STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

October 26, 2010

10.108H – Parents v. RSU #16

REPRESENTING THE FAMILY:	Pro Se
REPRESENTING THE SCHOOL DISTRICT:	Sara Stewart Hellstedt, Esq.
HEARING OFFICER:	Rebekah J. Smith, Esq.

This hearing was held and this decision issued pursuant to Title 20-A M.R.S.A. § 7202 et seq., Title 20 U.S.C. § 1415 et seq., and accompanying regulations. The hearing was held on August 18, September 1, and September 2, 2010, at the offices of the Department of Health and Human Services in South Paris and on September 14, 2010, at the offices of the Department of Health and Human Services in Lewiston. Present for the entire proceeding were Sara Hellstedt, Esq., counsel for the school department; the student's mother, who represented the family; the student's father; and Susan Prince, the director of special education for RSU #16. Also present for part of the proceeding were the sister of the student, and the student's grandfather.

Testifying at the hearing under oath were:

Maureen Downs, speech-language pathologist, RSU #16
Dennis Duquette, Superintendent, RSU #16
Barbara Hasenfus, former Director of Special Education, RSU #16
Sara Lewis, speech-language pathologist
Cheryl MacPherson, xx grade teacher, Elm Street Elementary School
Mary Martin, Principal, Elm Street Elementary School
Laura Parks, special education teacher, Elm Street Elementary School
Susan Prince, Special Education Director, RSU #16
Sarah Rose, health teacher, Elm Street Elementary School
the student's grandfather

Carol Ustach, xx and xx grade teacher, Elm Street Elementary School

The parents submitted 83 documents, 60 of which were admitted, and two CD recordings constituting a portion of the August 26, 2010, Individualized Education Program ("IEP") Team meeting. The school district submitted 60 documents, 57 of which were admitted, as well as a CD recording of the entire August 26, 2010, IEP Team meeting.[1]

I. PROCEDURAL BACKGROUND

The parents filed a request for a due process hearing on June 15, 2010. On July 29, 2010, a conference call was held to address several prehearing matters and a conference order was issued. On August 11, 2010, a prehearing conference was held and a conference order was issued. Also on August 11, 2010, an order was issued determining, at the parents' request, that the resolution session requirements had been met; modifying a subpoena issued to the student's mother; and granting the school district's motion to dismiss in part. On August 17, 2010, an order was issued modifying several subpoenas issued to witnesses by the parents. On August 22, 2010, an order was issued regarding the student's stay put placement, resolving document objections, and denying the parents' request for an order that the school district comply with the IDEA. On September 9, 2010, an order resolving the parties' disputes about aspects of the student's stay put placement was issued.

At the close of testimony on September 14, 2010, the parties jointly requested that

[1] In the Order of August 22, the hearing officer ruled on a series of document objections but reserved ruling on P. 40 and P. 176-80. On the second day of hearing, the hearing officer admitted P. 40 but excluded P. 176-80. On the last day of hearing, the parents offered a September 10, 2010, letter from the District regarding the parents' request for a list of neuropsychological evaluators. (P. A-32.) The school district objected. The hearing officer reserved a ruling until the final decision. The document at P. A-32 is

the record remain open for written closing briefs. A scheduling order was issued on September 15, 2010, granting the parties' joint request that closing briefs be due on October 11, 2010. The record closed with the hearing officer's receipt of both parties' closing briefs on October 11, 2010.

II. ISSUES

1. Whether RSU #16 failed to provide the student with a free appropriate public education during the 2009-2010 school year.

2. If the family is due a remedy, what remedy is appropriate?

III. FINDINGS OF FACT

1. Student is xx. (S. 77.) A resident within the jurisdiction of Regional School Unit #16, she attended the Elm Street Elementary School from xx grade (2001-2002) though xx grade (2009-2010). (Testimony of Martin.) She was scheduled to attend Poland Regional High School for her xx grade year beginning in August 2010, but, as of the last day of hearing, September 14, 2010, she had not attended. (Testimony of Prince.)
2. The student, who has Down Syndrome, is identified as a student in need of special education and related services on the basis of multiple disabilities, specified as a speech-language impairment and mental retardation. (S. 77, 148 & 184.)
3. The student's mother was hired by RSU #16 to provide services to the student as a one-on-one educational technician III for the student's xx through xx grade years. (Testimony of Martin; Hasenfus.) The student's IEP Team determined that an educational technician III was required because the student needed to be removed from the classroom setting for some of her instruction, which would not

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excluded due to lack of relevance to any of the issues for hearing.

be supervised by a classroom or special education teacher. (Testimony of Martin.) The position also required assisting the student in communicating with others, but did not require a degree in communication or speech-language pathology. (Testimony of Martin.)

4. Maureen Downs, speech-language pathologist for RSU #16 and its predecessor district for twenty-six years, was the student's case manager for the several years preceding the hearing and as such supervised the student's mother. (Testimony of Downs.) The special education teacher who served as the case manager for all other special education students at the school had been removed by the school district due to the student's mother's disagreement with some of that teacher's instruction methods. (Testimony of Hasenfus.)
5. As her one-on-one educational technician, the student's mother was significantly involved in the development of the student's IEPs, including drafting the student's goals with Ms. Downs. (Testimony of Downs.)
6. During her xx grade year (2009-2010), the student expressed frustration with her difficulty in being understood by peers, teachers, and even her mother at times. (Testimony of Ustach; Rose; Davis.) When communicating with the student, school staff often sought help from the student's mother. (Testimony of Rose; Martin; Ustach.) The student would stomp her feet, slam down books, slam her locker, or tap her head when frustrated by communication or other difficulties. (Testimony of Rose.) At lunch, the student would socialize with peers, although other students often asked for assistance in understanding the student. (Testimony of Rose.)

