

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: 20956-18-19

Child's Name: Y. T. **Date of Birth:** [redacted]

Date of Hearing:
8/10/2018

Parent:
[redacted]

Counsel for the Parent
Pro Se

Local Education Agency:
Norristown Area School District
401 N. Whitehall Road
Norristown, PA 19403

Counsel for the LEA
Amy T. Brooks, Esquire
Wisler Pearlstine, LLP
Blue Bell Executive Campus
460 Norristown Road, Suite 110
Blue Bell, PA 19422-2323

Hearing Officer: Cathy A. Skidmore, M.Ed., J.D. **Date of Decision:** 8/23/2018

INTRODUCTION AND PROCEDURAL HISTORY

The student (Student)¹ is an elementary school-aged student in the Norristown Area School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student has attended a private school (Private School) since January 2017, but the District proposed to have Student return to its program in the fall of 2018. Student's Parent disagreed with that proposal and filed a due process complaint against the District challenging its offer of programming for the 2018-19 school year.

The case proceeded to an efficient single-session due process hearing,³ at which the parties presented evidence in support of their respective positions. The Parent sought to establish that the District's proposed program failed to provide Student with a free, appropriate public education (FAPE) and that Student should remain in the Private School. The District maintained that its proposed special education program was appropriate for Student as well as in compliance with the IDEA mandate for education in the least restrictive environment.

For the reasons set forth below, the Parent's claim must be denied.

¹ In the interest of confidentiality and privacy, Student's name and gender, and other personal information, are not used in the body of this decision. All potentially 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 References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. Certain evidence was excluded prior to the hearing as irrelevant (HO-1). Admission of all of the Parent's exhibits was taken under advisement in order to ensure that no relevant document would be excluded; upon review of the remainder of the record, in an abundance of caution, all of the Parent exhibits (P-1 through P-22) are hereby admitted and, to the extent the District had objections thereto, they are overruled.

ISSUES

1. Whether the program proposed for Student by the District for the 2018-19 school year is appropriate for Student's needs;
2. If the District's proposed program is not appropriate for Student, should the District be ordered to maintain Student at the Private School for the 2018-19 school year?

FINDINGS OF FACT

1. Student is an elementary school-aged student who resides in the District. Student is eligible for special education as a child with Autism and a Speech/Language Impairment. Student also meets criteria for an Intellectual Disability. (N.T. 24-25; S-2; S-3.)
2. Student uses an augmentative alternative communication (AAC) device in addition to a few sign approximations, gestures, facial expressions, and body movements in order to communicate. (S-24 pp. 4-7.)
3. Student was provided with early intervention services following a diagnosis of Autism Spectrum Disorder in 2010 and entered the District in the fall of 2014. (N.T. 162; S-2; S-3.)
4. The District undertook participation in an autism initiative through the Pennsylvania Training and Technical Assistance Network (PaTTAN) in 2014 and developed an Applied Behavior Analysis (ABA)-based verbal behavior program. (N.T. 31.)
5. District teachers and paraprofessionals who implement the autism initiative program attend PaTTAN three-day boot camps on a regular basis. PaTTAN also provides daily consultation in addition to monthly training and additional consultation, and it conducts annual site reviews of the District's autism initiative program. (N.T. 31, 37, 42.)
6. PaTTAN provides Board Certified Behavior Analysts (BCBAs) to the District who are supervised as frequently as necessary. (N.T. 37.)
7. The District uses the Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP) to guide and determine the appropriate levels of programming for each child in the autism initiative program. The instrument assesses 170 measurable skills across three developmental levels (0-18 months, 18-30 months, and 30-48 months). The skills are in the following categories: manding, tacting, listener responding, visual perceptual skills/match to sample, independent play, social behavior/social play, motor imitation, echoic, spontaneous vocal behavior, intraverbal, group/classroom skills, linguistic structure, and academic skills. (S-6 p. 7; S-31.)

8. Generalization of skills is an important emphasis in verbal behavior programming. (N.T. 106-07.)
9. Student began participation in the District's autism initiative/verbal behavior program in the fall of 2014. (N.T. 43.)

