

*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 Final Decision and Order**

### **CLOSED HEARING**

#### **ODR File Number:**

25987-21-22

#### **Child's Name:**

M.H.

#### **Date of Birth:**

[redacted]

#### **Parent/Guardian:**

[redacted]

#### ***Counsel for Parents***

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#### **Hearing Officer:**

James Gerl, CHO

#### **Date of Decision:**

April 5, 2022

## **BACKGROUND**

The parents filed a due process complaint alleging that the school district violated IDEA and Section 504 by failing to include requested accommodations in the student's IEP. The school district contends that it was not authorized to make the accommodations requested by the parents. I find in favor of the parents on both issues.

## **PROCEDURAL HISTORY**

The attorneys for the parties did an excellent job of narrowing the issues and shortening the hearing and decisional process by stipulating to almost all significant facts. In addition, counsel agreed that all of the exhibits would be entered as joint exhibits. As a result, the hearing was completed in one very efficient virtual session. Two witnesses testified at the hearing. Joint exhibits J-1 through J-19 were admitted into evidence.

After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

### **ISSUES PRESENTED**

The due process complaint, as explained and clarified at the prehearing conference convened in this matter, presents the following two issues:

1. Whether the parents have proven that the school district denied a free and appropriate public education to the student by failing to include certain accommodations in the student's IEP in violation of IDEA?

2. Whether the parents have proven that the school district discriminated against the student on the basis of a disability in violation of Section 504 by failing to provide certain accommodations to the student?

### **FINDINGS OF FACT**

Based upon the parties' stipulations of fact, I have made the following findings of fact.

1. The student is a resident of the school district and is eligible for special education under the disability category of Other Health Impairment.

2. For the 2021 – 2022 school year, the student's educational placement is supplemental learning support at a middle school in the district and includes the related services of speech language therapy, occupational therapy, physical therapy, hearing support, paraprofessional support and counseling services.

3. For the 2021 – 2022 school year, the district and the education association for the district reached an agreement regarding livestream instruction through a Memorandum of Understanding signed January 13, 2022. The Memorandum of Understanding allows livestream instruction for a student “who has tested positive for COVID-19 as verified by a medical professional or has been asked to isolate or quarantine by their medical doctor or the ... County Department of Health.” The Memorandum of Understanding also states that when a student is absent due to a routine illness or a non-COVID reason, the livestream option will not be provided.

4. On August 31, 2021, the school district’s board of school directors voted to approve the district’s health and safety plan, which included face covering provisions in accordance with the order of the acting secretary of the state department of health. The order required the use of face coverings in all Commonwealth of Pennsylvania school buildings by all students, staff and visitors regardless of vaccination status.

5. On December 12, 2021, as a result of the termination of the acting secretary’s order by a ruling by the Pennsylvania Supreme Court, masks became optional in the district in accordance with a revised district health and safety plan. Because of federal requirements, masks were still required when traveling on district transportation.

6. Due to an increase in COVID-19 community spread, the parents did not send the student back to school and requested an IEP team meeting on January 3, 2022.

7. Starting on January 10, 2022, the student was permitted to livestream classes because a sibling with whom the student resides tested positive for COVID-19.

8. The student was permitted to livestream until January 21, 2022, even though the sibling returned to school on January 18, 2022.

9. At an IEP team meeting on January 20, 2022, the parents requested a number of accommodations be added to the student's IEP due to the parents' concerns regarding the student's medical status and potential exposure to COVID-19. The team agreed to add the following accommodations: (1) related services therapists will send communications about progress to parents bimonthly; (2) the student will be allowed to either leave class five minutes early or arrive five minutes late to avoid close contact in the hallways between classes; (3) when a positive COVID case is reported in any of the student's classes, the administration will contact the parents directly within 24 hours of the reported case; (4) the student will eat lunch in an alternate location to avoid close contact with peers, and (5) the student will have weekly check-ins with the student's guidance counselor. The team also agreed that the student will be seated with classmates who wear masks in the classroom and at lunch. The student's IEP was also revised on October 7, 2021 to include an accommodation that if the teacher is absent or if students are sent to a large group location, the student will complete assignments in another classroom or the office in order to promote increased social distancing.

10. Due to the district's current health and safety plan and Memorandum of Understanding, the district did not add to the student's IEP the parents' request for the student's one-on-one aide to wear a mask when working with the student or for the nurse or nursing assistant to wear a mask while treating the student in the nurse's office. The district also did not add to the IEP social distancing in the nurse's office for other students.

