

*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**

**Final Decision and Order  
ODR No. 21646-18-19  
CLOSED HEARING**

**Child's Name:**

E. S.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Local Education Agency:**

Coatesville Area School District  
3030 C G Zinn Road  
Thorndale, PA 1937

**Counsel for the LEA:**

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Levin Legal Group, P.C.  
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**Hearing Officer:**

Brian Jason Ford, JD, CHO

**Date of Decision:**

April 15, 2019

## Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student).<sup>1</sup> This hearing was requested by the Student's parent (the Parent) against the Student's school district (the District). The Parent claims that the District has not provided necessary services to the Student and has not been responsive to the Student's needs. The District argues that it has complied with all legal mandates.

Under the legal standards that I must apply, I find in favor of the Parent in part and in favor of the District in part.

## Issues

The Parent is *pro se*, meaning that she was not represented by a lawyer.<sup>2</sup> In her complaint, the Parent alleged that the District was not following recommendations from a doctor, not disclosing information during an evaluation, not providing services under the Student's current IEP, and not following recommendations from a mental health treatment center. During the due process hearing, the Parent clarified that she was seeking compensatory education because the District was not meeting the Student's needs, and in-person help from a special education teacher while attending the District's cyber school program.<sup>3</sup> The issues for me to resolve therefore, are:

1. Is the Student entitled to compensatory education?
2. Must the District provide in-person help from a special education teacher while the Student attends the District's cyber school program?

## Findings of Fact

I carefully considered all of the documents that both parties provided, and all of the testimony. I find as follows:

1. In April of 2017, the Student was admitted to an inpatient behavioral health hospital for about three weeks. NT 45, P-1.<sup>4</sup> The Student was discharged from the behavioral health hospital to an outpatient treatment center for approximately one month.<sup>5</sup>

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<sup>1</sup> Identifying information is omitted to the extent possible.

<sup>2</sup> I have done my best to make this decision readable for non-lawyers by avoiding legal terms, explaining legal terms that cannot be avoided, and keeping citations to case law in footnotes.

<sup>3</sup> NT 16-17.

<sup>4</sup> References to "P-" followed by a number are to the Parent's exhibits.

<sup>5</sup> To protect the Student's privacy, I will not name either facility. It is worth noting, however, that the first facility is a mental health hospital. The second facility has an inpatient program for individuals with drug and alcohol addiction and an outpatient program for individuals with emotional and psychiatric disorders

2. The 2017-18 school year was the Student's 11<sup>th</sup> grade year. During that school year, the Student was frequently absent from school. Despite excessive absences, the Student earned proficient grades in all classes except for Sports Medicine (Advanced) and Modern American History (Below Basic).<sup>6</sup> S-5, S-7, S-8.
3. Although the date is uncertain, the Parent requested a special education evaluation for the Student. The District evaluated the Student and drafted an evaluation report (ER). The ER is dated August 10, 2018. S-3.<sup>7</sup>
4. Through the ER, the District concluded that the Student qualified for special education as a student with an emotional disturbance. More specifically, the evaluator noted elevated ratings for depression and anxiety. The evaluator also noted problems with attention and executive functioning but attributed those problems to the Student's anxiety and depression. S-3.
5. The ER was the Student's first special education evaluation. The Student had never received special education before. S-3.
6. The 2018-19 school year is the Student's 12<sup>th</sup> grade year.
7. The Student's IEP team met on September 5, 2018. The Parent and Student attended the meeting. S-5.
8. At the meeting, the District offered an IEP. S-5.
9. The IEP included no goals. S-5.
10. The IEP did not have a post-secondary transition plan. S-5.
11. The IEP included several program modifications and specially designed instruction (SDI). However, the only modifications and SDI that the IEP *required* the District to provide were extended time on tests, small group testing, and preferential seating. Everything else was either non-binding suggestions (e.g. "[Student] will benefit from..." or "[Student should have opportunities to..." or "Teachers should be mindful..."), unspecified "strategies," or services provided to all students (e.g. "Access to the school counselor..."). S-5.