SPRING AND FALL 2016

10. An Individualized Education Program (IEP) developed in the spring of 2016 when Student was in first grade identified needs in physical therapy (locomotor and ball skills); occupational therapy (independent fine motor task engagement, self-help skills, and self-regulation); and pre-academic and speech/language skills (imitation of motor tasks, increased engagement in independent tasks, following directions, sorting items, matching pictures, manding, functional play, and waiting for reinforcement). (S-6.)
11. Annual goals and short term objectives in the spring 2016 IEP addressed matching pictures; imitation of motor tasks; following directions; manding; functional play/interactions; following a visual schedule; waiting for reinforcement; occupational therapy (completing fine motor tasks independently, using utensils); and physical therapy (navigating flights of stairs while carrying items, locomotor and ball skills). There was a Positive Behavior Support Plan (PBSP) addressing aggressive and elopement behaviors. A number of program modifications/items of specially designed instruction were also part of this IEP in addition to related services (transportation with an aide, occupational therapy and consultation, physical therapy and consultation, speech/language therapy and consultation, and a full-time personal care assistant (PCA)). (S-6.)
12. The spring 2016 IEP proposed full time autistic support, specifying participation with typically-developing peers during lunch, recess, assemblies, field trips, and school events. (S-6.)
13. Student was reevaluated in the spring of 2016 and a Reevaluation Report (RR) issued in May. (S-8.)
14. The May 2016 RR provided input from the Parent including concerns, incorporated previous evaluation information, and summarized various aptitude and achievement tests and classroom-based assessments including progress on IEP goals and objectives. A summary of an observation by a special education teacher was also provided. (S-8.)
15. Cognitive assessment for the May 2016 RR (Comprehensive Test of Nonverbal Intelligence – Second Edition (C-TONI II)) yielded a full scale IQ score of 50 (very low range), although Student's lack of focus and attention likely impacted Student's performance on that measure. (S-8.)
16. Adaptive behavior was assessed through rating scales (Adaptive Behavior Assessment System – Second Edition). Resulting scores were below the 0.1 percentile (extremely low range) in all skills as well as on the General Ability Composite. (S-8.)

17. Speech/language evaluation for the May 2016 RR indicated extremely low expressive and receptive language skills. (S-8.)
18. Occupational therapy evaluation for the May 2016 RR reflected continued needs with respect to daily living and other functional fine motor skills as well as sensory motor weaknesses. (S-8.)
19. Physical therapy evaluation for the May 2016 RR reflected continued need with respect to increasing strength, balance, and coordination for both locomotor and ball skills but some improvement over previous evaluations when cuing was provided. (S-8.)
20. A Functional Behavioral Assessment (FBA) for the May 2016 RR identified a number of aggressive and self-injurious behaviors. (S-8.)
21. Autism rating scales completed for the May 2016 RR confirmed that Student met criteria for that disability. (S-8.)
22. Educational needs identified in the May 2016 RR were for imitation of fine and gross motor tasks with objects; increased engagement during independent tasks; following more simple directions; matching pictures and objects; making requests; participation in functional play; increasing ability to wait for reinforcers; and speech/language, occupational therapy, and physical therapy skills. Adult support throughout the day, a high rate of behavioral reinforcement, and prompts for activities of daily living were also noted as needs. (S-8.)
23. The May 2016 RR identified Student's disability categories as Intellectual Disability and Autism. (S-8.)
24. The Parent and District entered into a settlement agreement in November 2016 at a time when the Parent was represented by counsel. That agreement provided for Student's placement in the Private School where Student attended beginning in January 2017. That agreement was for the time period through extended school year (ESY) programming over the summer of 2018. (N.T. 175; S-10.)
25. The settlement agreement included provisions for the District to conduct a reevaluation of Student in the spring of 2018 as well as develop a proposed IEP for the 2018-19 school year. There is also a provision that the Private School would not become the pendent placement should the parties have a dispute over programming for the 2018-19 school year. (S-10.)

THE PRIVATE SCHOOL

26. The Private School provides an ABA-based verbal behavior program. It uses the VB-MAPP to guide decisions on programming for students. (N.T. 76-78, 92-93)
27. The Private School operates year-round with breaks of no more than ten days. There are such breaks in December/January, June, and August. (N.T. 97, 103, 183-84.)

28. The Private School employs several BCBA's. Students are supported by BCBA's for a minimum of 20% of time spent at the Private School. (N.T. 70-73.)
29. The Private School is licensed by the Commonwealth of Pennsylvania but is not an approved private school. (N.T. 103-04, 125.)
30. Student is in a verbal behavior classroom at the Private School. There are two special education teachers for six students. (N.T. 76-78.)
31. Students at the Private School interact with typically-developing high school students twice each week in social groups. They also go on community outings. (N.T. 94-97, 106.)

PRIVATE SCHOOL FEBRUARY 2017 IEP

32. The Private School developed in IEP in February 2017. Annual goals and short term objectives addressed imitation of motor movements; following one-step directions independently; identifying functional pictures; completing independent work; increasing time participating in activities; independently requesting reinforcers; following a morning routine; using silverware and pacing bites; using the restroom independently; expanding sound repertoire and word approximations; responding to greetings; engaging in reciprocal interactions; taking turns; and decreasing problem behaviors. Additional goals addressed fine and gross motor skills and sensory regulation. (S-12.)
33. The Private School February 2017 IEP included a number of program modifications and items of specially designed instruction: use of ABA; variable reinforcement; natural environment and intensive teaching; a 1:1 student to teacher ratio with clear and consistent instruction; provision of clear directions; and a Behavior Intervention Plan (BIP). (S-12.)
34. Student made some progress toward goals in the Private School February 2017 IEP, but many were not introduced until the fall of 2017. (S-13.)