11. Due to the health and safety plan and the Memorandum of Understanding, the district did not permit livestreaming to continue for the student after January 21, 2022.

12. The student has not attended in-person school since December 23, 2021.

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: <sup>1</sup>

13. [redacted.] (J-1)

14. The student's date of birth is [redacted]. (J- 3)

15. The student is a highly medically complex child. [redacted]. (J-2, J-12, J-13)

16. The student is immunocompromised. (NT 50, 56-57)

17. The related service of paraprofessional support included in the student's IEP involves paraprofessional support for classroom transitions, academics, transportation and toileting. In order to support the student, the 1:1 paraprofessional is right next to the student, in close contact with the student. The 1:1 paraprofessional is with the student for the entire school day. The regularly assigned paraprofessional wears a mask when working with the student. There are occasions when a substitute paraprofessional may need to support the student if the regularly assigned paraprofessional is

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<sup>1</sup> (Exhibits shall hereafter be referred to as "J-1," etc. for the joint exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT\_\_\_").

absent. The student is also assigned a paraprofessional for extracurricular activities and sometimes a paraprofessional who is not the regularly assigned paraprofessional will “pick up” extra hours by filling in for that role. The paraprofessionals are not required to wear a mask while working in close proximity to the student. (J-5, J-7; NT 41 – 44, 79)

18. The nurse’s office at the student’s school includes a waiting room, an administrative office, an isolation room and a treatment room which has a desk, treatment cabinets and countertops. There are three treatment beds in another closed room with an additional bed and cabinets. The isolation room is used for students who are symptomatic or who display COVID-19 symptoms and are waiting to be picked up from school. There are no windows or fans in the waiting room of the nurse’s office; there is a small fan on the countertop in the treatment room. There are four staff members in the nursing office, two of whom are certified school nurses. One staff nurse was hired in December 2021 and is assigned primarily to the student. The nursing staff at the student’s school generally wear masks when interacting with the student, but wearing a mask is optional for the nursing staff. If there are other sick students in the nurse’s office when the student is present, staff try to isolate the students as much as they can, but only students with symptoms of COVID-19 are required to wear masks. (J-5; NT 37 – 51, 55)

19. The student has a standing appointment at the school nurse’s office at approximately 10:15 or 10:30 every morning for a [medical] procedure. Prior to the student’s arrival, the nursing staff prepare the bed and locate the supplies for the [procedure]. [redacted]. The [procedure] is a medical procedure that requires a doctor’s order. The nursing staff try not to use the bed that the student uses for other students, but occasionally, other students do use the bed. The [procedure] process takes

approximately 15 to 20 minutes. The student is usually treated quickly by the nursing staff except on rare occasions where other students come to the nurse's office with serious medical conditions. (NT 40, 45 – 46, 52; J-2)

20. On August 6, 2021, the student's doctor sent the school district a letter stating that the student is a medically complex patient and noting that because of the student's medical condition, the student may be at higher risk for severe illness from COVID-19. The letter recommends following the guidance of the Centers for Disease Control (hereafter sometimes referred to as "CDC.") (J-11)

21. On November 15, 2021, the school district and the parents agreed to an individualized health care plan for the student. The individualized health care plan recognizes the role of the school nurse in educating the school staff about safety measures needed because of the student's disabilities. It also permits the student to come to the health office for periods of rest when needed. In addition, the individualized health care plan includes a goal for successful bladder elimination. (J-2)

22. On December 14, 2021, the student's doctor sent a letter to the school district noting that the student is a medically complex patient who may be at higher risk for severe illness from COVID-19 and recommending that care be taken to minimize the student's risk of contracting COVID wherever possible. The letter recommends following CDC guidance. (J-12)

23. On January 6, 2022, two of the student's doctors sent a letter to the school district noting the student's complex medical history. In addition, the letter also recommended generally that CDC guidance for COVID prevention be observed and specifically that all teachers and staff who are in contact with the student also be masked. (J-13)



24. At the IEP team meeting on January 20, 2022, the parents also raised a concern that the student should be treated immediately when the student enters the nurse's office for the [medical] procedure. (NT 48 – 49)

25. The school district's board of school directors did not consult with its pandemic coordinator, who is also the district's nursing supervisor, when they created the district's health and safety plan concerning masking. (NT 56)

26. The district's health and safety plan permits individual accommodations. It states that the "...district will continue to design and follow any individualized health and safety plans for the students we serve" in order to ensure that the needs of students with disabilities are met. (J-5)

27. The school district's superintendent sent correspondence to district families on January 1, 2022, stating that despite the spread of COVID due to the Omicron variant, masking would remain the choice of students and families. The superintendent stated that the district would continue to work with immunocompromised students and families in conjunction with their health care providers to make the most appropriate decisions, while preserving the fidelity of their education. (J-14)

28. CDC guidance at the time of the January 20, 2022 IEP meeting recommended universal indoor masking in schools for all students, staff, teachers and visitors, regardless of vaccination status. (J-15)

29. In the school district, livestream instruction is an opportunity for students to listen in on a class that is occurring. This differs from the previously offered virtual instruction which included two-way communication between a teacher and a student. The school district discontinued offering virtual instruction at the end of the 2020 – 2021 school year for all middle school students, including the student. (NT 61 – 62)

30. The school district offered to provide homebound instruction for the student in the past. The student's doctor did not complete the required forms, and the student did not receive homebound instruction. (NT 67 – 70)

31. In-person learning is better for the student than virtual learning. (NT 70)

## **CONCLUSIONS OF LAW**

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make meaningful progress in light of the child's unique circumstances. Endrew F by Joseph F v. Douglass County Sch Dist RE-1, 580 U.S. \_\_\_\_, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area Sch Dist, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

2. A student cannot receive FAPE if the school district does not provide a safe learning environment. Shore Regional HS Bd. of Educ. v. PS, 381 F. 3d 194, 41 IDELR 234 (3d Cir. 2004); See, Lillbask ex rel. Mauclaire v. State of Connecticut, Dept. of Educ., 397 F. 3d 77, 42 IDELR 230 (2d Cir. 2005).

3. Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability shall solely by reason of the disability be excluded from participation and/or be denied the benefits of or be subjected to discrimination under any program that receives federal funds. 29 U.S.C. § 794; 34 C.F.R. § 104.33; 22 Pa. Code § 15.1. To establish a violation of Section 504, a parent must prove (1) that the student is disabled; (2) that the student is otherwise qualified to participate in school activities; (3) that the school district receives federal funds and (4) that the student was excluded from participation and/or denied the benefits of or otherwise subjected to discrimination by the school. Ridley Sch Dist v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); Gwendolynne S by Judy S and Geoff S v West Chester Area Sch Dist, 78 IDELR 125 (ED Penna 2021)

4. Immunocompromised students are at greater risk for serious illness if exposed to COVID-19. It is a violation of Section 504 to fail to make appropriate and reasonable accommodations for students who are immunocompromised, including the wearing of masks around such students. Doe by Doe v. Perkiomen Valley Sch. Dist., 80 IDELR 125 (E.D. Penna. 2022)

5. A parent need not prove deliberate indifference to establish a violation of Section 504. However, to be awarded compensatory damages, i.e., money damages, by a court for a violation of Section 504, a parent must meet the deliberate indifference standard. SH by Durell v. Lower Merion Sch Dist, 729 F.3d 248, 61 IDELR 271 (3d Cir. 2013)

6. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v.

Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010); Sch Dist of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area Sch Dist, 71 IDELR 87 (N.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009).

7. Compensatory education is a remedy that is often awarded to parents when a school district violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley Sch Dist Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); See Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005). In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by the denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or “cookie cutter” method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The “cookie cutter” or quantitative method has been approved by courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014).

8. The parents have proven that the school district violated IDEA by failing to add the following accommodations to the student’s IEP: that the student’s one-on-one paraprofessional be required to wear a mask when

working with the student; that the nursing staff in the nursing office be required to wear a mask when working with or near the student; and other students be required to maintain social distance in the nursing office while the student is present.

9. The parents have proven that the school district violated Section 504 by discriminating against the student on the basis of the student's disability by failing to make the following reasonable accommodations: that the student's one-on-one paraprofessional be required to wear a mask when working with the student; that the nursing staff in the nursing office be required to wear a mask when working with or near the student; and other students be required to maintain social distance in the nursing office while the student is present.

