

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: J. L.

Date of Birth: [redacted]

CLOSED HEARING

ODR File No. 16150-14-15 AS

Parties to the Hearing:

Representative:

Parents
Parent[s]

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Date Record Closed:

May 17, 2016

Dates of Hearing:

10/27/2015, 11/19/2015, 4/12/2016,
and 4/14/2016

Date of Decision:

May 31, 2016

Hearing Officer:

Cathy A. Skidmore. M.Ed., J.D.
Certified Hearing Official

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a late teenaged student formerly attending the Pine Richland School District (District), and 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 asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,³ as well as the federal and state regulations implementing those statutes.

The case proceeded to a due process hearing convening over four sessions. Specifically, the Parents claimed that the District failed to appropriately program for Student's special education needs from April 2011 through the end of the 2014-15 school year, after which Student withdrew from the District. The District challenged the scope of the hearing, and further maintained that it met all of its IDEA and Section 504 obligations toward Student.

The case was bifurcated to address the scope of the hearing before presentation of evidence on the substantive claims.⁴ Following an Interim Ruling, wherein this hearing officer concluded that the Parents had not filed their Complaint within two years of the date they knew or had reason to know of the facts underlying their earliest claims (HO-3), the parties proceeded

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

² 20 U.S.C. §§ 1400-1482.

³ 29 U.S.C. § 794.

⁴ The initial hearing session was devoted to the scope of the claims, with evidence on the merits over the remaining hearing dates. Several sessions were delayed due to the unavailability of parties and witnesses, including an employment change in January 2016 for one of the Parents that required rescheduling of the final sessions in April 2016. References to the record will be to the Notes of Testimony (N.T.), Parent Exhibits (P-), School District Exhibits (S-) and Hearing Officer Exhibits (HO-). References to duplicate exhibits may be to one or the other, or both.

with evidence on the substantive issues from April 2013 forward.

For the reasons set forth below, the Parents will prevail on a portion of their claims.

ISSUES

1. Whether the District complied with its obligation to provide Student with FAPE between April 2013 and the end of the 2014-15 school year under the IDEA and Section 504 in addressing all of Student's needs; and
2. If it did not, is Student entitled to compensatory education and, if so, in what form and amount?

FINDINGS OF FACT

1. Student is a late teenaged Student who is a resident of the District and is eligible for special education on the basis of Autism Spectrum Disorder (ASD). (N.T. 28-29)
2. Student was first diagnosed with ASD by the age of five. Student began attending school in the District from the fall of 2009 when Student was in fifth grade following early intervention and special education services, including speech/language, occupational, and social skills therapies, in other states. (N.T. 32, 623; P-8 pp. 1, 3; S-6 p. 9)
3. Student presents with anxiety, difficulty with organization and attention, and is easily distracted. Anxiety may be triggered when demands, particularly academic tasks, are challenging for Student. Student also has difficulty understanding and interpreting oral language due to an auditory processing deficit, as well as with expressive language; and engages in inappropriate verbalizations (scripting, refusals, asking off-topic questions). In addition, Student exhibits motor planning weaknesses and other sensory processing deficits. (N.T. 31-32, 260, 343-45, 393, 623-28, 653-54; P-8 pp. 1-2)
4. Visual presentations are effective for Student due to the difficulties with written and oral language; visual memory is a strength for Student. (N.T. 541, 640-41; S-1 p. 3)

Relevant Educational History

5. The District conducted a Functional Behavior Assessment (FBA) in January 2011. The FBA identified inappropriate verbalizations (including scripting, refusals, talking back, and off-topic questions) during times of increased anxiety. Skill deficits related to the behavior were participation in activities including large and small group instruction, social skills, communication, and self-regulation; academic skill weaknesses were not noted as a factor. The hypothesis of the FBA was that Student engaged in those behaviors when demands to complete work were placed on Student, particularly when Student was challenged by the task, with the functions of that behavior to escape through

simplification of tasks and a reduced workload, to explain the cause of the anxiety, and to reduce that anxiety. (P-26)

6. Student was evaluated by the District in May 2011. At the time, Student was fully included in regular education with the exception of language arts and reading instruction; curriculum materials were adapted for Student in other academic subjects. (N.T. 208; P-8; S-1)
7. The resulting May 2011 evaluation report (ER) included a summary of Student's achievement and performance, observations, and recommendations by teachers. Assessments were administered of cognitive functioning, achievement, and social/emotional functioning. Student achieved a full scale IQ score of 72, in the [borderline] range. Achievement testing reflected scores ranging from very low to average with significant variability; the ER noted strengths in the areas of basic reading skills and mathematics computation, with weaknesses in listening comprehension, reading comprehension, mathematics problem solving, and written expression. (P-8; S-1)
8. Social/emotional functioning revealed ASD characteristics and significant concerns with anxiety, attention problems, atypicality, withdrawal, adaptability, and functional communication. Social skills and speech/language were also identified needs. Student was determined to be eligible for special education on the basis of ASD, with speech/language and occupational therapy specified as necessary related services. The ER made recommendations for academic support, behavioral programming organization, attention, and social skills. (P-8; S-1)
9. An Individualized Education Program (IEP) developed in November 2011 identified academic strengths in the areas of basic math computation, decoding, and spelling; needs included mathematics problem solving, reading comprehension, and written expression (paragraph writing). Goals addressed reading comprehension; written expression (paragraphs); mathematics application, problem solving, and computation; reading fluency; and speech/language and occupational therapy. Program modifications and specially designed instruction included support staff during academic instruction; visual supports; social skills support and facilitation; cues, prompts, and strategies for addressing attentional needs; counseling; adapted tests and quizzes; preview, review, and remediation; test and assignment accommodations and adaptations, including writing tasks; and an adapted curriculum with adapted study guides and a modified mathematics curriculum. Speech/language and occupational therapy were identified as related services. The proposed program was supplemental learning support and artistic support. (P-12)
10. A Positive Behavior Support Plan (PBSP) created in November 2011 targeted three behaviors: inappropriate verbalizations, asking off-topic questions, and scripting. The hypothesis developed was that student exhibited these behaviors when experiencing increased anxiety in order to communicate anxiety over difficult demands and situations or changes to the schedule. A goal addressed completing tasks and using coping skills. A number of antecedents strategies were provided (provision of class notes, calendar review, an agenda, break cards and scheduled sensory breaks, positive reinforcement, a

list of coping skills in the agenda, social stories, behavior chart, daily communication between home and school and a daily snack break) as well as replacement behaviors (taking breaks, using coping techniques). Consequences for performing behavior that was appropriate (rewards) and inappropriate (redirection, reminders, encouragement to try again, opportunity for a break) were also included. (S-4)

