

*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 ON REMAND FROM THE  
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA

Name of Child: D.H.

ODR #18071-16-17 AS

Date of Birth:  
[redacted]

Parent  
[redacted]

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Date of Decision:

November 30, 2018

Hearing Officer:

Linda M. Valentini, Psy.D, CHO  
Certified Hearing Official

## Introduction

On March 16, 2017, I issued a final decision and order (ODR No. 18071 16-17) resolving a special education due process matter brought by the Parent on behalf of the Student<sup>1</sup> against the District.

Student is an elementary school age District resident who is eligible for special education programming under the classification of emotional disturbance, with secondary categories of autism and speech/language impairment. Student currently attends an Approved Private School (APS) pursuant to a Notice of Recommended Educational Placement (NOREP).

The Parent alleged a denial of a free appropriate public education (FAPE) when Student was enrolled in an elementary school in the District. The Parent sought compensatory education to remedy that alleged denial of FAPE. The District maintained that it provided FAPE to Student.

I found that the District denied Student FAPE and ordered the District to provide compensatory education for the 2014-2015 school year, summer 2015, and the 2015-2016 school year until the date Student stopped attending the District school.

The District appealed my decision to the United States District Court for the Eastern District of Pennsylvania. *D.H. v. Pottsgrove Sch. Dist.*, No. 17-5456, 2658 U.S. Dist. (E.D. Pa. September 10, 2018).<sup>2</sup>

## The Court's Remand Order

The Court remanded the case to me and ordered that I reconsider three areas as follows:

*Denial of FAPE* — “The hearing officer’s conclusion that FAPE was denied rested on several interlocking factors. In this Memorandum, the Court upheld the validity of some factors and dismissed others. On remand, the hearing officer should reevaluate her conclusion that FAPE was denied in light of the Court’s conclusions, including the Court’s instructions that (i) only one absence by the regular education teacher could properly count against the District, (ii) the effect of the pre-kindergarten FBA

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<sup>1</sup> 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. The identifying information appearing on the cover page or elsewhere in this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> I asked the parties to submit written briefs discussing what in their estimation would be a fair starting point for compensatory education. Although the Court supported my finding that there was a denial of FAPE, the District attempted to re-litigate this central issue, arguing that there was no denial of FAPE and urging me to so find, or in the alternative to award only 173 hours of compensatory education. On the other hand the Parent argued that upon reconsideration of my decision I should find that the compensatory education award should stand as ordered. I appreciate their detailed briefs, but decline to accept either party’s proffered resolution.

must be considered, and (iii) a subsequent FBA by a BCBA was not required by law.”

*Hours of Compensatory Education* — “If the hearing officer again concludes that FAPE was denied, then she should reevaluate the hourly award, paying closer attention to monthly, weekly, and daily variations in [Student’s] performance and any documentation of the shortcomings at issue.”

*Issues Raised in Counterclaim* — “If the hearing officer again concludes that FAPE was denied, and after reevaluating the hourly award, the hearing officer should consider the relief sought in [Student’s] and [Parent’s] counterclaim, including whether monetary relief should be awarded in the form of a third-party trust and the provable dollar value of each hour of compensatory education.”

### Reconsideration

The findings of fact upon which I based my conclusions below are presented in my final decision and order of March 2017 and will not be repeated here.

I now address the Court’s order, guided by the United States Supreme Court’s most recent interpretation of the requirements of the IDEA:

In *Andrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court observed that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” The Court concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The U.S. Supreme Court noted that appropriate progress, in turn, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 1000. The Third Circuit recently clearly reiterated that *Andrew* did not overrule Third Circuit precedent. *Dunn v. Downingtown Area Sch. Dist.* (In re K.D.), \_\_\_ F.3d \_\_\_, 2018 U.S. App. LEXIS 26379, 2018 WL 4441134 (3d Cir. 2018).