7. In the spring of 2009, the school district arranged for outside evaluators to conduct the student's triennial evaluations, including a speech-language assessment, an assistive technology assessment, and a neuropsychological evaluation. (Testimony of Downs.) In March 2009, Judith Yandow, M.S., CCC-SLP, of ALLTech, conducted an augmentive communication assessment. Ms. Yandow concluded that the student had a moderate to severe intelligibility of speech deficit. (S. 202.) Ms. Yandow also concluded that the student presented with mixed apraxia, manifested by significant difficulty with tongue movement and in speech movement patterns, and dysarthria, characterized by inconsistent levels of loudness and variable rates in short bursts of speech, punctuated by illogical pauses and silences. (S. 202-03.)
8. In March 2009, Deb Dimmick, M.S. Ed., ATP, of ALLTech, conducted an assistive technology assessment of the student. (S. 191-95.) Ms. Dimmick recommended that the student continue keyboarding instruction on her iBook; the student continue to use low-tech, paper-based graphic organizers, concept maps, and visual writing webs for generation of ideas and organization of concepts; the student obtain a talking word processor and word prediction software; and school staff receive training in these assistive technologies from ALLTech. (S. 194-95.)
9. In April and May 2009, the school district, unhappy with the Yandow augmentive communication assessment since it was not a speech-language assessment as requested, contracted with Shannon Fowler, M.S., CCC-SLP, of Mark Hammond Associates, Inc., to conduct a traditional speech-language evaluation of the student (S. 158-75; Testimony of Hasenfus.) Ms. Fowler concluded that the

student presented with a significant deficit in speech production skills and the characteristics of apraxia and dysarthria. (S. 173.) She also observed that the student presented with delayed social pragmatic skills that would adversely affect her language intelligibility and interactions with communication partners. (S. 173.)

10. In the spring of 2009, the student also underwent a neuropsychological evaluation by Ellen Popenoe, Ph.D. (S. 177-86.) Dr. Popenoe concluded that the student met the criteria for a diagnosis of mild mental retardation. (S. 184.) Dr. Popenoe opined that the student maintained the ability to gain academically as she progressed through school although mainstream settings would likely become more frustrating for the student as the instruction became more complex and abstract and the rate of expected learning increased. (S. 185.)
11. In June 2009, an IEP Team meeting was held for the student. (S. 147-53.) The Team conducted an annual review of the student's progress, reviewed the evaluations that had been completed, and reviewed the student's needs for classroom modifications and accommodations. (S. 148-53.)
12. The Team noted that Dr. Popenoe's evaluation had been conducted in a standardized manner even though a non-standardized test had been requested. (S. 151.) The family requested that all testing be stopped for the time being due to the student's frustration and frequent missing of school due to evaluation appointments. (Testimony of Hasenfus.) As such, the Team rejected Dr. Popenoe's offer to conduct further testing in a non-standardized manner and

declined to order an alternative neuropsychological assessment from another evaluator. (Testimony of Hasenfus; Downs.)

13. The Team noted that although both speech-language evaluations indicated social pragmatic issues, neither gave the Team a direction for providing programming. (S. 150-51.) The Team also reviewed the ALLTech assistive technology assessment, and discussed having ALLTech come to the school in the fall to try out some particular software with the student and assist the Team in determining what technology would be appropriate and essential for the student. (S. 151.)
14. The Team concluded that the evaluations did not provide sufficient information about how to efficiently and strategically provide instruction to the student. (S. 151.) The Team determined that RSU #16's special education director, Barbara Hasenfus, would contact Dubard School for Language Disorders in Mississippi to learn what they could offer in terms of evaluation, observation, and consultation. (S. 151.) The Team also agreed to further assessments of the student in the fall, including an academic assessment. (S. 151.)
15. The Team determined that the student's 2009-2010 IEP, which ran from June 10, 2009, to June 17, 2010, would include specially designed instruction in a special education setting for fifteen hours per week in math, home economics, career awareness, and support for academic instruction; sixty minutes per week of occupational therapy; and ninety minutes per week of speech-language therapy. (S. 147.)
16. Ms. Hasenfus contacted the Dubard School in August 2009 and was subsequently informed that they did not work with students with mental retardation. Ms.

Hasenfus informed the student's mother of this shortly thereafter. No other school or service provider was discussed as a substitute. (Testimony of Hasenfus.)

17. The student had received services from an outside occupational therapy provider for several years due to the parents' request that RSU #16's occupational therapist not provide services because of a disagreement about teaching handwriting skills. (Testimony of Hasenfus.) Late in the summer of 2009, Ms. Hasenfus received a letter from the outside service provider indicating that it could no longer provide an occupational therapist. (Testimony of Hasenfus.) She promptly informed the student's mother of this and indicated she would seek another occupational therapist. (Testimony of Hasenfus.) She followed up with one possible provider, who was not available, and she told the student's mother in late September or October that she had not had located a provider yet. (Testimony of Hasenfus.) Ms. Hasenfus offered for the student to begin therapy with the school's occupational therapy provider, which the student's mother declined, indicating that the student was busy with other activities. (Testimony of Hasenfus.) Between Thanksgiving and Christmas, Ms. Hasenfus informed the student's mother that she had not located a provider and the student's mother responded that it was acceptable if the services began later. (Testimony of Hasenfus.)

18. On March 5, 2010, the student's mother wrote a letter to the school principal, Mary Martin, which she copied to Ms. Hasenfus, requesting a meeting of the student's IEP Team as soon as possible to "assess and bring her IEP into compliance." (S. 116.) On March 8, 2010, the student's mother met with Ms.

Hasenfus, requesting that they discuss scheduling an IEP Team meeting, an assessment of the student's program to ensure its compliance with the IEP, and a review of the March 2009 assistive technology evaluation. (S. 115; Testimony of Hasenfus.) Ms. Hasenfus agreed to schedule an IEP Team meeting, look into obtaining an updated assistive technology evaluation, gather information from Kaufman Children's Center in Michigan about their ability to conduct an evaluation, and reinitiate the search for an occupational therapist. (Testimony of Hasenfus.) Ms. Hasenfus indicated that it would take her a week or two to obtain the relevant information. (Testimony of Hasenfus.)

19. Within two weeks of meeting with the student's mother, Ms. Hasenfus contacted Principal Martin to obtain her availability for an IEP Team meeting for the student. (Testimony of Hasenfus.) Ms. Hasenfus was informed by Principal Martin that the student's sister had suffered an injury that could be fairly serious and that the student and her mother were staying at home with the student's sister. (Testimony of Hasenfus.) Ms. Hasenfus felt it would be inappropriate to distract the student's mother with contact regarding an IEP Team meeting for the student. (Testimony of Hasenfus.) Ms. Hasenfus felt she was doing the most humane thing by not setting up an IEP Team meeting since the family's energies were centered on their injured daughter and Mrs. Martin perceived that the student's mother was not interested in pursuing an IEP meeting at that time. (Testimony of Hasenfus; Martin.) The student's mother did not contact Ms. Martin or Ms. Hasenfus about the IEP Team meeting while the student and she were at home

with the student's sister from mid-March through nearly the end of school. (Testimony of Martin.)

20. With the agreement of the school district, the student's mother provided the student's educational programming to her at home on March 16, 17, 18, and 25, and every school day from March 29 to June 8. (S. 42.) During that period, the student did not access speech therapy services at school. (Testimony of Downs; Hasenfus.)

21. On March 30, 2010, Ms. Downs contacted Ms. Hasenfus to obtain potential dates for an IEP Team meeting for the student, anticipating that the student required an annual review and development of an IEP for the next school year by the end of the 2009-2010 school year. (P. 19; Testimony of Downs.) Ms. Hasenfus did not respond because she perceived that the family was not able to attend an IEP Team meeting for the student while they were at home dealing with the student's sister's injury. (Testimony of Hasenfus.)

22. On April 7, 2010, Ms. Downs again sought dates from Ms. Hasenfus for an IEP Team meeting for the student. (P. 20.) Ms. Hasenfus replied to Ms. Downs's email during an April 17 phone call, indicating that she thought that the IEP meeting and agenda suggested by the parents early in March should be rolled into the student's annual meeting when the student returned to school. (Testimony of Hasenfus; Downs.) At the start of May, Ms. Martin spoke with Ms. Downs about the need for the student's IEP Team to meet and Ms. Downs indicated she would follow up with Ms. Hasenfus. (Testimony of Martin.)

23. On May 18, 2010, the student's parents attended a meeting with RSU #16 Superintendent Dennis Doucette, who informed them that the student's mother would not be transferred to the high school with the student as her one-on-one educational technician. (Testimony of MacPherson.) Superintendent Duquette stated that the student's mother would be offered another educational technician position in an elementary school within the district if one were available. (P. 193.) When the student's mother asked if she was in attendance at the meeting as a parent or as an employee, Superintendent Duquette responded "both." (Testimony of MacPherson.) Superintendent Duquette decided not to transfer the student's mother because he perceived her to be a person who was negative toward school administration and staff, she had brought a student to tears at another meeting, and high school teachers had approached him with concern about the student's mother being an employee there. (Testimony of Duquette.)
24. The student's mother objected that the decision as to whether she would be transferred with the student was premature since the student's IEP Team had not yet drafted her 2010-2011 IEP and thus the student's placement was not yet determined. (Testimony of MacPherson.) Superintendent Duquette did not have conversations with Ms. Hasenfus or Ms. Martin about the student's IEP. (Testimony of Duquette; Testimony of Martin.) The school district subsequently offered the student's mother an educational technician position in the district, which she declined. (Testimony of Martin.)
25. Also on May 18, Ms. Hasenfus provided the parents with some potential IEP Team meeting dates. (Testimony of Hasenfus.) On May 20, the student's parents

provided two dates that they would be available for an IEP Team meeting before the end of the school year, neither of which was available for Ms. Hasenfus. (P. 22.) On May 25, Ms. Hasenfus informed the student's mother that the IEP Team meeting would be held June 7 and forwarded the family an advance written notice. (S. 113; Testimony of Downs.) Ms. Hasenfus felt the meeting had to occur before the school year's end on June 9. (Testimony of Hasenfus.)

26. On June 3, 2010, and again on June 4, 2010, the student's parents wrote to Ms. Hasenfus indicating that the June 7 meeting was not scheduled for a mutually agreed time and place. (S. 112; P. 7.) On June 4, Ms. Hasenfus responded to the parents by hand-delivered letter, indicating many dates had been offered to the parents for the IEP Team meeting that were not acceptable to the parents and that because the student's IEP was about to expire, a meeting would be held on June 7. (S. 111.) The letter indicated that the student's mother would be given the afternoon off with pay in order to allow her to participate in the IEP Team meeting and that the student would be provided a substitute educational technician. (S. 111.)

27. On June 7, 2010, an IEP Team meeting was held. (S. 103.) A few days before the meeting, Superintendent Duquette requested that Ms. Hasenfus arrange for Dr. Michael Opuda, a special education consultant with the school district's law firm, to facilitate the meeting to ensure continuity between Ms. Hasenfus, who was retiring at the end of June, and the incoming special education director. (Testimony of Hasenfus.) In addition, Dr. Opuda had assisted the school district to prepare for mediation with the family and was thus familiar with the situation.

(Testimony of Hasenfus.) Ms. Downs, who drafted the advance notice to the parents, did not indicate that Dr. Opuda had been invited to attend the meeting because she was not aware that he had been invited. (Testimony of Downs.) When they arrived, the parents objected to Dr. Opuda's attendance at the meeting because he did not know the student and they had not received prior written notice of his attendance. (Testimony of Downs.) As the facilitator, Dr. Opuda kept the meeting moving, referred people back to the agenda, and set the stage for what the Team would discuss and hoped to accomplish. (Testimony of Hasenfus; Downs; Student's Grandfather.)

28. Nevertheless, tension between the parents and Dr. Opuda slowed the Team's progress. (Testimony of Hasenfus.) Although the purpose of the meeting was both to conduct an annual review and to determine the student's need for ESY services, the Team discussed primarily ESY services for the summer of 2010. (S. 104-06; Testimony of Downs; Hasenfus.)

29. The Team made determinations that the student's IEP would be extended until August 30, 2010, and that the student required ten hours of speech therapy and six hours of occupational therapy as ESY services over the summer. (S. 103.) The Team considered twelve hours of occupational therapy services, but the student's mother felt six hours would be sufficient. (S. 105.) The parents presented a statement of parental concerns, including that the IEP Team meeting request in early March was ignored, that the student's transition to high school was inadequately planned and required further evaluations, that assistive technologies options had not been appropriately assessed, and that the Team did not have

sufficient information about the student's diagnosis of apraxia. (S. 108.) The Team determined that another meeting would be held prior to the start of the 2010-2011 school year to complete the student's xx grade review and develop the student's IEP for xx grade. (S. 103; Testimony of Hasenfus.) Although dates for another IEP Team meeting were discussed, a date was not finalized. (S. 105.)

30. The parents requested additional assessments before the development of the student's IEP, although school staff expressed concern that evaluations could not be completed in time to inform the student's IEP for the upcoming school year. (S. 105.) The student's mother requested a vocational assessment and other Team members suggested a functional skills assessment and achievement testing, although the parents never returned the release. (S. 105; Testimony of Hasenfus; Prince.)

31. Ms. Hasenfus drafted an IEP for the student for the period of June 8, 2010, to August 30, 2010, which related solely to ESY services. (S. 50-76.) The IEP removed all school year services and classroom accommodations, since it included only ESY services. (S. 50; Testimony of Hasenfus.) It identified the setting of services to be exclusively special education settings, for eight out of eight blocks. (S. 71.) Ms. Hasenfus also extended the targeted completion dates for the student's transitional services to make them consistent with the date the student would complete high school. (S. 74; Testimony of Hasenfus.) On June 15, 2010, the parents filed a due process hearing request. (S. 34 – 41.)

32. Around the start of July, the student's mother met with Principal Martin to review the summer IEP and to explain her concerns that the IEP made significant

changes to the student's program without Team consent. (Testimony of Martin.) Ms. Martin reviewed the IEP with the student's mother and concluded that the reference to eight out of eight blocks in the special education setting was a mistake that was not consistent with the rest of the IEP, which was designed for summer programming only. (Testimony of Martin.) On July 6 and July 7, Susan Prince, the new special education director for RSU #16, called the parents to explain her understanding of why the summer 2010 ESY IEP designated only a special education setting, since it referenced only ESY services, which would be provided completely in a special education setting. (Testimony of Prince.) The parents never returned Ms. Prince's calls. (Testimony of Prince.)

33. Also on July 7, the student's mother informed Ms. Prince by email that the student's doctor had recommended that she not take part in ESY services or assessments until complications from a thyroid condition were stabilized. (S. 20.) The student's mother indicated that further thyroid testing would take place at the end of July that would determine whether the student would participate after that. (S. 20.) The student did not access ESY services at all during the summer of 2010. (Testimony of Martin.)

34. On July 16, July 21, and July 28, Ms. Prince contacted the parents by email and mail suggesting dates for an IEP Team meeting before the end of the summer. (S. 3, 5-6, 10 & A-41.)[2]

[2] Although the school district's documents at S. 2, S. 9, and S. 21-22 were admitted at hearing, the hearing officer finds, upon further review, that they violate MUSER § XVI.12.A because they constitute settlement offers. As such, these documents, and any testimony regarding them, were not considered and are hereby excluded.

35. On August 11, despite the parents' failure to respond with available dates, Ms. Prince informed the parents that RSU #16 had scheduled an IEP Team meeting for August 25 and offered to facilitate the parents' participation by conference call if necessary. (S. A-39-40.)

36. At the parents' request, Ms. Prince subsequently changed the IEP Team meeting to August 26 and invited individuals who had worked with the student the prior year. (S. A-29; Testimony of Prince.)

37. Although Ms. Prince intended to email the parents a draft IEP for the student on August 24, only the student's goals and objectives were attached to her email. (S. A-24; Testimony of Prince.) The parents were provided a draft IEP at the start of the meeting, which proposed implementing the services in the student's stay-put placement but incorporated new goals and objectives based on the student's growth during the 2009-2010 school year. (S. A-10-21.)

38. At the meeting, the student's xx grade language arts teacher and Ms. Downs reported on her progress in language arts and speech during xx grade. (Recording of 8/26/10 Meeting.) The student's mother declined to present information about the student's progress derived from her role as her educational technician the prior year because she was attending the meeting as a parent and not a staff person. (Recording of 8/26/10 Meeting.) The parents also declined to provide consent for the district to speak with the student's endocrinologist or for the conducting of a functional academic assessment. (Recording of 8/26/10 Meeting.) The student's mother objected to the use of an educational technician III as the one-on-one aide

for the student because she believed the student required a full-time one-on-one speech-language assistant. (Recording of 8/26/10 Meeting.)

39. After a break during which the parents reviewed the draft IEP, the parents returned with several specific objections. (Recording of 8/26/10 Meeting.) The parents also provided the school district with a prepared letter and statement of concerns indicating that they disagreed with the IEP, which they felt did not address the student' speech-language and assistive technology needs, and would seek a private placement and a due process hearing. (S. A-3, A-4-5 & A-8; Recording of 8/26/10 Meeting.) The school district subsequently provided the parents with a final IEP, which took into account their objections. (Testimony of Prince.)

40. The school district has hired an educational technician III who is assigned to the student at the high school. (Testimony of Prince.) The school district has contracted with a private speech-language pathologist, Sara Lewis, to provide the student with speech-language services at the high school. (Testimony of Prince; Lewis.)

IV. DISCUSSION AND CONCLUSIONS

A. Burden of Proof

Although the Individuals with Disabilities Education Act ("IDEA") is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses "if the evidence is closely balanced," lies with the party seeking relief. Schaffer v. Weast, 126 S.Ct. 528, 537 (2005).

B. Special Education Standards

The parties agree that the student qualifies for special education and related services as a student with multiple disabilities. See MUSER § VII.2.H. The student is thus entitled to a free appropriate public education ("FAPE") provided by the school district. 20 U.S.C. § 1412(a)(1)(A); 20 M.R.S.A. § 7201; MUSER §§ I & II.11.

When reviewing an IEP, the first question for consideration is whether the IEP was developed in accordance with the IDEA's procedural requirements; the second question is whether the IEP and placement were reasonably calculated to provide the student with some educational benefit. Board of Educ. v. Rowley, 458 U.S. 176, 206-07 (1982) (analyzing predecessor statute to IDEA). If procedural violations are found, they can be deemed a violation of FAPE only if they impeded the student's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); MUSER § XVI.15.A.2.

A student's program must be geared toward "the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs." Town of Burlington v. Dep't of Educ., 736 F.2d 773, 788 (1st Cir. 1984), aff'd, 471 U.S. 359 (1985); see also Sanford Sch. Dep't, 47 IDELR 176 (Me. SEA 2006) (stating that progress must be made in a student's specific area of need). Because there is no "bright-line rule on the amount of benefit required of an appropriate IEP," each situation requires a "student-by-student analysis that carefully considers the student's individual abilities." Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 248 (3d Cir. 1999)

(holding that the "meaningful benefit" standard requires "'significant learning'" (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182 (3d Cir. 1988)).

An IEP must include the student's present levels of performance, annual goals and short-term objectives, and the special education and supportive services necessary to help the student advance toward those goals, make progress in the general education curriculum, participate in nonacademic activities, and be educated with other children with disabilities as well as non-disabled peers. 20 U.S.C. § 1414(d)(1)(A); MUSER § IX.3.A. It should be designed to provide the student "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Rowley, 458 U.S. at 203.

C. Arguments and Analysis

The parents argue that the school district violated the student's right to a FAPE during the 2009-2010 school year in five ways, each of which is discussed in detail below.

i. Student's Communication Needs and Speech Language Goals

Parties' Arguments:

The parents argue that the student's IEP did not adequately address her speech impairment. They allege that the speech therapy goals were unreasonable, that the student's assistive technology and communication needs were not met, that the recommendations of the ALLTech assistive technology evaluation were not adopted, that the student experienced increased frustration with her communication deficits in xx grade that were indicative of a regression in her speech skills, that the school district should have held an IEP Team meeting in the fall of 2009 to address the student's assistive

technology and communication needs, and that the school district did not contact the Dubard School in a timely way.

The parents rely upon the holding in Lenn v. Portland Sch. Comm., 998 F.2d 1083 (1st Cir. 1993), that a student's IEP must "target all of [the student's] special needs," whether they be academic, physical, emotional, or social. Id. at 1089. They contend that educational performance in Maine extends beyond academics and for the student, programming should have included pragmatic language instruction to ensure access to the general curriculum, citing 34 C.F.R. § 300.39(b)(3). The parents contend that "demonstrable improvement" in the student's speech skills was required, citing Roland M. v. Concord Sch. Dep't, 910 F.3d 983, 991 (1st Cir. 1990). The parents rely on the testimony of Ms. Downs that the student's assistive technology needs were not met during the 2009-2010 school year.

The school district argues that the family has provided no evidence that any of the student's IEP goals were inappropriate and that the evidence overwhelmingly supported the conclusion that the 2009-2010 IEP was designed to, and did in fact, benefit the student. The school district highlights the testimony of Ms. Downs and Ms. Lewis that the student's speech-language goals and objectives were appropriate for a student with a moderate to severe speech impairment with diagnoses of apraxia and dysarthia. The school district also relies upon the testimony of Ms. Downs that the student made "good progress" on her speech-language goals during the 2009-2010 school year.

Analysis:

The student's speech-language goals were appropriate, regardless of whether the student was diagnosed with apraxia or not, in the opinions of speech pathologists Downs

and Lewis. In her 2009-2010 IEP, the student's annual speech-language goal was to "improve her articulation skills, intelligibility rate, and use learned vocabulary/language for appropriate social/pragmatic skills to age appropriate levels 80% of the time." (S. 81.) She made progress towards those goals, according to Ms. Down's assessments in November 2009, March 2010, and June 2010. (S. 81.) The student's IEP grading confirmed that she made measurable progress: of the seventeen individual short term objectives in speech that were contained in the student's IEP, by the end of the school year, the student had achieved four of the objectives, had made consistent progress toward nine, had made ongoing progress toward two, and had made limited progress toward only one objective. (S. 82.) The parents' allegation that the student's increased frustration in xx grade proves that her speech skills had regressed finds no foundation in the record. Further, testimony did not resolve the question of whether her frustration was the result of communication difficulties or other issues.

In terms of social pragmatic instruction, Ms. Fowler, who conducted the follow up speech-language evaluation after the insufficient All Tech evaluation, noted that she observed the student's social pragmatic skills to be delayed. (S. 172.) She did not, however, make any particular recommendation with regard to this observation. The Team discussed the observation, noting that the student was "extremely stressed" during the testing and eventually became frustrated, requesting to leave. (S. 150.) The Team concluded that the student's frustration was related to the testing and although it was atypical of someone her age, it was also atypical of her own behavior in larger social settings, in which she was observed to behave at least as well as typically developing peers. (S. 151.) The Team also noted that the Mark Hammond Associates second

speech-language evaluation also mentioned social pragmatics, but the Team agreed that none of the evaluations provided insight as to how to provide social pragmatics programming if it were necessary. (S. 151.) The Team did not conclude that social pragmatics programming was necessary or make any determinations as to future steps; nor does it appear that the student's parents disagreed with this conclusion. (S. 151.)

With regard to the Dubard School, the parents allege that the school district did not act in a timely manner in contacting Dubard after the June 2009 IEP Team meeting. Ms. Hasenfus's delay in contacting the Dubard School until August 2009 was not excessive given the summer break. She also contacted the student's mother shortly after learning that Dubard's programs were not appropriate for the student due to her profile.

The student's assistive technology needs, however, do not appear to have been appropriately addressed by the student's IEP Team. A student's IEP Team is required to consider the special factors involved in her education, including her communication needs and whether she needs assistive technology devices and services. 34 CFR § 300.324(a)(2)(iv) & (v); MUSER § IX.3.C.2(d) & (e). The Team discussed the March 2009 assistive technology assessment at its June 2009 meeting. The Team concluded that it should contract with ALLTech, which conducted the assessment, to work with the student in introducing a particular software program in the fall and provide more guidance to the Team. Although another IEP Team meeting would not have been necessary until further work by the ALLTech staff had been completed, the school district failed to follow through on the Team's agreement to get more input from ALLTech. As Ms. Downs, the student's case manager, testified, the student's assistive technology needs for the 2009-2010 school year were not met.

ii. Student's Occupational and Speech Therapy Services

Parties' Arguments:

The parents assert that the school district failed to provide the student a FAPE by failing to procure occupational therapy services throughout the 2009-2010 school year and by failing to provide speech therapy services from mid-March until the end of the school year.

The school district acknowledges that it failed to implement the occupational therapy services included in the student's 2009-2010 IEP. The school district points out that on numerous occasions it has offered to provide compensatory services for each hour of service that the student missed but that the family has refused the district's offers.

The school district contends that the family's remedy for any violation found should be undercut by the family's failure to establish how many hours of compensatory occupational therapy would be appropriate or show that the student's skills suffered as a result of the school district's failure to secure this service. The school district also contends that it reasonably relied on the family's repeated affirmations that occupational therapy could be delayed, and as such any remedy should be offset by equitable considerations.

With regard to speech therapy, the school district contends that although the student missed approximately fifteen hours of speech therapy from March to June 2010, it was due entirely to the family's decision to keep the student out of school and to not bring her in for speech therapy services.

Analysis:

The school district clearly failed to provide the occupational therapy services as

outlined in the student's IEP. Further, Ms. Hasenfus's testimony indicates that her efforts to locate a provider were limited to small number of providers and were not as rigorous as they should have been.

The school district's violation, however, was mitigated somewhat by the student's mother's continued assurance that the family was not concerned about the student reentering occupational therapy as well as the family's refusal to accept services from the school district's own occupational therapist. Also telling is the family's decision to decline an additional six hours of occupational therapy services in the summer of 2010, even though the student had been without such services for a full year.

With regard to the sessions of speech therapy that were missed while the student's parents kept her home from March through nearly the end of the school year, the school district was not able to provide the services during that time through no fault of its own. The student's mother was clearly aware that the student could have attended school for just those sessions, and chose not to undertake that or to attempt alternative arrangements. As such, the school district did not violate the IDEA because the student did not access speech therapy services from March 2010 through the end of the school year. See, e.g., Doe v. Defendant I, 898 F.2d 1186 (6th Cir. 1990) (holding that where parents choose to pay for private service rather than utilize service offered by school district, the district was not responsible for reimbursement).

iii. Summer 2010 IEP

Parties' Arguments:

The parents contend that the student's IEP for summer 2010 contained determinations that were not agreed to by the entire IEP Team, namely the elimination of

classroom accommodations, the indication that all services would take place in a special education setting, and the alteration of transition service time frames.

The school district contends that changes to the accommodations and locations of services in the student's IEP were in keeping with the IEP Team's decision to determine only ESY services at the June 2010 meeting. The school district argues that the changes in the dates of implementation of transition services were consistent with state regulations requiring transition services for students upon graduation.

Analysis:

The student's summer 2010 IEP was effective from June 8, 2010, to August 30, 2010. (S. 50.) The changes to the student's IEP for the summer period reflected that the IEP covered only ESY services. The IEP as received by the parents was understandably confusing at first, since it referenced goals besides occupational therapy and speech therapy and it indicated that the student would spend eight out of eight blocks (the high school time periods) in the special education setting. Nevertheless, Ms. Martin explained her interpretation of the student's IEP to the student's mother and Ms. Prince attempted to do the same shortly after the parents received it. The school district also made clear throughout the summer of 2010 that it sought to schedule an IEP Team meeting to develop the student's 2010-2011 IEP, a further indication that the summer 2010 IEP was not representative of school year programming.

The only other change to the student's IEP to which the parents object regards the extension by several years of the timeframe for the student's transition services. Although this change was not agreed upon by the student's IEP Team, it was a ministerial change implemented to coordinate the student's graduation date with services to help her

reach her postsectondary goals. In addition, Ms. Hasenfus added two services in the transition services section, including a referral to vocational rehabilitation services one year prior to graduation and a functional vocational evaluation during the coming school year. (S. 75 & 75.) Further, the parents could have raised their concern again at the IEP Team meeting to develop the student's 2010-2011 if they wished the Team to revisit the question, since it involved a timeframe several years away.

As such, the student's summer 2010 IEP was not a falsified document and the school district did not commit any procedural or substantive violations in its creation.

iv. Removal of Student's Mother as Educational Technician

Parties' Arguments:

The parents allege that Superintendent Duquette made a decision about the level of service that would be provided to the student outside of the IEP Team process in violation of IDEA mandates.

The school district responds that the family does not have the right to select educational personnel who will implement the student's IEP, citing B.V. v. Dep't of Educ., 451 F. Supp.2d 1113 (D. Ha. 2005).

Analysis:

It is clear that the parents' disagreement with the superintendent's decision not to transfer the student's mother to the high school with the student has soured their relationship with the school district. In the past, the parents and school district had worked in a much more collaborative manner even though testimony indicated that the student's mother intimidated some school staff members. (Testimony of Martin.)

A hearing officer does not have authority to order a school district to assign or

remove any particular personnel to fulfill a role in a student's IEP. Slama v. Indep. Sch. Dist. No. 2580, 259 F. Supp.2d 880 (D. Minn. 2003) (holding that "school districts have the sole discretion to assign staff"); Freeport Sch. Dist. No. 145, 34 LRP 189 (Ill. SEA 2000) (noting that "the selection or retention of an aide to assist a student with disabilities is an administrative function and not subject to review under the IDEA" unless the selection "deprives a student of a free appropriate public education"); C.S.D. No. 18, 102 LRP 4378 (Me. SEA 1998) (holding that "[t]here is no basis in education law or regulations which allows parents employment jurisdiction over staff who serve their special education children.").

Superintendent Duquette was focused on personnel considerations in making his decision. The Superintendent's decision did not constitute a change in the level of any service being provided to the student. Nor did he have any communication with school staff about the content of the student's IEP. As such, the school district's decision did not usurp the IEP Team's authority or violate the student's right to FAPE in any other regard.

v. Procedural Violations

Parties' Arguments:

First, the parents allege that the school district violated the IDEA by failing to convene an IEP Team meeting following their early March request and failing to respond to the agenda items that they wanted the IEP Team to consider.[3]

Second, the parents contend that the school district committed procedural

[3] The parents' closing brief characterizes Dr. Popenoe's evaluation as insufficient in providing the Team with meaningful recommendations for the student's programming but does not develop an argument that this resulted in an IDEA violation by the school district. The parents rejected Dr. Popenoe's request to do further testing in a non-standardized fashion and did not request an independent neuropsychological evaluation during the time frame at issue in this hearing. (Testimony of Prince; Hasenfus.) As such, this

violations that impacted their ability to take part in the decision making process by failing to provide them with advance notice that Dr. Opuda would facilitate the June 2010 meeting as well as by refusing the parents' request at the start of the meeting that Dr. Opuda not participate.

Third, the parents allege that the June 2010 IEP Team meeting was not held at a mutually convenient time, was not an annual review, and resulted in ESY determinations that were not appropriately based upon the student's present levels of performance, strengths, and goals.

Fourth, the parents assert that the school district should have convened an IEP Team meeting in the spring of 2010 because the student was being tutored outside the school for more than 10 days.

Fifth, the parents allege that they were not equal partners in the August 24, 2010, IEP Team meeting and note that although the school district had agreed to forward a proposed IEP prior to the meeting, the parents received only proposed goals and objectives.

The school district responds that it acted reasonably in not responding immediately to the parents' early March request for an IEP Team meeting. The school district points out that the IDEA does not identify the time frame in which a school district must respond to the parent's request for an IEP Team meeting. The school district further argues that the meeting between the student's mother and Ms. Hasenfus on March 8 included a review of the parents' concerns. The school district argues that school staff appropriately delayed the scheduling of an IEP meeting due to the family's

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issue is not considered.

situation and notes that although the student's mother saw Ms. Hasenfus and Ms. Martin on several occasions while she was out of school, she never mentioned her request for a meeting of the student's IEP Team. Under these circumstances, the school district alleges that even if a procedural IDEA violation occurred, the family did not provide any evidence that the failure to convene an IEP Team meeting impeded the student's ability to obtain FAPE.

With regard to Dr. Opuda's attendance at the June 2010 meeting, the school district argues that Dr. Opuda's facilitation in no way impeded the family's opportunity to participate, noting that several witnesses testified that Dr. Opuda made sure the meeting moved forward and kept Team members focused on the agenda. The school district also contends that the family agreed with each of the Team's determinations, further evidencing their active participation in the IEP Team process. The school district argues that the only impediment to the parents' participation was their own unwillingness to engage in the Team discussion. The school district contends that even if Dr. Opuda's attendance at the IEP Team meeting was a procedural violation, it did not result in the loss of educational opportunity for the student, seriously deprive the family of their right to participate, or cause a deprivation of educational benefits.

Analysis:

If procedural violations are found, they can be deemed a violation to provide FAPE only if they impeded the student's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. 20 USC § 1415(f)(3)(E)(ii).

a. Parents' March IEP Team Meeting Request and Meeting with Ms. Hasenfus

The school district's failure to set up an IEP Team meeting after the parents' March 5 request, in combination with Ms. Hasenfus's failure to follow through on the results of the subsequent meeting she had with the student's mother, were violative of the IDEA. Ms. Hasenfus and Ms. Martin discussed setting up an IEP Team meeting in March, but no effort was made by either of them or Ms. Downs to set up an IEP Team meeting. Although the student and her mother remained out of school for several weeks starting in mid-March, no efforts were made to set up an IEP Team meeting before or while they were out. Ms. Hasenfus's testimony, that she believed that the most humane thing to do was to hold off on setting up an IEP Team meeting, is compelling and assuredly genuine. She acknowledged, however, regret at not moving forward with contacting the parents to ascertain their desire and seek confirmation of her hypothesis that the parents wished to postpone the IEP Team meeting, which would have been a more appropriate course.

More importantly, Ms. Hasenfus met with the student's mother on March 8 and the two charted a plan for resolving the parents' concerns, which included obtaining an updated assistive technology evaluation, obtaining information from Kaufman Children's Center about their ability to conduct an evaluation, and locating an occupational therapist. Ms. Hasenfus's testimony did not indicate that she undertook any of these actions, either before the student's mother left school or while she was out. The school district's agreement to contact the Kaufman's Children Center was consistent with the student's IEP Team's agreement in June 2009 that the student's triennial evaluations did not

provide sufficient information to inform the Team's development of the student's programming. Because efforts to arrange services from the Dubard School had been unsuccessful, it was important to the student's programming that further efforts be made. Similarly, the student's Team in June 2009 had concluded that it required further information from the assistive technology evaluator at ALLTech as to how to implement her recommendations. Even though it is very possible that the student would not have participated in an evaluation or occupational therapy during the family crisis, the school district's failure to even ascertain whether and when such services would be available was detrimental to the student.

The school district's failure to schedule an IEP Team meeting in the spring of 2010 coupled with its failure to follow through on the commitments it made to the student's mother on March 8 impeded the student's right to FAPE. The student's IEP Team would have benefitted from information at its June 2010 meeting as to who would be available to provide occupational therapy, whether ALLTech would be able to provide further assessment and consultation on assistive technology, and whether the Kaufman School would be able to provide consultation. Even if such services were not put in place until the summer or fall, the IEP could have progressed further in determinations if the Team had known what services would be available.

b. Dr. Opuda's Facilitation of the June 2010 IEP Team Meeting

A school district is required to give advance notice to parents of who will be in attendance at an IEP Team meeting. 34 C.F.R. § 300.322(b)(1)(i) & (ii); MUSER § VI.2.A. A school district is authorized to invite an individual who it deems to have knowledge or special expertise to be a Team member. 34 C.F.R. § 300.321(c); MUSER

§ XVI.2.B.5.

The school district's failure to identify Dr. Opuda on the advance written notice, the result of Ms. Downs's lack of knowledge that he had been very recently invited by Ms. Hasenfus, possibly after the advance notice went out, was a violation of the IDEA.

This violation did not, however, violate the student's right to FAPE. Witnesses testified that Dr. Opuda helped to move the Team forward in its discussion and keep the Team focused on the agenda. The recording of the meeting evidences the student's mother's decision not to take part to the full extent possible by her refusal to share information gained in her role as the student's educational technician, particularly given that she was the only school staff member instructing the student in the few months prior to the IEP Team meeting. The parents, who were offered the opportunity to provide input into the student's progress the prior year as well as the development of her ESY services, had a full opportunity to participate. As such, Dr. Opuda's facilitation of the June 2009 IEP Team meeting did not impede the student's right to FAPE, significantly impede the parent's opportunity to participate in the decision-making process, or cause a deprivation of educational benefits.

c. Date of June 2009 IEP Team Meeting

IEP Team meetings must be established by a school district at a time and place that are mutually agreed upon with the parents. 34 C.F.R. § 300.322(a)(2); MUSER § VI.2.A. In this case, the school district made efforts to schedule the spring 2010 IEP Team meeting at a mutually agreed upon place and time. When the parents were asked for dates in mid-May, there were only two days they were available before June 9, neither of which Ms. Hasenfus could attend. School staff felt it was important to hold the

meeting before the student's IEP expired at the end of the school year, particularly since her summer 2010 ESY services had not yet been determined. It was not unreasonable, in these circumstances, for the school district to schedule the meeting prior to the conclusion of the school year, while providing the student's mother with paid time off from her position at the school to ensure that she could attend. Thus, no IDEA violation occurred by the school district's establishment of June 7 as the IEP Team meeting date.

The school district agrees that although the June 7 meeting was intended to include an annual review, the Team's slow progress prevented a full review. No IDEA violation occurred, however, because the Team agreed to reconvene over the summer to conduct an annual review, which it eventually did due to extensive efforts by school staff to schedule such a meeting. There is also no violation found in the substance of the student's 2010 ESY services, all of which were agreed to by the Team and were arrived at by consideration of the student's needs as well as her prior ESY services.

d. Student's Instruction Outside School Setting from Mid-March to June 2009

The parents' reliance on the provision that a student's IEP Team must meet when the student is removed from school for more than ten days and tutored off-site, MUSER § X.2.A.4, is misplaced. The student in this instance was removed from school by her parents and, during the time of her removal, she was provided with the direct instruction that her mother provided while they were in school, not tutoring. The direct instruction was evidenced by the student's mother's submission of time sheets for that period as well as the student's grades for that period, showing progress toward her goals. As such, the provision requiring an IEP Team meeting for students being tutored off-site was not applicable in these circumstances.

e. August 2010 IEP Team Meeting

The parents' allegation that they were not treated as equal Team members at the August 2010 meeting is unfounded. Mr. Prince made multiple efforts over the summer of 2010 to locate a mutually agreeable date for the meeting but the parents declined to respond. At the parents' request, Ms. Prince also changed the date, once it had been established, and added individuals to the invitation list. The recording of the meeting, as well as meeting minutes, portray a meeting that was tense but during which the parents were invited to share information and provide input. The parents were also given time, while the meeting was in recess, to review the draft IEP since due to an administrative error only the draft goals and objectives were provided to them in advance. Further, a school district is not obligated to provide draft IEPs or goals and objectives in advance. As such, no procedural violations occurred during the August 2010 IEP Team meeting.

V. REMEDIES

Parties' Arguments:

In its closing brief, the family seeks the following remedies:

1. Occupational therapy services to be provided by someone outside of the district and "not with a preschool provider."
2. Speech therapy services appropriate for a student with apraxia and dysarthria, including social pragmatics, at Kaufman Children's Center or Dr. S. Velleman at the University of Amherst.
3. Assistive technology, including a computer with appropriate programming, as recommended in the ALLTech evaluation.

The school district contends that the family must prove more than a de minimis failure to implement the student's programming to constitute a denial of FAPE, citing Houston Independent School District v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000). The school district also argues that a "material" aspect of the IEP had to be denied in

order for the family to secure a remedy, citing A.P. v. Woodstock Board of Education, 370 Fed. Appx. 202 (2nd Cir. 2010).

With regard to a remedy for the failure to provide occupational therapy services, the school district contends that the family would not have made the student available for such services after March 2010. Moreover, the school district asserts that as soon as it became aware that the family was displeased with the student's missed occupational therapy sessions, it made several attempts to provide compensatory services, which the family refused.

Analysis:

Compensatory education is an available remedy designed to compensate a student for educational opportunities missed as a result of substantive IDEA violations. Pihl v. Mass. Dep't of Educ., 9 F.3d 184, 189 (1st Cir. 1993). An award of compensatory damages "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." Reid v. District of Columbia, 401 F.3d 516, 518 (D.C. Cir. 2005).

Although an IEP need only provide some benefit, "compensatory awards must do more – they must compensate." Reid, 401 F.3d at 525. An award of compensatory education need not be an hour-for-hour replacement for lost time or opportunity; instead, a compensatory education award should be designed to "ensure that the student is appropriately educated within the meaning of the IDEA." Parents of Student W. v. Puyallup Sch. Dist. #3, 31 F.3d 1489, 1497 (9th Cir. 1994); see also Reid, 401 F.3d at 523 (rejecting a "cookie-cutter approach" that "runs counter to both the 'broad discretion' afforded by IDEA's remedial provision and the substantive FAPE standard that provision

is meant to enforce"). An award of compensatory education should be fact-specific, depending on the child's needs. Reid, 401 F.3d 516 at 524. Moreover, compensatory education is an equitable remedy but does not require a finding that the school acted in bad faith or egregiously. M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 396 (3d Cir. 1996).

The school district violated the IDEA by failing to provide occupational therapy, failing to meet the student's assistive technology needs, failing to schedule an IEP Team meeting in the spring of 2010, and failing to follow through on commitments it made to the parents in March 2010, all more than de minimis violations and all of which resulted in a denial of FAPE to the student. Nevertheless, equitable considerations as explained above impact the remedies ordered.

The student is awarded the following compensatory educational services:

1. Fifty hours of occupational therapy services. Because the parties have agreed in the past to arrange for services from an outside provider, these services should continue to be provided by an outside provider.[4] These services should be provided over the course of the next two years, unless the parties agree to an alternative time frame. These services are designed to supplement whatever occupational therapy services are determined as necessary by the student's IEP Team.

2. The school district shall arrange for an evaluator from ALLTech to consult with the Team as to implementation of the recommendations in its March 2009 evaluation as soon as possible but no later than November 30, 2010, and shall effectuate the recommendations as soon as possible thereafter.

3. Also as soon as possible but no later than November 15, 2010, the school district shall contact the Kaufman Children's Center to determine if the Center can provide consultation on the student's programming and, if so, arrange for such consultation. If the Center is unable to provide such services, the school district should reconvene the student's IEP Team by November 30, 2010, to determine an alternative provider.

[4] The origin of the parents' objection to a preschool provider is unclear and the hearing officer declines to make any further ruling regarding the qualifications of the service provider. Further, the school district may have to go farther afield to locate an outside service provider, necessitating more travel for the student.

Obviously, the school district can do no more than secure these services for the student. If the parents chose not to access them, as they have declined to access the student's IEP for the 2010-2011 school year, the school district is not liable.

VI. ORDER

RSU #16 is ordered to provide the student with fifty hours of occupational therapy over the next two years. RSU #16 is also ordered to consult with ALLTech as soon as possible but no later than November 15, 2010, regarding the recommendations in the student's assistive technology evaluation and shall implement the recommendations as soon as possible. Finally, also as soon as possible but not later than November 15, 2010, RSU #16 is ordered to contact the Kaufman Children's Center to determine whether it is able to consult on the student's programming and, if so, arrange for such consultation. If the Center is unable to provide such services, the school district shall reconvene the student's IEP Team by November 30, 2010, to determine an alternative provider.

Rebekah J. Smith, Esq.
Hearing Officer