11. The Parents approved the Notice of Recommended Educational Placement (NOREP) for supplemental learning and autistic support. (S-21)

2012-13 School Year (Eighth Grade)

12. Student was excused several minutes early at the end of the school day in eighth grade. (N.T. 323)
13. The Parents communicated with Student's learning support teacher at the very beginning of the 2012-13 school year regarding difficulties, including problematic behaviors that Student experienced at school particularly in mathematics class. Student's behaviors were more significant than in previous school years, and Student's interactions with peers were becoming a concern. (N.T. 86-87, 306-07, 630-32; P-6 pp. 30-34)
14. Student's IEP team met again in early September 2012, and agreed to revise Student's IEP to change the location of reading and mathematics instruction from regular education to small group to alleviate some of Student's anxiety and stress. The Parents approved the NOREP with this change. (N.T. 89-90, 308-09, 633-34; P-16, P-17 p. 6; S-9 p. 11; S-22)
15. Student continued to demonstrate problematic and disruptive behaviors following the September IEP revisions. The school psychologist conducted an observation in October so that the team could revise the current behavior plan. (N.T. 91-93; P-6 pp. 35-40)
16. A new IEP was developed in October 2012. That document provided updates including the September agreed revisions. Some information on Student's present levels of academic achievement and functional performance was included, largely from the fall of 2011. Strengths similar to those from the prior IEP and needs (behavioral support, a written schedule, mathematics problem solving skills, reading comprehension and vocabulary skills, written expression, and focus/attention with completion of all tasks) were provided. Occupational therapy consultation was recommended to improve legibility of written work and for development of a sensory diet at school. (P-17; S-11)
17. IEP goals and short term objectives addressed reading comprehension (answering questions at grade level), reading fluency (at sixth grade level), language arts/written expression (writing paragraphs), mathematics problem solving, and speech/language skills including social skills. Program modifications/specially designed instruction were similar to the previous IEP, with additions to include support for pre-algebra as well as occupational therapy support (sensory diet and writing legibility) and behavior supports. Speech/language therapy was a related service. (P-17; S-11)

18. The annual goal in the October 2012 IEP for reading comprehension does not contain a baseline, and Student's abilities with respect to that goal is not discernable from the present levels section of that IEP. The goals for reading fluency and mathematics problem solving were based solely on AIMSweb probes, but the short term objectives for the mathematics goal targeted some functional skills Student was not demonstrating. The written expression goal provides merely subjective and anecdotal information on Student's baseline despite the progress monitoring to be based on a scoring rubric. Speech/language information is very detailed throughout the IEP. (P-17; S-11)
19. Placement in special education for the October 2012 IEP remained for academic support, reading, language arts, and mathematics at a supplemental level of autistic and learning support. The Parents approved the accompanying NOREP. (P-17 p. 43, P-18; S-23)
20. Student's PBSP was revised in October 2012, targeting three behaviors: asking off-topic questions, inappropriate verbalizations, and new inappropriate physical behaviors such as eloping, screaming, and physically prompting peers and staff for attention. The hypothesis developed was that student exhibited these behaviors when experiencing anxiety due to demands, changes in schedule, an incomplete task, or loud noises in order to communicate anxiety, avoiding change, avoiding tasks, and avoid having to wait to complete a task. A goal addressed choosing from a list of coping skills and earning points for following directions and using those coping skills. A number of antecedents strategies were provided (provision of class notes, an agenda, break cards and scheduled sensory breaks, visual lists, cues, and charts of coping skills and behaviors, a weekly social skills group, social stories, and daily communication between home and school; choices during physical education) as well as replacement behaviors (checking schedule, taking breaks, using coping techniques). Consequences for performing behaviors that were appropriate (rewards) and inappropriate (redirection, encouragement to try again, opportunity for a break) were also included. (S-5)
21. Student's behaviors continued through the fall, with significant anxiety and several incidents of physical aggression and threats of physical aggression. The PBSP was revised again in December 2012. Revised replacement behaviors specified Student's use of coping skills when anxious, use of a daily point sheet with visuals to express feelings (with adult modeling and prompting until independent) and identification of coping skills on the daily point sheet. (N.T. 95-96; P-6 pp. 35-51, P-19, P-20; S-5, S-26, S-27, S-29)
22. The Parents communicated with the learning support teacher in March 2013 regarding Student's transition to high school. (N.T. 101-02; P-6 pp. 55-56)
23. In early spring of 2013, the Parents arranged to have Student independently evaluated to obtain additional information about Student and to identify any new options that might be available. They also retained an educational consultant with expertise in ASD. (N.T. 102-04, 113-14, 116, 544-45)
24. The independent school psychologist conducted assessments of cognitive ability, achievement, memory, social/emotional/behavioral needs, and executive functioning, as well as curriculum-based reading comprehension and fluency measures. The evaluator

did not seek input from the District, speak with the teachers, or conduct an observation at school, but the purpose of the evaluation was for educational planning. She issued an Independent Psychological Evaluation report (IEE) in April 2013. (N.T. 547-48, 561; P-24)

25. Cognitively, Student achieved a Full Scale IQ of 72 (borderline range) that was interpreted with caution because of the discrepancy among Index scores; however, the score was consistent with previous cognitive assessments. Achievement testing reflected variable performance across domains, with Student performing poorly on measures of verbal and nonverbal memory. Assessment of memory reflected deficient functioning. (N.T. 548-50, 554; P-24 pp. 5-12)
26. Behavior rating scales (Behavior Assessment System for Children – Second Edition (BASC-2)) results reflected similar concerns of the Parents and teachers. Specifically, the Parents identified clinically significant concerns with respect to anxiety, atypicality, withdrawal, developmental social disorders, and functional communication; and at-risk scores in the areas of adaptability, leadership, adaptive skills, and resiliency. One or more teachers rated Student with clinically significant concerns in the areas of anxiety, attention problems, executive functioning, and adaptability; and with numerous additional areas of at-risk concern: hyperactivity, atypicality, withdrawal, school problems, anger control, developmental social disorders, emotional self-control, negative emotionality, leadership, social skills, study skills, functional communication, adaptive skills, and resiliency. (N.T. 556-57; P-24 pp. 14-17)
27. The independent psychologist concluded that Student met diagnostic criteria for Generalized Anxiety Disorder and ASD. The IEE included a number of recommendations to address Student’s various educational needs. Those recommendations were based upon “best practices” for students with ASD and/or anxiety disorders: an FBA and behavioral interventions; progress monitoring; and a cognitive behavior therapy (CBT) approach for reducing anxiety. (N.T. 562, 570-71, 576; P-24 pp. 19-25)
28. The IEE was not provided to the District school psychologist or special education teacher. (N.T. 270-71, 467)
29. The Parents were concerned about some of the information in the IEE report, including Student’s reading comprehension skills, and anger management, attentional difficulties, and level of anxiety exhibited at school. They also found some of the suggestions in the IEE report to be new and different from what had been recommended and implemented by the District for Student’s needs. (N.T. 105-11, 120-21)
30. Student’s eighth grade teacher implemented the SDI in the IEP, including providing extra time for processing. Student’s teacher also provided supports to help Student get started on tasks that were difficult, such as beginning a writing activity for which she might provide ideas. (N.T. 331-33, 352-59)

31. Progress reporting on academic goals for the 2012-13 school year reflected variable performance on the reading comprehension goal both independently and with questions read aloud, with some improvement noted in the fourth quarter (but with no baseline for comparison); independent mastery on the written expression goal with detailed descriptions of Student's performance on probes; improvement in mathematics problem solving Aimsweb scores with some support, meeting the goals at the end of the fourth quarter; and variable performance with some progress in reading fluency probes with a recommendation to consider a focus on reading comprehension in the future. Anecdotal and data-based progress on speech/language and social skills reflected improvement across areas targeted by those goals and short term objectives; because the social skills goal was new, baselines were specified through observations. (P-21; S-10 pp. 20-63)
32. Progress reporting on Student's behavioral goal for following directions and using coping skills reflected attainment of the goal of earning points for demonstrating those skills with 80% accuracy by the third and fourth quarters; however, there was no indication of what the behaviors were or the frequency. Student exhibited an increase in anxiety and problematic behavior at the end of the school year with changes in routine and new activities. (P-22)
33. The District sought the Parents' consent to conduct a reevaluation in April 2013 due to concerns with Student's educational progress and needs for additional support. The Parents provided their permission for a reevaluation. (P-23; S-25)

2013-14 School Year (Ninth Grade)

34. The District completed the reevaluation of Student and issued a report (RR) in August 2013. At that time, Student was identified with a specific learning disability in reading comprehension, oral expression, and written expression, in addition to ASD. (N.T. 229-30, 234, 240, 659; S-3)
35. Parent input into the August 2013 RR reflected concerns with reading comprehension and vocabulary, communication, social interaction, and reasoning/drawing conclusions, as well as vocational planning and functional mathematics. This RR also summarized previous evaluation results, together with a May 2013 observation of a social skills group and teacher observations that student's performance was not always commensurate with ability due to student's anxiety and receptive and expressive language weaknesses. (S-3)
36. The District school psychologist administered a number of assessments of cognitive functioning, achievement, executive functioning, social/emotional/behavioral functioning, and adaptive behavior. Student's off-task behavior during the testing was discussed along with strategies used to address those difficulties. (S-3)
37. Student's cognitive ability was determined based on scores from three assessments, with results determined to be in the low average range. Performance on academic achievement tests was variable, with significant weaknesses noted in reading comprehension, mathematics problem-solving, oral expression, and written expression. The RR also reported results of a speech/language evaluation in the spring, including

assessment of pragmatic language and critical thinking skills where Student exhibited deficits in all areas (making inferences, sequencing, negative questions, problem solving, predicting, and determining causes). The speech/language assessments reflected continued needs in that area for auditory comprehension of language and social language skills. (N.T. 266-67; S-3)

