

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

**Pennsylvania Special Education Hearing Officer**  
**Final Decision and Order**

**CLOSED HEARING**  
**ODR File Number: 20014-1718AS**

**Child's Name:** J. H.

**Date of Birth:** [redacted]

**Date of Hearing:**  
1/8/2018

**Guardian:**  
[redacted]  
*Pro Se*

**Local Education Agency:**  
Commonwealth Charter Academy Charter School  
4050 Crums Mill Road  
Harrisburg, PA 17112

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**Hearing Officer:** Brian Jason Ford, JD, CHO

**Date of Decision:** 02/16/2018

## **Introduction**

This special education due process hearing was requested by the Guardian, on behalf of the Student, against the Cyber Charter School.<sup>1</sup> The Student is a child with disabilities. The Cyber Charter School is the Student's local educational agency (LEA).

The Student has an anxiety disorder. The Guardian requested homebound instruction to accommodate the Student's anxiety disorder. The Cyber Charter School did not immediately respond to the Guardian's request. The Guardian alleges that the Cyber Charter School's delayed response, and the Cyber Charter School's failure to provide certain documents with its response, violate the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* Ultimately, the Cyber Charter School responded, denying the request for homebound instruction. The Guardian alleges that Cyber Charter School's refusal to provide homebound instruction violates the Student's IDEA right to a free appropriate public education (FAPE). The Guardian further alleges that the same actions constitute a denial of FAPE under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.*, and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*

For reasons discussed below, I find in favor of the Cyber Charter School.

## **Issues**

1. Did the Cyber Charter School violate the IDEA in its response to the Guardian's request for homebound instruction?
2. Did the Cyber Charter School violate the Student's right to a FAPE under the IDEA, Section 504, and/or the ADA by refusing to provide homebound instruction?

## **History of Prior Litigation**

The facts of this case are best understood in the context of prior litigation between the parties. That prior litigation also reveals the Student's tumultuous upbringing, and the Guardian's laudable efforts to bring stability to the Student's life.

The Guardian obtained physical custody of the Student in October 2013, and educational decision-making rights in January 2014. At that time, the Student attended the public school district in which the Student and Guardian reside. That school district evaluated the Student, concluded that the Student was a child with a disability, specifically Other Health Impairment (OHI) resulting from ADHD. The evaluation sparked a dispute between the school district and the Guardian. The Guardian believed that the Student had a Specific Learning Disability (SLD), a disability that the school district did not find [through] its evaluation.

In the spring of 2014, the Guardian withdrew the Student from the school district and enrolled the Student in the Cyber Charter School. In May 2014, the Guardian requested a due process hearing against the school district, alleging a denial of FAPE and demanding an independent

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<sup>1</sup> Except for the cover page, all identifying information is omitted to the extent possible.

educational evaluation (IEE) at public expense. *See* ODR No. 15046-1314KE. The school district then requested a hearing to defend its evaluation. *See* ODR No. 15047-1314KE.

On July 21, 2014, Hearing Officer Valentini found that the school district's evaluation was appropriate except for a functional behavioral assessment (FBA). Hearing Officer Valentini ordered the school district to conduct a new FBA. *See* ODR No. 15047-1314KE.

On October 10, 2014, Hearing Officer Valentini found that the school district did not deny the Student a FAPE. In doing so, Hearing Officer Valentini specifically considered and rejected the Guardian's claims that the school district failed to appropriately accommodate the Student's anxiety. *See* ODR No. 15046-1314KE.

The Student attended the Cyber Charter School in the 2014-15 and 2015-16 school years. During this time, disagreements arose between the Guardian and the Cyber Charter School. In February 2016, the Guardian requested a due process hearing against the Cyber Charter School, alleging that the Cyber Charter School denied the Student a FAPE for the entire period that the Student had attended the Cyber Charter School (through the date of the complaint and ongoing). *See* ODR No. 17321-1516KE.

On September 16, 2016, Hearing Officer Jelley concluded that the Cyber Charter School failed to properly implement the IEP that transferred with the Student from the school district, and also failed to adhere to IDEA mandates in subsequent IEP development and implementation, resulting in a substantive denial of FAPE. Consequently, Hearing Officer Jelley ordered the Cyber Charter School to provide compensatory education to the Student until the Student achieves the goals in the transfer IEP. *See* ODR No. 17321-1516KE.

