

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. 30192-24-25

Child's Name:

C.D.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for the Parent:

Scott H. Wolpert, Esquire
400 Maryland Drive
Fort Washington, PA 19034

Local Education Agency:

Chichester School District
401 Cherry Tree Road
Aston, PA 19014

Counsel for the LEA:

Samantha L. Newell, Esquire
32 Regency Plaza
Glenn Mills, PA 19342

Hearing Officer:

Brian Jason Ford

Date of Decision:

01/31/2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parent (the Parent) requested this hearing against the Student's public school district (the District). The District is the Student's Local Educational Agency (LEA).

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*¹ The Parent alleges that the District has violated the Student's right to a free appropriate public education (FAPE) for many years. This matter, however, concerns the 2022-23 and 2023-24 school years. During those years, the Parent claims that the Student's Individualize Educational Programs (IEPs) were inappropriate, resulting in substantial educational harms. The Parent demands compensatory education to remedy those violations.

The Parent also alleges that the District failed to appropriately evaluate the Student. The Parent demands an Independent Educational Evaluation (IEE) at public expense to remedy that violation.

Discussed below, I find in the Parent's favor on the FAPE claims and award compensatory education. I also award an IEE at public expense, but do so on a different bases from that advanced by the Parent.

Issues Presented

The following issues were presented for adjudication (see NT 22):

1. Must the District provide an IEE at public expense for the Student?
2. Did the District violate the Student's right to a FAPE from August 28, 2022, through August 28, 2024?²

¹ The Parent's complaint also references Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* The Third Circuit cautions against assumptions that Section 504 claims are subsumed by IDEA claims. As applied in this case, however, the Section 504 claims are entirely derivative of the IDEA claims, and all the relief demanded is provided by and through the IDEA. A separate Section 504 analysis is not necessary for the instant matter.

² At the time of the hearing, there was some dispute about the appropriateness of the Student's current placement and programs that the District offered after the Parent filed the due process complaint. The parent clarified, however, that the demand for compensatory education related to a finite period. NT 27.

Regarding remedies, the Parent's demand for an IEE at public expense is a remedy in and of itself. The Parent demands compensatory education as a remedy for the alleged FAPE violation.

Findings of Fact

I reviewed the record of this matter in its entirety. I make findings of fact only as necessary to resolve the issues before me. It is noteworthy that the parties agreed about most of the underlying facts.

I find as follows:

The 2015-16 Through 2017-18 School Years

1. From the start of the 2015-16 school year through the 2017-18 school year, the Student attended a Pennsylvania public charter school (the Charter School). P-3, S-3, S-4.
2. Before February 20, 2018, the Charter School placed the Student in a full-time emotional support program. S-3.
3. On February 20, 2018, following a reevaluation, the Charter School changed the Student's placement to itinerant emotional support. S-3, S-4.³
4. On May 3, 2018, the Charter School issued an IEP providing 30 minutes per week of counseling for anger management, positive social skills, and peer relationships (the 2018 IEP). The 2018 IEP also included reading goals, targeting decoding and sight words. S-4.

The 2018-19 School Year ([redacted] Grade)

5. The Parent enrolled the Student in the District for the 2018-19 school year. P-4
6. The District adopted the Charter School's 2018 IEP and implemented that IEP for substantively all of the 2018-19 school year. See NT 109.

³ The Parent notes that the Charter School's reevaluation prior to removing full-time emotional support highlighted both the Student's significant disruptive and noncompliant behaviors, and the Student's low reading levels. The Parents argue that the changes to the Student's program in February 2018 at the Charter School were not appropriate at that time, and were not and are not indicative of the Student's needs.

7. On May 21, 2019, the District convened an IEP team meeting and drafted an IEP (the 2019 IEP). The 2019 IEP was the District's IEP, but it copied substantive portions of the Charter School's 2018 IEP, including information that was no longer true. For example, by copying and pasting from the 2018 IEP, the 2019 IEP stated that the Student had a Positive Behavior Support Plan in place, which was not accurate. Similarly, by copying and pasting, the 2019 IEP presented outdated behavioral information about the Student as current and accurate. See S-8.
8. The District did not reevaluate the Student before drafting the 2019 IEP. Rather, the District relied upon information gathered during the 2018-19 school year concerning the Student's behaviors and academic abilities as measured by curriculum-based assessments and benchmark testing. *Passim*.
9. The 2019 IEP included reading fluency, comprehension, and sight word goals. At the time, information available to the District indicated that the Student was reading at the 1st grade level in many domains. The reading goals were written at the 1st to 3rd grade level. S-8.
10. The 2019 IEP included math reasoning and computation goals. Those goals were written at the 3rd grade level. At the time, information available to the District indicated that the Student lacked math skills that are prerequisite to the skills targeted by the math goals. S-8.
11. The 2019 IEP provided an itinerant level of Learning Support and Emotional Support. The 2019 IEP called for 30 minutes per day of small group instruction in reading, 30 minutes per day of small group instruction in math, and 30 minutes per week of counseling. S-8.