38. Additional assessments in the RR reflected concerns with social perception and social skills; attention and executive functioning (inhibition, shifting, initiation, working memory, planning and organizing, and monitoring); and adaptive behavior (communication, functional academics, health and safety, daily living, self-care, and self-direction). Parent BASC-2 rating scales revealed clinically significant concerns in the areas of anxiety, atypicality, withdrawal, attention problems, and functional communication; and at-risk concerns in the areas of adaptability, social skills, and leadership. Teacher rating scales reflected clinically significant concerns (by at least one teacher) in the areas of anxiety, atypicality, and adaptability; and at-risk concerns in the areas of withdrawal, social skills, leadership, study skills, and functional communication. (S-3)
39. A number of recommendations were made in the RR to address mathematics problem-solving (including direct and explicit instruction, mastery of concepts and skills, visual presentation, guided practice); reading comprehension (reading for understanding with pre-teaching and review, visualization techniques, graphic organizers); oral language/listening comprehension (preferential seating, checks for understanding, verbal and physical cues, chunking of tasks, and supplementing auditory information with visual presentation); written expression (prompts and organizational tools, graphic organizers, visual models and cues and rubrics, and assistance with sentence structure and grammar); executive functioning (alleviating anxiety through visual cues and information, clear and concise directions, continued breaks, preferential seating, chunking of work, simple directions, and an emphasis on key words and information); a PBSP; vocational planning (skill development); adaptive functioning (safety awareness, adaptive instruction creating lists, development of leisure skills and skills that foster independence); speech/language support; an occupational therapy evaluation; and social skills (development of those skills with opportunities for generalization, assistance in reading social cues and engaging in interactions with peers, facilitation a peer interactions, a social skills group, extracurricular activities). (S-3 pp. 19-22)
40. A meeting convened to discuss the August 2013 RR. The Parents' autism expert attended this meeting. (N.T. 256-57, 380-82, 390, 465-66, 659-60)
41. The PBSP was reviewed in August 2013. Identified behaviors were (a) "nervous words" (e.g., Student asking to call 911) (b) more agitated expressions (e.g., Student stating that Student would sound an alarm); and (c) mildly aggressive behaviors and elopement. The hypothesis formulated was that Student exhibited those behaviors when Student was required to sustain attention or process language, when new concepts were presented, when changes occurred to routine, or when a safety drill was anticipated, in order to express anxiety and escape the demand. (S-39)

42. The District implemented an intervention called Zones of Regulation. That intervention is an approach to cognitive behavior management for children with ASD, ADHD, and social/emotional difficulties. (N.T. 268-69)
43. The August 2013 PBSP contained a goal for Student to choose and use a tool based on the Zone of Regulation Student was in. A number of antecedents strategies were provided (speaking to Student in a slow, calm voice; sensory breaks scheduled and as needed; teaching of the Zones of Regulation and how to move from one to another; positive reinforcement; a list of coping skills available; social stories; daily communication between home and school), visual representations of thoughts of others; and social skills group. Replacement behaviors were identified (using coping techniques by naming zones, and naming and using tools for each zone). Consequences for performing behaviors that were appropriate (rewards, offered breaks) and inappropriate (redirection, planned ignoring, reminders, encouragement to try again, forced break, covering if clothing was removed) were also included as well as a crisis plan. (S-39)
44. The Parents' autism expert observed Student at school in September 2013 and several times later in the school year. She provided recommendations for Student's program. (N.T. 263-64, 466, 509-10)
45. Student's IEP team met in late September and early October 2013. A new IEP was developed that included information from the August 2013 RR. Current information regarding present levels of academic achievement were provided including a Qualitative Reading Inventory (QRI) reflecting that Student was independently comprehending reading materials at a first grade level materials and frustrational at the second grade level. A summary of trial of assistive technology at the end of the 2012 13 school year reflected limited success. (N.T. 392, 394, 464-68, 661; P-36; S-13)
46. Strengths identified in the IEP included basic mathematics computation, reading decoding, and spelling skills; visual memory; proper use of schedules and computer skills. Student's needs were reflected as reading comprehension, mathematics comprehension and problem-solving, written expression, behavioral support, social skills, adaptive skills, executive functioning, speech/language, and occupational therapy, as well as transition. Transition goals were included (completing independent living and vocational tasks), as were academic goals and short-term objectives relating to reading comprehension (answering questions about passages); written expression (writing sentences related to a sequence of pictures); functional writing skills (completion of various writing activities/forms based on a rubric); mathematics problem solving (word problems); self-regulation (choosing and using coping skills/tools); and speech/language (answering "wh" questions, understanding sequencing of words, conversational skills). (P-36; S-13)
47. The functional writing and self-regulation goals lacked baselines, which were also not provided elsewhere in the IEP. The other goals and objectives did contain some baselines. (P-36; S-13)

48. Program modifications and specially designed instruction related to regular education support as follows: paraprofessional support; visual cues for auditory information and to assist in comprehension; use of a schedule; assistance with organization; preferential seating; checks for understanding; chunking of instructions and tasks; modeling of behavior; graphic organizers; prompting to remain on task; a behavior plan with strategies and support and a daily chart; preview and review of concepts; support and facilitation of social interactions; social skills instruction; a replacement language arts and mathematics instruction; a modified grading system; preparation for transition and changes in routine; a sensory diet; and accommodations for improved legibility of handwriting. Related services were included for speech/language, a personal care assistant at lunch, and counseling. (P-36; S-13)
49. Student was in an Autistic Support Classroom for homeroom during first period, then three periods of direct instruction (for reading, writing, and mathematics). Student had several regular education classes and was supported by a paraprofessional. Student also attended another period in the Autistic Support Classroom used for review and support of regular education class content. Student's ninth grade special education teacher implemented the SDI in Student's IEPs. (N.T. 470-75, 480-81)
50. Soon after the start of the school year, Student moved from the small group mathematics instruction to individual instruction each day using the SRA corrective reading program That program is not multisensory but does provide systematic instruction addressing reading comprehension. (N.T. 483-86, 491-93)
51. Early in the school year, Student began to exhibit an increase in problematic behaviors. Student demonstrated anxiety, difficulty with attention, used nervous words, and preferred isolation to interacting with others; new behaviors included "charging" at others and disrobing. (N.T. 476, 669-70, 672-73; P-37)
52. Student began counseling sessions twice per week, one individual session and one social skills group session, in ninth grade. The Zones of Regulation were implemented with Student through social stories in individual sessions, and group discussion where the children identified zones based on feelings and coping skills to manage feelings and regulate emotions. The coping skills were individualized to each Student, and included a visual component in which the zones were depicted (through colors) together with feelings Student might have while in each zone, example coping skills or tools to address those feelings, and rewards. Student successfully used the Zones of Regulation to identify feelings and tools to cope with difficult emotions including anxiety. (N.T. 261-62, 274-82, 284-89, 292-93, 497-02; S-35)
53. The school counselor consulted with Student's teachers and conducted observations in student's classroom to promote consistency across Student's day, including the Zones of Regulation. Student's teacher also worked with Student to practice social skills. (N.T. 287-89, 385-86, 394, 396, 475, 495, 497-503, 522, 541)

54. At the beginning of the ninth grade school year, Student would need several class periods to work through an episode of anxiety. By the end of the school year, Student at times would independently choose and successfully use a coping skill tool. (N.T. 504-05)
55. Student sometimes tried to sleep in class in ninth grade. The teacher prompted Student consistent with the Zones of Regulation to use tools for waking and being alert. (N.T. 395, 481-82, 498-501; P-36 p. 26)
56. Student did not have a reading fluency goal during ninth grade because the special education teacher believed that Student had a more significant need in reading comprehension. Student also exhibited frustration with repeated reading, such as would be expected in working on a reading fluency goal. (N.T. 486-88)
57. Student had assistive technology available for writing activities in the classroom, as well as graphic organizers. Student continued to become frustrated, however, with those supports, and the teacher believed that student was more successful using pencil and paper with prompts provided, and those were helpful for Student. (N.T. 489-91)
58. Student had a science class in ninth grade. The teacher adapted materials for Student by providing notes, and soon after the school year began provided Student with individual pre-teaching, and review and reinforcement, as well as adapted notes and materials that were at a lower grade level. Quizzes and work activities were also modified and adapted. (N.T. 728-50)
59. Student participated in an extracurricular activity a few times, but student exhibited anxiety when student stayed after school. (N.T. 282-83, 293-94)
60. Student was dismissed ten minutes early in ninth grade. Student typically exhibited escalated behavior at the end of the school day, but the teacher did not know why. In November 2013, the teacher asked the Parents to develop a social story for Student to help Student stay for the entire school day. (N.T. 414-16, 418; P-32 p. 4)
61. Student's IEP was revised in November 2013 to revise the writing goal and add a social skills goal. (S-13)
62. Student was on homebound instruction in December 2013 following a recommendation from Student's psychiatrist due to anxiety. The District received the letter from that psychiatrist from the Parents in early December, and conducted a search for an instructor. The District was not able to secure a teacher and Student did not receive any homebound services. (N.T. 425-27, 506-07, 672-74, 719-21, 723; P-31)
63. Student's IEP team met in December 2013 to discuss a plan to transition Student back to school. The Parents expressed an interest in additional independent living and vocational support, and those requests were accommodated for Student's return to school in January 2014. (N.T. 506-08; S-13 pp. 9-10)
64. Student returned to school in early January for three periods a day. Student never returned to the science class. (N.T. 506-08, 673-74, 728, 751-52)

65. Progress monitoring on academic goals and objectives for the 2013-14 school year reflected some progress in reading comprehension probes with one on one teacher assistance on a first grade reading level. Student's progress was variable on the written expression goals but was also with teacher assistance; the mathematics problem-solving goals lacked objective measurement to the extent student worked on those goals. Behaviors during academic tasks were noted throughout. (P-38; S-13)
66. Progress on Student's self-regulation goal was based upon the Zones of Regulation intervention. Student was able, with prompting, to identify tools and coping strategies, but not able to use any tools other than when a calm zone. Data reported did not match the criteria in the goal. Progress on speech/language and social skills goals was variable but showing improvement over time. (N.T. 441-43; P-38, P-39; S-13)
67. Student's IEP team met in June 2014. Updated information regarding present levels was provided including input from classroom teachers and related service providers; and results of a career interest inventory from May 2014 were summarized. A new QRI from May 2014 indicated that Student was independent in comprehending end of first grade materials with lookbacks; and remained frustrational at the second grade level. Reevaluation of Student's pragmatic language and critical thinking skills, when compared to previous assessment in May 2013, showed growth in all areas despite continued deficits overall. (S-14) (N.T. 447, 688)
68. Strengths identified in the IEP included basic mathematics computation, reading decoding, and spelling skills; sustained attention during preferred activities and tasks; navigational skills in the school building; computer skills; and recognition of changes to schedule. Student's needs were reflected as reading comprehension, mathematics problem-solving, written expression, behavioral support, social skills, executive functioning, vocational and independent living skills, receptive and expressive language, and occupational and physical therapy. (S-14)
69. Some of the academic goals and short-term objectives were slightly revised, continuing to address reading comprehension (answering questions about passages); mathematics problem solving (word problems); self-regulation (choosing and using coping skills/tools); and speech/language and social skills (conversational skills, with new goals for problem-solving and understanding directions); and vocational/independent living (completing independent living or pre-vocational tasks). The goal related to functional writing skills was removed; and the written expression goal relating to picture sequences raised expectations to paragraph responses. A new goal for physical therapy (physical fitness) was also added. No reading fluency goal was added in June 2014, although the Parents asked that one be considered. (N.T. 449, 690; S-14)
70. Baselines were provided or otherwise evident on the self-regulation, speech/language and social skills goals but not those for the academic, physical therapy, or vocational skills needs. (S-14)

71. The program modifications and specially designed instruction, as well as related services, remained the same as in the prior IEP except that physical therapy was added as a related service. The program remained one of supplemental autistic support. (S-14)
72. Student's PBSP was also revised in June 2014. Identified behaviors were (a) "nervous words" (e.g., Student asking to call 911) (b) more agitated expressions (e.g., Student stating that Student would call 911); and (c) aggressive behavior, elopement, and removal of clothing. The hypothesis of the behavior was that Student exhibited those behaviors when Student was required to sustain attention or process language, when new concepts were presented, when changes occurred to routine, or when a safety drill was anticipated in order to express anxiety and escape the demand. (S-15)
73. The June 2014 PBSP contained a goal for Student to choose and use a tool based on the Zone of Regulation Student was in. A number of antecedents strategies were provided (speaking to Student in a slow, calm voice; sensory breaks scheduled and as needed; teaching of the Zones of Regulation and how to move from one to another; positive reinforcement; a list of coping skills available; social stories; daily communication between home and school and a daily snack break), visual representations of thoughts of others; and social skills group. Replacement behaviors were identified (using coping techniques by naming zones, and naming and using tools for each zone). Consequences for performing behaviors that were appropriate (rewards, offered breaks) and inappropriate (redirection, planned ignoring, reminders, encouragement to try again, forced break, covering if clothing was removed) were also included as well as a crisis plan. (S-15)
74. Student had a different reading program during ESY services in the summer of 2014. Student did not experience anxiety with that reading program and the Parents believed Student was successful using it. Student was also provided with additional tutoring over the summer to make up for the lack of homebound instruction earlier in the school year. (N.T. 695-96, 721-22)
75. In August 2014, the Parents and District communicated about helping Student transition to the high school and Student's schedule. (P-32 pp. 7-9)

2014-15 School Year (Tenth Grade)

76. Student began the school year exhibiting problematic behavior. In mid-September, Student removed a piece of Student's clothing during a class. (N.T. 696-97; P-32 pp. 10-12)
77. Student required reinforcements as before, but those used previously did not appear to be motivating to Student at the start of the 2014-15 school year. (N.T. 456-57; P-18 pp. 18-19)
78. Student engaged in a sporting activity beginning in the fall of 2014 that was helpful in reducing Student's anxiety. That activity had been helpful for Student in the past. (N.T. 698-99; P-32 pp. 16-17)

79. The District conducted another reevaluation of Student in October 2014. Around that time, the parents were requesting additional instructions in a life skills classroom at the recommendation of their autism expert; and, Student's psychiatrist had provided an excuse for Student from mathematics instruction and physical education for several weeks. (N.T. 272-73, 514-16, 699, 702-03; P-32 pp. 16-17, P-33 p. 2; S-33 p. 2)
80. The October 2014 RR summarized information from the October 2013 RR and more current academic and functional performance. Identified strengths included functional reading vocabulary, functional mathematics skills, and knowledge of personal demographics. Specific needs related to functional reading comprehension, additional functional mathematics skills, problem-solving, and safety. Observations by the school counselor and teachers were summarized. Student was determined to be eligible for special education on the bases of ASD and a specific learning disability in reading comprehension, oral language, and written expression. (P-33; S-33)
81. Student's IEP was revised again in December 2014. The present levels were updated to describe Student's program during the first quarter, including the IEP team's concerns that Student's behaviors were escalating (using more threatening words rather than the "nervous words" previously observed). A plan to transition Student to more functional instruction in reading, writing, and mathematics was developed. Updated input from the current teachers was also included. Student's strengths were the same as the October 2014 IEP; and needs were similar with a revision to the areas of reading, writing, and mathematics where functional skills were the focus. (N.T. 514; P-32 pp. 18-19; S-32)
82. The goals and short term objectives in the December 2014 IEP addressed the following: functional mathematics (choosing operations to solve functional mathematics problems); functional reading (reading comprehension of nonfiction passages); written expression (writing paragraphs with prompts using proper conventions and structure). The self-regulation (choosing and using coping skills/tools); speech/language and social skills (conversational skills, problem-solving, and understanding directions); physical therapy (physical fitness) were identical to the August 2014 IEP. The vocational/independent living goal was limited to completing pre-vocational tasks. Baselines are provided or otherwise evident on the self-regulation, speech/language and social skills goals but not those for the functional academic, physical therapy, or vocational skills needs. Related services and program modifications/specially designed instruction remained essentially the same as in the prior IEP with the addition of alternative physical education, additional notification of scheduling changes, and limitation on use of language when Student became frustrated or anxious. (S-32)
83. Student's PBSP remained essentially the same as in the prior IEP, with the addition of immediate reinforcement through the behavior chart when Student demonstrated appropriate behaviors. (S-17)
84. Student's program as proposed in the December 2014 IEP was supplemental autistic and life skills support. The Parents approved the NOREP. (N.T. 273, 458-59; P-40; S-32 pp. 65-66, S-34)

85. In January 2015, Student became upset and frustrated during the last period of the day. Student attempted to elope from the room, and tried to engage a fire alarm and call 911. Student was redirected to a break room, where Student removed an article of Student's clothing and harmed Student's self. (N.T. 705-06)
86. Progress monitoring on the goals in the December 2014 IEP reflected unclear progress on the self-regulation goal (progress does not match the stated goal criteria). Some gains were reported on the speech/language and social skills goals. Progress on the functional academic and physical therapy goals is uncertain because there are not baselines for comparison, but behaviors were not noted as significant concerns as in the prior school year. (S-16, S-38)
87. Progress monitoring on Student's behavior goal during the 2014-15 school year reflected percentages of time that Student used tools to cope with frustration and anecdotal reports of Student remaining calm whether with a tool or not. Student did not show any gains in using tools consecutively by the end of the school year compared to the baseline. (P-41; S-16 pp. 39-40)
88. In April 2015, the Parents asked for changes to Student's program and placement to involve more life skills classes. The District agreed to this change. (N.T. 708-09, 713)
89. Student was homeschooled during the 2015-16 school year. (N.T. 714)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, 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); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Nevertheless, application of this principle 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 School Board*, 516

F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be credible, and specific testimony will be discussed further below as necessary. It should also be noted that the Parents presented as loving, concerned, and devoted parents who understandably want what is best for Student; and all of the District personnel who participated in the hearing presented as competent and qualified professionals dedicated to the field of education.