PRIVATE SCHOOL FEBRUARY 2018 IEP

35. An IEP was developed by the Private School in February 2018. This IEP contained information on Student's then-present levels of educational performance and functional performance including progress on goals. Needs identified in the IEP were for speech/language skills (speech sound imitation, functional communication with the device, reciprocal social communication, and oral motor intervention); gross motor skills (ball skills, hopping); fine motor skills (prewriting and marking, cutting, and self-care/using fasteners); and academic/pre-academic skills (to include responding to name, sorting and matching, labeling, imitation, and functional play). (S-19.)
36. Non-PBSP annual goals and short term objectives in the Private School February 2018 IEP addressed imitation of 10 new motor movements (from a baseline of 18 actions and 16 actions with objects); following 5 new verbal one-step directions independently (from a baseline of 6); identifying 5 new functional pictures of common items (from no baseline

because Student did not perform the skill); completing independent structured work activities requiring 30 responses (from a baseline of completing 20 responses with 67% accuracy); participating in chosen activities for specified durations (from a baseline of participating in 1 activity for 5 minutes); following an afternoon routine (from no baseline because Student did not perform the skill); using silverware, pacing bites, clearing the utensil, and keeping food from the floor (from a baseline of significant variability on the first 3 elements and no baseline on the final element because Student did not perform the skill); imitation of a new block design (from no baseline because Student did not perform the skill); labeling 4 new functional items with an adapted sign (from no baseline because Student did not perform the skill); performing 2 self-care routines independently (from a baseline of requiring prompts for all steps in a bathroom routine); responding to name across settings and instructors (from no baseline because Student did not perform the skill); expanding sound repertoire by 5 new sounds beyond a baseline of specified sounds; imitating 4 new target sounds (from a baseline of specified sounds already imitating); responding to greetings and goodbyes (with no baseline provided); gross motor skills (hopping and skipping from baselines of 4 hops and short distances of skipping; and dribbling and shooting a basketball from a baseline of dribbling 7 times and not shooting the ball); fine motor skills (copying 2 to 3 consecutive lines/marks independently from a baseline of requiring physical prompts for the second line/mark); cutting lines of varying lengths from a baseline of 4 to 8 inch lines with prompts; and independently donning clothing with a range of fasteners (from a baseline of attempting 2 types of fasteners with assistance)). (S-19.)

37. The Private School February 2018 IEP incorporated behavioral goals from its February 2018 PBSP. (S-17; S-19.)
38. The February 2018 Private School draft PBSP provided separate antecedents, consequences, and perceived functions for each of fifteen identified and defined problem behaviors, ranging from self-injurious behavior to aggression to elopement. The hypothesis statement on the function of the behavior was as follows: “When [Student] is unable to effectively communicate [Student’s] needs, attention or sensory stimulation is valuable, a demand is placed, access is denied, or [Student] wants a tangible item, but is not able to effectively communicate [Student’s] needs, [Student] will engage in problem behavior.” (S-17.)
39. A number of skill deficits were identified as related to the behaviors of concern in the February 2018 Private School draft PBSP. Annual goals in the PBSP were to refrain from engaging in problem behavior for 10 consecutive school days (from a baseline of an average of 1.43/day); and refrain from performing the most concerning form of self-injurious behavior (biting hands) from a baseline of 20.9/day as well as to use targeted replacement behavior for that behavior (no baseline); compliance with demands during intensive teaching and in the natural environment (from a February 2018 IEP baseline of 95% compliance (variable rates of reinforcement)); requesting 2 new reinforcers (from a February 2018 IEP baseline of 23); requesting removal from aversive stimuli (no baseline); and requesting attention (no baseline). (S-17, S-19.)

40. The Private School February 2018 draft PBSP included antecedent strategies, replacement behaviors, and specific consequences for performing replacement or problem behavior. (S-17.)
41. The Private School February 2018 IEP included a number of program modifications and items of specially designed instruction: use of ABA; variable reinforcement; natural environment and intensive teaching; a 1:1 student to teacher ratio with clear and consistent instruction; provision of clear directions; a BIP; and consultation with a speech/language pathologist regarding language, functional communication, feeding, and social communication. (S-19.)
42. Identified related services in the Private School February 2018 IEP were for transportation; speech/language therapy; occupational therapy; physical therapy; and a 1:1 bus aide. (S-19.)
43. The Private School February 2018 IEP provided for ESY programming for Student to address all IEP goals and objectives. (S-19.)

DISTRICT REEVALUATION SPRING 2018

44. The District requested permission to reevaluate Student in late January 2018. The Parent provided the signed consent noting a date of February 14, 2018, but the form is marked received by the District on February 26, 2018. (S-16.)
45. The Parent provided input into the spring 2018 RR identifying strengths (self-determination, independence, and happiness) and needs (competent, energetic, innovative staff who believe in Student's ability to learn). (S-18.)
46. The spring 2018 RR included the Parent's input and summarized results of previous assessments in May 2016 and in 2014. This RR also summarized academic and functional performance information from the February 2018 Private School IEP. (S-24.)
47. Speech/language assessment for the spring 2018 RR included a communication matrix to measure communicative behaviors at the most basic level for refusing or obtaining items, engaging in social interaction, and gaining information. The speech/language pathologist also observed Student at the Private School. Speech/language needs were identified to include an expanded sound repertoire, speech/sound imitation, functional communication, and labeling items with adapted signs. (N.T. 145, 147-49; S-24.)
48. Occupational therapy evaluation for the spring 2018 RR included review of records, observation, and formal and informal testing. Needs in this area were identified to include fine motor skills, visual motor skills, self-regulation, pre-writing and cutting, and self-care skills (feeding and dressing). The occupational therapist recommended that goals in the then-current IEP for that area be continued. (S-24.)
49. Physical therapy evaluation for the spring 2018 RR included review of records, formal assessment and screening measures, and interview with Private School staff. Needs in this area were identified to include improving coordination and balance, further

developing lower extremity strength, improving motor planning skills, and social activities involving gross motor skills. The physical therapist recommended that the goal for ball skills be continued and that a goal for core strength, coordination, and motor planning be added. (S-24.)

50. Observations by the District school psychologist and a special education teacher at the Private School were summarized for the spring 2018 RR. One observation was for the purpose of an FBA during which several behaviors of concern were noted. She also included a brief review of observations during her assessments of Student and inserted the content of the Private School PBSP contents into the RR. (N.T. 45-48, 126-28; S-19.)
51. The District school psychologist administered the C-TONI II for the spring 2018 RR. Student's scores were below the first percentile (very poor range) on this instrument; however, Student's distractibility and lack of focus were noted to have likely impacted the results. (S-19.)
52. Student's adaptive behavior was assessed for the spring 2018 RR (Vineland Adaptive Behavior Scales, Third Edition (Vineland-3)). The Parent's scales indicated that Student was exhibiting poor adaptive behavior skills on all composites, continuing to support the Intellectual Disability classification as well as Autism. (S-19.)
53. The Behavior Assessment System for Children – Third Edition (BASC-3) was also utilized for the spring 2018 RR. Results from the Student's Parent and a teacher revealed clinically significant concerns of the Parent for atypicality, withdrawal, attention problems, social skills and functional communication; and at-risk concerns for hyperactivity, adaptive skills, and daily living skills. The teacher's scales were in the clinically significant range with respect to hyperactivity, atypicality, withdrawal, adaptive skills, social skills, and functional communication; and in the at-risk range for attention problems. Both raters endorsed Autism criteria through this instrument. (S-24.)
54. The spring 2018 RR identified Student's categories of disability as Intellectual Disability and Autism. Needs were indicated to address deficits with cognitive, adaptive, academic, speech/language, social, sensory and motor skills, as well as those specified by the District related service providers who participated in that RR. (S-24.)
55. The District provided a copy of the RR to the Parent by mail on May 1, 2018. However, that version of the RR did not include all input. The full RR was sent to the Parent sometime after its completion. (N.T. 119, 167-68; P-2; P-19.)

SPRING 2018 IEPs

56. A draft IEP was provided to the Parent prior to the IEP meeting on May 24, 2018. Both the spring 2018 RR and draft IEP were discussed. (N.T. 56-58; P-6; P-8; S-25; S-26.)
57. The May 2018 IEP provided a brief summary of Student's educational background and incorporated the Private School's February 2018 present levels of academic performance and functional performance. Additional information supplementing this section of the

IEP included the results of assessments administered for the May 2018 RR (C-TONI II, Vineland-3, and BASC-3); results of the VB-MAPP administered by the Private School in January 2018 with updates from May 2018; previous assessment of cognitive ability, adaptive behavior, and school readiness; summaries of observations of Student at the Private School by the District school psychologist and special education teacher; and an interview with a BCBA at the Private School who worked with Student. Portions of the Private School's February 2018 draft PBSP were also incorporated: the problem behaviors exhibited with their definitions, the hypothesis statement, the identified skill deficits, and the antecedent and consequence strategies. The goals from the Private School February 2018 IEP were also contained in the present level section of the May 2018 IEP. (S-27.)

