This is a redacted version of the original decision. Select details have been removed from the decision to preserve the 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

CLOSED HEARING

ODR No. 30945-24-25

Child's Name:
J.M.

Date of Birth:
[redacted]

Parent:
[redacted]

Counsel for the Parent:
Kathleen Metcalfe, Esquire
Jennifer Wilcznski, Esquire
993 Montgomery Avenue, #1093
Narbeth, PA 19072

Local Education Agency:
Methacton School District
1001 Krieble Mill Road
Norristown, PA 19403

Counsel for the LEA:
Mark Burgmann, Esquire
460 Norristown Road, Suite 110
Blue Bell, PA 19422

Hearing Officer:
Brian Jason Ford

Date of Decision:
05/21/2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Students parent (the Parent) requested this hearing by filing a due process complaint against the Student's public school district (the District). This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq*.

The Student has a history of mental health difficulties that interfere with the Student's learning. The Student is very frequently absent from school. The Student's absenteeism is a function of the Student's disabilities. The parties do not agree about how to address the Student's absenteeism, and that dispute is the focus of this due process hearing.

The Parent argues that the Student requires a residential treatment facility (RTF) to receive a free appropriate public education (FAPE). The Parent claims that the District's failure to offer an RTF placement violated the Student's right to a FAPE. The Parent claims that violation started on January 10, 2025, and continues through the present and ongoing until the District offers an RTF. The Parent demands compensatory education to remedy the FAPE violation and an order requiring the District to place the Student at an RTF.

The District takes the opposite position. The District argues that the services it put in place to enable the Student's attendance were reasonably calculated to provide a FAPE when they were offered. The District further argues that it has been continuously responsive to the Student's needs, offering different or more intensive services in response to the Student's school-avoidant behaviors. The District's position is that it has continuously offered a FAPE to the Student, and the Student does not require placement in an RTF to receive a FAPE.

On the record before me, I find in the Parent's favor.

Procedural History and Prior Hearing

This is the second due process hearing between this parties in rapid succession. Their first hearing, ODR 30585-2425-, was decided by Hearing Officer Gerl on Tuesday March 4, 2025. On Friday, March 7, 2025, the Parent filed the due process complaint initiating these proceedings and presenting issues substantively similar to those heard by Hearing Officer Gerl. The timing of the complaint and the similarity of the issues drew objections and a

motion to dismiss from the District. After hearing from both sides, I issued a pre-hearing order on April 1, 2025, granting a small part of the District's motion and denying the rest. I found the issues raised in the current due process compliant were distinguishable from those resolved by Hearing Officer Gerl in ODR 30585-2425-.

More specifically, in the prior hearing, the Parent argued that the Student required an RTF to overcome the Student's chronic absenteeism and receive a FAPE.[1] Events that occurred on January 10, 2025, formed part of the basis of Hearing Officer Gerl's resolution of the prior hearing. The District had contracted with its local Intermediate Unit (IU) to offer the RISE program (described below) as a service to improve the Student's attendance. Prior to January 10, 2025, the RISE program was not staffed and could not be implemented in the Student's home even if it were staffed. On January 10, 2025, the Parents learned for the first time that the RISE program was staffed and could be implemented. With those roadblocks removed, Hearing Officer Gerl found that the District's offer, including the RISE program, was reasonably calculated to provide a FAPE and that the Student did not require an RTF to receive a FAPE.[2]

The pre-hearing order speaks for itself, but it provides important context and procedural clarity. Considering the parties' arguments and Hearing Officer Gerl's prior decision, I wrote:

> One factor in Hearing Officer Gerl's determination that the IEP was appropriate when it was offered was the inclusion of the RISE program. Hearing Officer Gerl also found that the District (via the IU) would implement the RISE program on January 10, 2025. But, in the [current due process complaint], the Parents present facts that, if true, may prove that the RISE program did not work as intended, and that the District failed in its duty to respond to new information.
>
> Generally speaking, "Monday morning quarterbacking" is not allowed – IEPs must be reasonably calculated to provide a FAPE when they are offered. But an IEP that is reasonably calculated to provide a FAPE when it is offered may fail in

[1] The Parents presented other issues in the prior hearing as well, prevailing in part. *See* ODR 30585-2425-.
[2] More exactly, Hearing Officer Gerl found that the Parents had not met their burden to prove that the Student required an RTF placement to receive a FAPE. *See* ODR 30585-2425-.

> practice. Such a failure, by itself, rarely substantiates a FAPE violation. However, an LEA's FAPE obligation is ongoing and the appropriateness of an IEP at the time it was offered does not shield an LEA from FAPE claims in perpetuity. Once an LEA knows that an IEP is not working as intended, the LEA has a duty to act, and failure to do so may result in a FAPE violation.
>
> Applied to this case, I cannot hear claims that the Student's IEP was inappropriate when it was issued. That issue has been resolved. Instead, the [current due process complaint] can be fairly read to include a different claim: that the IEP was inappropriate in practice and that the District was too slow to act. Similarly, the question of the Student's need for a residential placement when the IEP was developed has been answered, but the question of the Student's need for a residential placement based on alleged changes after January 10, 2025, is a different issue.

The issues presented for adjudication in this matter are consistent with the pre-hearing order. Unlike most cases, I do not have to decide if the Student's IEP was appropriate when it was offered. That question has already been answered in the affirmative. Rather, my task is to determine if the IEP worked as intended and, if not, did the District's response to new information square with its obligations to the Student.

Issues

The following issues were presented for adjudication:

1. Did the District violate the Student's right to a FAPE under IDEA and Section 504 from January 10, 2025, through the present and ongoing until the District offers an RTF.