The 2019-20 School Year ([redacted] Grade)

12. The District implemented the 2019 IEP from the beginning of the 2019-20 school year. *Passim*.
13. I take judicial notice that on March 13, 2020, Governor Wolf issued an order closing all Pennsylvania schools to mitigate the spread of COVID-19. The record of this case does not reveal when the District closed, but there can be no dispute that the District closed on March 13, 2020, at the latest.

14. From March 13, 2020, at the latest, the Student received all instruction and any special education through the end of the 2019-20 school year. See, e.g. S-20.

The 2020-21 School Year

15. The Student continued to receive remote instruction at the start of the 2020-21 school year. See, e.g. S-20.
16. In January 2021, the District began hybrid programming. The Student returned to school four days per week and received remote instruction one day per week. S-20.
17. In the Spring of 2021, the District reevaluated the Student. S-20.
18. On April 19, 2021, the District issued a reevaluation report (the 2021 RR). S-20.
19. The 2021 RR included new standardized assessments of the Student. The District's evaluator, a Certified School Psychologist (CSP), urged caution when interpreting the results of those tests. COVID safety protocols required some deviation from testing standardization. The CSP found that those deviations were worth noting, but did not invalidate the tests. S-20 at 23.
20. More concerning was the Student's presentation during testing, which interfered with the tests themselves and warranted its own caution from the CSP:

"[The Student] struggled to sustain consistent attention and motivation for more than 20 minutes per session. After approximately 25-30 minutes of each session, [Student] either requested to leave or put [] head down and appeared to be falling asleep. At this point in each session, testing was discontinued and [Student] was permitted to return to class. With a great deal of prompting and support, [Student] was able to put forth adequate effort and complete some tasks, but results in some areas should be viewed with caution. [Student's] performance in some areas may have been impacted by [] difficulties with attention and motivation." S-20 at 23.

21. The 2021 RR included cognitive testing (WISC-V), which placed the Student's GAI in the Low Average range.⁴ S-20.
22. The 2021 RR included standardized tests of academic achievement. The Student's scores on the Woodcock Johnson Test of Achievement were nearly all in the "Extremely Low" range. The Student's scores for reading, written expression, and math were all below grade level and in the "Below Average" range as measured by the WIAT-III. S-20
23. The 2021 RR noted the Student's scores on reading assessments and benchmarks given during the school year. Read180 assessments placed the Student in the "Beginning Reader" range. A Phonics Inventory assessment placed the Student in the "Pre-Decoder" or "Beginning" levels. An Informal Reading Inventory placed the Student at a "Primer" level for independent reading and a 1st grade level for instructional reading. S-20.
24. The above reading scores placed the Student's reading ability four to five years behind same-age peers, whether examining discrete, objective readings skills or broader, less objective grade levels. See S-20 at 39, *passim*.
25. In addition to academic deficits, the 2021 RR found that the Student continued to demonstrate behavioral, emotional, social, and executive functioning deficits as well. Those deficits were reported by teachers and measured in several rating scales. S-20.
26. Teacher ratings on the BASC-3 (a broad-ranging behavior scale) placed the Student in the "Clinically Significant" range for all composite scores (Externalizing Problems, Internalizing Problems, School Problems, and Adaptive Skills). While some of the sub-scores that contribute to those composites fell in the average range, significant behavioral observations across multiple domains contributed to the results of the composites. S-20.
27. Teacher ratings on the BASC-3 that correlate with Emotional Disturbance (called the EDQ) placed the Student in the Clinically Significant in one of five domains and in the At Risk range in two of five domains. S-20.⁵

⁴ The GAI is a broad measure of cognitive ability that does not include some functions like working memory or processing speed.

⁵ The Emotional Disturbance scales are described as "the minimum criteria used to determine a student's eligibility for special education and related services under the classification of Emotional Disturbance." However, no threshold is set to evaluate the scales

28. Teacher ratings on the SAED-2 (a scale specifically targeting Emotional Disturbance) placed the Student in the Average range, which is not indicative of Emotional Disturbance. S-20.
29. Teacher rating scales on the Conners 3 (a rating scale that correlates with medical ADHD symptoms) placed the Student in the "Very Elevated" range across most composite scales. The Conners 3 placed the Student below threshold criteria for various types of ADHD, but the test was consistent with DSM 5 symptom counts for Oppositional Defiant Disorder. S-20.
30. Teacher ratings on the BRIEF-2 (a rating scale of executive functioning) revealed clinically elevated ratings in 11 of 13 domains. S-20.
31. The CSP reviewed and interpreted the testing as well as input from teachers, the Parent, and the Student, and concluded that the Student was a child with a Specific Learning Disability (SLD) but not Emotional Disturbance (ED). S-20 at 39.
32. The basis of the SLD classification was a significant discrepancy between the Student's reading ability (as measured by cognitive testing) and the Student's reading achievement (as measured by everything else). S-20.
33. Regarding the decision to not classify the Student as a child with an Emotional Disturbance, the CSP wrote:

"Current findings suggest that [Student] has exhibited inappropriate behaviors over an extended period of time which adversely affects [Student's] educational performance at times. However, SAED-2 and EDQ results suggested that [Student] most likely does not meet the threshold at this time for an educational classification of an Emotional Disturbance Disability. Given the impact of current circumstances of hybrid and virtual learning as well as assessed learning, academic and executive functioning needs that impact [Student's] current educational performance, a classification of

against. Another domain reported in this section concerns the likelihood of social maladjustment, which the teacher rated as "present." S-20 at 37-38/

Emotional Disturbance will not be made at this time. However, [Student's] assessed behavioral and emotional functioning needs should continue to be addressed when educationally planning for [Student]." S-20 at 39.

34. The 2021 RR concluded by outlining the Student's extensive needs, which were academic, social, behavioral, emotional, and executive functioning related – regardless of the Student's disability classifications. S-20.
35. The 2021 RR included a substantial list of specially designed instruction (SDI) and program modifications for the Student's IEP team to consider. Some of those were listed as a continuation of SDI that the Student's IEP already called for and others were listed as additional SDI that the CSP recommended. S-20.
36. On June 1, 2021, the Student's IEP team convened, and the District drafted an IEP for the 2021-22 school year (the 2021 IEP). S-22.
37. Significant portions of the 2021 RR were copied and pasted into the 2021 IEP in the Present Education Levels section. S-22.
38. The 2021 IEP referenced a need for Occupational Therapy (OT) and Speech/Language (S/L) evaluations and constitutes a referral for both. S-22. *See below.*
39. The 2021 IEP included a behavioral goal calling for the Student to "manage conflict on a daily basis 60% frequency, independent of teacher support, in 4 out of 5 situations over three consecutive trials measured every two weeks." S-22 at 26. This goal, as written, is not objective, not measurable, and all but meaningless.
40. The 2021 IEP included an objective, measurable reading comprehension goal that called for the Student to demonstrate proficiency on a 2nd grade reading comprehension assessment. S-22.
41. The 2021 IEP included a math reasoning goal that was measurable and objective. The math reasoning goal targeted specific, delineated skills at the 3rd grade level. This goal was a continuation of an identical goal in the 2019 IEP, but with a lower target for mastery. Even setting the lower target aside, completing this goal would result in a wider gap between the Student and same-age peers in comparison to when the goal was written in 2019. S-22.

42. The 2021 IEP included a 3rd grade level math computation goal that was measurable and objective. This goal was also a continuation of an identical goal in the 2019 IEP, but with a lower target for mastery, and would represent a widening gap in comparison to the original goal written in 2019. S-22.
43. The 2021 IEP included a reading fluency goal. The goal was measurable and objective, calling for the Student to read a 1st grade passage at 70 correct words per minute with no more than three errors on three out of four trials measured monthly. This goal was also copied from the 2019 IEP and, if mastered, would put the Student two years further behind same-age peers in comparison to when the goal was originally written. S-22.
44. The 2021 IEP included an executive functioning goal targeting the Student's ability to plan, organize, and complete assignments. This goal included no objective mastery criteria, meaning that different people could count different things towards mastery. S-22.
45. The 2021 IEP included a goal for the Student to remain on task, and was measured by the level of teacher prompting required for the Student to remain on task. S-22.
46. The 2021 IEP included minimal SDI and program modifications, omitting the vast majority of recommendations in the 2021 RR. Instead, the SDI and modifications in the 2021 IEP were akin to those in the 2019 IEP. S-22 at 36-37.
47. The 2021 IEP provided no direct instruction in social skills or executive functioning but did include counseling services one time per week for 30 minutes per session. The 2021 IEP said nothing at all about where those services would be provided, what purpose those session served, or whether the Student would be seen individually or in a group. S-22.
48. The 2021 IEP provided three classes per week of "systematic intensive multi-sensory phonics instruction." S-22. In the context of this case, that language is code for Wilson Reading, which is a branded, Orton-Gillingham based reading program. *Passim*.

The 2021-22 School Year ([redacted] Grade)

