

By order of Judge Eduardo C. Robreno on December 7, 2020, this decision has been vacated.

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

HEARING

ODR File Number:

21422-18-19

Child's Name:

C.D.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Charles W. Jelley Esq.

Date of Decision:

07/08/2019

PROCEDURAL HISTORY

The Student¹ is an eleventh grade school-aged child residing in the District and attending a private school. The Parties agree the Student is a person with a Specific Learning Disability in reading, math and written expression (SLD) within the meaning of the Individuals with Disabilities Education Act (IDEA). The Parties further agree that as a result of the SLD, the Student is otherwise eligible to receive an individual education program (IEP) and specially-designed instruction (SDI). In Fall 2017, the Parents believing the Student was not learning withdrew the Student and made a unilateral placement at a nearby private school for persons with similar learning disabilities. Thereafter in December 2018, the Parents made a request for tuition reimbursement for the upcoming 2018-2019 school year. Rather than deny the request outright, the District issued prior written notice requesting permission to reevaluate the Student. The Parents immediately agreed to the reevaluation. Once the evaluation was completed, the District convened a multidisciplinary evaluation meeting and a timely IEP meeting. The District then made an offer of a free appropriate public education (FAPE)

¹ In order to provide confidentiality and privacy, Student's name, gender, and other personal information are not used in the body of this decision to the extent possible. 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, implementing the IDEA are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). References to the record throughout this decision will be to the Notes of Testimony (NT p.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Due to multiple schedule conflicts the hearing exceeded the typical 75-day timeline. The Parties made multiple requests to extend the Decision Due Date, finding a good cause this hearing officer granted the Parties' joint requests.

for the 2018-2019 school year. The offer included a transition program to ease the Student's return to the high school, extended school year services and a series of services/supports including, but not limited to a series of individualized academic learning goals/objectives and multiple forms of specially-designed instruction. The Parent rejected the IEP and filed a due process Complaint demanding tuition reimbursement. The Parents contend as a result of multiple procedural and substantive violations, the District's 2018-2019 offer of a FAPE is not appropriate. The District at all times argues it complied with all substantive and procedural regulations; therefore, the District argues that the Parent's claims must be denied.

After reviewing all of the testimony and the exhibits I now find in favor of the Parents.² A Final Order granting appropriate relief follows.

ISSUE

Whether the District's proposed offer of a free appropriate public education for the 2018-2019 school year is appropriate? If the District failed to offer a free appropriate public education are the Parents entitled to tuition reimbursement and/or other appropriate relief?

² After carefully considering the record of this hearing in its entirety I now find that I can now draw inferences, make Findings of Fact and Conclusion of Law. Consequently, I do not reference portions of the record that are not relevant to the single issue in dispute.

FINDINGS OF FACT

The Student's 7th Grade 2016 Reevaluation Report³

1. The Student's 2016 reevaluation report (RR) included the results of the psychologist's classroom observation. The psychologist noted the Student was on task and engaged 100% of the time (P-2).
2. The Student's reading teacher noted the Student's recent comprehensive reading assessment yielded a Lexile score of 826. Students with a Lexile score of 826 can read and understand 4th grade work (P-2).
3. The RR notes in 2009 on the Wechsler Preschool and Primary Scale Intelligence test-Third Edition (WPPSI-III) the Student earned an average intelligence quotient (IQ) of 100. The RR also notes on the Wechsler Individual Achievement Test-Second Edition (WISC-II) the Student earned standard scores (SS) in the solid average range in Word Reading, Passage Comprehension, Pseudo Word Decoding, Numerical Operation, Spelling, Writing Samples and Listening Comprehension (P-2). The SS ranged from a high SS of 103 in Listening Comprehension to a low SS of 93 in Written Comprehension (S-9).
4. The RR notes that in the fall of 2015, the Student earned a Below Basic RIT Score of 202, at the 22nd percentile in Reading and a Basic RIT score of 211 at the 25th percentile, in Math (P-2).⁴

³ Although the Findings of Fact start with the Student's seventh grade RR, I will not make any legal conclusions if the RR or any IEP outside the scope of the issue stated herein provided a FAPE.

⁴ RIT scale stands for Rasch Unit scale (RIT). There are several RIT scales for reading, language usage, mathematics, and general science. RIT scales are stable, equal interval

5. In the spring of 2015, the Student earned a Proficient RIT score of 220 at the 36th percentile in Math and a Below Basic RIT score of 200, at the 13th percentile in Reading (P-2).
6. In the winter 2015, the Student earned a Proficient RIT score of 216, at the 33rd percentile in Math and a Below Basic RIT score of 202, at the 20th percentile in Reading (P-2)
7. On the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) the Student earned an Average Full Scale IQ of 95 and an average General Ability Index Score of 97 (P-2).
8. On the Woodcock-Johnson Tests of Achievement-Fourth Edition (WJ-IV or Woodcock Johnson), the Student's Word Attack, Oral Reading, Broad Reading scores fell in the Average to Low Average range. The Student's WJ-IV Math Facts Fluency Broad Math. Spelling and Oral Expression scores fell in the Low Average Range (P-2). The Student's Word Identification, Passage Comprehension and Sentence Reading Fluency subtest scores ranged from a SS of 73 in Word Identification to a SS of 91, in the Average range for Sentence Reading Fluency (S-9). The Student's math scores ranged from a high SS of 103 in Applied Problems to a low SS of 71 in Math Facts (S-9).

scales that use individual item difficulty values to measure student achievement independent of grade level (that is, across grades). "Equal interval" means that the difference between scores is the same regardless of whether a student is at the top, bottom, or middle of the RIT scale. "Stable" means that the scores on the same scale from different students, or from the same students at different times, can be directly compared, even though different sets of test items are administered. A RIT score also has the same meaning regardless of the grade or age of the student.

In summary, the RIT scale is: an accurate equal interval, achievement scale that is useful for measuring growth over time, regardless of the grade or age of the student.

