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Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

ODR No. 28760-23-24

CLOSED HEARING

Child's Name:

J.R.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

01/20/2024

INTRODUCTION AND PROCEDURAL HISTORY

The student, J.R. (Student),¹ is a late-teenaged student residing within the boundaries of the Wilson School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² under the classifications of Other Health Impairment and Specific Learning Disability, and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ Student is currently enrolled in a cyber charter school.

In November 2023, the Parents filed a Due Process Complaint under the IDEA, seeking compensatory education for the District's asserted failure to provide a free, appropriate public education (FAPE) to Student over the 2022-23 school year. The basis for the Complaint was Student's refusal to attend school for the majority of that school year and an alleged lack of adequate supports by the District to address that need. The District countered that it responded appropriately by offering a number of alternatives and interventions to address Student's school refusal and that, therefore, it did not deny FAPE to Student. The matter proceeded to an efficient hearing at which four witnesses testified.⁴

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Counsel for both parties, commendably, limited the evidence to that directly relevant to the narrow issues presented.

Following review of the record and for all of the reasons set forth below, the claims of the Parents must be granted, in part.

ISSUES

1. Whether the District's programming over the 2022-23 school year was appropriate for Student; and
2. If the District's program for Student over the 2022-23 school year was not appropriate, is Student entitled to compensatory education?

FINDINGS OF FACT

1. Student is a late teenaged student residing within the District but attends school outside of the District for the 2023-24 school year. Student has been identified as eligible for special education under the IDEA based on identification of Specific Learning Disability and Other Health Impairment. (N.T. 28-29; S-9 at 30.)

Prior Educational History

2. Student attended District schools beginning in kindergarten through the end of the 2020-21 school year except for a therapeutic hospitalization placement in the spring of 2021. Student then attended a private school for the 2021-22 school year at District expense. The private school reportedly is small and provided significant individualized (1:1) support and instruction. (N.T. 32-37; P-1; S-1; S-2; S-9 at 14-15.)
3. Student has had wraparound behavioral health services in the home since 2019 due to defiance and aggression in that environment. Student was also diagnosed with Attention Deficit Hyperactivity

Disorder (ADHD) and Oppositional Defiant Disorder at that time. (N.T. 57-58; S-1 at 2-3.)

4. Student has a history of engaging in school-avoidant behavior including over the 2020-21 school year, frequently failing to attend with prolonged absences. Student frequently missed remote classes during the pandemic restrictions and hybrid schedule by failing to log on. (N.T. 35; S-1 at 1-2, 13-17; S-9 at 1.)
5. The District evaluated Student in the spring of 2021 and issued a Reevaluation Report (RR) in March of that year. (S-1.)
6. Assessment of cognitive functioning for the 2021 RR yielded overall scores in the low average range, consistent with previous similar administrations. On assessment of academic achievement, Student's scores were variable across subtests but all composite scores were in the below average to low range. Separate testing of phonological processing reflected below age expectations on all composites. Analysis of cognitive functioning and achievement revealed significant discrepancy in the areas of Oral Expression, Basic Reading, Reading Fluency, Mathematics Calculation, and Written Expression. (S-1 at 4-5, 20-27.)
7. Speech/Language evaluation for the 2021 RR revealed continuing deficits in the areas of language skills including social language. Direct speech/language services in addition to social skills instruction were recommended. (S-1 at 42-47.)
8. On assessment of executive functioning skills for the 2021 RR, Student exhibited areas of strength and weakness. Overall, Student exhibited significant deficits in those skills in both the home and school settings. (S-1 at 27-28, 31-33.)