The Guardian and Cyber Charter School continued to have disputes after the September 2016 due process decision. In February 2017, the Guardian requested a second due process hearing against the Cyber Charter School. That due process complaint took a complex procedural posture, including concurrent litigation in U.S. District Court.

In April 2017, while the second hearing against the Cyber Charter School was pending, the Guardian filed a third due process complaint against the Cyber Charter School. Ultimately, the second and third due process complaints against the Cyber Charter School were consolidated. *See* ODR Nos. 18768-1617KE and 19108-1617KE (consolidated).

Details about an agreement between the Guardian and the Cyber Charter School to effectuate Hearing Officer Jelley's order in the first hearing against the Cyber Charter School are detailed in Hearing Officer McElligott's decision in ODR Nos. 18768-1617KE and 19108-1617KE (consolidated) at 10-12. As discussed below, Hearing Officer McElligott's findings about that agreement are pertinent to this case. In sum, the Cyber Charter School offered to fund the Student's placement in a private school selected by the Guardian. That agreement fell apart when the Guardian refused to sign the private school's enrollment contract. Then, the Cyber Charter School offered to fund testing and educational services provided by a third party. The Student received those services for some time, and then the Guardian discontinued those services upon

learning that the third party was sharing the same progress data with the Cyber Charter School as it was sharing with her.

Since the Guardian discontinued the third-party services, there is no clear record of the Student receiving the compensatory education that Hearing Officer Jelley ordered.

After all procedural issues and preliminary motions in the second and third complaints against the Cyber Charter School were resolved, two issues remained: 1) did the Cyber Charter School deny a FAPE to the Student (nine specific FAPE violations were alleged), and 2) did the Cyber Charter School discriminate against the Student on the basis of disability. Ultimately, Hearing Officer McElligott found that the Cyber Charter School did not discriminate against the Student on the basis of disability, and did not deny the Student a FAPE. Hearing Officer McElligott also found that the Guardian's "lack of engagement in the IEP process" prevented the Cyber Charter School from making important changes to the Student's IEP. Consequently, the Hearing Officer ordered the Cyber Charter School to make particular revisions to the Student's IEP. That order was issued on September 30, 2017. *See* ODR Nos. 18768-1617KE and 19108-1617KE (consolidated).

On October 7, 2017, one week after Hearing Officer McElligott's order, the Guardian submitted a request for homebound instruction. The Cyber Charter School did not immediately respond, but ultimately denied the request for homebound instruction. That denial prompted the Guardian to request this due process hearing.

On December 4, 2017, the Guardian requested this hearing.

### **Findings of Fact**

There are very few facts in dispute in this case. This is not surprising, given the matter's procedural posture. I am bound by the findings of fact made by other Hearing Officers in the four prior due process decisions unless those findings are overturned by a court. To my knowledge, this has not happened. Even in the absence of prior decisions, there are no significant, substantive disputes about what happened and when. Rather, the parties do not agree about what laws are applicable in this case, or whether the Cyber Charter School's actions or inactions violated any law.

Despite the apparent lack of any substantive factual disagreement, all evidence — both documents and testimony — was carefully considered. I make findings of fact, however, only as necessary to resolve the issues before me. Further, there was some overlap between the Guardian's exhibits and the Cyber Charter School's exhibits. In those instances, I refer to only one copy of the document. Consequently, not every document entered into evidence is referenced herein.

I find as follows:

## **The Cyber Charter School**

All facts concerning the nature of the Cyber Charter School are not in dispute, and derived from the entirety of the record — but especially from the Cyber Charter School’s Director of Special Education’s testimony (NT 30-112).

1. The Cyber Charter School provides all instruction online. Teachers give lectures that are broadcast into online classrooms. Students may log into those classrooms to watch and participate in the lectures, may review recordings of the lectures, or both.
2. The Cyber Charter School does not require students to log in to the classrooms when the lectures are live. Rather, students keep their own schedules and participate or view lectures when they wish.
3. Class assignments and tests are sent by teachers and completed and submitted by students online. The same software lets students and teachers communicate with each other through an email-like system.
4. Grades are determined by each student’s scores on assignments and tests.
5. Parents with children attending the Cyber Charter School also have access to a portion of the Cyber Charter School’s online software. This software enables parents to communicate with teachers and see their child’s grades.
6. All of the Cyber Charter School’s software is accessed through the internet. This means that students can access lectures, communicate with teachers, and receive, complete, and return assignments and tests from any internet-connected computer.
7. The Cyber Charter School does not restrict or regulate the physical location from which students access its software. In this case, the Student primarily accessed the Cyber Charter School’s software from a computer in the Student and Guardian’s home.

## **The Student / The IEP**

8. There is no dispute that the Student has an anxiety disorder and ADHD. NT 118.
9. In April 2017, while the proceedings at ODR Nos. 18768-1617KE and 19108-1617KE were pending, the [Cyber Charter School] offered an IEP to the Student (the April 2017 IEP). S-1.
10. On September 30, 2017, Hearing Officer McElligott found that the April 2017 IEP was substantively appropriate. However, Hearing Officer McElligott ordered some changes to the

April 2017 IEP to address the period of time between its issuance in April and the Order in September.<sup>2</sup> See ODR Nos. 18768-1617KE and 19108-1617KE.

11. On October 6, 2017, the Cyber Charter School issued the April 2017 IEP as modified in accordance with Hearing Officer McElligott's Order. S-3, S-10.
12. The April 2017 IEP, as modified, included one-to-one (1:1) support from an Instructional Assistant for two hours per school day, and 1:1 support from a Board Certified Behavior Analyst (BCBA) for one hour per week. Both of these services would be provided in person, not online. S-3.
13. The Guardian did not communicate with the individuals retained by the Cyber Charter School to provide the in-person services. As a result, those services were never scheduled and delivered. S-5, S-10.
14. The April 2017 IEP, as modified, also included 30 minutes of virtual counseling per week. This service enabled the Student to have weekly video teleconference sessions with a counselor. S-3.
15. The April 2017 IEP, as modified, also substantively included all of the services and accommodations detailed by Hearing Officer McElligott in at ODR Nos. 18768-1617KE and 19108-1617KE. S-3.

### **The Request for Homebound Instruction**

16. The Student is under the care of a psychiatrist. The record does not reveal how long the Student has been under the psychiatrist's care, how frequently the Student sees the psychiatrist, or what services or treatment the psychiatrist provides for the Student. NT *passim*.
17. On October 7, 2017, the Guardian submitted a letter from the psychiatrist. That letter, in its entirety, is as follows (S-4):

[Student] is a patient of this psychiatrist at this center. It is recommended as medically indicated that, in view of [Student's] current level of anxiety in [Student's] present school program, [Student] be provided homebound instruction at this time.
18. With that letter, the Guardian also requested a copy of the Cyber Charter School's homebound instruction policy. The Guardian also asked the Cyber Charter School to draft a plan of action for the psychiatrist's review. S-4.
19. The Cyber Charter School does not have a homebound instruction policy. NT at 74.

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<sup>2</sup> In the absence of the Guardian's agreement, the Cyber Charter School was prohibited by the IDEA's "stay-put" or "pendency" rule from implementing the April 2017 IEP while the prior hearing was pending. See 20 U.S.C. § 1415(j).

20. On October 20, 2017, the Cyber Charter School responded to the Guardian's request for homebound instruction, saying that it would provide homebound instruction but also requesting a release so that it could communicate with the psychiatrist, both to gain information about the Student's limitations, and to substantiate the need for homebound instruction through medical records. S-5.
21. The psychiatrist's letter neither referenced the Cyber Charter School specifically, nor indicated that the psychiatrist knew that the Student was not attending a traditional "brick and mortar" school. Although not explicitly stated in the Cyber Charter School's reply to the Guardian, the Cyber Charter School sought a release to communicate with the psychiatrist in part to confirm that the psychiatrist understood the type of school that the Student was attending, and to get an understanding of what the psychiatrist meant by homebound instruction in a cyber setting (if that was the psychiatrist's intention at all). NT *passim* (see, e.g. NT 78)
22. The Guardian did not provide consent for the Cyber Charter School to communicate with the psychiatrist. S-5.
23. The parties stipulate that the Cyber Charter School denied the Guardian's request for homebound instruction.

### **Credibility**

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003); *See also, generally, David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009).

In this case, all witnesses testified credibly. All answered questions to the best of their abilities, were explicit in what they could and could not recall, and sought clarification when appropriate.

