

*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: I.B.  
Date of Birth: [redacted]  
CLOSED HEARING  
ODR File No. 17847-15-16 KE

Parties to the Hearing:

Parents  
Parent[s]

Local Education Agency  
Upper Dublin School District  
1580 Fort Washington Avenue  
Maple Glen, PA 19002

Dates of Hearing:

Date of Decision:

Hearing Officer:

Representative:

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October 6, 2016; November 29, 2016;  
December 14, 2016; December 16,  
2016; December 20, 2016

January 9, 2017

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

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student)<sup>1</sup> is a late middle school-aged student in the Upper Dublin School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> The parties recognize that Student demonstrates needs in, among others, the area of reading comprehension, but they differ on their perspectives on how to address those weaknesses as well as Student's categories of IDEA eligibility.

To resolve their dispute, Student's Parents filed a due process complaint against the District asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,<sup>3</sup> as well as the federal and state regulations implementing those statutes, from the start of the 2014-15 school year and continuing through the present. The case proceeded to a due process hearing convening over five sessions,<sup>4</sup> with significant rescheduling required to accommodate various circumstances for both parties.<sup>5</sup> The Parents sought to establish that the District failed to provide Student with FAPE, that Student required a specific type of reading program, and that Student is entitled to compensatory education; they also sought reimbursement for certain expenses they incurred. The District

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<sup>1</sup> 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.

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are set forth in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

<sup>4</sup> The hearing officer acknowledges with sincere appreciation the cooperation of counsel and the parties in participating in the electronic exhibit pilot program. References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. S-97, to which strenuous objection was made by the Parents, is hereby admitted as providing general background information, although its persuasive nature is minimal given that the source of the document is the program's publisher. Citations to duplicative exhibits may be to one or the other or both. References to Parents in the plural will be made where it appears that one or the other was acting on behalf of both Parents.

<sup>5</sup> The first and last sessions together did not comprise a full hearing day, but adding a fifth hearing session was a consequence of scheduling accommodations. Efforts to promote efficiency (HO-3) were balanced with the need to ensure the parties had an adequate opportunity to present evidence; and, the decision due date under the standard timelines was extended by requests by both parties for good cause shown (HO-1, HO-2).

maintained that its special education program, as offered and implemented, was appropriate for Student, and that no remedy was warranted.

For the reasons set forth below, the Parents' claims will be granted in part.

### **ISSUES**

1. Whether the District appropriately addressed Student's needs in reading comprehension from the start of the 2014-15 school year through the date of this decision;
2. If the District did not appropriately address Student's needs in reading comprehension, should the District be ordered to provide an intensive reading program;
3. If the District did not appropriately address Student's needs in reading comprehension, should the District be ordered to provide Student with compensatory education; and
4. If the District did not appropriately address Student's needs in reading comprehension, should the District be ordered to reimburse the Parents for expenses incurred with providing Student with a private reading program?

### **FINDINGS OF FACT**

1. Student is a late middle school-aged Student who resides in the District. Student has a disability and is eligible for special education under the IDEA, currently identified under the categories of Other Health Impairment and Speech/Language Impairment. (N.T. 35-36; P-4 p. 25; S-85 p. 25)
2. Student was adopted at an early age from a foreign country. The Parents were made aware that Student had developmental, including speech/language, delays at the time of the adoption, and also were advised of certain medical conditions prior to two years of age. Student was provided with early intervention services for those delays following the adoption. (N.T. 188-90; P-11 pp. 1-2)
3. Student was evaluated by a school district in a neighboring state in 2008, and was thereafter provided special education services addressing reading (fluency and comprehension), writing, and mathematics skills, as well as speech/language needs. Student was also provided Title I reading services. (P-11 pp. 2-3 P-12, P-13)

District Enrollment Spring 2011 through end of 2012-13 School Year

4. Student was first enrolled in the District in January 2011 during Student's second grade year. (N.T. 192-93, 279)
5. The District conducted an evaluation<sup>6</sup> in the spring of 2011 and issued a Reevaluation Report (RR). In addition to reviewing Student's medical and educational history and records, the District conducted cognitive and achievement assessments. (P-11)
  - a. On the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), Student obtained a Full Scale IQ score of 81 (low average range) with Index scores ranging from 79 (Perceptual Reasoning) to 91 (Processing Speed). The Comprehensive Test of Nonverbal Intelligence (C-TONI) revealed a Nonverbal IQ of 81 (below average range), reflecting consistency in the cognitive testing. (P-11 pp. 7-8)
  - b. The Wide Range Assessment of Memory and Learning revealed extremely low range scores on the General Memory Index, as well as when presented with visual material. Student demonstrated better ability to remember material presented verbally rather than visually. (P-11 pp. 8-9)
  - c. On the Wechsler Individual Achievement Test – Third Edition (WIAT-III), Student obtained average scores on the reading, writing, and mathematics composites with some variability on the mathematics subtests. (P-11 pp. 9-10)
6. Speech/language assessment for the RR revealed weaknesses in a number of areas, with receptive language skills better developed than expressive language skills. Overall, Student's language scores were below average. Student's memory weaknesses impacted Student's performance on those measures. (P-11 pp. 10-12)
7. Social/Emotional/Behavioral Assessment through rating scales (Behavior Assessment System for Children – Second Edition (BASC-2)) revealed more concerns at home than at school, with the Parents reporting clinically significant concerns in the area of withdrawal and a few at-risk concerns. Both parent and teacher scales reflected poor expressive and receptive communication in addition to difficulty seeking and finding information independently. (P-11 p. 12)
8. The RR concluded that Student was eligible for special education on the basis of Other Health Impairment (based on cognitive and memory profiles) and a Speech/Language Impairment, but not a Specific Learning Disability. (P-11 pp. 12-14)
9. Historically upon enrollment in the District, Student was provided with Title I reading services in addition to special education through an Individualized Education Program (IEP). On a Qualitative Reading Inventory (QRI) in the spring of 2013 (fourth grade), Student's estimated reading levels were instructional at the second level and frustrational

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<sup>6</sup> Although this was the first evaluation by the District, the resulting document is entitled Reevaluation Report. (P-11)

at the third level; no independent reading level was established. Student exhibited weak reading comprehension skills on the QRI. The Parents expressed concern with the District's response to Student's reading comprehension needs following that QRI, and the District sought permission to reevaluate Student. Student's IEP was also revised to add a goal for reading comprehension (answering comprehension questions based on text at Student's instructional level). The Parents approved the Notice of Recommended Educational Placement (NOREP) accompanying the May 2013 revised IEP. (P-10 pp. 23-25, P-18, P-19; S-8, S-11, S-12, S-15, S-17, S-19, S-20, S-22 p. 1)

### 2013-14 School Year

10. The Parents consented to a re-evaluation in May 2013. The resulting RR was issued in early September 2013 (2013 RR). (P-10; S-15, S-22)
11. A speech/language evaluation in the spring of 2013 and included in the 2013 RR revealed significant deficits with short-term auditory memory without visual supports, and continued weakness in word retrieval. Some speech/language skills had declined since 2011. (P-10 pp. 19-21; S-22 pp. 18-20)
12. The 2013 RR provided parental input that included their concerns with Student's reading comprehension, writing, and memorization skills. Teacher input similarly reflected Student's difficulties with reading comprehension, written expression, and retention of concepts and materials, in addition to mathematics problem-solving. (S-22 pp. 2-5)
13. The District again conducted additional cognitive and achievement assessments for the 2013 RR.
  - a. On the WISC-IV, Student obtained a Full Scale IQ score of 82 (borderline range) with Index scores ranging from 74 (Working Memory) to 89 (Verbal Comprehension). Due to the significant variability, a low average range General Ability Index score was obtained (88) and was considered to be a better estimate of Student's general intelligence. (S-22 pp. 7-8)
  - b. A new administration of the WIAT-III produced more variability among subtests and composites. With additional measures of Student's abilities in the areas of language processing and reading, Student's academic achievement results reflected weaknesses compared to peers in the areas of reading comprehension, sentence composition, phonological awareness, phonological memory, and oral reading ability. (S-22 pp. 8-11)
14. Social/emotional/behavioral assessment (BASC-2) rating scales for the 2013 RR reflected parental concerns in the clinically significant range for anxiety and withdrawal. Parents and teachers reported at-risk concerns in several areas, with both rating scales indicating difficulty with functional communication (both receptive and expressive communication skills). (S-22 pp. 11-12)

15. The 2013 RR maintained the same categories of eligibility, Other Health Impairment (cognitive profile and memory deficits) and Speech/Language Impairment. The Parents questioned whether Student should also be considered eligible on the basis of a Specific Learning Disability. (S-22 pp. 13-17)
16. Meetings to revise Student's IEP convened in September 2013. Needs identified at that time were mathematics computation, basic reading, formal writing, word retrieval, and short term auditory memory skills. Annual goals addressed reading comprehension (maintaining the goal from May 2013 with the addition of a baseline (60%); written expression (new goal); mathematics computation; and speech/language (revised from May 2013). Program modifications/specially designed instruction were also included, with a proposed program of supplemental learning support for reading and language arts instruction in addition to speech/language support. The Parents approved the accompanying NOREP. (S-24, S-25, S-26, S-27)
17. Student's IEP team convened several times in the spring of 2014. In May 2014, the District proposed Extended School Year (ESY) services for language arts and mathematics instruction in addition to speech/language services. (S-33, S-34, S-35, S-37, S-38, S-39, S-40, S-41)

#### Independent Educational Evaluation (IEE) Fall 2013

18. The Parents arranged for an Independent Educational Evaluation (IEE) in the fall of 2013 during Student's fifth grade year. They obtained and shared the report with the District once received in the spring of 2014. (N.T. 213-14, 286-87, 292, 294; P-9; S-31)
19. The reported main concern of the Parents for the IEE was reading comprehension. At the time, Student was receiving, *inter alia*, Title I reading instruction daily, in addition to visualizing and verbalizing strategies provided by the speech/language therapist. (P-9 pp. 1, 6-7; S-31 pp. 1, 6-7)
20. In addition to a classroom observation, the independent evaluator conducted a number of assessments of cognitive, achievement, neuropsychological, social/emotional/behavioral, and related functioning. (P-9; S-31)
  - a. Results of cognitive assessment (Woodcock-Johnson Tests of Cognitive Abilities – Third Edition) revealed a General Intellectual Ability in the low average range (85), with variability among subtest scores reflecting significant difficulties with cognitive efficiency, processing speed, and long-term retrieval, particularly as relating to language development. (P-9 pp. 10-12; S-31 pp. 10-12)
  - b. Academic achievement was measured using the Woodcock-Johnson Tests of Achievement – Third Edition, revealing weaknesses in the areas of reading comprehension and vocabulary; some written expression skills; and mathematics problem solving. A new administration of a QRI suggested Student's instructional reading level at a third to fourth level with frustration at the fourth level; no independent reading level was obtained. (P-9 pp. 35-40; S-31 pp. 35-40)

- c. With respect to memory, Student exhibited weaknesses with visual and verbal memory as well as with working memory. (P-9 pp. 21-27; S-31 pp. 21-27)
  - d. Assessment of Student's language abilities and functioning was adversely impacted by Student's memory and verbal retrieval and organizational skills. (P-9 pp. 18-21; S-31 pp. 18-21)
  - e. On assessment of attention, Student demonstrated some difficulty with sustained attention, with lower performance on visual attention tasks compared with auditory attention tasks. Executive functioning measures revealed weaknesses with planning and organization. (P-9 pp. 15-18, 27-32; S-31 pp. 15-18, 27-32)
21. Using criteria in the Diagnostic and Statistical Manual of Mental Disorders, the independent evaluator concluded that Student exhibited disorders in reading comprehension and vocabulary, written language, mathematics, and receptive/expressive language; she also identified a Learning Disorder Not Otherwise Specified. P-9 p. 47; S-31 p. 47)
22. The independent evaluator made a number of recommendations for Student's educational program, specifically regarding reading, writing, and mathematics instruction. With respect to reading, the evaluator recommended direct instruction in reading comprehension and vocabulary, with visualizing and verbalizing strategies in addition to other visual supports. (P-9 pp. 47-52; S-31 pp. 47-52)

### Read 180

23. The Read 180 program is a research-based program that was developed for struggling readers who are two or more years below grade level. This multisensory program provides direct, systematic instruction focused on all aspects of reading: comprehension, writing, and critical thinking skills. Students in the Read 180 Program are expected to improve their Lexile scores by 75-100 points in a school year. (N.T. 700, 738, 905, 991; P-42; S-96 p. 1, S-97 pp. 5, 11, 19, 33, 55)
24. The District implements the Read 180 program at the middle school. Instruction is provided daily over approximately 85-90 minutes in a double period class. The program is comprised of whole group instruction on reading comprehension, grammar, vocabulary, and writing skills. Students then are broken into group activities based on individual needs, with each group participating in three rotations: small group (or individual) instruction, individual work on a computer targeting specific skills, and independent reading. Visuals are used as one component of Read 180. (N.T. 658-60, 669-71, 676, 685, 742, 874, 967, 970-71)
25. The District determines each student's reading level, or Lexile, based on a Scholastic Reading Inventory (SRI), an assessment tool that is given four times during the school year. (N.T. 659-60)

## 2014-15 School Year

26. Student had Read 180 instruction in the learning support classroom during the 2014-15 school year. There were approximately 8 students in the class. (N.T. 661-62)
27. Student's performance with the Read 180 program and with IEP reading goals was inconsistent during 2014-15. (N.T. 694; P-23 pp. 1-7; S-44)
28. During the 2014-15 school year, Student was in three co-taught classes for science, social studies, and mathematics, two specials, and an advisory period. One of Student's special periods two days a week was a reading strategies class taught by a reading specialist. (N.T. 677-78)
29. There are visualization components used in the reading strategies class, which provided instruction in reading passages for understanding, including highlighting and identifying key words. (N.T. 868, 879)
30. Student's IEP team met in early October 2014 to review and revise the IEP. A new IEP was developed at that time. (S-48, S-51, S-52)
31. The October 2014 IEP provided a summary of Student's present levels of academic achievement and functional performance. With respect to reading, Student's then-current SRI Lexile level (639 – below basic range) and Pennsylvania System of State Assessment (PSSA) score (below basic) were reported. Student's progress on the IEP goal for reading comprehension at a fourth grade level was also reported (answering multiple choice and open-ended questions). Input from the speech/language pathologist reflected use of visualizing and verbalizing strategies for listening comprehension (structure words) and with prompting. Needs were identified for reading and language comprehension, mathematics computation and problem solving, and formal writing skills. (S-52 pp. 8-11)
32. The October 2014 IEP contained annual goals in reading comprehension (answering questions regarding text at a fifth grade level with 80% accuracy, with a focus on retelling and open-ended questions); written expression; mathematics problem solving; and speech/language (summarizing and retelling of instructional level paragraphs, with details, with support). Program modifications/specially designed instruction included modified reading material in content areas; wait time in responding to questions; modified and adapted assignments and tests; visual checklists; prompts for word retrieval strategies including imaging; and graphic organizers and visuals for writing tasks. The proposed program was for supplemental learning support for reading and language arts, with speech/language therapy twice per week for thirty minutes. (S-52)
33. The Parents did not approve the NOREP accompanying the October 2014 IEP because information from the IEE was not included. Specifically, the Parents objected to the omission of the IEE results that suggested Student's cognitive ability was not as limited as depicted by the District's RR. (S-55)



34. The Parents and District agreed to revise the October 2014 IEP to include results from the IEE, and the Parents approved the NOREP accompanying that revised IEP. (S-56, S-57, S-58, S-59)
35. The Parents obtained a communication evaluation in November 2014 and shared it with the District upon its receipt. They also arranged for the evaluator to attend an IEP meeting in the spring of 2015. (N.T. 217-19, 237, 445, 464; P-8, P-25 p. 3; S-60)
36. The communication evaluation assessed Student's receptive and expressive language skills, including pragmatic language, through a number of instruments. The results of the evaluation indicated that Student had a moderate to severe delay in expressive and receptive language skills with a related mild pragmatic language delay. Student's skill deficits were more pronounced with more complex language including imaging skills, particularly when visuals were not provided as a support, and reflected difficulty with making inferences. The speech/language pathologist who conducted the evaluation made a number of recommendations for Student's educational program, including continued speech/language therapy, an imaging assessment, and continued reading interventions. Specific strategies that were suggested included visual support, simplification of tasks, instruction in developing imaging skills (such as the Lindamood-Bell Visualizing and Verbalizing Program), and extended time for processing language. (P-8; S-60)
37. In April and May 2015, Student's IEP team met again to review the IEP. Present levels were updated to include, among other things, SRI Lexile scores and results of reading comprehension drills reflecting continued difficulty with making inferences, sequences, comparing and contrasting, and problem solving. Student's progress on the reading comprehension goals was reported to be inconsistent. A summary of the communication evaluation was added, and the District speech/language therapist reported on Student's progress on those goals. New Parent input was also included. Needs were identified for improved speech/language skills (identifying main ideas and answering "how" and "why" questions), reading comprehension, mathematics application, and written expression skills. (S-64, S-65 pp. 8-14, S-66)
38. Student's reading comprehension goal was revised to add an expectation for identifying the evidence in the text to support responses to questions; a new vocabulary goal was also included. The speech/language goal was updated and a new goal added for answering "how" and "why" questions with visual support. Minor revisions were made to the specially designed instruction section, and speech/language therapy was increased to 45 minute sessions. Student was determined to be eligible for ESY services to address reading comprehension, mathematics problem solving, and speech/language. Student's program remained supplemental learning support for reading and language arts together with speech/language as a related service. (S-65 pp. 20-34)
39. Results of the Group Reading Assessment and Diagnostic Evaluation (GRADE) from the spring of 2015 reflected the majority of subtest scores were in the average range, with a weakness in listening comprehension. Student's overall score was slightly below the national mean but within a range of  $\pm 1$  standard deviation of the mean, consistent with previous administrations of the GRADE to Student. (S-69)

40. Student's Lexile scores on the SRI during the 2014-15 school year were as follows:

<b>Date</b>	<b>Lexile Score</b>	<b>Proficiency Range for Grade Level (End of Year)</b>
9/18/14	639	
11/18/14	743	
2/4/15	738	
6/12/15	786	925-1070

(S-43)

41. The District proposed that Student be provided Read 180 instruction during ESY programming in 2015. (N.T. 312-13, 418, 706-07)
42. The Parents arranged for Student to be provided with a private school program at their expense to address reading, writing, and mathematics skills during the summer of 2015 rather than the District's ESY program. The reading program incorporated techniques from the Visualizing and Verbalizing Program such as structure words. However, the private school program is not affiliated with Lindamood-Bell. (N.T. 232-34, 306, 1066-67; P-6; S-72)

#### 2015-16 School Year

43. Student had Read 180 instruction in the learning support classroom during the 2015-16 school year. There were 6 or 7 students in the class. From the beginning of the school year, the Parents expressed concerns with Read 180. (N.T. 866-67, 874-75)
44. After students in the Read 180 class listened to text read aloud and answered comprehension questions about the text as a group, Student did not demonstrate the ability to answer those same questions independently. (N.T. 550-51, 909-10)
45. On an SRI administration as Student began the seventh grade year, Student achieved a Lexile score of 731. (S-75)
46. Student's IEP team met in October 2015 at the request of the Parents. The purpose of the meeting was to review their request for the Visualizing and Verbalizing Program. A new goal was added to the IEP for Student to respond correctly to reading comprehension probes. Student's mathematics goal was also revised at that time. (N.T. 368-69, 394; S-77, S-78, S-95 pp. 8, 12, 20)
47. The IEP was revised again in November 2015 to update the reading comprehension goal to add baselines. (S-95 pp. 8, 19, 21)
48. During the 2015-16 school year, Student was in co-taught science and social studies a regular education mathematics class with support, two specials, and an advisory period. One of Student's special periods four days a week was the reading strategies class taught by a reading specialist. (N.T. 875-79)

49. During the 2015-16 school year, Student had speech/language therapy twice each week in a very small group with one other student. The speech/language therapist also consulted with the teacher. (N.T. 569-70, 645-46)
50. The learning support teacher for the 2015-16 school year provided support for Student when Student experienced difficulty with reading and other tasks. She also provided support for content area classes where Student was expected to read the grade level materials as well as with mathematics. (N.T. 881-82, 887-88, 959-60)
51. Student's IEP was revised again in January and February 2016. The team agreed to conduct another QRI and reviewed it once complete; and the Parents reiterated their belief that Student needed a Visualizing and Verbalizing program. Student's reading comprehension goal was raised to a level 5.6, and eligibility for ESY services was also confirmed to address reading comprehension and speech/language services. (S-95 pp. 9, 12, 19, 31-34)
52. The January-February 2016 QRI reflected a third grade independent level, a fourth (silent) to sixth (oral) grade instructional level, and a fifth grade (silent) to upper middle school (oral) frustrational level. Student exhibited better comprehension on orally read passages, particularly with lookbacks. (S-79)
53. A new IEP was developed in April 2016. This document provided a summary of Student's present levels of academic achievement and functional performance. With respect to reading, Student continued to practice language arts skills but maintained difficulty with higher level reading skills particularly without supports. Student's then-current SRI Lexile level was 819 (compared to an expected level of proficiency at the end of seventh grade between 970 and 1120). Student's progress on the reading comprehension goal was reportedly inconsistent with significant difficulty with inferencing. The sixth grade PSSA reading score was in the basic range. Input from the speech/language therapist reflected better performance with visualization support and word retrieval strategies. Parental input into this IEP reflected their concerns with Student's language development and suggested a need for Student to be provided with a program such as Visualizing and Verbalizing. (S-82 pp. 6-12)
54. The April 2016 IEP included transition services with a goal for post-secondary education. Annual goals addressed reading comprehension (answering concrete and inferential questions on a 5.6 grade level with 85% accuracy; and attaining certain scores on probes); written expression; mathematics problem solving; and speech/language (including retelling, making inferences, and answering "how" and "why" questions). Program modifications/specially designed instruction were similar to the previous IEPs and added strategies to facilitate language comprehension. Student was eligible for ESY services to address reading comprehension and speech/language. The proposed program was for supplemental learning support for reading and language arts, with speech/language therapy twice per week for forty five minutes. (S-82 pp. 13-34)

55. The District speech/language therapist decided to make changes to Student's speech/language goals to make them more focused and less broad. (N.T. 584-86, 619-20, 622; S-82 pp. 23-25)
56. Results of the GRADE from the spring of 2016 reflected all scores were in the average range, with a relative strength in listening comprehension. (S-80)
57. Student's Lexile scores on the SRI during the 2015-16 school year were as follows:

<b>Date</b>	<b>Lexile Score</b>	<b>Proficiency Range for Grade Level (End of Year)</b>
9/10/15	731	
11/11/15	766	
2/2/16	819	
4/29/16	821	1010-1185

(S-93)

58. Student did not attend the District's 2016 ESY program. (N.T. 332)

#### 2016-17 School Year

59. A QRI was obtained in August 2016 by a District reading specialist in order to determine Student's instructional reading level. (N.T. 119-20, 127, 136, 141, 144-45, 153-54, 156)
60. Student was reevaluated beginning in the spring of 2016 with parental consent, and a new RR issued in September 2016. This RR provided input from the Parents that emphasized their concerns with reading comprehension and written expression skills, in addition to anxiety and frustration with schoolwork. Previous evaluation reports were also summarized. The RR also reported the results of the recent QRI determining that Student was at an independent third grade level with lookbacks, and was frustrational at a fourth grade level; no instructional level was obtained. (N.T. 70-71; S-85 pp. 2-7, S-92)
61. Teacher input reflected concerns with pacing and processing information (mathematics); acquiring higher level reading skills and improving comprehension; positive performance in science and social studies with modifications to assignments and assessments. A substantial amount of information about Student's achievement in the Read 180 program was provided, with indications that Student continued to struggle with inferencing and reading comprehension, achieving inconsistent scores in those areas. Progress on the IEP goals was also included. (S-85 pp. 7-8)
62. The District conducted additional assessments of cognitive and achievement ability for the 2016 RR.
  - c. On the fifth edition of the WISC (WISC-V), Student obtained a Full Scale IQ score of 79 (upper end of the very low (formerly borderline) range) with Index scores all in the low average range. Although the GAI score (81) was calculated,

it was not reported in the RR because it was not a statistically significant difference from the Full Scale IQ score. On the C-TONI, Student achieved a Full Scale IQ of 82 (below average range) with all subtests in the average to below average range. Assessment of memory revealed areas of strength (verbal memory) and weakness (visual memory). (N.T. 54-55, 80-81; S-85 pp. 10-14)

- d. In a new administration of the WIAT-III, Student attained average scores on all reading subtests except reading comprehension; on all written language subtests (with the exception of essay composition); and on all mathematics subtests except those for fluency. A different written expression assessment reflected average to above average ability. (S-85 pp. 14-16)
63. The Third Edition of the BASC (BASC-3) rating scales revealed some concerns of the Parents in the at-risk range for anxiety, withdrawal, and functional communication, and no clinically significant concerns. The teacher's rating scales reflected one or more had at-risk concerns for learning problems, anxiety, withdrawal, leadership, and functional communication, with no clinically significant results. Student's self-report did not endorse any concerns. (S-85 pp. 16-20)
64. Speech/language evaluation conducted in conjunction with, and reported in, the RR included a number of formal assessments. Overall results were that Student had expressive and receptive language skills within the average range, with notably better skills with visuals and repetitions; improvement was noted with comparisons to previous speech/language assessments. The speech/language therapist explained, however, that despite having age-appropriate language skills overall, Student continued to have difficulty applying and generalizing those abilities. Recommendations from that evaluation included visual supports for comprehension and retention; use of lookbacks; verbal rehearsal; wait time for responses; and chunking of information. (S-84, S-85 pp. 20-25)
65. The 2016 RR continued to conclude that Student was eligible on the bases of Other Health Impairment (cognitive and memory functioning) and Speech/Language Impairment. Recommendations included small group instruction for both literal and inferential reading comprehension. (S-85 pp. 25-27)
66. The District school psychologist concluded that Student did not have specific learning disability because he did not find a significant discrepancy between Student's cognitive ability and academic achievement. (N.T. 49-50, 108)
67. Student continued to be provided speech/language therapy twice each week in a very small group with one other student. The speech/language therapist also consulted with the teacher. (N.T. 569-70, 645-46)
68. Student has been provided with adaptations for reading text, such as text-to speech software. The one software program can provide visual pictures to Student. (N.T. 979-80)

69. The Parents obtained an updated communication evaluation in September 2016. The speech/language therapist who conducted this evaluation performed, among other tests, non-standardized, informal assessments of Student's inferencing and imaging skills. She continued to recommend that those areas be addressed in the educational program in order to promote Student's reading comprehension at an independent level. (N.T. 468; P-1)
70. The parties met to discuss the District's RR in October 2016 and to revise Student's IEP. (N.T. 983-85)
71. The October 2016 IEP provided an updated summary of Student's present levels of academic achievement and functional performance from the RR. Parental input indicated concerns with reading comprehension skills and completion of tasks and homework; they also requested a SETT evaluation.<sup>7</sup> Needs noted in the IEP were speech/language skills (identifying main ideas and details, answering "how" and "why" questions); reading comprehension; mathematics application skills; and written expression. (S-94 pp. 8-19)
72. The October 2016 IEP included transition services continuing a goal for post-secondary education. Annual goals addressed reading comprehension (answering concrete and inferential questions at Student's instructional level by increasing the Lexile score, with a baseline of 793 (a decrease to a third to fourth grade level from the prior IEP goals written at a 5.6 – 6.0 grade level)); written expression (paragraph writing); mathematics problem solving; and speech/language (including vocabulary, making inferences, and answering "how" and "why" questions). The reading probe goal was removed. Program modifications/specially designed instruction were virtually identical to the most recent IEP with a SETT evaluation added. Student remained eligible for ESY for reading comprehension and speech/language services. The proposed program was for supplemental learning support for reading and language arts, with speech/language therapy twice per week for forty five minutes. (N.T. 425-27; P-24 p. 1; S-94 pp. 20-41)
73. The reading comprehension goal was revised to specify Lexile scores rather than grade levels in the October 2016 IEP in order to achieve some consistency among Student's fluctuating performance on reading comprehension goals. (N.T. 989-90, 1007-08, 1017-18, 1027-28)
74. The District speech/language therapist recommended that Student be revised to include one small group session each week, with consultative services and push-in to the classroom for the other session in order to promote generalization. (N.T. 632-33, 638-39, 646-47; S-94 p. 35)
75. The September 2016 speech/language evaluation was revised in late October 2016 only to revise the qualitative descriptors of Student's performance for one of the instruments. (N.T. 588-89; S-98)

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<sup>7</sup> Student, Environment, Task, Tools

76. During the 2016-17 school year, Student has had co-taught mathematics (algebra), science, and social studies classes; two periods of Read 180; and Student also has had two special classes and an advisory period. (N.T. 974-78, 981-82)

#### Non-Grade Specific Information

77. Reading comprehension may be impacted by various factors including prior knowledge, working memory, vocabulary, pragmatic language, as well as visual-spatial imaging. (N.T. 88-89, 91-92, 837-38, 843)
78. Student exhibits weaknesses in visual memory, working memory, and processing speed. Inferencing is a skill with which Student has difficulty. Fluid reasoning is a relative strength, as are reading fluency and decoding skills. (N.T. 50, 87-88, 91-92, 662, 683, 768, 771-72, 843, 973)
79. Student needs to learn to visualize or create images in Student's mind about what Student is reading in order to promote comprehension of the text. (N.T. 792-93, 795-96, 834-35)
80. Student exhibits difficulty with written expression, but can perform significantly better when provided with a picture to assist in writing a story. (N.T. 270, 769-70, 792-93)
81. The learning support and other teachers for each of the 2014-15, 2015-16, and 2016-17 school years were aware that the Parents were concerned that Student was experiencing anxiety and frustration including with homework. Student's assignments were modified as needed. (N.T. 187-88, 223, 244-46, 332, 544, 691-92, 886-87, 997-98; P-25 pp. 11-18, 22-26, 29-35, 37-48, 51-58, 60-62, P-31 pp. 2-4)
82. The District speech/language therapists utilized a strategy of providing structure words for Student to assist in imaging and visualization. That strategy is only one small part of developing the skill of creating mental images. (N.T. 612, 681, 1072)

#### Lindamood-Bell Visualizing and Verbalizing Program

83. The Lindamood-Bell Visualizing and Verbalizing program is a sequential program that develops skills of concept imagery for language and reading comprehension. Its goal is to enable students to develop the skill of creating visual imagery as part of processing language for comprehension. (N.T. 1045-47, 1049-50, 1063-64)
84. The level of a student's participation in the program varies in intensity depending on need. (N.T. 1052-55)

## **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 his or her recollection from his or her perspective. The testimony of the Parents’ private school psychologist and speech/language therapist regarding Student’s specific cognitive profile and needs relating to Student’s reading comprehension difficulties was accorded significant weight due to the persuasive nature of that evidence in light of the record as a whole. Credibility will be discussed further in this decision as necessary.

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, as were the parties’ closing arguments.



## GENERAL IDEA PRINCIPLES

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to a student who qualifies for special education. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE 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 v. Board of Education*, 172 F.3d 238, 247 (3d Cir. 1995).

Local education agencies (LEAs), 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, of course, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, the IEP need not “provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). The standard is not maximization of the child’s potential. *Rowley, supra*, at 198. Furthermore, “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

## GENERAL SECTION 504 PRINCIPLES

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii). The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). In this matter, the Section 504 and IDEA claims are the same, challenging the obligation to provide FAPE, and will be addressed together.

## THE FAPE CLAIMS

The first issue is whether the District has provided an appropriate educational program to meet Student’s needs in reading comprehension. As a preliminary matter, the parties have disagreed over whether Student should be identified as having a Specific Learning Disability in reading comprehension. While the Parents’ expert psychologist did express concerns with the use of a discrepancy analysis (N.T. 765-68, 826-27; P-2), the law permits school districts to utilize such an approach in evaluating children for that category of IDEA eligibility. 20 U.S.C. § 1414(b)(6); 34 C.F.R. § 300.307; 22 Pa. Code § 14.125.<sup>8</sup> That expert did not, however, evaluate Student, and the evidence was far from preponderant that Student meets the criteria of having a specific learning disability in reading comprehension. In any event, labels notwithstanding, the

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<sup>8</sup> Moreover, in Pennsylvania, school districts are required to obtain approval from the state Bureau of Special Education in order to use a Response to Instruction and Intervention Process for identifying students with a specific learning disability. *See* [http://www.pattan.net/category/Educational%20Initiatives/Multi-Tiered%20Systems%20of%20Support%20\(MTSS-RtII\)/page/Using\\_RtII\\_for\\_SLD\\_Determination\\_.html](http://www.pattan.net/category/Educational%20Initiatives/Multi-Tiered%20Systems%20of%20Support%20(MTSS-RtII)/page/Using_RtII_for_SLD_Determination_.html) (last visited January 7, 2017).

District has identified a need for Student in the area of reading comprehension and has been providing a program of special education relating to those deficits throughout the time period in question. Thus, the District recognizes and has attempted to address Student's reading comprehension needs regardless of the eligibility categories specified in its RRs.

With respect to the programming, the record establishes that Student entered middle school with a complex cognitive profile and needs that included reading comprehension. Student was provided reading instruction using the Read 180 program from the start of the 2014-15 school year. In addition, Student had a reading strategies class that focused on reading comprehension and included visualization strategies. Student also worked on visualizing and verbalizing strategies in speech/language therapy. Based on the information available in the fall of 2014, the District's program as proposed and implemented for the start of the 2014-15 school year was reasonably calculated to address Student's reading comprehension needs. However, it was soon apparent that Student's performance on IEP goals was inconsistent, that Read 180 skills were similarly uneven, and by February 2015 that Lexile scores were relatively stagnant. Student continued to exhibit difficulty with reading comprehension, including imaging and visualization and related skills, across settings; and, Student required significant supports and repetition to access the curriculum. In addition, a private communication evaluation provided a wealth of new information about Student's complex abilities and needs, with an array of recommendations. Certainly by the start of the second half of the school year, the District had the requisite knowledge to begin to take steps to respond to Student's lack of progress by revising Student's program as it addressed reading comprehension.

By the end of the 2014-15 school year, although Student's Lexile score had increased from February 2015, it remained well below proficiency expectations, and other measures of

progress remained variable. Then, Student entered the start of the 2015-16 school year with a much lower Lexile score, continuing the pattern of fluctuating performance in that program. Although the District attributes the Lexile score decrease to Student's failure to attend its ESY program, that data point was merely one in a series of assessments that reflected a lack of consistency in performance. Even with the additional reading strategies classes provided outside of Read 180, Student continued to struggle with reading comprehension across subjects, and exhibited difficulty with higher level thinking skills. Student required significant supports to access the curriculum and was not able to read and understand materials already covered during group instruction. The Lexile scores again stagnated at the end of the 2015-16 school year, with the gap between Student's score and the expected proficiency level widening. Those struggles continued into the fall of 2016, when Student's IEP goal for reading comprehension lowered the grade-level expectations for Student. While it is logical that the language of the goal should translate into understandable data regarding performance, Student's lack of demonstrable progress with the current reading program signaled that a much more significant change to programming was necessary.

It should be noted that there was substantial evidence presented relating to the use of qualitative descriptors of standard scores, as well as grade equivalency scores. The District school psychologist cogently explained that grade equivalent scores such as those reported on a WIAT-III administration do not specify instructional levels; rather, they are derived scores that are based on the raw scores obtained, and are not easily comparable. (N.T. 92-93, 1077-78)<sup>9</sup>

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<sup>9</sup> Grade-level scores are a type of developmental score that must be interpreted cautiously and carefully, as they can be misleading for many reasons. Salvia, J., Ysseldyke, J., & Bolt, S., *Assessment in Special and Inclusive Education* (11<sup>th</sup> ed. 2010) at 40-41; Sattler, J. M., *Assessment of Children: Cognitive Applications* (5<sup>th</sup> ed. 2008) at 104-106.

Similarly, qualitative descriptors of standardized scores, typically expressed in ranges, do not provide the depth of information that the scores themselves reflect.

Nevertheless, the evidence is preponderant that Student did not make consistent gains toward IEP reading comprehension goals; and, moreover, Student's Lexile scores were similarly uneven and reflected that Student was falling farther and farther behind peers and grade level proficiency. There was some confusion in the testimony about whether the Lexile ranges for Read 180 are comparable to or different from Lexile scores beyond that program. (N.T. 1084-85; P-30; S-95)<sup>10</sup> Yet, Student's most recent IEP goal in reading comprehension is based on an increase in Lexile score, something that Student has not been able to consistently achieve. In addition, Student's similarly variable performance in the Read 180 program as a whole reveals a lack of certainty on the specific reading skills which Student has or has not mastered.

Furthermore, even considering Student's seemingly average-range scores on two administrations of the GRADE, the several QRIs that have been conducted over the relevant time period reflect that Student's instructional and independent reading levels have not increased to any discernable degree.

The Parents' experts provided very persuasive testimony that Student needs to learn to visualize or create images in Student's mind about what Student is reading in order to promote comprehension of the text. (N.T. 450-53, 470-73, 482-83, 792-93, 795-96, 834-35) This is a skill that should be taught for generalization across all of Student's classes. (N.T. 473-76) There was also compelling testimony that while pictures and visuals provided support for Student (N.T. 608-09), there was also a concern that Student could become dependent on them if Student did not learn to create visual images of language (N.T. 462, 473-74). Indeed, the District did not

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<sup>10</sup> However, the Read 180 Program literature specifically references the Lexile framework developed by MetaMetrics, Inc. (S-97 p. 40)

truly contradict these opinions, as the record is replete with evidence that imaging was a weakness for Student, and that visual supports were provided and were beneficial.<sup>11</sup> There is also nothing in the evidence to suggest that concept imagery is a skill that Student cannot reasonably learn given Student's complex learning profile. Critically, Student will be starting high school in the fall with a goal to go on to post-secondary education; Student must acquire the reading comprehension skills, including higher-level thinking skills, necessary to be able to read to learn at this stage of Student's life. This hearing officer concludes that the District's failure to provide appropriate instruction in visualizing and imaging skills constituted a denial of FAPE, and both retrospective and prospective remedies will be awarded.

The District correctly notes that Student experienced some medical complications early in life and that Student's cognitive functioning has been impacted as a result. (District's closing argument at 1, 3) Still, there is nothing in the record to support a conclusion that Student does not have the ability to learn crucial visualization and imaging skills necessary to comprehend textual materials, which in turn will allow Student to become more independent and less reliant on visual and other supports. Moreover, all of the evaluations in this record have acknowledged those conditions as but one part of a considered assessment of Student, whose current constellation of strengths and needs must be the focus of any programming decisions going forward.

#### REMEDIES

The Parents seek as part of the remedy an order that the District provide Student with the Lindamood-Bell Visualizing and Verbalizing Program. (Parents' closing argument at 8) In the

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<sup>11</sup> The Read 180 Program publisher similarly recognizes that students need to be able to visualize text in order to understand it. (S-97 p. 55)

alternative, they ask that the District be directed to provide a comparable program. (*Id.*) The District aptly observes that parents do not have the right to demand a certain program or methodology in their child's education; rather, LEAs need only provide programs and methodologies that are appropriate. (District's closing at 7, citing, *inter alia*, *M.M. v. School Board of Miami-Dade County*, 437 F.3d 1085 (11<sup>th</sup> Cir. 2006)). This hearing officer finds that while it is critical that Student's public education include intensive instruction in the specific skill areas described by the private speech/language therapist (N.T. 450-53, 470-72, 482-83), the District must have the opportunity to explore all options for providing an intensive, sequential, remedial program for developing concept imagery for language and reading comprehension that targets Student's specific cognitive profile, strengths, and needs. The IEP team will be directed to convene to revise Student's program to include such instructional programming. At the Parents' election, they may invite one of their experts to attend the meeting to assist in this portion of Student's IEP development at District expense.

The Parents also seek compensatory education, which is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. *M.C. v. Central Regional School District*, 81 F.3d 389 (3d Cir. 1996). Such an award may compensate the child for the period of time of deprivation of educational services, excluding the time reasonably required for a school district to correct the deficiency. *Id.* The Third Circuit has recently endorsed a different approach, sometimes described as a "make whole" remedy, where the award of compensatory education is designed "to restore the child to the educational path he or she would have traveled" absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia*

*Public Schools*, 401 F.3d 516 (D.C. Cir. 2005) (adopting a qualitative approach to compensatory education as proper relief for denial of FAPE). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

This hearing officer has concluded that the District's programming for Student's reading comprehension and related needs at the start of the 2014-15 school year was reasonably calculated to provide Student with meaningful educational benefit based on the District's knowledge of Student's strengths and needs. By early February 2015, however, or approximately halfway into the school year, there was sufficient indication that Student's program was not adequately meeting Student's needs in reading comprehension. It is at that point that the District is charged with the knowledge that Student's program was not appropriate, and was obligated to respond. The remedy shall therefore begin at the start of the second semester of the 2014-15 school year and continue through the date of the attached Order.

The Parents' expert school psychologist provided an opinion regarding compensatory education (N.T. 797-800), yet it was not based on his familiarity with Student but rather on some personal knowledge about the programming that the Parents sought. (N.T. 803-05) While that testimony was not incredible, it cannot be deemed satisfactorily reliable in terms of an equitable, individualized remedy for the denial of FAPE to Student. Quite simply, this hearing officer finds that the evidence of record is insufficient to support a conclusion that a publicly-funded Lindamood-Bell Visualizing and Verbalizing Program would make Student whole, although the Parents should have the opportunity to pursue that avenue if they so choose.

Accordingly, the hour for hour approach to compensatory education to remedy the deprivation shall be applied based on the record as a whole. Throughout the time period in question, Student has been provided with ninety minutes per day of Read 180 instruction,



supplemented by visualization strategies and supports in speech/language therapy and throughout portions of the school day. There is no question that Student needs to learn to generalize the reading comprehension skills that Student attains across the educational environment, and there can be no argument that Student's reading comprehension deficits impacted Student's performance in other content areas classes and with homework. Nevertheless, the District consistently provided accommodations, adaptations, and modifications for Student outside of the learning support classroom because of Student's reading comprehension deficits. This hearing officer equitably estimates that an additional one half hour per day of compensatory education is appropriate to remedy the generalization that should have occurred in speech/language therapy and other classes beyond the specific reading instruction, while accounting for the measures taken by the District outside of the Read 180 class throughout the time period in question.

The Parents' final request is for reimbursement for the summer 2015 program. While this time period is within the period of deprivation as discussed above, the test for reimbursement for a parentally-provided program includes three separate inquiries: first, a finding must be made that the program offered by the public school did not provide FAPE; second, it must be determined that the private placement is proper; and third, equitable considerations may operate to reduce or deny reimbursement. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *Mary Courtney T., supra*, 575 F.3d at 242. Here, and although the Parents may be pleased with their chosen program, the record does not establish by a preponderance of the evidence whether or not that chosen placement appropriately addressed Student's special education needs. Accordingly, reimbursement for that summer program must be denied.

## CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District denied FAPE to Student from the second half of the 2014-15 school year through the present, and that Student's IEP team must convene to revise the program prospectively. Student is also entitled to compensatory education.

## ORDER

NOW, this 9<sup>th</sup> day of January 2017, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's educational programming provided to Student during the second half of the 2014-15 school year, the entire 2015-16 school year, and the 2016-17 school year from its beginning through the date of this decision, were not appropriate in addressing Student's needs in reading comprehension.
2. Student is entitled to 2 hours per day of compensatory education to remediate the FAPE deprivation for each day of school that Student attended during the period of time described in ¶ 1.
  - a. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's educational and related services needs in the areas of reading and language. At the Parents' election, the compensatory education may be used for services privately arranged with an outside provider such as the Lindamood-Bell Visualizing and Verbalizing Program. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age eighteen (18).
  - b. The costs to the District of providing the awarded hours of compensatory education may be limited to the average market rate for private providers of those services in [the] County where the District is located.

3. Within ten school days of the date of this Order, the District is ordered to convene a meeting of Student's IEP team to revise Student's IEP to include an intensive, sequential, remedial program for developing concept imagery for language and reading comprehension that targets Student's specific cognitive profile, strengths, and needs.
  - a. At the Parents' election, their private speech/language therapist or their private school psychologist may be invited to attend the IEP meeting to participate in the discussion of the revisions ordered herein. The attendance of the one evaluator chosen by the Parents at the IEP meeting for a period not to exceed two hours of professional service, excluding travel or other costs, shall be at District expense.
  - b. Within five school days of the IEP meeting described in ¶ 3(a), the District shall issue a NOREP to the Parents, to which all procedural safeguards shall attach.
4. The Parents are not entitled to reimbursement for the program Student attended at a private school during the summer of 2015.
5. Nothing in this Order should be read to preclude the parties from mutually agreeing to alter any of the directives regarding the timelines, revisions to the IEP, or nature of compensatory education set forth in this decision and Order.

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

*Cathy A. Skidmore*

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Cathy A. Skidmore  
HEARING OFFICER