

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 Due Process Hearing Officer

Consolidated Final Decision and Order

ODR No. 21462-18-19

ODR No. 21625-18-19

CLOSED HEARING

Child's Name:

Q. G.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

07/26/2019

Introduction

This matter concerns the special education rights of a former student (the Student) of the Charter School (School). The Student's parents (the Parents) allege that the Student's rights under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* were violated while attending School. School is now defunct, ceasing all operations in the weeks before this decision. Anticipating that outcome well in advance, the Student's parents initiated these proceedings against the Pennsylvania Department of Education (PDE), which is Pennsylvania's State Educational Agency (SEA). The Parents' original complaint named PDE as the only respondent. That matter was assigned to me as ODR No. 21462-1819KE.

PDE raised several defenses to the Parent's complaint. In sum, PDE argued that the Parents' claims were not ripe because School was still open. PDE also argued that it is not a proper party to these proceedings and that I lacked jurisdiction to make determinations that would resolve PDE's party status under current case law (see discussion below). I convened a conference call to address PDE's defenses. During the call, I explained my understanding that IDEA claims must be raised against the local educational agency (LEA – School in this case) as long as it is open, but that PDE cannot participate in the hearing if it is not a party. I invited briefing on the issue.

The Parents filed an amended complaint after the conference call. The amended complaint is similar in substance to the original complaint but named both PDE and School as parties. As a technical point, claims against School were assigned their own file number, ODR No. 21625-1819KE, and I consolidated the matters.

The parties negotiated with each other in an effort to resolve this matter, making scheduling motions to enable process. Eventually, the parties concluded that no material facts were in dispute, but that they were unable to resolve the dispute via settlement. Consequently, the parties agreed that adjudication on a stipulated record was the most efficient way to proceed. I granted additional scheduling motions to give the parties time to draft and submit stipulations.

The parties drafted stipulations. The Parents filed a copy of those stipulations, which were executed only by the Parents and PDE, along with 11 stipulated documents (605 pages in total). At that time, the Parents indicated that School did not agree to the stipulations. School replied to clarify that it disagreed with only with one of the stipulations. I scheduled a conference call to discuss next steps. Between my receipt of the stipulations and the conference call, School confirmed that it ceased operations on June 7, 2019. The Parents then withdrew all claims against School.

Issues

The issues in this case are:

1. Did School deny the Student a free appropriate public education (FAPE) during the period from February 13, 2017 to June 7, 2019?
2. Are the Parents owed reimbursement for the cost of tuition and transportation for a program that the Student attended in the summer of 2019?
3. Are the Parents entitled to an independent educational evaluation (IEE) at public expense?

Claims Against School

The Parents withdrew all claims against School. ODR No. 21625-1819KE is, therefore, dismissed.

Stipulated Facts

I adopt the stipulated facts as my own findings of fact in ODR No. 21462-1819KE. I reproduce those stipulations here with some modifications to the headings written by the parties, some formatting changes, and some edits to protect the Student's privacy. For example, one of the stipulations is the Student's date of birth, which is not reproduced below. Footnotes are my own; they are not stipulations. At the time of drafting, some future events were anticipated. All future events occurred as anticipated, but I did not change the tense use by the parties. *See, e.g.* #10.

Some of the parties' stipulations are more akin to legal conclusions. They represent a mutual understanding between the parties about PDE's obligations to the Student under the circumstances of this case. I have kept those stipulations both to illustrate that understanding and because the parties' conclusions mirror my own reading of applicable laws.

The parties (now the Parents and PDE only) stipulate as follows:

Background

1. The Student has been identified with autism under the Individuals with Disabilities Education Act (IDEA).
2. The Student has academic, behavioral, social skills, speech and language, and sensory needs as a result of autism.

3. By reason of the Student's disability, the Student is eligible for special education and related services under the IDEA.
4. The Student is "disabled" under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.
5. The Student is "otherwise qualified" to participate in school activities.
6. School is the Student's LEA.
7. PDE is the Student's SEA.
8. The Student has been enrolled in School since the 2016-2017 school year (2nd Grade).
9. The School District of Philadelphia revoked School's charter on December 14, 2017. The Charter School Appeal Board affirmed the revocation by the School District of Philadelphia on December 17, 2018. School did not appeal the Charter School Appeal Board's decision.
10. The Charter School Appeal Board's decision will take effect at the end of the 2018-2019 school year. School's last day of school for the 2018-2019 school year is June 7, 2019. School is closing at the end of the 2018-2019 school year. School's charter term expires June 30, 2019.
11. In May 2019, School issued a NOREP specifying [Private School] as Student's placement, including for ESY 2019.
12. Parents agreed to the placement by signing the NOREP on May 24, 2019.