9. On the Wechsler Individual Achievement Test-Third Edition (WIAT-III) the Student earned a SS of 99 in Reading Comprehension, a SS of 95 in Essay Composition, a SS of 93 in Grammar Mechanics, a SS of 97 in Word Count, a SS of 92 in Theme Development and Text Organization. All of the Student's SS fell in the solid average range (P-2). The Student's Test of Word Reading Efficiency (TOWRE) SS of 83 for Sight Word Efficiency fell in the Below Average range, while the Student's SS of 71 in Phonemic Decoding Efficiency and SS of 76 in Total Word Reading Efficiency scores fell in the Poor range (P-2).
10. On the Conners-3 Self-Report Rating Scale, the Student's T-scores fell in the solid Average range (P-2). On the Behavior Assessment System for Children-Second Edition (BASC-2), the Student's mother rated the Student mostly Average, but with "at-risk score" for withdrawal, leadership and functional communication difficulties. The Teachers, on the other hand, did not rate the Student as either at-risk or clinically significant on any of the 20 BASC-2 scales (P-2). The evaluator noted that throughout the test, the Student appeared to provide honest and forthright answers (P-2).
11. On the Bruininks-Oseretsky Test of Motor Proficiency 2nd Edition (BOT-2) an occupational therapy assessment of motor coordination, the therapist reported the Student found efficient and successful ways to compensate for a high degree of fine motor weakness (P-2).
12. The Test of Auditory Perceptual Skills-3 (TAPS) was used to assess the Student's receptive/expressive language and language processing skills. The Student's TAPS scores were combined to determine Overall Performance, Phonological Abilities, Auditory

Memory, and Auditory Cohesion Indexes. Across the board, the Student's SS fell in the Average range (P-2).

13. The Clinical Evaluation of Language Fundamentals (CELF-5) evaluates receptive and expressive language skills. On the Recalling Sentences, Formulating Sentences, Understanding Spoken Paragraphs and Semantic Relationships, the Student's scores fell in the Average range. Based on this formal assessment, the Student demonstrated Average Receptive/Expressive skills and higher order Language Processing skills. The Student's scores demonstrated an Average ability to answer inference, prediction and sequence questions. The Student was able to appropriately engage in conversations with intact grammar, syntax and turn-taking. Pragmatic skills, such as eye-contact, articulation and reciprocity, were in the Average range (P-2).

14. On the Woodcock-Johnson Test of Achievement, Fourth Edition (WJ IV), based on age level norms, the Student earned the following SS:

Subtest	SS	Percentile	Range
Word Identification	73	4	Low
Passage Comprehension	91	28	Average
Word Attack	83	13	Low Average
Oral Reading	87	19	Low Average
Sentence Reading Fluency	91	27	Average
Broad Reading	84	15	Low Average
Applied Problems	103	57	Average
Calculations	92	31	Average

Subtest	SS	Percentile	Range
Math Facts Fluency	71	3	Low
Broad Math	85	16	Low Average
Spelling	73	4	Low
Writing Samples	98	46	Low Average
Picture Vocabulary	115	84	High Average
Oral Expression	87	19	Low Average

(P-2).

15. The RR notes decoding, encoding, reading fluency, writing skills, writing mechanics and math fluency as areas of unique need (P-2).⁵

The Parents' Private Evaluation

16. In 2016, while the Student was attending 8th grade, in the District, the Student participated in a private neuropsychological assessment. As part of the 2016 private assessment, the evaluator reviewed the Student's most recent RR and previous testing profile. Over the course of six hours, during two days of testing, the private evaluator administered ten normative based standardized assessments, completed a classroom observation and interviewed the Parents (P-3). The private evaluator notes the Student was attentive and focused during the testing, although at times

⁵ Age Equivalent (AE) scores reflect developmental level and may be useful in understanding the abilities of young children and may help with placement planning. Examiners are encouraged to use the same reference group when comparing results from different tests (i.e., age to age, grade to grade). Generally grade norms are preferable in school based settings while age norms are suggested in ungraded settings. When examinee's age and grade are not consistent, score results both ways.

exhibited mild test fatigue after the first two hours of testing. Throughout the testing, the Student demonstrated good effort, motivation and persistence on all activities presented. The report notes the Student stated while the then current, Wilson Reading program was helpful, the Student expressed frustration that the recently reintroduced instruction began at a lower level (P-3).

17. On the Delis-Kaplan Executive Function Test (D-KEFS) Trail-Making Subtest, the student scored in the High Average range at the 84th percentile. The Student was able to rapidly locate target numbers on a two-page visual array. The Student demonstrated age-expected dexterity, coordination and integration skills (P-3).
18. The Student scored in the Low Average range on the Berry Visual Motor Integration test. The Berry assesses the Student's ability to integrate visual spatial skills with coordinated motor activity (P-3).
19. The Comprehensive Test of Phonological Processing-2nd Edition (CTOPP-2) assesses various language processing skills, necessary for the acquisition of reading skills, including Phonological Awareness, Phonological Memory, and Rapid Naming. The Student scored in the Low Average range on the Phonological Awareness and Rapid Symbolic Naming (SS 82 and SS 88) (P-3). On the Elision subtest, an assessment of sounds and syllables within words, the Student scored at the 5th percentile. While on the Blending Words subtest the Student earned a subtest score at the 37th percentile and a Below Average score at the 16th percentile for both Rapid Naming and Rapid Letter naming. Stronger performance was noted in the Average range, on Phonological Memory Index, SS 98, at the 45th percentile (P-3).

20. The Student demonstrated "Very Strong" performance on the Differential Ability Scales (DAS) Recall of Objects subtest at the 90th percentile. While weaker performance was noted, although in the Average range, at the 46th percentile on the Recall of Designs subtest (P-3).⁶
21. To collect information regarding global conceptual and reasoning abilities, as well as specific verbal, nonverbal and spatial, tasks, the Student completed the DAS-III School Age Form. The Student earned a Global Conceptual Ability (GCA) of 97 at the 42nd percentile. The GCA represents the individual's ability to perform complex mental processing tasks involving conceptualization and transformation of information. On this measure, a SS of 100 falls in the Average range. Overall the Student performed Average on all three clusters. (Verbal Cluster SS 96 at the 39th percentile, Nonverbal Reasoning cluster SS 100 at the 50th percentile and Spatial Closure SS 94 at the 34th percentile) (P-3).
22. The Student demonstrated "Very Strong" performance, at the 75th percentile on the Wide Range Assessment of Memory and Learning-2 Verbal Learning subtest. The Student demonstrated strong initial auditory attention span by retrieving 9 of 16 words on the initial trial. The Student then earned a score at the 50th percentile on the Verbal Learning Recognition subtest (P-3).

⁶ The DAS is a nationally normed and individually administered battery of cognitive and achievement tests. The DAS subtests measure a variety of cognitive abilities including verbal and visual working memory, immediate and delayed recall, visual recognition and matching, processing and naming speed, phonological processing, and understanding of basic number concepts.

23. On the Kaufman Test of Educational Achievement (KTEA-3), Letter and Word Recognition Skills subtest measuring a student's knowledge and ability in the areas of reading, the Student earned a SS of 82 at the 12th percentile with a grade equivalent score of 4.5. The examiner notes the Student did not overtly employ word decoding strategies (P-3).
24. On the KTEA-3 Nonsense Word Decoding subtest, the Student earned a SS of 80, at the 9th percentile at the 2.9 grade level. The Student's automaticity in Word Reading was in the Low Average Range (P-3)
25. The Student's KTEA-3 Word Recognition Fluency SS of 84 at the 14th percentile placed the Student at the 4.5 grade level. The Student's Decoding Fluency SS of 75, at the 5th percentile equates to a grade equivalent score of below 3rd grade (P-3).
26. The Student's Silent Reading Fluency SS of 85, at the 16th percentile equates to a 5.3 grade level. The Student scored at the Low Average Range of the KTEA Reading Comprehension subtest earning a SS of 80, at the 9th percentile at the 4.8 grade level. At times the Student responded incorrectly due to inaccurate decoding skills. The Student tended to make higher frequency of errors in response to questions drawing inferences from materials when compared to questions (P-3).⁷

⁷ The Kaufman Test of Educational Achievement (KTEA-3) measures a student's knowledge and ability in the areas of math, reading, written language and oral language. The test comes in two forms: Comprehensive Form and Brief Form. The KTEA-3 is a statistically sound instrument.

27. The Student's writing skills were measured at the Low end of the Borderline range on the KTEA-3, SS of 70, at the 2nd percentile at the 3.1 grade level. Errors occurred when spelling words like "very," "germ," "while," "roasted," and "bridge." The Student also scored at the Low end of the Average range on the KTEA-Written Expression subtest earning a SS of 90, at the 25th percentile, at the 4.9 grade level. The Student exhibited inconsistency in the ability to insert grammatically correct words needed to form complete sentences and dialogue that appropriately fit the context of the passage. The Student had a significantly difficult time combining/integrating sentences and ideas in a grammatically and syntactically correct fashion. The examiner notes that during the writing assessment, the Student was oftentimes confused. On the final requirement of the Written Expression subtest, the Student wrote for five and one half minutes, producing one paragraph consisting of seven simple sentences. Based on the Student's performance, the Student obtained a Written Language Composite SS of 80, at the 9th percentile at the low end of the Low Average Range (P-3).
28. On the KTEA-3 Math Concepts and Application subtest, the Student performed on the Average range earning a SS of 96, at the 39th percentile at the 6.10 grade equivalency. Weaker performance occurred on the KTEA-Math Computation subtest at the 14th percentile at the 5.0 grade level. On the Math Fluency subtest, the Student score on the Low Average range earning a SS of 80, at the 9th percentile at the 4.4 grade level (P-3).
29. On the Adolescent Self-Report and Projective Inventory 9 (ASRPI), the Student indicated that reading and writing are the biggest

problems. The Student reported that “[redacted] sometimes feels angry when [redacted] gets thing wrong.” (P-3).

30. The examiner observed the Student for 45 minutes, in social studies, at the middle school. The examiner notes that 18 students and two adults were in the class at the same time. While the Student did not initiate participation, the Student did respond to teacher and peer directed questions (P-3).
31. To enhance learning the private examiner made 17 recommendations including but not limited to: 1. Provide the Student with an individualized, small group multisensory explicit, systematic, individualized reading program targeting decoding, encoding and fluency instruction. 2. Provide the Student with an individualized, small group multisensory explicit individualized writing program. 3. Provide the Student with regular access to a laptop to produce written materials. 4. Provide the Student with access to study guides and scheduled opportunities to prepare for tests. 5. Tests should be administered in a quite environment with minimal distractions (P-3).
32. After completing a comprehensive assessment of the Student in all areas of suspected disability, the examiner concluded the Student met the Diagnostic and Statistical Manual of Mental Disorders (DSM–5) criteria of a Specific Learning Disorder with an impairment in reading, written expression and mathematics (P-3, P-5).

The Student Withdrew From The District

33. At the beginning of the Student’s ninth grade [2017-2018] school year, the Parents unilaterally withdrew the Student from the District and placed the Student at a nearby private school for

students with learning disabilities. The private school offers the Student a typical high school experience including, extracurricular activities and ambitious academics. Academic instruction includes direct instruction in English, math, foreign languages, social studies science, multisensory written expression and reading instruction. The private school is accredited by the Pennsylvania Independent School (PAIS). The Student to teacher ratio is one instructor for every five students. Students attending the school have a variety of reading, writing and math learning needs (NT pp. 134-138).

34. All teachers at the private school receive ongoing professional development in the school's proprietary Orton-Gillingham reading and writing curriculum The curriculum at the private school and the teacher training model is accredited by International Multisensory Structured Language Education Council (IMSLEC) (NT pp.137-138, pp.148-152).
35. After completing the 120 hours of professional development course work, the teachers can then sit for the Academic Language Therapy Association certification in multisensory instructional techniques and strategies. Passing the exam indicates that the teachers have completed the IMSLEC multisensory teacher training standards (NT pp.150-155). Regardless if they take the Academic Language Therapy Association certification exam, all teachers, at the private school, participate in ongoing multisensory teacher training (NT pp.131-153).
36. The private school teachers meet weekly to discuss the Student's decoding, encoding, fluency, math and written expression programing and progress (NT pp.139-141).