9. Occupational therapy evaluation for the 2021 RR noted needs in the areas of sensory processing, visual motor and visual perceptual skills, and following directions. Direct services were recommended. (S-1 at 47-49.)
10. The 2021 RR also reported on assessments of social/behavioral and adaptive functioning. There were discrepancies between home and school rating scales, with the Parents reporting more concerns than did teachers. On the Behavior Assessment System for Children – Third Edition (BASC-3), the teacher endorsed a clinically significant concern with withdrawal and at-risk concerns with school problems, adaptive skills, social skills, leadership, and functional communication; by contrast, the Parents endorsed clinically significant or at-risk concerns across most of the scales, although their scores were to be interpreted with caution. Student’s self-report on the BASC-3 endorsed clinically significant concerns with depression, sense of inadequacy, and self-esteem, with a number of additional at-risk concerns including attitude toward school. (S-1 at 29-36.)
11. A Functional Behavior Assessment (FBA) for the 2021 RR identified attendance as the only concerning behavior at school; the Parents, however, identified refusal behaviors with some aggression at home particularly when transitions were expected. No hypothesis of the function of any behaviors could be determined because of Student’s frequent absences when observations were to be conducted. (S-1 at 39-41.)
12. Rating scales for Autism Spectrum, Social Responsiveness, and Adaptive Behavior were also obtained for the 2021 RR, again with the Parents’ ratings more concerning than those of teachers. At school, the RR noted that Student had difficulty with social behavior, social motivation, communication, peer socialization, and social/emotional

reciprocity; adaptive skill deficits were also reported in the areas of conceptual and social skills. (S-1 at 36-39.)

13. The 2021 RR identified Student as eligible for special education under the Specific Learning Disability, Other Health Impairment, and Speech/Language Impairment categories. Needs were identified in the areas of basic reading, reading fluency, mathematics calculation, written expression, speech/language therapy, social skills, occupational therapy, focus/attention, frustration and coping skills, organization, and self-advocacy. A number of recommendations were also included. (S-1 at 49-50, 59-60.)
14. During the 2021-22 school year at the private school, Student did not exhibit difficulty with regularly attending school. (N.T. 61, 66.)

2022-23 School Year

15. Prior to the start of the 2022-23 school year, the Parents asked to maintain Student's placement at the private school, but the District declined. (N.T. 37.)
16. A meeting to develop an Individualized Education Program (IEP) for Student convened in June 2022. At that time, Student expressed concerns that the District's programming had been inadequate in prior school years and threatened to drop out if returned to the District. (N.T. 38, 63-64, 68-69, 153; S-3.)
17. Input from the private school teachers for the June 2022 IEP described Student as extremely introverted but motivated to complete work, and having a positive attitude and developing self-advocacy skills. Needs identified in this IEP mirrored those in the 2021 RR with the addition of listening comprehension, working memory skills, and processing skills. (S-3.)

18. Annual goals in the June 2022 IEP addressed reading fluency, reading comprehension, written expression, mathematics, speech/language skills, social skills, and occupational therapy skills. Program modifications and items of specially designed instruction included a replacement reading curriculum; various accommodations for tests, assignments, and instructional presentation; strategies for working memory deficits; and check-ins with a trusted adult at school. (S-3 at 16-29.)
19. The June 2022 proposed a program of learning support at a supplemental level, with Student outside of regular education for Reading, English, History, and a supported study hall. (S-3 at 30-31.)
20. Prior to the start of the 2022-23 school year, Student and the Parents met with a school counselor and the group toured the school building so that Student would know where the classrooms were. No concerns about attendance were raised at that meeting. (N.T. 164-66.)
21. Student returned to the District for the 2022-23 school year. Student began to exhibit "meltdowns" at home in the morning and explained that Student was not getting all of the necessary support at school. (N.T. 39, 72.)
22. The District obtained parental consent for another reevaluation in early September 2022 at the request of the Parents. (S-6.)
23. Student's IEP team met in early September 2022 to discuss Student's transition back to the District and attendance, with Student present at the meeting in the District. Student had attended only the first three days of that school year at that time, but check-ins with the special education case manager on those three days did not reveal any concerns. District staff had contacted the Parents about Student's lack of attendance as the absences occurred. At the meeting, Student

expressed concern about a lack of one-on-one (1:1) support. (N.T. 116-17, 155-56; S-7 at 4-5.)

24. Student's IEP was revised based on the early September 2022 meeting, adding a provision for a new FBA to examine Student's school refusal/avoidance, and an Intermediate Unit (IU) attendance program along with social worker support as an item of specially designed instruction. Options discussed for Student included a virtual learning academy through the District; a personalized learning academy that met in person with approximately ten to fifteen students or could be accessed remotely; and various schedule changes. Student had been involved with the social worker support in the past and the Parents viewed it as unsuccessful. However, both the IU and social worker services began and continued, working with Student to address anxiety about school. The Parents did not agree to the virtual learning academy or other remote options. (N.T. 40-42, 76, 78-79, 81-82, 117, 119, 121, 152-53; S-7; S-9 at 1.)
25. After Student stopped attending school, the school counselor met once with Student outside of the building, and Student told the counselor that Student did not want to attend school in the District. The counselor made some suggestions to Student at that time. (N.T. 169-70.)
26. Student's IEP team convened again in October 2022, and Student was present. The team discussed different options for Student including schedule changes to provide a resource room period after content-area classes similar to what occurred in the private school, and a block of small group classes that were all located in the same general area of the school building. Student was to discuss the options with attendance program staff. (N.T. 102, 122-23, 158; S-8.)

27. A new RR issued in early November 2022. That RR largely incorporated the March 2021 RR, and added information about the then-current attendance program. Staff of that program reportedly met weekly, made home visits, and provided consultation; however, Student maintained that Student would not return to the District. Student did go to a District building on two consecutive dates for assessments for the RR. (S-9.)
28. Assessment of cognitive functioning for the November 2022 RR yielded overall scores in the low average range, again consistent with previous evaluations. On assessment of academic achievement, Student's scores were variable across subtests but all composite scores were in the below average to low range with the exception of Mathematics (average range). (S-9 at 15-20.)
29. An assessment for Autism was conducted by the District school psychologist who determined that Student did not meet criteria for that disability despite some social and communication skill weaknesses. Rating scales for Autism Spectrum were also completed for the November RR by the Parents, who indicated elevated to very elevated concerns with a majority of areas assessed. (S-9 at 20-22.)
30. On assessment of executive functioning skills for the November 2022 RR through rating scales completed by the Parents and Student, results contrasted sharply, with clinically significant parental concerns across most domains and overall but Student only having minor concern with emotional control. (S-9 at 17-18.)
31. The BASC-3 rating scales for the November 2022 RR yielded numerous clinically significant and at-risk concerns of the Parents; Student's own self-report reflected only at-risk concerns with attitude toward school and self-esteem. Another rating scale focused on ADHD similarly were

disparate between the Parents (elevated to very elevated across domains) and Student (elevated only for learning problems). (S-9 at 22-26.)

32. The FBA was not conducted for the November 2022 RR because Student did not attend school; it was to be completed when Student's attendance improved. (S-9 at 34.)
33. Assessment of speech/language skills for the November 2022 RR did not reflect areas of concern. Occupational therapy evaluation determined that Student overall had age-appropriate skills in that area. (S-9 at 26-30.)
34. The November 2022 RR identified Student as eligible for special education on the bases of Specific Learning Disability (basic reading, reading fluency, reading comprehension, mathematics problem solving and calculation, and written expression) and Other Health Impairment (due to ADHD and ODD, with resulting difficulty managing emotions and behaviors). Needs were identified in the areas of reading (word reading, phonological processing, reading fluency, reading comprehension); mathematics problem-solving, calculation, and fluency; written expression; and social and self-advocacy skills. (S-9 at 30-34.)
35. A November 2022 IEP developed following the RR maintained the academic and social skills goals from the June 2022 IEP and the program modifications and items of specially designed instruction essentially remained the same. A 1:1 support paraprofessional was provided as a related service during core academic classes and supported study hall; although Student did not agree with that related service despite recognizing a need for such support. Check-ins with a

social worker was also an added related service. This IEP continued to provide for learning support at a supplemental level. (S-10.)

36. Also at the November 2022 IEP meeting, the team members agreed to a different, more intensive program suggested by the Parents to address Student's school attendance, with behavioral service consultation for a period of two to four weeks to be followed by another meeting. However, due to staffing, the program did not become involved with Student until approximately February 2023; the prior services did continue. Student returned to school for approximately eight school days⁵ in December 2022 including participating in a community outing. (N.T. 43-44, 76-79, 82-85, 178-81; S-18.)
37. Student reportedly benefitted from the new program that began in February 2023 for a two-week period, exhibiting an effort to return to school from the Parents' perspective. At its conclusion, however, staff from that program recommended that Student return to the private school despite concerns voiced at and around the September 2022 meeting about its ability to meet Student's needs. (N.T. 46-47, 102-03, 127-31; S-4 at 1; S-7 at 4.)
38. The District also proposed considering out-of-District programs and placements beginning in March 2023. After the Parent-proposed attendance program ended, a different program was proposed by the District which began to provide services in approximately June 2023. (N.T. 47-48, 53, 86-87, 131-33, 138; S-12.)
39. The District proposed an out-of-District full-time therapeutic program and placement with a comprehensive approach to attendance in April

⁵ Notice taken of the December 2022 standard calendar reveals 17 weekdays between December 1 and 23, 2022, with December 23, 2022 the likely last school day before the winter break. Student was absent on nine of those dates (S-18).

2023 for the 2023-24 school year; it also proposed ESY for 2023. Parents did not approve the April 2023 NOREP because they were concerned with the level of support and attendance programming. (N.T. 48-50; S-14.)

40. In June 2023, the District provided a Notice of Recommended Educational Placement (NOREP) for extended school year services that summer as well as services of a Board Certified Behavior Analyst (BCBA) for 15-20 hours each week in the home to address school avoidance and a full-time emotional support program. The Parents approved this NOREP. (N.T. 52; P-2; S-22.)
41. Student was enrolled in a cyber charter school for the fall of 2023. (N.T. 29, 31-32.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof is comprised of two elements: the burden of production and the burden of persuasion. 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). Accordingly, the burden of persuasion in this case rests with the Parents who filed the Complaint leading to this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The Parents also accepted the burden of production at the hearing.

Special education hearing officers, who have a role as fact-finders, are charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also 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). This hearing officer found all of the witnesses who testified to be credible as to the facts as they recalled them; several witnesses including the Parent who testified did not have clear memories of exactly what took place when. The testimony was essentially quite consistent where it overlapped; it is essentially the parties' perspectives on the facts that are divergent rather than what occurred or did not occur.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA mandates that states provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. "Special education" consists of specially designed instruction. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(a). "Specially designed instruction" is adapting the content, methodology, or delivery of instruction as appropriate to a child with a disability to meet educational needs and to provide for access to the general education curriculum. 34 C.F.R. § 300.39(b)(3).

Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed the IDEA's statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the

procedural obligations in the Act. Through local educational agencies (LEAs), states meet this obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). An IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Andrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 399 (2017).

An LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Proper assessment of whether a proposed IEP meets the above standards must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). “The IEP *must aim* to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

General IDEA Principles: Compensatory Education

It is well settled that compensatory education may be an appropriate remedy where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate educational services, while excluding the time reasonably required for a school district to correct the deficiency. *Id.* The Third Circuit has also

endorsed an alternate approach, sometimes described as a “make whole” remedy, where the award of compensatory education is crafted “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville-Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

The Parents’ Claims

The main contention of the Parents is that the District did not appropriately address Student’s tendency to avoid school and that the supports it did offer or suggest were insufficient. The District counters that a number of options were presented to address the school avoidance as they were manifested, and that most were rejected by the Parents and Student.