Additionally, it is long-established case law in the Third Circuit that the need for emotional and behavioral instruction and support are equally valid reasons for special education eligibility as are academic concerns. *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3rd Cir. 1996), cert. den. 117 S. Ct. 176 (1996)(education includes progress in emotional and social domains); *Breanne C. v. Southern York County District*, 2010 WL 3191851 (M.D. Pa. 2010)(education includes progress in all relevant domains under the IDEA, including behavioral, social and emotional)

### *Denial of FAPE: FBA*

An FBA is an assessment of behavior that is based on direct observation of the child by a trained behavior specialist and is used to develop a positive behavior support plan. The behavior specialist collects a representative sampling of the problem behavior(s), which is then analyzed to look for patterns of behavior, environmental factors which are contributing to problem behavior, and most importantly determining the hypothesized

function of each problem behavior. The information from the FBA is used to create an individualized, carefully created Positive Behavior Support Plan (PBSP) that addresses the problem behaviors, primarily through selection and reinforcement of appropriate replacement behaviors. [NT 273-274, 276-279; P-26]

There were significant behavioral issues during Student's preschool years. For purposes of creating a Positive Behavior Support Plan for Student's transition from preschool to kindergarten, the District's evaluator interviewed teaching staff at the preschool program about Student's behaviors. I faulted the District for not having conducted an FBA as part of its transition evaluation. The Court deemed however that the District's efforts had in fact resulted in an FBA and has ordered that I "consider the effect of the pre-kindergarten FBA" (hereinafter "the pre-kindergarten FBA").

Proceeding from the premise that the purpose of an FBA is to gather data that allows the IEP team to create an individualized, carefully created Positive Behavior Support Plan, the "pre-kindergarten FBA" failed. From the first weeks of kindergarten through second grade the Student demonstrated severe acting out behaviors, and experienced numerous toileting accidents, with these behaviors and accidents leading to multiple restraints, increasing levels of restrictiveness, calls to the family to take Student home, and on one occasion police involvement. The demonstrable contribution of the "pre-kindergarten FBA" to creating an appropriate Positive Behavior Support Plan for Student was negligible to nonexistent.

Having deemed that there had in fact been a "pre-kindergarten FBA", the Court found that I erred in faulting the District for not conducting an FBA in kindergarten, first and the majority of second grade. Given that the "pre-kindergarten FBA" resulted in an inappropriate Positive Behavior Support Plan that fell apart within weeks of the start of kindergarten such that the Student required restraints, the District was obligated to revise the Positive Behavior Support Plan in light of the Student's circumstances. I hold that to do so required the expertise of a professional specially trained in behavioral science, whether or not that person conducted a formal FBA.

Finally, during the latter half of second grade the District's trained behavior specialist, who was a Board Certified Behavior Analyst (BCBA) did conduct an FBA and the IEP team revised Student's Positive Behavior Support Plan accordingly, shortly before determining that in order to receive FAPE Student required a more restrictive placement in an approved private school. Although as the Court pointed out, this FBA discovered the same antecedents and consequences as the "pre-kindergarten FBA" it is significantly noteworthy the BCBA's professional expertise in conducting the second grade FBA led to the not entirely surprising conclusion that Student's previous Positive Behavior Support Plans were inappropriate and had in the Court's words, "backfired." The Court recognized of the kindergarten plan, as the District did not, that "...the crux of the plans — that under no circumstances should [Student] escape unwanted tasks — was ignored. Instead, it appears that [Student] learned that by acting out, [Student] could avoid various tasks and receive special attention." The Court noted that in 1<sup>st</sup> grade, no changes to the kindergarten IEP were made and, "[Student] reportedly made no progress in [Student's]

communication skills or task completion.” In 2<sup>nd</sup> grade, “the violent outbursts, toileting accidents, and restraints continued” despite several revisions of the IEP.” When elopement became an issue in 2<sup>nd</sup> grade, as the Court observed, “the IEP team revised the behavior plan to respond to elopement”... (but) [t]he plan provided a response to elopement, not a strategy to prevent elopement.”

Although the new Positive Behavior Support Plan flowing from the second grade FBA did not result in a significant change in Student’s behavior, it was based on what the IEP team knew at that time guided by input from a professional trained in the science of behavior and behavior management. Although under the new Positive Behavior Support Plan Student continued to exhibit significant behavior problems and a highly restrictive APS placement could not be avoided, “so long as the IEP responds to the [student’s] needs, its ultimate success or failure cannot retroactively render it inappropriate.” *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995).

Reconsideration Outcome: I will order that the compensatory education award end on the date the March 8, 2016 IEP and its Positive Behavior Support Plan were implemented, rather than my previous extension of recovery to the last day Student attended school in the District.

#### Denial of FAPE: Absences of IEP Team Members

The Court found that I erred when I faulted the District for conducting IEP team meetings without relevant staff members present.