49. The Student started the 2021-22 school year under the 2021 IEP. [redacted]. *Passim*.

50. By the end of March and April 2022, the only goal that the Student clearly mastered was the 1st grade reading fluency goal that the Student had been working on for three years. See S-22. Progress reporting on goals that were not objective or measurable relied heavily on narrative reporting that is subject to interpretation while process on objective goals was highly inconsistent and, apart from 1st grade reading fluency, never reached mastery criteria. *Id.*⁶
51. Throughout the 2021-22 school year, the Student's behaviors and interactions with adults and peers remained problematic. The Student's most serious behavioral incidents involved hitting, kicking, pulling other students to the ground, pulling other student's hair, and defiance and disrespect to teachers and adults. These incidents resulted in multiple in-school and out-of-school suspensions. See S-23, S-24, S-25, S-27, S-34 at 31.
52. 185 days after the OT referral in the 2021 IEP, the District completed an OT screening on October 21, 2021. The screening examined the Student's handwriting and sensory concerns. The screening found no evidence of sensory-seeking behavior that interfered with the Student's education, and that the Student's handwriting was sufficiently legible. The OT screening did not recommend an OT evaluation or school-based OT. S-26.
53. I find that the District did not conduct an S/L screening or evaluation as recommended in the 2021 IEP. An IEP written in May 2022 references the OT screening and an S/L screening and says that the Student did not qualify for S/L services. S-32 at 21. There is no evidence whatsoever that an S/L screening was ever completed. Given the District's affirmative obligations to document an S/L screening if one occurred, the lack of any documentation establishes the non-existence of the evaluation recommended in the 2021 IEP.
54. On May 26, 2022, the District reconvened the Student's IEP team to draft a new, annual IEP for the Student (the 2022 IEP). S-31.
55. The 2022 IEP includes false and misleading information in the present education levels section. That section includes progress reporting on prior goals, describes those goals as mastered, and then lists progress

⁶ It must be noted, again, that the Student would remain several years behind peers across academic domains academically even if the Student had m

monitoring data showing that the Student never met mastery criteria. See, e.g. S-31 at 16-17.

56. The 2022 IEP – which was to be implemented during the Student’s [redacted] grade year – replaced the 1st grade reading comprehension goal with a 2nd grade reading comprehension goal. S-31.
57. The 2022 IEP replaced the 3rd grade math reasoning goal with a similar goal targeting 4th grade skills. S-31.
58. The 2022 IEP replaced the 3rd grade math computation goal with a similar goal targeting 4th grade skills. S-31.
59. The 2022 IEP replaced the 1st grade reading fluence goal with a 2nd grade reading fluency goal. S-31.
60. The 2022 IEP continued the same un-objective, un-measurable, behavioral goal that was included in the 2021 IEP. Data collected regarding this goal during the 2021-22 school year is not objective but, in the District’s estimation, the Student’s baseline when the 2022 IEP was written was 50%.⁷ S-31.
61. The 2022 IEP continued the same executive functioning goal that was included in the 2021 IEP. However, the 2022 IEP incorrectly described that as a new goal, and set the Student’s baseline at 50% based on nonexistent data. S-31.
62. The 2022 IEP continued the same task completion goal that was included in the 2021 IEP. However, as with the executive functioning goal, the 2022 IEP incorrectly described that as a new goal, and set the Student’s baseline at 50% based on nonexistent data. S-31.
63. The SDI and program modifications in the 2022 IEP were substantively identical to those in the 2021 IEP. S-31.

The 2022-23 School Year ([redacted] Grade)

64. The Student started the 2022-23 school year under the 2022 IEP. *Passim.*

⁷ Both the goal itself, and the District’s baseline, underscore the goal as written was meaningless. Did half of all the Student’s peer interactions result in unmanageable conflict? Surely not. But the lack of objectivity in the goal would permit such a reading.

65. Throughout the 2022-23 school year, the Student's behaviors were similar to those in the 2021-22 school year, and continued to result in in-school and out-of-school suspensions. *Passim, see, e.g.* S-34.
66. The Parent asked the District to complete a Functional Behavioral Analysis (FBA) to draft a Positive Behavior Support Plan (PBSP). The Parent also expressed concerns that the Student was struggling in Math and Science, and that the Student was reporting inaccurate information to the Parent about schoolwork completion. S-34 at 50.
67. Prompted the Parent's request and by the Student's behaviors, the District reevaluated the Student and completed a reevaluation report on December 16, 2022 (the 2022 RR). S-34.
68. The 2022 RR included multiple forms of input from the Parent. S-34.
69. The 2022 RR included a copy/paste of the 2021 RR nearly in its entirety. S-34.
70. The 2022 RR included curriculum-based academic progress reports from the 2022-23 school year that were available at the time of the report. These included the Student's progression through the Wilson Reading System. S-34.
71. Wilson is a leveled reading system in which students demonstrate mastery at one level before moving onto the next level. Wilson levels correspond to discrete reading skills, not grade levels. The Student started Wilson in September 2021 at level 1.3. By the time of the 2022 RR, the Student had reached level 2.1. See S-34 at 27. This is significantly below the rate of progress projected by the Wilson program.
72. The 2022 RR included multiple forms of input from the Student's teachers. S-34.
73. The 2022 RR included two classroom observations by the District's CSP. S-34.
74. The 2022 RR included a new administration of the BASC-3, completed by three teachers.⁸ S-34.

⁸ The BASC-3 typically includes a parent rating as well. The Parent did not return BASC-3 ratings to the District. See S-34 at 40.

75. One of the three teachers' ratings placed the Student in the Average range in most domains. One of the teachers' ratings placed the Student in the At Risk or Clinically Significant range in many domains. One of the teachers' ratings placed the Student in the Clinically Significant in many domains. S-34.
76. As in the prior evaluation, the District's CSP used the BASC-3 ratings to derive an EDQ. One of the three teachers' ratings would have qualified the Student as a child with an Emotional Disturbance but the other two teachers' ratings – although elevated in some domains – fell short of the EDQ's threshold. S-39.
77. Teachers also completed the CEFI (an executive functioning rating scale). The CEFI revealed significant executive functioning deficits with the Full Scale composite index and all but one sub-domain falling into the "Well Below Average" range, which is the lowest range in the assessment. The teachers' ratings of the Student's emotional regulation and self-monitoring were some of the lowest scores that the assessment can produce. S-39.
78. The CSP considered the information gained through the 2022 RR and concluded that the Student continued to qualify as a child with SLD but now also qualified as a child with Other Health Impairment (OHI). S-39.
79. As reported in the 2022 RR, the OHI qualification was "due to ADHD symptoms" and the Student's "observed struggles ... in producing academically are believed to be accounted for in part by [Student's] difficulties in attending to information presented to [Student]." S-39.
80. The 2022 RR does not represent, and cannot represent, an ADHD diagnosis. Rather, a fair reading of the 2022 RR is that the CSP concluded that the Student's significant executive functioning deficits resulted in ADHD-like symptoms, warranting an OHI classification in addition to an SLD classification.
81. The basis of the Student's SLD classification continued to be the significant discrepancy between the Student's reading ability and the Student's reading achievement. S-34.
82. The 2022 RR included recommendations for the IEP to consider. Notable among those was a recommendation to complete an FBA and a PBSP (the Parent's request for the same prompted the 2022 RR itself), and continuation of Wilson reading. S-34.

83. On December 17, 2022, the day after the 2022 RR was complete, the District completed an FBA. S-35A. The FBA included two observations of the Student in class, and a review of behavior reports. The evaluator recommended strategies nearly identical to those that were already in place. S-35A.
84. The District used the FBA to write a PBSP. See S-36 at 15. As with the FBA itself, the PBSP recommended strategies that were already included in the Student's IEP or otherwise had been provided to the Student. The vagueness of the behavioral strategies listed in the PBSP resulted in vague behavioral SDIs in the Student's IEP. *Id.*
85. The District also used the FBA to develop a Crisis Plan. S-28. As with the PBSP, the Crisis Plan was both vague and required nothing more than what the District was already doing. *Id.*
86. On January 11, 2023, the District revised the Student's IEP to incorporate the PBSP, and to add behavioral SDIs. S-31.
87. On January 25, 2023, the Student was involved in a major disciplinary incident in the school cafeteria. A School Resource Officer (SRO) intervened and arrested the Student, handcuffing the Student in school. S-36.
88. On February 2, 2023, the District convened a Manifestation Determination Review (MDR) meeting. Through the MDR process, the District determined that the incident was not a manifestation of the Student's disability but that the "conduct in question was the direct result of the LEA's failure to implement the IEP." S-36 at 10.
89. The Parent agreed with the MDR conclusions the same day. S-36.
90. The parties agree that the January 11, 2023, IEP revisions were offered and implemented at some point. The parties do not agree about when that happened. The Parent did not recall an exact date that the District offered the revisions but was certain that the revised IEP was implemented sometime after the MDR. See NT 520. The District, which has a significant and affirmative obligation to document its special education offers, could provide no evidence to the contrary. I find, therefore, that the January 11, 2023, IEP was implemented sometime after February 2, 2023.

91. The behavioral SDI added to the IEP through the January 11, 2023, revisions simultaneously mirrored interventions that were already in place, and were vague. For example, SDIs called for the District's guidance counselor to "teach replacement behaviors" and teachers to provide "active supervision" without providing any explanation as to what those terms means for the individual Student in this case (no clues are found the 2022 RR, FBA, BPS, or Crisis Plan either). Other SDIs were to be provided "when possible" or "as needed," representing a guarantee of nothing at all. S-31 at 48.
92. The District reported the Student's progress towards IEP goals in March and May 2023. For the goals that could be objectively measured, the Student did not satisfy the mastery criteria and progress was erratic. Nevertheless, in some instances, teachers determined that the Student's progress should be measured using materials at a grade higher than the goal indicates. S-38 at 11-12.
93. The clearest example of this exercise of teacher discretion is seen with the reading comprehension goal. That goal called for the Student to read a score 80% or higher on reading comprehension assessments on four out of five trials at the 2nd grade level. The Student did not hit that mark, but scored 80% or higher on several occasions. In May 2023, teachers determined that the Student's progress should be monitored at the 3rd grade level. S-38 at 12. This was the end of the Student's [redacted] grade year.
94. I find that progress monitoring and reporting related to goals that were not objective is not reliable.
95. On May 23, 2023, the District reconvened the Student's IEP team and drafted an annual IEP (the 2023 IEP). S-38.
96. The 2023 IEP replaced the 2nd grade reading comprehension goal in the 2022 IEP with a substantively similar goal at the 3rd grade level. S-38.
97. The 2023 IEP replaced the 4th grade math reasoning and 4th grade math computation goal with one goal targeting specific 4th grade applied math skills. This goal was measurable, objective, and baselined. As indicated by the baseline, the goal was – functionally – a continuation of the program that was already in place for the Student at that time. S-38.

98. The 2023 IEP replaced the 2nd grade reading fluency goal with a substantively similar goal at the 3rd grade level. S-38.
99. The 2023 IEP replaced the behavioral peer interaction goal with a different but related goal. The new goal called for the Student to use unspecified "coping strategies" to respond appropriately when faced with "non-preferred academic activities and/or peer conflict." As written, District personnel were to track the Student's use of coping strategies in response to both non-preferred academic activities and peer conflicts over the course of a trimester. If the Student used coping strategies in 80% of those instances, mastery criteria was met. S-38.
100. Nothing in any document gives any information as to what "coping strategies" the Student was supposed to use, or how District personnel would know if the Student was using them. Consequently, the behavioral goal in the 2023 IEP relied on District personnel being in the right place at the right time to observe something negative and then make a judgement call as to whether the Student did something that is not defined. There is no better illustration of how a score on a tally sheet may in no way represent objective data. I find that the behavioral goal in the 2023 IEP was not objective or measurable.
101. The 2023 IEP replaced the executive functioning goal with a goal calling for the Student to complete and submit 80% of classwork assignments in six out of seven weekly checks over a trimester. That, by itself, is measurable and objective. S-38.
102. Other language in the same goal indicates that this would assess the Student's on-task behaviors (working on assignments, asking for help if the Student did not understand the assignment, and handing in assignments). S-38. Some of that is misleading. The only thing the goal measured is the Student's completion and submission of assignments. The goal is not related to the accuracy of the Student's work and does not measure the whether the Student was on task or understood the lesson. Submitting 80% of assignments would satisfy the goal, even if the Student's work evidenced no understanding of the course material or if the Student was off task during instruction.
103. The SDI and program modifications provided through the 2023 IEP were substantively identical to those in the 2022 IEP, as revised in January/February 2023. S-38.

104. Notably, setting aside problematic vagueness, the Student now had a goal that called for use of coping skills and an FBA, PBSP, and Crisis Plan referencing replacement behaviors. The only SDI in the 2023 IEP that can be construed as the District's effort to teach coping skills and replacement behaviors is the provision of unspecified "social skills instruction" that would occur "when meeting with guidance" without any specified frequency. S-38 at 32.

The 2023-24 School Year ([redacted] Grade)

105. The Student started the 2023-24 school year under the 2023 IEP. *Passim.*
106. The 2023 IEP was in place for the entirety of the 2023-24 school year. *Passim.*
107. By May 2024, the Student had moved to Wilson level 4.2. S-40.
108. By May 2024, the Student's progress towards the 3rd grade reading comprehension was relatively strong. The Student never satisfied mastery criteria, but the Student frequently scored in the 80% range. S-40.
109. By May 2024, the Student had not made progress in the 4th grade math goal. S-40.
110. By May 2024, the Student had not made progress in the 3rd grade reading fluency goal. S-40.
111. By May 2024, progress reporting on the Student's behavioral goal showed considerable growth. However, as explained above, this reporting is subjective. S-40.
112. By May 2024, the Student's progress towards the work completion goal was variable but, on the whole, positive. The Student frequently submitted 90% of assignments or more. S-40. Again, the only thing measured by this goal is the Student's literal assignment completion.
113. By May 2024, teachers reported that the Student demonstrated age-appropriate behavior in class. S-40 at 19-22. However, the Student continued to have disciplinary incidents during the 2023-24 school year. While these were less frequent and intense than in the prior year, the Student received detentions and one suspension. S-40 at 23.

114. On May 15, 2024, the District reconvened the Student's IEP team and drafted an annual IEP (the 2024 IEP). S-40.
115. The 2024 IEP replaced the 3rd grade reading comprehension goal in the 2023 IEP with a substantively similar goal at the 4rd grade level. S-40.
116. The 2024 IEP continued the 4th grade math goal. S-40.
117. The 2024 IEP replaced the 3rd grade reading fluency goal with a substantively similar goal at the 4rd grade level. S-40.
118. The 2024 IEP continued the behavioral "coping strategies" goal that was introduced in the 2023 IEP. Mastery criteria was increased to 90%. S-40.
119. The 2024 IEP continued the assignment completion goal that was introduced in the 2023 IEP. Mastery criteria was increased to 90%. S-40.
120. The SDIs and program modifications in the 2024 IEP were substantively identical to those in the 2023 IEP.
121. The 2024 IEP included, for the first time, individual counseling sessions one time per week for 15 minutes per session as a related service. S-40 at 45.
122. On August 28, 2024, the Parents filed a due process complaint initiating these proceedings.

Witness Credibility

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). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa.

2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

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).

Applied in this case, the Parent is the party with the burden of proof.

Free Appropriate Public Education

The IDEA requires the states to provide a free appropriate public education to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, 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* 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* decision is 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*, 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*, 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.

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.

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. *Reid* is the leading case on this method of calculating compensatory education, and the method has become known as the *Reid* standard or *Reid* method.

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.

Evaluation Criteria

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 20 U.S.C. § 1414.

In substance, evaluations must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” whether the child is a child with a disability and, if so, what must be provided through the child’s IEP for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A).

Further, the evaluation must “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” and must “use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors”. 20 U.S.C. § 1414(b)(2)(B)-(C).

In addition, the District is obligated to ensure that:

assessments and other evaluation materials... (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess “all areas of suspected disability”. 20 U.S.C. § 1414(b)(3)(B).

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: “A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..” 34 C.F.R. § 300.502(b)(1). “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that it's evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense.” 34 C.F.R. § 300.502(b)(2)(i)-(ii).

“If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” 34 C.F.R. § 300.502(b)(4).

Discussion and Legal Conclusions

The District Violated the Student’s Right to a FAPE

The parent alleges a FAPE violation and demands compensatory education for the 2022-23 and 2023-24 school years. The appropriateness of the Charter School’s IEP, the District’s adoption of the same, the District’s response to the COVID-19 pandemic, the appropriateness of the 2021 RR, and the appropriateness of the 2021 IEP are not at issue in this case. Those facts and circumstances, however, establish what the District knew about the Student by the time it drafted the 2022 IEP. The 2022 IEP was the Student’s special education program during the 2022-23 school year.

The 2022 IEP was not reasonably calculated to provide a FAPE at the time it was offered. The 2022 IEP was drafted in May 2022. By that time, the 2021 IEP had been in place for nearly a full school year. The District had actual knowledge that the special education provided through the 2021 IEP – that is, the SDIs and modifications contained within that document – were insufficient for the Student to reach the very low goals set therein. The

District also had actual knowledge that the Student's program was insufficient to address the Student's significant behavioral needs. The District could have used the information it had either to propose changes to the Student's program or to determine that a reevaluation was needed. The District did neither. Instead, the District offered the same program again and hoped for a better result. Sadly, but unsurprisingly, the same program resulted in the same lack of progress in the 2022-23 school year.

I cannot judge the 2022 IEP against the Student's actual progress during the 2022-23 school year. Rather, the question is whether the 2022 IEP was reasonably calculated to offer a FAPE under the *Endrew* standard at the time it was offered. For several reasons, the 2022 IEP fell short of that standard. I will highlight two: First, described above, the District had actual knowledge of the Student's lack of progress in an identical program over the course of the prior school year. Second, and of equal importance, the 2022 IEP offered a trivial or *de minimis* benefit at best. Through its own evaluation, the District concluded that the significant discrepancy between the Student's cognitive abilities and academic achievement warranted an SLD designation. This means that the Student had the cognitive ability to shrink the gap between the Student's actual achievement and that of same-age peers.⁹ Ignoring every other deficiency in the 2022 IEP, if the Student mastered the academic goals in that document, the Student would finish the 2022-23 school year as far behind same age peers as the Student was at the start of that school year. The paltry gains anticipated by the 2022 IEP do not come close to the student-specific, "appropriately ambitious" threshold established by the Supreme Court in *Endrew*.

The 2022 IEP was not reasonably calculated to provide a FAPE when it was offered primarily because the District knew the offered program was not effective for the Student and because the goals were not appropriately ambitious. In addition, the 2022 IEP contains several other deficiencies, any one of which could, on its own, render the document inappropriate. These include false and misleading information in the present education levels section, goals that were neither objective nor measurable, and the absence of SDIs, modifications, and related services explaining what special education the District would provide to enable the Student to obtain those goals (vagueness and un-ambitiousness notwithstanding).

Wilson reading illustrates the problem. The District's own evaluations, curriculum-based assessments, and progress monitoring show a need for

⁹ The District was, and is, under no obligation to "cure" the Student. Complete remediation is not the hallmark of an appropriate public education. In this case, however, the Student's ability to catch up to peers at least to some degree is half of the basis of the District's SLD designation.

intensive reading intervention. Assuming, for the sake of argument, that Wilson constituted the intensive reading intervention that the Student required, none of the Student's goals were related to that program. Wilson, derived from the Orton-Gillingham methodology, is phonics-based. Success in the Wilson program does not necessarily correlate with what the District was measuring (reading comprehension and fluency). If the goal was for the Student to improve reading fluency, the District was obligated to offer special education to improve the Student's reading fluency. The 2022 IEP offered no special education targeting the Student's reading fluency. The same is true for every goal in the Student's IEP. Setting aside every problem with the goals themselves, the 2022 IEP did not provide special education to enable the Student to achieve the goals in that document.

The 2023 IEP was drafted in May 2023, at the end of the disastrous 2022-23 school year.¹⁰ By this time, the District had completed the FBA, PBSP, and Crisis Plan. The IDEA itself does not set minimum standards for FBAs, PBSP, and Crisis Plans, and so deficiencies in those documents do not, by themselves, prove a FAPE violation. However, the District had actual knowledge of the Student's significant behavioral needs and addressed those needs by incorporating the FBA and PBSP into the Student's IEP. The FBA and PBSP were vague and unhelpful, and so the behavioral components of the 2023 IEP were also vague and unhelpful. The 2023 IEP provided no clear information about what special education the District would provide to address the Student's behaviors. Undefined concepts like "active supervision" and undefined skills like "coping strategies" fall short of the mark. Programs provided "as needed" or "when possible" provide no assurance or guarantee of any amount of special education.

The 2023 IEP was not reasonably calculated to provide a FAPE when it was offered for the reasons discussed above, but also because the 2023 IEP repeated all the errors of the 2022 IEP. The 2023 IEP was, fundamentally, a continuation of the 2022 IEP. As such, it represented a trivial benefit and was not appropriate ambitious for the Student. Many goals were vague and not objective, and the small amount of special education that the District offered was disconnected from those goals – particularly regarding reading.

In fairness, the Student was more successful during the 2023-24 school year than in the 2022-23 school year. The Student's progress towards behavioral

¹⁰ Even if the 2022 IEP was appropriate when it was written, there is ample evidence that the District had actual knowledge that the 2022 IEP was not working as expected in the 2022-23 school year. There is also preponderant evidence that the District simply did not implement the 2022 IEP during the 2022-23 school year and said as much during the MDR, which followed the Student's in-school arrest. These findings alone would establish a FAPE violation during the 2022-23 school year.

goals was not objective and so it is not reliable, but the Student had fewer disciplinary infractions resulting in suspension. At the same time, the Student did not master academic goals. By any measure, over the two school years in question, the gap between the Student and same age peers remained the same.

In sum, I find that the District violated the Student's right to a FAPE under the IDEA by failing to provide IEPs that were reasonably calculated to provide a meaningful educational benefit under the *Endrew* standard during the 2022-23 and 2023-24 school years.

Full Days of Compensatory Education are a Necessary Remedy

As a result of the District's violation of the Student's right to a FAPE, the Student's academic progress in reading and math stagnated, the Student's significant executive functioning needs were not meaningfully addressed, and the Student's behaviors, while somewhat improved, remained problematic.

It is difficult to think of any aspect of a child's educational experience that does not involve reading, math, executive function, or social behaviors. Every moment of the school day involves at least one, if not many, of those domains. The Student's needs, as measured and reported by the District, were significant. The District's response to those needs was minimal and, consequently, the Student remains several years behind peers in critical areas. The District's FAPE violation resulted in pervasive, substantial educational harms to the Student. Full days of compensatory education are necessary to remediate that harm.

I award one hour of compensatory education to the Student for each hour that the District was open for instruction during the 2022-23 and 2023-24 school years, or 990 hours for each of those years, whichever is greater.

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.

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.

The Parent is Awarded an IEE at Public Expense

The question of what comes next for the Student is not presented in this hearing, but it is of paramount concern. The answer to that question also impacts upon the permissible uses of the compensatory education award, as described above. A comprehensive evaluation targeting every domain of the Student's suspected disability is required.

The record of this case includes examples of evaluations with comprehensive recommendations that the District ignored, delayed evaluations resulting in vague recommendations, and requests for IEEs that went without reply. To remedy these failures, and to enable the parties to move forward, pursuant to my authority under 34 C.F.R. § 300.502(d), I order the District to fund an IEE for the Student. That IEE shall consist of a comprehensive psychoeducational evaluation, a speech/language evaluation, and a FBA.

The Parent shall have sole discretion over which individual or individuals will complete the IEE, provided that those individuals are qualified to conduct the necessary testing. The District's cost, however, limited to the average market rate for private providers of those services in the county where the District is located.

As a technical matter, the Parent's demand for an IEE pursuant to 34 C.F.R. § 300.502(b) is denied as moot. My order requiring the District to provide an IEE pursuant to 34 C.F.R. § 300.502(d) supersedes the Parent's demand. The result is the same.

ORDER

Now, January 31, 2025, it is hereby **ORDERED** as follows:

1. The District violated the Student's right to a FAPE during the 2022-23 school year. Full days of compensatory education are awarded to remedy that violation. The amount and permissible uses of that compensatory education are fully described above.

2. The District violated the Student's right to a FAPE during the 2023-24 school year. Full days of compensatory education are awarded to remedy that violation. The amount and permissible uses of that compensatory education are fully described above.
3. Pursuant to my authority under 34 C.F.R. § 300.502(d), the parent is awarded an IEE at public expense. The Parent's discretion to chose the evaluator(s), the District's maximum cost, and the function of the IEE, are fully described above.

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

/s/ Brian Jason Ford
HEARING OFFICER