

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

Pennsylvania Special Education Hearing Officer
Final Decision and Order

CLOSED HEARING
ODR File Number: 20663-17-18AS

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

Parents:
[redacted]

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Hearing Officer: Cathy A. Skidmore, M.Ed., J.D. **Date of Decision:** 10/30/2018

INTRODUCTION AND PROCEDURAL HISTORY

The student, (hereafter Student),¹ is a late elementary school-aged student residing in the School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² as a child with an Other Health Impairment and a Speech/Language Impairment. Student attended school in the District until the spring of 2015, after which time Student was enrolled in a private school for the 2016-17 and 2017-18 school years at District expense pursuant to a settlement agreement. The current dispute arose following the District's offer of a program with a return to its schools for the 2018 -19 school year. The Parents elected to retain Student in the private school (Private School) for the current school year.

Student's Parents filed a Due Process Complaint against the District under the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504),³ and the Americans with Disabilities Act (ADA),⁴ as well as the federal and state regulations implementing those statutes. Specifically, the Parents asserted that the program the District offered for the 2018-19 school year did not constitute a free, appropriate public education. As remedies, the Parents sought reimbursement for tuition and related expenses. The District denied that its program was inappropriate for Student and contended that the Parents' claims did not warrant relief. The

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

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

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

⁴ 42 U.S.C. §§ 12101-12213.

matter proceeded to an efficient due process hearing.⁵ Following review of the record⁶ including the parties' closing arguments, and for the reasons set forth below, the Parents' claims must be denied.

ISSUES

1. Whether the educational program proposed by the District for the 2018-19 school year was appropriate under the applicable law;
2. If the educational program proposed by the District for the 2018-19 school year was not appropriate, is the private school appropriate for Student; and
3. If the educational program proposed by the District for the 2018-19 school year was not appropriate and the private school is appropriate, are there equitable considerations that may operate reduce or deny tuition reimbursement?

FINDINGS OF FACT

1. Student is a late elementary school-aged child who resides within the boundaries of the District. Student is eligible for special education under the IDEA on the basis of an Other Health Impairment and a Speech/Language Impairment. (N.T. 38; S-21.)
2. Student was adopted from a foreign country at the age of twenty months and early developmental history is unknown. (N.T. 712; S-1 at 1.)

⁵ The hearing officer acknowledges with appreciation the participation of the parties and their counsel in the Electronic Exhibit Pilot. Citations to the record will be as follows: Notes of Testimony (N.T.); Parent Exhibits (P-) followed by the exhibit number; and School District Exhibits (S-) followed by the exhibit number. The term Parents is used in the plural when it appears that one or the other Parent was acting on behalf of both.

⁶ This hearing officer must correct her explanation at N.T. 855-56 that inaccurately reflected the date of the 2016 settlement agreement as the cutoff point for the line of questioning and exhibits to which the District objected at N.T. 64-70; to the extent any clarification is necessary, the District's objections to P-4 through P-8 and associated questions relating to alleged breach of obligations in connection with the 2016 settlement agreement, proffered to support the Parents' position that the District's actions after April 2, 2018 (the date of the Parents' notice of their intention to return Student to the Private School) should be considered in balancing the equities, were and are sustained.

3. Student currently has a number of strengths, including problem solving skills, receptive and expressive language skills, fine and gross motor skills, visual motor and visual perceptual skills, and a strong motivation to learn. (S-21 at 32.)
4. Student is easily distracted at school, especially by other students. Student is also easily distracted at home. (N.T. 476-77, 774.)
5. Student has significant difficulties with writing tasks but not necessarily the act of handwriting. (N.T. 481-82, 491, 510-13, 515.)
6. Student dislikes being or feeling singled out and different from peers. (N.T. 493-94, 498-99, 523, 524.)

EDUCATIONAL HISTORY

7. Student received early intervention services for speech/language deficits in prekindergarten before transitioning to the District for kindergarten. The District's initial evaluation of Student in the spring of 2012 recommended a general articulation plan and monitoring of speech/language and early literacy skills, but Student was determined to not be eligible for special education and related services. (N.T. 713-15; S-1.)
8. Student was evaluated in early 2014 during first grade at the request of the Parents for a determination of special education eligibility. They reported social, emotional, and behavioral concerns in addition to distractibility. (N.T. 121, 173-74, 718; S-2.)
9. The January 2014 ER included a review of existing information, input by the Parents and teachers, and observations by a District school psychologist. At the time, Student was receiving Tier 2 Interventions for reading. (N.T. 123; S-2.)
10. The January 2014 included cognitive, achievement, and occupational therapy assessments and rating scales (Behavioral Assessment System for Children – Second Edition (BASC-2), Behavior Rating Inventory of Executive Functioning (BRIEF), and Conners Third Edition (Conners-3)). The rating scales were all completed by both Parents and a teacher. (S-2.)
11. Cognitive assessment yielded average range ability on all Composites including the Full Scale IQ (102) (Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV)). Academic achievement scores were all in the average range in reading with the exception of the word reading subtest (below average on the Wechsler Individual Achievement Test - Third Edition (WIAT-III) and in written language (below average on the spelling subtest and Written Language Composite of the Kaufman Test of Educational Achievement – Second Edition (KTEA-2)). (S-2 at 7-11.)
12. BASC-2 results reflected clinically significant concerns of one or both Parents for hyperactivity, conduct problems, attention problems, atypicality, withdrawal, and a majority of adaptive skills (adaptability, social skills, leadership, functional communication, and activities of daily living) and at-risk concerns for depression. On the content scales, one or both Parents endorsed clinically significant concerns with anger

control, developmental social disorders, executive functioning, negative emotionality, and resiliency; and at-risk concerns with bullying and emotional self-control. The teacher's ratings reflected clinically significant concerns with hyperactivity, and at-risk concerns with anxiety, depression, attention problems, learning problems, atypicality, withdrawal, and some adaptive skills (adaptability, social skills, and leadership). On the content scales, the teacher reported clinically significant concerns with emotional self-control and at-risk concerns with anger control, bullying, developmental social disorders, executive functioning, negative emotionality, and resiliency. (S-2 at 11-12.)

13. The Conners-3 yielded scores that were elevated or very elevated in nearly all areas (inattention, hyperactivity/impulsivity, learning problems, executive functioning, defiance/aggression) by at least one rater with peer relations the sole exception. All endorsed ADHD (inattentive and hyperactive/impulsive types) and Oppositional Defiant Disorder (ODD) symptoms. (S-2 at 13.)
14. On the BRIEF, at least one of the raters reflected concerns in each area of executive functioning skills (inhibition, shifting, emotional control, initiating, working memory, planning/organizing, organizing materials, and monitoring). (S-2 at 14-15.)
15. Needs identified in the January 2014 ER were for increasing task focus, increasing coping and self-regulation skills, improving organizational skills, and continued articulation support. Student was determined to be eligible for special education under the categories of Other Health Impairment (based on ADHD) and a Speech/Language Impairment (so that articulation weaknesses could be addressed through an Individualized Education Program (IEP)). (S-2.)
16. In the spring of 2015, an occupational therapy evaluation reported deficits in sensory processing at home and in school. A physical therapy evaluation at the same time revealed no needs in that area. (S-3, S-6.)
17. A functional behavioral assessment (FBA) by a Board Certified Behavior Analyst (BCBA) was also conducted in the spring of 2015 based on concerns with Student's non-performance and non-completion of tasks; disruption; repetitive behaviors; and verbal refusal to complete tasks and follow directives. During the observations, Student required frequent redirection by the teacher and PCA. Recommendations were made for addressing those behaviors based on their hypothesized functions, and the District developed a Positive Behavior Support Plan (PBSP). (S-4, S-5.)
18. An IEP developed in April 2015 contained annual goals addressing articulation and problematic behaviors. A number of program modifications/items of specially designed instruction were also included including a personal care assistant (PCA). (S-7.)
19. During the 2014-15 school year (second grade), Student had difficulty maintaining focus and attention and completing tasks at school, and eloped from the classroom at times. At home, Student cried and refused to complete tasks at home including homework and engaged in physical aggression towards objects. Student also did not have many social

interactions with peers outside of school. A behavior specialist consultant (BSC) worked with the family on behaviors across settings. (N.T. 723-27.)

20. During the 2015-16 school year (repeating second grade), the same behaviors continued as in the previous school year at school and at home, but Student also engaged in self-injurious behavior (picking at skin and lips until bleeding occurred). The BSC continued to work with the family. (N.T. 731-33, 738-40.)
21. Student was reevaluated in 2015 with the resulting Reevaluation Report (RR) issued in October of that year. That RR contained input from the Parents including recent vision and audiological evaluations, and summarized existing information from the education records. Teacher input reflected concerns with reading and written expression in addition to behavior (including being off-task and distractible, organization of materials). (N.T. 138, 174; S-8.)
22. Cognitive assessment (Woodcock-Johnson Tests of Cognitive Abilities – Fourth Edition) reflected average low average to average range scores across domains and subtests with the exception of the numbers reversed subtest of the short-term memory test (low range); no measure of short term memory could be reported. The General Ability Index score (87) was in the low average range. Additional assessment of Student’s memory (Wide Range Assessment of Memory and Learning - Second Edition (WRAML-2)) revealed low average general memory skills with both visual and verbal memory below same-age peers. (S-8 at 14-17.)
23. Academic achievement (Woodcock-Johnson Tests of Achievement – Fourth Edition) and Third Edition of the KTEA (KTEA-3)) reflected average range scores in reading, low average to average range scores in written expression, and low average to average range scores in mathematics. (S-8 at 17-19.)
24. Speech/language assessment yielded average range scores on nearly all measures, but with a deficit in pragmatic language skills. (S-8 at 12-13.)
25. Social/emotional/behavioral functioning (Third Edition of the BASC (BASC-3) rating scales completed by both Parents, three teachers, and Student; and the BRIEF completed by both Parents a teacher) reflected clinically significant concerns by at least one rater in all areas on the BRIEF. The Parents and at least one teacher endorsed clinically significant concerns with a majority of the scales on the BASC-3 with the exceptions of anxiety (at risk by two teachers); and school problems, learning problems, and study skills (at risk by more than one teacher). However, overall, the Parents’ rating scales endorsed a higher level of concern with respect to more behaviors and skills on the BASC-3 than did the teachers. Student’s BASC Self Report reflected at-risk concerns with locus of control, attention problems, relations with parents, and self-reliance. (S-8 at 20-21.)
26. Student’s social skills were assessed by rating scales completed by the Parents and two teachers and yielded results indicating below average to well below average skills across domains as well as higher than average problem behaviors. (S-8 at 22-23.)

27. The October 2015 RR identified needs with respect to task focus and initiation, self-monitoring and coping skills, social skills, sensory processing, and articulation. Student was determined to be eligible for special education again based upon an Other Health Impairment and a Speech/Language Impairment. (S-8 at 23.)
28. An IEP developed in October 2015 following the recent RR contained annual goals addressing articulation, problematic behaviors, and written expression. A number of program modifications/items of specially designed instruction were also specified including maintaining the PCA and a PBSP. This IEP was revised over the course of the school year with the last revision in August 2016. (S-9.)
29. Toward the end of the 2015-16 school year, the Parents requested that the District provide a therapeutic educational setting or a different environment. The Parents also expressed concerns with Student's behavioral functioning including paying attention to task, requiring prompts and redirection, and anxiety leading to picking of Student's skin. (N.T. 79, 741, 744; S-9 at 15.)
30. Student exhibited increased anxiety at home during the summer of 2016 and at one point expressed suicidal ideation. This information was never shared with the District. (N.T. 746, 784.)
31. Student enrolled in the Private School at the start of the 2016-17 school year. The Parents and District executed a settlement agreement in 2016 for District funding of the Private School for the 2016-17 and 2017-18 school years. (N.T. 57, 747; S-11.)
32. The settlement agreement contains terms for the District to reevaluate Student in the fall of 2017, with a Permission to Reevaluate form to be provided to the Parents by December 5, 2017 and an RR issued no later than February 15, 2018. There is also a provision for development of an IEP and NOREP by April 15, 2018. (S-11.)

PRIVATE EVALUATION 2016

33. A private neuropsychologist conducted an evaluation of Student in September 2016 at the request of the Parents due to concerns including behaviors across settings: attention, self-injurious behavior, and failure to concentrate. The Parents shared information that included psychiatric diagnosis of Generalized Anxiety Disorder, Dysthymic Disorder, and ODD. (N.T. 548-49; S-10.)
34. The private neuropsychologist observed Student in the home for the 2016 evaluation. Student exhibited significant inattention and fidgety during that observation. (N.T. 550; S-10 at 9-11.)
35. The private neuropsychologist did not observe Student at the Private School for the 2016 evaluation. (N.T. 552, 590-91.)

36. The private neuropsychologist conducted a number of assessments for the private evaluation including cognitive and achievement testing and speech/language assessment, and obtained rating scales from the Parents and a teacher. (S-10.)
37. Cognitive assessment (Fifth Edition of the WISC (WISC-V)) yielded average range scores on all Composites with the exception of Working Memory (low average range) and a Full Scale IQ of 100 (average range). On a re-administration of the WRAML-2, Student attained scores commensurate with peers. (S-10 at 13-15, 18-19.)
38. Academic achievement (WIAT-III) results were somewhat variable. Student scored in the average range on the Basic Reading Composite with Reading Comprehension a relative strength (standard score of 117, above average range). The Mathematics Composite score was in the average range. With respect to written expression, Student scored in the below average range on the Spelling and Sentence Composition subtests. An oral reading measure yielded average range scores for reading comprehension (upper end of that range) and fluency. (S-10 at 19-21.)
39. Speech/language assessment reflected average ability with respect to oral motor skills, expressive and receptive language, and phonological abilities. Visual-motor functioning was also reportedly average. (S-10 at 15-17.)
40. Social/emotional/behavioral functioning assessed through rating scales completed by the Parents and a teacher. The Parents' scales revealed clinically elevated concerns on the anxious/depressed, withdrawn/depressed, social problems, thought problems, attention problems, rule breaking behavior, and aggressive behavior scales (Child Behavior Checklist). Two teachers endorsed clinically elevated concerns on the anxious/depressed and thought problems scales and borderline concerns on the attention problems and aggressive behavior scales (Teacher's Report Form). The Parent and teacher Conners Rating Scales produced elevated scores on the inattention scale, and the teacher's rating was similarly elevated on the executive functioning scales; the Parents also endorsed elevated scores on the hyperactivity/impulsivity, learning problems, executive functioning, defiance/aggression, and peer relationships scales. A self-report measure yielded inconsistent results in social/emotional functioning. (N.T. 604; S-10 at 21-24.)
41. The private neuropsychologist concluded that Student exhibited some characteristics of Autism Spectrum Disorder such as a lack of understanding of social cues and difficulty transitioning. (N.T. 554; S-10 at 28.)
42. The private neuropsychologist recommended that Student be placed in an educational environment with similar peers with learning differences due to concerns about Student's self-esteem and dislike of being singled out or appearing to be different. Other educational recommendations were for occupational therapy for handwriting, motor coordination, and sensory breaks; a direct, multisensory reading and spelling program; writing accommodations such as graphic organizers; small group mathematics instruction for computation; social skills training and practice; monitoring of focus; and ESY services. (N.T. 556-57, 575; S-10 at 29-30.)

PRIVATE REEVALUATION 2017

43. The private neuropsychologist conducted an updated evaluation of Student in August 2017. The private neuropsychologist did not observe Student at the Private School for the 2017 update. (N.T. 548-49, 581, 590, 599; S-13.)
44. On a new administration of the WIAT-III, scores were in the average range on the Basic Reading, Mathematics, and Written Expression Composites with reading comprehension still a strength (standard score of 152, 99th percentile). An oral reading measure yielded average range scores for reading comprehension and fluency. (S-13 at 4-6.)
45. Speech/language assessment reflected average ability with respect to oral motor skills, expressive and receptive language, and phonological abilities. Visual-motor functioning was also reportedly average. (S-10 at 15-17.)
46. Social/emotional/behavioral functioning assessed through rating scales completed by the Parents and a teacher revealed elevated concerns by at least one of the Parents on the anxious/depressed, withdrawn/depressed, social problems, thought problems, attention problems, rule breaking behavior, and aggressive behavior scales (Child Behavior Checklist). The Teacher's Report Form for one teacher reflected significant elevation only on the anxious/depressed scale and in the borderline range on the school problems and thought problems scales; the other teacher's form did not reveal any concerns on that measure. The parent Connors Rating Scales produced significantly elevated scores on the hyperactivity/impulsivity and learning problems scales, inattention scale; the teachers reported concerns on the plan/organize and task monitor scales. Results of the BRIEF-2 by the teacher did not reflect concerns, which the private neuropsychologist attributed to the structured private school setting; however, the Parents endorsed significant concerns across the majority of domains. (S-13 at 6-9.)
47. The private neuropsychologist concluded that while Student exhibited anxiety at the time of the 2017 evaluation, those symptoms had decreased. Supports for writing tasks were recommended. (S-13 at 12-13.)

THE PRIVATE SCHOOL

48. Teachers at the Private School have elementary education certification. (N.T. 471.)
49. Student has benefitted from the small-group instructional setting provided at the Private School and individual check-ins throughout the school day. (N.T. 473-74, 480, 498-99, 537-38.)
50. The Private School has a location in each classroom for students to take break as needed, whether by request of the student or a teacher. Students also have the opportunity to visit the counselor and head of the school if taking the break is not sufficient to enable the child to return to class. Student has taken advantage of both. (N.T. 483-84, 485-86, 490-91, 525.)

51. By the end of the 2017-18 school year, Student did not consistently self-advocate, including to take advantage of the break areas in the classroom. (N.T. 531-33)
52. The Private School utilizes school-wide and classroom positive reinforcement plans for its students. (N.T. 501-03.)
53. The teachers at the Private School post schedules which are reviewed as a class in the morning. (N.T. 504.)
54. The Private School provides social/emotional skill instruction to all of its students to help them learn to communicate and interact appropriately, to share positive or negative reactions and emotions, and to try to resolve any conflicts. (N.T. 487-88, 521.)
55. The Private School does not implement IEPs for students but develops learning profiles for each child that includes strengths, needs, and educational background information. (N.T. 506, 533.)
56. The intensive reading program provided by the Private School does not directly address reading comprehension. It is appropriate for students with language-based learning disabilities who lack decoding and encoding skills and is the most intensive of that publisher/developer's programs. (N.T. 264-65, 268-69, 280-81; S-48.)
57. The Parents believe Student has made significant progress at the Private School in academics, behavior including self-injurious behavior, self-esteem, and social/peer interactions and functioning. (N.T. 748, 750-55, 778-81, 795-96.)
58. Student demonstrated progress toward competency in all skill areas reported for reading, writing, mathematics, science, and social studies, as well as special classes, during the 2017-18 school year. (P-1.)
59. The Private School reported providing the following accommodations for Student: redirection given non-critically; use of praise, humor, and positive reinforcement; redirection and repetition; frequent breaks; check-ins; prompts to remain on-task; a visual schedule; chunking of tasks; preferential seating (seated by self) or alternate seating; use of a band around Student's legs; fidget items; ESY services; writing supports (graphic organizer, modeling, brainstorming, typing); mathematics supports (extra time, reminders for monitoring, graph paper, computation practice, multiplication chart); reading checklist; occupational therapy; social skills training; articulation; multisensory instruction; small group instruction; classroom responsibility/leadership opportunities; and specified techniques from its reading program for spelling. (S-17; S-51.)

FALL 2017 AND SPRING 2018: DISTRICT PREPARATION FOR 2018-19 SCHOOL YEAR

60. The Parents contacted their counsel after December 5, 2017 when they had had no contact from the District about a reevaluation. (N.T. 757.)

61. The District issued a Permission to Reevaluate form on December 21, 2017. The Parents provided consent on January 8, 2018. (N.T. 61; S-15.)
62. The District made an error in issuing one check for tuition to the Private School in March of 2018. (P-2; P-3.)

FEBRUARY 2018 REEVALUATION

63. The District's 2018 RR was issued on February 9, 2018. The document incorporated a summary of relevant records such as all previous evaluations, including the two privately obtained evaluations in 2016 and 2017, as well as input from the Parents and the Private School. The Parents were cooperative throughout the RR process. Teacher input reflected concerns with impulsivity, listening to directions, rushing through tasks, written expression tasks, and unspecified behaviors when unsupervised. (N.T. 102; S-21, S-22.)
64. Psychological assessments for the February 2018 RR were conducted over two days at a District elementary school. Student was cooperative for both sessions but more engaged during the first. (N.T. 191-92.)
65. Cognitive assessment for the February 2018 RR was re-administration of the WISC-V and WRAML-2. Student attained average range scores on all Composites with the exception of the Fluid Reasoning Index (low average range) and Processing Speed Index (high average range) with a Full Scale IQ of 97 (average range). Student's memory skills were somewhat variable, with relative weaknesses in visual and verbal memory. (S-21 at 21-23.)
66. Assessment of academic achievement for the February 2018 RR (KTEA-3) reflected scores in the average range on all subtests and Composites with the exception of the reading comprehension subtest (below average), the silent reading fluency subtest (above average), and the written expression subtest (below average). Additional tests of reading and written expression skills (curriculum-based measures) were also obtained. (S-21 at 26-27.)
67. Social/emotional/behavioral functioning was assessed with the BASC-3 and Social Skills Improvement System (SSIS) for the February 2018 RR. On the BASC-3, one or both Parents endorsed clinically significant concerns with hyperactivity, conduct problems, attention problems, and atypicality, in addition to many adaptive skills (adaptability, social skills, leadership, and functional communication); areas of at-risk concern were for aggression, depression, and activities of daily living on the adaptive skills scale. Teacher concerns were in the clinically significant range for hyperactivity and in the at-risk range for conduct problems. Student's self-report reflected concerns only with attitude toward teachers and relations with parents, On the SSIS, the Parents rated Student as having deficits in all areas with the exception of bullying and internalizing problems; the teacher only endorsed concerns with cooperation. (S-21 at 28-32.)
68. Executive functioning (NEPSY-II and BRIEF-2) abilities assessed for the February 2018 RR yielded inconsistent results. The NEPSY-II indicated age-appropriate executive

functioning skills, but the Parents' BRIEF-2 ratings endorsed elevated or clinically elevated concerns across scales and Indices with the exception of organization of materials; the teacher's BRIEF-2 ratings reflected only mildly elevated concerns with self-monitoring. (S-21 at 23-26.)

69. Speech/language assessment for the February 2018 RR (Clinical Evaluation of Language Fundamentals – Fifth Edition and Godman Fristoe Test of Articulation – Third Edition) reflected expected receptive and expressive language skills but below average articulation skills. (S-21 at 10-11.)
70. A BCBA from the local Intermediate Unit conducted an FBA of Student at the Private School in January 2018 on request of the District. Behaviors identified in the Private School were vocal outbursts and off-task behavior including noncompliance throughout the school day. (N.T. 400, 403-04, 435; S-18.)
71. The FBA was based on momentary time sampling and event recording, and included comparison to peers. The FBA identified antecedents to and consequences for the target behaviors. Antecedents included core subjects, transitions, small group work, large group work, proximity to certain peers, reprimands/correction, non-preferred activities, and unstructured time. Student required frequent redirection and teacher intervention for most of the class periods observed. The FBA also provided hypothesized functions of the problem behaviors: to gain attention or delay or terminate non-preferred tasks. A PBSP was recommended particularly to address attentional difficulties. (N.T. 411-12, 427, 463; S-18.)
72. The BCBA did not speak with the Parents in conducting the FBA. (N.T. 433, 759.)
73. The District sought an occupational therapy evaluation for the 2018 RR based on the independent neuropsychologist's recommendation. (NT. 175-77, 814-15; S-19; S-21 at 11-17.)
74. The occupational therapist who conducted that portion of the evaluation met with Student's Private School teacher and observed Student in the classroom for a brief period and then transitioning to and in physical education class. Student's teacher did not express concerns about Student's skills in the area of occupational therapy. (N.T. 818-21, 824-25, 834; S-19.)
75. Assessments for the occupational therapy evaluation in 2018 were of visual-motor, visual perception, and motor coordination as well as fine motor and sensory processing skills. Student did not demonstrate any occupational therapy needs, although it was noted that Student received "much more" external supports than others with respect to sensory processing abilities in the school setting. The occupational therapist did not identify any areas of need. (S-19.)
76. The occupational therapist did not contact or communicate with the Parents for the February 2018 RR. (N.T. 830.)

77. All of the instruments administered for the February 2018 RR are valid, reliable, and recognized instruments. (N.T. 192, 194, 195-96, 198, 204-05, 822.)
78. The District school psychologist recognized Student's written expression difficulties in the February 2018 RR but attributed those to impulsivity, inattention, and self-monitoring deficits rather than a specific learning disability. (N.T. 208.)
79. The District school psychologist did not recommend a full time PCA for Student following the 2018 reevaluation for several reasons: Student disliked looking different from peers, and Student did not exhibit the same severity of off-task and impulsivity as in the past. However, Student did demonstrate more difficulty with attention to task and controlling impulsivity in less structured settings. (N.T. 142-43, 158.)
80. The February 2018 RR determined that Student was eligible for special education based on an Other Health Impairment and a Speech/Language Impairment. Identified needs were for task focus, self-regulation/monitoring, written expression, and articulation. Recommendations included direct speech/language support services, specially designed instruction to address written expression weaknesses, a PBSP, use of visuals, and direct instruction in social skills and behavioral regulation. (S-21 at 32-35.)
81. The February 2018 RR was reviewed with the IEP team including the Parents at a meeting in March 2018. (N.T. 211-12. 338, 340, 446-47, 762, 782-83; S-24.)

MARCH 2018 PROPOSED IEP

82. The proposed IEP specified Student's needs as task focus, self-regulation/monitoring, written expression, and articulation. Annual goals addressed written expression (producing writing pieces at grade level expectations based on the District rubric, from a baseline of second and third grade level derived from that produced for the February 2018 RR); maintaining on-task behavior (actively following directions, participating in activities as directed, and orienting toward instruction for 85% of observations, from a baseline of 77% derived from the FBA); recognizing expected and unexpected behaviors and self-monitoring behavior based on a rubric following social thinking instruction (from a baseline to be determined at the start of the school year); articulation (production of /r/ with 85% accuracy (based on distortion of that sound at the time of the February 2018 RR); and encoding and decoding using a form of the reading program provided by the Private School (from baseline levels in a May 2017 assessment administered by the Private School). (S-12; S-25 at 20, 24-29; S-46.)
83. Program modifications and items of specially designed instruction in the March 2018 IEP were: testing accommodations; sensory movement breaks; visual and verbal prompts and redirection for focus; chunking of tasks and assignments; preferential and flexible seating; visual schedule; repetition of directions; written expression direct instruction; specified techniques from the reading program provided by the Private School for spelling; social skills instruction; multisensory instruction; visual and verbal prompts/instruction; an editing checklist; mathematics supports (daily period of instruction to enable transition back to District curriculum, monitoring reminders,

checklists and use of graph paper, a multiplication chart, extra time); reading supports (a specified reading program including strategies and modeling, checklists); classroom responsibility/leadership opportunities; a plan of transitioning back to the District (visit to the elementary school; extended school year (ESY) services); and a PBSP. (S-25 at 30-32.)

84. Related services in the March 2018 IEP were for social skills small group instruction (once per six-day cycle), individual social skills instruction (once per six-day cycle), and speech/language therapy (once per six-day cycle). (S-25 at 32.)
85. ESY services in the March 2018 IEP targeted transition back to the District and included social skills instruction, reading instruction, and English/Language Arts and Mathematics instruction and tutoring. (S-25 at 34.)
86. The PBSP specified a number of antecedents to the behaviors of concern (off-task behavior (engaging in tasks other than the assigned task/activity; leaving seat; vocal outbursts; and non-compliance with directives). The PBSP repeated the goal for maintaining on-task behavior and set forth a number of program modifications/items of specially designed instruction: frequent check-ins for remaining on-task; frequent feedback; reviewed expectations; varied instruction (independent seat work, high interest activities); scheduled breaks; a visual timer; visual supports; opportunities to make choices; chunking of assignments; and a planner for assignments. Social skills training and direct instruction in self-regulation were also specified. Consequences were set forth for when the Student does and does not perform the behavior of concern or the replacement behavior, and a data collection form was developed. (S-27; S-41; S-42; S-43.)
87. The March 2018 IEP proposed a program of supplemental learning support, with Student participating in regular education with the exception of writing instruction (forty five minutes per day), reading instruction (forty five minutes per day), mathematics support (twenty five minutes per day), social skills instruction, and speech/language therapy in the neighborhood school. (S-25 at 35-36.)
88. The reading program proposed by the District for Student for the 2018-19 school year was from the same publisher/developer as the one used by, but less intensive than, that provided by the Private School. It is provided in small groups of one to fifteen students and would occur during the same time that peers would have reading instruction. (N.T. 325, 365, 367-69; S-49.)
89. The March 2018 IEP included a goal for encoding and decoding as part of the transition from the intensive reading program at the Private School to the less intensive program proposed. (N.T. 365, 371.)
90. The social thinking curriculum that the District implements includes a video recording component. The IEP team discussed that specific activity at the March 2018 meeting. (N.T. 378.)
91. The Parents disapproved the NOREP for ESY services on March 30, 2018. (S-28.)

FIFTH GRADE CLASSROOM AND IMPLEMENTATION OF THE MARCH 2018 IEP

92. The fifth grade classroom that Student would have attended included twenty five or twenty six students. An instructional aide is present for portions of the school day, and paraprofessional support could increase as needed. (N.T. 634, 636, 676-77, 698-99.)
93. The fifth grade classroom teacher provides schedules for the students and the class follows a consistent routine. Transitions outside of the classroom are generally as a group. (N.T. 637-40, 646-47, 682-84.)
94. Students in the fifth grade classroom participate in whole group and small group instruction as well as individual activities. The activities change at least once every twenty minutes. (N.T. 640-44, 650.)
95. The fifth grade classroom has a designed area in the front of the room for individual work and a second table for small group work. Students can take a break in those areas. Large group activities typically are conducted in the rear area of the classroom. (N.T. 635-38, 648-49, 660.)
96. Several students in the fifth grade classroom that Student would have attended receive small group, pull out instruction in reading and mathematics; two of those also attend a pull-out social skills group. (N.T. 634.)
97. Student would have been in the fifth grade classroom for the majority of the school day, leaving for small group reading practice and writing instruction in the afternoon until dismissal. (N.T. 671-73.)
98. Student would have been provided with mathematics reinforcement and social skills instruction during a daily enrichment period when all students have time for extra practice or make up missed work, take music lessons, or be provided with related services. (N.T. 639, 673-75.)
99. Students in the fifth grade in the District do not change classrooms for the majority of classes. However, they do transition between activities and movement is a natural part of the day. (N.T. 145, 330.)
100. The regular education fifth grade teacher would be responsible for redirecting and prompting Student in the regular education classroom as needed. (N.T. 161, 163-64, 325-26.)
101. The Parents disapproved the NOREP for the proposed IEP for the 2018-19 school year on March 30, 2018, and sent a letter dated April 2, 2018 providing notice of their intention to maintain Student in the Private School for the 2018-19 school year and to seek District funding. (S-29, S-32.)
102. The private neuropsychologist recommended that Student remain in the Private School for the 2018-19 school year. (N.T. 560; S-13 at 12-13.)

103. The District denied the request for public funding for the Private School for the 2018-19 school year by letter dated April 11, 2018. (S-33.)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. At the outset of the discussion, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who requested this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in “equipose.” *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Special education hearing officers, in the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found all of the witnesses to be credible, testifying to the best of her recollection and based upon her unique perspective. There was little inconsistency in the testimony that was important to resolving the issues, and the minor differences are attributed to lapses in memory rather than any intention to deceive. The testimony of the private neuropsychologist regarding her placement recommendation, while certainly credible, lacked

persuasive value and was accorded less weight than that of the District professionals in large part because she did not observe Student in any educational setting and was not familiar with the District's program (N.T. 564-65; S-10; S-13). Instead, her opinion was based upon her perceptions that there was no reason to move Student from the Private School and that doing so "could" result in a setback for Student (N.T. 564:20-21), and that its environment provided the "gold standard" (N.T. 570:21-22). Similarly, her suggestion that all children require a certain level of external supports through the age of twelve or thirteen (N.T. 570-71) seemed to suggest that the District, and public schools in general, do not have the resources available to meet the needs of any child of certain ages. By contrast, the testimony of the teacher whose class Student would have attended was compelling in its detail and very persuasive, and was thus accorded significant weight in evaluating the proposed program and whether and how, as implemented, it was appropriate in addressing Student's educational needs.

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

RELEVANT IDEA PRINCIPLES

The IDEA and state and federal regulations obligate local education agencies (LEAs) to provide a "free appropriate public education" (FAPE) to children who are eligible for special education. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services that are reasonably calculated to permit the child to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase "free appropriate public

education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). LEAs meet the obligation of providing FAPE to eligible students through development and implementation of an IEP 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).