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, as were the parties' Closing Arguments.

General IDEA Principles

The IDEA and state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. For children who are eligible for special education services, states are mandated to provide a “free appropriate public education” (FAPE). 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District 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 Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). Local education agencies (LEAs) 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. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).

Substantively, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. An LEA “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity.’” *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995) (quoting *Rowley*, *supra*, at 201). Accordingly, the IEP need not “incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). It is also critical to recognize 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 Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993); *see also D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same).

Nevertheless, an educational program comprises more than academics. The U.S. Supreme Court over thirty years ago recognized that a child with a disability who is “advancing from grade to grade” is not necessarily a child who has been provided with an appropriate education. *Rowley*, *supra*, at 203 n.25; *see also* 34 C.F.R. § 300.101(c)(1) (“Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”). An appropriate education, thus, encompasses all domains, including behavioral, social, and emotional. *Breanne C. v. Southern York County School District*, 732 F.Supp.2d 474, 483 (M.D. Pa. 2010) (citing *M.C. v. Central Regional*

School District, 81 F.3d 389, 394 (3d Cir. 1996)). Moreover, while parental acquiescence to programming decisions may be a relevant consideration, “a child's entitlement to special education should not depend upon the vigilance of the parents[.]” *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996).

Section 504 Principles

Section 504 specifically prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood, supra*, at 253 (citation and quotation marks omitted); *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, “an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of” the related subsections of that chapter, §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b).

The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *Lower Merion, supra*, at 931. With the exception of one issue relating to Student’s early dismissal, all of the Section 504 claims will be addressed together with the IDEA denial of FAPE contentions.

THE PARENTS' CLAIMS

The Parents claim that the District failed to provide appropriate programming in all areas. Specifically, they challenge the behavioral interventions implemented for Student and particularly its refusal to conduct an FBA after October 2011; insufficient adaptations to materials to Student's reading comprehension levels; inadequate programming for Student's academic, social, and emotional deficits; and a lack of clarity on Student's progress toward IEP goals.

Before turning to the school years at issue, the Parents' contention that the District failed to incorporate all of the recommendations in the various evaluations merits discussion. Evaluation reports, whether conducted by an LEA or privately, routinely include recommendations for consideration by the IEP team. Not all recommendations may be appropriate for a child; and not every recommendation, or good teaching practice, needs to be spelled out in a child's IEP (N.T. 494-95) In this matter, the District's IEPs provided annual goals, program modifications, and specially designed instruction, that targeted Student's identified needs as they changed over time. Despite apparent flaws in the programming, discussed below, this hearing officer cannot conclude that the District ignored important program recommendations merely because each and every suggestion was not incorporated in the IEP documents.

FAPE DURING 2012-13 SCHOOL YEAR (8TH GRADE)

Student's eighth grade school year began with implantation of the IEP from the previous school year, with goals addressing identified needs: reading comprehension, written expression, mathematics application, problem solving, and computation, reading fluency, and related services (speech/language and occupational therapy); Student also had a PBSP. Communication

between home and school resumed as school started due to Student's newly intensified concerning behaviors. The District promptly responded by revising the program to decrease Student's anxiety and stress in reading and mathematics classes, and a new IEP and PBSP followed when Student's behaviors did not significantly improve. The October 2012 IEP addressed Student's needs much the same way as the previous IEP had. By December, however, Student's PBSP required revision as Student continued to exhibit significant anxiety and was not successfully choosing coping strategies. Although progress monitoring indicated that Student became more successful using coping skills following that revision, the data does not reflect the frequency or intensity of Student's behaviors, and it is thus impossible to draw any meaningful conclusion from that information.

Academically, Student's progress in the areas of reading comprehension is similarly difficult to discern; without baselines, one is not able to make informed decisions about whether a program was effective, or to glean whether Student made gains. For the same reason, the District would have been unable to evaluate the effectiveness of its reading programming for Student and to make revisions where warranted. This uncertainty is particularly troublesome since the IEP team determined that Student should focus more on reading comprehension than on reading fluency going into the 2013-14 school year. And, the RR completed in August 2013 confirmed that Student's need in that area was significant since Student was at that time determined to have a specific learning disability in, among other areas, reading comprehension.

FAPE DURING 2013-14 SCHOOL YEAR (9TH GRADE)

Newly identified with specific learning disabilities, Student began the 2013-14 school year with a comprehensive evaluation that specified a number of new and continuing educational needs. A new behavioral intervention was implemented as part of Student's IEP, one that was

based on cognitive behavioral therapy principles (and not inconsistent with a recommendation of the private evaluator). However, soon after the start of the school year, Student again exhibited increasingly more problematic behaviors that had not been seen at school previously, such as disrobing. It is rather perplexing that the IEP team refused to consider whether a new FBA was warranted in light of these new manifestations; and, also critically, the 2011 FBA had not acknowledged academic skill deficits as a factor, and Student's most recent RR had identified a number of new areas requiring specially designed instruction. Moreover, Student did not demonstrate success in effectively utilizing the Zones of Regulation over the course of the school year, particularly when Student was experiencing anxiety. By the end of the school year, the PBSP was further revised but the approach remained the same despite its lack of success in Student learning to manage anxiety and engage in appropriate behaviors.

Academically, Student was comprehending first grade reading materials independently, but was frustrational at a second grade level, in the fall. Student required significant assistance in order to answer reading comprehension questions or participate in writing activities; in mathematics, the absence of baselines renders understanding of any gains impossible. Progress reports reflected Student's anxiety and noncompliance as impacting Student's ability to participate in instruction across academics. Because Student's anxiety and behavior was not effectively addressed, Student's ability to make strides in academic functioning was compromised and denied Student FAPE.