The various absences at IEP team meetings of the regular education teacher, the speech/language therapist, the occupational therapist and/or the physical therapist, while notable, contributed only minimally to my overall award of compensatory education. In accord with my earlier discussion above, in order to craft a plan that would be reasonably calculated to provide Student with FAPE in light of the Student’s changing and evolving circumstances, the expertise of an individual trained in the science of behavior analysis and behavior modification was critical in IEP meetings as well as in day-to-day consultation with classroom staff and support services staff. I hold that the record demands the conclusion that such expertise on the IEP team and in the school setting was needed to provide FAPE, and that whether or not that person conducted a formal FBA his/her consultation was sorely needed and its absence caused an ongoing denial of FAPE including the use of multiple restraints. As the Court emphasized, “[T]he persistent use of physical restraints over three years suggests that whatever “plan” the district had in place was inadequate...the persistent use of such a measure is a red flag. A tool meant as a ‘last resort,’ deployed dozens of times over three years, is strong evidence that the behavior plan was not working.”

The specific expertise of a trained behavior analyst was required from the beginning of kindergarten through Student’s leaving the District school in late second grade. A preschool-age child, and that same child at school-age, presents evolving challenges. For example, the child becomes physically bigger and stronger throughout the kindergarten through second grade years; a four-half-days per week preschool experience away from

the home constitutes less than half the demands of a five-full-days-per-week school age program; the requirements for emotional regulation and compliance in a less structured preschool setting are very different from the same demands in the increasingly more structured school-age environment. It also cannot be overlooked that a child in second grade, and even in first grade or kindergarten, suffers opprobrium from peers over frequent toileting accidents, thus adding to the already existing social challenges of autism and speech/language disabilities. Even an entirely appropriate FBA conducted in a preschool setting by a trained behavior analyst in all likelihood would not continue to inform the creation of an appropriate Positive Behavior Support Plan in kindergarten and certainly not throughout the primary grades. On the several occasions when the IEP team revised the behavior plan without the help of a trained behavior analyst, these revisions proved to be ineffective and Student continued to suffer the consequences of a denial of FAPE. In fact, once the District did at last conduct an FBA a salient finding by the District (and its candor is recognized and appreciated) was that the flawed behavior plan was contributing to the Student's behavior problems. The District's BCBA concluded that the District's approach was encouraging the Student's problem behavior, in the words of the Court, it was "backfiring". Of significant import, not only was the Positive Behavior Support Plan inadequate and inappropriate to the point that it was backfiring, the IEP chronically contained no specially designed instruction geared toward addressing how the Student would be assisted in gaining age-appropriate bowel and bladder control, a crucial life skill, or in developing age-appropriate emotional regulation and social/communication skills.

In summary Student did not make progress on any of Student's goals, as evidenced by restraints, explosive behavioral incidents, toileting accidents, suspensions and early pick-ups that persisted over the entire period under consideration. Student did not make meaningful progress on Student's goals to eliminate aggressive behavior in response to task demands and for task completion and Student did not make progress on Student's toileting goal. Additionally it should be noted that despite documented lack of progress on Student's communication goal, the goal was deleted in April 2015 and speech services were discontinued, and that Student did not make progress on Student's occupational therapy goals and was deprived of appropriate occupational therapy.

The District's own re-evaluation report of February 2016 documented Student's lack of progress and, in the language of the Parent's written brief, demonstrates "the significant emotional toll of [Student's] school experience." Student was described as of February of second grade as "almost always easily upset", having "trouble making friends", being "chosen last by other children", presenting "a nervous appearance", behaving "in a perfectionist manner", displaying "moods that cycle between crying and smiling or depressed and happy", appearing "awkward in initiating, holding or ending conversations" and "'2-4' times per week avoids interacting with peers ...is unable to make friends...and expresses odd or bizarre thoughts 'at least once per day.'" [S-31]

The Parent's written brief provides a meticulously compiled chart which I have now reviewed for accuracy in concert with the record that was before me. It provides the granular basis that supports my award of compensatory education that the Court requires,

and as such I am attaching it as part of this Decision on Remand as an Appendix. Although there is ample evidence available in the record, I also note, as the Parent points out the Court noted, there are gaps in the data because of the District's incomplete record keeping. The Court wrote, "For example, the school restrained [Student] 11 times in the first half of first grade, but only one of those was formally reported. Without consistent data, the Court will not second-guess the hearing officer's factual findings about first grade."; "[T]he Court recognizes that only two incidents were recorded in May 2015; others may have gone unrecorded."

The Court captured my findings and reorganized them in a precise summary, affirming that the Student's Positive Behavior Support Plan was not appropriate as a matter of formulation, content and implementation. A Positive Behavior Support Plan is supposed to be appropriately formulated based on reliable data, contain strategies to assist a child in amending inappropriate behaviors and thus reaching important goals, and followed with fidelity on a daily basis. The District's oft-revised Positive Behavior Support Plans afforded this child none of those essential elements, thus depriving Student of FAPE on a daily basis. Even the poorly-conceived Positive Behavior Support Plans were not implemented – Student lacked a trained 1-1 aide, and the aide that was provided did not adhere to the plan.

The Court ordered that I reconsider my award of compensatory education paying closer attention to monthly, weekly, and daily variations in Student's performance. In considering the fact that Student did not have a documented behavioral incident every day, I also note that the District's lax documentation is part of the administrative record and was worthy of comment by the Court. Student's record of documented behavioral difficulties alone is alarming, and the likelihood that this is an incomplete record compounds the concern as is the fact that the District did not keep a daily record of Student's behavior – at the end of each day staff wiped the behavior charts clean.

Of equal importance is the centrally significant fact that even on days that Student did or did not have a documented or undocumented behavioral incident, Student's inappropriate IEP, one not "constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth", one not "reasonably calculated to enable [the] child to make progress appropriate in light of the child's circumstances", and one not "appropriately ambitious in light of [the child's] circumstances" was constantly running in the background. The IEPs during Student's entire time in the District lacked appropriate specially designed instruction that was proactive rather than reactive, and lacked a plan for teaching essential life skills and social skills and emotional regulation skills that Student so clearly needed. In simple terms, Student was expected to decrease doing things (having toileting accidents and behavior outbursts), and even stop doing things (eloping), without being specifically instructed on how not to do those things and how to do other positive things instead. The record demonstrates that strategies for educating Student in the critical areas of need identified at the time of transition were lacking during the entire period Student attended a District school, including the kindergarten year which the Parent did not choose to attempt to challenge and which therefore is not under consideration for recovery.

This Decision on Remand incorporates as if included in the body of the decision the entire Appendix A of Parent's written brief, which should be read in conjunction with this decision.

Reconsideration Outcome: The absence at IEP team meetings of the regular education teacher, the speech/language therapist, and the occupational therapist were a minor consideration my calculation, although this distinction was inartfully delineated in my March 2017 decision. Of overarching concern, the absence of a person with the training and experience to guide the team in developing a Positive Behavior Support Plan for Student in the face of escalating serious behavior issues remains at the core of the District's failure to provide FAPE. I conclude that the District's failure to afford the IEP team with a professional behaviorist who had the necessary expertise to create, train staff to implement, and thereafter monitor an appropriate Positive Behavior Support Plan for Student, with or without a new FBA, resulted in a significant denial of FAPE from the beginning of kindergarten through the date that the Positive Behavior Support Plan was implemented pursuant to the IEP of March 8, 2016. I also hold that the District equally egregiously failed, over a two-and-two-thirds-year period, to create and implement an appropriate IEP with specific specially designed instruction to address Student's needs in the areas of toileting, behavioral regulation, coping skills, social skills and communication skills resulting in a denial of FAPE.

As I did in my March 2017 decision I recognize that although the denial of appropriate instruction/intervention in the areas of concern affected a great part of the school day, it appears that the Student did make some progress in academics, so full days of compensatory education are not warranted. In light of the Court's analysis of the impact of other staff members' absence from IEP meetings, I will order that the compensatory education award of four (4) hours per day be reduced to three-and-a-quarter (3.75) hours a day.

#### Issues Raised in Counterclaim

The relief sought in Parent's counterclaim will be denied. The Parent asks me to order that each hour of compensatory education be assigned a dollar value and that a trust be established for the fund. Although, as the District acknowledges, a Court or Hearing Officer may exercise equitable powers to ensure that a student has proper access to compensatory education, I am not persuaded that this is a necessary remedy at this time. Although the District, as is its right, appealed my award of compensatory education, I have no evidence upon which to base a conclusion that the District will not comply with an order to provide funding for the services the Parent will choose under the conditions I will specify in my order. Additionally given the wide range of hourly fees for professional services, for instance a potential fee for tutoring vs a potential fee for psychological treatment vs a potential fee for behavior specialist services, "the usual and customary rate by the providers of educational, developmental, and therapeutic services in the county where the District is located and geographically adjacent Pennsylvania counties" is the best criteria. Although in the past I have limited the monetary value of compensatory education to the total cost to a District for salaries and benefits that would



have been paid to the staff providing the denied services, a November 2015 decision by the Eastern District, *Sch. Dist. of Phila. v. Williams*, 2015 U.S. Dist. LEXIS 157493, reversed my restriction noting that “Third Circuit precedent requires that it [compensatory education] be calculated based on the educational time deprived rather than the cost savings reaped by the District. *See M.C.*, 81 F.3d at 397.”

In the event that the District does not live up to the terms of the order by funding allowable compensatory education services of the Parent’s choosing, or attempts to set an unrealistically low dollar amount on professional hours, the Parent has avenues of recourse to enforce my decision.

### Discussion

In *Endrew*, the United States Supreme Court emphasized that, “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” It is well established that education must address basic developmental needs in the emotional, behavioral and social domains. Further, the regulations promulgated by the Pennsylvania Department of Education for public education require local education agencies to “prepar[e] students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible. In conjunction with families and other community institutions, public education prepares students to become self-directed, life-long learners and responsible, involved citizens.” 22 Pa. Code § 4.11(b).

In addition to reviewing the complete administrative record, the Court entertained oral arguments. Upon meticulous review, the Court found, as did I, that contrary to the District’s arguments Student was denied FAPE during the entire time Student spent in the District’s school building.

With regard to kindergarten, the Court noted that the District did not construct a research-based plan to teach Student the desired “good behavior” – the essential life skill of regulating one’s own toileting activities, one of Student’s “critical needs”. Also with regard to kindergarten, the Court found that, “The closest that the IEP came to a toileting plan was a “specifically designed instruction” requiring “shaping” — that is, rewarding good behavior — “for aversive tasks such as toileting.” The Court recognized of the kindergarten plan, as the District did not, that “...the crux of the plans — that under no circumstances should [Student] escape unwanted tasks — was ignored. Instead, it appears that [Student] learned that by acting out, [Student] could avoid various tasks and receive special attention.”

The Court noted that in first grade, no changes to the kindergarten IEP were made and, “[Student] reportedly made no progress in [Student’s] communication skills or task completion” The Court pointed out that, “First grade was also the second of three straight years in which [Student] apparently made no progress in toileting or in communicating [Student’s] feelings”, citing *Endrew* at 996 (no free and appropriate education when the education plan “largely carried over the same basic goals and objectives from one year to

the next, indicating that [the student] was failing to make meaningful progress toward his aims.”). A revision of Student’s plan later provided that, as the Court noted, “A toileting goal of no accidents for four weeks was added, with no mention of how the goal would be reached.”

The Court recognized that in second grade, “the violent outbursts, toileting accidents, and restraints continued” despite several revisions of the IEP. When elopement became an issue in 2<sup>nd</sup> grade, the Court observed, “the IEP team revised the behavior plan to respond to elopement”... (but) [t]he plan provided a response to elopement, not a strategy to prevent elopement.”

With regard to restraints, the Court found that “persistent use of physical restraints over three years suggests that whatever “plan” the district had in place was inadequate. A tool meant as a “last resort”, deployed dozens of times over three years, is strong evidence that the behavior plan was not working.”

At the administrative level and by the District Court Student was found to have been denied FAPE. Student is therefore entitled to compensatory education for the District’s failure to provide a program and placement that was reasonably calculated to provide Student with meaningful educational benefit in light of Student’s circumstances.

#### Order

It is hereby Ordered that:

Given that the Kindergarten year during which the District denied Student FAPE is outside the relevant period, compensatory education is ordered for first grade, and the summer following first grade, and for second grade up to the date the March 8, 2016 IEP was implemented. In accord with the Court’s opinion, I again decline to adjust the award to account for a reasonable rectification period because the District had the entire Kindergarten year to develop an appropriate program for Student.

As compensatory education is the appropriate remedy for the denial of FAPE, in accord with the discussion above, the District is ordered to provide Student with three-and-three-quarters (3.75) hours per day of compensatory education for every day Student was present in school from the first day of first grade up to the date the March 8, 2016 IEP was implemented. Student is also awarded an additional number of hours equal to the number that should have been delivered in an ESY program during summer 2015.

The Parent will choose the compensatory education services. The hours are to be used exclusively for educational, developmental and therapeutic services, products or devices that further the Student’s IEP goals. The value of these hours shall be based upon the usual and customary rate charged by the providers of educational, developmental and therapeutic services in the county where the District is located and geographically adjacent Pennsylvania counties. The compensatory services may be used after school, on

weekends and in the summers until Student's 21<sup>st</sup> birthday. The services are meant to supplement, and not be used in place of, services that are in Student's IEPs.

The District must pay a provider of a compensatory education service, or reimburse the Parent if she paid the provider directly, no later than 30 days upon receipt of a bill from a provider or proof of payment by the Parent.

Any claims not specifically addressed by this decision and order are denied and dismissed.

*Linda M. Valentini, Psy.D., CHO*

November 30, 2018

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official

The reader is further directed to the Appendix that is incorporated into this decision.

### First Half - 1<sup>st</sup> Grade - 2014-15 School Year

1 <sup>st</sup> Half - 1 <sup>st</sup> Grade	Aug./September 2014	October 2014	November 2014	December 2014	January 2015
<b>Goal: 0 incidents of aggression in response to task demands for 4 weeks.</b> S-16 at 1.	Not making progress	Not making progress	Not making progress	Not making progress	Slight decrease in recorded episodes but not meeting goal
<b>Recorded incidents of task escape.</b> <sup>1</sup> S-20 at 3; S-22.	9/10/14 9/30/14	10/6/14 10/15/14	11/3/14 11/7/14 11/17/14 11/18/14	No data on task completion available	No data on task completion available
<b>Goal: 0 Toileting Accidents per Week for 4 Weeks.</b> S-16 at 2.	Not making progress	Not making progress	Not making progress	Slight decrease but not meeting goal	Slight decrease but not meeting goal
<b>Goal: Identify and Manage Feelings.</b> S-16 at 3.	Not making progress	Not making progress	Not making progress	Not making progress	Not making progress
<b>Speech.</b> S-11 at 20.	30 minutes per week	30 minutes per week	30 minutes per week	30 minutes per week	30 minutes per week
<b>Goal: Dressing.</b> S-16 at 6.	No progress on worn articles	No progress on worn articles	No progress on worn articles	No progress on worn articles	No progress on worn articles
<b>OT.</b> S-11 at 20.	30 mins/cycle individual	30 mins/cycle individual	30 mins/cycle individual	30 mins/cycle individual	30 mins/cycle individual
<b>Behavior Plan.</b>	Daily data erased	Daily data erased	Daily data erased	Daily data erased	Daily data erased
<b>PCA.</b> S-11 at 20.	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA
<b>Social Skills</b>	None	None	None	None	None

<sup>1</sup> With no data on task completion, looking at recorded incidents where D.H. refused and was allowed to escape the task shows that behavior plan was not followed and this skill was not being taught. Refusals likely occurred that did not lead to aggression but were not part of progress monitoring.

<b>1<sup>st</sup> Half - 1<sup>st</sup> Grade</b>	<b>Aug./September 2014</b>	<b>October 2014</b>	<b>November 2014</b>	<b>December 2014</b>	<b>January 2015</b>
<b>Counseling</b>	None	None	None	None	None
<b>BCBA</b>	None	None	None	None	None
<b>Recorded Behavior Incidents incl. Restraints.</b> S-20 at 4-5; S-21 at 3.	9/10/14	10/3/14 (restraint) 10/6/14 (restraint) 10/9/14 (restraint) 10/15/14 (attempted restraint)	11/3/14 (restraint) 11/7/14 11/12/14 11/17/14 11/18/14 (restraint) 11/20/14 (restraint)	12/17/14 (restraint)	
<b>Recorded Toileting Accidents.</b> S-20 at 4-6.	9/30/14 (2 accidents)	10/9/14 10/15/14 10/16/14	11/7/14 11/12/14 11/20/14		1/15/15 1/22/15 1/28/15 1/30/15
<b>Early Pick-Ups.</b> HOD ¶ 56; Tr. 424:10-11.	Once per week	Once per week	Once per week	Once per week	Once per week

## Second Half - 1<sup>st</sup> Grade, 2014-15 School Year

2nd Half - 1 <sup>st</sup> Grade	February 2015	March 2015	April 2015	May 2015	June/July 2015 <sup>2</sup>
<b>Goal: 0 incidents of aggression in response to task demands for 4 weeks.</b> S-16 at 1; S-37 at 5.	Slight decrease in recorded episodes but not meeting goal.	Slight decrease in recorded episodes but not meeting goal.	Annual goal not met; goal repeated in April 2015 IEP. S-17 at 13.	No progress; increase in reported incidents	No progress.
<b>Recorded Incidents of Task Escape</b>	2/19/15. S-20 at 6.  PCA logs show PCA followed neither the behavior plan nor the aide support plan. HOD ¶ 57, 69; P-7.		Logs show PCA followed neither the behavior plan nor the aide support plan. HOD ¶ 57, 69; P-7.  OT reported lack of progress in task completion. S-17 at 6.		
<b>Goal: 0 Toileting Accidents per Week for 4 Weeks.</b> S-16 at 2; S-37 at 6.	Goal not met	Goal not met	Goal not met; increase in accidents; goal repeated in annual IEP. S-17 at 14.	No progress	No progress.
<b>Goal: Identify and Manage Feelings</b>	No progress  S-16 at 3	No progress  S-16 at 3	Despite lack of progress, goal deleted from IEP; S-16 at 3; S-17.	No reported progress	
<b>Speech</b>	30 mins/cycle. S-11.	30 mins/cycle. S-11.	D.H. exited from speech. S-17 at 2, 19.	None	None
<b>Goal: Dressing</b>	No progress on worn articles	No progress on worn articles	No progress on worn articles	No progress on worn articles	

<sup>2</sup> School year appears from record to end in June. Last progress report is dated June 12, 2015.

<b>2nd Half - 1<sup>st</sup> Grade</b>	<b>February 2015</b>	<b>March 2015</b>	<b>April 2015</b>	<b>May 2015</b>	<b>June/July 2015<sup>2</sup></b>
<b>OT</b>	30 mins/cycle (individual)	30 mins/cycle (individual)	Reduced OT from individual to group. S-17 at 19.	30 mins/cycle (group)	None
<b>Behavior Plan</b>	Daily data erased	Daily data erased	Daily data erased	Daily data erased	
<b>PCA.</b> S-11 at 20; S-17 at 19.	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA  Gap in PCA logs from 2/27/15 to 4/14/15	5 hours/day, not trained in ABA  Aide support plan that differed from behavior plan. S-17 at 29, 30.	5 hour/day, not trained in ABA	
<b>Social Skills</b>	None	None	None	None	
<b>Counseling</b>	None	None	None	None	
<b>BCBA</b>	None	None	None	None	
<b>ESY</b>					None
<b>Reported Behavior Incidents incl. Restraints</b>	PCA logs show frequent negative classroom behavior. HOD ¶ 69; P-7.	Unexplained gap in PCA logs from 2/27-4/15. P-7.	PCA logs show frequent negative classroom behavior. HOD ¶ 69; P-7.	5/4/15 (restraint). S-20 at 6  PCA logs show frequent negative classroom behavior including aggression HOD ¶ 69; P-7.	
<b>Recorded Toileting Accidents.</b> S-20 at 6	2/19/15	3/31/15	4/17/15 4/23/15	5/4/15	
<b>Early Pick-Ups.</b> HOD at ¶ 56; Tr. 424:10-11.	Once per week	Once per week	Once per week	Once per week	

## First Half - 2<sup>nd</sup> Grade – 2015-16 School Year

1 <sup>st</sup> Half - 2nd Grade	Aug./September 2015	October 2015	November 2015	December 2015	January 2016
<b>Goal: 0 incidents of aggression in response to task demands for 4 weeks.</b> S-37 at 5.	Significant regression.	Significant regression.	Significant regression.	No progress.	No progress.
<b>Recorded Incidents of Task Escape</b>	9/9/15 S-42 at 7-8			12/8/15  P-6 at 7	1/27/16 1/28/16 1/29/16 S-42 at 28-30
<b>Goal: Eliminate toileting accidents.</b> S-37 at 6.	Significant regression.	Significant regression.	Significant regression.	No progress.	No progress.
<b>Goal: Identify and Manage Feelings</b>	Goal deleted; no progress.	Goal deleted; no progress.	Goal deleted; no progress.	Goal deleted; no progress.	Goal deleted; no progress.
<b>Speech</b>	None	None	None	None	None
<b>Goal: Dressing.</b> S-37 at 4.	No progress on worn articles.	No progress on worn articles.	No progress on worn articles.	No progress on worn articles.	No progress on worn articles.
<b>OT</b>	30 min/cycle group	30 min/cycle group	30 min/cycle group	30 min/cycle group	30 min/cycle group
<b>Behavior Plan</b>	Daily data erased	Daily data erased	Daily data erased	Daily data erased	Daily data erased
<b>PCA.</b> S-17 at 19.	Aide not staffed at start of school year. HOD at 72.	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA
<b>Social Skills</b>	None	None	None	None	None
<b>Counseling</b>	None	None	None	None	None
<b>BCBA</b>	None	BCBA reports first learned of D.H.	Attends IEP meeting; one minimal change to behavior plan. HOD ¶ 91, 93-94.	First recorded observation. Tr. 180-82.	Data collected starting January 21. S-31 at 22.



<b>1<sup>st</sup> Half - 2nd Grade</b>	<b>Aug./September 2015</b>	<b>October 2015</b>	<b>November 2015</b>	<b>December 2015</b>	<b>January 2016</b>
<b>Recorded Behavior Incidents incl. Restraints.</b> HOD ¶ 73-75; S-42; S-53; P-6.	9/15/15 (restraints) 9/24/15 (restraint) 9/25/15 (restraints)	10/12/15 (restraints) 10/14/15 10/20/15 10/28/15 10/29/15 10/30/15	11/6/15 11/17/15 (attempted restraint)	12/8/15 (restraint) 12/16/15 (restraint) 12/17/15 (restraint) 12/18/15	1/22/2016 1/27/16 1/28/16 (possible restraint) 1/29/16
<b>Recorded Toileting accidents.</b> S-42 & S-53.	9/15/15 (bathroom related) 9/25/15 (bathroom related)	10/12/15 (toileting related) 10/14/15 10/28/15 10/29/15 10/30/15	None recorded.	12/8/15 (bathroom related) 12/17/15	1/22/16 1/27/16 1/29/16
<b>Recorded Early pickups.</b> S-43.	9/25/15	10/28/15 10/29/15 10/30/15	11/6/15 11/9/15 11/17/15	12/8/15 12/11/15 12/15/15 12/17/15	1/20/16
<b>Suspensions (full day).</b> S-43; P-6 at 13-14.			11/9/15 11/10/15 11/11/15	12/18/15	
<b>Placement</b>			Parent asks District to consider outside placement. S-22 at 5; Adds one hour/day in learning support. HOD 96; S-22 at 25.		

## Second Half - 2<sup>nd</sup> Grade, 2015-16 School Year

2nd Half - 2nd Grade	February 2016	March 2016	April 2016	May 2016	June/July (ESY) 2016
<b>Goal: 0 incidents of aggression in response to task demands for 4 weeks.</b> S-37 at 5.	No progress.	No progress.	No progress.		
<b>Recorded Incidents of Task Escape</b>	2/1/16 2/2/16 2/17/16 2/22/16  S-42 at 31, 32, 38		4/22/16  S-42 at 48		
<b>Goal: 0 Toileting Accidents per week for 4 Weeks.</b> S-37 at 6.	No progress.	No progress.	No progress.		
<b>Goal: Identify and Manage Feelings</b>	RR changes primary eligibility category to emotional disturbance and identifies continued need for speech. S-31.	No progress.	No progress noted.	Transferred to out of district placement on May 9, 2016	
<b>Speech</b>	None  RR determines there is continued need for speech. S-31 at 18-19.	30 min/cycle speech services added to revised IEP. S-35 at 28	30 mins/cycle		
<b>Goal: Dressing</b> S-37 at 4.	No progress on worn articles; OT did not re-evaluate as part of RR.	No progress on worn article.	No progress on worn articles.		

<b>2nd Half - 2nd Grade</b>	<b>February 2016</b>	<b>March 2016</b>	<b>April 2016</b>	<b>May 2016</b>	<b>June/July (ESY) 2016</b>
<b>OT</b>	30 mins/cycle group (formerly individual)	30 mins cycle group (formerly individual)	30 mins/cycle group (formerly individual)		
<b>Behavior Plan</b>	Daily data erased	Daily data erased	Daily data erased		
<b>PCA</b>	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA	5 hours/day, not trained in ABA		
<b>Social skills</b>	None	None	None		
<b>Counseling</b>	None	None	None		
<b>BCBA</b>	Conducts FBA	None in revised IEP	None in revised IEP		
<b>Recorded Behavior Incidents, incl. Restraints. S-42.</b>	2/1/16 2/2/16 2/8/16 2/16/16 2/17/16 2/18/16 2/19/16 2/22/16	3/17/16 (police called)	4/20/16 4/22/16		
<b>Recorded Toileting Accidents. S-42 &amp; 53; P-6.</b>	2/1/16 2/2/16 2/8/16 2/18/16 2/19/16		4/22/16 (bathroom related)		
<b>Recorded Early Pick-ups. S-43</b>	2/1/16 2/8/16 2/10/16 2/22/16	3/22/16 3/31/16	4/22/16 4/28/16		
<b>Suspensions (full day). S-43; P-6 at 13-14.</b>			4/23/16		
<b>Placement</b>				May 9 left for out of district placement	