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

DECISION

Student's Name: J.F.

Date of Birth: [Redacted]

ODR No. 14281-13-14-AS

CLOSED HEARING

Parties to the Hearing:	Representative:
Parent[s]	Pro Se
School District of Philadelphia 440 North Broad Street, Suite 313 Philadelphia PA 19130	Sarah W. Egoville, Esquire Fox Rothschild, L.L.P. 10 Sentry Parkway, Suite 200 P.O. Box 3001 Blue Bell, PA 19422-3001
Dates of Hearing:	October 4, 2013; October 18, 2013; December 18, 2013
Record Closed:	January 7, 2014
Date of Decision:	January 17, 2014
Hearing Officer:	William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

The student named in the title page of this decision (Student) is an eligible resident of the school district named in the title page of this decision (District) and was an eligible resident of the District during the period of time relevant to this decision.[1] (NT 19-21.) Student is identified with Emotional Disturbance and Other Health Impairment pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 21.)

Student attended a District high school in the 2011-2012 and 2012-2013 school years; the Student's high school closed and Student was transferred over Parent's objection to another District high school to begin the 2013-2014 school year. After about one month, in October 2013, Parent enrolled Student in a District cyber school program called the Virtual Academy, which is operated by a private cyber school pursuant to a contract with the District. The District remains responsible for Student's education as the IDEA local education agency. (S 20, 31.)

Parent requested due process under the IDEA, alleging[2] that the District inappropriately disciplined Student by excluding Student for over fifteen days cumulatively without a manifestation determination, thus changing Student's placement and failing to provide a free appropriate public education (FAPE). Parent also alleged retaliation through the forwarding of false information to truancy and juvenile courts. Parent sought compensatory education, an order for placement in the District's Virtual Academy, correction of school records and correction of court records.

[1] Parent challenged District actions in the 2012-2013 school year and 2013-2014 school year. (NT 104-119.) I refer to this as the relevant period.

[2] Parent's allegations are set forth in two complaints requesting due process. Parent filed a complaint on September 5, 2013, requesting an expedited hearing (S 1); on September 30, 2013, Parent amended her complaint to provide additional details of her allegations. (S 2.)

The District asserted that the disciplinary exclusion issue had been resolved by agreement of the parties through a Bureau of Special Education Complaint Resolution, which ordered the District to provide 35.5 hours of compensatory education. The District also moved to strike the request for expedited hearing, and to dismiss the allegations regarding incorrect records and their transmission to the courts, arguing that the hearing officer does not have jurisdiction of these claims.

At the initial hearing session on October 4, 2013, the parties reported a settlement in principle, and I held the matter for two weeks anticipating a written settlement agreement. That intended settlement was not completed, and at a hearing on October 18, 2013, I dismissed all claims regarding alteration of records and transmission of incorrect records to the courts. I also concluded that there was no issue requiring expedited scheduling. In colloquy with the parties, I determined the remaining issues for hearing, which concerned placement and the provision of a FAPE in the 2012-2013 and 2013-2014 school years. (NT 104-119.)

At the hearing on December 18, 2013, the parties advised me that most of the issues had been resolved pursuant to a resolution session in October 2013; to resolve the issues, the District had agreed to provide the Student with compensatory education in an amount of 1,963.5 hours, as it stipulated on the record. (NT 171.) The Parent withdrew her request that I adjudicate the appropriateness of the placements and provision of a FAPE in the 2012-2013 and 2013-2014 school years, except for the approximately one month period of time from the first day of school in the 2013-2014 school year (September 10, 2013) until Student's first day of class in the District's Virtual Academy (October 8, 2013). (NT 147-161, 170-173.)[3] However, the parties

[3] During this hearing session, Parent also requested attorney fees for herself and correction of Student's grade level as shown in District documents. I declined to hear these issues based upon lack of jurisdiction. (NT 159-169.)

advised that they could not reach an agreement on appropriate uses of the agreed compensatory education hours, and they asked me to adjudicate that issue; I agreed to do so. (NT 170-171.)

The hearing was completed in the third session, and the record closed upon receipt of written summations. I conclude that the District did not deny Student a FAPE from September 10, 2013 to October 8, 2013, and I set forth the appropriate uses of the agreed compensatory education hours below. .

ISSUES

1. Did the District fail to offer and provide Student with an appropriate placement from September 10, 2013 until October 8, 2013?
2. Did the District fail to offer and provide Student with a FAPE from September 10, 2013 until October 8, 2013?
3. Should the hearing officer order the District to provide compensatory education to Student for all or any part of the period from September 10, 2013 until October 8, 2013?
4. Are the uses proposed by Parent for the agreed hours of compensatory education appropriate?

FINDINGS OF FACT

1. Student is of high school age; Student is identified with Emotional Disturbance and placed in itinerant emotional support. (S 4 p. 1.)
2. Student's IEP provides that Student should be encouraged to use a computer for home assignments. (S 25.)
3. During the 2012-2013 school year, the Student's high school officials suspended Student several times pursuant to disciplinary charges, in such a way as to reduce Student's educational opportunities during the latter part of the school days on which Student was suspended. (NT 63-66; P 33; S 4.)
4. The Student's high school closed after the end of the 2012-2013 school year. (NT 70.)
5. The District assigned Student to another high school, Student's neighborhood school, contrary to Parent's wishes. Parent did not send Student to the assigned school, due to concerns for Student's safety in relationship to other students and residents of the neighborhood. (NT 70-76, 227-229, 240.)

6. The application process for the District's Virtual Academy usually takes from one to two weeks to complete and admit the Student to the virtual classroom environment. (NT 216.)

7. In August 2013, Parent and the District resolved a complaint that had been filed by the Parent with the Commonwealth. On August 8, the District's Director of Special Education mailed a copy of the resolution paperwork to Parent along with a form for application to the District's Virtual Academy. (NT 230-232; S 27.)

8. Parent delivered papers to the District's Director of Special Education, requesting Student's admission to the Virtual Academy. In September, the Director received additional paperwork from Parent, which the Director forwarded to the Administrator of the Virtual Academy. The Virtual Academy contacted the Parent, and then met with Parent; by the end of that meeting on September 19, 2013, the Virtual Academy had a complete application. Student was scheduled for a mandatory orientation with the Virtual Academy on October 4, 2013, and began virtual classes on October 8, 2013. (NT 217-218, 231-234; P 12; S 28, 30.)

9. The District provides students with opportunities to attend cultural events in the Philadelphia area, including visits to museums and attending cultural performances, including performances by the Pennsylvania Ballet. (NT 192- 194.)

10. Students in the District's virtual academy program are permitted to participate in athletics, music and other extracurricular activities at their neighborhood schools, but students must be in academic good standing in order to be eligible. (NT 199-205.)

11. Students are referred to their neighborhood schools' programs and the Virtual Academy facilitates their applications to participate at neighborhood schools. If the neighborhood school does not have the desired activity, students can apply to participate in programs at other schools. (NT 199-205.)

DISCUSSION AND CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations: the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the

finder of fact (which in this matter is the hearing officer).[4] In Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence[5] that the other party failed to fulfill its legal obligations as alleged in the due process complaint. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in Schaffer called "equipoise". On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See Schaffer, above.

In this matter, the Parent requested due process and the burden of proof is allocated to the Parent. The Parent bears the burden of persuasion that the District failed to comply with its obligations under the IDEA, and that the hearing officer should order the agreed compensatory education hours to be utilized as Parent requests. If the Parent fails to produce a preponderance of evidence in support of Parent's claims, or if the evidence is in "equipoise", then the Parent cannot prevail.

FREE APPROPRIATE PUBLIC EDUCATION – APPLICATION OF LEGAL STANDARD

The IDEA requires that a state receiving federal education funding provide a "free appropriate public education" (FAPE) to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C.

[4] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact.

[5] A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810.

§1401(9). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan ("IEP"). 20 U.S.C. § 1414(d). The IEP must be "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." Shore Reg'l High Sch. Bd. of Ed. v. P.S., 381 F.3d 194, 198 (3d Cir. 2004) (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182-85 (3d Cir.1988)); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3rd Cir. 2009), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009).

"Meaningful benefit" means that an eligible child's program affords him or her the opportunity for "significant learning." Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child's IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a "trivial" or "de minimis" educational benefit. M.C. v. Central Regional School District, 81 F.3d 389, 396 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 (3rd Cir. 1988).

A school district is not necessarily required to provide the best possible program to a student, or to maximize the student's potential. Ridley Sch. Dist. v. MR, 680 F.3d 260, 269 (3d Cir. 2012). An IEP is not required to incorporate every program that parents desire for their child. Ibid. Rather, an IEP must provide a "basic floor of opportunity" for the child. Mary

Courtney T. v. School District of Philadelphia, 575 F.3d at 251; Carlisle Area School District v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. Carlisle Area School v. Scott P., 62 F.3d 520, (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) Its appropriateness must be determined as of the time it was made, and the reasonableness of the school district's offered program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010).

I conclude that the evidence is not preponderant in favor of Parent on the claim for compensatory education from September 10, 2013 to October 8, 2013. Parent provided no evidence that the District offered an inappropriate placement or an inappropriate IEP. Moreover, Parent kept Student at home while she went through the process of enrolling Student in the Virtual Academy, thus preventing the District from even attempting to provide Student with a FAPE.

Based upon these conclusions, there is no basis for an order for compensatory education. There is no evidence that the District failed to provide appropriate services, and it would not be fair or equitable to order the District to provide compensation when it was not even given a chance to provide appropriate services.

Parent argues that the placement was inappropriate, because Student had experienced conflict with or threats from, students in the neighborhood of the assigned public school. I have no criticism of Parent's decision to find another school because of that concern, or to keep

Student from attending the school in question. It was a safety concern, and it also was reasonable for Parent to be concerned with the effect of peer conflicts upon Student's emotional disability.

Nevertheless, Parent did not provide a preponderance of the evidence that the District's response to Parent's concerns was inappropriate. Parent did not provide a sufficient factual basis to show the nature of the conflicts or threats to Student. Parent did not show that the District was aware of these concerns more than a few weeks before the start of the school year. The record shows that the District responded to these concerns and suggested alternatives within a reasonable time.[6] Thus, I will not order compensatory education for this period of time.

PERMISSIBLE USES OF COMPENSATORY EDUCATION

In support of an amicable resolution of this matter, the parties have asked the hearing officer to provide a declaratory judgment as to the permissible uses of compensatory education in this matter. I have reviewed the citations in their written summations and I have sought out judicial and administrative authority on my own. My decision regarding this issue is based upon the following legal principles.

Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. M.C. v. Central Regional Sch. Dist., 81 F.3d 389 (3d Cir. 1996). Hearing officers have broad authority to order the provision of compensatory education as an equitable remedy for a district's failure to provide

[6] Parent showed that the District's Director of special education was on vacation during part of the August period after the Director had suggested possible solutions for transferring Student to another school; however, I cannot conclude that any delay due to the Director's vacation was unreasonable. The record shows by a preponderance of the evidence that the Director worked with reasonable care and speed to resolve the problem.

appropriate educational services. See, Ferren C. v. School Dist. of Phila., 612 F.3d 712, 717-720 (3d Cir. 2010)(District can be ordered to provide IEP to administer compensatory education to child who graduated); Lester H. v. Gilhool, 916 F.2d 865, 871-873 (3d Cir. 1990)(court can order compensatory education for child who graduated); cert. den. 499 U.S. 923, 111 S. Ct. 1317 (1991); Letter to Riffel, 34 IDELR 292 (OSERS 2000)(compensatory education must at least further the broad purposes of the IDEA: obtaining employment and living independently).

While compensatory education can be applied broadly to remedy a denial of a FAPE, its scope is not unlimited. Compensatory education must be in accord with the intent of Congress in enacting the IDEA, Ferren C., 612 F.3d above, at 717; Lester H., 916 F.2d above, at 872. Moreover, it must not go beyond the child's entitlement a FAPE. Letter to Kohn, 17 IDELR 522 (OSEP 1990). Compensatory education is intended as "a remedy to compensate [the student] for rights the district already denied . . . because the School District violated [the] statutory rights while [the student] was still entitled to them." Lester H., 916 F.2d above, at 872.

In view of these general principles for determining the appropriateness of compensatory education, I have reviewed both the regulations implementing the IDEA and the Student's current IEP[7] to find guidance as to what is legally appropriate use of compensatory education in this matter.

COMPUTER EQUIPMENT AND DESK

Parent would like to have the District fund her purchases of a desk and computer equipment for Student, as well as software and internet access. The District insists on a limit in the settlement agreement of two purchases, and will not pay for internet access, an iPod or any

[7] The parties provided an extensive documentary record, which also colors my view of what services the IDEA entitles Student to receive.

gaming systems. I conclude that, while a blanket prohibition ahead of time would not be appropriate, reasonable limitations on such items are appropriate.

Absolute prohibition or limitation beforehand is inappropriate in my view because the IDEA makes it clear that a student is entitled to assistive technology when the technology is "necessary" to enable the student to receive a FAPE. 34 C.F.R. §300.105(a). Assistive technology is defined broadly: anything that may be used to increase, maintain or improve the functional capabilities of a child with a disability. 34 C.F.R. §300.5. The District must "ensure" that all necessary technology is provided. Ibid. Moreover, such technology must be provided in the home if the IEP team determines that to be necessary to the provision of a FAPE. 34 C.F.R. §300.105(b). Thus, assistive technology – where necessary for the provision of a FAPE – is an appropriate use of compensatory education.

In the present matter, I conclude that the Parent's objection to an absolute prohibition of a desk, computer or scanner is well taken; however, the District is within its rights to review any request for funding for such purchases to reasonably determine whether or not such purchases would be necessary to assist Student in Student's educational goals as set forth in the IEP. I note that the Student's IEP provides for encouraging use of a computer at home; however, the Virtual Academy provides one as part of its program. Thus, while I can see no need for the purchase of another computer at this time, the District should consider Parent's request for one in the future if circumstances change and such a purchase becomes necessary. While I fail to see the need for a scanner, the District similarly should consider any parental request for a scanner if Parent shows that it is necessary for Student's education.

If a desk is needed for Student to be able to work on school assignments, then the District should provide one. I note that Student's secondary identification is Other Health Impairment

due to Attention Deficit Hyperactivity Disorder; thus, it is conceivable that a simple work desk might be necessary to enable Student to work away from distractions in the home, and organize Student's materials and tasks.[8]

Similarly, internet access, iPods, gaming systems and other materials do not seem necessary to me based upon the record in this matter, but there could be a circumstance in which such technology would have a necessary educational function. If so, Parent should be free to apply to the District for funding.

To establish necessity, Parent should be able to show that the technology is needed for use in connection with coursework at the Virtual Academy or with any private tutoring that the Parent has obtained for Student.

EXTRACURRICULAR ACTIVITIES

I conclude that such activities[9] are an appropriate use of compensatory education, and I see no reason for prohibiting the funding of such activities. Student had a right to equal access to participate in the broad range of activities that the District made available to other students during the years referenced in the settlement. Any compensatory education must include funding for such activities as Parent determines to be appropriate to advance Student's education.

The IDEA regulations provide a different form of entitlement to participation in these activities. Unlike the entitlement to assistive technology, the right to participate in extracurricular activities is not limited to situations of necessity. Rather, the regulations require educational agencies to provide all supports needed to afford children with disabilities an "equal

[8] The cost of such a desk, however, should be limited to the cost of an individual student desk in one of the District's high schools, or the cost of a desk that is marketed for a high school student, whichever is lower.
[9] These would include a mock trial activity, clubs, participation in any artistic endeavor, including music, and athletics.

opportunity for participation" in all non-academic and extracurricular services offered by the district. 34 C.F.R. §300.107(a). Such services and activities include counseling, athletics, transportation, recreational activities, special interest groups or clubs sponsored by the district, referrals to other service agencies, and employment or assistance in obtaining employment. 34 C.F.R. §300.107(b). Similarly, the regulations require equal opportunity to participate in other programming made available to nondisabled students, such as art, music, industrial arts, consumer and homemaking education and vocational education. 34 C.F.R. §300.110.

The District argues that athletics and a broad range of other activities are provided already through the Virtual Academy's referral to the neighborhood school. This does not render parental selection of extracurricular activities inappropriate, for two reasons. First, the compensatory education is intended to replace services not provided in the past; if Student participates in extracurricular activities through the Virtual Academy in the coming school years, this would constitute present services to which Student is presently entitled. It would not be in addition to Student's normal programming, and thus would not "make up" to Student the participation that was lost in previous years. Second, Parent has legitimate[10] concerns for the Student's safety at the neighborhood school[11], and any limitation to that school – which is the District's policy in most cases, especially in athletics - would effectively deny Student the use of the compensatory education for these purposes.

In conclusion, Parent-selected extracurricular activities are an appropriate use of compensatory education in this matter, and Parent should not be required to prove necessity as a condition of utilizing compensatory education for this purpose.

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[10] I make no finding on the facts surrounding these concerns. I merely note that there is no evidence refuting Parent's concerns, so there is no basis for me or the District to discount or disregard them.

[11] There was ample testimony that extracurricular activities, especially athletics, are provided through the neighborhood school for Virtual Academy students.

TUTORING

As with extracurricular activities, tutoring is an appropriate use of compensatory education. It is a remedial service that is intended to replace educational services not provided previously, and is intended to restore the student to the position that the student would have been in if those services had been provided previously. I see no reason to limit Parent's selection of such services.

EDUCATIONAL TRIPS

There is ample testimony to show that the District does offer educational class trips to students as part of its programs. I conclude that these services come within the regulations governing extracurricular activities and other program options. 34 C.F.R. §300.107, 34 C.F.R. §300.110. Thus, such trips are a legitimate use of compensatory education, with appropriate limits. As transportation is expressly listed as a nonacademic service in 34 C.F.R. §300.107, reasonable transportation costs for educational trips would be an appropriate use of compensatory education.

The District does not offer trips out of town, and Student would not be entitled to such trips under the IDEA regulations. Thus, such trips would not be an appropriate use of compensatory education.

The District makes educational trips available as class trips for free as part of the Virtual Academy's activities; these are with Virtual Academy students, so the concerns about the neighborhood school do not appear to apply. It makes no sense, and it would be inequitable, to require the District to pay for educational trips when it can provide them for free. Therefore, the Student should utilize compensatory education only for trips that are not made available to

Student after Student makes a reasonable effort to utilize the system established by the Virtual Academy for arranging such trips, including applying for the Philly Stamp Pass.

The only limit that the evidence shows in the Virtual Academy program is that the program limits its students to participation in four trips per year. I conclude that these four trips are "present" services to which the Student is entitled in the present year or in future years. Only trips in addition to the four would be considered a restoration of services previously denied.

In conclusion, compensatory education can be used appropriately in this matter for any educational trip in the Philadelphia area[12] not provided by the Virtual Academy after Parent asks Virtual Academy to provide it to Student and complies with any application requirements.

COLLEGE LEVEL COURSES

Parent expresses the desire to use compensatory education for college level courses. Parent indicates that such courses would be in aid of Student's post-secondary transition, which is part of the IEP and is certainly among the services that the District must provide under the IDEA. The District indicates that it presently is willing to provide college level courses if they are not for credit, as it declines to provide college education to students. I conclude that the District is within its rights to limit compensatory education this way. The IDEA does not require the use of IDEA funds for educational services beyond the high school level.

Commonwealth public schools are mandated to provide educational services for the curriculum at levels up to and including the secondary school level; they are not required to provide a higher level of curriculum. See, Centennial Sch. Dist. v. Department of Ed., 539 A.2d 785, 791 (1988)(district not required to provide college level curriculum to gifted child). The fact that a child is entitled to special education as an "exceptional" child does not require school

[12] This is limited to locations in Philadelphia, Bucks, Montgomery, Chester, Delaware and Camden counties.

districts to provide post-secondary curriculum: such services exceed the definition of a free appropriate public education. New Brighton Area Sch. Dist. v. Matthew Z., 697 A.2d 1056, 1058 (Pa. Cmwlth 1997)(holding limited to gifted children but Court viewed principle to be applicable to all "exceptional" children).[13]

This is the view and guidance of the federal Office of Special Education and Rehabilitative Services (OSERS). In Letter to Frank, 52 IDELR 16 (OSEP 2005), OSEP advised that IDEA funds cannot be used for tuition for a college, stating that such funds must be limited to paying for secondary school services only. The letter stated that an LEA could not expend IDEA funds for college tuition, but it pointed out that there may be circumstances in which an award of compensatory education could be used for the costs of a provider that is not a secondary school, especially for a student who has graduated. The letter contained a proviso: services so provided must be "considered secondary education" under state law.

In Letter to Riffel, 33 IDELR 292 (OSERS 2000), OSERS stated that the purpose of a compensatory education award is to remedy the failure to provide services that the student should have received in grade school or high school when he or she was entitled to FAPE. It added that a district is not required to provide compensatory services to a graduated student once the student enters college or junior college, unless such level of education is considered elementary and secondary education under state law. Thus Part B does not require a district to provide compensatory education at the post-secondary level. The scope of compensatory education is limited to the service entitlement that was denied. See also, Letter to Kohn, 17 IDELR 522, 573 (OSEP 1990).

Therefore, I conclude that the District's limitation of compensatory education - to non-matriculating college courses - is appropriate in this matter.

[13] See also, 34 C.F.R. §300.17(c)(FAPE defined as including up to secondary education).

CREDIBILITY

I found that all of the witnesses were credible and reliable.

CONCLUSION

In sum, I conclude that the District is not required to provide compensatory education for the period of approximately one month before Student began at the Virtual Academy. I conclude that the agreed upon compensatory education for previous periods of time may be used consistent with this decision. Any claims regarding issues that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. The District did not fail to offer and provide Student with an appropriate placement from September 10, 2013 until October 8, 2013.

2. The District did not fail to offer and provide Student with a FAPE from September 10, 2013 until October 8, 2013.

3. Based upon equitable principles, the hearing officer declines to order the District to provide compensatory education to Student for all or any part of the period from September 10, 2013 until October 8, 2013.

4. Compensatory education hours which the District has agreed to provide to Student may be used for purposes discussed above, consistent with this decision.

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

January 17, 2014