FAPE DURING 2014-15 SCHOOL YEAR (10TH GRADE)

The start of the school year was similar to the previous year, with Student engaging in increasingly more concerning problematic behaviors. Again, no FBA was considered, nor was significant revision to the PBSP made with the District continuing to implement the ineffective

Zones of Regulation intervention. Student's anxiety remained significant, with the IEP team ultimately concluding that Student required a more functional curriculum for academics with behaviors no more under control than they had been early in the school year. It is disconcerting that the District continued to implement a behavioral intervention that had not provided meaningful benefit for Student for two entire school years.

Academically, again the absence of baselines in the goals makes any understanding of Student's progress over the course of the tenth grade school year impossible to ascertain. It is reasonable to conclude that the anxiety and behaviors coincided with the academic demands placed on Student, as in the prior year; the decision to focus on functional academics for the second half of the school year does correlate to a decrease in behaviors. Once again, however, the absence of appropriate programming for Student's anxiety and behaviors impeded Student's ability to make academic gains, thereby depriving Student FAPE over the course of the school year.

SECTION 504 DISCRIMINATION

The Parents also contend that Student was discriminated against on the basis of disability because Student left school early during the 2013-14 and 2014-15 school years. The reasons for this schedule for Student are not apparent on the record; however, permitting students to leave classes early or arrive late is not an unusual accommodation, such as when a child exhibits anxiety and difficulty navigating crowded hallways. The scant evidence of record does not support a finding that the District engaged in disability-based discrimination beyond the FAPE issues addressed above.

REMEDY

Compensatory Education

It is well settled that 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 School District*, 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.* Other courts have accepted a more qualitative approach to this remedy. *B.C. v. Penn Manor School District*, 906 A.2d 642, 650-51 (Pa. Cmwlth. 2006) (rejecting the *M.C.* standard for compensatory education, and holding that “where there is a finding that a student is denied a FAPE and ... an award of compensatory education is appropriate, the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district’s failure to provide a FAPE.”); *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015) (concluding compensatory education may be awarded “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE); *Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005) (adopting a qualitative approach to compensatory education as proper relief for denial of FAPE). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

The record in this matter overall establishes that the District failed to program appropriately for Student’s behavior, and that Student’s behaviors significantly and adversely impacted Student. This hearing officer agrees with the Parents that a new FBA was crucial, even if staff believed they understood the functions of all of Student’s behaviors (N.T. 267-68, 295, 326-29, 349, 452, 457, 477-78, 531-33, 539-40). Although the evidence does establish that

Student's teachers worked with Student extensively to pre-teach and review academic concepts and individualize instruction, and that materials were adapted for Student, it is also evident that Student continued to exhibit significant difficulty with managing anxiety, particularly in academic classes that were challenging. The behavioral manifestations coupled with a lack of clarity in whether Student made progress on IEP goals amounts to a denial of FAPE that warrants compensatory education. There was no evidence presented from which one could arrive at an award that would place Student in the same position Student would be in absent a denial of FAPE; thus, an hour for hour award will be ordered.⁵ The difficulty is ascertaining how to compute the hours, particularly since Student did not present the same on a yearly or even daily basis. However, there will be no period of reasonable rectification for the start of the remedial award, because Student's needs have been ongoing and known to the District since well before the time period at issue.

For the relevant period of time during the 2012-13 school year, Student shall be awarded one hour of compensatory education for each school day that Student attended from April 16, 2013 through the end of the school year as an approximate amount of time that Student's reading comprehension needs were addressed but with unknown efficacy, and anxiety associated with those demands that were not appropriately addressed.

For the remainder of the relief period, and although Student's needs fluctuated over time, this hearing officer equitably estimates that the District's programming for Student in academic areas where behavioral manifestations were most prevalent during the 2013-14 and 2014-15 school years account for two hours each school day, until the second half of the 2014-15 school year when more functional academics were the focus and behaviors did decrease. Student will

⁵ The Parents did not suggest any specific remedy in their Closing Argument.

thus be awarded two hours of compensatory education for each day that Student attended at least part of the school day for the 2013-14 and first half of the 2014-15 school years; and one hour for each school day that Student attended during the second half of the 2014-15 school year. *See Keystone Central School District v. E.E. ex rel. H.E.*, 438 F.Supp.2d 519, 526 (M.D. Pa. 2006) (explaining that the IDEA does not require a parsing out of the exact number of hours a student was denied FAPE in calculating compensatory education). The time period when Student was on homebound instruction is not included in this calculation as it is not clear why Student was not able to attend school; and it is evident that the District made up the missed hours of homebound instruction. The District will also be credited with a period of approximately sixty calendar days (forty school days) at the beginning of the 2013-14 school year when it began to implement the Zones of Regulation as a period of reasonable rectification in light of new challenging behaviors and the need to monitor the chosen interventions.

The hours of compensatory education are subject to the following conditions and limitations. Student's Parents may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional needs and skills. Should Student return to the District, the compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21).

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District did deny FAPE to Student in several respects during the time period in question, and Student is accordingly entitled to compensatory education.

ORDER

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

1. The District denied FAPE to Student during the time period April 16, 2013 through the end of the 2014-15 school year.
2. The District shall provide Student with 1 hour of compensatory education for every day Student attended school from April 16, 2013 through the end of the 2012-13 school year.
3. The District shall provide Student with 2 hours of compensatory education for every day Student attended school from the beginning of the 2013-14 school year through the end of the first half of the 2014-15 school year (first and second quarters), less forty school days at the start of the 2013-14 school year as a period of reasonable rectification.
4. The District shall provide Student with 1 hour of compensatory education for every day Student attended school during the second half (third and fourth quarters) of the 2014-15 school year.
5. The hours of compensatory education are subject to the following conditions and limitations. Student's Parents may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional needs and skills. Should Student return to the District, the compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age 21.
6. The District did not otherwise discriminate against Student on the basis of Student's disability.

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: May 31, 2016