It bears repeating that the facts of this case are not truly in dispute. Rather, the parties disagree about the Cyber Charter School's legal obligations, and whether those obligations were satisfied by the Cyber Charter School's actions.

### **Legal Principles**

#### ***The Burden of Proof***

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010),

citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Guardian is the party seeking relief and must bear the burden of persuasion in order to obtain relief.

### ***Continuum of Placements, Instruction in the Home, Homebound Instruction***

The IDEA requires LEAs to “ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a). That continuum must include “instruction in regular classes, special schools, *home instruction*, and instruction in hospitals and institutions.” 34 C.F.R. § 300.115(b)(1) (emphasis added), *see also* 34 C.F.R. § 300.99(a)(1)(i). LEAs must place students with disabilities in the least restrictive environment in which each student can receive FAPE. *See* 34 C.F.R. § 300.114. Generally, restrictiveness is measured by the extent to which a student with a disability is educated with children who do not have disabilities. *See id.*

In addition to the IDEA requirements, Pennsylvania draws a distinction between “homebound instruction” and “instruction in the home.” Homebound instruction is a regular education service for children both with and without disabilities who cannot come to school on a temporary basis. Instruction in the home is the “home instruction” contemplated in the IDEA. Both homebound instruction and instruction in the home are regulated.

Homebound instruction is governed as part of Pennsylvania’s regular education compulsory attendance regulations, 22 Pa. Code § 11. Specifically, schools may excuse a student’s nonattendance for a period that may not exceed three months for “urgent reasons.” 22 Pa Code § 11.25(a). The term “urgent reasons” is strictly construed, and is established by “satisfactory evidence of mental, physical or other urgent reasons.” *Id.* When an urgent reason is established, the school *may* provide homebound instruction for up to three months. 22 Pa Code § 11.25(b). When a student receives homebound instruction, the school may count the Student for attendance purposes, and is reimbursed by the Pennsylvania Department of Education (PDE) for the services. *Id.* Schools can request extensions of the three month period, but PDE must reevaluate the decision to place a student on homebound instruction every three months. *Id.* Schools must also adopt policies “that describe the services that are available to students who have been” placed on homebound instruction. 22 Pa Code § 11.25(c). Those policies “must include statements that define the responsibilities of both the district and the student with regard to these services.” *Id.*

The homebound instruction regulation mentions “schools” and “district[s].” 22 Pa Code § 11.25. The regulation does not mention cyber charter schools. PDE interpreted Pennsylvania’s homebound instruction regulation in a Basic Education Circular (BEC) titled “Instruction Conducted in the Home” (the Home BEC). The Home BEC was first published on September 1, 1997 and was most recently reviewed on July 1, 2009. The Home BEC addresses both homebound instruction and instruction in the home. Regarding homebound instruction, the Home BEC reiterates that homebound instruction is not a special education intervention, but that “students with disabilities may receive homebound instruction due to a temporary excuse from compulsory attendance in the same manner as non-disabled peers.” *Home BEC* at 2. Moreover, the Home BEC interprets the homebound instruction regulation as applying to both public school districts and charter schools. *Id., passim* (referring to “Districts and Charter Schools” throughout).

Nowhere does the Home BEC state, or even imply, that the regulation applies to *cyber* charter schools.

Unlike homebound instruction, instruction in the home is a special education placement. As such, both Pennsylvania charter schools and cyber charter schools are obligated to make instruction in the home available to children with disabilities. 22 Pa. Code § 711.3(12) (explicitly requiring charter and cyber charter schools to comply with 34 CFR §§ 300.115—300.117). Although the law is clear, I am unaware of any case testing the application of instruction in the home within the context of a cyber charter school.

## **Discussion**

### ***Applicability of Homebound Instruction and Instruction in the Home***

More likely than not, Pennsylvania laws do not require cyber charter schools to provide homebound instruction as a regular education intervention to children both with and without disabilities. In general, cyber charter schools provide instruction in the home through their typical pedagogical systems. The applicability of regulations designed to enable students who cannot physically go to school on a temporary basis to get some education is questionable in circumstances in which students never have to physically go to school, and typically receive all educational services in their homes.