58. The results of and other input from the speech/language, occupational therapy, and physical therapy evaluations for the May 2018 RR were also included in the May 2018 IEP. (S-27.)
59. Needs identified for the May 2018 IEP were for academic/classroom skills (motor imitation, self care, manding for actions, requesting, following one-step directions, and behavior); speech/language skills (sound repertoire, speech sound imitation, functional communication, and labeling items with adapted signs); fine motor skills (self-care (feeding and dressing), fine motor and visual motor skills, self-regulation/attention, prewriting and cutting skills); gross motor skills (improving coordination, balance, and lower extremity strength; improving motor planning skills; and incorporation of peer interactions with gross motor activities); and behavior. (S-27.).
60. The May 2018 IEP contained the following annual goals with short term objectives: requesting 25 new reinforcers (from a baseline of 23); independently requesting removal from aversive stimuli across instructors (from a baseline of 1 during a ninety minute observation); imitation of 10 new motor movements (from a baseline of 18 actions and 16 actions with objects); following 5 new verbal one-step directions independently (from a baseline of 6); performing 2 self-care routines independently (from a baseline of requiring prompts for all steps in a bathroom routine); using 2 new forms of requesting attention (from a baseline of requiring prompting for all forms); labeling 4 new common items or pictures of such items with adapted signs (from a baseline of requiring modeling or prompts for 3 different common items); imitating 4 new target sounds (from a baseline of 3 specified sounds already imitated with cues); expanding sound repertoire by 5 new sounds beyond a baseline of specified sounds; copying 2 to 3 consecutive lines/marks independently (from a December 2017-January 2018 baseline of requiring physical prompts for the second line/mark); using silverware, pacing bites, clearing the utensil, and keeping food from the floor (from a baseline of significant variability on the first 3 elements and no baseline on the final element because Student did not perform the skill); cutting lines of various lengths with scissors independently (from a baseline of 4 to 8 inch lines with prompts and deviations); independently donning clothing with a range of fasteners (from a baseline of attempting 2 types of fasteners with assistance); improving core strength, coordination, and motor planning to perform 2-step gross motor skills (from no baseline because Student did not perform the skill); and dribbling a basketball 8 consecutive times (from a baseline between 3 and 9 with prompting). Behavior goals

were for refraining from engaging in problem behavior for 10 consecutive school days (from a baseline of 1.43 episodes per day of 1.71 minutes average duration); and refraining from engaging in the most concerning self-injurious behavior for 1 school day (from a baseline of 20.9 per day ranging from 4-52 in December 2017 and January 2018). (S-27.)

61. Program modifications and items of specially designed instruction in the May 2018 IEP were for verbal behavior strategies with errorless teaching and a high level of structure; a most- to least prompt hierarchy; pairing of highly reinforcing items with play/peer interactions; preferential seating with limited distractions; a visual schedule; warnings for transitions; designated area for routines; a timer; visual representations of tasks with steps; limited short directions; chunking of tasks; highly structured, short work sessions with varied activities; repetition and guided practice, including with the AAC device; use of a Picture Exchange Communication System (PECS) when the AAC device is not available; language/communication support; Stimulus-Stimulus Pairing and Rapid Motor Imitation Antecedent Procedures; multisensory cues and prompts; occupational therapy accommodations; a sensory diet with scheduled sensory breaks and incorporated sensory strategies; a low student to teacher ratio; adult modeling; sensory strategies; a PBSP with frequent and positive tangible reinforcement, variable schedule of reinforcement, and a token economy; and daily home-school communication. (S-27.)
62. The May 2018 IEP proposed a program of full-time autistic support with the exception of lunch, recess, assemblies, field trips, and school-wide events. Occupational, physical, and speech/language therapy, special transportation, and a full time PCA were provided as related services. (N.T. 27-28; S-27.)
63. The May 2018 IEP included a PBSP that mirrored the Private School February 2018 draft PBSP. The PBSP did include an assessment summary that combined the behaviors as though all had the same antecedents, consequences, and perceived function, but then provided the details on the separate antecedents, consequences, and perceived functions for each of the fifteen identified and defined problem behaviors, as had the Private School February 2018 draft PBSP, with a few additions. The PBSP in the May 2018 IEP includes the same hypothesis statement as in the Private School February 2018 draft IEP; and, the skill deficits identified by the latter appear earlier in the May 2018 IEP. (S-27.)
64. Three of the goals in the main body of the May 2018 IEP are incorporated into the PBSP section of that May IEP: requesting removal from aversive stimuli; refraining from engaging in problem behavior; and refraining from engaging in the most concerning self-injurious behavior. A number of the previously described program modifications/items of specially designed instruction in the May 2018 IEP are incorporated into the PBSP. (S-27.)
65. The options considered by the IEP team included a regular education program as well as the Private School. The District's proposed program would return Student to the same elementary school Student previously attended. (N.T. 60; S-28.)

66. All of Student's teachers and the PCA would work with Student on the speech/language goals to promote generalization in the District's proposal. (N.T. 150-54.)
67. Student would participate with typically-developing peers during lunch, recess, and special classes in the District's proposal. (N.T. 27-28.)
68. There would be eight students and five adults in the proposed classroom. The adults would be the special education teacher, two classroom paraprofessionals, and two PCAs including the one assigned to Student. (N.T. 30.)
69. The Parent provided questions and concerns with the initial draft IEP in writing after the May 24, 2018 meeting. She indicated disapproval of the May 2018 Notice of Recommended Educational Placement (NOREP) on June 1, 2018. (N.T. 166-67, 168-69; P-11 pp. 4-7; S-28.)
70. A second IEP meeting convened on June 20, 2018. (N.T. 60; S-26 p. 5.)
71. The IEP as revised following the June 20, 2018 meeting included the following: an explanation for the discrepancy between the Private School's and District's scoring of the VB-MAPP in 2018 and 2016, respectively, for the tacting section; correction to the name of the test instrument and year administered for a prior (2013) cognitive assessment; and a verbatim list of all of the Parent's concerns and questions with the May 2018 IEP and spring 2018 RR including the specific page numbers she had provided. A few of those concerns/questions were addressed in the revised June 2018 IEP (an explanation for the discrepant scoring of the tacting section of the VB-MAPP and correction of the year and test instrument of a prior cognitive assessment); however, the District did not conclude that all questions/concerns required written responses within the IEP. No other revisions were made to the June 20, 2018 IEP. (N.T. 63-64; S-37.)
72. The Parent was provided a copy of the June 2018 IEP and a NOREP at the end of June or early July by email and regular mail. The Parent indicated disapproval of the June 2018 NOREP on July 6, 2018. (P-16; P-17; P-18; S-35.)

PROGRESS AT THE PRIVATE SCHOOL

73. When Student began at the Private School, Student exhibited problem behaviors multiple times each day. (N.T. 79-80.)
74. When Student began at the Private School, Student exhibited difficulty with transitioning between activities and locations, often demonstrating problem behavior. (N.T. 81-82.)
75. Student was assessed with the VB-MAPP in January 2018 at the Private School. Student demonstrated 27 of the 170 skills assessed, in the level one learner range. By May 2018, Student demonstrated 30 of the skills assessed, with points earned in the areas of manding, tacting, listener responding, visual perceptual skills/matching to sample, independent play, social behavior/social play, motor imitation, and spontaneous vocal behavior. (S-27 pp. 9-15; S-31)

76. Student made progress toward some of the goals in the Private School February 2018 IEP that was reported at the end of May 2018, but not shared with the District when the parties were meeting to develop the new IEP for the fall. Specifically, between the end of February and the end of May 2018 on the goals that were part of the District's May and June IEPs, Student demonstrated 5 new mands for reinforcers; imitated 2 new motor movements; and increased accuracy in the use of silverware, pace of bites, and clearing utensils. Student also had 9 consecutive days without engaging in problem behavior. Student demonstrated variable or no progress/goal not introduced on other goals. (N.T. 109-10; S-34; S-38.)
77. By June of 2018, Student was successfully transitioning between activities and locations without engaging in problem behavior or stereotypy, and exhibited less than 1 episode of problem behavior per day. (N.T. 80-82.)
78. The Parent is very pleased with the progress Student has made at the Private School, particularly with respect to communication skills and the most concerning self-injurious behavior. (N.T. 169-74.)

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 Parent 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 " equipoise." *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 each of the witnesses to be credible, and the testimony overall was essentially quite consistent where it overlapped.

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. However, not all of the admitted evidence was pertinent to the straightforward issue presented and consequently some of the testimony and exhibits are not cited.

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).

EVALUATIONS AND REEVALUATIONS

In conducting an evaluation or reevaluation, the law imposes certain requirements on LEAs to ensure that sufficient and accurate information about the child is obtained:

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

- (i) Whether the child is a child with a disability under § 300.8; and
- (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. §§ 300.304(b); *see also* 34 C.F.R. § 303(a). The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data including that provided by the parents in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(a).

In Pennsylvania, LEAs are required to provide a report of an evaluation or reevaluation within sixty calendar days of receipt of consent excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1).

PARENT PARTICIPATION

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).