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including substance use treatment. The Student attended the outpatient program at the second facility and was not placed there for drug or alcohol problems. NT 80-81.

<sup>6</sup> The District provides number grades instead of letter grades, and provides descriptors for numeric ranges.

<sup>7</sup> The citation "S-" with a number is to the District's exhibits.

12. The District issued a Notice of Recommended Educational Placement (NOREP) with the IEP. S-5. Functionally, the NOREP is a form through which the Parent can accept or reject the IEP. S-5.
13. On September 20, 2018, the Parent wrote on the NOREP that the IEP should contain the Student's therapy goals and requested an updated IEP reflecting those goals. The Parent did not check boxes on the NOREP form accepting or rejecting the IEP. S-5.<sup>8</sup>
14. The District re-issued the same NOREP on October 26, 2018. The Parent signed the NOREP on November 1, 2018 but did not indicate approval or disapproval. S-5.
15. The District re-issued the same NOREP again in November, 2018. The Parent signed and return the NOREP, checking a box to approve the IEP. However, the Parent also wrote, "Please send the IEP for me to review. I have asked for the IEP form [multiple] times. Please send the IEP form with [the Student]." S-5. The District complied with the request. NT 129.
16. The Parent's signature on the NOREP is November 20, 2018. The District's signature on the NOREP (which always should come first) is November 26, 2018. I find that the Parent signed and returned the NOREP on November 20, 2018. S-5.
17. The Student's attendance problems continued immediately at the start of the 2018-19 school year and did not improve. At the time of the hearing (March 15, 2019) the Student had attended only 57 days of school. S-7.
18. In November 2018, the Student had a concussion. NT 114.<sup>9</sup> The Student sought medical treatment for the concussion on November 30, 2019. S-4. The Student received a medical note excusing absences and requesting accommodations for the concussion the same day. S-4.
19. The Student sought additional medical treatment from a specialized hospital for the concussion on January 4, 2019. The Student received a more extensive list of academic accommodations from the hospital the same day. S-4.
20. The Office for Dispute Resolution received the Parent's complaint on January 14, 2019. The Parent dated the complaint December 12, 2018.<sup>10</sup>

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<sup>8</sup> No evidence was presented establishing what the therapy goals were, or if or when they were shared with the District.

<sup>9</sup> NT means Notes of Testimony – the transcript of the hearing session.

<sup>10</sup> The Parent did not, of course, raise claims in the complaint concerning events that happened after January 14, 2019. However, both parties affirmed their understanding of the issues presented. The majority of the District's case involves events after January 14, 2019.

21. The District operates a cyber school program. The cyber school program is not a public cyber charter school. Rather, it is the District's own program. NT *passim*.<sup>11</sup>
22. In February 2019, the Parent and District met at an IEP team meeting. During the meeting, the Parent told the District that she wanted the Student to attend the District's cyber school program. NT 88-89, S-6 at 4.
23. The Parent's brother's partner (the Teacher) is a special education teacher who, during the time in question, was not employed. The Teacher came to the February 2019 IEP team meeting and offered to help the Student while the Student attended the District's cyber school program. NT 89-90, S-6 at 4.
24. The District was concerned about the Student's ability to attend the cyber program after sustaining a concussion. The Parent obtained a clearance letter from a doctor and gave that letter to the District. The District then approved the Student's participation in the cyber program. NT 91-92.
25. The District revised the Student's IEP to reflect participation in the cyber program and invited the Parent to a meeting on March 11, 2019, to review the changes. The Parent was not able to attend the meeting. NT 93-95.
26. District personnel called the Parent on March 14, 2019 to discuss the IEP changes but did not connect with the Parent. The Parent did not return the District's call. NT 97.
27. On March 18, 2019, the District drafted a revised IEP. The revised IEP listed the Student's absences to date. S-6.
28. The revised IEP did not include a post-secondary transition plan but noted that a "transition survey will be completed to identify post-secondary needs." S-6 at 32.
29. The revised IEP included the following goals:
  - a. "In each of [gendered pronoun redacted] classes, [Student] will complete 8 out of 10 assignments and submit them on due dates in 4 out of 5 opportunities over the course of a nine week marking period."
  - b. "When presented with a problem (non-preferred task, frustrating situation, criticism/correction), [Student] will accurately determine the size of the problem (big problem, little problem) and determine the appropriate emotional response (take a break, talk with teacher, take a deep breath, replace frustration with good thoughts, etc.) and return to the task at hand in 4 out of 5 trials as measured by teacher charted data."

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<sup>11</sup> NT *Passim* means that there are references found throughout the transcript. I typically reference the transcript as a whole when the fact was repeated and is not in dispute.

- c. "When presented with genuine or contrived scenarios of social conflict, [Student] will demonstrate problem solving skills by identifying the problem and generating two solutions appropriate to the problem in 4/5 trials, as measured by data collection."
  - d. "Given helpful organizational strategies, [Student] will present with organized school materials (folders, books, assignments, supplies) in [incorrect gendered pronoun redacted] desk  $\frac{3}{4}$  times, 3 weeks in a row, as measured by review of timely completion of assignments, and teacher report."
30. None of the goals are baselined. However, the first goal includes a note that the Student has not attended enough school for a baseline to be established. S-6
31. The revised IEP included non-substantive edits to the program modifications and SDI. Several SDI marked as new were repeated from the original IEP. S-6.
32. It is not clear when or if the District transmitted the revised IEP to the Parent. A NOREP for the revised IEP does not appear in the record.
33. Despite ongoing attendance problems, the Student is on track to graduate at the end of the 2018-19 school year. S-9.
34. The family moved at least once during the 2018-19 school year. The record clearly indicates that the Parent and Student moved in late October or early November 2018. The District was unaware of the move until shortly before this hearing. NT 23-24.<sup>12</sup>
35. The family does not have internet access at home, and the Parent does not have regular access to email. NT 24. The Student participates in the cyber program from the Teacher's house. NT 25-26.

### **Witness Credibility**

Part of my job as a hearing officer is to judge the credibility of witnesses. That means that I have to decide if I can rely on what witnesses said to resolve the case.<sup>13</sup> In this

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<sup>12</sup> During the hearing, the District sought to confirm the Parent and Student's residency within its boundaries. The District ultimately did not raise residency as a defense. The Parent's responses to the District's questions alert me to the possibility that the Student may have been protected by the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 *et seq.* for at least a portion of the time in question. As applied to this case, the Act does not impact upon the Student's special education rights because there is no dispute that the District was the Student's local educational agency at all times. However, I urge the Parent to immediately inform the District if the Student's housing is ever in jeopardy.

<sup>13</sup> During a due process hearing, the hearing officer is [redacted]. One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's

case, all witness testified credibly. There was very little dispute concerning the underlying facts. To the extent that testimony from one witness contradicted another, the witnesses simply recalled facts differently.

## **Legal Standards**

These are the laws and standards that I must apply to resolve this case.

### ***The Burden of Proof***

The Parent requested this due process hearing and is asking the District to provide a teacher and compensatory education. Therefore, the Parent must prove that the Student is entitled to the things that the Parent asked for.<sup>14</sup>

### ***Free Appropriate Public Education (FAPE)***

Students with disabilities who need special education are entitled to an IEP. An IEP is a document that says how the Student is doing, sets goals for the Student to achieve, and explains what the District will do to enable the Student to meet the goals.

An IEP satisfies legal standards if it provides free appropriate public education (FAPE). An IEP is said to provide a FAPE if it provides an appropriately ambitious education in light of the Student's circumstances. An IEP does not have to provide the best possible education, but it must give the Student a meaningful educational benefit.<sup>15</sup>

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credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion." ). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

<sup>14</sup> The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parent is the party seeking relief and must bear the burden of persuasion.

<sup>15</sup> My explanation of the FAPE standard is streamlined in this decision. A more typical (and more robust) explanation is found nearly all of my due process decisions – most recently *E.G. v. Colonial School District*, ODR No. 21067-1819KE. The essence of the FAPE standard described in this decision comes from multiple sources: 20 U.S.C. §§ 1412, 1414(d); 34 C.F.R. § 300.324; *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003); *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); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), cert. denied, 488 U.S. 1030 (1998); *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir.

## ***Compensatory Education***<sup>16</sup>

Compensatory education is an appropriate remedy if the District fails to offer a FAPE. If the District fails to offer a FAPE, there are two ways to decide how much compensatory education the Student should receive. The first way is to award one hour of compensatory education for each hour that the District denied a FAPE to the Student. The second way is to figure out what services will put the Student in the same position that the Student would be in but for the denial of FAPE.

In this case, neither party put on evidence to show what services the Student needs to make up for a denial of FAPE, and so I must use the hour-for-hour method.

## **Discussion**

### ***The Student is Entitled to Compensatory Education***

As a threshold matter, I acknowledge that the focus of the Parent's complaint was not the focus of the evidence presented during the hearing. The Parent made specific allegations in the complaint about the District's adherence to medical recommendations. At the hearing session, however, claims were broader and the appropriateness of the Student's education as a whole during the 2018-19 school year was in question. Both parties acknowledged that the Parent alleged a denial of FAPE and was seeking compensatory education.<sup>17</sup> Consequently, I considered the broad claims that were presented in this hearing.

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1995); *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011); *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989); *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), cert. denied, 488 U.S. 925 (1988).

<sup>16</sup> As with the FAPE standard, my explanation of the compensatory education standard is streamlined in this decision. A more typical (and more robust) explanation is found nearly all of my due process decisions – most recently *R.D. v. North Pocono School District*, ODR No. 21067-1819KE. The essence of the standard presented here comes from multiple sources, but primarily *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. I acknowledge that, in recent cases, courts tend to prefer the make-whole standard articulated in *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). Ultimately, 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.

<sup>17</sup> Similarly, due process complaints are presumptively sufficient and need not specify every fact that the complainant intends to prove.



The Student was found eligible for special education on August 10, 2018. The first day of school was August 27, 2018. Therefore, from August 27 to September 5, 2018, the Student was entitled to an IEP but did not have one. The Student is entitled to one hour of compensatory education for each hour that school was in session during this period of time. That amount, however, will be reduced in part by the Student's absenteeism, as discussed below.

From September 5, 2018 through November 20, 2018, the Student had no IEP because the Parent did not approve the NOREP. School districts may not provide initial special education services without parental consent and cannot request a hearing to override withholding of consent.<sup>18</sup> Typically, I could not award compensatory education for this period of time. However, compensatory education is an equitable remedy, and the equities in this case require a different result. When the Parent received an IEP with no goals, she asked the District to put goals into the IEP. The District ignored that request and continued to issue the same NOREP for the same IEP. Below, I find that the offered IEP was not calculated to provide any educational benefit. As a result, the Student would have not received a FAPE even if the Parent had said yes immediately. Since the Student would have received no benefit even if the Parent immediately complied with the District's requests, I find that the Student is owed one hour of compensatory education for each hour that school was in session during this period of time. As with the very start of school, however, that amount will be reduced in part by the Student's absenteeism.

The Student suffers from chronic absenteeism. At one level, the District cannot be held responsible for failing to educate a child who does not come to school. At another level, the District had an obligation to determine if the Student's absenteeism is, even in part, a function of the Student's disabilities. If so, the District had an obligation to determine whether special education supports could improve the Student's attendance.<sup>19</sup> The District did not satisfy that obligation. Looking at these factors together, I conclude that the Student's compensatory education award must be reduced by half an hour for each hour that the Student did not attend school from August 27, 2018 through November 20, 2018. After November 20, 2018, the Student's absenteeism does not reduce the Student's compensatory education award. That period of time is discussed in greater detail below.

From November 20, 2018 through March 18, 2019, the District's original IEP was the blueprint for the Student's special education. The original IEP falls well below every applicable standard. The Parent does not challenge the ER, and so I accept the conclusions and recommendations in the ER as true. The original IEP incorporates the ER to express the Student's present educational levels. In so doing, the IEP explains what the Student's needs were at the time that the document was drafted. The remainder of the IEP does nothing at all.

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<sup>18</sup> 20 U.S.C. § 1414(a)(D)(ii)(II).

<sup>19</sup> See, e.g. *A.W. v. Middletown ASD*, ODR No. 13543-1213AS (2016).

It is remarkable that this is the first and only instance in this Hearing Officer's experience that a school district has held up an IEP that contains *no goals* as appropriate. The IEP says nothing at all about what progress the Student should make. Of equal importance, under a very generous reading, the IEP only guarantees extended time on tests, test questions read aloud, use of a calculator, and small group testing. See S-5 at 19. There is no evidence that any of those accommodations have anything to do with remediating the Student's anxiety and depression. In sum, the IEP has no goals and provides no special education relative to the Student's needs as identified by the District.

I recognize that modifications provided in the IEP flow directly from the ER, but that is hardly a defense under the circumstances of this case. The ER's recommendations provide information so that the IEP team can craft a program. For example, the ER recommended that the Student would benefit from "strategies to improve ... class attendance and work completion." The purpose of the IEP team is to take that recommendation and decide what those strategies are. An IEP must describe the program that the Student will receive. The IEP that was in place for the Student from November 20, 2018 through March 18, 2019, falls significantly below this standard.

The original IEP was not calculated to provide any meaningful benefit whatsoever to the Student at the time it was offered. I find that the Student is owed one hour of compensatory education for each hour that school was in session during this period of time. Unlike prior periods, I will not reduce this award in consideration of the Student's attendance. The District had both an obligation and an ample opportunity to address the Student's attendance through special education interventions but did nothing of the sort. Further, it is not clear if a traditional concept of attendance applies after the Student enrolled in the District's cyber program. What is clear, however, is that education encompasses much more than academics, and the District breached its duty to provide any special education to the Student in the domains that it identified as areas of need in its own ER.

From March 18, 2019 through the present, the District has offered the revised IEP. The revised IEP is better than the original in form because it includes goals. Unfortunately, the revised IEP is not better than the first in substance. None of the goals are baselined. Even if the Student's attendance could excuse the lack of baselines, none of the goals are objective. Simply adding numbers to a goal does not make it objective or even measurable. For example, take the goal "[Student] will complete 8 out of 10 assignments and submit them on due dates in 4 out of 5 opportunities over the course of a nine week marking period." Eight out of ten and four out of five are both eighty percent – but they do not mean the same thing in context. Does this goal call for the Student to complete eight assignments and turn in four of those? Does this goal call for the Student to have five opportunities to complete and turn in eight assignments? There is a significant difference between the two, and it is not possible to tell what constitutes mastery for the goal.

Similarly, goals that require purely subjective evaluations cannot be objective. Sometimes, subjective evaluations can be made objective through standardization. For example, rubrics are often used to assess the quality of a student's writing, and strict definitions are often used to determine if a student engages in a certain behavior. No such effort was made in this case. For example, it may be wise for the Student to distinguish between a "big problem" and a "little problem." A measurable, objective goal must define those terms. Without definitions, the data to be collected depends entirely on a teacher's subjective impressions (which may not be the same teacher to teacher). Even more importantly, if the goal is for the Student to distinguish between a "big problem" and a "little problem," the IEP must say what SDI the District will provide to enable the Student to achieve the goal. The revised IEP does not satisfy that standard.<sup>20</sup>

As a technical matter, the record does not establish with preponderant evidence that the revised IEP was implemented. That makes no difference in this case. Either the Student was educated pursuant to the original IEP or the revised IEP. In substance, those IEPs are equally inappropriate. Consequently, I find that the Student is owed one hour of compensatory education for each hour that school was in session from March 18, 2019 through the present. As with the period from November 20, 2018 through March 18, 2019, I will not reduce this award in consideration of the Student's attendance. I decline to make such a reduction for the same reasons that apply in the period from November 20, 2018 through March 18, 2019.

It is also critically important to develop a transition plan for the Student. The statutory timeline for developing a transition plan for the Student is certainly expired. The District's plan to address this problem at some unidentified point down the road – a plan put into writing roughly three months before graduation – is inexcusable.<sup>21</sup>

The Parent may decide how the hours of compensatory education are spent. Compensatory education may take the form of any appropriate developmental remedial or enriching educational service, product or device that furthers the goals of the Student's current or future IEPs or educational programs. Compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should be provided through the Student's IEP. When purchasing products or services, the cost of compensatory education shall not exceed the market rate within the Charter School's geography area. Compensatory education shall not be used for products or services that are primarily for leisure or recreation.

Compensatory education shall continue to accrue at the same hour-per-hour rate until the Student receives an appropriate IEP. To be appropriate, an IEP must include measurable, objective, ambitious goals that target the Student's identified needs; and

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<sup>20</sup> An IEP need not (and should not) dictate the minutia of a child's day. However, some specificity is needed. To say that teachers will provide "strategies" without giving any clue as to what those strategies are is a disservice not only to the Student, but also to the teachers, who are left to guess at what services they are expected to provide.

<sup>21</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

must say with specificity what special education (SDIs) the District will provide to enable the Student to achieve those goals.

***The Student is Not Entitled to an In-Person, One-to-One (1:1)  
Special Education Teacher***

The Student is fortunate to have support from a special education teacher who can provide 1:1 support while the Student participates in the District's cyber school program. There is no preponderant evidence in the record establishing that the Student requires in-person, 1:1 support from a special education teacher in order to obtain a meaningful educational benefit.

Academically, despite very serious attendance problems, the Student is on track to graduate. That has always been the case. The Student's enrollment in the cyber school program is not evidence of changed academic needs. I understand the Parent's preference to have a special education teacher at the Student's side, but the record does not support a conclusion that such a level of support is necessary.

In making this determination, I urge caution. The District's acquiescence to the Parent's preference for a cyber school program will not absolve the District of its obligations *to the Student*. At this point, the District has actual knowledge that the Student cannot access the cyber school program from home. If the District intends to provide all of the Student's special education through the cyber school program, the District must also ensure that the Student is able to receive that special education.

**ORDER**

Now, April 15, 2019, it is hereby **ORDERED** as follows:

1. For the period from August 27, 2018 through September 5, 2018, the Student was qualified for special education but had no IEP. I award one (1.0) hour of compensatory education for each hour that school was in session during this period of time, less a half hour (0.5) for each hour that the Student was unlawfully absent.
2. For the period from September 5, 2018 through November 20, 2018, the Student was qualified for special education, did not receive special education, and would not have received a meaningful educational benefit had the Parent consented to the District's IEP. I award one (1.0) hour of compensatory education for each hour that school was in session during this period of time, less a half hour (0.5) for each hour that the Student was unlawfully absent.
3. For the period from November 20, 2018 through the present, the Student was first educated under an initial IEP that offered no meaningful educational benefit, and then a revised IEP that offered no meaningful educational benefit. I award

one (1.0) hour of compensatory education for each hour that school was in session during this period of time.

4. Compensatory education shall continue to accrue at a rate of one hour of compensatory education for each hour that school is in session until the District offers an appropriate IEP.
5. The Parent may direct the use of compensatory education in accordance with the accompanying Decision.
6. The Student is not entitled to one-to-one (1:1) in person support from a special education teacher while attending the District's cyber school program.

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

/s/ Brian Jason Ford  
HEARING OFFICER