The Guardian points to an October 3, 2017 memorandum from the Director of the Pennsylvania Department of Education, Bureau of Special Education (BSE), to argue that Pennsylvania’s homebound instruction laws apply to cyber charter schools. The Guardian correctly notes that the memo quotes 22 PA Code § 11.25 using the term “LEA.” P-14 at 2. That quotation is inaccurate, as the term does not appear in the text of the regulation. The memo instructs LEAs on how to report students receiving homebound instruction or instruction in the home to BSE. There is no doubt that the Cyber Charter School is an LEA, and so the memo applies. Beyond that, the Guardian misinterprets the memo. The memo does not alter the Home BEC, nor does it change the guidance in the Home BEC concerning homebound instruction. In fact, the memo includes hyperlinks back to the Home BEC.

The Guardian also points to a different BEC, regarding Intensive Interagency Coordination (IIC). P-14 at 4 (the IIC BEC). The IIC BEC, which concerns the implementation of *Cordero v. Pa. Dep’t of Educ.*, 795 F. Supp. 1352 (M.D. Pa. 1992), was updated on January 27, 2017 to replace the words “school district” with the words “local education agency.” *See id.* The IIC BEC explains how Pennsylvania’s system for reporting students receiving homebound instruction and instruction in the home is linked to systems used to identify students who require IIC. However, the changes to the IIC BEC changed neither the language of the Home BEC, nor the language of the homebound instruction regulation.

Despite clear indications that Pennsylvania’s homebound instruction regulations do not apply to cyber charter schools, I need not resolve the applicability of those regulations to resolve this case. Rather, I will assume for the sake of argument that the homebound instruction regulations apply. That assumption does not change the outcome of this matter.

In contrast, both Pennsylvania and Federal laws require cyber charter schools to provide instruction in the home as part of the IDEA's continuum of special education placements. Like homebound instruction, the application of instruction in the home in a cyber school context is not immediately clear. It is certainly possible that a cyber school student may require in-person services in order to receive a FAPE, and those in-person services could be delivered in the student's home. It is not clear if such services are properly considered program modifications, specially designed instruction, or instruction in the home. Fortunately, I need not resolve that (mostly) semantic question to resolve this case.

***The Cyber Charter School's Response to the Guardian's  
Request for Homebound Instruction Did Not Violate the Procedural Requirements of the  
IDEA, Section 504, or the ADA***

The only documentary evidence offered by the Guardian to support her position is the letter from the Student's psychiatrist. That letter is hearsay, and therefore I cannot rely upon it to conclude that the Student requires homebound instruction. It is evidence only of what was communicated to the Cyber Charter School. Even if the letter were not hearsay, it hardly constitutes preponderant evidence. The letter itself does not reveal the basis of the psychiatrist's conclusions, provides no information about what educational activities the Student can and cannot participate in, and strongly suggests that the psychiatrist did not understand the nature of the Cyber Charter School's program. Even if Pennsylvania's homebound instruction laws apply, the psychiatrist's letter would only require the Cyber Charter School to do what it did: reach out to get more information about what the Student is and is not medically permitted to do. The Guardian blocked that effort by refusing to provide consent.<sup>3</sup> In the absence of additional information, the Cyber Charter School's denial of the Guardian's request for homebound instruction was proper.

Continuing to assume that Pennsylvania's homebound instruction laws apply in this case, and further assuming that the psychiatrist's letter was sufficient evidence to support homebound instruction, the Cyber Charter School still would have discretion to deny the request. Regardless of the sufficiency of the evidence, Pennsylvania law does not require schools to honor requests for homebound instruction. *See* the six (6) instances of the word "may" within 22 Pa. Code § 11.25. Of course, LEAs exercise their discretion to deny legitimate requests for homebound instruction for children with disabilities at their own peril. The exercise of that discretion may not violate homebound instruction regulations but may yield violations of special education laws. This distinction also illustrates the boundaries of my jurisdiction.

Continuing to assume that Pennsylvania's homebound instruction laws apply in this case, and further assuming that the Cyber Charter School's actions violated those laws, I cannot conclude

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<sup>3</sup> Without consent, the Cyber Charter School cannot share information with the psychiatrist and the psychiatrist cannot share information with the Cyber Charter School. The Cyber Charter School is blocked by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR 99. The psychiatrist is blocked by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 29 U.S.C. § 1181 *et seq.*

that the any part of the IDEA, Section 504, or the ADA were violated *per se*. As explained above, homebound instruction is a regular education intervention. Disputes about a school's compliance with Pennsylvania's regular education laws are outside of my jurisdiction. I have no authority to determine whether the Cyber Charter School's response to the Guardian's request for homebound instruction (not responding immediately and not having a policy) violated the homebound instruction regulations.

Again, it is possible that failure to comply with a regular education law may result in a violation of a special education law. In such cases, my inquiry is limited to the special education violation. For this reason, it is beyond my authority to determine whether the Cyber Charter School's response to the Guardian's request for a regular education intervention violated any of Pennsylvania's regular education laws. Instead, I find that the Cyber Charter School's response to the Guardian's request for Homebound Instruction did not violate any procedural requirement of the IDEA, Section 504, or the ADA. The substantive impact of the denial is discussed below.

***The Cyber Charter School's Denial of the Guardian's  
Request for Homebound Instruction Did Not Result in a Substantive Denial of FAPE  
Under the IDEA, Section 504, or the ADA***

Throughout these proceedings, the Guardian has been exceedingly clear in her position that the Cyber Charter School's alleged violation of Pennsylvania's homebound instruction laws resulted in a substantive denial of FAPE for the Student. Stripping away the Guardian's stated position, and examining the relief that the Guardian demands, reveals an allegation that the Cyber Charter School violated the Student's right to a FAPE by refusing to send a "qualified special education teacher with a background in teaching students with Anxiety Disorders" to the Student's home. *Complaint* at 6. In deference to the Guardian's *pro se* status, I will consider this claim.<sup>4</sup>

No evidence was presented to support the need for in-person instruction by a special education teacher in the Student's home as a necessary component of FAPE.<sup>5</sup> The psychiatrist's letter does not indicate that such services are necessary (ignoring that the letter is hearsay). No evidence was presented to suggest, let alone establish, that the Student's needs changed so greatly between September 30, 2017 and October 7, 2017 that the IEP previously adjudicated appropriate no longer constituted an offer of FAPE. Rather, the record clearly establishes that the Cyber Charter School's efforts to provide in-person services have been thwarted by the Guardian. The Guardian took actions, or refused to take actions, that terminated a private placement offer, and scuttled both an in-person Instructional Assistant and a BCBA. The Cyber Charter School has attempted to put people in the Student's home specifically to help the Student cope with anxiety and access educational programming. The Guardian has failed to cooperate with these efforts. The Student did not receive in-person services at home that were designed to accommodate and ameliorate the Student's anxiety because the Guardian obstructed the Cyber Charter School's attempts to

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<sup>4</sup> Given the clarity of the Guardian's complaint, and the Guardian's consistent articulation of her position, I acknowledge there is some question as to whether this claim is properly before me.

<sup>5</sup> To be clear, the Guardian did not satisfy her burden under the IDEA, Section 504, or the ADA. There is considerable disagreement as to whether I have jurisdiction to hear ADA claims. The Guardian's complaint reveals that ADA claims are derivative of IDEA claims in this case.

provide those services. Similarly, the Guardian terminated third-party in-home services, paid for by the Cyber Charter School, because the third-parties shared progress information with both the Guardian and the Cyber Charter School. In sum, the Guardian went through a due process hearing to get educational services in the Student's home, then unilaterally discontinued those services, and has now requested a due process hearing to obtain similar services again.

In sum, I find that there is no evidence that the Student requires in-person academic instruction by a special education teacher at home in order to receive a FAPE. Consequently, the Guardian has not met her burden to establish that service is a necessary component of FAPE, regardless of how the claim is presented in the Complaint.

In closing, I have no doubt that the Guardian provides a positive, stabilizing force in the Student's life. The Guardian's conduct and work throughout this hearing were exemplary, and her professionalism was on par with what I expect from attorneys who appear before me. My rejection of the Guardian's legal argument is in no way a commentary on her belief in what the Student needs to be successful, or on her diligence as an advocate. The Guardian is clearly the "loving parent" contemplated in *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012) (citations omitted). Even so, the record of this matter establishes that the Cyber Charter School has met its obligations to the Student.

### **ORDER**

Now, February 16, 2018, in accordance with the accompanying memorandum, it is hereby **ORDERED** that the Guardian's claims are **DENIED** and **DISMISSED**.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER