

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

Child's Name: T.C.

Date of Birth: [redacted]

Date of Hearing:
December 4, 2013

CLOSED HEARING

ODR File No. 14452-1314KE

Parties to the Hearing:

Representative:

Parent[s]

Lilian A. Akin, Esquire
3510 Gerber Avenue
Pittsburgh, PA 15212

Belle Vernon Area School District
270 Crest Avenue
Belle Vernon, PA 15012

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Date Record Closed:

December 14, 2013

Date of Decision:

December 26, 2013

Hearing Officer:

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is an elementary school-aged student residing in the Belle Vernon Area School District (hereafter District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student's Parents filed a due process complaint against the District in November 2013, asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA from the time it issued a Notice of Recommended Educational Placement (NOREP) near the beginning of the 2013-14 school year to the present.

The case proceeded to a due process hearing convening in one session at which the parties presented evidence in support of their respective positions. Commendably, counsel for the parties agreed to a number of stipulated facts over which there was no dispute.³ In presenting evidence, the Parent sought to establish that the District failed to provide Student with FAPE in its proposed means of transporting Student to a new private placement outside of the District boundaries; and the District maintained that its transportation proposal was appropriate for Student based on information known to it at the time of the NOREP.

For the reasons set forth below, I find that neither the transportation proposal offered by the District, nor that suggested by the Parents, is adequate to meet Student's needs. The parties will be directed to take specific action to develop an appropriate plan for transporting Student to and from school.

ISSUES

1. Whether the transportation to the agreed-upon private placement as proposed by the District is appropriate for Student's needs; and
2. If it was not, whether the Student is entitled to compensatory education.

FINDINGS OF FACT

1. Student is a pre-teenaged student residing in the District with Student's family. (Hearing Officer Exhibit (HO-) 1, p. 1 ¶¶ 1-3)

¹ In the interest of confidentiality and privacy, Student's name and gender are not used in the body of this decision.

² 20 U.S.C. §§ 1401 *et seq.*

³ The parties also presented a number of joint exhibits. In addition to those admitted at the conclusion of the hearing session (Notes of Testimony (N.T.) 182-83), Joint Exhibits A and B are admitted to complete the record.

2. Student has multiple disabilities including cerebral palsy, spasticity and dystonia, Pervasive Developmental Disorder, and a recently diagnosed genetic defect. Because of the genetic defect, Student has an Intellectual Disability as well as significant motor delays. (Notes of Testimony (N.T.) 26-28; HO-1, p. 1 ¶ 5)
3. Student is eligible for special education as a student with Multiple Disabilities, and is also eligible under the secondary categories of Intellectual Disability and Speech/Language Impairment. (HO-1, p. 1 ¶ 6)
4. Student is nonverbal, and is not able to ambulate independently. Because of Student's increased muscle tone, Student requires frequent repositioning, such as through stretching and range of motion exercises, to relax Student's muscles. (N.T. 26-27, 36, 37-38, 66; Joint Exhibit (J)-6)
5. Student wears ankle-foot orthotics (AFOs) and uses a wheelchair. When using the wheelchair, Student requires a harness as well as a lap belt, and Student's ankles and feet must also be strapped in. (N.T. 33, 36-37)
6. Student's AFOs could cause skin breakdown if left in place for extended periods of time. When Student is not using the wheelchair, Student's AFOs do permit some limited movement which can help prevent skin breakdown in that area. (N.T. 39-40)
7. When positioned in the wheelchair, Student is able to move Student's arms and head. Student's wheelchair also allows Student to move Student's back and legs slightly if the chair is put in the unlocked position. (N.T. 36-37, 39-40, 80)
8. Student's dependency on a wheelchair also requires frequent repositioning in order to prevent skin breakdown and pressure ulcers. (N.T. 25-26, 37-38)
9. Student takes a number of medications that address, among other things, Student's increased muscle tone and inability to perspire. (N.T. 29, 34-35; HO-1, p. 1 ¶ 7)
10. Student's transportation needs include a specialized van that is climate-controlled and accommodates Student's wheelchair, as well as a personal care assistant or monitor. (N.T. 94; HO-1, p. 1 ¶ 8)
11. Student has very limited communication skills, but is able at times to make choices from a field of two using an iPad or picture cards. This skill is inconsistent at this time. (N.T. 30, 69-70)
12. Student is partially toilet trained. Student's family toilets Student frequently throughout the day by positioning Student on the toilet approximately every 1½ hours, using the Rifton Blue Wave System, although at times Student goes approximately 2 hours between toileting sessions. This system permits Student to sit at a 90-degree angle with support from straps at the waist and feet. Student's family is generally able to recognize when Student needs to use the toilet. (N.T. 31-32, 50, 76-78)

13. Student's normal morning routine is that Student is placed on the toilet upon waking up. Student's typical morning routine is complicated due to Student's significant needs; on school days the routine takes approximately 1½ hours before Student is ready to leave the house. Occasionally Student is toileted a second time before leaving for school. (N.T. 61-66, 78, 87-88)
14. Student also wears Pull-Ups at all times. Student typically becomes very upset and frustrated when Student is not toileted at the time Student needs to void. When Student is in the wheelchair, Student must be completely unstrapped from the wheelchair to check to see if Student is soiled. (N.T. 33-34, 37-38)
15. Prior to the 2013-14 school year, Student was educated in a multiple-disability program operated by the local Intermediate Unit (IU) for three years. For that placement, Student was transported by a specially equipped van. Travel time between Student's home and that placement was approximately 40-50 minutes. (N.T. 43-44; HO-1, p. 1 ¶ 8)
16. Student attended the same multi-disability program in the summer of 2013. (N.T. 112-13)
17. Student was evaluated by the National Institutes of Health (NIH) through its Undiagnosed Diseases Program in August 2013, after the genetic abnormality was diagnosed. Student demonstrated significant impairments in all areas of adaptive functioning. In a psychiatry consult, the clinician noted that Student was "almost 100% continent" (J-6 p. 7) when toileted on a 2-hour schedule. Additional information through physical and occupational therapy assessments was included in this NIH report. This report was provided to the District around the time it was issued. (N.T. 76-77; J-6)
18. A neuropsychology evaluation was also conducted in August 2013, and the report discussing this evaluation made a number of recommendations for Student's educational program. (J-3)
19. In late August 2013, the Parents requested and the District agreed to conduct a re-evaluation of Student for purposes of considering a change in Student's placement. (N.T. 117-19, 120-127; J-4)
20. Student's pediatric rehabilitation physician authored a letter dated August 30, 2013, supporting a change in placement to an environment which would address all of Student's needs including physical, occupational, and speech therapy and sensory regulation. She recommended placement at one of two private facilities, both located some distance from Student's home.⁴ (N.T. 46-47; P-1)
21. Student's Individualized Education Program (IEP) met on September 16, 2013 to develop a new program for Student for the 2013-14 school year. This IEP included Present Levels of Academic Achievement and Functional Performance, which noted, among other things, that Student needs to be changed every 1 ½ hours. This section also noted

⁴ The record is unclear whether this letter was provided to the District prior to the due process hearing. (N.T. 74-75, 140)

Student's progress toward goals relating to physical, occupational, and speech therapy needs. (J-7 pp. 4-5)

22. The September 2013 IEP included goals and objectives relating to early pre-reading and pre-writing skills, number identification, communication, speech therapy, occupational therapy, physical therapy, and attending to tasks. Modifications and specially designed instruction provided for, among other things, a personal care assistant (PCA) to assist with toileting and changing. Transportation is listed as one of the related services. This document also indicated that Student's IEP would be revised within 30 days of the start of the new placement, and that further evaluation and assessments would occur at that time. (J-7)
23. The District prepared a Re-evaluation Report (RR) in late September 2013, although the team members agreed that further evaluations would be necessary after Student's placement was determined. The RR summarized information from previous RRs as well as the August 2013 NIH and neuropsychology evaluation reports. The Parents also provided input into the RR which included, among other things, an indication that when Student shows that Student is upset by crying, toileting is the usual cause. Input from the speech/language pathologist, occupational therapist, and physical therapist, as well as the information from the September 2013 IEP by the PCA, was also included. (N.T. 121-22; J-8)
24. Student's IEP team agreed to a change of placement for Student for the 2013-14 school year. Of the several options explored, Student's Parents selected a private program (hereafter Institute), which was one of those suggested by the pediatric rehabilitation physician and is located the greatest distance from the District. (N.T. 45-47, 79-80, 113-15, 121-22; HO-1, pp. 1-2 ¶ 9)
25. The Institute offers an appropriate school placement to meet Student's needs. (HO-1, p. 2 ¶ 11)
26. The District offered a NOREP dated October 10, 2013 for the Institute placement, at a meeting held at the Institute which one of the Parents attended. The Parents approved the NOREP that same date. (N.T. 53, 89, 130, 153; J-9, J-10, J-11; HO-1, p. 2 ¶ 10)
27. The October 10, 2013 IEP contains information about Student's Present Levels of Functional Performance as well as goals and objectives in the areas of fine and gross motor skills, self-care, use of technological devices, communication (receptive and expressive language), and pre-mathematic skills. Program modifications and specially designed instruction included a PCA for activities of daily living and assistance throughout the day; related services included transportation provided by the District. (J-10)
28. The school day at the Institute begins at 9:00 a.m. and staff there generally begin unloading students from school buses at 8:50 a.m. (N.T. 58; HO-1, p. 2 ¶ 16)

29. The District has made arrangements with staff at the Institute for Student to disembark from the van upon arrival, or at approximately 8:40 a.m. (N.T. 59, 151-52, 160-62; HO-1, p. 2 ¶ 15)
30. There are two possible driving routes between Student's home and the Institute, which vary between 41 and 56 miles. (HO-1, p. 2 ¶ 12; P-3, P-5; S-3)
31. The longest route of approximately 56 miles is mostly highway driving and has taken approximately 1 hour and 15-20 minutes on several occasions (non-winter conditions) in the morning hours when Student would be transported to the Institute. This route does require vehicles to merge onto the highways. (N.T. 55-56, 97; P-3)
32. The shortest route of approximately 41 miles is closer to the City of Pittsburgh and involves more traffic. This route also passes another private educational facility where another student of the District attends. The start of the school day at the other private educational facility is earlier than the start of the school day at the Institute. (N.T. 56-57, 98, 99-101, 106, 139, 166; HO-1, p. 2 ¶ 13; J-14; P-5; S-3)
33. The proposed afternoon transportation involved picking Student up at approximately 2:30 p.m. for a return home at approximately 4:10 p.m. Student would be picked up and dropped off first in the afternoon.⁵ (N.T. 100-01; HO-1, p. 2 ¶ 17)
34. The District has its own transportation department, owning all vehicles used for student transportation and employing all personnel who operate that system. The transportation department became familiar with Student's transportation needs during the 2012-13 school year and was involved in determining the transportation arrangements for the 2013-14 school year. (N.T. 92-95, 147, 157-59)
35. When the transportation department became aware that Student would need to be transported to the Institute each day, personnel reviewed its schedule and available vehicles. The supervisor of the transportation department determined that Student could ride the same specialized van which transported another student to a different private placement located approximately eight miles from the Institute. This van is climate controlled and accommodates Student's wheelchair. The other student's placement is on the way to the Institute using the shortest approximately 41-mile route, and it typically takes between 15 and 20 minutes to allow the other student to disembark from the van before resuming the drive to the Institute at the time Student would be making this trip. (N.T. 93-95, 98-100, 147-48, 158-59; J-12; S-3 p. 2)
36. The District has calculated the cost it would incur to purchase a new specialized van for transporting Student as well as the costs of the separate trips and additional personnel. (N.T. 164-67; S-2)
37. The weekday before Student was to begin attending the Institute, the District advised the Parents that the new pickup time would be 7:00 a.m., which was approximately 40

⁵ Compared to the morning transportation arrangements, there was little evidence presented regarding the afternoon proposal.

minutes earlier than in the previous three school years. When the van arrived to pick up Student on the first day Student was to attend the Institute, the Parents declined the transportation arrangement. Student did not begin attending the Institute as of the date of the due process hearing. (N.T. 49, 53, 60, 72-73, 93-94; HO-1, p. 2 ¶¶ 14, 18; J-13)

38. Student's Parents are concerned that with a morning travel time in excess of 1 hour and 30 minutes, Student will experience muscle stiffness and discomfort causing frustration, irritability, and a lack of cooperation, as well as an immediate need for toileting and/or changing. They are also concerned that Student will not be able to progress in communication and self-help skills if Student's needs cannot be met during the lengthy travel time. (N.T. 68-72)
39. Both parties were interested in scheduling a meeting to discuss the transportation concerns. However, due in part to miscommunications which cannot be attributed to either party, no meeting to address transportation convened. (N.T. 86, 137-38, 141, 150-52, 162-63, 169-70, 171-73, 175-76, 178; S-1, S-5)
40. Student's pediatric rehabilitation physician, after being advised of the length of travel to the Institute, made a written recommendation by letter dated October 16, 2013 that Student not be placed in a vehicle for more than 1 hour 25 minutes on a regular basis. This letter was not shared with the District. (N.T. 52, 75, 141; P-2)
41. The District has arrived at Student's home each morning then taken proposed shorter route to the other child's placement. Since October 7, 2013, this trip has consistently taken approximately 1 hour and 15 minutes in the morning hours when Student would be transported to the Institute. With the additional 15-20 minutes to unload the other student and then travel to the Institute, Student's travel time in the mornings would be approximately 1 hour and 30 minutes to 1 hour and 35 minutes.⁶ (N.T. 56-57, 98-101, 106, 164; J-12, J-13, J-14)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Broadly stated, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005);⁷ *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Courts in this jurisdiction have

⁶ Student's mother timed this route on one occasion to take approximately 1 hour and 40 minutes. (N.T. 56-57) The Parents' and District's mapped directions of this route varied slightly at the very beginning of the route, but the difference between the two internet-based mapping services was relatively insignificant at 0.74 miles and an estimated 8 minutes in travel time. (Compare P-5 with S-3)

⁷ The burden of production, "i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding," *Schaffer*, 546 U.S. at 56, relates to the order of presentation of the evidence.

generally required that the filing party meet their burden of persuasion by a preponderance of the evidence. *See Jaffess v. Council Rock Sch. Dist.*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Nevertheless, application of these principles determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County Sch. Bd.*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also generally David G. v. Council Rock Sch. Dist.*, 2009 WL 3064732 (E.D. Pa. 2009). This hearing officer found each of the witnesses to be generally credible and the testimony as a whole on matters important to deciding the issues in this case was essentially consistent.

Relevant IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Local education agencies, including school districts, meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. Sch. Dist. of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Most critically, the IEP must be appropriately responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, it has long been recognized that “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993).

The sole issue in this case relates to the appropriateness of Student’s transportation to the Institute. Transportation is, of course, a related service under the IDEA. 20 U.S.C. §1401(26); 34 C.F.R. § 300.34(a). Thus, for a child such as Student who requires transportation designed to meet his or her needs, that related service must be made part of the child’s IEP. 20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4).

Transportation includes

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and

- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 C.F.R. § 300.34(c)(16). It is the child's IEP team who determines whether transportation is a necessary related service and, if so, how those services will be provided. *See* 20 U.S.C. 1414(d); 34 C.F.R. § 300.23.

Turning to the facts of this case, consideration must be given to the arguments presented by the parties. The Parents first contend that the District gave full authority to the transportation department to make the decisions about the arrangements for Student to attend the Institute, rather than allowing those determinations to be made by the IEP team. The District counters that it has the discretion to allocate its resources, as well as to consider financial consequences of decisions such as transportation, citing *Delaware Valley (PA) Sch. Dist.*, 28 IDELR 627 (OCR 1997), and *Letter to McKaig*, 211 IDELR 161 (BEH 1980). It also cites to *DeLeon v. Susquehanna Comm. Sch. Dist.*, 747 F.2 149 (3d Cir. 1984).

Administrative interpretations such as the cited policy letter are not binding, as they “do not rise to the level of a regulation and do not have the effect of law.” *Michael C. ex rel. Stephen C. v. Radnor Twp. Sch. Dist.*, 202 F.3d 642, 649 (3d Cir. Pa. 2000)(quoting *Brooks v. Village of Ridgefield Park*, 185 F.3d 130, 135 (3d Cir. 1999)). However, such pronouncements may be given deference to the extent that they are persuasive. *Id.*

The guidance offered by *Letter to McKaig* and *Delaware Valley* is instructive, although not determinative. In *Letter to McKaig*, the Bureau of Education for the Handicapped⁸ clarified that the predecessor to the IDEA did not address specific areas relating to transportation of children with disabilities, instead leaving those matters to the states. *Delaware Valley* similarly suggested that an adjustment to a bus route for a child with a disability, made in accordance with the general arrangement of bus schedules by the transportation department based on changing student populations, without more, did not amount to discriminatory practice. Nothing in these guidance documents, however, contradicts the general principles in the IDEA that the appropriateness of special education, including transportation services, must be based on the individual student's needs.

With respect to the Parents' contention that the District relinquished decisions on the transportation arrangements to others outside of the IEP team, this hearing officer does not find that the consideration given to the existing route to a facility near the Institute was fatal. Here, the District's transportation department was aware of Student's unique transportation needs in the previous three school years and reviewed its schedules based on the information already known to it. (Findings of Fact (FF) 30, 32, 33, 34, 35) Further, through no fault of either party, the IEP team never had an opportunity to convene and discuss Student's transportation needs for the lengthier van ride, which was a new circumstance with potential consequences not previously encountered by either the IEP team or the transportation department. (FF 17, 20, 21, 39, 40) For these reasons, this hearing officer finds that the involvement of the supervisor of the transportation department in the route selection did not serve as a denial of FAPE.

⁸ Now the Office of Special Education Programs (OSEP).

The next question is the substantive appropriateness of Student's transportation. After careful review of all of the evidence, this hearing officer is persuaded that the District's originally proposed transportation arrangement is not adequate to meet Student's significant needs in this case. Nevertheless, this hearing officer is similarly unconvinced that the Parents' proposed transportation route provides a meaningfully different, or appropriate, alternative.

The record reveals that Student will be required to remain seated in the wheelchair for a minimum of 1 hour and 30 minutes in the morning and 1 hour and 40 minutes in the afternoon, regardless of which route between the home and the Institute is taken. (FF 31, 33, 35, 41) Simply because the route proposed by the Parents has, on a few occasions, taken a few minutes less (FF 31), does not necessarily mean that using that route will take that same amount of time consistently. By contrast, the District's route has consistently been the same during the relevant time period. (FF 41) As is the case with either proposed route, factors such as weather, construction, and general traffic fluctuations will impact any travel⁹ that spans 41-56 miles. Moreover, and not insignificantly, the routes proposed by the parties are both very close to the 1 hour and 30 minute timeframe that appears to be the critical factor.¹⁰ Thus, the record simply does not establish by a preponderance of the evidence that the 10 minute difference, even if constant, is the crucial element in addressing Student's needs in traveling such a long distance. Thus, this hearing officer will not order the District to use the transportation route to the Institute that has been proposed by the Parents.¹¹

For all of these reasons, Student's IEP team will be directed to convene to address Student's transportation needs¹² based on the assumption that Student will be required to remain seated in the wheelchair in the van for a period of approximately 1 hour and 30 minutes to 1 hour and 40 minutes. The team will be required to develop a transportation plan which will include, at a minimum, a PCA on the van transporting Student who is (1) trained to monitor Student's need for toileting; and (2) trained to recognize Student's need for repositioning and, to the extent feasible, place the wheelchair in the unlocked position to allow for some movement of Student's feet and legs; (3) available to assist Student from the van upon arrival at the Institute for immediate attention to toileting needs; (4) available to assist Student with morning feeding needs, if any, prior to the start of the school day; and (5) able to attend to Student's toileting needs immediately prior to leaving the Institute. The parties will also develop a plan for engaging in systematic communication over any concerns over skin breakdown as well as a daily log on Student's toileting routine at the Institute upon arrival in the morning. Lastly, the team

⁹ This hearing officer did observe on the record that she is from the Pittsburgh area and had a general familiarity with the location of the Institute and the other private school along the District's proposed route. (N.T. 24)

¹⁰ As in *DeLeon*, a 10 minute change appears to be "small," 747 F.2d at 154; however, unlike *DeLeon*, Student's pediatric rehabilitation physician did opine, without elaboration, that there would be a difference to Student between a bus ride that is more or less than 1 hour 25 minutes. (FF 40) This physician did not testify at the hearing.

¹¹ This hearing officer need not address the contention that the District must include financial considerations in a decision such as this one (FF 36). Although school districts must necessarily remain fiscally responsible, and this hearing officer recognizes the difficulties inherent in serving the needs of all of its students in an uncertain economy, the IDEA requires that the standard for judging a special education program, including related services, is one of appropriateness based on the child's unique needs.

¹² It should be noted that the specific considerations set forth in the order are based on the record as a whole and reflect my understanding of what concerns the IEP team would undoubtedly have considered and addressed had a meeting to address them convened.

will include a plan for revisiting the transportation plan after it has been in effect for 10 school days and to make any necessary adjustments, including, if necessary, further changes to Student's IEP.

Time limitations will be made part of the order to ensure that Student begins to attend school at the Institute as soon as possible and to provide for a mechanism for monitoring the success of the transportation plan, which can guide future changes to Student's educational program.

Having concluded that the District's proposed transportation arrangement is not appropriate to meet Student's needs, the second issue is whether compensatory education should be awarded. 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). Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school district to correct the deficiency. *Id.*

It is very concerning that Student has not been in school since the beginning of the 2013-14 school year. (N.T. 64) Nevertheless, the facts in this case do not support an award for compensatory education. First, a school district's proposal must be assessed in terms of what information was known at the time of the offer. *Fuhrman, supra*. Here, despite the recognition that Student would be traveling a longer distance and for a longer time period to the Institute, the District was not aware of the recommended outside limit for tending to Student's toileting and other needs at the time Student was to start at the Institute. Additionally, as the parties were not able to convene an IEP meeting to address concerns with the proposed plan of transportation, the District did not have a reasonable opportunity to rectify the situation. Thus, despite the absence of an educational program during the relevant time period due to the transportation issue, the District is not obligated to provide compensatory education.

Finally, this hearing officer makes the following additional observations. Because Student resides a very long distance from the Institute, it may not be possible to devise an appropriate and consistent plan of transportation that meets all of Student's needs, despite all of the benefits Student would derive from that placement. It is very obvious that the Parents and the District share similar concerns that the advantages to the chosen placement will be outweighed by the time Student will spend traveling to and from the Institute, which the parties have not had an opportunity to fully explore. Regardless of what decisions about Student's educational programming needs are made in the future, the success of Student's transportation to the Institute will undoubtedly have a marked influence.

CONCLUSION

In sum, I conclude that neither party's proposed transportation plan is appropriate to meet Student's needs, and the IEP team will be directed to convene to develop a transportation plan to include specific components. However, there will be no compensatory education awarded.

ORDER

In accordance with the foregoing findings of fact and conclusions, of law, it is hereby **ORDERED** as follows.

1. Neither the District's proposed transportation plan, nor the Parents' proposed transportation route, is appropriate to meet Student's needs. The District is not ordered to transport Student to the Institute via the Parents' proposed route.
2. Student's IEP team is directed to convene within 10 days of the date of this Order to develop an appropriate transportation plan which includes the following components:
 - a) A PCA on the van transporting Student who is
 - (1) trained to monitor Student's need for toileting; (2) trained to recognize Student's need for repositioning and, to the extent feasible, able to place the wheelchair in the unlocked position to allow for some movement of Student's feet and legs; (3) available to assist Student from the van upon arrival at the Institute for immediate attention to toileting needs; (4) available to assist Student with morning feeding needs, if any, prior to the start of the school day; and (5) able to attend to Student's toileting needs immediately prior to leaving the Institute;
 - b) A plan for engaging in systematic communication over any concerns over skin breakdown as well as a daily log on Student's toileting routine at the Institute upon arrival in the morning;
 - c) A plan for revisiting the transportation plan after it has been in effect for 10 school days, and thereafter, and to make any necessary adjustments.

Nothing in this decision and order should be read to preclude the IEP team from agreeing to different and additional components in Student's IEP including the transportation plan.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: December 26, 2013