

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

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

Dates of Hearing: 5/27/2015, 5/28/2015, 7/6/2015

CLOSED HEARING

ODR File No. 15980-14-15KE

Parties to the Hearing:

Parents
Parent[s]

Local Education Agency
South Western School District
225 Bowman Road
Hanover, PA 17331-4213

Date Record Closed:
Date of Decision:

Hearing Officer:

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July 30, 2015
August 14, 2015

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a high school-aged student in the South Western School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student's Parents filed a due process complaint against the District under the IDEA and the federal and state regulations implementing the statute.

The case proceeded to a due process hearing convening over three sessions, at which the parties presented evidence in support of their respective positions. The Parents sought to establish that the District failed to provide Student with an offer of a free, appropriate public education (FAPE) for the 2014-15 school year, and sought, after they rejected that program, tuition reimbursement for the Private School where Student was enrolled. The District maintained that the special education program that it offered was appropriate for Student, and that no remedy is warranted.

For the reasons set forth below, I find in favor of the District and will deny the Parents' claims.

ISSUES

1. Whether the program proposed by the District for Student for the 2014-15 school year was appropriate;
2. If the program proposed for the 2014-15 school year was not appropriate, are the Parents and Student entitled to reimbursement for private school tuition?

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. References will be made to the record as follows: Notes of Testimony (N.T.); Joint Exhibits (J-); Parent Exhibits (P-); School District Exhibits (S-); and Hearing Officer Exhibits (HO-). It should be noted that there is a gap between the last page of the transcript from the second hearing session and the first page of the transcript from the third hearing session, but all citations will be to the page numbers set forth in those transcripts.

² 20 U.S.C. §§ 1400-1482.

FINDINGS OF FACT

1. Student is a high school-aged student who is a resident of the District. Student is eligible for special education under the IDEA. (N.T. 32-33)
2. Student attends a private school (hereafter Private School) in a neighboring state where Student has attended since the 2012-13 school year. For the 2012-13 and 2013-14 school years, the District funded Student's placement at Private School pursuant to a settlement agreement. Student's Parents paid the tuition for the 2014-15 school year. (N.T. 33, 41, 80, 1318, 1350; J-22)

General Background

3. Student moved with the family to Pennsylvania from another state in 2007 when Student was in second grade. (N.T. 41)
4. When Student was in third grade in 2008, Student began treating with a private psychologist. (N.T. 117-18, 303-04, 315, 319)
5. Student has difficulty with attention and focus, particularly with sustained attention, and is easily distracted. Student also exhibits poor impulse control and hyperactivity, and has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD). (N.T. 53, 74, 326, 340-41, 352, 421, 422-23; J-6)
6. Student has been prescribed medication for ADHD over the years that helped to some degree with symptoms, but Student did not respond well to medication. (N.T. 334)
7. Student has significant deficits with working memory and cognitive flexibility. As a result, Student has difficulty retrieving previously learned information when Student learns new information; and in retaining new information in addition to previously learned information. Student requires continuous review, practice, and repetition, as well as controlled pace and amount of information presented to Student. (N. 248-52, 329-31, 333, 335-38, 340-42, 356, 420-21, 424-25, 459-60; J-6 p. 8)
8. Student can become nervous and experience anxiety, particularly when Student is concerned that others will view Student as different. (N.T. 57-58, 98)
9. Student has difficulty with expressive language, particularly in social situations, including articulation. (N.T. 44-46, 111, 247, 275, 433, 525, 527-28, 551)
10. The District programmed for Student's articulation needs until Student began seventh grade, at which time the team, including the Parents, agreed that this service should no longer be provided. (N.T. 110-11, 497-98)

Spring 2014 Evaluations and Assessments

11. The District conducted an evaluation of Student in April 2014 by a school psychologist with the local Intermediate Unit (IU), who issued a Neuropsychological Report (NR). (N.T. 42, 410; J-6)
12. Cognitive assessment (Wechsler Intelligence Scale for Children – Fourth Edition) for the NR revealed low average full scale IQ (81) and general ability index (84) scores, with some variability among the index scores attributed to Student’s language-based learning disability and attentional difficulties. (J-6)
13. Academic achievement (Woodcock Johnson Tests of Achievement – Third Edition) scores in the NR were all below expectations for Student’s age, which the neuropsychologist noted was consistent with previous evaluations. Student also demonstrated significantly underdeveloped speech/language, reading, spelling, and writing skills that impaired Student’s learning and language comprehension in general. (J-6)
14. Other assessments for the NR reflected difficulties with maintaining attention, organization, cognitive flexibility, storing and recalling information, and social perception. (J-6)
15. The IU school psychologist recommended that Student’s educational program focus on academic needs specifically related to vocational planning for post-secondary life, rather than on academic skills in the context of traditional instruction in basic subjects such as reading and spelling. Student’s IEP team discussed this recommendation and agreed that Student’s program should continue to address foundational skills in reading (including decoding), spelling, writing, and mathematics, rather than on vocational training. (N.T. 428, 431, 433, 1083-84, 1086-87, 1092, 1157-61)
16. The District conducted an occupational therapy evaluation in March 2014, reflecting below average performance on an assessment of visual motor and visual perceptual skills. Because Student was demonstrating the ability to function in the classroom, occupational therapy was not recommended. (J-3)
17. The District conducted a speech/language evaluation in March and May 2014. Student exhibited articulation errors (Goldman-Fristoe Test of Articulation 2) with some inconsistency. On the Clinical Evaluation of Language Fundamentals – Fifth Edition, Student demonstrated weaknesses on subtests measuring formulated sentences, recalling sentences, sentence assembly, and semantic relationships; index scores (receptive language, expressive language, language content, and language memory) were below average. The speech/language pathologist recommended speech/language support to address articulation, syntax, and semantic language. (J-4)
18. The District drafted a Reevaluation Report (RR) that included a summary of previous evaluation information, input from the Parents and Private School, observations by District representatives at Private School, and information from the NR, as well as the speech/language and occupational therapy evaluations and a normal audiological test.

The input from the Private School teachers reflected organization and attentional difficulties as well as weaknesses in reading comprehension and recall, reading fluency, spelling, written assignments, processing and retaining information, self-advocacy, and taking notes. Recommendations from Private School teachers included preferential seating, provision of notes, adaptation and modifications to assignments and tests, one-on-one or small group support, constant review and practice of old and new material, multisensory instruction, directions read aloud and repeated/rephrased with checks for understanding, prompts including visual triggers and mnemonic devices, directions for note taking, and constant positive reinforcement. (J-7)

19. Private School also provided results of Student's Stanford Achievement Test scores in the spring of 2014 for the RR. Student scored in the below average range in Total Reading and in the average range in Total Mathematics. Additionally, Student scored in the below average range in language, spelling, and social studies and in the average range in science and listening. (J-7)
20. Behavior checklists completed by Private School teachers for the RR indicated concerns for Student relating to learning problems, peer relations, hyperactivity/impulsivity, and inattention. (J-7)
21. The RR determined that Student was eligible for special education on the basis of a specific learning disability (basic reading, reading fluency, reading comprehension, and written expression), speech/language impairment, and other health impairment (based on ADHD). Recommendations to the IEP team were for speech/language therapy and specially designed instruction in all classes (with direct instruction reading, mathematics, and writing), with accommodations and adaptations to the curriculum, including small group instruction, use of manipulatives, prompts for refocusing, chunking of materials and assignments, assistive technology, repetition of directions, visual models, preferential seating, frequent breaks, and adaptations for assignments and assessments. (J-7)
22. The District assessed Student in mathematics concepts and applications, mathematics computation, reading comprehension, reading fluency, and written expression using Aimsweb and other measures in the spring of 2014 for the RR in order to obtain benchmarks. Student's reading comprehension performance was a relative strength, while reading fluency and written expression were relative weaknesses based on this testing. (N.T. 1205, 1211-13; J-7)
23. Student and the Parents completed transition surveys in April 2014. According to both Student and the Parents, mathematics was an academic strength. Student also indicated that Student had good computer skills; the Parents noted that Student was improving in self-advocacy skills and was more independent in many aspects of Student's life, including completing homework and using a laptop. (J-8 pp. 30-31)