While development of an IEP is expected to be a collaborative process, an LEA’s issuance of a NOREP does not require either complete agreement of the IEP team or acquiescence to a parent’s preferences. As the U.S. Department of Education cogently explained in 2010,

[t]he IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). * * * * If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency's determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint.

Letter to Richards, 55 IDELR 107 (OSEP 2010).

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 suggested that the Parent sought tuition reimbursement, 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.*

At the hearing, however, the Parent clarified that she sought prospective relief through an order directing the District to maintain the placement at the Private School. Hearing officers do enjoy broad discretion to fashion an appropriate remedy under the IDEA. *See, e.g., Forest Grove*, *supra*, 557 U.S. at 240 n. 11; *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010). In a case such as this, there is no reason to forego application of this

discretion to an order for a private school placement. *See, e.g., Burlington, supra*, 471 U.S. at 370; *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285-86 (11th Cir. 2008); *Ridgewood, supra*, 172 F.3d at 248-49.

While the tuition reimbursement test may not be directly applicable, its prongs do provide concrete guidance for evaluating this type of claim. Additionally, this hearing officer has previously determined that an order for prospective placement requires evidence that supports a conclusion that the LEA is not in a position to make timely and reasonable revisions to its special education program in order to offer and provide FAPE. *See, e.g., A.Z. v. Young Scholars – Kenderton Charter School*, 15202-1415KE (Skidmore, December 24, 2014) (citing *Burlington, supra*, 471 U.S. at 369 (explaining that private placement at public expense is warranted where an appropriate public school program is not possible)). This does not mean that the Parent must establish that the LEA cannot “in theory” provide an appropriate program, *Draper, supra*, 518 F.3d at 1285 (quoting *Ridgewood, supra*, 172 F.3d at 248-49), but the equitable nature of the requested remedy logically demands something more than a denial of FAPE. In this matter, as discussed more fully below, it is not necessary to address this specific consideration.

DISTRICT PROPOSED PROGRAM

The District’s proposed IEP is based on a comprehensive RR that utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student in all areas of suspected disability. Specifically, the spring 2018 RR included input from the Parent and a review and summary of relevant prior assessments. It incorporated information on Student’s present levels of academic and functional performance from the Private School February 2018 IEP. Assessments of Student’s cognitive ability, adaptive behavior, and social/emotional/behavioral functioning were conducted.

Speech/language, physical therapy, and occupational therapy strengths and needs were also evaluated. The District school psychologist and others observed Student at the Private School. All of this evidence supports the conclusion that the District's spring 2018 RR was sufficiently comprehensive to identify Student's needs and provided a sound basis for development of an IEP to address them. It is also significant that the spring 2018 RR yielded results consistent with previous evaluations.

It is true that the spring 2018 RR was not timely issued. As noted, the applicable law required the reevaluation to be completed within sixty calendar days of receipt of the Parent's consent. The RR was therefore due no later than April 27, 2018 (assuming the date it was marked as received is correct), and the Parent did not receive a complete copy of the document until sometime after May 1, 2018. 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. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010); 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2). Here, the parties met on two occasions nearly a month apart to discuss the spring 2018 RR and proposed IEP, with one of those meetings well after completion of the former; and, Student was not attending the District's ESY program. 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 May and June 2018 IEPs are appropriately responsive to the needs identified by the spring 2018 RR including academic, adaptive, speech/language, occupational therapy (including fine motor, visual motor, sensory, and self-regulation needs), physical therapy, and behavioral

skill deficits. Each of the identified needs are addressed through targeted and measurable annual goals with short term objectives, 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 (as well as the progress reported in May 2018 but not known at the time of the District's proposal) including VB-MAPP skills acquired by that time.⁴ The proposed IEP included a PBSP that was based in large part on that drafted by the Private School in February 2018 and included a plan for addressing all fifteen behaviors of concern. The program proposed is one of intensive, highly structured autistic support based upon ABA principles, and is very similar to and consistent with that provided in the Private School that the Parent prefers.

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, or even a specialized classroom in a non-neighborhood public school. Here, the 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. It clearly did so. The proposed program also offers daily participation with typical peers, an essential component of LRE considerations. Additionally,

⁴ The expectations in the goals in the District's proposed IEP are also not inconsistent with the Private School February 2018 IEP. Although there is no reason to doubt that the District would update the proposed IEP to reflect Student's present levels with the information from May 2018, it will be ordered to do so.

the record evidence is preponderant that the Parent was a full participant in the process of developing an educational program for Student for the 2018-19 school year, and that the IEP team met its various obligations in determining placement.

The Parent raised a number of concerns with the District's proposal. The first is that the District's proposed IEP removed some of the Private School's IEP goals and, thus, improperly reduced expectations for Student contrary to *Andrew F.*'s mandates. A majority of the goals remained, however, and those that are in the proposed IEP are suited to the public school environment. The proposed IEP also addresses needs through means other than goals, including program modifications, items of specially designed instruction, and related services; not all special education services are provided through identified goals. The evidence further reflects that the Private School waited to introduce goals over the time Student has attended there because the level and intensity of Student's needs in acquiring skills prevented implementation of them all at the same time (N.T. 108-09). For these reasons, the removal of a few goals in light of the spring 2018 RR and other considerations does not render the proposed IEP inappropriate.

The Parent and the Private School BCBA explicitly expressed disapproval of the removal of a goal for learning a replacement behavior for the most concerning self-injurious behavior (N.T. 89-90, 92). The absence of this specific goal cannot be fatal, however, where the District's PBSP does address use of replacement behavior, and there are a number of program modifications and items of specially designed instruction in the proposed IEP and PBSP to support Student in reducing that behavior. Moreover, that goal had not even been introduced at the Private School until late May 2018, and there was scant information on whether and how Student was progressing toward that goal at the Private School (N.T. 89). The record simply

does not establish preponderantly that omission of this particular goal renders the entirety of the District's proposed IEP and PBSP inappropriate.

A second concern that was explained by the Private School BCBA is with the District's FBA and PBSP, namely that the FBA did not include underlying data and graphs and, further, that the problem behaviors were combined together in the District's PBSP rather than separating their topographies and functions (N.T. 86-88). The FBA did include some of the data obtained, however (S-24 p. 19), and it is unclear what additional data is lacking or how having additional data would better inform the FBA or PBSP. In addition, while graphs might have been useful to include especially for a professional such as a BCBA who is trained to use and interpret them, graphs are based on and developed from data, and there is no evidence that the District failed to obtain or consider all of the relevant underlying data. With respect to the PBSP, it is true that the District did include a summary section that combined the behaviors as well as the antecedents, consequences, and functions of each (which was consistent with the Private School February 2018 draft PBSP hypothesis statement). In any event, the District's PBSP also provided the level of detail that the Private School BCBA testified was important to understand. This hearing officer finds that the District's FBA and PBSP are sufficiently detailed and specific.

Next, the Parent and the Private School BCBA disagree that Student would benefit from interactions with typically developing peers at this time (N.T. 92-93) based on certain recommendations of a nationally-known expert in the field of ABA and autism. The District, however, is required to follow the law, including the LRE provisions in the IDEA; and here, it has done so.

The Parent also conveyed concerns that Student would regress if returned to the District, including disappointment with the District speech/language pathologist who previously worked

with Student (N.T. 161-64) and participated in conducting the spring 2018 RR. The Parent further expressed disagreement with the Intellectual Disability classification (N.T. 165). Finally, the Parent challenged the District's failure to address all of the questions and comments she provided following the May 24, 2018 IEP meeting in the revised June 2018 IEP (N.T. 63-64, 67-68, 166).

The Parent is clearly a very dedicated, devoted, and passionate advocate of, and naturally wants the best for, Student. While the various concerns and firmly held beliefs 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 Parent believes Student has done in the Private School. An LEA is required to provide FAPE, not the best or most ideal program that loving parents desire. There is also nothing in the record to suggest that the District's professionals are not well qualified and competent. In addition, simply because a student may be classified under the IDEA as a child with an Intellectual Disability does not equate to any predetermined limitations on potential for growth; and, moreover, a child's special education program is not dependent upon nor dictated by an eligibility classification. As a final matter, to the extent that the Parent's questions and concerns about the District's proposed IEP were not addressed at a meeting or in the due process hearing, the District will be required to offer another meeting of the team in order to do so.⁵

⁵ There is no reason that many if not all of the remaining questions and concerns may be properly addressed solely through verbal discussion; many of them listed in P-11 and in the proposed June IEP relate to word choice and other non-substantive matters.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District's proposed program for Student for the 2018-19 school year is appropriate.

ORDER

AND NOW, this 23rd day of August, 2018, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's proposed program for the 2018-19 school year met its obligations to offer a free, appropriate public education to Student.
2. Within five calendar days of the date of this Order, the District shall offer no less than three dates to meet with the Parent and the entire IEP team to discuss any remaining concerns and questions. The proposed meeting dates shall be prior to the tenth school day of the 2018-19 school year.
3. Within seven calendar days of the date of this Order and prior to any meeting held with the Parent as provided by paragraph 2, the District is ordered to revise the proposed IEP to include all new information provided to it about Student's present levels and progress on the goals in the Private School February 2018 IEP and to revise goal baselines as appropriate.

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
20956-1819KE