## **DISCUSSION**

### **I. Merits**

**1. Whether the parents have proven that the school district denied a free and appropriate public education to the student in violation of IDEA by failing to make requested accommodations in the student's IEP?**

The parents contend that the school district violated IDEA by refusing to make changes to the student's IEP to require that the nurse who treats the student every day wear a mask, that the aide who was assigned to the student every day wear a mask, that students who do not wear a mask in the nurse's office be required to maintain social distance, that the student be immediately treated in the nurse's office and that the student be permitted to livestream classes when the student is home because of high COVID transmission rates in the county. The school district contends that it does not have the authority to make the requested additional accommodations in the student's IEP because of the school board's masking policy and a memorandum of understanding with the teachers.

This case is unusual in that almost all of the facts are uncontested. Counsel for the parties did an excellent job of agreeing to stipulations of fact and joint exhibits. The parties' disagreement turns largely on the interpretation of the law.

A determination as to whether FAPE has been provided to a student with a disability requires a deep factual analysis. The Supreme Court has provided guidance that FAPE is fact specific and that the determination of whether FAPE has been provided requires a hard look at the unique individual circumstances of the child in question.

In this case, it is undisputed that the student has had cancer twice, difficult surgeries and has undergone extensive chemotherapy. As a result, the student is immunocompromised, and, therefore, the student is at increased risk of serious illness from COVID. The student's treating doctors recommended generally that COVID guidance from the CDC be followed and specifically that all teachers and staff who are in contact with the student wear masks.

The parties agree that in-person learning is much better for the student than remote learning. The student cannot attend in-person learning safely unless the staff that are in the vicinity of the student wear masks. The record evidence establishes that the parents have proven that this student's unique circumstances require the accommodation that nursing staff and the paraprofessional working near the student be required to wear masks in order for the student to be able to safely access an education and to receive a FAPE.

As the parents' post-hearing brief points out, the school district does not offer any educational or medical reason to support its refusal to provide the accommodations requested by the parents in order to ensure that the student can learn in a safe environment. Instead, the principal testified that she had no authority to require staff to wear masks. It should be noted, however, that IDEA and Section 504 are federal laws. A school board cannot simply contract away its obligations under the special education laws or enact a policy that supersedes federal law. If the student needs the requested accommodations in order to safely receive a FAPE, IDEA authorizes and requires the school staff to provide the accommodations. The school district's argument it lacks the authority to provide the accommodations is rejected.

As the parents' brief notes, the parents are not seeking an order invalidating the school district's masking policy, but rather, they are seeking individual accommodations for this particular student. Moreover, the school district's health and safety plan permits individual accommodations for students with disabilities by its express terms. The individualized health care plan for this student notes that there are safety issues related to the student's disabilities and requires the school nursing staff to educate other

staff concerning those safety issues. The unique circumstances of this particular student include a stated concern for the student to be able to learn in a safe environment.

The parents have proven that the school district's refusal to make the accommodations requiring nursing staff and the student's one-on-one aide wear masks when around the student denied the student a FAPE and violates IDEA.

As the school district's brief points out, the student's doctors do not request the additional accommodations of social distancing of other students in the nurse's office, that the student be treated immediately in the nurse's office or livestreaming. The doctors, however, did recommend compliance with CDC guidance, and at the time that the January 20, 2022 IEP was developed, the CDC guidance required that students who are not wearing a mask in the nurse's office be socially distanced from the student. Accordingly, that accommodation is also required in order to ensure that the student can learn in a safe environment, and it must be included in the student's IEP for the same reasons. The parents have proven that the school district's refusal to make the accommodation with regard to social distancing in the nurse's office denies the student a FAPE and violates IDEA.

The requested accommodations concerning immediate treatment and livestreaming, however, are not supported by the correspondence from the student's physicians or any other evidence in the record, and, therefore, are not required in order for the student to safely receive the benefit of the student's IEP and to receive a FAPE. To the extent that the parents seek the accommodations of immediate treatment and livestreaming, the parents have not proven a denial of FAPE and the relief requested concerning these accommodations is denied.



## **2. Whether the parents have proven that the school district's refusal to make the requested accommodations for the student violates Section 504?**

The parents contend that the school district's refusal to make the accommodations requested by the parents also violates Section 504. The school district contends that there has been no violation of Section 504 because it had made other reasonable accommodations for the student.

The discussion in the preceding section is incorporated by reference herein. For the same reasons that the school district's refusal to make the three accommodations violates IDEA, the same refusal also violates Section 504. One case cited in the parents' brief is particularly persuasive with regard to this point. In Doe by Doe v. Perkiomen Valley School District, 80 IDELR 125 (E.D. Penna 2022), the court found that immunocompromised students are at much greater risk for serious illness and death if exposed to COVID and, as a result, granted an injunction pursuant to Section 504 requiring that school staff near students with severe disabilities wear a mask. The reasoning of that case applies fully to the facts of this case. The parents have proven that the school district discriminated against the student on the basis of the student's disability by failing to require that nursing staff treating the student wear a mask, that the student's one-on-one aide wear a mask around the student and that other students who are not masked while the student is in the nursing office be required to be social distanced from the student.

It is true, as the brief of the school district points out that the district did make other reasonable accommodations at the parents' request. Because the additional reasonable accommodations of staff masking and

social distancing of unmasked students in the nursing office were also necessary for the student to safely access an education, the failure to provide the additional accommodations also constitutes a violation of Section 504. See, Doe by Doe v. Perkiomen Valley School District, *supra*. The fact that other accommodations were made does not affect the conclusion that additional accommodations were necessary. The district's argument is rejected.

The parents urge the hearing officer to go further and make a finding of deliberate indifference in this case. It is clear, however, that a special education hearing officer cannot award money damages to the parties in a special education case. As the Third Circuit has ruled, deliberate indifference is an element that needs to be proven only where a parent seeks compensatory damages, or money damages, for a Section 504 violation; this proof would have to be established before a court and not in a due process hearing before a hearing officer, however. It is not necessary to prove deliberate indifference to establish a violation of Section 504, and the parents have established a violation of Section 504 here. The issue of deliberate indifference, however, is not properly before the hearing officer because money damages cannot be awarded as a remedy in a due process hearing, and no finding is made with regard to deliberate indifference here.

Even assuming *arguendo*, however, that the hearing officer had the authority to make a finding of deliberate indifference, there is no evidence in the record that the school district acted with deliberate indifference in this case. There is no evidence of intentional discrimination, unreasonableness, bad faith or improper motive on the part of school officials. Indeed, it is significant that the school district did agree to add a number of other accommodations to the student's IEP that were requested by the parents at

the same time that the disputed accommodations were requested. Moreover, given the newness of the global pandemic and the response thereto, it is difficult to conclude that any action or inaction by school officials might violate any longstanding legal principles.

The parents have proven that the failure of the school district to make the specified accommodations violated Section 504, but there is no finding concerning deliberate indifference.

## **II. Relief**

The parents have proven that the school district denied a free and appropriate public education to the student from January 24, 2022 until such time as the student's IEP is revised to include the necessary accommodations. During this period of time, the student was not able to safely access an education or receive any meaningful benefit.

The appropriate remedy is compensatory education of one full day for each school day during the period of denial of FAPE. Although a qualitative compensatory education calculation is more fair and more directly addresses the harm caused by the denial of FAPE, there is no evidence in the record from either party concerning the harm to the student as a result of the violation. Accordingly, the hearing officer must utilize the relatively discredited quantitative compensatory education calculation instead. In view of the student's unique circumstances and individual needs, particularly in view of the student's risk of serious illness or death if exposed to COVID, one full day of compensatory education per day of denial of FAPE should adequately compensate the student.

The other appropriate remedy is that revisions must be made to the student's IEP in order to provide the needed accommodations. As has been discussed in the previous section, no finding of deliberate indifference is made in this decision. The relief specified above is appropriate to remedy both the denial of FAPE under IDEA and the discrimination under Section 504.

Because all relief under IDEA is equitable relief and should be flexible and because special education under IDEA requires a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as both parties and their lawyers agree in writing.

## **ORDER**

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. The school district is ordered to provide one day of compensatory education to the student for each day of the period of denial of FAPE, as described above. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parents may decide how the compensatory education is provided. The compensatory education may take the

form of any appropriate developmental, remedial or enriching educational service, product or device for the student's educational and related services needs; and

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory services shall be provided by appropriately qualified professionals selected by the parents. The cost to the school district of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the district is located.

2. The student's IEP shall be immediately amended to include (a) that the nursing staff of the school district shall be required to wear a mask when treating the student; (b) that the student's one-on-one aide shall be required to wear a mask when working with or near the student; and (c) that other students in the nurse's office when the student is present shall be required to be socially distanced from the student.

3. The parties may adjust or amend the terms of this order by mutual agreement signed by all parties and counsel of record; and

4. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: April 5, 2022

*James Gerl*

James Gerl, CHO  
Hearing Officer