

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

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

**CLOSED HEARING**

**ODR No. 29600-23-24**

**Child's Name:**

S.F.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

*Pro Se*

**Local Education Agency:**

Mariana Bracetti Academy Charter School  
1840 Torresdale Ave,  
Philadelphia, PA 19124

**Counsel for the LEA:**

Nicole Snyder, Esq.  
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**Hearing Officer:**

Charles W. Jelley Esq.

**Decision Date:**

July 1, 2024

## **BACKGROUND**

The Mariana Bracetti Academy Charter School (Charter), acting as the local education agency (LEA) within the meaning of the Individuals with Disabilities Education Act (IDEA), initiated a due process hearing seeking a declaratory finding that the Charter offered the Student a free appropriate public education (FAPE) and other forms of prospective appropriate relief.<sup>1</sup> The overall strain of the past two and one-half school years has fostered an atmosphere of distrust, frustration, and miscommunication. The Parent has refused to participate in meetings, take phone calls, or respond to text messages necessary to ensure the Student is educated. The Parent's frustration spilled over into the due process hearing when, after receiving prior written notice from the Office for Dispute Resolution, the Charter, and this hearing officer, she elected not to participate in the due process hearing. The Parent was, however, provided with paper and electronic copies of the exhibits and the transcript. After the hearing, the Parent never reached out to explain her position.

After reviewing all 44 exhibits and the transcript, for all the reasons that follow, I find against the Charter. Although the Student's behavior is alarming and the Parent has made the IEP process difficult, the Charter has

<sup>1</sup> In the interest of confidentiality and privacy, the Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 USC § 1415(h)(4)(A); 34 CFR § 300.513(d)(2). The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. References to duplicative exhibits are not necessarily to all.

not met its burden of proof on all stated issues. Therefore, I now find that I must Order a comprehensive independent diagnostic educational evaluation in a private setting in a Full-time Emotional Support classroom. The facts and the circumstances further require me to direct the Charter to contact the members of the local Intensive Interagency Coordination subgroup for assistance in marshaling all available resources to ensure the Student attends school and receives a FAPE.<sup>2</sup>

### **STATEMENT OF THE ISSUES**

Should the hearing officer override the Parent's refusal to consent to the Student's placement at an approved private school for the 2024-2025 school year? If not, what appropriate relief is otherwise necessary to provide the Student with a free appropriate public education?

Should the hearing officer override the Parent's refusal to consent to additional evaluations that are otherwise needed to provide a free appropriate public education? If not, what appropriate relief is otherwise necessary to provide the Student with a free appropriate public education?

Should the hearing officer grant the Charter's request for declaratory relief that the Charter offered the Student an appropriate education during the 2021-2022, 2022-2023, and 2023-2024 school years? If not, what appropriate relief is otherwise necessary to provide the Student with a free appropriate public education?

### **FINDINGS OF FACT**

1. The Charter is a public school established and operating under the Pennsylvania Charter School Law, 24 Pa. § 17-1702-A, *et. seq.*

<sup>2</sup> Intensive Interagency Coordination <https://www.education.pa.gov/Policy-Funding/BECS/uscode/Pages/>; Intensive Interagency Coordination and Overview of Intensive Interagency, <https://www.education.pa.gov/Policy-Funding/BECS/uscode/Pages/>; See, *Cordero v. Commonwealth of Pennsylvania and Pennsylvania Department of Education*, 795 F. Supp. 1352, 18 IDELR 1099 (E.D. Pa. 1992).

2. The Charter is required to comply with Chapter 711 of Title 22 of the Pennsylvania Code (relating to charter school and cyber charter school services and programs for children with disabilities). The Charter is exempt from the following certain Pennsylvania-specific regulations otherwise applicable to Pennsylvania school districts, like Chapter 14 of Title 22 of the Pennsylvania Code, Chapter 15 of Title 22 of the Pennsylvania Code, and Chapter 16 of Title 22 of the Pennsylvania Code regarding special education for gifted students. (22 Pa. Code § 711.2; 24 P.S. §§ 17-1732-A, 17-1749-A).
3. The Charter is, however, expected to comply with the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and all substantive and procedural rights and safeguards enumerated in Chapter 711 of Title 22 of the Pennsylvania Code. 22 Pa. Code § 711 *et seq.*

### **THE 2021-2022 SCHOOL YEAR**

4. The Student enrolled at the Charter on January 31, 2022, as an [redacted] grader. Prior to enrolling at the Charter, the Student attended four (4) different schools within the School District of Philadelphia from grades [redacted]. The Student's cumulative record received by the Charter in February 2022 reflects educational gaps and well below grade-level expectations. The records noted ongoing behavioral concerns related to self-control, anger management, verbal and physical aggressiveness, and impaired judgment. The Parent reported to the Charter, at enrollment, that the Student also has medical diagnoses of Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and Disruptive Mood Disorder. No outside records were provided to confirm the diagnoses. The record is unclear as to whether the Student is receiving community

behavioral health services. (S-1; S-2; S-3).

5. After reviewing the prior school district's April 30, 2021, Reevaluation Report, the Charter's IEP team accepted the prior school's description of the Student's needs and circumstances. The Charter's IEP team next concluded that the Student was otherwise IDEA eligible as a person with an Emotional Disturbance and an Other Health Impairment. The Charter also decided that the Student required specially designed instruction and agreed to implement the former school district's individual education program (IEP) as is. (NT p.52; S-2: S-3). The record is unclear if the Charter did not issue prior written notice, procedural safeguards, or a Notice of Recommended Educational Placement confirming its actions and decision-making process. *Id.*
6. The transfer school district's IEP included a statement of the Student's present levels, along with math, reading, behavioral, and writing goals. The IEP also included a positive behavior support plan and offered 60 minutes a month of counseling services. The IEP included three extended school year goals and a long list of specially designed instruction. (S-3).
7. Upon enrollment at the Charter, as an [redacted] grader, the Student was reading at or about the fourth-grade level. Math skills were on or about the third-grade level. The educational records further indicate that the Student needs help with problem-solving, social issues, and regulating emotions. Updated academic assessments from the Charter indicate that the Student is performing well below grade level. The Charter's 2022 records indicate that the Charter offered to provide the Student with Supplemental Emotional and Learning Support in reading, written language, and math in the special education classroom, a Positive Behavior Support Plan ("PBSP"), a Crisis Plan, and 60 minutes a month, of school-based counseling services. (S-3; NT *passim*).

8. On February 24, 2022, the Student pushed and cursed at a staffer, walked out of class, and then began to wander around the building. With support from the hall monitors, the Student was escorted to the in-school suspension room. The building disciplinarian called the Parent and informed her that the Student was suspended; the Parent, in turn, agreed to pick the Student up. While the staff waited for the Mother, the Student walked out of in-school suspension. The Student was later found on the second floor of the building and escorted back to in-school suspension. The Mother arrived, and the Student left the building. (S-4 p.24; NT pp.54-58).
9. From January through March 2022, the Student records indicate a history of escalated interfering behaviors. The interfering behaviors include cursing or threatening peers and staff. At other times, the Student throws objects at the classroom. The Student's behavioral records detail frequent threats to fight other students, as well as actual fighting in the school building and on properties adjacent to the school building after school. In the classroom, the Student also has a history of sleeping through classes and not completing or making up missed assignments. The record includes a notation that it can take up to 1.5 hours before the Student is able to return to the classroom safely. (S-43).
10. The Student's regular education discipline record includes offenses like possession of a [redacted] device and possession of a device that causes a loud and disruptive alarm, which in turn interferes with the learning of others. The sound mimics what one might expect to reflect a danger signal during a school-wide lockdown. The Student has also been disciplined for carrying a flashlight, which was used to bang against lockers. The flashlight also included a siren feature, which, when activated, disrupted the school environment. The discipline file next

includes additional incidents of bullying and mocking others, name-calling, cursing, and the use of derogatory slang terms and slurs. (S-43).

11. Most of the time, the Student is unable to sit in a seat for any extended period of time. Rather than sit, the Student will instead work on their hair, sing loudly, pace around the classroom, lay across the desks, or leave the classroom without permission. The Student has been observed berating other peers or mumbling about other students. The Student has threatened staff, stating that the Mother is [redacted] on the School. (S-43).
12. The Student's records note that the Parent declined suggested in-school and community-based behavioral services and supports, including consideration of a full-time therapeutic support person to assist the Student during the school day. Examples of other negative and uncooperative responses include statements like "Have a nice f\*ing day, bi\*\*ch" and "Address my child the right way like I said b\*\*ch." (S-43).
13. On March 3, 2022, the Charter sent the Parent a Notice of Recommended Educational Placement (NOREP) proposing a change in placement from in-person education to virtual homebound services. (S-43; S-12). Although the Mother never signed or returned the NOREP, the Charter school changed the Student's placement and initiated online virtual homebound services. (S-12; S-43).
14. Due to internet connection problems and attention difficulties, Student attendance became a problem. Overall, virtual instruction did not go well or meet the Student's learning needs. The school year ended, and the Student failed all classes. Furthermore, the Student did not participate in an extended school year (ESY) experience listed in the transfer IEP. (S-12; S-43; NT *passim*). The record does not include any IEP progress monitoring data for the academic or behavioral goals or the related

service counseling sessions. (S-12; S-43; NT *passim*; S-8 pp.6-8).

15. On or about May 6, 2022, the Charter staff prepared an IEP. The Charter scheduled an IEP meeting for June 6, 2022. When the Parent did not attend the IEP meeting, the Charter, using the in-house document-sharing platform, sent the Parent the Draft IEP and a NOREP. The Draft IEP included math, reading, writing, and behavioral goal statements. The IEP team reduced counseling support from 60 minutes a month to 10 minutes a week if requested by the Student. The IEP team also checked the box that the Student was no longer eligible for extended school-year services (ESY). (S-8 p.31). The IEP team next checked the boxes indicating that the Student should receive Supplemental Emotional and Learning Support at the Charter school building. The IEP did not include the standard page describing the length of time the Student would spend in the regular education classroom. (S-8; S-43 p.23; NT pp.58-61).
16. Also, on May 6, 2022, the Charter sent the Parent a NOREP stating the Student would remain on homebound virtual instruction until the Student was accepted at a private school. (S-13 S-43 p.23; NT pp.58-61). The Parent did not return the NOREP. *Id.*

### **THE 2022-2023 SCHOOL YEAR**

17. Despite the NOREP stating that the Charter would provide virtual homebound services until placement at an APS, the Student showed up on the first day of school. The Charter allowed the Student to attend in-person instruction, and the Student followed a [redacted] grade schedule of classes. The record is unclear if the Student received special education services, as IEP progress monitoring data is not in the record, or how the Charter implemented the May 2022 IEP. (NT pp.61-64; S-43 pp.16-23).
18. From September 2022 to January 2023, the Student's record includes multiple instances when the Student was not able to self-regulate. For



example, the Student would curse, hit, or scream at others, play loud music in class, and otherwise disrupt the classroom and the school. (S-43).

19. On or about January 30, 2023, the Charter sent the Parent another NOREP, placing the Student on virtual homebound instruction awaiting placement at an APS. (S-14; S-43 p.16 line 3). Also, in January 2023, the Charter arranged for the Parent to tour and interview staff at several approved private schools. The Parent did not attend any of the meetings, and the private schools lost interest. (NT pp.69-74).
20. On April 28, 2023, the Charter sent the Parent another NOREP again, offering to maintain the Student's in-home virtual homebound placement until the Student was accepted at an APS. (S-17). The Parent did not return the NOREP, and the Student finished the 2022-2023 with homebound services. (S-17). The record is unclear on how often the Student received counseling or behavioral support. *Id.*
21. In early May 2023, the Charter contacted the Parent with news that the Student was accepted at a private school. (S-43 p.15). The Mother did not respond to the staff's emails or phone calls. The school year ended, and the Student with the Student still on homebound instruction. The Student failed all classes. The Charter did not provide progress monitoring reports or data. (S-43).
22. On May 23, 2023, the Charter prepared another IEP. The record is unclear if an IEP meeting occurred or how the Charter gave the Parent a copy of the IEP. (S-17). The IEP fails to include updated IEP progress monitoring data. (S-17). The IEP present levels note that the Student failed all of the core classes. Once again, the IEP offered Supplemental Emotional Support and Learning Support at the Charter school. (S-17). The record does not explain the basis for the differences between the IEP team's

recommendation for Supplemental Support at the Charter (S-8 and S-17) and the Chief Executive Officer's proposed "action" in the NOREPs to make a private placement. (S-14 January 2023; APS NOREP - and S-16 – April 2023 NOREP).

### **THE 2023-2024 SCHOOL YEAR**

23. Like before, the Student returned to in-school instruction at the beginning of the 2023-2024 school year. On September 23, 2023, the Parent signed a consent to release educational records to outside providers. (S-15).
24. The Charter issued a Permission to Reevaluate on October 11, 2023. (S-18).
25. The November 2, 2023, Student behavioral incident log includes references to five (5) disciplinary infractions. The second notation of the day is particularly disturbing. The teacher reported that the Student "had broken just about every school policy that day, which included eating in hallways, being out of uniform, cursing at staff, cutting class, going into locked rooms, threatening students, and running in hallways which at one point notes 25 minutes of [redacted] sprinting through the school building." (S-43 pp.20-21).
26. On November 11, 2023, the Charter CEO emailed the Parent, inviting her to participate in a Zoom video conference call with the staff at one of the APS. The Parent never responded to the offer, and the interview did not go forward. (S-19). The Charter also offered to transport the Parent and the Student to and from each private school visit. The Parent did not respond. (S-43; NT pp.42-45; NT pp.59-60; NT pp.72-79).
27. On November 15, 2023, a "Threat Assessment" was completed when the Student made a threat to fight another peer. A regular education "Safety Plan" was developed, which included having an adult with the Student throughout the school day. (S-43 p.8).

28. On November 16, 2023, the staff learned that the Student made additional threats of assault on a social media platform. When the Parent was contacted about the posts, the Parent responded with multiple profanities and threatened to file a police report. (S-43 p.8).
29. On November 17, 2023, the Charter's CEO called the Parent twice to advise her that the Student had been accepted at an APS. On both occasions, the call dropped, and the Parent did not respond to the APS offer. Later on that day, the Student continued to threaten other peers. When contacted, the Parent acknowledged the Student's threatening behaviors and expressed her overall frustration about the Student and the Charter. After the November 17, 2023, threat incidents, the Charter staff tried to use peer mediation strategies to teach self-regulation. The peer mediation strategies were not successful. (S-43 p.9)
30. On November 21, 2023, the Charter sent the Parent a NOREP offering to educate the Student on homebound until placement at an unnamed approved private school. (S-20). The November 2023 NOREP was not returned. *Id.*
31. On November 27, 2023, the Student was observed screaming at another student, stating, "Kill yourself." (S-43 p.9; S-19).
32. On December 1, 2023, the Student had a particularly bad day. When eloping from the classroom, the Student pushed a staff member and knocked over several containers. The staff called the Crisis Behavioral Hotline for assistance. The staff also called the Parent about the behavior and the need for outside behavioral health support. The record indicates that when the Crisis team arrived, the Student insisted that they did not need crisis support. The record further indicates that the Student told staff, "[I] can show you what a crisis is if you want to call crisis." The Student further stated that a staff member should "offs herself." Also, on

December 1, 2023, the Student made a series of verbal threats to peers. When the Parent arrived, she asked about transferring the Student to another location. (S-43). When presented with a transfer form, the Parent refused to proceed. The Charter staff explained to the Parent that the Student was aware of the fact that the Parent was not partnering with the staff, which, in turn, made the discipline and the transition to the appropriate program and placement much harder. (S-43).

33. On December 4, 2023, the Parent met with a staffer and refused to consent to change the Student's placement. (S-43 p.8). To reduce the Parent's concerns about transportation, the staff assured the Parent that the Charter would arrange for transportation to and from the APS. The staff offered, and the Parent signed and consented to the October 2023 Permission to Reevaluate. (S-43 p.8).
34. The Student's December 5, 2023, behavioral log notes five (5) different behavioral incidents with the staff and peers. (S-25; S-43).
35. On December 6, 2023, the Student, using profanity, threatened a staff member. When walking out of the classroom, the Student knocked over [redacted], and the staff intervened. (S-43 pp.6-7).
36. On December 15, 2023, the Charter invited, and the Parent refused to participate in a Manifestation Determination meeting. The meeting continued without Parental involvement. The Charter team determined that the Student's lack of self-regulation was a manifestation of the Student's disabilities. Rather than revise the IEP and the behavior support plan, the team instead suggested a 45-day placement at an APS. (NT pp.79-81).
37. Throughout December 2023 through March 2024, the Student made multiple threats to harm others, cursed, annoyed peers, instigated fights, and was otherwise disrespectful to staff. (S-43)

38. The Student's reevaluation was completed in mid-February 2024 and reviewed by the staff. Despite multiple attempts to gather Parental input, the Parent did not participate. The reevaluation included a review of the records, standardized tests, and behavioral checklists. The Student's full-scale IQ fell in the "Well Below Average" range. The Student's achievement scores ranged from "Well Below Average" to "Below Average." The Parent refused to complete the behavioral checklist. Three teachers, however, completed two different behavioral rating scales. Two teacher ratings identified behaviors consistent with the IDEA definition of Emotional Disturbance; the third teacher's rating did not identify any behavioral or organizational issues. The reevaluation report also included the results of a functional behavioral assessment. The reevaluation team concluded that the Student was IDEA-eligible and recommended specially designed instruction. The report does not include an assessment of the Student's transition needs. (S-26).
39. On March 11, 2024, the Charter scheduled, and the Parent did not attend an IEP conference. The March 2024 IEP included the updated testing data and results found in the reevaluation report. The IEP included reading, math, writing, and behavioral goals. The IEP also included one ten-minute counseling session a week if requested by the Student and a positive behavior support plan. The IEP also included the results of a functional behavioral assessment. The IEP team proposed Supplemental Emotional and Learning Support at the Charter. Transition planning was overlooked. (S-39 pp.1-40).
40. In early April 2024, the Student was suspended one day for threatening another student. The Student stated that the peer was "going to catch a bullet to [redacted] head." The Charter informed the Parent and conducted another threat assessment. The Charter routinely reached out to the Parent for input, but the Parent refused to collaborate. (S-43).

41. From January 2024 through May 2024, the Student had 100 behavioral incidents. (S-43).
42. During the current 2023-2024 school year, the Student was suspended for twelve (12) days. (S-43).
43. The Student ended the 2023-2024 school year with failing grades. (S-43).

## **GENERAL LEGAL PRINCIPLES**

### **BURDEN OF PROOF AND CREDIBILITY**

Generally, the burden of proof 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. The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. In this case, the Charter is the party seeking relief and must bear the burden of persuasion on all issues.<sup>3</sup> During a due process hearing, the hearing officer makes "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses."<sup>4</sup> Explicit credibility determinations give courts the information that they need in the event of a judicial review. The testimony from the Charter's single witness, while credible, was not otherwise persuasive.

### **SPECIALLY-DESIGNED INSTRUCTION, AND THE LEAST RESTRICTIVE ENVIRONMENT MANDATE**

The IDEA mandates that eligible students must be provided with a "free appropriate public education" ("FAPE").<sup>5</sup> Though the IDEA does not explicitly prescribe what a FAPE entails, it does make clear that it consists of both "special education" and

<sup>3</sup> *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

<sup>4</sup> *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003).

<sup>5</sup> *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 390, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017) (citing 20 U.S.C. § 1412(a)(1)).

"related services."<sup>6</sup> The IDEA also contains a "least restrictive environment" promise.<sup>7</sup> To this end, the "least restrictive environment" guarantees that each Student's instruction must "to the greatest extent possible, satisfactorily educate disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled."<sup>8</sup>

### **THE IEP IS THE CENTERPIECE**

The "centerpiece" of the IDEA FAPE mandate is the "individualized education program" ("IEP").<sup>9</sup> "An IEP is a written statement, developed, reviewed, and revised' by [an] 'IEP Team'— a group of school officials and the parents of the Student— that spells out how a school will meet an individual disabled student's educational needs."<sup>10</sup> An IEP sets forth the Student's "present levels of academic achievement, offers measurable annual goals to enable the child to . . . make progress in the general educational curriculum, and describes supplementary aids and services . . . provided to the child to meet those goals." *Id.*<sup>11</sup> The hearing officer must analyze the appropriateness of the IEP at the time it was issued, often called the "snapshot rule" not at some later date.<sup>12</sup> The IDEA does not require an IEP to detail specific behavioral goals, but an IEP team must consider a positive behavior program if a behavior impedes a student's learning. *Id.*<sup>13</sup>

<sup>6</sup> *Bd. Of Educ. Of Henrick Hudson Cent. Sch. Dist., Westchester Cnty. V. Rowley*, 458 U.S. 176, 188-89, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982) (citing 20 U.S.C. §§ 1401(26), (29)).

<sup>7</sup> *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384, 390 (3d Cir. 2006).

<sup>8</sup> *S.H. v. State-Operated Sch. Dist. of City of Newark*, 336 F.3d 260, 265 (3d Cir. 2003) (citing 20 U.S.C. § 1412(a)(5)(A)) (internal quotation marks omitted); see also *Oberti by Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204, 1213-14 (3d Cir. 1993) ("[T]his provision sets forth a 'strong congressional preference' for integrating children with disabilities in regular classrooms.").

<sup>9</sup> *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988); See, also 20 U.S.C. § 1412(a)(4).

<sup>10</sup> *Y.B. ex rel. S.B. v. Howell Twp. Bd. of Educ.*, 4 F.4th 196, 198 (3d Cir. 2021) (quoting 20 U.S.C. §§ 1414(d)(1)(A), (B)).

<sup>11</sup> 20 U.S.C. §§ 1414(d)(1)(A)(i)(I), (II)(aa), (IV)).

<sup>12</sup> *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 564- 65 (3d Cir. 2010) (citing *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 762 (3d Cir. 1995)).

<sup>13</sup> *East Valley Sch. Dist.*, 120 LRP 17286 (SEA WA 01/16/20) (because the parent did not agree to the student receiving instruction in the counselor's office, the district should have returned the student to the behavior intervention program).

## **TWO CLASSES OF IDEA VIOLATIONS**

Generally speaking, the IDEA identifies two categories of IDEA violations. First, there is a "substantive violation," which arises when an "IEP's content, such as the educational services, is insufficient to afford the student a FAPE."<sup>14</sup> A "procedural violation" occurs "when the school district fails to comply with the processes required by the IDEA."<sup>15</sup>

### **INTENSITIVE INTERAGENCY COORDINATION**

In *Cordero v. Pennsylvania Department of Education* (PDE), the district court directed PDE to implement a comprehensive system for identifying all children with disabilities who are experiencing placement delays or who are at risk for placement delays.<sup>16</sup> The court order requires LEAs to report monthly all children with disabilities who are placed by the IEP team to "instruction conducted in the home" or assigned to homebound instruction to PDE. The *Cordero* decision distinguished the terms "instruction conducted in the home" versus "homebound instruction." "Instruction conducted in the home" is included in the definition of special education and is recognized as a placement option on the continuum of alternative placements for students with disabilities.<sup>17</sup> PDE has declared that instruction conducted in the home is restricted to students whose needs require full-time special education services and programs outside the school setting for the entire day. "Homebound instruction," on the other hand, describes the instruction a district or charter school provides when a student is excused from compulsory attendance under 22 Pa. Code §11.25 due to temporary mental or physical illness or other urgent reasons. Even though homebound instruction is not a special education placement option for students with disabilities, there are occasions when a student with

<sup>14</sup> *S.W. v. Elizabeth Bd. of Educ., No. 22-11510*, 2022 U.S. Dist. LEXIS 47495, 2022 WL 807344, at \*6 (D.N.J. Mar. 17, 2022).

<sup>15</sup> See also *ASAH v. New Jersey Dep't of Educ., No. 16-3935*, 2017 U.S. Dist. LEXIS 101736, 2017 WL 2829648, at \*10 n.10 (D.N.J. June 30, 2017) ("A procedural violation generally concerns the process by which the IEP and placement offer was developed and conveyed; on the other hand, a substantive violation arises from a deficiency in the programming being offered." (internal quotation marks omitted)).

<sup>16</sup> *Cordero v. Commonwealth of Pennsylvania and Pennsylvania Department of Education*, 795 F. Supp. 1352, 18 IDELR 1099 (E.D. Pa. 1992).

<sup>17</sup> 34 CFR §300.39(a)(i)); 34 CFR §300.115.



a disability may receive homebound instruction due to a temporary medical excusal from compulsory attendance like the Student's non-disabled peers. Districts and charter schools must also report to the Department students with disabilities for whom homebound instruction is approved. Finally, they must also file a follow-up report when the temporary placement has concluded and the Student has returned to school. Districts and charter schools must document the physician's recommendation for homebound instruction.<sup>18</sup>

### **IDEA AND PENNSYLVANIA-SPECIFIC ESY STANDARDS**

The IDEA ESY eligibility standards differ from the Pennsylvania ESY eligibility and procedural safeguards standards. Under the IDEA, IEP teams must discuss and offer extended school year services "only if a child's IEP team determines, on an individual basis,. . . that the services are necessary for the provision of a Free Appropriate Public Education (FAPE) to the child."<sup>19</sup> The IDEA defines the term ESY services to mean special education and related services that: "Are provided to a child with a disability: (i) Beyond the normal school year of the public agency; (ii) In accordance with the child's IEP; and (iii) At no cost to the parents of the child; that (2) Meet the standards of the state educational agency." "A public agency [school district] cannot (i) limit ESY services to particular categories of disability or (ii) Unilaterally limit the type, amount, or duration of those services."<sup>20</sup> Pennsylvania-specific ESY standards are rooted in the federal court decision in *Armstrong v. Kline* 476 F. Supp. 583 (E.D. Pa. 1979) and the *Armstrong* Remedial Order No. 2 Guidelines. The *Armstrong* Guidelines establish additional protections for students in Pennsylvania with autism/pervasive developmental disorder, serious emotional disturbance, severe intellectual disability, and degenerative impairment with mental involvement.

<sup>18</sup> Instruction Conducted in the Home, <https://www.pattan.net/assets/PaTTAN/a4/a4950c37-42af-49c8-853b-cea8072f531e.pdf>

<sup>19</sup> 34 CFR § 300106(a)(2).

<sup>20</sup> 34 CFR § 300.106.

The Student is identified as a person with an Emotional Disability; therefore, all the *Armstrong* substantive and procedural requirements apply. Pennsylvania special education ESY practices include specific procedural timelines for LEAs to determine ESY eligibility, offer an ESY FAPE, and issue procedural safeguards and NOREPs. For students in the *Armstrong Kline* group, the ESY IEP team eligibility meeting must occur no later than February 28 of each school year. This February date may require the Charter to reschedule the annual IEP team meeting, or if necessary, the Charter must conduct a separate Extended School Year IEP team meeting.<sup>21</sup>

ESY NOREPs describing the ESY offer must be sent to the parents no later than March 31 of each school year. The location, frequency, and duration of specially designed instruction and related must be included in the ESY IEP. These February and March timelines ensure that ESY disputes are resolved in an expedited manner.<sup>22</sup>

### **THE MANIFESTATION DETERMINATION REVIEW PROCEDURE**

A manifestation determination requires the team to review the records and complete a quasi-evaluation of a child's misconduct to determine whether a student's misconduct is a manifestation of the child's disability. It must be performed when a district proposes disciplinary measures that will result in a change of placement for a child with a disability.<sup>23</sup> Traditionally, the determination is performed within 10 school days of "any decision to change the placement of a child with a disability because of a violation of a code of student conduct." *Id.* The obligation to revise and review a student's behavior plan under 34 CFR 300.530 (f) exists even if the behavior plan was created shortly before the misconduct occurred.<sup>24</sup> A student's need for behavioral interventions and support must be decided on an individual basis by the Student's IEP team.<sup>25</sup> In *Herron Charter*, while the manifestation team found that a student's involvement in a

<sup>21</sup> 22 Pa. Code § 14.132(d).

<sup>22</sup> 22 Pa. Code § 14.132 and 22 Pa. Code § 14.162 *et seq.*

<sup>23</sup> 34 CFR § 300.530 (e).

<sup>24</sup> See, e.g., *District of Columbia Pub. Schs.*, 68 IDELR 83 (SEA DC 2016) (finding that despite the fact that the BIP was developed just prior to the misconduct, the district violated the IDEA where the MDR team failed to address whether the BIP needed changes in the wake of the incident).

<sup>25</sup> 71 Fed. Reg. 46,683 (2006).

fight was not a manifestation of his disability, his charter school was still required to determine whether an FBA and/or behavior plan was needed to address his behavior. The failure to develop or revise a behavior plan when a child needs one can result in a denial of FAPE.<sup>26</sup> The IDEA does not require an IEP to detail specific behavioral goals, but an IEP team must consider a positive behavior program if behavior impedes a student's learning. *Id.*

## **ANALYSIS AND CONCLUSIONS OF LAW**

### **THE TRANSFER IEP, THE CHANGE IN PLACEMENT, AND THE MAY IEP**

Applying *Rowley, Andrew*, and the "snapshot rule, I now find that the Charter failed to offer or provide a FAPE during the 2021-2022 school year. The first procedural violation occurred when the Charter failed to issue a NOREP, prior notice, or procedural safeguards after agreeing to implement the transfer IEP. The second procedural violation occurred when the Charter failed to reevaluate the Student before the proposed change in placement to homebound. The third procedural violation occurred when the Charter failed to hold an IEP and discuss how to modify the IEP goals, the positive behavior plan, or the related services when the Student was on homebound. The fourth procedural violation occurred when the Charter failed to hold an IEP meeting after the homebound placement to redesign the IEP when the Student refused to log into the virtual lessons. The fifth procedural violation occurred when the Charter failed to collect academic, behavioral, or counseling progress monitoring data from March to June 2022.

Contrary to PDE guidance issued after the *Cordero* Order, the Charter placed the Student on "homebound instruction." At the time of the "homebound instruction" placement, the Student had not been diagnosed with a severe medical condition. The

<sup>26</sup> *R.K. v. New York City Dep't of Educ.*, 56 IDELR 212 (E.D.N.Y. 2011), *aff'd*, 59 IDELR 241, *cert. denied*, 113 LRP 24542, 133 S.Ct. 2802 (2013); *Enterprise City Bd. of Educ. v. S.S. and J.S.*, 76 IDELR 295 (M.D. Ala. 2020) (The district denied FAPE to a student by failing to incorporate appropriate positive behavioral interventions in the student's IEP and properly documenting the behavior strategies implemented in the classroom.); and *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003) (any slight academic benefit the student received was lost because of ongoing behavior problems that interfered with [redacted] ability to learn.).

record is preponderant that rather than revise the IEP, behavior plan, or request a reevaluation, the Charter staff predetermined the placement and unilaterally made the homebound placement. The record is also clear that even though the Student refused to attend the virtual instruction lessons, the Charter did not revise the adopted transfer IEP to align with the unilateral change in placement. Although the transfer IEP required counseling support, neither the exhibits nor the testimony confirm that counseling services were provided or that academic progress was monitored. Accordingly, I now find that from March 2022 through May 2022, the Charter failed to offer or implement an appropriate IEP within a reasonable period of time.<sup>27</sup> From January 2022 through May 2022, the Charter failed to provide adequate prior written notice or procedural safeguards after the homebound placement. I now find these violations caused substantive FAPE violations.

### **THE MARCH 2022 NOREP AND THE MAY 2022 IEP ARE NOT ALIGNED**

On April 29, 2022, the Parent agreed, by phone, that the Charter could implement a different IEP before a scheduled May 6, 2022, IEP meeting. The May 6, 2022, meeting was canceled and rescheduled to June 8, 2022. When the Parent did not attend the June meeting, the Charter sent the Parent the May 6, 2022, IEP and another NOREP using the in-house document-sharing platform. The May 2022 IEP included the same math, reading, writing, and behavioral goal statements found in the transfer IEP. The May 2022 IEP team, however, reduced counseling support from 60 minutes a month to 10 minutes a week if requested by the Student. Absent a review of any regression and recoupment data, the IEP team checked the box and found that the Student was no longer eligible for extended school-year services. (S-8 p.31). Next, the IEP team, without explanation, checked the boxes indicating that the Student should receive Supplemental Emotional and Learning Support at the Charter school building. At the same time, the NOREP proposed homebound instruction pending placement at an APS. Homebound placement is legally insufficient, and an APS is highly restrictive. (S-13; S-

<sup>27</sup> 20 USC §1414 (d)(2)(C)(i)(I); and 34 CFR §300.323 (e).

43 p.23; NT pp.58-61). The Parents never returned the NOREP or agreed to the IEP. When the school year ended, the Student was failing all classes, yet the Charter never offered to reevaluate the Student. The Charter's evidence fails to cogently explain the difference between the NOREP homebound placement and the IEP team's suggested placement at the Charter. The reference to "homebound instruction" is problematic. Applying *Cordero* and the IDEA I now conclude that the Charter is not permitted to use "homebound instruction" as an interim placement. The Charter's homebound to APS placement decision made before the development of an IEP is a standalone predetermination FAPE violation.<sup>28</sup> Predetermination FAPE violations occur when the placement decision is made before the IEP is written.<sup>29</sup> Issuing the NOREP with boilerplate language before writing an IEP signals a closed-minded thinking process that supports a finding of a substantive violation.<sup>30</sup>

### **THE 2022-2023 SCHOOL YEAR**

Despite the May 2022 homebound virtual education NOREP, the Student returned to the Charter as a full-time [redacted] grade day learner. The record does not describe any action by the Charter over the summer months to locate the APS mentioned in the NOREP prior to the start of the school year. Within the first few weeks of the school year, the Student was disciplined for twirling [redacted] on their finger and hanging the [redacted] from their hair. The record is preponderant that from September 7, 2022, to January 30, 2023, the Student engaged in approximately 100 plus acts of interfering behaviors like laying on desks, playing loud music in class, cursing at staff, cursing at students, walking around the class, walking out of class, talking out in class, threatening staff, threatening peers, wandering around the school, fidgeting, fighting, kicking and punching others. (S-43).

<sup>28</sup> *W.G. v. Bd. of Tr. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir.1992), superseded by statute on other grounds, as recognized in *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir.2007); see also *Spielberg v. Henrico Cnty. Pub. Schs.*, 853 F.2d 256, 258-59 (4th Cir.1988); *Doyle v. Arlington County School Board*, 806 F.Supp. 1253, 1262 (E.D. Va. 1992); *Union School District v. Smith*, 15 F.3d 1519, 1526, (9th Cir. 1994)(court emphasized the importance of the formal offer of a FAPE before placement is consider requirement).

<sup>29</sup> *Spielberg*, 853 F.2d at 259.

<sup>30</sup> *Id.*

In December 2022, the Charter and Parent participated in a manifestation determination meeting. Although the team agreed that the acting out behavior was a manifestation of the Student's disability, the team recommended a 45-day placement, and the Parent refused. Contrary to manifestation determination regulations, the team did not revise the IEP, the behavior plan, or the specially designed instruction.

On January 30, 2023, the Charter, without the benefit of an IEP team meeting or a reevaluation, sent the Parent another NOREP, returning the Student to virtual "homebound instruction" while awaiting placement at an APS. The 2023 NOREP, like the 2022 NOREP, failed to identify the APS or the proposed start date at the APS.

The Student's January 31, 2023, incident log notation that the Student was placed on virtual homebound "indefinitely" is additional evidence of a predetermination violation. (S-43 p.14). The log note, when coupled with the homebound NOREP placement, is a substantive IDEA violation and runs contrary to the *Cordero* Order restrictions.<sup>31</sup>

The unilateral change in placement also caused a procedural violation of the IDEA's IEP meeting requirements, parental participation, parental consent restrictions, prior written notice protections, and stay-put requirements. 22 Pa. Code 711.61 *et seq.*<sup>32</sup> The Student ended the school year with failing grades in all classes. I now conclude that the ongoing procedural errors, circumstances, and events caused a denial of a FAPE.

### **The 2023-2024 SCHOOL YEAR**

When the 2023-2024 school year started, despite the January 2023 NOREP calling for homebound instructions prior to an APS placement, the Student once again returned to the Charter school for in-person instruction. On September 27, 2023, the Parent signed a release of information allowing the Charter to send educational records to the private

<sup>31</sup> If the proposed change substantially or materially affects the composition of the educational program and services provided to the child, then a change in placement occurs, triggering the notice requirement. *Letter to Flores*, 211 IDELR 233 (OSEP 1980); *Letter to Fisher*, 21 IDELR 992 (OSEP 1994); *Veazey v. Ascension Parish Sch. Bd.*, 42 IDELR 140 (5th Cir. 2005, unpublished), *cert. denied*, 112 LRP 58755, 546 U.S. 824 (2005).

<sup>32</sup> 34 C.F.R. § 300.116(b); *Spielberg v. Henrico County Public School*, 853 F.2d 256, 441 IDELR 178 (4th Cir. 1988)(placement decisions can only be made after the development of the IEP).

schools for consideration. On October 18, 2023, the Charter gave the Parent a Permission to Reevaluate form.

From September 2023 through December 2023, the Charter arranged for the Parent and the Student to visit several private schools either in person or virtually. Even though intakes were arranged, the Parent and the Student refused to participate, which in turn caused the private schools to drop out of the picture.

On March 3, 2024, the Charter offered another IEP. The March 2024 IEP included the same math, reading, and goals found in the earlier IEPs. The frequency and duration of the counseling sessions and the positive behavior program remained the same.

Although the Student failed all classes for two school years, the March 2024 IEP did not offer ESY support. Like the May 2022 and the May 2023 IEPs, the staff suggested Supplemental Emotional and Learning Support at the Charter. The Penn Data sheet describing the Student's time in regular and special education called for the Student to participate in regular education classes for 5.6 hours a day out of a 7-hour school day. Like before, the "homebound" placement violated the *Cordero* and IDEA restrictive placement protections. Applying the "snapshot" rule under these atypical circumstances, I now find that offering the same goals, specially designed instruction, positive behavior plan, and counseling found in the earlier IEPs that were unsuccessful was a substantive violation. Accordingly, after hearing the testimony and reviewing the record, I now find that the Charter has not met its burden to override the Parent's refusal to place the Student at the APS. These dual findings and conclusions, however, do not end the analysis.

### **THE PARENT'S ACTIONS AND INACTIONS DELAYED THE OFFER OF A FAPE**

Although parents are "equal" participants in the IEP process, they do not have veto power over the IEP and placement process. According to the U.S. Education Department, if the team cannot reach a consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both,

regarding the child's educational program.<sup>33</sup> Furthermore, Parents do not have the right to veto the placement decision made by the placement group outlined in 34 CFR 300.116 (a)(1).<sup>34</sup> The Parent's inaction, the level of the Student's dysregulation, and three years of failing grades now require this hearing officer to Order an independent diagnostic educational reevaluation in all areas of unique need.

### **THE SCOPE OF THE DIAGNOSTIC REEVALUATION**

First, the diagnostic reevaluation will require the administration of nationally normed standardized ability, achievement, behavioral, and executive functioning testing. Second, the diagnostic reevaluation requires the Charter to locate, educate, and transport the Student to a full-time Emotional Support classroom at a private school or therapeutic setting for up to 100 calendar days. Third, during the first 60 calendar days in the private setting, an independent psychologist, along with the evaluators identified below, and the private school staff must complete a comprehensive reevaluation of the Student's classroom academic skills, ability, achievement, transition, social, emotional, and behavioral needs. Fourth, the private school classroom staff are directed to use a variety of curriculum-based and criterion-referenced instruments to gather data about the Student's classroom educational skill set. Fifth, the Charter must arrange for a Board Certified Behavioral Analyst to complete a functional behavioral assessment. Sixth, the diagnostic assessment should include input from a psychiatrist and a social worker who must assess the Student's behavioral health needs. Seventh, the Charter must identify an independent evaluator who must assess the Student's transition

<sup>33</sup> 34 CFR §300.503 (a); See, *Letter to Richards*, 55 IDELR 107 (OSEP 2010); *Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (S.D. Tex. 1994), *aff'd*, 22 IDELR 626 (5th Cir. 1995); See also, e.g., *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15), *aff'd*, 67 IDELR 229 (C.D. Cal. 2016)(Although the mother argued that the district did not incorporate all of her input in the Student's IEP, the ALJ commented that "the parents of a child with a disability do not have a veto power over the proceeding.").

<sup>34</sup> See, e.g., *Ms. S. v. Vashon Island Sch. Dist.*, 39 IDELR 154 (9th Cir. 2003), cert. denied, 112 LRP 25825, 544 U.S. 928 (2005); *K.L.A. v. Windham Southeast Supervisory Union*, 54 IDELR 112 (2d Cir. 2010, unpublished) ("Though the parents are afforded input as to the determination of the general characteristics of an appropriate educational placement, they cannot summarily determine a specific placement.").



strengths, preferences, and interests. Eighth, within 20 calendar days of this Order, the Charter, at their sole discretion, must make all necessary arrangements to identify a private or therapeutic placement outside of the Charter school that can implement the above classroom-based diagnostic assessments. Ninth, the Charter is directed to transport the Student to and from the private diagnostic placement or to and from any evaluation as needed. Tenth, and finally, within 20 calendar days of this Decision, the Charter is directed to identify and retain all necessary independent diagnostic evaluators needed to implement the Order. Each independent evaluator's role and participation ends once the Charter provides the Parent with a new IEP, NOREP, prior notice, and procedural safeguards.

### **THE CHARTER IS DIRECTED TO SHARE THE STUDENT'S RECORDS**

To ensure that the evaluators, the private school staff, the Parent, and the Charter are on the same page, I further find that the diagnostic independent evaluation team members, described above, have a "legitimate need to know educational interest" in accessing the Student's records. 34 CFR §99.7(3) (iii); 34 CFR §99.31 *et. seq.*<sup>35</sup> Therefore, I conclude that the IDEA's appropriate relief provision now requires the sharing of the Student's educational records. Accordingly, the Parental consent override authorized herein enables the Charter to share the Student's IEPs, the February 2024 reevaluation, and the previous transfer reevaluation with all persons expected to work with the Student. Once the diagnostic reevaluation is completed, the Charter should collect all shared records from each evaluator. Although I do not have subject matter jurisdiction to direct the release of the Student's community-based behavioral health records, I strongly encourage the Parent and the Student to reconsider their earlier decisions.

<sup>35</sup> 34 CFR §99.31 *Joint Guidance on the Application of FERPA and HIPAA to Student Health Records*, 119 LRP 47130 (EDU/HHS 12/19/19). *Hudson City Sch. Dist.*, 63 IDELR 26 (SEA OH 2014); *IDEA and FERPA Crosswalk -- A side-by-side comparison of the privacy provisions under Parts B and C of the IDEA and FERPA* (August 24, 2022) <https://studentprivacy.ed.gov/resources/ferpaidea-crosswalk>.

## **THE DEVELOPMENT AND SHARING OF THE REEVALUATION REPORTS**

The independent evaluators and the private school staff must compile the diagnostic data and prepare individual written reports within 60 calendar days of the Student's first day of attending the diagnostic classroom. The individual reports must be provided to both Parties at the same time ten (10) days before the next IEP meeting. The Charter is encouraged to summarize the data, conclusions, and recommendations into a single reevaluation report. The IEP team, including the Parent, the Student, and the independent evaluators, if they so choose, must collaborate and prepare an IEP within 30 days of receipt of the reevaluation report. The Charter should then offer the Parent the final IEP, including a description of the proposed placement, procedural safeguards, and a Notice of Recommend Educational Placement. The Parents then have 10 calendar days to review and respond to the IEP and proposed placement. If the Parent does not participate in the reevaluation or the IEP process, the Charter should take steps to complete the IEP process and offer the Student a FAPE within 100 calendar days.

## **THE DIAGNOSTIC EDUCATIONAL TIMELINE AND THE RETURN TO THE CHARTER "STAY PUT" PLACEMENT**

The 100-day diagnostic educational evaluation placement time clock starts the first day the Student attends the diagnostic educational placement and ends the day the Charter offers the Parents a new IEP, prior written notice, procedural safeguards, and a NOREP. The testing, report writing, and IEP development process should be completed within 60 calendar days. The Parties have 40 calendar days to review the reports and prepare the new IEP. After that, provided the Parties cannot agree on a new IEP and placement, the Student should return to the Charter school. If the disagreement continues, either Party can file another due process Complaint. 22 Pa Code 711.22; 711.24

## **THE DEVELOPMENT OF A STUDENT-SPECIFIC SCHOOL IMPROVEMENT PLAN**

The Pennsylvania School Code requires that all school-age children must comply with compulsory attendance requirements from age 6 to age 18. The term "compulsory attendance" refers to the mandate that all children of compulsory school age having a legal residence in Pennsylvania must attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught. Each LEA must adopt a written attendance policy that aligns with compulsory attendance requirements. 22 Pa Code Chapter 11 allows LEAs to determine when a student who is enrolled has an unexcused absence. Copies of the attendance policy should be provided to parents at the beginning of each year and to all new students upon enrollment in the LEA. Each LEA's attendance policy must address the maximum number of lawful absences verified by parental notification that will be accepted in one school term. For all absences beyond the maximum amount, each LEA should state whether it will require an excuse from a physician for an absence to be considered lawful. When a student's absences reach the maximum level, LEA should consider developing a School Attendance Improve Plan (SAIP). The particulars of the improvement plan are explained in numerous Pennsylvania Department of Education publications.<sup>36</sup> LEAs should invite the Student, the parents, and other knowledgeable individuals to participate in a School Attendance Improvement Conference (SAIC). To resolve the attendance issues, LEAs often engage in cross-agency collaboration with other local community and state agencies to develop school attendance plans. During the 2022-2023 school year, the Student failed to make it to class 274 times. Then, during the 2023-2024 school year, the Student failed to make it to classes 174 times. The record does not describe how attendance records were kept for the Student's [redacted] grade year in 2021. (S-11; S-9). The failure to go to class, when

<sup>36</sup> School Attendance Toolkit: A toolkit of information to support professionals working with students and families to increase student attendance (November 2021) <https://www.education.pa.gov/Documents/K-12/Safe%20Schools/SCHOOL%20ATTENDANCE%20TOOLKIT.pdf>

coupled with the vagaries of the homebound placements and the Student's inability to self-regulate when in school, now requires the Charter to create a Student-specific attendance plan. Accordingly, within 20 calendar days of the Order, the Charter is directed to gather a group of knowledgeable persons, including the Parent, the Student, and members of the Intensive Interagency subgroup, who can assist in creating an attendance plan. The strategies, interventions, supplemental aids, and services identified in the attendance plan should be finalized and provided to the Parent, the Student, and all persons implementing this Order before the first day of school.

### **SUMMARY**

The procedural and substantive errors in this record require me to deny the Charter's request for declaratory and prospective relief. I next conclude that I lack personal jurisdiction over the Parent and the Student. Therefore, the Charter's request that I order each participant to participate in all meetings meaningfully and consent to the APS or other interim placements is denied. After reviewing the facts and circumstances, I now conclude, based on the frequency and severity of the Student's overall behavior circumstances, the Charter must provide and fund a diagnostic educational reevaluation in a Full-Time Emotional Support classroom, at a private school or in a therapeutic setting for a term of up to 100 days. Finally, I conclude that the Charter must collaborate with the Intensive Interagency Coordination subgroup to marshal all resources to provide a FAPE.<sup>37</sup> I firmly believe that this Decision provides the necessary structure, resources, and timeline to evaluate and educate the Student. All other claims, demands, or requests for prospective appropriate relief are Denied.

<sup>37</sup> Intensive Interagency Coordination, <https://www.pattan.net/assets/PaTTAN/23/23e8f22d-593f-49ec-ab71-a1886ad4ff7d.pdf>

## FINAL ORDER

**AND NOW**, this 1<sup>st</sup> day of July 2024, I now find the above Findings of Fact and Conclusion of Law will provide appropriate relief. The Parties are now free to appeal this **ORDER**.

1. The Charter request for declaratory relief is Denied.
2. I now conclude that I lack personal jurisdiction over the Parent and the Student; therefore, the Charter's request for an Order directing each to participate in meetings, consent to the APS, or other interim placements is Denied.
3. The Charter's request that I override the Parent's refusal to complete necessary evaluations is Denied.
4. To remedy the above procedural and substantive errors, the Charter is directed to provide a diagnostic reevaluation in a Full-Time Emotional Support classroom, at a private school, or in a therapeutic setting.
5. Finally, the Charter, with the help of community-based support from the Intensive Interagency Coordination subgroup, must provide a Student-specific plan to improve attendance.<sup>38</sup>
6. After the completion of the diagnostic, the Charter is directed to prepare and offer a revised IEP, procedural safeguards, prior written notice, and a NOREP. Once the NOREP and IEP arrive, the Parent has 10 days to respond to the NOREP.
7. All other claims for appropriate relief, causes of action, demands, or affirmative defenses not argued for in the Parents' or the District's closing statements and not discussed herein are now dismissed.

Date: July 1 2024

s/ Charles W. Jelley, Esq. LL.M.

Hearing Officer  
ODR FILE 29600-23-24

<sup>38</sup> Intensive Interagency Coordination, <https://www.pattan.net/assets/PaTTAN/23/23e8f22d-593f-49ec-ab71-a1886ad4ff7d.pdf>