School District offer an appropriate IEP and placement for Student for the 2014/2015 school year?
7. If not, should the School District be required to fund Student's private school placement selected by Parents in that it was an appropriate placement that met Student's needs?

FINDINGS OF FACT

1. Student, an [elementary school-aged] child born [redacted] is a resident of the School District, currently attending a private school selected by Parents, and is eligible for special education services. (Stipulation, N.T. pp. 19, 20)
2. Student has been identified as IDEA eligible in the disability categories Other Health Impairment (OHI) and Speech/Language Impairment (S/LI), in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(9), (11); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 20)

District Evaluation/Private Evaluations/District Reevaluation

3. Concerns about Student's focus, attention and ability to follow multi-step directions arose near the end of the kindergarten school year, prompting Student's kindergarten teacher to recommend a speech/language screening. (N.T. pp. 148, 149, 439, 441 S-31 pp. 1—3)¹
4. After reviewing the results of the screening, and hearing Parents' concerns about Student's functioning in the home setting with respect to focus and following directions, the District's Child Study Team referred Student for an initial psycho-educational evaluation, including a full speech/language evaluation, to be conducted during the 1st grade school year. When the 2012/2013 school year began, Parent signed a permission to evaluate form (PTE) to begin the evaluation. (N.T. pp. 148, 149, 442; S-32, S-33, S-42)
5. Prior to the District's evaluation, Parents provided a number of private evaluation reports that they had obtained, including educational evaluations conducted when Student was 5 years old and speech language evaluations, a vision evaluation and an audiological evaluation conducted during the summer of 2012. (N.T. pp. 150—159; S-38,S-39, S-40, S-41, S-43, S-44)
6. The District school psychologist administered standardized assessments of cognitive ability (WISC-IV –Wechsler Intelligence Scale for Children-Fourth Edition) and academic achievement WIAT-III –Wechsler Individual Achievement Test-Third Edition). Student's full scale IQ (FSIQ) was 96, in the average range. Student's math and reading subtest scores were also in the average range, with percentile ranks ranging from the 23rd (reading comprehension) to the 73rd (spelling). (S-31 pp. 5-9, 17)
7. The Connors 3 Rating scales, given to Student's Parents and teachers to assess Student's inattention, hyperactivity/impulsivity, learning problems and executive functioning, resulted in a high probability that Student met the criteria for ADHD. (S-31 pp. 13—15, 18)
8. The evaluation also included review of Student's prior private evaluations, child study team information, input from Parents and teachers, including educational progress and performance, teacher recommendations and a classroom observation. (S-31 pp. 3—5)
9. The District speech/language pathologist reviewed the private speech/language reports submitted by Parents and conducted several standardized language assessments, but not the same measures recently completed in the private evaluations, due to validity concerns arising from re-administration of the same assessments too close in time. The

¹ Commendably, both parties agreed to use primarily the exhibits submitted by the School District in this matter, which avoided an unnecessarily duplicative record. The exhibits are designated by the letter "S" followed by the exhibit number. A few additional exhibits submitted by Parents are designated by the letter "P" followed by the exhibit number.

speech/language pathologist considered and incorporated those assessment results into her evaluation report. (N.T. pp. 440, 443—446; S-31 pp. 10—13, S-41)

10. The speech/language evaluation that Parents had obtained from Children’s Hospital of Philadelphia (CHOP) in mid-June 2012 included assessment of Student’s receptive and expressive language skills using the CELF-4 (Clinical Evaluation of Language Fundamentals-Fourth Edition), which is a measure the District speech/language pathologist would ordinarily have used. The CHOP evaluator also administered the TAPS-3 (Test of Auditory Processing Skills-Third Edition). (N.T. pp. 444, 445, 447; S-31 pp. 10, 11, S-41)
11. Although Student’s overall core language, expressive and receptive language scores on the CELF-4, as well as the results of other assessments administered by the District speech/language pathologist, were all within in the average range, some of the CELF-4 subtest results revealed areas of receptive and expressive language weaknesses. (N.T. pp. 448—454; S-31 pp. 11—13)
12. The speech/language pathologist’s behavioral observations during the assessments noted that Student was easily distracted at times and required frequent verbal reminders to remain focused and on task. Student had difficulty formulating sentences in response to a specific word and picture, tending to respond quickly with a phrase or series of phrases that lacked organization. Student also had difficulty formulating sentence structures using adjectives, adverbs, and conjunctions. Also notable was Student’s use of self-developed strategies for answering questions on the assessments, such as quietly repeating questions and clapping out words Student heard in the sentences. (S-31 p. 12)
13. Based upon the results of the June 2012 CHOP evaluation, as well as the weaknesses in sentence formulation/structure skills, primarily thought organization (ability to interpret and produce information) observed during the speech/language evaluation, the speech/language pathologist concluded that Student should be identified with a mild language disability and qualified for speech/language support. (N.T. pp. 454, 455; S-31 p. 13)
14. The District’s initial evaluation report (ER) was issued on November 11, 2012. Based upon the psycho-educational testing, rating scale and speech/language evaluation results, the ER concluded that Student should be identified as IDEA eligible, with speech/language impairment as the primary disability category and OHI, due to ADD/ADHD symptoms, as a secondary disability category. The ER also included a number of recommendations for services and supports to be included in an IEP. The ER did not include an OT evaluation, which was to have been part of the initial evaluation but was omitted. (S-31 pp. 17, 18)
15. The District OT evaluation was conducted in December 2012 and early January 2013. The occupational therapist reviewed prior private reports, (not OT reports) and educational records, considered Parent concerns, teacher reports of attention and focus

issues, and completed assessments of Student’s sensorimotor, visual-motor and fine-motor skills. (N.T. pp. 288, 289, 295—299; S-25 pp. 16—24)

16. On the Sensory Processing Measure, teacher ratings of Student were in the typical range of functioning in the classroom, but Parent ratings placed Student in the “probable difference” range, overall, at home. Student’s scores on direct assessments of motor coordination and visual perception were in the average range. Typical performance in the school setting ordinarily does not support school-based OT services, but the OT qualified Student for consultative services based upon Parent concerns and teacher reports about Student’s focus and attention needs. The OT report also included recommendations to address those needs. (N.T. pp. 299—304, 306, 307, 315, 367; S-25 pp. 18—23)
17. In the late winter of 2014, upon referral from Student’s pediatrician, Parents obtained a neuropsychological evaluation from the Children’s Hospital of Philadelphia (CHOP) in order to delineate neuropsychological strengths and weaknesses in light of Student’s history of expressive-receptive language disorder and sensory issues, and Parent reports of Student’s ongoing struggles with attention organization and learning. (N.T. pp. 61, 62; S-20 p. 1)
18. The CHOP neuropsychologist gathered and reviewed extensive information about Student’s background, health, developmental and educational history, including prior evaluations. (S-20 pp. 1—3)
19. The evaluator administered numerous assessments/selected sub-tests of assessments to explore various aspects of Student’s functioning and performance, including: **a) general intellectual functioning** (Wechsler Abbreviated Intelligence Scale—WASI-II); **b) academic functioning** (WIAT-III); **c) attention and executive functioning** (ADHD Rating Scale-IV-Home Version, Behavior Inventory of Executive Functions (BRIEF), Working Memory Test Battery for Children (WMTBC), Test of Everyday Attention for Children (TEA-CH), Tower of London-Dx, Delis Kaplan Executive Function System (D-KEFS), Children’s Memory Test (CMS); **d) visual-motor integration/fine motor skills** (Beery-Butenica Developmental Test of Visual-Motor Integration (Beery VMI, Fifth Edition, Grooved Pegboard); **e) learning/memory** (California Verbal Learning Test-Children’s Version (CLVT-C), Wide Range Assessment of Memory and Learning, 2nd Edition (WRAML2); **f) language** (Token Test for Children, second Edition (TTFC-2); **g) social/emotional functioning/adaptive behavior skills** (Behavior Assessment System for Children-Second Edition (BASC-2)-Parent and teacher ratings). The WASI-II measures of vocabulary definition and verbal concept formation were also considered in assessing Student’s language functioning. Student’s low average perceptual reasoning index (PRI) score was considered part of the assessment of Student’s visual/motor/perceptual skills. (S-20 pp. 3—5, 10—12)
20. The neuropsychological report provided a thorough analysis of the assessment results, their implications for Student’s classroom functioning, and recommendations for instructional strategies, classroom supports and modifications. The report noted that Student exhibited many strengths, including low average to average cognitive ability and

learning/memory, particularly in learning rote information, and further noted that Student had made academic progress in many areas. (S-20 pp. 5—8)

21. Although acknowledging Student’s continuing language difficulties, despite considerable progress in overcoming the effects of the expressive/receptive language disorder, the neuropsychological report highlighted the overlap between Student’s language issues and the increasing impact of Student’s executive functioning weaknesses, particularly planning, organization and working memory, on language based skills. The report noted that the combined issues were, and could be expected to continue, creating greater difficulties as the complexity and demands of academic tasks increase, and that Student was beginning to manifest more academic skill weaknesses with higher order skills. The combination of Student’s ADHD and language disorder create a complex neuropsychological profile that makes Student difficult to describe with a single diagnostic category. (S-20 pp. 5, 6)
22. Although Student’s FSIQ on the WASI-II (83) was in the low average range of intellectual ability, and 13 points below Student’s average range FSIQ on the WISC-IV (96) in 2012, the neuropsychologist described Student’s cognitive ability scores as “generally consistent” in the two evaluations, but with “slightly weaker” performance on verbal tasks on the WASI-II. The District school psychologist who reviewed the CHOP report noted that the decrease was due primarily to a particularly low score on the vocabulary subtest of the verbal comprehension index, which was an area affected by Student’s language disability. It is also possible that the effect of Student’s weak performance on the single subtest score was magnified because only the verbal comprehension score on the WASI-II is derived from only two sub-tests rather than the three subtests that comprise the WISC-IV verbal comprehension Index. (N.T. pp. 622, 623, 661; S-20 pp. 3, S-31 p. 5)
23. Student’s WIAT-III academic achievement scores in reading and math remained in the average range, overall, with some fluctuation in standard scores/percentile ranks on the same subtests between the District’s 2012 testing and the 2014 CHOP testing. (N.T. pp. 619—621; S-20 p. 12, S-31 p. 8)²
24. After receiving the CHOP neuropsychological report, the District compiled a reevaluation report (RR) dated May 9, 2014 consisting of a review of records including, along with the neuropsychological report, information from the District’s initial ER. The RR also included input and recommendations from Student’s teacher concerning Student’s classroom functioning and academic progress; an updated report from Student’s case manager/speech therapist, which included review of a private speech/language evaluation from CHOP dated June 2013, and a report from the District OT. (N.T. pp. 595—597, 610, 611, 639; S-18 pp. 1—7, S-20)

² Higher standard scores/percentile ranks 2012—2014: Reading comprehension 89/23rd—96/39th; word reading 96/34th—101/53rd; numerical operations 94/34th—95/37th; math fluency/addition 107/68th—112/79th. Lower standard scores/percentile ranks 2012—2014: Spelling 109/73rd—100/50th; math problem solving 91/27th—88/21st; math fluency/subtraction 95/37th—90/25th.

25. After discussion of the neuropsychological report and review of the other records included in the RR at an April 14, 2014 meeting that included the school psychologist who drafted the RR, Student's IEP team concluded that it had sufficient information to determine Student's continued IDEA eligibility and to appropriately plan for Student's educational needs without additional assessments or other evaluation information. The District school psychologist considered the assessments conducted as part of the CHOP evaluation extensive, thorough and consistent with Parent and teacher reports of Student's functioning. (N.T. pp. 597—599, 602, 626, 627; S-18 p. 8, S-47 p. 37)
26. Based upon the analysis of Student's changing needs, the recommendation found in the CHOP neuropsychological report and classroom observations, the District IEP team concluded that Student's primary and secondary disability categories should be reversed, with OHI to be Student's primary disability category and S/LI the secondary category. (N.T. pp. 600, 601, 614—616; S-18 p. 8)

IEPs—2012/2013, 2013/2014, 2014/2015

January 2013

27. After the District's initial evaluation was completed, an IEP team meeting was convened in November 2012. Since speech/language impairment had been identified as Student's primary disability category, the speech/language pathologist served as Student's IEP case manager and drafted the initial IEP proposal. (N.T. p. 440; S-28, S-31)
28. The November 2012 IEP included one multi-component speech/language goal to address Student's identified areas of receptive and expressive language weakness with respect to linguistically complex receptive and expressive language concepts.³ (N.T. pp. 458, 459; S-28 p. 20)
29. The speech/language pathologist considered the goal to encompass a hierarchy of language skills. To begin working on the goal, she selected materials similar to the kinds of items included in the CELF-4 assessment, *i.e.*, formulating one sentence responses correctly when presented with a word and picture stimulus. Another aspect of the goal was to develop Student's ability to listen for information and produce accurate sentences encompassing the information presented to Student orally, using materials typically used in speech language sessions. As Student's skills increased, the level of the goal would increase to telling an entire story with multiple syntactically correct and accurate sentences, and finally to listening to information and producing multiple syntactically correct sentences using grade level curriculum materials. (N.T. pp. 459, 460)
30. The IEP also included numerous items of specially designed instruction (SDI) as strategies and supports to address receptive language needs, as well as attention/focus and self-advocacy needs in the classroom during regular academic instruction, in addition to supporting the IEP speech goal. Specifically, the SDI were: Ask Student to restate

³ The IEP goal reads as follows: "When retelling, explaining, and answering questions, [Student] will produce organized and syntactically accurate sentences with 85% accuracy in three consecutive sentences." (S-28 p. 20)

directions to check for comprehension; remind Student to ask for repetition of instructions or material; chunking of information; teacher repeated instructions to increase Student's understanding; visual information presented along with auditory information; cues to stay on task; prompting, questions to check Student's comprehension of directions, tasks, curriculum material; small group instruction; use of "listening strategies" when listening to verbally presented information (looking at the speaker, using fingers as a visual aide to help remember facts, "drawing a picture" in Student's head); cues to begin a task; preferential seating; opportunity for movement breaks; visual and graphic organizers to help organize thoughts when re-telling; small group speech and language support. (N.T. pp. 493—495; S-28 p. 22)

31. Student's special education placement was identified as itinerant speech/language services, with all of Student's academic instruction to be delivered in the regular education classroom in accordance with District grade-level curriculum standards for approximately 98% of the school day. Pull-out small group speech/language therapy was provided for 25 thirty minute sessions per year, which worked out to two 30 minute sessions of direct speech/language support every 12 days, delivered in a small group setting, with one other student. (N.T. pp. 461—465; S-28, pp. 22, 24, 26)
32. In order to assist Student in generalizing the skills taught in the pull-out speech/language sessions to the classroom, and to assure that the SDI were fully implemented throughout the school day, the speech/language pathologist incorporated an additional 30 minute session of "push-in" speech language support in Student's classroom each week, which included one to one support for Student with the speech therapist during that time. The speech/language pathologist also consulted with Student's 1st grade teacher about Student's speech/language needs and strategies to address them. (N.T. p. 462—467, 476—479, 496)
33. In both the pull-out sessions and in the classroom, the speech/language pathologist used various strategies to build Student's receptive and expressive language skills, including strategies incorporated into the SDI and speech/language therapeutic techniques. (N.T. pp. 467—472, S-21 p. 11, S-64)
34. Student was also seeing a private speech/language therapist who was working on similar skills. The District speech/language pathologist and the private therapist consulted at least twice concerning Student's progress. The private therapist expressed no concerns about, and recommended no changes to the speech/language services Student was receiving in the school-based program. (N.T. pp. 473—475)

February 2013

35. Another IEP team meeting was held in February 2013, when the initial OT report was completed, to add information from the report and consider whether the IEP should be revised to add additional services. Parent also asked whether recommendations from another vision report Parents had obtained in January 2013, were considered and raised concerns regarding Student's increased focus and attention issues at home, resulting in

struggles with homework. Parents also asked for help to support and encourage Student's socializing with peers. (N.T. pp. 193—197 ; S-25, S-27)

36. District staff noted that classroom accommodations recommended in the vision therapy report were part of standard practices in Student's 1st grade classroom practices, and so did not need to be incorporated into the IEP. The District guidance counselor included Student in a "Lunch Bunch" group. (N.T. pp. 195, S-25 p. 38)
37. No changes were made to Student's IEP goal or to specially designed instruction at the February 2013 IEP meeting. Strategies to address potential issues in the areas of fine motor skills, visual processing and sensory skills were described in the section of the IEP that added the results of the OT evaluation and OT consultation with teachers was added as a support for school personnel. (N.T. pp. 81, 326, 334, 483; S-25 pp. 17—24, 30, 32, 33)
38. Pursuant to the IEP, the District OT's services to meet Student's sensory or other OT needs might arise were provided through an integrative consultative model, which involves providing therapy in the natural environment of the classroom, through consultation with teachers, rather than through pull-out direct services. In Student's case, the consultative services centered on sensory strategies for focus and attention issues. The consultation began in January 2013, once the OT was aware that Student would be identified as IDEA eligible. (N.T. pp. 289—291, 317—321, 325, 332, 333; S-25 p. 33)
39. Other than movement breaks, the sensory activities trialed with Student in the classroom were more distracting than helpful. (N.T. pp. 328—331, 335, 368—371)
40. Progress reports from the first two trimesters of the IEP term, covering most of Student's 1st grade year, were issued in March and June 2013. Student's ability to listen to verbally presented information and re-tell details with syntactically accurate sentences was at 74% in March 2013, and increased to 79% by June 2013. The speech/language therapist also observed that Student had become more independent in using strategies that were taught with less modeling and prompting. (N.T. pp. 481—483; S-64 p. 1)

November 2013

41. Student's annual IEP meeting was held on November 18, 2013. The updated IEP included information from Student's 2nd grade teacher, from the consulting OT, and from Student's IEP case manager/speech/language pathologist, who incorporated updated progress monitoring data from the beginning of the 2013/2014 school year. (N.T. pp. 485, 486; S-21 pp. 9, 11)
42. Student's speech/language goal remained the same, with progress reported at 79%, 80% and 81%. The SDI also remained generally the same with the addition of a provision for Student to retell/repeat directions to the class or to the teacher in Student's own words for the teacher to check for understanding. The amount of pull-out speech/language services remained the same during the second grade school year, but the speech/language

pathologist was able to push into Student's classroom twice in each six day cycle. (N.T. pp. 491, 496—498; S-21 pp. 17, 19)

43. As Student approached meeting the IEP goal using speech/language materials, the therapist began incorporating information from curriculum-based, grade level materials to provide additional challenge, and used classroom-based materials for the remainder of the 2nd grade school year as the stimulus for Student to retell information. Student also worked on using syntactically correct sentences for writing assignments. (N.T. pp. 486—489, 491, 492, 568, 569, 571, 572; S-21 pp. 9, 11)
44. With the more challenging classroom-based materials and assignments, Student's progress was inconsistent at times. During the 2013/2014 school year, Student's progress toward the goal of 85% accuracy in retelling, explaining and answering questions using syntactically correct sentences was measured at 79%, 75% and 80%. The speech/language pathologist observed that Student was better able to start tasks independently, independently generate sentences that made sense and use words in the classroom that were practiced in therapy. (N.T. pp. 499—501; S-64 p. 2)

May, September 2014

45. After the District's reevaluation report was completed, an IEP meeting was held on May 19, 2014 and a new IEP proposed. Based upon the May 9 RR, which included review of the June 2013 CHOP speech/language reevaluation that identified difficulties with understanding word relationships, and the March 2014 CHOP neuropsychological evaluation that documented Student's increasing executive functioning needs, two additional goals were added to the original speech/language goal.⁴ There were also additions to the SDI to address both speech and ADHD needs. (N.T. pp. 524, 526, 527, 529, 531.532, 576, 578, 581; S-16 pp. 19, 20, 22)
46. Parents' concerns at the May 19, 2014 IEP meeting were based upon the results of the CHOP neuropsychological evaluation, in terms of addressing Student's increasing executive functioning needs and assuring that the recommendations from the neuropsychological report was incorporated into Student's IEP. (N.T. pp. 223—225; P-10, S-16 p. 13, S-20)
47. In September 2014, after Parents notified the District that they were requesting District funding for the costs of the private school in which they had enrolled Student, the District convened a final IEP meeting at which it proposed an IEP with revised and updated information from the OT, who continued to classroom strategies for sensory issue and identified no OT sensory or fine motor needs that required direct OT services. The IEP

⁴ When given a target word, [Student] will determine the relationship between words Through naming items in a category, function, looks like, made of, parts, where to find it and shared attributes with 80% accuracy. (S-16 p. 19)

Given an academic task and clearly defined directions, [Student] will initiate the task and work through to completion with no more than 2 verbal or non-verbal prompts given in 4 out of 5 opportunities. (S-16 p. 20)

proposal also incorporated additional information/concerns from Parents, but otherwise proposed no changes from the May 2014 IEP. (S-6 pp. 13, 14)

Classroom Instruction, Services—2012/2013 School Year

48. During the 2012/2013 school year, Student was placed in a regular education classroom with a total class size of 19 students for most of the school year, co-taught by a special education teacher for part of the school day. There were at least two adults in the classroom, which could include the teachers, classroom aides and child-specific aides. (N.T. pp. 808, 809)
49. Throughout Student's 1st grade school year, the teacher used, and Student benefitted from various classroom strategies recommended by private therapists and/or later included in Student's IEP, that are instructionally and developmentally appropriate for all children in 1st grade, such as 16 point or larger print font, color-coding/highlighting different types of information, simple graphic organizers for "chunking" instructional material presented on the classroom SMART Board, movement breaks and small group instruction. The general education instructional technique known as "scaffolding" which the teacher used in her classroom and involves repeated contact with the same skill, was also particularly helpful to Student's success in the classroom. (N.T. pp. 788, 796, 797, 798—800, 826, 827, 834, 849, 850)
50. Student was well able to attend to and complete grade level language arts tasks (reading, including exercises that required reading comprehension, spelling, writing) during 1st grade, Language arts instruction was presented primarily in a two hour block in the morning, but was embedded in the curriculum throughout the school day. Student began the school year in the "approaching grade level" guided reading group, approximately one level below the "on grade-level" group, but was moved to the "on grade-level" group by mid-October, where Student remained for the rest of the school year.⁵ (N.T. pp. 801—806, 812—827)
51. After Student's IEP was developed in January 2013, the 1st grade teacher began consulting formally, on a monthly basis, and informally, on a weekly basis, with the District OT, who pushed into the classroom, to discuss strategies for improving Student's attention and focus. (N.T. pp. 806—808)
52. The math instruction block was scheduled early in the afternoon and included various activities such as whole and small group instruction and practicing skills with a peer partner. The special education teacher conducted a workshop several times each week for extra skill practice. Students were assigned to the special education teacher's workshop group on a rotating basis, with need determined by test/quiz scores, other written work and/or observation. (N.T. pp. 833—838)

⁵ The 1st grade classroom also had a "below" and a "beyond" grade level group.

53. After math, students had a 30 minute small group intervention/enrichment period when they could obtain extra help/practice with skills or receive enrichment activities. The teacher determined each child's daily skill practice group. Student typically worked on retelling stories including lots of detail, cause-effect or problem-solution activities. (N.T. pp. 839—841)
54. The 1st grade school day also included “Encore” classes (art, music, gym, library, guidance), as well as either science or social studies daily, which included activities such as hands-on activities, working with a partner, using graphic organizers and journaling/writing to record observations and to demonstrate knowledge of the concepts presented. (N.T. pp. 841—843)
55. The 1st grade teacher participated in the IEP meetings for Student in January and February 2013, consulted regularly with Student's case manager/speech therapist, and implemented the SDI in the classroom. Strategies such as restating directions, checks for comprehension and chunking information were typically used regularly for all children but were particularly helpful for Student to help maintain focus and to become more independent in initiating and completing tasks. (N.T. pp. 843, 844, 846—855, 888—891, 893; S-25, S-28)
56. By the end of 1st grade, Student met the District's grade level academic standards for the regular education curriculum in all but a few of the 41 academic skill areas assessed. Student was described as “Approaching Expectations” with respect to “describes causes and effects of events” (language arts), and with respect to the math skills described as understands the meanings, uses and presentations of numbers; computes accurately and makes reasonable estimates, and several measurement skills. With respect to the Qualities of a Learner, Student consistently and independently performed at or above grade level expectations in all areas except use of metacognitive strategies, for which Student was rated as sometimes performing near grade level expectations. Student's performance was assessed in accordance with rubrics used to evaluate all regular education 1st grade students. (N.T. pp. 857—869, 874, 877—880; S-50 pp. 1, 2, S-66)
57. Student ended the 2012/2013 school year on grade level for reading, and worked on 1st grade level reading and other language arts materials throughout the school year. (N.T. pp. 869—872)

Classroom Instruction, Services—2013/2014 School Year

58. Before the 2013/2014 school year began, the 2nd grade teacher reviewed Student's ER and IEP, and had a conversation with the 1st grade teacher about Student's speech/language needs and successful classroom strategies. The 2nd grade classroom included 22 children and was also co-taught for part of the day by the same special education teacher who had worked with Student during 1st grade. (N.T. pp. 919—922)
59. The special education teacher participated in the entire math instruction block, which included a whole group “mini” lesson to introduce the math objective for the day,

followed by small group instruction. The three math groups were flexible, selected by assessments and observations of task completion to assure that the 6—8 students in each group were at the same skill level based on state grade level standards. (N.T. pp. 922—926)

60. Student began the school year in the middle group, which was working on grade-level and at a pace that was successful with the materials without much teacher intervention. By November, when the teacher noticed that Student was having difficulty keeping pace, she moved Student to the lower group, hoping to improve Student’s confidence, which was successful, since Student was the highest achiever in the lower group. The move also benefitted Student by providing an additional 20 minutes of small group direct math instruction with the special education teacher, as well as slower-paced instruction, additional practice and skill review. At times, Student needed and received more intensive instruction for some math skill/concepts, which the teacher provided in the form of either additional small group instruction or 1:1 instruction. (N.T. pp. 926—931, 934, 935)
61. The 2nd grade school day included a classroom “morning meeting” for greetings, activities and sharing stories, including the opportunity to ask questions of the speakers. Science and social studies were also part of the 2nd grade curriculum, and included hands-on activities, such as science experiments, cooperative group work, research and use of technology. (N.T. pp. 954—956)
62. Language arts instruction included word study (patterns, rules for building words) and grammar practice, as well as whole group reading instruction, which might include listening comprehension, and guided reading. (N.T. pp. 957—962)
63. Based on assessments given at the beginning of the school year, Student was initially placed in the middle guided reading group that was functioning just below grade level. In November, the teacher moved Student to a lower group that received an extra period of reading instruction from the teacher, instruction from the reading specialist and Student received instruction in a “reading buddies” group, for a total of 50—70 minutes of small group reading instruction daily. At the time Student’s reading group was changed, the teacher noticed that Student was beginning to have difficulty with reading comprehension for higher level texts, and believed that Student would benefit from additional reading instruction and support. (N.T. pp. 965—970)
64. The teacher used instructional techniques and strategies such as scaffolding, modeling, graphic organizers and guided practice to build problem-solving skills in math. Graphic organizers, used generally in the 2nd grade classroom, were also particularly beneficial to Student during reading instruction to chunk information with the teacher’s assistance. Student also used graphic organizers heavily during writing instruction. The teacher also provided movement breaks throughout the school day. (N.T. pp. 936, 962, 963, 973, 974, 996)

65. Student participated in writer's workshop for writing instruction, in which Student was often supported by the speech/language pathologist who pushed into the classroom and also consulted with the teacher almost daily to develop strategies to help Student with writing. (N.T. pp. 972—975)
66. Student also participated in Encore classes daily, and had a 30 minute intervention/enrichment period when Student either received additional instruction from the teacher on a concept or worked at a center. (N.T. p. 992)
67. In 2nd grade, progress with respect to the District's grade level, regular education curriculum standards was described in the same terms used by the state assessment system, with each descriptor represented by a number on the trimester progress reports.⁶ In the final trimester, Student was at the Basic level (demonstrates partial understanding of the expectations for grade level, year-end standards) with respect to 11 of 19 language arts skills and Proficient (demonstrates satisfactory understanding of year end grade level expectations) with respect to 8 skills. In math, Student was at the Basic level with respect to 8 of 14 skills, and at the Proficient level with respect to 6 skills. With respect to the Qualities of a Learner, Student met expectations (was performing at or near grade level) in all areas except stays on task, which was below expectations. Student's performance was assessed in accordance with rubrics used to evaluate all regular education 2nd grade students. (N.T. pp. 997—1012; S-50 pp. 4-8, S-67)

Private School Instruction, Services—2014/2015 School Year

68. The private school Student attends currently has 72 Students enrolled in 1st through 8th grades, all with learning disabilities. There are approximately 6 students at the 3rd grade level. Students receive reading instruction in groups of approximately 4—6 students at the same skill level. (N.T. pp. 692, 693, 697, 698, 1146)
69. Student has a list of academic, behavioral and social goals developed by Parents and the teacher at the first conference of the school year. Student's goals are to improve comprehension and vocabulary skills; improve organizational skills; increase confidence and self-esteem; build a strong number sense of the operations of computation and improve organization of equations. (N.T. pp. 702—704, 1162; P-22)
70. Students are instructed in reading for 80 minutes/day. The curriculum also includes 40 minutes/day of writing instruction, math and science or social studies. Students also receive an additional hour/day of Orton-Gillingham reading instruction, which focuses primarily on phonics. The Orton-Gillingham instruction emphasizes decoding and encoding, but includes some fluency, comprehension and word recognition. (N.T. p. 1146, 1196—1198)
71. Student receives twice weekly speech/language services through the local intermediate unit. Speech/language services are completely separate from classroom instruction. The

⁶ 1= Below Basic; 2 = Basic; 3= Proficient; 4= Advanced

teacher does not see speech goals or progress reports, is not asked to work on or support speech/language goals in the classroom, and the speech therapist has not visited Student's classroom. (N.T. pp. 705—709, 1161)

72. To address Student's organization needs, instruction is multimodal, instructional material is chunked. Student is not presented with multi-step directions and directions are presented both orally and in writing. Longer directions require prompting and redirection. (N.T. pp. 720, 721, 1152, 1153)
73. The private school does not provide OT contract services. Interns from a local university provide some services at the private school, but do not work with Student. Student's sensory needs are addressed with frequent breaks as needed and meetings with the guidance counselor to discuss difficulties with communication input and understanding emotions. (N.T. pp. 705, 1158—1160)
74. Based upon an evaluation conducted in the summer of 2014 from Student's treating OT, Parents believe that Student's current school-related OT needs/issues are vestibular, sensory integration, visual integration, organization and executive functioning, all of which will be handled by an OT outside of the school setting, since the private school does not have an OT on site to provide the services that Parents believe Student needs (N.T. pp. 83—85)

DISCUSSION AND CONCLUSIONS OF LAW

Due Process Hearing/Burden of Proof

The IDEA statute and regulations provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3rd Cir. 2009).

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the U.S. Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion, a component of the burden of proof, which also includes the burden of going forward with the evidence. The burden of persuasion is the more important of the two burden of proof elements, since it determines which

party bears the risk of failing to convince the finder of fact that the party has produced sufficient evidence to obtain a favorable decision. This rule is the deciding factor in a case when neither side produces a preponderance of evidence, *i.e.*, when the evidence on each side has equal weight, which the Supreme Court described in *Schaffer* as “equipoise.”

When the evidence on one side has greater weight, it is preponderant in favor of that party, which has borne its burden of persuasion and prevails. When the evidence is equally balanced, the party with the burden of persuasion has produced insufficient persuasive evidence and cannot obtain a favorable decision.

In these consolidated cases, the burden of persuasion is divided. The District bears the burden of persuasion with respect to the evaluation/IEE issues, and the Parents have the burden of persuasion with respect to the remaining issues, including the appropriateness of the District’s IEPs/provision and offer of FAPE to Student from November 2012 through the end of the 2013/2014 school year and at the beginning of the 2014/1015 school year, when the final IEP offer was made to Parents, and the appropriateness of the private school placement. As in most cases, however, the burden of persuasion did not affect the outcome in any respect, as the evidence was not equally balanced with respect to any of the issues identified for decision.

Independent Educational Evaluation

IDEA Evaluation/Reevaluation/IEE Legal Standards

The IDEA statute and regulations require an initial evaluation, provided in conformity with statutory/regulatory guidelines, as the necessary first step in determining whether a student is eligible for special education services and in developing an appropriate special education program and placement. *See* 20 U.S.C. §1414; 34 C.F.R. §300.8(a). The primary purpose of the initial evaluation is, of course, to determine whether the child meets any of the criteria for

identification as a “child with a disability” as that term is defined in 20 U.S.C. §1401 and 34 C.F.R. §300.8, as well as to provide a basis for the contents of an eligible child’s IEP, including a determination of the extent to which the child can make appropriate progress “in the general education curriculum.” 34 C.F.R. §§300.8, 300.304(b)(1)(i), (ii).

After a child is determined to be eligible, the IDEA statute and regulations provide for periodic re-evaluations, which “may occur not more than once a year unless the parent and public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that an evaluation is unnecessary.” 20 U.S.C. §1414(a)(2)(B)(i), (ii); 34 C.F.R. §300.303(b). School districts, however, also have the obligation to “ensure that a reevaluation of each child with a disability is conducted” at any time “the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child’s parent or teacher requests a reevaluation.” 20 U.S.C. §1414(a)(2)(A)(i), (ii); 34 C.F.R. §300.303(a).

The standards for an appropriate evaluation or re-evaluation, found at 34 C.F.R. §§300.304—300.306, require a school district to: 1) “use a variety of assessment tools;” 2) “gather relevant functional, developmental and academic information about the child, including information from the parent;” 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child

in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs,” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

For a reevaluation, the district must review the existing evaluation data and identify data needed to determine whether the child continues to have a disability, the present levels of academic achievement and related developmental needs of the child, whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet IEP goals. 34 C.F.R. §300.305(a)(1) and (2). A district must also use the data/information it is required to gather to determine whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum. 34 C.F.R. §§300.305(a)(2)(iv).

The evaluation data required for an initial evaluation, however, is not absolutely mandated for a reevaluation “if the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and the child’s educational needs.” 34 C.F.R. §300.305(d)(1). In that event, however, the district “must notify the child’s parents of that determination and the reasons for the determination, and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational needs.” 34 C.F.R. §300.305(d)(1)(i), (ii). Upon such notification, the district is relieved of the obligation to conduct an assessment for continued eligibility and/or to determine current educational needs unless the parents request it. 34 C.F.R. §300.305(d)(2).

Once an evaluation or reevaluation is completed, a group of qualified school district professionals and the child's parents determine whether he/she is a "child with a disability" and his/her educational needs. 34 C.F.R. §300.306(a). In making such determinations, the district is required to: 1) "Draw upon information from a variety of sources," including those required to be part of the assessments, assure that all such information is "documented and carefully considered." 34 C.F.R. §300.306 (c)(1).

Independent Educational Evaluations

The IDEA also provides that Parents have the right to obtain an independent educational evaluation (IEE) and, if the private evaluation meets the standards of the local education agency (LEA), and parents share it with the district, to have the evaluation considered in making decisions concerning the provision of FAPE to a child. 34 C.F.R. §300.502(a), (b)(3), (c)(1).

Parents can obtain an IEE at public expense if they disagree with an evaluation obtained by the district and it either agrees to fund the independent evaluation or the district evaluation is found inappropriate by the decision of a hearing officer after an administrative due process hearing. 34 C.F.R. §300.502(b)(1), (2)(ii). Once a parent has requested an IEE, the district "must, without unnecessary delay," file a due process complaint to show that its evaluation is appropriate or assure that the IEE is provided. 34 C.F.R. §300.502(b)(2)(i), (ii).

An IEE is defined in the IDEA regulations as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 C.F.R. §300.502(a)(3)(i).

IEE Claim

Initially, the parties disagree over the scope of the independent evaluation Parents request. The District argues that Parents are seeking four separate independent evaluations,

while Parents contend that because the District failed to fully and appropriately assess Student in all areas related to Student's suspected disability in either the 2012 initial evaluation or the 2014 reevaluation, they are requesting a single IEE that includes all essential components, which Parents identified as an "educational" neuropsychological evaluation, a vision evaluation, a speech/language evaluation, an OT evaluation and a vision evaluation.

The District's initial evaluation included the usual components of a psycho-educational evaluation, generally, and assessments ordinarily administered for a child with suspected attention and focus issues affecting learning, *i.e.*, ability and achievement testing, behavior and executive functioning rating scales. (FF 6, 7, 8; S-31 pp. 15, 16) Because the primary issue that triggered the initial evaluation recommendation was a suspected language disability, supported by private evaluations obtained prior to the District's initial evaluation that provided a diagnosis of a receptive and expressive language disorder, the District's initial evaluation also included a comprehensive speech/language evaluation. (FF 9, 10, 11, 12, 13) An OT evaluation was also to be included in the initial evaluation, but that was completed after the ER was issued, and the results were included in a revision to Student's initial IEP. (FF 14, 15, 35) The child study team recommendation for an initial evaluation did not include either a neuropsychological or a vision evaluation; the PTE for the initial evaluation, which Parents approved without comment on September 21, 2012, did not include those types of evaluation, and vision issues were not listed as an area of concern prior to the initial evaluation. (S-31, S-32)

The District's 2014 reevaluation was somewhat unusual in that it was neither requested by Parents nor by the District as ordinarily contemplated by the IDEA reevaluation provisions. Rather, the reevaluation was, essentially, an update to information about Student, based primarily upon the results of the CHOP neuropsychological evaluation Parents had obtained early in 2014.

(FF 17—21) The reevaluation also included a review of additional records, including Student's educational progress, and the District's initial evaluation in the areas of speech/language and OT.

(FF 24) The District evaluators, including the school psychologist, the speech/language pathologist and the occupational therapist, concluded that no additional assessments were needed.

(FF 25) Based upon the recommendation of the private neuropsychological evaluation, however, the school psychologist agreed that Student's primary disability category should be changed from speech/language impairment to OHI, since it appeared that attention, focus and executive functioning issues had supplanted the speech/language issues as the primary factors adversely impacting Student's learning and classroom performance. (FF 26)

Based upon the foregoing facts and circumstances, neither party's position entirely reflects the circumstances underlying the IEE request. Specifically, Parents are correct in their argument that if each of the IEE components they request is, indeed, necessary to assess Student in all areas of suspected disability, all are part of a single appropriate evaluation. Consequently, to the extent any necessary component was missing from, insufficient or otherwise inappropriate in either the initial evaluation or the reevaluation, Parents are entitled to an IEE in that area.

On the other hand, however, Parents' IEE request is not, as they contend, entirely unitary. Rather, each IEE component that Parents request stands alone, because each would explore different aspects of Student's functioning. In addition, three of the four requested components can arguably be based upon the reevaluation, while the fourth, the vision evaluation, is the only component request that was not included in the first evaluation, so it would not reasonably have been expected to be included in the reevaluation, unless some information came to light via the records review that would suggest a need for a vision evaluation at that time.

Regardless, although Parents contend that all of the evaluation components are essential for a full assessment of all needs related to Student's suspected and identified disabilities, there is no basis for determining that if one of the component evaluations is needed, Parents are entitled to an IEE in all four areas—just as there would no basis for denying an IEE in all four areas if there is an insufficient basis to order only one or two one of the component evaluations, but a basis for ordering an IEE in other areas requested by Parents. Each of the components that Parents request to be included in an IEE will, therefore, be examined separately to determine whether an evaluation or further evaluation in that area is needed to meet the IDEA evaluation /reevaluation criteria for a comprehensive evaluation, sufficient to assess Student in all areas of suspected disability, and to assist Parents and District members of the IEP team to determine Student's educational needs.

Finally, since Parents were very specific about the alleged deficiencies in the District's evaluation and reevaluation that warrant independent evaluations in four specific areas, the review of the District's evaluations will focus on those alleged deficiencies. Otherwise, in general, the District's initial evaluation met the procedural criteria for an appropriate IDEA evaluation. Whether the components Parents challenge as missing or insufficient warrant an IEE in those areas, based upon either the initial evaluation or the reevaluation, are considered separately below.

Neuropsychological Evaluation

Although Parents obtained a comprehensive neuropsychological evaluation in the spring of 2014 from CHOP, a non-District provider, and, therefore, an independent evaluation, they are

nevertheless requesting an additional, publicly funded neuropsychological evaluation.⁷ Parents argue that the CHOP evaluation is “medical” and their IEE request is for an “educational” neuropsychological evaluation. Without an explanation of the distinction between a “medical” and an “educational” neuropsychological evaluation, which was not directly provided, it would be very difficult to fashion an order to provide Parents with the relief they are seeking. Under the circumstances, however, that is not an issue.

A neuropsychological evaluation typically includes assessments of general intellectual skills and academic achievement, arousal and attention, executive functions and problem-solving abilities, language functions, visuospatial functions, learning and memory, personality, emotional functioning, adaptive behavior skills, sensory and motor functions and environmental factors. *See Sattler, J., Foundations of Behavioral, Social, and Clinical Assessment of Children, Sixth Edition* (2014, Jerome M. Sattler, Publisher, Inc.) at 660, 661; Sattler, J. and Hoge, R., *Assessment of Children-Behavioral, Social and Clinical Foundations, Fifth Edition* (2006, Jerome M. Sattler, Publisher, Inc.) at 543, 544. The CHOP evaluation clearly encompasses all of those areas, including seven separate measures of attention and executive functioning, Wechsler cognitive and achievement testing and two additional measures of memory and learning. (FF 19)

Sattler, generally recognized as a leading authority on psychometric testing and assessments, discusses neuropsychological evaluations only in terms of an adjunct to neurological evaluations to examine the functional effects of brain pathologies and injuries.⁸ Nevertheless, neuropsychological evaluations, provided by a neuropsychologist, and sometimes

⁷ Parents’ counsel explicitly stated in opening remarks at the due process hearing, and Parent confirmed in testimony at the due process hearing, that Parents are not seeking reimbursement for the March 2014 CHOP neuropsychological evaluation. (N.T. p. 64)

⁸ *Foundations of Behavioral, Social, and Clinical Assessment of Children, Sixth Edition* at 660, 662, 682, 683; *Assessment of Children-Behavioral, Social and Clinical Foundations, Fifth Edition* at 543, 544, 568—570.

by a school psychologist who may or may not also be also trained in neuropsychology, are often requested and provided as part of a psycho-educational reevaluation or independent evaluation, and sometimes as an initial evaluation. Neuropsychological evaluations are becoming particularly common when the issues that affect a child's learning and other classroom functioning appear to be based upon focus, attention, language, behavior issues and learning disabilities.

It is likely that Parents' attempt to distinguish between a "medical" and an "educational" neuropsychological evaluation is based, at least in part, upon the training of the CHOP evaluator, who is identified as a psychologist/neuropsychologist in the CHOP Stroke Program in the signature line of the report, and not as a school psychologist. (*See* N.T. p. 216; S-20 p. 9) There is, however, no way of telling whether the evaluator may also have had some training in education or school psychology, since her CV is not included in the record. In addition, the report itself refers to "treatment/therapeutic recommendations" and "treatment planning." (S-20 pp. 1, 9) Regardless of the evaluator's educational credentials and the medical terminology in the report, however, those factors are an insufficient basis for Parents' contention that the District should fund an "educational" neuropsychological evaluation.

The CHOP neuropsychological evaluation includes the same kinds of assessments, particularly for executive functioning, memory, learning/attention and behavior/emotional functioning, that are ordinarily given to assess school-related functioning and needs. Most important, as Parent readily acknowledged in her testimony at the due process hearing, the CHOP report contains primarily educational recommendations based upon the results of the neuropsychological assessments. (N.T. pp. 62, 63) Moreover, the representatives from the private school who testified at the due process hearing also acknowledged that the CHOP report

was comprehensive; that it provides much good information about Student “as a learner;” that the recommendations in the CHOP report can be implemented in an educational setting, specifically, the private school, private school, and that the private school needs no additional information to determine Student’s educational needs. (N.T. pp. 749, 1170, 1172, 1173, 1175)

In terms of the executive/functioning/attention, standardized achievement and behavior rating scale assessments, in particular, administered as part of the CHOP neuropsychological evaluation, it is difficult to understand how much more, or different, information might provide any more or any different, insight into Student’s ability and functioning. Tellingly, Parents do not really identify any such information—they simply fault the District for not conducting additional assessments as part of its reevaluation.

One specific area that Parents cite as needing further exploration is the difference between Student’s FSIQ measured on the WISC-IV, given in 2012 as part of the initial District evaluation (96, in the average range) and Student’s low average intellectual ability score (83) on the WASI-II, administered as part of the neuropsychological evaluation. (FF 6, 22) Parents argue that the 13 point drop in FSIQ score indicates an unusual regression in intellectual ability in a child of Student’s that should have been explored by further cognitive testing in the District’s reevaluation, and that now warrants an independent neuropsychological evaluation.

There was no expert testimony or analysis to support that conclusion—it was based on argument alone. Parents ask that the hearing officer draw the inference that the change in FSIQ number signifies an unexplained “loss” of intellectual ability, warranting further investigation. The CHOP neuropsychologist, however, did not suggest that was the case. To the contrary, she described the 2014 assessment of Student’s cognitive ability scores as “generally consistent” and Student’s performance on verbal tasks as only “slightly weaker.” (FF 22) Those terms do not

suggest regression that carries any significance for school functioning, especially in light of the thorough and comprehensive review of the assessment results and extensive recommendations to address Student's educational needs. In addition, the District school psychologist provided a reasonable explanation for the drop in the FSIQ score, based upon the abbreviated nature of the WASI-II, that fits with the neuropsychologist's conclusion that the ability scores are generally consistent. (FF 22)

In the absence of evidence, as opposed to argument, suggesting a real issue, the FSIQ score discrepancy does not suggest a need for further cognitive ability assessments at this time, and provides no basis for ordering an independent neuropsychological evaluation.

To the extent that Parent contends that the CHOP evaluation does not sufficiently cover language, visual-motor integration, sensory or other OT aspects, each of those specific areas is the subject of a separate IEE request. It would be unnecessary, therefore, to order an additional independent neuropsychological evaluation to cover any of those areas, since the need for any additional assessments in those areas will be considered separately. Since the CHOP neuropsychological evaluation is thorough and comprehensive, there is no need for an additional neuropsychological evaluation at this time. Parents' request for an independent neuropsychological evaluation, therefore, is denied.

Speech/Language Evaluation

Parents' argument that the District should be ordered to fund an independent speech/language evaluation seems to rest primarily on Student's not having met the speech/language IEP goal that was repeated in all of the District's IEPs. Parents argue that if the same goal is repeated without change in successive IEPs but not mastered, either the goal or the implementation is flawed, and that a more extensive speech/language evaluation is necessary,

presumably to either better identify the nature of Student's language impairment or identify different strategies to meet Student's needs.

The record does not support Parents' argument. Before the District's initial evaluation, Parent obtained two independent assessments, including an evaluation from CHOP that identified a mild to moderate receptive and expressive language disorder. (FF 5, 9, 10, 11) The District reviewed the results of the CHOP assessments and administered several more measures of language functioning, all of which yielded scores in the average range. (FF 11) Subsequently, Student received private speech/language therapy from CHOP, was assessed again in 2013 and in 2014 when therapy ended, and was assessed again by another independent provider during the summer of 2014. (FF 24; S-20 pp. 13—18, S-40, S-41, P-9) All evaluators diagnosed a mild to moderate receptive/expressive language disorder, and all teacher and speech therapist observations agreed that Student's language issues are manifested primarily by the inability to fully understand linguistically complex oral communications, follow multi-step directions and formulate sentences properly. (FF 3, 12, 28, 29, 43, 44, 63) Nothing in the record suggests that there is anything unclear or obscure about the nature of Student's language disability that warrants an independent speech/language evaluation, and Parents identified no information that they believe an independent speech/language evaluation might provide. Parents simply argue that the District did not conduct any further assessments in connection with its reevaluation after the CHOP neuropsychological evaluation.

Although there is no doubt that Student's needs, overall, are complex, nothing in the record suggests that the speech/language aspect of Student's needs have been insufficiently evaluated and identified. Consequently, there is no basis for ordering a speech/language IEE, and Parent's request for an IEE in that area is denied.

Vision Evaluation

During the summer prior to the District's initial evaluation, and just before Student entered 1st grade, Parents obtained an evaluation from a pediatric optometrist vision therapist at the recommendation of a private speech/language therapist. (N.T. pp. 156, 157; S-38). The evaluator found that Student's visual acuity and eye health were good, and that lateral and directional skills were age appropriate. (S-38 pp. 1, 2) Without quantifying, or describing in detail, the results of the assessments she administered to Student, or detailing any other basis for her conclusions, the evaluator identified some visual efficiency and perception problems that she believed might be factors that interfered with Student's school performance. (S-38 p. 4) The evaluator recommended 24—36 sessions of vision therapy or computer-based home vision therapy, as well as a number of classroom accommodations, including: Eyeglasses at school and when reading or doing close work; using a finger or guide while reading; seating near the teacher or board; encouragement to maintain proper reading posture and good lighting; minimize copying from board to desk; uncluttered printed materials provide in 16 point type. (S-38 pp. 4, 5) A second vision evaluation, by a different provider was conducted in January 2013, with similar results and recommendations, with the addition of extended time for written work as needed. (S-27)

Student wears glasses at school (N.T. p. 102). Preferential seating has been part of Student's SDI since the initial IEP, and Student's 1st grade teacher testified that Student was provided with both seating and larger font text to maximize Student's ability to see materials presented on the smart board easily. (N.T. pp. 789, 790) The second grade teacher noted no difficulty with Student's ability to read text.

Other than the initial reports, and Parents' belief that there should be a follow-up to determine whether vision and perception issues are a factor in Student's academic struggles, there is nothing in the record to suggest that a vision evaluation is needed. Parents' belief, no matter how strongly or sincerely held, is not evidence of a need for an evaluation. Moreover, the private evaluation reports are equivocal, at best, with respect to how much, if any, impact the vaguely identified vision efficiency and processing issues might have on Student's classroom performance. Although vision therapy was recommended to improve Student's eye movements and increase comfort during visually-intensive tasks, neither of the vision evaluations identified disability-related educational needs that must be addressed through IEP goals or SDI.⁹ Both reports explicitly state that Parents should not expect vision therapy to lead to direct improvement in reading skills. (S-27 p. 4, S-38 p. 4) In the absence of any evidence in the record suggesting that Student needs a vision evaluation to further assess eye movement, eye teaming, visual efficiency and/or perception issues due to adverse effects on educational performance, and in the absence of any other evidence of vision difficulties affecting Student's school functioning not corrected by wearing glasses, there is no basis for ordering a vision IEE. That request, therefore, is also denied.

OT Evaluation

As with the speech/language evaluation, Parents' argument in support of an OT/IEE appears to rest primarily on the District's determination that no additional assessments provided at the time of the 2014 records review reevaluation. Again, that is an insufficient basis for ordering an IEE, since the IEP team, including Parents, identified no need for any additional assessments at that time. Nothing in the record suggests that Student had any unidentified OT

⁹ In a letter presumably provided for Parents' medical insurance, the evaluator described the therapy she recommended as "medically necessary." (S-37 p. 1)

needs that adversely affected Student's educational progress. To the contrary, the record establishes that Student's OT needs related to classroom functioning were appropriately identified and appropriately met through consultative services, SDI and general classroom techniques that are developmentally appropriate for young children in the early elementary school years.

Moreover, Parents clearly believe that they have adequately identified Student's OT needs from a private evaluation conducted in the summer of 2014, so it is unclear what additional information is needed. (FF 74) Finally, the OT needs identified by the most recent private evaluation obviously do not create a need for school-based OT services, since Student has not received any OT services, on a direct or constative basis, since enrolling in the private school, yet Parents believe that Student made good progress during the 2014/2015 school year.

In the absence of any evidence supporting the need for an independent OT evaluation at public expense, Parents' claim for an IEE in that area is also denied.

FAPE/Progress 2012/2013, 2013/2014 School Years

Legal Standards/IEP, Meaningful Progress

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) in accordance with an appropriate IEP, *i.e.*, one that is "reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress." *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 249. "Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning."

Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999). Consequently, in order to properly provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his/her program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3rd Cir. 1996; *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, however, an LEA is not required to provide an eligible student with services designed to provide the “absolute best” education or to maximize the child’s potential. *Mary Courtney T. v. School District of Philadelphia*, at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

Speech/Language IEP Goal/Progress

Parents argue that Student’s IEPs from January 2013 through the end of the 2013/2014 school year must have been inadequate, insufficient, or otherwise inappropriate, because the same goal was repeated in each IEP but never mastered. That argument has some initial resonance, but does not withstand close scrutiny under the circumstances of this case. A speech/language goal for extracting information from material presented orally or in writing and producing organized and syntactically correct responses in retelling and answering questions is not the same as increasing fluency or word recognition in reading or solving math problems, in terms of quantifying progress. Receptive and expressive language skills are complex processes that cannot readily be separated into quantifiable component parts.

The speech/language pathologist clearly and cogently explained that the goal has many components, and can increase in difficulty by varying the complexity of the materials used to elicit responses. (FF 28, 29) At times, therefore, Student’s “numbers” might not show a great deal of upward movement. Student began to work on the IEP goal with easier materials specific to the skills to be taught, and worked up to using more difficult curriculum –based materials that were more directly relevant to academic success. (N.T. pp. 525—528; FF 29)

In addition, Student made sufficient progress in speech/language therapy at CHOP, while also receiving District services, to be discharged from the private therapy. (P-9) Throughout the time Student was receiving private therapy along with District speech/language services, there were no concerns expressed by the CHOP evaluators, or the CHOP speech/language therapist, concerning either Student’s progress or the appropriateness/adequacy of the District’s speech/language services.

Although in terms of IEP drafting and progress monitoring, the speech/language IEP goal could certainly have been better written to convey at least some the information that was provided through the hearing testimony, either by using short-term objectives in the IEP, or by providing more detailed explanatory narratives in the progress reports, in order to draw a clearer picture of Student’s functioning, and how Student was progressing in terms of the practical use and application of the skills Student was learning and practicing. Such information, provided by the speech/language pathologist in testimony at the due process hearing, adequately explained Student’s uneven progress in a way that makes sense. Although it is arguable that the information should have been readily ascertainable from the IEP itself, that lapse amounts to a procedural violation, only, in light of the extensive information in the record concerning how the goal was appropriately implemented to meet Student’s clearly identified speech/language needs.

Consequently the lack of detailed information in the IEP and in the progress monitoring reports cannot support a denial of FAPE determination, and a compensatory education award, in the absence of evidence that the procedural violation impeded Student's right to a FAPE, or denied Student an educational benefit. 34 C.F.R. §300.513(a)(1), (b)(2)(I, (iii).

Although Parents expressed frustration at the hearing that Student's speech/language IEP goal remained the same, (N.T. p. 222), that is not a sufficient basis to conclude that the goal was inappropriate. Moreover, nothing in the record suggests that Parents questioned, or requested a change in Student's goal or speech/language services, at any time that Student was still enrolled in the District. The reasonable inference from all of the evidence is that the speech/language IEP goal in the District IEPs, and the speech/language services provided to implement the IEP goal, were appropriate to meet Student's needs. There is no basis, therefore, for an award of compensatory education based upon the Speech/language IEP goal and services.

General Educational Progress

Parents' concerns with Student's academic progress in the regular education curriculum during 1st and 2nd grades appeared to center on homework, since Parents concluded that that Student could not retain and apply the information learned in school to homework assignments. (N.T. pp. 189, 190, 273) Parents also noted inconsistency in Student's performance from week to week, which they attributed to impulsivity. (N.T, pp. 190, 217, 218) Reading, including comprehension was not as big a concern as math in 1st or 2nd grades, and Parents acknowledged that Student made progress in reading, particularly reading fluency. (N.T. pp. 191, 217, 227) Parents were concerned that Student had not mastered as many skills as they hoped by the end of the 1st grade school year, and were concerned that so many of Student's skills were at the basic level by the end of 2nd grade. (N.T. pp. 198, 199, 219, 220, 228; FF 67)

2012/2013 School Year

Parents' claims that Student made little or no educational progress during 1st grade are completely unsupportable. The 1st grade teacher provided extensive testimony concerning both her implementation of the SDI in Student's IEP, the classroom techniques and strategies she used that are developmentally appropriate for all children in 1st grade and specifically met Student's needs. (FF 48—54) In addition, the speech/language therapist and the OT, as well as the teacher, described their push-in classroom support and consultation to assure that Student's disability-related needs were met. (FF 32, 38, 55)

By the end of the school year, Student was performing at grade level in the regular education curriculum, when assessed by the same standards as non-disabled, same grade peers. (FF 56, 57) Full participation in, and adequately meeting grade level curriculum standards, is the "gold standard" for meaningful progress. There is, therefore, no basis for an award of compensatory education for the 1st grade school year.

2013/2014 School Year

There is no doubt that Student's academic difficulties increased in 2nd grade, and that academic progress was lower and slower than in 1st grade. (FF 60, 63, 67) Parents were understandably concerned to see Student struggling with academic tasks and needing additional supports, despite special education services. Perhaps also understandably, Parents came to believe that Student's increasing difficulties were attributable to insufficient and/or inappropriate instruction and special education services. Nevertheless, the notion that Student's difficulties were attributable to District actions or inactions should have been put to rest after receiving the independent neuropsychological evaluation report in March 2014.

First, despite Student's difficulties, the CHOP testing disclosed that Student had maintained average performance in basic reading and math skills on nationally normed assessments, and had achieved average scores in two subtests that assessed writing skills, which had not been tested in the District's initial evaluation. (FF 23; S-20 p. 12)

Second, the evaluator specifically noted that Student had made academic progress in many areas, as Parent readily acknowledged in her testimony at the due process hearing. (FF 20; N.T. pp. 105—109) Although Parent also noted that the assessment results did not reflect Student's daily struggles with classroom work (N.T. pp. 109), that aspect of Student's functioning can also be explained by the neuropsychological evaluation results. The evaluator pointed out that Student's combination of disabilities had already begun to adversely affect higher order thinking skills and was likely to continue to do so as academic work becomes more challenging, and makes greater demands on Student's areas of weakness, particularly executive functioning skills. (FF 21)

It would, no doubt, be far more satisfactory to parents if disabilities could be entirely remediated with special education services, and even better if that could be accomplished within a single IEP term. That, however, is neither realistic nor legally required. Neither, as Parents suggested, can there be an automatic determination that if goals are not met, or an eligible child's regular education progress is not commensurate with non-disabled peers at the end of every school year, there has been no meaningful progress.

First, it should be noted that the IDEA standard to which the District is held is not a guarantee of meaningful progress, as Parents appear to suggest, but of a reasonable opportunity for meaningful progress. The circumstances of this case suggest why that standard is necessary: Just as it is impossible to predict, with certainty, how a child will develop and change in any

respect from year to year, it is also impossible to predict how the effects of disabilities might change over time.

Here, as the CHOP report explained, and the District reevaluation report reflected in recommending a change in Student's primary disability category, Student's language disability was the primary interference in Student's academic progress in the early phases of acquiring basic academic skills, particularly reading, and was also affected by Student's ADHD/executive functioning issues. Currently, however, as Student moves more heavily into applying academic skills to acquire, synthesize and use information, all of which place greater demands on executive functioning skills, those weaknesses will have a greater effect, yet academic progress will continue to be affected Student's language disorder. (FF 21) Consequently, Student will not only continue to need services as recommended in the CHOP report, but will likely to continue to need more, and more intensive, not fewer or less intensive, services in order to make progress. Moreover, as the academic work gets harder and the production demands increase, Student's progress may become slower, or Student may require more curriculum modifications to continue participating effectively and successfully in the grade level regular education curriculum.

In short, Student's slower progress during 2nd grade does not support an inference that the District provided insufficient, inappropriate or inadequate special education services or regular education instruction. In many cases, as in this case, a decreased rate or amount of progress can mean that the effects of a disability are increasing in response to increased academic demands or otherwise. When that occurs, the District is certainly entitled to a period of time to determine that the issue signifies a permanent change in a child's needs in order to trigger a change in the type or level of IEP goals, SDI or other services. In addition, Parents need to keep in mind that

the District is required to provide appropriate, not ideal services. In other words, the District is not required to provide every service or type of instruction that Parents may desire for their child in order for the District to meet IDEA standards that require providing an eligible child with services reasonably calculated to result in meaningful educational benefit.

Here, the District met the IDEA FAPE standard for the 2013/2014 school year. The 2nd grade teacher implemented the SDI in Student's IEP and made reasonable and prompt adjustments to Student's instruction to meet Student's changing and developing needs, including increasing small group instruction. (FF 60, 63, 64,) Student also continued to receive push-in classroom support from the speech/language therapist, especially for writing, an academic area significantly affected by both language and executive functioning weaknesses. (FF 65) Although at the end of 2nd grade, Student was not at grade level with respect to as many academic skills as the end of 1st grade, Student was still proficient in many skills. (FF 67) There is, therefore, no basis for finding a denial of FAPE and awarding compensatory education for any part of the 2013/2014 school year.

Tuition Reimbursement

Legal Standards

In *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985), the United States Supreme Court established the principle that parents do not forfeit an eligible student's right to FAPE, to due process protections or to any other remedies provided by the federal statute and regulations by unilaterally changing the child's placement, although they certainly place themselves at financial risk if the due process procedures result in a determination that the school district offered FAPE or otherwise acted appropriately.

To determine whether parents are entitled to reimbursement from a school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon the *Burlington* decision and the later Supreme Court decision in *Florence County School District v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). (See also 34 C.F.R. §300.148(c), codifying the criteria for private school reimbursement). The first step is to determine whether the program and placement offered by the school district is appropriate for the child, and only if that issue is resolved against the School District are the second and third steps considered, *i.e.*, is the program proposed by the parents appropriate for the child, and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof. *In Re: The Educational Assignment of Cindy D.*, Special Education Decision No. 994 (SEA, PA June 27, 2001). A decision against the parents results in a denial or, in some instances, reduction of reimbursement, particularly with respect to equitable considerations.

Appropriateness of IEP Proposed for 2014/2015 School Year

The IEP proposed by the District in September 2014, is substantively the same as the May 2014 IEP. (FF 47) The May 2014 IEP includes the same speech/language goal as the earlier IEPs, and there is no reason to believe that the implementation of the goal would change. Consequently, for the reasons discussed above, that aspect of the IEP is appropriate, along with the SDI, which were appropriate and successful for Student in 1st and 2nd grades. In addition, the proposed IEP adds another speech/language goal and an executive functioning goal which target skills identified as needs in the CHOP neuropsychological evaluation and an unmet goal in the March 2014 discharge summary from CHOP speech/language services. (P-9 p. 1) These goals, therefore, are appropriate for Student.

Since the District offered an appropriate IEP for the 2014/2015 school year, there is no real need to discuss the appropriateness of the private placement, but it will be addressed briefly.

Private School

Although Parents are not required to identify and select a perfect placement when selecting a private school, it should, at least, on its face, meet an eligible child's identified needs that Parents contend a public placement has not adequately met. Here, however, that is not the case.

In general, Parents decided to withdraw Student from the public school and search for a private school placement because they foresaw a continuing battle with the District to provide the level of services they believe that Student needs in order to fully address Student's ADHD/executive functioning needs in order to assure that Student does not fail as school becomes more difficult. (N.T. pp. 275, 276) There is little, if anything, however, to suggest that the private school can meet Student's executive functioning needs as well as the District has in the past and could do in the future with the new IEP goal. The private school is focused on reading instruction, which was not expressed as Parents' primary concern, and even at that, the private school reading instruction does not appear to target comprehension, which the CHOP evaluation identified as an emerging need that is likely to intensify for Student. In addition, there is no coordination between speech/language services and Student's classroom instruction, which appears to be particularly beneficial, given Student's continuing language disability, and the exacerbating, complicating effects of Student's increasing executive functioning difficulties.

In light of the information available concerning how the private school addressed Student's disability-related needs, it is not an appropriate private placement for public funding for this Student.

CONCLUSION

Parent commented in testimony that Student's 2nd grade teacher described Student as a puzzle that the teacher was unable to solve consistently. (N.T. p. 276) That is, indeed, a good framework for understanding the FAPE issues in this case. As noted in the CHOP neuropsychological report, Student's profile is complicated by both a language disability and increasing executive functioning difficulties, and it is, unfortunately, likely that Student's disability-related needs will continue and possibly increase. The disconnect in this case between Parents and the District is the Parents' belief that the District either should have been able to find and put together all of the pieces of the puzzle that comprise Student's complex and developing needs by the time 2nd grade ended—or leave no stone unturned trying to do so. That, however, goes beyond the District's IDEA obligations.

Parent noted in testimony at the due process hearing that she believes that smaller class sizes available in the private school are better for Student in terms of making it easier to address organization and focus needs. It is also certainly understandable that obviously caring Parents want the best for their child, which they are certainly free to identify for themselves and obtain. Parents cannot, however, compel the District to provide what they believe to be the best possible educational situation for their child. The acronym for the District's obligation, FAPE, provides a short explanation for outcome of this matter: Student is entitled to an appropriate, not an ideal education, and to a free public education, not to a private education at public expense.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in the above-captioned matters are **DENIED**, and, therefore, the School District need take no action with respect to providing Student with an independent educational evaluation in any of the areas requested by Parents, or with respect to providing Student with compensatory education for any period in dispute, or with respect to reimbursing Parents for any costs associated with Student's parentally selected private school placement for the 2014/2015 school year.

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

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

June 24, 2015