37. The instructional day at the private school includes a seven period school day. Instructional periods at the private school are 85 minutes long and the school follows a block scheduling model (NT pp.141-145).
38. One period of the day is dedicated to multisensory instruction in reading and writing. All teachers at the school reinforce the Orton-Gillingham multisensory reading and writing approach in all classes throughout the school day. Two times a day, the Student, as part of a group of five or six other students, checks in with the advisor to review the daily schedule and pending assignments (NT pp.131-160).
39. All students at the school receive a laptop. In all classes, the Student has access to a text-to-speech computer application to assist in encoding, decoding and writing (NT pp.131-165).
40. Each day the Student receives small group or one-on-one direct instruction, in executive functioning skills (NT pp.141-145).
41. During the Student's first year [2017-2018] at the private school, the Student began to show signs of independence (NT pp.158-159).
42. In November 2017 the Student earned a Reading MAP RIT score of 207. In Fall 2017 the Student earned a Language Arts MAT RIT score of 209. In the Spring 2018, the Student earned a Language Arts RIT score of 208. The MAP RIT scores indicate the Student is moving forward and making progress at the private placement (P-9 p.14, P-11, NT pp.159-160, NT pp.155-178, NT pp. 190-245).
43. In June 2017, on the Nelson Denny test of Reading, the Student scored at the 4th grade level, by May 2019, the Student earned a grade equivalency of 8.7. Also in June 2017, on the Test of Written

Spelling (TWS) the Student earned a grade equivalency of 5.0 (P-10 P-11, P-12, NT pp.155-178, NT pp. 190-245).

44. From June 2017 to May 2019 the Student's Reading score on the Diagnostic Assessment of reading (DAR) went from a grade equivalency of 3.5 to 8.7 (P-10 P-11, P-12, NT pp.155-178, NT pp. 190-245).

45. In October 2018, the Student earned a Reading MAP RIT score of 221. This profile indicates the Student is at the 93rd percentile for Growth and the 52nd percentile for Achievement; these scores place the Student in the High Growth quadrant for learning (P-11 p.8). The MAP projected growth for that school term was to achieve +2 RIT score increase from the start of the term to the end of the term. By the end of the school year, the Student's observed Growth was +14 RIT score increase.⁸

46. On October 22, 2018, the Student earned a Language Arts MAP RIT score of 212; this score indicates the Student is in the 60th percentile for Growth and the 333rd percentile for Achievement. This profile places the Student in the High Growth quadrant. The projected increase in the RIT scores for the beginning of the term was +2 RIT score increase, by the end of the term the Student's observed growth was +3 increase in the RIT score (P-10 P-11, P-12, NT pp.155-178, NT pp. 190-245).

⁸ The MAP is a computerized adaptive test which helps teachers, parents, and administrators improve learning for all students and make informed decisions to promote a child's academic growth.

47. On February 22, 2018, the Student earned a Math, MAP RIT score of 231. (P-9 p.14, P-11, NT pp.159-160, NT pp.155-178, NT pp. 190-245).
48. In May 2018, the Student earned a TWS grade equivalency score of 4.2 (P-10 P-11, P-12, NT pp.155-178, NT pp. 190-245).
49. On April 4, 2019, the Student earned a Math MAP RIT score of 231. The score reflects the Student is at the 60th percentile for Growth and the 47th for Achievement. The record indicates this profile places the Student in the High Growth category. The projected growth at the start of the term was to achieve a performance increase of +3 RIT scores; in this instance, the Student observed growth was + 5.
50. In April 2019, the Student's Lexile reading level range from 990 to1140. In April 2019, the Student's Flesh-Kincaid reading level was between 5.6 to 6.3 grade equivalency (P-10 P-11, P-12, NT pp.155-178, NT pp. 190-245).

The District's 2018 Reevaluation

51. On March 22, 2018, the District issued prior written notice requesting permission to conduct a reevaluation; upon receipt of the request the Parents completed the form and provided consent (P-4).
52. At the time of the reevaluation, the Student was attending the private school for persons with disabilities. The examiner noted that previous evaluations found the Student was IDEA eligible as a Student with a SLD in basic reading skills and reading fluency. Previous IEPs provided intensive phonological awareness and word analysis services (P-4).

53. The 2018 reevaluation included the Student's previous Scholastic Reading Inventory (SRI) Lexile data from the 2015-2016 school year. The Student's Lexile scores during 2015-2016 ranged from 826 to 922. At the end of the 7th grade school year, the Student's Lexile score goal was between 970 and 1120. The RR notes the expected SRI growth rate is 75 points per year. In May 2018, at the private school, the Student earned an SRI Lexile score of 1072 in the 9th grade range (P-4).⁹

54. On the District administered Woodcock Johnson Test of Achievement-Fourth Edition, using the grade based normative comparisons, the Student earned the following scores:

Subtest	SS	Percentile	Range
Sight Word	81	24	Low
Passage Comprehension	89	23	Low
Oral Reading	81	24	Low

⁹ The Lexile rubric for reading is a scale that uses a measure called a Lexile to score an individual's reading ability or a text's readability-level of difficulty. The theory is once the Lexile score is calculated educators can then match the reader with books, articles and other leveled reading resources that correspond to the reader's Lexile score. Readers and books are assigned a score on the Lexile scale, in which lower scores reflect easier readability for books and lower reading ability for readers. The Lexile rubric uses quantitative methods, based on individual words and sentence lengths, rather than qualitative analysis of content to produce scores. Lexile scores for texts do not reflect factors such as multiple levels of meaning or maturity of themes. Higher Lexile measures represent a higher level of reading ability. A Lexile reader measure can range from below 200L for beginning readers to above 1700L for advanced readers. Hebert, E.H. (2002). Standards, assessment, and text difficulty. In A. E. Farstrup & S. J. Samuels (Eds.). *What research has to say about reading instruction* (3rd Ed.), Newark, DE: International Reading Association. "Lexile Guide". *GL Assessment*.

Subtest	SS	Percentile	Range
Sentence Reading Fluency	85	15	Low
Broad Reading	81	11	Low
Applied Problems	95	37	Average
Calculations	85	15	Low
Broad Math	82	12	Low
Spelling	82	12	Low
Writing Samples	93	32	Average
Math Facts Fluency	76	76	Below Average

(P-4)¹⁰

55. On the Test of Word Reading Efficiency (TOWRE) the Student earned the following scores: Sight Word Efficiency SS 79, Phonemic Decoding Efficiency SS 70 with a Total Word Reading Efficiency Score of SS 69 (P-4).

56. On the Reading Inventory (RI) a criterion-referenced test intended to measure reading comprehension, the Student earned Lexile score of 1072 at the 9th grade level (P-4).

57. On the Wilson Assessment of Encoding and Decoding (WADE) the Student earned the following scores:

Subtest	2016 Score	2018 Score
Diagraphs/Trigraphs	78%	82%
Constants	100%	92%

¹⁰ Grade Equivalent (GE) scores reflect the level of task difficulty at which a student can perform and may be useful but is not dispositive for instructional planning.

Subtest	2016 Score	2018 Score
Additional Sounds	54%	30%
Welded	0%	27%
Total Sounds	64%	54%
Real Words	45	56
Nonsense Words	37	32
Sight Words	99%	97%
Total Words	58%	62%

(P-4).

51. The RR included input from the private school Language Arts, Algebra, Physics, World History and English teachers. The teachers reported the Student is “generally prepared and ready to learn,” “meets daily deadlines,” “adapts well to the process and strategies used in class,” “is a diligent and dedicated student who routinely works well to meet curricular expectations” (P-4).
52. On the Woodcock-Johnson Test of Cognitive Abilities-Fourth Edition (WJ-IV or Woodcock Johnson) the Student earned a full scale IQ 102 at the Average level. The Student’s Perceptual Speed, Cognitive Processing Speed, Letter-Pattern Matching, Number-Pattern Matching and Pair Cancellation scores all fell in the Low Average range (P-4).
53. On the Wide Range Assessment of Memory and Learning-Second Edition (WRML-2), the Student earned Average to Above Average scores (P-4).
54. On the Test of Reading Comprehension-Fourth Edition (TORC-4), the Student earned a Text Comprehension Average score at the 37th

- percentile and Contextual Fluency score at the 5th percentile at the Below Average/Poor range (P-4).
55. On eight of the nine measures, on the Conners-3 Self Report Scale, the Student scored in the Average range with one score for Learning Problems at the Very Elevated range (P-4). On the Parent form of the Conners-3, the mother rated the Student Average on nine out of 10 of the scales. The mother rated the Student in the Very Elevated range for Learning Problems (P-4).
56. On the Achenbach System of Empirically Based Assessment (ASEBA) Youth Self Report, the Student scored Average on 22 out of the 23 scales. The Student had one self-score at the Borderline Clinical range. The mother rated the Student as Average on 24 out of 25 scales. The mother, like the Student, rated the Student at the Borderline Clinical range on the Total Competence scale. A score in the Borderline Clinical range indicates a potential problem that needs careful monitoring (P-4).
57. On the Brief Rating Inventory of Executive Function (BRIEF) Parent Form, the mother rated the Student in the solid Average range. The teachers also rated the Student in the solid Average range (P-4).
58. The RR team recommended and the IEP agreed with the private evaluator's conclusion that the Student has a SLD in reading, written expression and math (NT *passim*).

The 2018-2019 Offer Of A Fape And The IEP

59. On or about June 23, 2018, the District's staff and the Parents met to develop an IEP for the 2018-2019 school year. Assuming the Student would return to the District, the IEP included a two week plan to support the Student's transition back to the District. For example, the IEP recommended that the Student regularly visit the

high school before the start of the school year. The IEP also included Extended School Year (ESY) services targeting the Student's reading needs. To address the Student's reading deficits, over the summer months, the District offered to provide twenty, one hour Wilson reading sessions, in a one-on-one setting, with a highly qualified reading specialist (P-5).

60. The present levels of educational performance included input from the Parents, the private school teachers and District staff. The present levels of educational performance summarized the Student's 2016 private evaluation, the private evaluation and the 2018 RR's norm referenced Woodcock Johnson ability testing, the updated achievement testing, the WADE data placing the Student on or about Level 7 in the Wilson Reading series, the 2017 through 2018 RIT scores, transition from school to work assessment data, along with updated academic data and behavioral, emotional, and executive functioning rating scores (P-5, NT 371-379).
61. The IEP described multiple transition from school to work services and activities. The IEP included an offer of ESY reading services to begin in the summer of 2020. The IEP also provided for school year annual goals, including short term objectives for reading decoding and encoding, and reading fluency. Next, the IEP provided annual goals for written expression and math computation. The specially-designed instruction (SDI) included general supports for written expression, math accommodations like using a calculator, testing accommodations, academic study skill strategies, along with SDIs for reading, writing and math (P-5, S-9).
62. The IEP called for Student to participate in the regular education classroom for science, social studies, math/geometry and English.

The IEP did not include a goal for executive functioning skill development (P-5).

63. To address the Student's reading deficits/needs, the District offered daily Wilson reading instruction (P-5). Unlike the reading SDIs and goals, the IEP did not describe the frequency, intensity, or duration of the written expression or math supports (P-5, NT *passim*).
64. Due to the District's rotating block schedule, on most days the Student would receive up to 44 minutes of daily Wilson Reading instruction. Every, ninth or tenth day, the Student would receive 66 minutes of Wilson Reading that day (NT pp.400-401).
65. The proposed special education teachers have completed Level 1 Wilson Reading teacher training (NT p.404, pp.429-431, p.466, S-36-S-37). Teachers who have a Level 1 Wilson Reading Teaching certificate are trained to implement Wilson Reading Level 1 through Level 6 (NT *passim*).¹¹ The reading teachers are not certified or trained to instruct any student beyond Wilson Reading Level 6 ((NT p.404, pp.429-431, p.466, S-36-S-37).
66. The IEP notes the annual goal for written expression and the annual goal for math would be taught by the regular education teacher, in the regular education classroom (NT pp.455-466). The IEP does not

¹¹ The Wilson Reading System (WRS) Level I Certification program is designed to prepare teachers to effectively implement WRS Steps 1-6 with students who are reading and spelling below grade level. Teachers who have completed Wilson Reading System Level I Certification may seek WRS Level II Certification. This advanced Level II Certification coursework provides in-depth strategies to expand knowledge and practice of the Wilson Reading System Levels 7-12. Completion of WRS Level II Certification makes one eligible to receive the professional credential of Wilson® Dyslexia Therapist (W.D.T.) Wilson Language Corporation.

identify a research based written expression or math curriculum (NT *passim*, P-5). The location where the written expression and math SDIs would be provided merely stated “to be determined” (P-5, S-9).

Witness Credibility

67. The Parents decided to enroll the Student at the private school in mid-August 2018 (NT pp.268-272, P-5).
68. The private school witness did not know the date the Parents decided to enroll the Student or the date the Parents made the first tuition payment for the 2018-2019 school year (NT pp.256-261).
69. The private school witness knew that additional school records/data reports other than the Student records found at exhibits P-6 through P-10 existed in the Student’s educational records (NT pp.256-261).
70. The private school witness did not know who sent the records to the Parents’ counsel (NT pp.256-261).
71. The District did not request a copy of the Student’s entire educational record at the private school. The District did not request a subpoena for the Student’s entire educational record at the private school (NT *passim*).

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 "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, *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 who testified to be credible, testifying to the best of his or her recollection from his or her perspective. The testimony overall was essentially consistent on factual matters. This hearing officer now finds the District's witnesses and the Parents' testimony credible and essentially consistent with respect to the actions taken or not taken by the team in evaluating, instructing and designing the Student's ESY program. I will, however, as explained below when and if necessary, give less persuasive weight to the testimony of certain witnesses when the witness fails to provide a clear, cogent and convincing explanation of how he/she evaluated the Student's eligibility, designed the Student's IEP, or designed and participated in the preparation of the prior written notice, the NOREP or the offered IEP.

Free Appropriate Public Education

The IDEA and the implementing state and federal regulations obligate local education agencies (LEAs or districts) 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). Districts/LEAs meet the obligation of providing FAPE to eligible students through development and implementation of an IEP that 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 was called upon to consider once again the application of the *Rowley* standard, and it then observed 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 IEP must aim to enable the child to make progress.

The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Endrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09) (other citations omitted). The *Endrew* 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.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352. The *Endrew F.* standard is not inconsistent with the above longstanding interpretations of *Rowley* by the Third Circuit. As *Endrew*, *Rowley*, and the IDEA make abundantly 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. However, a school district is not required to provide the “best” program, but rather one that is appropriate in light of a child’s unique circumstances. *Andrew F.* In addition, an IEP must be judged “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).

“The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child’s “IEP Team,” which includes teachers, school officials, the local education agency (LEA) representative and the child’s parents, an IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B).

An IEP must contain, among other things, “a statement of the child’s present levels of academic achievement,” “a statement of measurable annual goals,” and “a statement of the special education and related services to be provided to the child.” *Id.* § 1414(d)(1)(A)(i). When formulating an IEP, a school district “must comply both procedurally and substantively with the IDEA.” *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). A FAPE, as the IDEA defines it, includes both “special education” and “related services.” *Id.* § 1401(9). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability”; “related services” are the support services “required to assist a child . . . to benefit from” that instruction. *Id.* §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services “in conformity with the [child’s] individualized education program,” or “IEP.” *Id.* § 1401(9)(D).

A school district may violate the IDEA in two different ways. "First, a school district, in creating and implementing an IEP, can run afoul of the Act's procedural requirements." *Rowley*, 458 U.S. at 206). "Second, a school district can be liable for a substantive violation by drafting an IEP that is not reasonably calculated to enable the child to receive educational benefits." *Fresno Unified*, 626 F.3d at 432 (citing *Rowley*, 458 U.S. at 206-07); See also, *Andrew F.*, 137 S. Ct. at 999.

A procedural violation occurs when a district fails to abide by the IDEA's procedural requirements. Procedural violations do not necessarily amount to a denial of a FAPE. See, e.g., *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 909 (9th Cir. 2009). A procedural violation constitutes a denial of a FAPE where it "results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010).

A substantive violation occurs when an IEP is not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," *Andrew F.* 137 S.Ct. 1001, but the IDEA does not guarantee "the absolutely best or 'potential-maximizing' education." *Rowley*, *Andrew F.*, *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314 (9th Cir. 1987).

The Burlington And Carter Tuition Reimbursement Test

To determine whether parents are entitled to reimbursement for their unilateral placement in a private school after refusing a public school's offered FAPE, courts apply the three part *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985) (hereafter *Burlington-Carter*) test. See, e.g., *Benjamin A. through Michael v. Unionville-Chadds Ford Sch. Dist.*, No.

16-2545, 2017 U.S. Dist. LEXIS 128552, 2017 WL 3482089, at *15 (E.D. Pa. Aug. 14, 2017) (applying the "*Burlington-Carter* test" to private school tuition reimbursement case).

Under the *Burlington-Carter* test, the party seeking reimbursement relief must show:

1. The public school did not provide a FAPE;
2. Placement in a private school was proper; and
3. The equities weigh in favor of reimbursement.

The parent must establish each of the three prongs of the *Burlington-Carter* test to prevail. Thus, failure on any one of the prongs is fatal to a demand for reimbursement. Indeed, if the plaintiff fails to establish the first prong of the test, then the reviewing court may immediately end its analysis. *See, e.g., Benjamin A.*, 2017 U.S. Dist. LEXIS 128552, 2017 WL 3482089, at *17 (stopping analysis after concluding that aggrieved student/parents had not established the first prong of the *Burlington-Carter* test); *N.M. v. Central Bucks Sch. Dist.*, 992 F. Supp. 2d 452, 472 (E.D. Pa. 2014) (same). To prove the first prong of the test—that the public school did not provide a FAPE—the party seeking relief must show that the public school failed to "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. 999. With these principles in mind, I will now turn to an analysis of the facts and applicable law.

The Parents' Claims And The District's Response

The Parents contend as a result of multiple procedural and substantive violations, the District's offer of a FAPE is not appropriate. The District at all times argues it complied with all substantive and procedural regulations and requirements. The District further contends, assuming *arguendo*, the

District's program and placement are inappropriate the private school is not an appropriate or proper program/placement.

Finally, the District argues in any event; the equities favor the District; therefore, on the equities alone, the tuition reimbursement claim should be denied. After reviewing all of the testimony, the offer of FAPE, the prior written notice, the NOREP and the exhibits for all of the following reasons, I now find in favor of the Parents. A Final Order granting appropriate relief follows.¹²

The District's Offer Of A Fape Is Insufficient

In a *Burlington-Carter* dispute, like this, provided the District offered a FAPE the *Burlington-Carter* analysis stops. For all of the following reasons, I have serious doubts if the Student were to return to the high school the District can provide a FAPE.

The Student is a rising eleventh grader who is performing somewhere between third and fifth grade level.¹³ The record is preponderant that the Student's ability is "Average" and the Student's achievement test scores are highly discrepant. This profile indicates although the Student has average intelligence and should be performing better, the Student has a severe

¹² To the extent the Parents raise Section 504 denial of FAPE claims seeking equitable relief, the Final Order attached below provides the Student and the Parent complete equitable relief under the IDEA and Section 504. I make no findings, if at all times relevant, the District acted with deliberate indifference; therefore, all claims legal relief, which are beyond my jurisdiction are otherwise exhausted. See, *Fry v. Napoleon Community Schools*, 137 S. Ct. 988 (2017 (February 22, 2017)).

¹³ While I reference grade levels performance I am in no way suggesting that grade level scores have the reliability of a SS. That said grade level score do however score compares the child's performance on grade-level material against the average performance of students at other grade levels on that same material and is reported in terms of grade level and months. In this instance, caution was used when discussing the Student's grade equivalents, SS and RIT scores.

performance discrepancy between the ability and achievement. Whether one looks at the Student's Woodcock Johnson achievement SS, the MAP RIT scores, the Lexile reading scores, the KTEA achievement scores, the SRI Lexile scores, the TOWRE or the WADE reading scores the Student's testing profile confirms, although the Student is advancing from grade to grade, the Student continues to perform in the "Low," "Low Average," to the "Below Basic" range in reading, written expression and math.

I fully realize that the IDEA's promise of a FAPE does not require the District to close the discrepant performance gap or for that matter provide the Student with the best education, however, the District's offer of a FAPE must be ambitious and reasonably calculated to provide significant learning and meaningful benefit, in light of the Student's circumstances. The 2018-2019 IEP, at issue, misses the mark.

Although the District's reading teachers are trained to provide Wilson reading instruction up to Level 6, at the current time, the Student's Wilson reading level is at the beginning of Level 7. Therefore, on the first day of school, the Student's reading teachers, although Wilson trained are not trained to provide instruction at the Student's current present level of performance. Even assuming *arguendo*, the Student's reading level dropped during the transition back to the District, it is reasonable to expect that in a short time the Student's present reading levels would surpass the teacher's limited certification. Once the teachers are no longer trained to provide individualized reading instruction, the District's FAPE offer becomes a nullity.

Second, while the District has a recognized research based reading program, the District staff could not cogently describe the District's research based curriculum for written expression or math. The 2016 private evaluation, the MAP RIT scores, and the 2018 RR all confirm the Student's math and written expression scores are significantly discrepant. Despite this long term, consistent data pattern the IEP, without describing how or why

somehow calls for this particular Student to receive below grade level instruction while enrolled in a regular education geometry and eleventh grade English class. Conspicuously absent from the IEP is any reference to co-teaching or additional supports for the staff or the Student.

The IEP math present levels indicate the Student has basic addition, subtraction and multiplication problems [SS of 76 at the 5th percentile] yet the IEP fails to note what supplementary supports the staff and/or the Student will receive in the regular education geometry classroom. The IEP anticipates the Student will take geometry; given the Student's present levels in broad math, math calculation and math reasoning the IEP fails to describe how the regular education teacher will provide individualized instruction in basic math skills in a regular education geometry class at the Student's current present level.

The IEP present levels and SDIs in written expression state the Student's writing mechanics, grammar, spelling, punctuation and organization skills are unique needs. The IEP also states the Student requires support in brainstorming, prewriting, drafting, editing, proofreading and completing assignments, yet the IEP conspicuously fails to state who will provide and how often the Student will receive direct instruction on these agreed upon needs.

On the KTEA test of achievement, the Student struggled to write five to seven simple sentences. Even assuming the regular education teacher implements all of the SDIs and accommodations, the KTEA, the private evaluation, the Woodcock Johnson achievement data, the 2018 RR and the Student's profile clearly demonstrate the Student needs targeted small group and/or one-on-one individualized instruction in written expression.

Although the Student's Woodcock Johnson achievement scores, WADE scores and the MAP RIT scores are in the "Low" to "Low Average" range

neither the IEP/SDIs nor the NOREP sufficiently describe the District's commitment of sufficient resources like the frequency, intensity or the amount of time each day or each week the Student will receive individualized instruction in math and written expression.

The record is also preponderant that in seventh and eighth grade when the Student did not advance in reading as expected, the Student expressed frustration about repeating previously completed materials. The District's evaluation team and the private psychologist each recognized that the Student's self-confidence, self-esteem and overall coping skills need to be calibrated with the Student's own high expectations and otherwise low performance. The Student's and the mother's current ASEBA clinically significant "Total Competence" scores and the Student's BASC self-reporting scores corroborate the Student's feeling of frustration regarding the discrepant reading, writing and math performance/competence.

The District's failure to commit sufficient resources describing the frequency, intensity and duration of the instructional services, in this instance, is both a substantive and a procedural violation. Simply stated, no one knows what research based math or writing program the Student will receive. No one knows if the person implementing the research based program is trained and/or certified to implement the curriculum. Absent a clear commitment of District resources; no one knows if the proposed location of the program in the regular education classroom can provide the Student with a small group or one-on-one instruction and significant learning.

Accordingly, for all of the above reasons I now find the decision to have the Student receive math and written expression instruction in the regular classroom, without a clear description of the research based curriculum, additional teacher or Student supports that create targeted small

group or one-on one instruction the proposed IEP is not reasonably calculated to provide a FAPE.

The ESY Offer Of A Fape Is Also Inappropriate

Although the Student's math and written expression Woodcock Johnson achievement scores, KTEA and RIT scores, like the Student's reading scores, are in the discrepant "Low" to "Low Average" range the District's failure to include these equally discrepant unique SLD need areas into the offer of an ESY program is inappropriate on its face. The record is preponderant that absent small group and/or one-on-one ESY services the Student will continue to struggle in math and written expression. Given the Student's status as a rising eleventh grader coupled with the Student's third to fifth grade present levels of educational performance, the record is preponderant that these individual circumstances require sufficient, intensive and robust direct small group or one-on-one services, throughout the year. Accordingly, I now find the proposed ESY offer of a FAPE is insufficient, inadequate and inappropriate. The above factual findings, however, do not end the tuition reimbursement analysis.

The Private Placement Is Proper And Appropriate

The private placement provides direct daily multisensory instruction in reading, written expression and math. All of the teachers at the private school implement and reinforce the school wide Orton-Gillingham multisensory techniques. The Student to teacher ratio is one instructor for every five students. Like the District's schedule, the instructional day at the private school consists of seven core periods. One period of the day is dedicated to reading and written expression. Throughout the day, all teachers, at the private school, reinforce the Orton-Gillingham approach. The Student to teacher ratio is one instructor for every five students. Students attending the school have a variety of reading, writing and math learning

needs; therefore, all teachers at the private school receive ongoing professional development. The Student's classes at the private school are small and the schedule is set up to provide ample opportunity for small group and/or one-on-one instruction.

The private school offers the Student a typical high school experience, including extracurricular activities and ambitious academics. Academic instructional periods are 85 minutes long and the school follows a block scheduling model. Like a typical high school, the core curriculum includes direct instruction in English, math, foreign languages, social studies, science, and multisensory written expression and reading instruction. The private school is accredited by a state and an international agency. Since students attending the private school have a variety of academic, organizational and executive functioning needs, all teachers receive ongoing professional development in teaching executive functioning skill sets.

Teachers are also encouraged to complete additional course work, which in turn allows the instructor to sit for the Academic Language Therapy Association certification in multisensory instructional techniques and strategies.¹⁴

To ensure the Student is making progress, the staff meet weekly to discuss the Student's decoding, encoding, fluency, math and written expression programming and progress. Two times a day, the Student, as part of a group of five or six other students, checks in with the advisor to review

¹⁴ The Academic Language Therapy Association (ALTA) certifies academic language therapists. Certified Academic Language Therapists (CALT) have completed accredited courses of study that provide extensive training and practicum experiences in multisensory structured language teaching (Structured Literacy). Academic Language Therapists have knowledge of the logic and structure of English language systems: phonology, phonics, orthography, morphology-etymology, semantics, and syntax. They also know how to deliver structured language instruction using simultaneous multisensory teaching strategies.

the daily schedule and pending assignments. Each day the Student receives small group or one-on-one direct instruction in executive functioning skill development. All students at the school receive a laptop and the school provides all students with access to assistive technology strategies like text-to-speech computer application. The text-to-speech applications assist this Student in encoding, decoding, organizational skills and writing. While the staff at the private school do not develop an IEP the services at the private school target the Student's unique SLD related academic needs, organizational and executive functioning needs. Therefore, I now find the private school offers and provides the Student with a proper, ambitious and appropriate program that addresses all areas of this Student's SLD.

The Equites Favor The Parents

When the District asked the Parents made the Student readily available for all testing, data collection and direct observations. Parents have attended all meetings and have not otherwise restricted the District staff from collecting or reviewing the Student's records. To support its equites argument, the District makes two arguments. First, they contend, by inference, that the Parents' failure to enter additional school records into this hearing about the Student's private school experience the Parents must be hiding something. When the private school witness testified about additional not yet produced, yet otherwise available records, the witness cogently explained the private school provided the requested records. Furthermore, the District, as part of the RR process, was free to request a release of records, it did not. In the alternative, in this proceeding, the District could have requested a subpoena for the records, it did not. Since the District did not request a timely records subpoena or request a complete copy of the records, I will not speculate as to the content of the not yet produced yet otherwise available records. Accordingly, the District's request for an adverse inference about the equites favoring the District is denied.

Second, the District contends that since the private school witness did not know the date the Parents made their first tuition payment, again by inference the District argues, the Parents must be hiding something. The witness stated since she is not part of the billing department, she did not know the answer. Given the scope of the District's cross examination, I now find the witness's response to the question credible. The record is also preponderant that the District asked the Parents the same question about when they first made the decision to enroll the Student and a follow up question about when they made their first tuition payment for the 2018-2019 school year. Again based upon the scope of the District's cross examination I have no reason to doubt the Parents' statement that after meeting with the District staff and contemplating what they should do the Parents enrolled the Student in mid to late August 2018. Accordingly, the District's request for an adverse inference about the equities favoring the District is denied.

Based on the scope and breadth of the substantive and procedural violations described above, I now find the equities favor the Parents; an Order granting the Parents' request for tuition reimbursement follows.

CONCLUSIONS

The record is preponderant that the District failed to commit sufficient resources to provide a FAPE. The record is also preponderant that the private school can meet the Student's reading, math and written expressions needs. Based upon a careful review of this record and the exhibits, I now find the equities favor the Parent. Accordingly, this hearing officer will **GRANT** Parents' request for tuition reimbursement. A Final Order awarding the Student appropriate relief including directing the District to reimburse the Parents for all of their out of pocket costs now follows.

ORDER

And now this July 9th, 2019, I find in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claim for tuition reimbursement in this matter is **GRANTED**.

1. The School District is **ORDERED** to reimburse the Parents for their out of pocket tuition reimbursement cost relating to the Student's attendance at the private school during the 2018-2019 school year.
2. It is further **ORDERED** that any claims not specifically addressed by this decision are denied.

Date: July 9, 2019

Charles W. Jelley, Esq. LL.M

Special Education Hearing Officer