Recently, the U.S. Supreme Court considered anew the application of the *Rowley* standard, observing that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

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

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

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. * * * As we observed in *Rowley*, the IDEA “requires participating States to educate a wide spectrum of handicapped children,” and “the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between.”

Endrew F., ___ U.S. ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 349-50 (2017)(italics in original)(citing *Rowley* at 206-09)(other citations omitted). The Court explained that, “an

educational program must be appropriately ambitious in light of [the child's] circumstances... [and] every child should have the chance to meet challenging objectives.” *Id.*, 137 S. Ct. at 1000, 197 L.Ed.2d at 351. This is especially critical where the child is not “fully integrated into the regular classroom.” *Id.* The Court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.*, 137 S. Ct. at 1001, 197 L.Ed.2d 352. This standard is not inconsistent with the above interpretations of *Rowley* by the Third Circuit.

As *Andrew*, *Rowley*, and the IDEA make clear, the IEP must be responsive to the child’s identified educational needs. *See* 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. Nevertheless, the LEA is not obligated to “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). In other words, the law does not demand that LEAs provide services beyond those that are reasonable and appropriate in light of a child’s unique circumstances, such as those that “loving parents” might desire. *Andrew F.*, *supra*; *Ridley*, *supra*; *see also Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). Critically, “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); *see also D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same).

PROCEDURAL FAPE

The IEP is developed by a team, and a child’s educational placement must be determined by the IEP team based upon the child’s IEP, as well as other relevant factors. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.116. Parents play “a significant role in the IEP process.”

Schaffer, supra, at 53. Indeed, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). However, a procedural violation is actionable under the IDEA only if there is a consequent loss of educational opportunity for the student, a parent is seriously denied the right to participate, or a deprivation of educational benefit results. *D.S., supra*, 602 F.3d at 565; 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

GENERAL SECTION 504 AND ADA 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 v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995); *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012). Courts have long recognized the similarity between claims made under those two statutes, particularly when considered together with claims under the IDEA. *See, e.g., Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). Thus, in this case, the coextensive Section 504 and ADA claims that

challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

LEAST RESTRICTIVE ENVIRONMENT

One crucial component of the IDEA is the obligation for eligible students to be educated in the “least restrictive environment” (LRE) that permits them to derive meaningful educational benefit. 20 U.S.C. § 1412(a)(5); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993). All LEAs are required to make available a “continuum of alternative placements” to meet the educational and related service needs of children with disabilities. 34 C.F.R. § 300.115(a); 22 Pa. Code 14.145. And, FAPE and LRE are related, but separate, concepts. *A.G. v. Wissahickon School District*, 374 Fed. App’x 330 (3d Cir. 2010) (citing *T.R.*, *supra*, at 575, 578); *see also L.G. v. Fair Lawn Board of Education*, 486 Fed. Appx. 967, 973 (3d Cir. 2012).

TUITION REIMBURSEMENT AND OTHER REMEDIES

Parents who believe that a public school is not providing or offering FAPE to their child may unilaterally place him or her in a private school and thereafter seek reimbursement for tuition. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Here, the Parent obtained a private placement funded by the District through a settlement agreement in 2016 and sought to retain that placement beyond the time period specified in that agreement. The Complaint demanded tuition reimbursement and related expenses, an available remedy for parents to receive the costs associated with their child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington*

v. Department of Education, 471 U.S. 359 (1985); *Mary Courtney T.*, *supra*, 575 F.3d at 242.

Equitable principles are also relevant in deciding whether reimbursement for tuition is warranted.

Forest Grove School District v. T.A., 557 U.S. 230 (2009); *Carter*, *supra*. A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *Id.* The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Id.*

THE DISTRICT'S PROPOSED PROGRAM

The above tuition reimbursement test requires an initial analysis of whether the District's proposed program was reasonably calculated to provide Student with FAPE before proceeding to assessment of the private placement. It is first necessary here to address the Parents' concerns that the Permission to Reevaluate form for Student was not timely issued in December 2017. As noted, the settlement agreement required that document to be provided no later than December 5, 2017, but was not issued until December 21, 2017 after the Parents asked about it. The District candidly conceded the delay at the hearing. However, it did complete and issue the February 2018 RR before the date specified by the settlement agreement, and the timing of its delivery allowed for consideration of its results for development of the March 2018 IEP. As such, there is no evidence to support a conclusion that this procedural flaw resulted in any loss of educational opportunity for or benefit to Student, or a denial to the Parent of the opportunity to participate meaningfully in educational decision-making.

The District's proposed March 2018 IEP is based on a comprehensive RR that utilized a variety of assessment tools, strategies, and instruments to gather relevant academic, functional, and developmental information about Student in all areas of suspected disability. Specifically, that February 2018 RR included input from the Parents and a review and summary of relevant

prior assessments. It incorporated information on Student's present levels of academic and functional performance and curriculum-based measures obtained for that RR. Detailed input from the Private School was included. Assessments of Student's cognitive ability, academic achievement, and social/emotional/behavioral functioning were conducted. Speech/language and occupational therapy strengths and needs were also evaluated, and an FBA was conducted; two of those evaluations involved observations of Student at the Private School.

The proposed IEP is appropriately responsive to the needs identified by the February 2018 RR: task focus, self-regulation/monitoring, written expression, and articulation. Each is addressed through targeted and measurable annual goals, a significant number of program modifications and items of specially designed instruction, and/or necessary related services. The goals contained baselines to the extent the information was known to the District at the time the offer was made, and are appropriately ambitious in light of Student's unique strengths and needs and historical progress. The reading program proposed was a less intensive version of that provided by the Private School but was based upon the needs Student exhibited at the time of the February 2018 RR. The proposed IEP included a PBSP that was based on an FBA and included a plan for addressing all identified behaviors of concern. And, virtually all of the recommendations of the Private School and the private neuropsychologist are contained within the proposed March 2018 IEP. That IEP also included a plan for transitioning Student back to the District over the course of the summer of 2018.

The class that Student would have attended is provided with schedules and a consistent classroom routine with transitions generally made as a group. Class activities vary and change frequently throughout the day. There are areas in the classroom for taking breaks. An instructional aide is present for a portion of the day and paraprofessional support could be made

available for additional time as needed. Moreover, to address Student's dislike of being or feeling singled out, no PCA was included in the IEP, and the transition to instruction outside of the regular education classroom including related services was to occur when other students were moving throughout the building. The most significant block of instruction outside of the regular education classroom was to occur in the afternoon through dismissal for the day, minimizing the number of times Student would need to leave or return to the classroom.

As is further relevant here, in examining the LRE factor, "[i]f the school has given no serious consideration to including the child in a regular class with such supplementary aids and services and to modifying the regular curriculum to accommodate the child, then it has most likely violated the Act's mainstreaming directive." *Oberti, supra*, 995 F.2d at 1216. A private school is certainly on the more restrictive end of the LRE continuum when compared to the neighborhood school, even with pull-out instruction for a portion of the school day. Here, the IEP team was required to deliberate on placement in a regular education setting before proceeding to consider more restrictive environments along the continuum, including the Private School that Student attended. The proposed program also offers significant daily participation with typical peers, an essential component of LRE considerations. Additionally, the record evidence is preponderant that the Parents had the opportunity to act as full participants in the process of developing an educational program for Student for the 2018-19 school year. The evidence wholly supports a conclusion that the IEP team met its various obligations in determining the proposed program and placement.

The Parents raised a number of concerns with the District's proposal that were not globally addressed above. First, they contend that the issuance of the delayed Permission to Reevaluate form was due to their own diligence, and they harbored concerns that that

circumstance coupled with a mistake with a single check in the spring of 2018 provided them with sufficient grounds to lack confidence in the District. As noted above, the procedural error regarding the late Permission to Reevaluate form in this case did not amount to any substantial impediment to Student's right to FAPE or to the Parents' ability to meaningfully participate in development of the March 2018 IEP. This hearing officer also cannot conclude that a single check error over the course of the 2016-17 and 2017-18 school years before their April 2, 2018 decision, even in combination with the delayed Permission to Reevaluate, was so serious as to undermine the District's ability to provide Student with an appropriate educational program. While it is understandable that the Parents may have approached the IEP development process with caution due to these concerns, the errors were minor and did not meaningfully impact the process agreed to for preparing for the 2018-19 school year.

The Parents' main disagreement with the District's proposed program is their belief, and that of several of their witnesses, that the large public school environment will be too distracting to Student. (N.T. *passim*.) There are two main reasons that these concerns do not compel the conclusion the Parents seek. The first is that Student does not manifest behaviors in the educational setting to the same degree that Student does at home. This was true at the time of the February 2018 RR and has been consistent throughout the various evaluations when Student was in the District and at the Private School. Thus, the Parents' own experience with and concerns over Student's distractibility is not what the District professionals would encounter and address. The second is that the testimony about how Student might perform and behave in a setting larger than the Private School was necessarily speculative in nature; indeed, neither of the Parents' witnesses who opined on this subject ever observed Student in a large group setting, and one of them did not observe Student in any educational environment; and, the Parents' own testimony

about those concerns was similarly not based on observations of Student in large educational settings. In any event, the District's proposed IEP includes a variety of interventions for addressing this need of Student in the public school setting in a comprehensive PBSP that this hearing officer concludes is reasonably calculated to meet Student's unique needs and enable Student to make appropriate progress.

The Parents also expressed concern with some suggested interventions that they do not believe would be successful for Student, such as use of video recording as part of a social skills curriculum. (N.T. 764-68, 771-72, 801.) The testimony of the District witnesses simply did not establish the use of that technology to the extent of, or consistent with, the specific concerns they raised. Moreover, there is also nothing in the record to suggest that the District's professionals are not well qualified and competent to recognize whether any specific intervention may not be successful; on the contrary, the record as a whole supports the conclusion that the District's professionals are fully capable of implementing Student's IEP, monitoring Student's progress, and evaluating whether and how programming decisions should be revised based on how Student actually performs.

The Parents are clearly very loving and devoted parents who are advocating for what they believe is best for Student. While their concerns and firmly held beliefs about Student's ability to succeed in a setting outside of the Private School are wholly understandable from a parental perspective, this hearing officer cannot base conclusions on whether a proposed program is appropriate on speculation that Student may not progress as well in the District as the Parents believe Student has and will in the Private School. An LEA is required to provide FAPE, not the best or most ideal program that loving parents may desire. In this case, the Parents simply have not met their burden of establishing that the District's program is inappropriate based on the

applicable legal standards, and there is no need to proceed to the remaining steps of the *Burlington-Carter* test. Accordingly, the Parents' claims must be denied.

CONCLUSION

The evidence presented in this matter amply supports the conclusion that the District's proposed program for the 2018-19 school year was appropriate and that the Parents are entitled to no remedy.

ORDER

AND NOW, this 30th day of October, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's proposed program and placement for Student for the 2018-19 school year met all legal requirements, and the Parents' claims are therefore DENIED in their entirety.

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
ODR File No. 20663-1718AS