Proposed Program for 2014-15

24. Student's IEP team met five times to develop the IEP for the 2014-15 school year. (N.T. 53, 1340-41; J-11)

25. The final proposed IEP summarized Student's present levels of academic achievement and functional performance with Private School input prior to and over the 2013-14 school year and information from the recent RR. Student's post-secondary transition interests and the Parents' concerns were also provided. A plan for addressing assistive technology needs was included in the IEP, and Student's education-related strengths and needs were noted. The identified needs were: utilize the test center for tests (with adaptations); be provided study guides; use of a calculator; explicit instruction for reading (decoding, comprehension, and fluency), written expression, and mathematics (calculation and problem solving); monitored understanding of directions; redirection and prompting for focus and attention; test modifications; exploration of post-secondary transition opportunities; self-advocacy in the classroom; speech/language therapy; assistive technology support; small group instruction; support and accommodations for memory, language processing, and executive functioning deficits; and adapted amount and pace of information and instruction. (J-8)
26. The final proposed IEP provided for transition programming. Annual goals with short term objectives addressed reading decoding, reading fluency, encoding, reading comprehension, written expression, mathematics computation, mathematics problem solving, speech/language therapy (including articulation/speech intelligibility), and transition. Numerous program modifications and items of specially designed instruction related to weaknesses in executive functioning, memory, written expression, language processing, reading decoding, fluency, and comprehension, speech/language; others addressed assistive technology, instructional and assessment accommodations, and communication. Related services were for guidance counseling, speech/language support, and assistive technology support. The IEP proposed supplemental learning support with participation with regular peers in physical education and non-academic content area settings. (J-8, J-10)
27. The District proposed the Wilson program five days per week for Student, taught by a teacher who is certified in that program, in addition to Read 180 to address reading comprehension, reading fluency, writing skills, and spelling needs. The District assessed Student to determine if Student was at a level appropriate for Read 180, and Student was. The Read 180 instruction was to be teacher-directed, providing whole group instruction, small group rotations, and independent practice, with no single activity lasting more than twenty minutes. The Reading 180 program would use high-interest materials and provide continuous review and repetition; and, accommodations were available to meet individual student needs. (N.T. 1095-98, 1120, 1153-56, 1163-68, 1171-72, 1174-79, 1198-1200, 1206-07, 1215-19, 1226)
28. The District proposed a spatial temporal mathematics program three days out of every six-day cycle for the first semester. That program is computer-based, with limited emphasis on language, and focuses on mathematics computation and foundational skills, including basic operations (addition, subtraction, multiplication, division), geometry, probability and statistics, and measurement, with topics based on individual performance on pretesting. A paraeducator who was a certified teacher would monitor Student in the spatial temporal mathematics program and address gaps in skills. Student would have a

pre-algebra class for the second semester. (N.T. 1101-02, 1107-08, 1123, 1243-47, 1254-56, 1333-35, 1346, 1365)

29. The pre-algebra class was designed for students who need to master skills necessary for an algebra I class. The pre-algebra class was combined with the spatial mathematics program so that students engaged in a variety of large and small group activities during the block period in addition to independent work. This class provided continuous review and repetition of skills and was taught using a multisensory approach. The pre-algebra class was taught by a special education teacher assisted by a classroom paraprofessional with approximately thirteen students. Students' mathematics skill development was monitored through Aimsweb and performance on the spatial mathematics assessments. (NT. 1124, 1237-40, 1242-47, 1252, 1253-60, 1262-63, 1266-68, 1346)
30. The Parents do not disagree with the content of the proposed IEP, but have concerns with the schedule that was proposed. They also do not believe that Student would be successful with block scheduling of 79-minute periods. (N.T. 73-74, 94-95)
31. Student's proposed schedule for the 2014-15 school year was based on 79-minute class periods, except where noted, on a six-day cycle, as follows:

	Fall	Spring
1 st Period	Spatial Temporal Math (35 minutes) and Typing (35 minutes) (every other day) Physical Education (every other day)	Pre-Algebra
2 nd Period	English 9 and Read 180	
3 rd Period	American Cultures 9	General Science
4 th Period	Wilson Reading and Organizational Skills (if needed)	
5 th Period (40 minutes)	Intervention/Remediation (Day 1 and 4) (All Students) Speech (2 days/cycle) Assistive Technology (2 days/cycle) Clubs (Day 5) (All Students) Progress Monitoring (Day 6) (All Students)	

(N.T. 1104, 1284-96, 1300, 1335-39; J-11 p. 2)

32. Student's mother toured the high school in July 2014. Student was not present for this tour. (N.T. 144-45, 1273-74)
33. The high school principal met with Student's mother, the learning support teacher, and the District's school psychologist outside of the IEP team to address the Parents' concerns about Student returning to the District. There were six areas raised by the Parents: Student's schedule including class sizes; reading; mathematics; assistive technology; speech therapy; and certification of the Wilson instructor. The participants also discussed the size of the high school and accommodations that could be provided to Student such as leaving class early or late to avoid the crowded hallway and helping Student navigate the cafeteria or have lunch in a different location. (N.T. 1281-85, 1288-95, 1328; J-11 pp. 1-4)
34. Student's classes other than physical education would have between six and nine students with two teachers or a teacher and a classroom aide in most content area classes; physical education class would have twenty students. (N.T. 1285, 1290-91; J-11 p. 3)
35. The District had two teachers who were certified in Wilson reading at Student's level who could provide that instruction to Student for the 2014-15 school year. (N.T. 1173, 1328, 1331)
36. Student would work on organizational skills for fifteen minutes each day. (N.T. 68, 281-82)
37. The District implements a transition program for students who are entering the high school from the middle school. This program begins with a day of orientation before classes start and includes a tour of the building. Upperclassmen meet with groups of freshmen and are available to assist those students during the day once the school year begins. (N.T. 1274-77)
38. The District monitors student skills and progress in mathematics concepts and applications, mathematics computation, reading comprehension, reading fluency, and written expression using Aimsweb. (N.T. 1204, 1261)
39. The Parents did not approve the final proposed IEP and Notice of Recommended Educational Placement (NOREP) and requested District funding of tuition for Private School for the 2014-15 school year. (J-10, J-20 pp.15-17)

Private School Program 2014-15

40. Private School serves students with language-based learning differences using a multi-sensory approach. All students have laptop computers. The Private School curriculum is digitized and textbooks are available in audio format. (N.T. 169-70)
41. Student was provided with Wilson Reading programming at the Private School during the 2012-13 and 2013-14 school years. (N.T. 70)
42. Student has friends at Private School. (N.T. 82, 84)

43. In addition to typical speech/language therapy addressing articulation and receptive and expressive language skills, Student worked with a neurolinguist, who is also a speech/language pathologist, at Private School to address articulation twice each week. (N.T. 70, 226, 231; J-17)
44. Students do not have a physical education class at Private School but instead participate in sports with the rest of the student body after the school day ends. (N.T. 95-96)
45. Student did not have an IEP at Private School, or any individualized goals or objectives. Private School does not provide progress monitoring on individual special education goals as public schools do, but does use report cards. Teachers and therapists also provide information on Student's skills and progress. (N.T. 105-06, 139-40, 163, 213-21; J-12, J-13, J-17; P-2)
46. Private School does develop a program of study for each student based on his or her learning profile, including strengths and needs. This student profile is a "snapshot" of the student that is not a formal document and is not ordinarily shared with parents. (N.T. 163-64, 169, 202-03, 205-06)
47. Class sizes at Private School range from 1 to 10 students to one teacher. Students are provided more personalized instruction in these small class settings than they would in a larger class. Review and repetition are part of each class; additionally, the curriculum can be modified, and accommodations and modifications can be made for students. (N.T. 170, 181, 183-84, 186, 260-61)
48. Student had eight classes at Private School that were approximately 43 minute periods: English (one period for literature and one period for composition); reading decoding (including components of Wilson, Orton-Gillingham, and other programs provided on a 1:1 basis); world history; biology; pre-algebra (provided on a 1:1 basis); language literacy (receptive and expressive language including articulation); and photography as an elective. (N.T. 171-73, 177-80, 242-44, 246-47, 254, 256)
49. Private School convenes frequent team meetings to share and discuss successful strategies and approaches for students. (N.T. 168-69, 194-95)
50. Student required prompts to remain on task, particularly with mathematics and written assignments, at Private School. Accommodations provided to Student at Private School include tests read to Student individually as well as modified tests and assignments with extended time. (N.T. 178-80, 224-25, 229, 263, 273-74)
51. The District did develop and propose a new IEP for the 2015-16 school year, although the issue of whether it was appropriate was not made an issue in the hearing. (N.T. 1347, 1349, 1366; S-1)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be credible, testifying to the best of their understanding and recollection; specific testimony is addressed further below as necessary. It should also be noted that the Parents are clearly concerned and devoted parents who understandably want what they feel is best for Student; and, the District personnel all presented as dedicated and competent professionals in their respective fields.

In reviewing the record, the testimony of every witness and the content of each admitted

exhibit, were thoroughly considered in issuing this decision,³ as were the parties' Closing Arguments.

Relevant IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Local education agencies including school districts meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Most critically, the IEP must be appropriately responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at

³ There were, however, several objections to evidence (N.T. 1376-79) that are addressed as follows. Exhibits S-5 and S-6 are hereby excluded and not admitted, on the basis that those documents are hearsay, were referenced only minimally during the hearing, and are not materially relevant to the specific issues presented; regardless of whether or not Student might be considered to be a “treatment resistor,” the District did nonetheless offer to continue providing Student with the Wilson Reading Program. The Parents’ objection to them is, thus, sustained. The Parents’ objection to School District Exhibit 1 is overruled on the basis that this document serves to provide part of the natural history of this case, and it is hereby admitted. Exhibits P-5, S-2, and S-3 were removed from the record as they were not referenced and neither party moved for their admission. S-5 and S-6 will be retained as part of the official record for purposes of appeal, although they were not reviewed or considered in issuing this decision.

some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

An LEA “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity.’” *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995) (quoting *Rowley*, *supra*, at 201); *see also Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). This legal standard at times may contrast sharply with the wishes of caring parents who understandably want what is best for their child.

Parents who believe that a public school is not providing FAPE may unilaterally remove their child from that school and place him or her in a private school may seek tuition reimbursement for the cost of the alternate placement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c); *Mary Courtney T.*, 575 F.3d at 242. Tuition reimbursement is an available remedy for parents to receive the costs associated with a child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). Consideration of equitable principles is also relevant in deciding whether reimbursement for tuition is warranted. *Carter*, *supra*; *see also. See Forest Grove School District v. T.A.*, 557 U.S. 230 (2009) (explaining that tuition reimbursement award may be reduced where equities warrant, such as where parents failed to provide notice).

The Parents’ Claims

The first issue is whether the program proposed by the District was appropriate for Student. Careful review of the record compels the conclusion that it was.

The District conducted comprehensive assessments of Student in the spring of 2014 in preparation for its program offer for Student's return to the public school that fall. The various evaluations were compiled into an RR that considered and identified all of Student's educational strengths and weaknesses, including substantial input from Private School. The RR contained a significant number of recommendations for Student's program, including the explicit suggestions of the Private School teachers, based on Student's unique needs that encompassed academic (including transition), social, and emotional functioning.

The IEP that was thereafter proposed is comprehensive, systematically addressing each of the needs identified in that document and the RR (academic, social, and emotional) through annual goals and short term objectives, clearly stated and individualized program modifications and items of specially designed instruction, and related services. The section of the specially designed instruction in particular reflected contributions of the entire IEP team, with careful thought given to how those important elements of the program would be implemented. (N.T. 1219-24, 1228-29; J-8 pp. 47-50) Each of the recommendations from the RR, including those of the Private School teachers, are components in the IEP. Additionally, the IEP proposed supplemental learning support in all areas of need, but with typically developing peers in non-academic classes, providing for Student to participate in the regular education setting as appropriate.⁴ In short, there is nothing in the record to support a conclusion that the District neglected any facet of Student's educational program in the proposed IEP.

The main contention throughout the hearing was the Parents' concerns with the size of the high school and its use of block scheduling. The record establishes, however, that block scheduling does not mean the students endure 79 minutes of lecture or any other single activity;

⁴ It merits reiteration that the Parents did not find fault with the content of the IEP. (N.T. 73-74, 94-95)

rather, each teacher has control over scheduling within the block to ensure that the students remain actively engaged. (N.T. 1104, 1225, 1342) Both the reading and mathematics classes, for example, provide a variety of activities, with large and small group and independent work during the class period with individualization as necessary and opportunities for continuous review and practice. Even the Parents' expert agreed that block scheduling might be appropriate for Student if it was individualized for Student. (N.T. 361-62) With respect to the size of the high school, the District provides a plan of transition for freshmen that includes a tour to help them become familiar with the building; upperclassmen are also available to meet with younger students after the school year gets underway. Student's IEP included, and the team discussed, several approaches to assist Student in navigating the building including the common accommodation of allowing Student to leave classes early or arrive late. Moreover, Student's class sizes at the District were comparable to those at Private School. Taken as a whole, the District appropriately responded to these concerns of the Parents.

In their Closing Argument, the Parents focus on two major aspects of the proposed program: mathematics and reading. With respect to mathematics, they contend that the failure to propose a specific class of direct mathematics instruction for the fall semester, and instead rely on a part-time, computer based program, is inappropriate because Student has significant weaknesses in mathematics skills that require continual exposure. They also argue that Student is not successful when required to use technology such as computer-based programs. The evidence, however, does not support these claims.

First, the District recognized Student's need to continue to develop basic mathematics computation skills, as well as the parental concern for mathematics instruction for the entire school year. In response, the District proposed a computer-based mathematics program for the

fall semester of the 2014-15 school year that provided ongoing assessment monitored by a teacher who would provide instruction as needed to fill gaps in those skills. This program was also part of the algebra I class scheduled for the spring semester, providing for continuity as Student would continue to improve on those foundational skills. Furthermore, by all accounts, and even without some of these foundational skills, mathematics is reportedly a relative strength for Student. Indeed, the Private School learning specialist suggested that daily mathematics instruction would be in Student's "best interest" (N.T. 188), not that Student had such a need for the entire school year; and she also related her response to mathematics instruction for only one semester (N.T. 188-89), contrary to the actual program and schedule proposed. In addition, by the spring of 2014, the Parents and Student had indicated that Student was becoming much more independent including in using a laptop computer; thus, there is no reason to believe that Student would be resistant to this computer-based mathematics program or be unsuccessful on that basis. Lastly, while the Parents point to testimony by a District witness that it would have offered year-long mathematics class if one were available (Parents' Closing at 8 (citing N.T. 1372-73)), such a statement reflected the District's willingness to collaborate and address the Parents' concerns, not that its personnel believed that Student needed a year-long mathematics course. I therefore reject the contention that the District was attempting to merely fit Student into its program without addressing mathematics weaknesses appropriately.

Second, with respect to reading, the Parents contend that the block scheduling does not provide sufficient time for the Read 180 program to be implemented as designed; they also reiterate Student's difficulties with technology as well as difficulty working independently. These contentions have been addressed above, with the exception of the District's provision of the Read 180 program in a 79-minute block. The District presented persuasive testimony by a

qualified reading specialist that it would be able to fully implement all components of the Read 180 program within the block periods. (N.T. 1186-87) This program, together with English 9, would address Student's weaknesses in reading comprehension, reading fluency, writing skills, and spelling; and, Student would be provided Wilson Reading by a certified instructor. Thus, here again, I do not conclude that the District merely attempted to place Student into a program that it had available without determining that it was appropriate for Student. With respect to the argument that the District did not administer a specific assessment before recommending Read 180, that argument is moot given the results;⁵ and if Student scored at a level that suggested Read 180 was not appropriate, there is no reason to believe the District would have failed to respond with suggested revision to the IEP.

For all of these reasons, this hearing officer concludes that the District's IEP as proposed for the 2014-15 school year was appropriate for Student at the time it was developed. While the Parents, perhaps understandably, believe that Private School is better for Student, and they are entitled to maintain Student's placement there, they may not do so at public expense if the District has proposed an appropriate program. There is, therefore, no need to consider the remaining prongs of the tuition reimbursement analysis.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, I conclude that the District's program proposed for the 2014-15 school year was appropriate, and that no remedy

⁵ I did not consider the testimony related to other students' reading scores on that measure as that evidence was not relevant. (N.T. 1207-10)

is due to the Parents and Student.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Parents' claims are denied, and the District is required to take no action.

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

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: August 14, 2015