Prior Hearings

13. On January 26, 2018, Parents filed a due process complaint against PDE and School alleging that School denied Student a free and appropriate public education (FAPE) during the 2016-2017 and 2017-2018 school years. Parents further alleged that because School could not meet its FAPE obligations, PDE must step in and satisfy School's obligations.
14. The Pennsylvania Office for Dispute Resolution (ODR) bifurcated the January 26, 2018 complaint into a case against PDE (ODR No. 20202-1718KE) and a case against School (ODR No. 20201-1718KE).¹

¹ These matters were assigned to a different hearing officer.

15. On February 25, 2018, a hearing officer granted PDE's motion to dismiss ODR No. 20202-1718KE for lack of jurisdiction.
16. The Parents appealed the hearing officer order dismissing ODR No. 20202-1718KE by filing a civil action in the United States District Court for the Eastern District of Pennsylvania under 20 U.S.C. § 1415(i)(2).
17. On April 11, 2018, while the Parents' appeal in District Court was pending, a hearing officer ruled for them in ODR No. 20201-1718KE, holding that School had denied the Student FAPE since the 2016-2017 school year. The hearing officer awarded the Parents, *inter alia*, compensatory education and IEEs, and she ordered School to provide Student an educational program that affords the Student a FAPE.

Current Complaints

18. School failed to comply with the April 11, 2018 hearing officer order and continued to deny the Student FAPE. School failed to provide the Student the compensatory education and evaluations to which the Student is entitled under the order, and it failed to provide the Student an educational program that affords the Student a FAPE.
19. The Parents filed a second due process complaint against PDE on November 20, 2018 in which the Parents alleged School's ongoing failure to fulfill its FAPE obligations. ODR designated the case ODR No. 21462-1819KE.
20. On January 9, 2019, at the hearing officer's instruction, the Parents amended their complaint in ODR No. 21462-1819KE, naming School as an additional party. ODR designated the case against School as ODR No. 21625-1819KE and consolidated it with ODR No. 21462-1819KE.²
21. On January 23, 2019, the United States District Court for the Eastern District of Pennsylvania remanded ODR No. 20202-1718KE to ODR for a due process hearing and ordered ODR to consolidate ODR Nos. 20202-1718KE and 21462-1819KE.
22. Pursuant to the District Court's order, ODR consolidated ODR Nos. 20202-1718KE and 21462-1819KE.

School is Unable to Fulfill its FAPE Obligations to the Student

23. School has the following outstanding FAPE obligations to the Student:

² As I recall the conversation, I expressed my opinion that due process claims are properly against School, the Student's LEA, as long as School was open. I do not recall "instructing" the Parents to file against School.

- a. provide the Student compensatory education, including the compensatory education remedy set forth in the April 11, 2018 hearing officer order;
 - b. pay for ESY 2019 at, and transportation to and from, [Private School] to which School and the Parents agreed upon pursuant to the May 2019 NOREP; and
 - c. pay for the Student's IEE in reading and written expression.
24. School is unable to provide any compensatory education remedy to the Student, including the compensatory education remedy set forth in the April 11, 2018 hearing officer order.
25. School is unable to pay for ESY 2019, or provide transportation to and from, pursuant to the May 2019 NOREP.
26. School is unable to pay for the Student's IEE for reading and written expression.
27. School is unable to provide the Student a FAPE.

PDE's Obligations to the Student

28. As the SEA, PDE is ultimately responsible for ensuring that IDEA-eligible students receive FAPE. 20 U.S.C. § 1412(a)(11).
29. Under the IDEA, PDE is required to provide educational services owed to an eligible student when the student's LEA is unable to provide the services. 20 U.S.C. § 1413(g).
30. On April 18, 2018, PDE issued a fact-finding investigation report concluding that School had denied the Student FAPE since November 21, 2017. PDE determined that to remedy the denial, *inter alia*, School must provide compensatory education.
31. Pursuant to the April 11, 2018 hearing officer order, on July 13, 2018, the Montgomery County Intermediate Unit 23 conducted an IEE of the Student, for which PDE paid.
32. On April 9, 2019, PDE issued a letter to the Parents to inform them that PDE would fund any remaining compensatory education owed to Student pursuant to the April 11, 2018 hearing officer order that School had yet to provide.
33. On April 30, 2019, PDE issued a fact-finding investigation report concluding that School has denied Student FAPE since February 13, 2017. PDE determined that to remedy the denial, the Student requires compensatory education and an IEE in reading and written expression. On the same date, PDE issued a letter to the

Parents to inform them that PDE would provide the compensatory education and pay for an IEE in reading and written expression.

34. Because School is unable to fulfill its FAPE obligations to Student, PDE - as the SEA - must step in and satisfy School's obligations. This requires PDE to:
- a. pay for Student's compensatory education to which Student is entitled under the April 11, 2018 hearing officer order from February 13, 2017 through June 7, 2019, the last day of School's 2018-2019 school year;
 - b. pay for ESY 2019 at, and transportation to and from, [Private School] pursuant to the May 2019 NOREP; and
 - c. pay for Student's IEE in reading and written expression.

Documentary Evidence

The parties' stipulations are supported by the jointly-submitted documentary evidence. I make those eleven exhibits part of the record of this case. Some of the pages within those exhibits are duplicative, but I accept the evidence in its entirety.

Several of the exhibits are printouts of online newspaper articles. Those articles accurately reflect actions taken by PDE and the School District of Philadelphia's School Reform Commission (SRC). I accept the articles for that purpose only, and only because they are jointly submitted.

Applicable Legal Standards

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including charter schools, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be "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 each child's individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew F.* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id* at 3015.

Historically the Third Circuit has interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003).

LEAs are not required to maximize a child’s opportunity; it must provide a basic floor of opportunity. See *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than “trivial” or “de minimis” benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id* at 1000. In terms of academic progress, grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics.

The essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student’s circumstances.

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child’s educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v.*

Central Regional Sch. District, 81 F.3d 389 (3d Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the “hour-for-hour” method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

The hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). These courts conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. This more nuanced approach was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(quoting *Reid* and explaining that compensatory education “should aim to place disabled children in the same position that the child would have occupied but for the school district’s violations of the IDEA.”).

Despite the clearly growing preference for the “same position” method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount or what type of compensatory education is needed to put the student back into that position. Even cases that express a strong preference for the “same position” method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

“... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district’s deficiencies.”

Jana K. v. Annville Cleona Sch. Dist., 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student’s school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) may be warranted if the LEA’s “failure to provide specialized services permeated the student’s education and resulted in a progressive and widespread decline in [the Student’s] academic and emotional well-being” *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. *See also Tyler W. ex rel. Daniel*

W. v. Upper Perkiomen Sch. Dist., 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011AS, at 18-19 (Nov. 12, 2011).

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default – unless the record clearly establishes such a progressive and widespread decline that full days of compensatory education is warranted. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to find and correct the problem.

SEA as Remediator of Last Resort

Above, the parties stipulate that PDE is responsible for funding any remedies owed to the Student or Parents as a result of School's failures. The stipulations point to applicable regulations, but the proposition is also supported by case law. Under the controlling cases, when an LEA is unable to remediate a denial of FAPE, the SEA must step in as the remediator of last resort by funding compensatory education or services. *See Kruelle v. New Castle Cnty. Sch. Dist.*, 642 F.2d 687, 697-8 (3d Cir. 1981) (the SEA was ultimately responsible to remedy a denial of FAPE because the SEA has ultimate responsibility for the provision of FAPE, even if it is not responsible for the direct provision of services).

Specifically concerning Pennsylvania charter schools, courts have held that settlement agreements between parents and a charter school are enforceable against PDE after the charter school closes. *Charlene R. v. Solomon Charter Sch., et al.*, 2014 U.S. Dist. LEXIS 164161; 2014 WL 6676575 (E.D. Pa. Nov. 21, 2014). The same is true for

charter schools that remain open but unable to fund settlement agreements. *Lejeune v. Khepera Charter Sch.*, 2018 U.S. Dist. LEXIS 146926 (E.D. Pa. Aug. 29, 2018).³

Discussion

The parties agree that School violated the Student's right to a FAPE. The parties also agree that PDE is responsible for remediating that violation.

In Pennsylvania, hearing officers cannot approve settlement agreements. Nevertheless, the parties came to an agreement about what remedies PDE owes to the Student and the Parents. In pre-hearing correspondences and conference calls, I explained that I would accept the parties' agreement about relief as jointly proposed remedies. After reviewing the entire stipulated record, I find that it is equitable to award the jointly-proposed relief. I adopt the parties' proposal as my own award. My award is as follows:

1. PDE must pay for 2,380 hours of compensatory education for the period of February 13, 2017 to April 30, 2019, which includes the compensatory education remedy set forth in the April 11, 2018 hearing officer order. PDE must also pay for compensatory education calculated at 7 hours per day from May 1, 2019 through June 7, 2019, the last day of School's 2018-2019 school year. The compensatory education shall be subject to the following terms:
 - a. PDE will structure the compensatory education based on hours of services obtained. PDE will deduct one hour of compensatory education for every hour of compensatory education service received by Student. Parents may also use the compensatory education for materials or services that are not invoiced based on a number of hours. In situations where the materials or services are not invoiced based on number of hours provided, PDE will deduct one hour of compensatory education for every \$65 billed by the provider.⁴
 - b. The compensatory education may be used by Parents in their sole discretion, so long as (1) the provider of the services is properly credentialed, licensed, or certified, (2) compensatory education is used for services that occurred after February 13, 2017, and (3) the services take the form of appropriate developmental, remedial, or enriching instruction or are services or materials that further the goals of Student's current or future Individualized Education Programs (IEPs), recommended by Student's evaluation/reevaluation reports, remediate past denials of FAPE, or overcome the effects of Student's disabilities. If Student is

³ It does not escape my attention that *Lejeune* involved School. Also, a particular difficulty in this case was a jurisdictional question as to whether I could determine School's financial ability to provide a remedy. The parties' stipulations resolve that issue, and so I will not address that further in this decision.

⁴ Hearing officers in Pennsylvania rarely assign a dollar-per-hour rate to compensatory education awards. Rather, the tendency is to leave the awards "uncapped" or pin the awards to prevailing market rates in the parties' geographic area. In this case, I adopt the rate proposed by the parties.

enrolled in a public school, “compensatory education” includes services provided outside of the regular school day which supplement services included in Student’s IEP.

- c. Examples of permissible uses of the compensatory education hours include but are not limited to:
 - i. Educational or instructional programs, including but not limited to tutoring, courses, classes, after school programs, summer and winter break programs;
 - ii. Related services, as that term is defined by the IDEA and its implementing regulations;
 - iii. Evaluations and assessments by appropriately credentialed individuals, including, but not limited to, psychoeducational assessments, functional behavior assessments, vocational assessments, related services assessments, transitional assessments, and neuropsychological assessments as permitted by the IDEA;
 - iv. Behavioral therapy, training, or education provided by Board Certified Behavior Analysts (BCBA) or Board Certified Assistant Behavior Analysts (BCABA) or providers under the authority and supervision of a BCBA or BCABA, such as an Applied Behavior Specialist, or by qualified behavioral specialists, therapeutic support staff, personal care assistants, or licensed or appropriately accredited providers, schools, or programs;
 - v. Transition services and planning, as defined by the IDEA, including services that instruct the Student in skills needed for employment, post-secondary education, or independent living, including but not limited to apprenticeships;
 - vi. Services of appropriately credentialed professional educators to assist in devising Student’s educational program, and identifying or selecting appropriate assistive technology devices;
 - vii. Parent training;
 - viii. Transportation costs to the provider of services for which reimbursement is due, including but not limited to public transportation and transportation at the then-applicable Commonwealth of Pennsylvania’s reimbursement rate when such transportation is provided by the Parent or the Student to travel to and from a provider providing compensatory education services;

- ix. Materials, services, or equipment (as “equipment” is defined by the IDEA and its implementing regulations) that further the goals of Student's current or future IEPs or private school education or that will assist Student in overcoming the effects of Student's disabilities, as identified in evaluation report(s) prepared by an appropriately credentialed professional, Student's IEP, or an education plan developed by a private school;
 - x. Materials, services, or equipment (as “equipment” is defined by the IDEA and its implementing regulations) that support the development of skills in Science, Technology, Engineering, Art, and Math (STEAM); improve Student's social, fine or gross motor, behavioral, adaptive and language skills; or prepare Student for employment or independent living;
 - xi. Private, parent-selected educational placements and equipment or activity fees for nonacademic and extracurricular services and activities as defined by 34 C.F.R. § 300.107(b);
 - xii. Assistive technology, as that term is defined by the IDEA and its implementing regulations, including computers, printers, tablets, and educational software; and
 - xiii. Nonacademic and extracurricular activities designed to assist Student with improving social skills, behavior, furthering transitional programming, or otherwise overcoming the effects of Student's disabilities.
- d. The compensatory education hours may not be used for:
- i. Purchasing more than one computer, more than one printer, or more than one tablet during a three-year period, unless the computer, printer, or tablet to be replaced is antiquated;
 - ii. Activities intended for personal enrichment;
 - iii. Leisure travel;
 - iv. Living expenses;
 - v. Food;
 - vi. Clothing;

- vii. Entertainment activities, including but not limited to, attendance at amusement parks, movies, and vacations;
 - viii. Video game systems such as PlayStation and X-Box;
 - ix. Legal services, attorney's fees, or litigation costs;
 - x. Services which have no educational purpose or which are not permissible under the IDEA.
2. PDE must pay for ESY 2019 at, and transportation to and from, Private School pursuant to the May 2019 NOREP.
 3. PDE must pay for an Independent Educational Evaluation in reading and written expression.

An appropriate order follows.

ORDER

Now, July 26, 2019, it is hereby **ORDERED** as follows:

1. Claims related to ODR No. 21625-1819KE are withdrawn and that matter is **DISMISSED**.
2. PDE shall provide the award detailed in the decision above.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER