

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: KF

Date of Birth: Redacted

Dates of Hearing:

October 4, 2011

November 18, 2011

CLOSED HEARING

ODR File No. 1914-1011KE

Parties to the Hearing:

Representative:

Pro Se

Cumberland Valley School District
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Date Record Closed:

November 28, 2011

Date of Decision:

December 8, 2011

Hearing Officer:

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

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a high school-aged student in the Cumberland Valley School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² on the basis of autism. Student's Parents filed a due process complaint in June 2011, asserting that the District failed to provide adequate direct reading instruction (the Lindamood Bell Visualizing and Verbalizing program) during the 2010-11 school year, and they sought compensatory education through provision of this program over the summer of 2011. After that issue was resolved by the parties, the Parents were subsequently permitted to amend the complaint which raised new and different claims.

The case proceeded to a due process hearing convening over two sessions, at which the parties presented evidence in support of their respective positions. The Parents sought to establish that the District failed to provide an appropriate education during the 2010-11 school year and that its proposed program for the 2011-12 school year was not appropriate for Student. The District maintained that its special education program, as offered and implemented, was appropriate for Student.

For the reasons set forth below, I find in favor of the District, with the understanding that by agreement of the parties the District is currently undertaking a reevaluation of Student and that future programming will be based upon and responsive to the needs identified in that reevaluation, as well as previous evaluations and assessments, as determined by the IEP team.

ISSUES³

1. Whether the Individualized Education Program (IEP) proposed by the District for the 2011-12 school year was appropriate for Student with respect to assistive technology and Visualizing and Verbalizing instruction; and
2. Whether the educational program provided to Student during the 2010-11 school year was appropriate with respect to [Redacted], assistive technology, transition to the high school, counseling, support and accommodations for mathematics, and goals in the areas of reading comprehension, written expression, self-advocacy, socialization, and mathematics instruction.

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifying information, are not used in the body of this decision.

² 20 U.S.C. §§ 1400 *et seq.*

³ The issues were set forth in Hearing Officer Exhibit (HO) 4 at p. 1, and restated at the hearing (Notes of Testimony (N.T.) at 27-33, 40-45, 231-33). Other references in this decision are to Parent Exhibits (P) and School District Exhibits (S).

FINDINGS OF FACT

1. Student is a high school-aged student who resides in the District and is eligible for special education within the disability category of autism. (N.T. 51, 166; P 1)
2. Student's disability primarily manifests itself in Student's difficulty with social communication and social interaction. (N.T. 51, 53-54, 63-64, 223-24; P 1)
3. Student also experiences anxiety associated with social-emotional difficulties and academic performance, for which Student has been participating in private individual counseling and family therapy. (N.T. 61-62, 71, 73-77, 219-21, 250-51; P 13)
4. Student and the family resided in another state until moving to the District in 2009. This move was a difficult change for Student. (N.T. 201, 244-45; P 1)
5. [Redacted]
6. The District conducted an initial evaluation of Student in early 2010 and issued an Evaluation Report (ER) in March 2010. Student was administered the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) and demonstrated general cognitive ability in the high average range (full scale IQ of 115). On the Wechsler Individual Achievement Test – Second Edition (WIAT-II), Student achieved scores in the average range in reading comprehension, in the high average range in mathematics reasoning, and in the superior range in written expression. Reading comprehension was determined to be a relative weakness despite Student's average scores in that area. (S 1)
7. The ER also reported the results of the Autism Diagnostic Observation Schedule (ADOS) which revealed scores above the autism cutoff in all domains. Results of the Behavior Rating Inventory of Executive Function (BRIEF) reflected elevated scores by one or more teachers in many categories, as well as on both the Behavioral Regulation and Metacognition Indexes and the Global Executive Composite. The BRIEF inventories of the Parents and Student revealed no concerns. (S 1)
8. A Speech/Language Assessment conducted as part of the ER revealed relative weaknesses in interpreting others' perspectives as well as with pragmatic language. (S 1)
9. The ER noted needs in pragmatic language and repetition of directions and instructions, and suggested counseling and multisensory presentation of instructional materials, as well as direct instruction of social skills (how to use verbal and nonverbal language in social interactions). Student was determined to be eligible for special education by reason of autism. (S 1)
10. Student was evaluated in the spring of 2010 by a private neuropsychologist who issued an Independent Evaluation Report (IEE). This evaluator conducted a review of records and provided an extensive summary of those. Additionally, the IEE reported on two

classroom observations and the results of various assessments performed including the WISC-IV, WIAT – Third Edition (WIAT-III), and Behavior Assessment Scale for Children – Second Edition (BASC-2). (P 1)

11. A speech/language evaluation conducted as part of the IEE reported a few articulation errors in addition to weaknesses in expressive language, pragmatic language skills, and auditory processing. The speech/language pathologist recommended continued speech/language therapy. (P 1)
12. The IEE reflected Student's notable strengths in visual perceptual problem solving skills, abstract reasoning and conceptual problem solving skills, visual learning ability, and memory capacity. Important weaknesses were identified in communication, auditory processing, and social interactions, and Student's concrete thinking style was also noted. (P 1)
13. Recommendations in the IEE for Student's educational program included preferential seating; test-taking accommodations in a less distracting environment; instruction using visual approaches and possibly in addition to kinesthetic and tactile strategies, as well as geared toward Student's strengths in abstract reasoning, conceptual problem solving, and visuospatial reasoning; development of creativity and imagination; a mentor or "go to" person at school; provision of teacher and peer notes and tutoring of note-taking strategies and/or taped lectures for later review; and speech/language therapy. (P 1)
14. Student's final grades for the 2009-10 school year included one C, four Bs, and nine As. (S 10 p. 1)
15. A team meeting convened in August 2010 to discuss Student's schedule and courses for the 2010-11 school year. Student's schedule did not have room for guidance class which nearly all ninth grade students take. This class provides an introduction to the high school environment and involves planning for their graduation as well as sensitive social topics such as drugs and alcohol and bullying. The team concluded that Student would still participate in post-secondary exploration activities which is the focus of the guidance class during the second semester. The team also decided to compile a re-evaluation report (RR). (N.T. 265-69, 436-39; S 3 p. 1; S 4)
16. Student was diagnosed with major depression in September 2010 by a private psychiatrist. (N.T. 77; P 13)
17. In the fall of 2010, the IEP team discussed a transition plan for Student's entry into high school that school year (2010-11). The District implemented the previous IEP at the start of the school year. (N.T. 211-14, 353-54; S 12)
18. Student began the 2010-11 school year with a college preparatory Geometry class as well as an honors Algebra class at the Parents' request. The honors courses are higher level courses than college preparatory courses and emphasize application of concepts and knowledge. (N.T. 128-30; S 11 at 3)

19. Student moved to an honors Geometry class during October 2010 at the Parents' request, and Student no longer had Algebra. Student struggled with applications, which was the focus of the honors level class. Student did demonstrate good acquisition of concrete geometry concepts and successfully completed problems in class done as a group. (N.T. 89, 91, 93, 95-96, 98-100, 103-06, 109-10, 113-15, 122, 128-30, 164, 169, 172-74, 408-09; S 11 at 6)
20. Student's Geometry teacher used models or other visual representations when presenting material whenever possible. (N.T. 95-96, 136-40, 152)
21. On October 22, 2010, the RR was issued. This document summarized assessments conducted in the spring of 2010 including those described in the ER and IEE. Additional detailed information on Student's then-current social language skills was provided. The RR concluded that Student remained eligible for special education with autism as the primary disability category. (S 4)
22. A new IEP was developed in November 2010. This IEP contained present levels of academic achievement and functional performance which set forth some of Student's current grades: 85% in Earth and Space Science; 94% in [elective redacted]; 87% in Western Civilization; and 72% in Honors Geometry. Also included in this IEP were a post-secondary transition goal and planning, and annual goals addressing social language skills and reading comprehension. (N.T. 354-55; P 7; S 5)
23. Program modifications and items of specially designed instruction in the November 2010 IEP included strategies for auditory skills and processing; cues for remaining on task and participating; monitoring of comprehension and understanding of directions and assignments; monitoring of completed study guides; cues/prompts for small group activities and assignment of small groups when needed; use of visual aids; opportunities for review and preview of concepts; wait time for processing; improvement of social language skills; direct instruction in reading; extended time for tests; and academic support. Speech/language therapy was listed as a related service, and autistic support consultation was an additional support for personnel. (S 5)
24. Small group assignments for all of Student's classes during the 2010-11 school year were based on Student's preferences. Student's speech/language therapist met with Student in the fall of 2010 to help Student select peers to work with, and she conveyed that information to Student's teachers. (N.T. 115-16, 140-41, 176, 187-88, 325-29, 331)
25. Student received academic support with the learning support teacher three times per cycle at the beginning of the 2010-11 school year. The number of periods gradually increased over the course of the school year (for example, by adding study hall periods) until Student was provided with nine periods of academic support per cycle. (N.T. 355-57, 362-63, 366, 376)
26. For academic support, Student worked with the learning support teacher on daily assignments as well as various long-term projects, chunking them and setting goals for completion. The learning support teacher discussed other areas of concern such as test-

taking strategies and organizing materials and notes with Student, and reviewed class materials to check for Student's understanding. (N.T. 357-58, 377-79)

27. Student's Geometry teacher was available for Student outside of class before school, after school, and during second or ninth period. She worked with Student individually and provided Student with numerous opportunities to practice application problems throughout the school year. (N.T. 95-96, 100, 111, 113-14, 123, 136, 143, 146-47, 154-56, 171-72, 178-80, 182-83, 185)
28. On a number of occasions, Student's honors Geometry teacher recommended that Student be placed in a different level class which did not emphasize applications. However, Student's Parents did not agree and overrode the recommendation for a different level Geometry class. Student passed the Geometry class with a high D grade. (N.T. 91, 98-99, 105, 132, 134-35, 148-49; S 10 p. 2, S 11 p. 6)
29. Student was provided with individual, direct instruction by a speech/language pathologist for fifteen minute sessions one time per month during the 2010-11 school year, which concentrated on perspective-taking, pragmatic language, and peer communication skills. The speech/language pathologist also observed Student twice each month in various classrooms and provided consultation to Student's teachers on Student's communication with peers and pragmatic language skills. (N.T. 318-23, 326-27, 331-32, 346-47; S 2) 1:1 goal was S6 p. 30)
30. The autistic support specialist also observed Student once each month in various classes and made specific recommendations. (S 3)
31. Student's learning support teacher during the 2010-11 school year referred Student to the guidance counselor on several occasions when Student became frustrated with academics or experienced difficulty with social interactions. The guidance counselor worked with Student on coping strategies as needed. (N.T. 365-66, 440-46, 455-56, 461-62)
32. In February 2011, Student's IEP team convened and revised Student's IEP. The changes related to specifying that Student's direct instruction in reading would use visualizing and verbalizing strategies, and the frequency was reduced from daily to three times per 6-day cycle. (N.T. 523-24; S 6 p. 35 (compared with S 5 p. 29); P 15)
33. A meeting convened in March 2011 to discuss assistive technology. The team agreed to conduct a trial of the web program Webspiration, but that was not accomplished by the end of the school year. Webspiration is the same program as Inspiration but is web-based. (N.T. 68, 209-11)
34. Student's IEP team convened again in early June 2011 to develop a new IEP. At the time, Student had an 89% in a foreign language; a 79% in Geometry; an 85% in English; and a 78% in Earth and Space Science. Progress on social language skills goals was reported, reflecting continued concerns with that area of need. (P 8; S 13)

35. The June 2011 IEP contained annual goals for social language skills, reading comprehension, and self-advocacy skills. Program modifications and items of specially designed instruction included strategies for auditory skills and processing; cues for remaining on task and participating; monitoring of comprehension and understanding of directions and assignments; monitoring of completed study guides; cues/prompts for small group activities and assignment of small groups when needed; use of visual aids; opportunities for review and preview of concepts; wait time for processing; improvement of social language skills; direct instruction in reading using visualizing and verbalizing strategies; extended time for tests; and academic support. Speech/language therapy was listed as a related service, and autistic support consultation was an additional support for personnel. One change was made to Student's reading program from February 2011, further reducing the time for visualizing and verbalizing strategies to fifteen minutes three times each 6-day cycle. (N.T. 523-24; S 13 p. 31 (compared with S 6 p. 35))
36. The Parents did not approve the June 2011 IEP. (HO 3)
37. Over the course of the 2010-11 school year, a total of fourteen IEP meetings for Student convened, including one with a facilitator. (N.T. 353; S 3 p. 19)
38. Student's final grades for the 2010-11 school year included a D in Honors Geometry; a C in Earth and Space Science; and Bs in all other courses. (S 10 p. 2)
39. The Parents and District reached an agreement that Student would be provided with 40 hours of individual Lindamood-Bell Visualizing and Verbalizing instruction in the summer of 2011, which resolved the issue presented in the initial due process complaint. (N.T. 264, 472-73, 539-40; HO 2, 3)
40. The District also provided assistive technology training for Student during the summer of 2011, including training on the Webspiration program and using an iTouch for planning and organization. (N.T. 262-64; 476-83; S 9)
41. At the time of the due process hearing, the District had arranged for, and was awaiting licenses to use, the Webspiration program. (N.T. 480-83)
42. The center where the Lindamood-Bell Visualizing and Verbalizing instruction was provided conducted testing of Student and recommended intervention to develop Student's language and literacy skills. A report of progress in July 2011 after the 40 hours of instruction reflected that Student was mostly independent in giving images and summaries, was using those strategies for higher order thinking questions, and responded to prompting to create images for specific parts of a story. (P 4)
43. Student's Parents arranged for Student to have private tutoring in mathematics after school during the 2010-11 school year. Student also had private tutoring over the summer of 2011 focusing on Algebra because Student wanted to be able to avoid having to take Algebra at school. However, Student did not successfully meet the criteria to skip Algebra 2 [redacted]. (N.T. 106, 178, 193-94, 236-42, 258-59)

44. Student's Parents also arrange for Student to have private tutoring to work on writing skills and study skills beginning in August 2011. (N.T. 228-30, 234-36, 534; P 12)
45. Student's current learning support teacher refers Student to the guidance counselor when Student experiences frustration. (N.T. 445-46)
46. The District is currently in the process of conducting a comprehensive reevaluation of Student. (N.T. 464-65, 484-85, 537)
47. The following exhibits were admitted into evidence:

P 1, 4, 5, 7, 8, 12, 13, 14, 15

S 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15

HO 1, 2, 3, 4, 5, 6, 7, 8

Ruling on P 9 and P 16 was reserved. P 9 appears to be a partial transcript of an IEP meeting held on March 3, 2011. This hearing officer concludes that this document setting forth a portion of what one person states was heard during part of a single IEP meeting is of questionable reliance, and is not relevant to or probative of the issues presented since determinations of the appropriateness of a special education program cannot be based upon such limited information. The objection to P 9 is sustained and that document is excluded from my consideration. P 16 is a two-page supplemental report by the private psychologist who conducted the IEE. The District objected to this document because it was not disclosed until the second hearing session. This document was not available prior to the first hearing session; additionally, it is not prejudicial since it essentially summarizes this witness' testimony and is consistent with his recommendations in the IEE on Student's needs. Accordingly, the objection to P 9 is overruled and that exhibit is admitted.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Broadly stated, 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);⁴ *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. Courts in this jurisdiction have generally required that the filing party meet their burden of persuasion by a

⁴ The burden of production, "i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding," *Schaffer*, 546 U.S. at 56, relates to the order of presentation of the evidence.

preponderance of the evidence. See *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Nevertheless, application of these principles 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 are also charged with the responsibility of making credibility determinations of the witnesses who testify. See generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). This hearing officer found each of the witnesses to be generally credible and the testimony as a whole was essentially consistent. Credibility of particular witnesses is discussed further as necessary.

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). Under the IDEA and its implementing regulations, an IEP for a child with a disability must include present levels of educational performance, measurable annual goals, a statement of how the child’s progress toward those goals will be measured, and the specially designed instruction and supplementary aids and services which will be provided, as well as an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular classroom. 20 U.S.C. § 1414(d); 34 C.F.R. §300.320(a). Most critically, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, it has long been recognized that “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).

2010-11 School Year Program

The Parents’ concerns with the 2010-11 school year are that the District failed to (1) [redacted] (2) provide appropriate assistive technology; (3) develop a plan for Student’s transition to high school; (4) provide sufficient counseling; (5) provide adequate support and accommodations in mathematics (honors Geometry); and (6) include appropriate goals with

respect to reading comprehension, written expression, self-advocacy, socialization, and mathematics (*see n. 3, supra*).

[Redacted]

The next claim is that the District failed to provide assistive technology during the 2010-11 school year. There was testimony that the District had used Inspiration, a computer software program, in all of its schools. (N.T. 480-81) This program was recommended by the evaluator who conducted the IEE (*Id.*; P 1 at 18) There was no evidence that Student was not afforded the opportunity to use the Inspiration program or that Student required other assistive technology during the 2010-11 school year that was not provided. Although there was a team decision to conduct a trial of the similar program Webspiration in the spring of 2011 which had not been accomplished before the school year ended (FF 33, 41), training with the program was provided in the summer of 2011 and the District has taken all necessary steps to begin using Webspiration with Student (FF 40). For all of these reasons, this hearing officer finds no evidentiary support for this claim.

Next, the Parents challenge the absence of an appropriate plan for Student's transition to the high school. This claim is somewhat unclear. There was a meeting in August 2010 at which the team, including the Parents, decided that that Student's schedule required adjustment to eliminate the ninth grade guidance class which would have assisted in Student's transition to high school. (FF 15) Although there was testimony that the transition plan discussed in the fall of 2010 (FF 17) was not actually developed (N.T. 211-12), Student's identified social and academic needs were addressed through Student's program. (FF 23, 24, 25, 26, 27, 30, 31) In short, there is simply no evidence on what type of transition planning should have been done for Student beyond that provided. Absent such evidence, this hearing officer concludes that the Parents failed to meet their burden of proof.

The next claim is that the District did not provide adequate counseling for Student. There was some testimony that the guidance counselor not always immediately available for Student during the 2010-11 school year. (N.T. 214-16, 257-58, 266-69, 446-48) The Parents also made the reasonable suggestion that Student have more than one "go-to" person. (N.T. 257) However, Student was referred to the guidance counselor when necessary. (FF 31) Further, there was little testimony on how often Student needed to see the guidance counselor but was not able to meet, and the evidence suggests that any difficulties Student experienced was as much a factor of Student's full schedule as that of the counselor. This hearing officer cannot conclude that the District's program was inappropriate on this basis.⁵

Next, the Parents challenge the sufficiency of the support and accommodations provided to Student for Geometry. The evidence is preponderant that the Geometry teacher worked with Student regularly on an individual basis and was always available if Student needed more help, and that she incorporated visual representations of concepts into her instruction as often as possible. (FF 19, 20, 27) Moreover, the Geometry teacher repeatedly recommended that Student

⁵ There was testimony suggesting that Student should be provided with regular counseling at school. (N.T. 61-62, 460-61) The IEP team may wish to consider this option in future programming once the reevaluation is completed.

transfer to a different level Geometry class where applications were not emphasized quite as heavily, but the Parents disagreed. (FF 28) It appears to this hearing officer that the Parents believe that because Student has a strength in mathematics but was not able to achieve a good grade in honors Geometry, the District failed to program appropriately. This belief, however firmly rooted, is not sufficient to meet the Parents' burden of proving an inadequacy in Student's program with respect to support and accommodations for Geometry.

The last claim regarding the 2010-11 school year is that the District did not program appropriately by developing goals in reading comprehension, written expression, self-advocacy, socialization, and mathematics. The IEPs implemented during that school year did address reading comprehension, and the February 2011 revision specified that Student would be provided visualizing and verbalizing strategies for reading comprehension. (FF 23, 32) To the extent that this claim remained after the filing of the amended due process complaint, it is not supported in the record. These IEPs also included goals and specially designed instruction addressing Student's socialization and social skills needs, as well as self-advocacy (*id.*), and the evidence does not establish any inadequacy in these specific goals as they related to Student's needs. Lastly, the District presented credible evidence that Student does not require specially designed instruction in the area of written expression (N.T. 531-35), and the record does not support a contrary conclusion. After careful review of the 2010-11 IEPs as well as the IEE, and for all of the foregoing reasons, this hearing officer cannot conclude that the claims relating to the 2010-11 school year merit any relief.