2. Is the District required to offer an RTF placement for the student?

Findings of Fact

Stipulations

As is often the case in special education due process hearings, material facts are not in dispute. There is no question about what happened and when. Rather, the parties see the same facts through different lenses and come to different conclusions. Wisely, the parties did waste countless hours at in an evidentiary hearing to "prove" facts that were never in doubt. Instead, the parties worked with each other and drafted 135 joint stipulations of fact and a stipulated chronology of the Student's educational placements.

Before the parties filed stipulations, I explained that I would adopt the parties' stipulations as if they were my own findings. I further explained that there is no standard method for me to accomplish that task, and I would abide by their mutual preference. The parties have asked me to incorporate their stipulations into this decision, and so I will do so. I must, however, edit the parties' writing to protect the Student's confidentiality. What follows are the parties' stipulations, edited as indicated, and adopted as my own findings. Some of those edits include information contained in the evidence and testimony provided by the parties, discussed further below.

I take judicial notice that references to "Magellan" in the parties' stipulations are to Magellan Behavioral Health of Pennsylvania, which is the Medicaid managed care company contracted to provide behavioral health services for persons with qualifying disabilities. Magellan is not a party to this hearing and Magellan personnel did not testify. For some periods of time in question, Magellan managed the Student's behavioral health services, functioning as something akin to an insurance provider.

1. [Student] is a [early teenage] student, born [date of birth redacted].[3]

2. [Student] is currently an [redacted]-grade student.

3. [Student] and [Parent] are, and have been at all relevant times, residents of the [District].

[3] The Student's name and date of birth appear unredacted in the version of the cover page of this decision that is sent to the parties. That information is removed from the cover page if this decision is published and appears nowhere else in the decision. More importantly, my redaction is, and should not be taken as, a criticism of the parties' efforts or the efforts of their attorneys. The unredacted stipulations provide helpful information and context, even if not all of that information can be included in this decision.

4. The District is the [Student's] local education authority ("LEA") under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401(15), 34 C.F.R § 300.28, and state law, 22 Pa Code § 14.102(a)(2)(vii).[4]

5. The District is a federal funds recipient with the meaning of the IDEA 20 U.S.C. § 1401, and Section 504 of the Rehabilitation Act of 1973 ("Section 504" or "Rehabilitation Act"), 29 U.S.C. § 794(b)(2)(B).

6. [Student] is a "child with a disability" within the meaning of the IDEA, 20 U.S.C. § 1401(3)(A), 34 C.F.R. § 300.8, and a "qualified individual with a disability" within the meaning of Section 504, 29 U.S.C. §705(20).

7. [Student] is eligible for [redacted] special education and related services under the IDEA disability category of Emotional Disturbance ("ED") and secondary category of Other Health Impairment ("OHI").

8. [Student] was [redacted]Parent when [redacted] was [an infant – age redacted].

9. [Student's] [redacted].

10. Per a psychiatric evaluation completed by [a medical doctor] on or about December 13, 2022, [Student] was diagnosed with Reactive Attachment Disorder, Attention Deficit Hyperactivity Disorder, Disruptive Mood Dysregulation Disorder, Unspecified Anxiety Disorder and Severe Aggression.

11. [Student] has a significant history of partial and in-patient hospitalizations, with at least 20 hospitalizations and/or placements in 7 years.

12. [Student] was evaluated by [a doctoral psychologist] and an independent educational evaluation ("IEE") report was issued on or about February 10, 2023.

13. At the time of the IEE, [Student] was inpatient at [an out-of-state hospital for mental and behavioral health treatment].

[4] Some of the parties' stipulations are more akin to legal conclusion than factual conclusions, but it is helpful to highlight that some basic legal parameters were – like the underlying facts – never in dispute.

14. [Student] then transitioned to [a Pennsylvania RTF – or "RTF"] in March 2023.

15. While at that [RTF, the Student] received [redacted] education at [a private school associated with and on the same campus as the RTF] in a full-time emotional support program and placement.

16. [The RTF] issued an update psychiatric evaluation on May 21, 2024, and it noted possible discharge from the RTF in 90 days.

17. Releases for referrals to a new placement for [the Student], i.e. [a different private placement run by the same entity as the RTF – "the Private Placement"], were made in summer 2024.

18. The District issued a permission to reevaluate including a functional behavior assessment in the home and in school on August 1, 2024. Parent consented on August 9, 2024.

19. The District proposed placing [the Student] at [the Private Placement's] full-time emotional support day program for the 2024-2025 school year.

20. The District issued a NOREP to implement this program and placement at [the Private Placement] on or about August 7, 2024.

21. The District made a referral to the Montgomery County Intermediate Unit on August 12, 2024, for a School Attendance Improvement Program Evaluation ("SAIP" and now known as the Restore and Improve Student Engagement "RISE" program) with areas of concern listed on the referral form as attendance, mental health, behavior, and academic challenges.

22. [The Student] was discharged from the RTF on August 16, 2024.

23. The District placed [the Student] at [the Private Placement's] full-time emotional support day program for the 2024-2025 school year.

24. [The Student] began at [the Private Placement] on or about September 3, 2024.

25. Student was restrained on September 11, 2024, at [the Private Placement]. An IEP meeting was held and the team agreed that the behavior specialist at [the Private Placement] would complete a new school-based FBA.

26. The District, through the Montgomery County Intermediate Unit, completed a Functional Behavior Assessment ("FBA") of [the Student] in the home in the fall of 2024 with report dated October 1, 2024.

27. On or about September 29, 2024, Parent brought [Student] to [hospital name redacted] Emergency Room for psychiatric evaluation. [Student] was then involuntarily committed to an inpatient facility ("302'd") by Parent and hospitalized at [a pediatric psychiatric hospital] on or about October 4, 2024.

28. "302'd" refers to Section 302 of the Mental Health Procedures Act in Pennsylvania [URL to statute omitted]. Section 302 specifically relates to the procedure for "Involuntary Emergency Examination and Treatment Authorized by a Physician – Not To exceed One Hundred and Twenty Hours." Section 302 covers the process for petitioning that an individual be involuntarily committed for psychiatric treatment at an inpatient psychiatric unit. The process beings with the petitioner. The petitioner must be someone who has either witnessed first-hand a person's behaviors or threats, such as those that pose an imminent risk of danger to themselves or others or the inability to care for oneself, or another person who is otherwise authorized by law, such as a physician or police officer in the county. The petitioner completes the 302 petition, then the person is evaluated by a doctor. The evaluation often occurs at an emergency room of a hospital. The evaluation may determine that: 1) the person is not in need of services; or 2) outpatient treatment is recommended; or 3) inpatient treatment is required. If the person being evaluated is found to be in need of inpatient treatment but is then not agreeable with inpatient or does not have ability to consent, then the involuntary treatment under Section 302 may begin. This process is detailed in the statute.

29. Per Parent report, Magellan insurance refused to fund another residential hospitalization; so, Parent's private insurance agreed to pay for an RTF, i.e. [a private, out-of-state RTF], which is a short-term residential treatment program, with an average stay of 60-90 days ["the Out-of-State RTF"].

30. On October 25, 2024, Parent requested a meeting with all relevant IEP team members to discuss the RTF recommendations and what the District can pay for any costs associated with an RTF stay.

31. [Student] was discharged from the pediatric psychiatric hospital on or about October 30, 2024.

32. On or about October 30, 2024, Parent requested a meeting to discuss [the Out-of-State RTF] and to discuss how the District can assist in funding [Student's] stay [there]. In the same email, Parent informed the District that the program is a short-term RTF with an average stay of 60-90 days with [Student] returning by the beginning of the 3rd marking period.

33. [Student] began attending [the Out-of-State RTF] on or about October 31, 2024.

34. The District issued a NOREP on or about October 31, 2024, declining to fund [the Out-of-State RTF].

35. On or about October 31, 2024, J.M. was discharged from [the Private Placement].

36. On or about November 8, 2024, an interagency meeting was held.

37. Per Parent, she was informed by [the Out-of-State RTF] on December 3, 2024, that [Student] would be discharged within days due to funding.

38. The District then received a request from Parent for an IEP meeting to discuss [Student's] imminent discharge from [the Out-of-State RTF] on or about December 3, 2024.

39. Parent then reported that [Student] would be discharged from [the Out-of-State RTF] and return home on or about December 8, 2024.

40. The District scheduled an IEP meeting for December 10, 2024.

41. On or about December 5, 2024, Parents filed a special education due process complaint (ODR#30585-24-25 KE) alleging the District denied [the Student] a FAPE during the 2024-2025 school year.

42. The District held an IEP meeting with Parent on or about December 10, 2024.

43. The District informed the Parent that placement at [the Private Placement] was unavailable at the time and an alternative placement at [a different private day school] was discussed [Private Placement 2].

44. The District discussed placement at [Private Placement 2] in their full-time emotional support day program.

45. Parent requested additional time at the December 10, 2024, IEP meeting, and an additional IEP meeting was then scheduled for December 13, 2024.

46. Parent took [Student] to tour [Private Placement 2] on December 11, 2024.

47. Additional revisions to the IEP were discussed to address Parental concerns as well as other placements and referrals at the meeting on December 13, 2024.

48. On or about December 16, 2024, the District issued a revised IEP and NOREP for [Private Placement 2]'s Day program as the proposed placement to Parent.

49. On or about December 16, 2024, Parents returned the NOREP with disapproval and requesting due process based on disagreeing with the proposed placement.

50. Two days before the January 9, 2025 hearing session for ODR#30585-24-25 , [the Student] was accepted to [the] full time emotional support day placement [within the private school sharing a campus with the RTF (Private Placement 3)]. [Private Placement 3's campus] is nearly an hour-long commute from the family's home.

51. While waiting for the decision in ODR #30585-24-25, the parties agreed to begin [Private Placement 3].

52. [Student's] first day at [Private Placement 3] was January 15, 2025.

53. On January 15, 2025, the MCIU RISE program began. The RISE program provided two clinicians in the home before school.

54. On January 15, 2025, [the Student] attended school, getting on the bus shortly after it arrived at 7:32 a.m. with RISE clinicians present. [The Student] threatened Parent with RISE clinicians present. Before getting on the bus, [the Student] kicked a hole in the wall and threw [redacted] desk chair, among other items, down the stairs.

55. On January 16, 2025, [Student] refused to get on the bus with RISE clinicians present.

56. On January 21, 2025, [Student] refused to get on the bus with RISE clinicians present. [Student] threatened Parent with RISE clinicians present. [Student] additionally began to complain about the bus driver from this point forward as a reason not to attend school.

57. On January 22, 2025, [Student] refused to get on the bus with RISE clinicians present.

58. On January 23, 2025, [Student] refused to get on the bus with RISE clinicians present.

59. On January 24, 2025, [Student] refused to get on the bus with RISE clinicians present.

60. On January 27, 2025, [Student] refused to get on the bus with RISE clinicians present.

61. On January 28, 2025, [Student] refused to get on the bus with RISE clinicians present.

62. A SAIP meeting was held on January 28, 2025.

63. On January 29, 2025, and January 30, 2025, [Student's] teacher called to speak with [Student] in the mornings to encourage [Student] to attend school, but [Student] refused to speak to [the teacher] or go to school on both occasions. After the second refusal, the team agreed to stop having [Student's] teacher call in the mornings.

64. On January 31, 2025, [Student] attended school with RISE clinicians present. [Student] reported [Student] did so because there was a new bus driver. [Student] went on the bus at around 7:40 a.m.

65. On February 3, 2025, [Student] attended school with RISE clinicians present, getting on the bus around 8:02 a.m.

66. Additionally on February 3, 2025, the District sent Parent a Permission to Reevaluate for the Chester County Intermediate Unit's ATTEND program.[5] The proposed reevaluation includes psychological and

[5] The District is located within Montgomery County. The testimony reveals that the Chester County Intermediate Unit provides a program similar to RISE called ATTEND. The Chester County Intermediate Unit offers the ATTEND program, at its discretion, to schools outside of Chester County on a fee-for-service basis.

behavioral assessments. Parent approved the request on the same day.

67. On February 4, 2025, [Student] refused to get on the bus with RISE clinicians present.

68. On February 5, 2025, [Student] refused to get on the bus with RISE clinicians present.

69. On February 6, 2025, the RISE team did not come to the home, citing inclement weather. [Student] did not attend school.

70. On February 7, 2025, [Student] attended school with RISE clinicians present, getting on the bus around 7:39 a.m.

71. On February 10, 2025, [Student] refused to get on the bus with RISE clinicians present.

72. An IEP meeting and SAIP meeting were held on February 10, 2025.

73. On February 11, 2025, [Student] refused to get on the bus with RISE clinicians present.

74. On February 12, 2025, the RISE team did not come to the home, citing inclement weather. [Student] did not attend school.

75. On February 13, 2025, [Student] refused to get on the bus with RISE clinicians present.

76. On February 14, 2025, the RISE team and a member of [Private Placement 3], an Office of Children and Youth Program, were present in the home. [Student] only got on the bus after the RISE team members left the home after 8:30 a.m.

77. On February 18, 2025, [Student] refused to get on the bus with RISE clinicians present.

78. On February 19, 2025, [Student] refused to get on the bus with RISE clinicians present.

79. On February 20, 2025, [Student] refused to get on the bus with RISE clinicians present.

80. On February 21, 2025, [Student] refused to get on the bus with RISE clinicians present. While clinicians were present, [Student] slammed a door, creating a hole in the wall. [Student] also threatened Parent with RISE clinicians present.

81. An IEP meeting was held on February 21, 2025, to discuss the RISE program and Parent's concern of [Student's] lack of improvement.

82. RISE Services were expanded to be from 6:30am-8:00am with an additional hour of parent training and weekly consultation with the RISE team.

83. On February 21, 2025, after the team meeting, Parent sent an email to RISE and the District regarding property destruction in her home during RISE services.

84. On February 23, 2025, the RISE Director responded to Parent's email stating the MCIU would not reimburse for property destruction and clinicians would only provide services when Parent was in the home. This would mean RISE would change its hours to 6:30am-7:00am when Parent could be home.[6]

85. On February 24, 2025, the District also responded to Parent's emails about this change with RISE services and issued a NOREP reflecting the change. Parent rejected the change in services.

86. On February 24, 2025, RISE clinicians left the home at or around 7:00 a.m. when Parent left the home. [Student] refused to get on the bus.

87. On February 25, 2025, RISE clinicians left the home at or around 7:00 a.m. when Parent left the home. [Student] refused to get on the bus. [Student] threatened Parent multiple times with RISE clinicians present.

88. On February 26, 2025, the RISE team did not come to the home. [Student] refused to get on the bus.

[6] Testimony reveals that RISE personnel were never home alone with the Student. Rather, after the Parent went to work, the Student's grandmother would arrive at the home and be present with the Student and RISE personnel. The ability of RISE personnel to provide services for the Student in the Student's home with the Student's grandmother, but not the Student's mother, is discussed in the prior proceedings before Hearing Officer Gerl. The MCIU's decision to limit RISE services to periods when the Parent is home, regardless of the Grandmother's availability, runs contrary to one of the deciding factors in the prior decision.

89. On February 27, 2025, RISE clinicians left the home at or around 7:00 a.m. when Parent left the home. [Student] refused to get on the bus.
90. February 28, 2025, the RISE team did not come to the home. [Student] refused to get on the bus.

91. On March 3, 2025, RISE clinicians left the home at or around 7:00 a.m. when Parent left the home. [Student] refused to get on the bus.

92. On March 4, 2025, RISE clinicians left the home at or around 7:00 a.m. when Parent left the home. [Student] refused to get on the bus.

93. The final decision and order for ODR #30585-24-25 was issued on March 4, 2025. The District was found to have denied Student a FAPE due to the lack of RISE services and ordered to provide compensatory education for the 2024-2025 school year up until the January 9, 2025, except for the period of Student's hospitalization and placement at [the Out-of-State RTF]. The request for residential placement was denied.

94. On March 5, 2025, RISE services were cancelled due to an in-home observation with the ATTEND Program. [Student] refused to get on the bus.

95. On March 6, 2025, RISE clinicians left the home at around 7:08 a.m. when Parent left the home. [Student] refused to get on the bus.

96. On March 7, 2025, RISE clinicians left the home at or around 7:12 a.m. when Parent left the home. [Student] refused to get on the bus.

97. On March 10, 2025, RISE clinicians left the home when Parent left the home [Student] refused to get on the bus.

98. On March 11, 2025, RISE clinicians arrived to the home at 6:30 a.m. but left the home at approximately 7:09 a.m. when Parent left the home. RISE clinicians remained outside until [Student's] grandmother arrived at approximately 7:20 a.m. RISE clinicians stayed providing support until 8:13 a.m. when [Student] refused to get on the bus and it left.

99. On March 12, 2025, RISE services were cancelled due to J.M.'s appointment for an evaluation with the ATTEND Program. [Student] refused to go to school after the evaluation.

100. On March 13, 2025, Parent requested that RISE clinicians arrive at 7:15 a.m., when [Student'] grandmother arrives, because Parent would be leaving earlier for work that day. RISE clinicians arrived at 7:15 a.m. and entered the home when grandmother arrived at 7:18 a.m. RISE clinicians stayed until 8:15 a.m. when [Student] refused to get on the bus and it left.

101. On March 14, 2025, RISE services were cancelled due to home visit and observation by the Office of Children and Youth ("OCY"). [Student] refused to get on the bus.

102. On March 17, 2025, RISE clinicians were present from 6:36 a.m. until 8:12 a.m. [Student] refused to get on the bus with RISE clinicians present.

103. On March 18, 2025, RISE clinicians were present until 8:21 a.m. [Student] refused to get on the bus with RISE clinicians present.

104. On March 19, 2025, RISE clinicians were present from 7:15 a.m. until 8:19 a.m. when grandmother was present. Parent had to leave early that morning for a meeting. [Student] refused to get on the bus with RISE clinicians present.

105. On March 20, 2025, RISE services were cancelled due an in-person evaluation with the ATTEND program. Parent drove [Student] to school after the evaluation, where [Student] attended a half-day.

106. At the ATTEND evaluation, [Student] refused to get out of the car. The evaluation occurred with the CCIU Psychologist standing outside of the family vehicle.

107. On March 21, 2024, RISE services were cancelled due to [Student] having an appointment in the morning, but [Student] appeared to fall ill and did not attend school due to being sick.

108. On March 24, 2025, RISE clinicians arrived at 7:15 a.m. at Parent request. The bus left at 8:04 a.m. and [Student] refused to get on it. [Student] got into Parent's vehicle after RISE clinicians left the house. RISE clinicians left after [Student] and Parent drove off at 8:12 a.m. [Student] refused to get out of the vehicle and go to school once arrived at [Private Placement 3].

109. On March 25, 2025, RISE clinicians came to the home. [Student] got into Parent's vehicle at 8:15 a.m., but [Student] refused to get out of the vehicle and go to school once he arrived at [Private Placement 3].

110. On March 26, 2025, RISE clinicians came to the home. [Student] got into Parent's vehicle at approximately 8:20 a.m. after requesting that the RISE clinicians leave and attended school.

111. On March 27, 2025, RISE clinicians stayed until 8:10 a.m. [Student] got into Parent's vehicle, but [redacted] refused to get out of the vehicle and go to school once [redacted]arrived at [Private Placement 3].

112. On March 28, 2025, RISE cancelled services due to one of the clinicians being unavailable. [Student] refused to attend school.

113. The District received the CCIU psychological evaluation and functional behavior assessment on March 28, 2025.

114. On March 31, 2025, [Student] refused to get on the bus with RISE clinicians present until 8:05 a.m.

115. On April 1, 2025, [Student] refused to get on the bus or into Parent's vehicle with RISE clinicians present. RISE clinicians left at 8:15 a.m. [Student] got into Parent's vehicle around 9:00 a.m. [Student] only attended a shortened school day from around 10:00 a.m. until 12:30 p.m.

116. On April 2, 2025, RISE clinicians were at the home from 6:30 a.m. until 8:06 a.m., except for 7:10-7:20 a.m. when neither Parent nor grandmother were in the home. [Student] refused to get on the bus with RISE clinicians present.

117. On April 3, 2025, RISE clinicians came to the home. [Student] refused to get on the bus with RISE clinicians present. RISE clinicians left the home when mother left the home. Grandmother was not available this day.

118. On April 4, 2025, RISE clinicians were at the home from 6:30 a.m. until 8:05 a.m., except for 7:00-7:15 a.m. when neither mother nor grandmother were in the home. [Student] refused to get on the bus with RISE clinicians present.

119. No RISE support was provided on April 7, 2025.

120. The District shared the completed CCIU ATTEND psychological evaluation report, functional behavior assessment, positive behavior support plan, crisis management plan, and recommendations with Parent on April 7, 2025. The District proposed an IEP meeting with CCIU ATTEND to review the reports and recommendations.

121. On April 8, 2025, RISE clinicians came to the home. [Student] refused to get on the bus with RISE clinicians present. RISE clinicians left the home when mother left the home. Grandmother was not available on this day.

122. On April 9, 2025, RISE clinicians came to the home and were present except when mother left. [Student] became significantly escalated while mom and RISE clinicians were present. RISE clinicians and Parent left the home. When grandmother arrived, she asked the clinicians to remain outside while she entered the home. The clinicians waited outside but remained and provided ongoing support to grandmother. [Student] de-escalated but refused to get on the bus. Parent reported that [Student] broke the television, damaged a car key, and caused damage to a door and hallway. Neither Mobile Crisis nor 911 were called.[7]

123. On April 10, 2025, RISE clinicians came to the home. [Student] refused to get on the bus with RISE clinicians present. RISE clinicians left the home when mother left the home. Grandmother was not available on this day.

124. A Parent Support Session was held on April 10, 2025, with members from the MCIU RISE team.

125. On April 11, 2025, [Student] refused to get on the bus with RISE clinicians present. RISE clinicians were present at the home from 6:30 a.m. until 8:05 a.m., except for 7:05-7:20 a.m. when neither mother nor grandmother were in the home.

126. On April 14, 2025, RISE clinicians came to the home, but Parent drove [Student] to school, where he attended school for a half-day. [Student] threatened Parent multiple times with RISE clinicians present.

[7] This, and several other incidents were fleshed out through evidence and testimony. While the evidence and testimony painted a clearer picture of the incidents than what the stipulations describe, and that clarity can provide helpful context, none of the particular details of any individual incident are outcome determinative in this hearing.

127. On April 15, 2025, [Student] did not attend school because [student]was sick.

128. An IEP meeting was held on April 15, 2025 with CCIU ATTEND members.

129. The District proposed continuing RISE services until ATTEND is available. Representatives from the CCIU could not confirm when ATTEND services could begin since they need to identify and obtain two staff members. RISE members were not available to be at that meeting to discuss modifications to RISE services.

130. The District additionally suggested that [Student] attend school on a modified schedule because [redacted] had been responsive to attending partial days and in an effort to increase attendance and gradually increase the length of the school day.

131. Final decisions for continuing or altering RISE services or changing [Student] school day were not made at the April 15, 2025 IEP Meeting. The team agreed to schedule a follow-up meeting as soon as possible with the RISE team members.

132. On April 16, 2025, [Student] refused to get on the bus with RISE clinicians present. This was J.M.'s 56th unexcused absence.

133. The IEP team met again with RISE members on April 23, 2025. The team continued the discussion of modifying RISE services and modifying [Student's] school day. The team agreed to modify RISE services to provide direct in-home support only on Tuesday and Thursday. Parent support would change over to the CCIU ATTEND's BCBA. The school team recommended trialing a modified schedule for [Student]. The school team members would develop that plan and revise the IEP with NOREP for Parent to review.[8]

134. In total, [Student] has attended 9 days of school since January 15, 2025.

135. The parties agree that based on records submitted by Parent, the below is what Parent has been represented as to Student's various

[8] A BCBA is a Board-Certified Behavior Analyst. A NOREP is a Notice of Recommended Educational Placement and, used in this context, indicates a form by which schools can propose program or placement changes for parents' review and consent.

hospitalization and school history and what each respective facility is: hospital, PHP, RTF, or school. …

The remainder of Stipulation 135 is a chronology of the Student's placement history from the 2016-17 school year through the present and is consistent with the stipulations above. For the time in question, the Student was not assigned to any placement at all from January 10 through January 15, 2025.[9] Then, from January 15, 2025, through the present, the Student was assigned to Private Placement 3. Stipulation 135 further clarifies that Private Placement 3 is a Pennsylvania Approved Private School (APS).

Documentary Evidence

In addition to the joint stipulations, the parties also stipulated to the entry of 79 joint evidentiary documents and an additional 11 evidentiary documents from the Parents into the record. I have reviewed all 90 documents independently and find that they are consistent with the stipulations.

Testimony and Witness Credibility

With stipulations and joint exhibits filed in advance, the parties came together at a one-session hearing to present testimony to support facts. The hearing also give the parties a forum in which to present the dispute directly to a neutral adjudicator. Nothing in the testimony was inconsistent with the stipulations. However, the testimony also yields the following fact-finding:

136. The RISE program and the ATTEND program are substantively identical. *Passim, see e.g.* NT 161.

137. The ATTEND program is not staffed. The CCIU has taken no action to staff the program and can provide no assurance as to how long it will take the staff the program. *See* NT 113, 122.

138. The Parents applied to, and the Student has been accepted at an out-of-state RTF (the "Out-of-State RTF"). NT 197, 202

139. The Out-of-State RTF focuses on treating adopted children diagnosed with Reactive Attachment Disorder. NT 197-198

140. The Out-of-State RTF is an approved private agency with the state department of education in the state in which it is located. It provides

[9] The Stipulations establish that the Student left the Out-of-State RTF on or about December 8, 2024, and did not start a new placement until January 15, 2025. *See, e.g.* Stip. 135.

30 hours a week of core and elective course instruction in a small class size of between six to eight students NT 209, 212.

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). I find that all witnesses testified credibly. To whatever extent the witnesses contradicted each other, such contradictions are a function of genuinely different memories or conclusions.

Applicable Legal Principles

The Burden of Proof

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 case, the Parents are the party seeking relief and must bear the burden of persuasion.

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. LEAs 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.

Third Circuit consistently 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). In substance, the *Endrew F.* decision in no different.

A school district is 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. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, 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.

Least Restrictive Environment (LRE)

The IDEA requires LEAs to "ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." 34 C.F.R. § 300.115(a). That continuum must include "instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions." 34 C.F.R. § 300.115(b)(1); see also 34 C.F.R. § 300.99(a)(1)(i). LEAs must place students with disabilities in the least restrictive environment in which each student can receive FAPE. See 34 C.F.R. § 300.114. Generally, restrictiveness is measured by the extent to which a student with a disability is educated with children who do not have disabilities. See id.

In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit held that LEAs must determine whether a student can receive a FAPE by adding supplementary aids and services to less restrictive placements. If a student cannot receive a FAPE in a less restrictive placement, the LEA may offer a more restrictive placement. Even then, the LEA must ensure that the student has as much access to non-disabled peers as possible. *Id* at 1215-1218.

More specifically, the court articulated three factors to consider when judging the appropriateness of a restorative placement offer:

"First, the court should look at the steps that the school has taken to try to include the child in a regular classroom." Here, the court or hearing officer should consider what supplementary aids and services were already tried. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216 (3d Cir. 1993)

"A second factor courts should consider in determining whether a child with disabilities can be included in a regular classroom is the comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom. The court will have to rely heavily in this regard on the testimony of educational experts." The court cautioned, however, that the expectation of a child making grater progress in a segregated classroom is not determinative. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216-1217 (3d Cir. 1993).

"A third factor the court should consider in determining whether a child with disabilities can be educated satisfactorily in a regular classroom is the

possible negative effect the child's inclusion may have on the education of the other children in the regular classroom." The court explained that a child's disruptive behavior may have such a negative impact upon the learning of others that removal is warranted. Moreover, the court reasoned that disruptive behaviors also impact upon the child's own learning. Even so, the court again cautioned that this factor is directly related to the provision of supplementary aids and services. In essence, the court instructs that hearing officers must consider what the LEA did or did not do (or could or could not do) to curb the child's behavior in less restrictive environments. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1217 (3d Cir. 1993)

There is no tension between the FAPE and LRE mandates. There may be a multitude of potentially appropriate placements for any student. The IDEA requires LEAs to place students in the least restrictive of all potentially appropriate placements. There is no requirement for an LEA to place a student into an inappropriate placement simply because it is less restrictive. In fact, if an LEA puts a child into a placement that it knows is inappropriate simply because that placement is less restrictive than an appropriate placement, the LEA has violated the child's right to a FAPE *per se*. However, LEAs must consider whether a less restrictive but inappropriate placement can be rendered appropriate through the provision of supplementary aids and services.

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). In *Reid*, the court 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.

The more nuanced *Reid* method 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 *Reid* 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) are warranted. Such awards are fitting 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. Full-day compensatory education can also be awarded if that standard is met. 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.

Discussion and Conclusions of Law

A Residential Program is Necessary

The Student's IEP, including the RISE program, was appropriate when it was offered. Hearing Officer Gerl resolved that question through his decision in ODR 30585-2425-. This case concerns what happened next.

There are three theories upon which implementation of an appropriate IEP can result in a violation of a child's right to a FAPE: 1) Either the child's needs change in some important and knowable way such that the LEA knew or should have known that the IEP was no longer appropriate, 2) the IEP was not implemented with fidelity resulting in substantive educational harms, and 3) despite being "reasonably calculated" to provide a FAPE when written, the IEP fails in practice and the LEA does nothing in response.

I find nothing in the record supporting a finding that the Student's needs changed in any significant way after January 10, 2025. In fact, the record of this case in conjunction with Hearing Officer Gerl's findings in ODR 30585-2425- illustrate that the Student's behaviors – primarily school avoidance and refusal – have been remarkably and sadly consistent over time. On the record before me, I find that the Student did not change in any way that would cause the District to know that the IEP had become inappropriate after it was offered.

I find that there is no preponderance of evidence to prove that the IEP was not implemented with fidelity. The record establishes that, for a period, RISE personnel refused to provide services unless the Parent was home. In the prior hearing, the Hearing Officer found that RISE personnel would provide services if the Parent or the Student's grandmother were at home. That finding was a factor in Hearing Officer Gerl's decision, and so the change must be scrutinized. The change occurred on February 23, 2025. From that point forward, RISE personnel came to the Student's home earlier so that they were there with the Parent. On a few occasions, RISE personnel stayed later, remaining at (if not in) the Student's home after the Parent left and the Student's grandmother arrived. On the whole, I find that this time shift does not yield an IEP implementation failure that rises to the level of a substantive FAPE violation. In fact, there is no evidence that the shift had any substantive impact on the Student. The Student did not go to school before the shift and continued to not go to school after the shift.

Evidence that the IEP did not work as intended is well beyond preponderant. The Student's school avoidance and refusal was a central issue in the prior hearing. At that point, improving the Student's attendance became a focus of the Student's IEP – both in terms of goals and related services like the RISE program. Bluntly, the prior decision holds that the District did what it was supposed to do: it recognized that the Student's absenteeism was a function of the Student's disability, set goals to improve attendance, and secured robust services in support of those goals.

The District's plan failed. That failure was abject and known immediately by both parties. The Student did not attend school before the RISE program was implemented and continued to not attend school after the RISE program was implemented. The comprehensive, undisputed record of this case very clearly establishes that the RISE program did nothing at all to improve the Student's ability to attend school. And this is no slight against the RISE program or its personnel. My observation of RISE personnel during the hearing, along with every other part of the record of this case, convinces me that these exceptional people went above and beyond in their efforts to help the Student, placing themselves in risk of physical harm on more than one

occasion. But the District viewed the RISE program as a cure for the Student's attendance issues despite overwhelming evidence that the program did not work as intended.

The District takes the position that its response to this failure had been, and continues to be, significant. I disagree. Minor tweaks and changes to the RISE program's implementation are a grossly insufficient response, relative to the program's complete failure for this child. The District's current plan to replace the RISE program with the ATTEND program is also inappropriate. I find no substantive difference between the RISE program and the ATTEND program. The District proposes more of what does not work. And even if the ATTEND program were different (it is not), the ATTEND program is not staffed. In short, the District has proposed continuing a failed program but shifting that program to personnel who do not exist. This leaves one to question what might happen if I agreed with the District and required it to implement an unstaffed program. The record of this case provides no answers to that question.

The record of this case does, however, establish that the one intervention consistently enables the Student to attend school: an RTF placement. Throughout the Student's educational history, the Student goes to school when the school is connected to an RTF. I cannot conclude that an RTF placement is the only way to get the Student to attend school, but I can conclude that the Student historically does not have attendance issues while placed at an RTF. I can also conclude that the District has not put any other reasonable option on the table. And so, I will order the District to do what works.

I recognize the District's argument that I should use the "inextricably intertwined" standard established in *Kruelle v. New Castle County Schl. Dist.*, 642 F.2d 687 (3d Cir. 1981) to resolve this case. It is well-established that schools need not fund interventions for students with disabilities that are typically considered to be non-educational unless the students' educational and non-educational needs are inextricably intertwined. Said differently, the District need not fund an RTF unless an RTF is educationally necessary. *See also, Mary T. v. Sch. Dist. of Phila.*, 575 F.3d 235, 243-244 (3d Cir. 2009).

This case is distinguishably different from *Kruelle* and similar cases in that there is no non-educational purpose for the residential program that may or may not be separatable from the Student's educational needs. *Kruelle*-like cases involve children who require residential placements at least in part for some non-educational function (often medical in nature). In this case, there is no non-educational basis for the residential placement. The Parent

demands a residential placement because it is the only proven effective method of enabling the Student to attend school. The Parent demands an RTF for purely educational purposes.

The Student's school avoidance and refusal behaviors are educational in nature (as acknowledge by the District through its IEPs). But, even if they were not and the *Kruelle* standard applies, the result is the same. The Student receives no educational benefit when the Student does not attend school. Consequently, even if the behaviors that kept the Student from attending school are non-educational, those behaviors are inextricably intertwined with the Student's educational needs. While I do not believe that *Kruelle* applies to this case, I would reach the same conclusion if it did.

The Parent does not simply demand an RTF placement but specifically request the Out-of-State RTF. The record does not establish that the Parent's preferred RTF is the only RTF in which the Student can receive a FAPE, but the record establishes that the Student can receive a FAPE there. The Out-of-State RTF is approved by the state in which it is located and specializes in serving children like the Student. Not every service provided by the Out-of-State RTF is educational in nature, but that is not the standard even under *Kruelle*. Further, the Student has been accepted at the Out-of-State RTF. I will not create a situation in which the Student languishes in limbo by sending the parties back to square one. Given the comprehensive failure of the District's program and the unavailability of the identically inappropriate option that the District offers as a solution, I find it equitable to order the District to fund the Out-of-State RTF.

Compensatory Education is Owed

The Student received no educational benefit on days when the Student did not attend school. The District had actual and immediate knowledge that its method of remediating the Student's attendance problems was not working. Even so, the IEP (including the RISE program) was reasonably calculated to provide a FAPE when it was offered. *See* ODR 30585-2425-. The question, therefore, turns on a determination of when the District became obligated to act.

Under current precedent, the District had no obligation to act immediately. The District had every expectation that the IEP would function as intended when it was offered. Further, if the RISE program had worked, it would not have worked overnight. Under current precedent, the time that it should have taken the District to realize the ineffectiveness of its program must be removed from a compensatory education award.

The record includes several dates that are pertinent to the analysis. The first of those is the day that the RISE program started, January 15, 2025. This day was after the record closed in the prior proceedings but 48 days before the final decision in 30585-2425-. That decision was issued on March 4, 2025. On that day, a Hearing Officer told the District that its IEP was reasonably calculated to provide a FAPE but, by then, the student had already missed 27 days of school, counting from the implementation of the RISE program.

While I hold that the District had actual knowledge of the Student's non-attendance, the clearest indications that the District knew changes were necessary were the SAIP and IEP meetings in which the parties discussed the Student's unmitigated challenges and the ineffectiveness of the RISE program for this child.[10] The first of those occurred on January 28, 2025. By February 3, 2025, the District was already contemplating a shift from RISE to ATTEND, and sought the Parents' consent to evaluate for that purpose. A second SAIP meeting then convened on February 10, 2025, and an IEP meeting convened on February 21, 2025. The Student's lack of improvement was the topic of conversation during the IEP team meeting on February 21, 2025. I hold that this is the day that the District's safe harbor ends.

The Student is awarded a "full day" of compensatory education (meaning one hour for each hour of Private Placement 2's school day) for each day that the Student did not attend school from February 21, 2025, through the present. Compensatory education shall continue to accrue at the same rate until the District offers placement at the Out-of-State RTF or until the parties execute a different placement agreement.

The Parent may decide how the compensatory education is used. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs. The compensatory education may not be used for services, products, or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress.

[10] As noted above, it is not appropriate to draw broad conclusions about the RISE program from this decision. This hearing officer has little doubt that the RISE program may be highly effective for some children. The RISE program personnel are impressive, dedicated professionals. I hold only that the RISE program was not effective for the Student in this case.

Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. The cost of providing the awarded hours of compensatory services shall be limited to the average market rate for private providers of those services in the county where the District is located.

ORDER

Now, May 21, 2025, it is hereby **ORDERED** as follows:

1. The District is hereby **ORDERED** to place the Student in the Out-of-State RTF.

2. The Student is **AWARDED** compensatory education, accruing at the rate described above, from February 21, 2025, until the District offers placement at the Out-of-State RTF.

3. Nothing herein prohibits the parties from agreeing to place the Student somewhere other than the Out-of-State RTF, but any such agreement must be in writing and executed by both parties. Any such agreement also terminates accrual of compensatory education.

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

/s/ Brian Jason Ford
HEARING OFFICER