2011-12 School Year Program

The Parents' concerns with the proposed 2011-12 school year are that the program was not adequate with respect to assistive technology and lacked individual instruction in the Lindamood Bell Visualizing and Verbalizing program provided by a certified instructor. With respect to the assistive technology claim, the District responded to the team decision in March 2011 to investigate the Webspiration program and, by the time of the due process hearing, was merely awaiting licenses to use that program. (FF 33, 41) Webspiration is very similar to the Inspiration plan already used. (FF 33) Training was conducted with Student for both Webspiration and use of the iTouch over the summer of 2011. (FF 40) It is not clear what, if any, additional assistive technology needs the Parents believe exist and have not been addressed. While it is unfortunate there was some delay in the process of obtaining Webspiration, this hearing officer cannot conclude that the District has denied Student FAPE in its proposed program as a result.

Lastly, and perhaps most significantly from the Parents' perspective, is the proposal for using Visualizing and Verbalizing strategies three times per 6-day cycle in a small group, rather than providing individual daily instruction by a certified instructor. A District witness testified, quite credibly and convincingly, that because Student has had numerous hours of individual instruction in the Visualizing and Verbalizing program, and further needs to learn to generalize those skills, the amount and form of this instruction which the Parents are seeking would not be

appropriate.⁶ (N.T. 473-75, 485-87, 500-01) Student's current learning support teacher has been trained in this program and will be cuing Student to use these strategies across the curriculum. (*Id.*) She has and will be collaborating with Student's other teachers so that Student can generalize the skills in other classes in addition to the writing process. (N.T. 501-09, 514-16, 533-35) This testimony is not inconsistent with the July 2011 report of the learning center that Student was "mostly independent" in creating images and responded to prompting to do so. (P 4 at 7) While it is quite understandable that the Parents would prefer that Student be provided with continued individualized instruction in this program, the preponderant evidence supports the proposal of the District.

It is noteworthy that the evaluator who conducted the IEE summarized his recommendations in P 16 and further opined, based upon extremely limited information (P 16 at 2), that the District was not providing the majority of those suggestions. This witness testified quite credibly and demonstrated a very good understanding of Student and Student's needs. The record as a whole, however, supports the conclusion that virtually all of his recommendations were part of Student's educational program proposed for the 2011-12 school year. Accordingly, this hearing officer concludes that the Parents have not met their difficult burden of establishing that the proposed IEP was inappropriate based upon information known to the parties at the time the June 2011 IEP was developed.

This hearing officer offers the following observations. It was abundantly clear at the hearing sessions that Student's Parents are dedicated advocates for Student and want nothing but the best for Student. Their support and encouragement of Student is both understandable and admirable. Similarly, the District witnesses who testified also demonstrated a commitment to Student and working with Student's Parents. The parties' abilities to collaborate effectively and convene no less than 14 IEP meetings over the course of a single school year, in addition to maintaining daily communication, evidences their cooperative spirit and determination to address concerns as they arose.⁷

One other concern of the Parents merits mention. There was testimony that suggested that some changes were made to Student's IEP after a meeting occurred that were not made at the meeting. (*See, e.g.*, N.T. 382-85, 393-94, 402) A comparison of the documents submitted reveals that these word changes were extremely minor, and were easily explained since both the Parents and District were at that time represented by counsel who continued to work to finalize the document prior to its implementation. (N.T. 428-30) There is nothing to suggest any improper action by the District as a result of these few differences between documents. Further, it is the sincere hope of this hearing officer that the parties are able to put this proceeding behind

⁶ The center in the other state where Student was initially provided with Lindamood-Bell instruction in 2007 recommended 100-120 hours of instruction in its Visualizing and Verbalizing for Language Comprehension and Thinking program. (P 5) Student had at least 82 hours of that instruction in 2007 in the other state. (*Id.*) The recommendation by the center in Pennsylvania which provided the 40 hours of instruction in the summer of 2011 made a similar recommendation of 100-160 hours of the same program. (P 4)

⁷ This observation is not meant to encourage the team to continue to convene multiple ongoing IEP meetings for Student.

them and focus on the positive aspects of their relationship in addition to collaborating on Student's future educational programming. Completion of the current reevaluation will provide the parties with a prompt opportunity to work together to develop an appropriate program for Student just as they have done in the past.

CONCLUSION

For all of the foregoing reasons, this hearing officer concludes that the District did not deny FAPE to Student for the 2010-11 school year, and that the proposed program for the 2011-12 school year is appropriate.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that

1. The District did not deny FAPE to Student for the 2010-11 school year;
2. The proposed program for the 2011-12 school year is appropriate for Student; and
3. The District need take no further 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: December 8, 2011