It is important to keep in mind that Student presented with mental health diagnoses known to the District during the school year in question and had a history of refusing to attend school. The District did make efforts before and as the 2022-23 school year began to ease Student’s transition back to one of its schools, despite Student having not exhibited absenteeism at the private school. Within days of Student’s first absences that year, the District convened an IEP meeting to discuss options to address concerns including attendance and a reevaluation, and arranged for services to promote Student’s attendance by addressing the underlying anxiety. The District quite appropriately proposed an FBA to examine the school avoidance behavior as part of a reevaluation. Additional options were explored in October with a plan for the Parents and Student to discuss them further. As of that point in time, the District had responded appropriately to Student’s refusal to attend school by offering a number of avenues for Student to access educational programming based on Student’s needs.

The RR was timely completed in November 2022, and the intended FBA was clearly logical and reasonable to pursue. Nonetheless, the purpose of the FBA was to determine the reasons for Student's refusal to attend school. The decision not to undertake the FBA until Student's attendance improved is irreconcilable with the IEP team's intended rationale for its completion. The failure to conduct the FBA could be excused, perhaps, had some other approach been proposed that was reasonably calculated to address Student's lack of attendance which was ongoing and had not at that point markedly changed through the IU and social worker program. Instead, the team turned its focus toward a different attendance program that similarly met with only limited success before the team considered BCBA services in the home and more therapeutic options.

The parties disagreed on whether the Parents or the District had the responsibility to address Student's school avoidance. The answer to that question usually depends on a variety of factors. Here, though, the IEP as revised over the fall of 2022 does not indicate that Student engaged in behavior in the fall of 2022 that impeded Student's learning, although routinely failing to attend school unquestionably satisfies that specific consideration. It is evident that the IEP team did not view the school avoidance as such a behavior, and the District made no attempt to implement any positive behavior supports as required by 20 U.S.C. § 1414(d)(3)(B)(i) and 34 C.F.R. § 300.324(a)(2)(i) designed to encourage, facilitate, and promote Student's engagement in the school environment after the November RR was completed. Even the agreement to arrange for the Parent-suggested attendance services was unsuccessful, which was certainly reasonably foreseeable in light of failed similar services in the fall. It was not until April 2023 when the District proposed a therapeutic placement with comprehensive attendance programming that the District offered a program that was reasonably calculated to provide meaningful

educational benefit to Student based on Student's unique circumstances. Its failure to do so between the issuance of the November 2022 RR and revised IEP and the date of that April 2023 NOREP amounted to a denial of FAPE.

Remedy

Having concluded that a denial of FAPE occurred, it is equitable to award compensatory education for the deprivation. There is no evidence in the record to support a qualitative award; thus, a quantitative remedy shall be awarded. Allowing a brief reasonable rectification period for the IEP team to decide to consider alternatives following the November 2022 meeting, Student is entitled to compensatory education in the amount of 5.5 hours for each school day⁶ that the District was in session from December 1, 2022 through April 26, 2023, the date that the Parents rejected the April 2023 NOREP, less the number of full or partial schools days that Student did attend school in that time period.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs. The compensatory education may not be used for 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 should Student return to the District. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the

⁶ Students at the secondary school level are entitled to 990 hours of instruction per school year over 180 school days, equating to 5.5 hours per day. 22 Pa. Code §§ 11.1, 11.3.

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; and the cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

CONCLUSIONS OF LAW

The District denied Student a free, appropriate public education for a portion of the 2022-23 school year and Student must be awarded compensatory education to remedy the deprivation.

ORDER

AND NOW, this 20th day of January, 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. Student was deprived of FAPE during a portion of the 2022-23 school year.
2. Student is awarded 5.5 hours of compensatory education for each day that school was in session from December 1, 2022 through

April 26, 2023, less the number of partial or full days that Student attended school during that time period. All of the conditions and limitations on that award set forth above are expressly made a part hereof as though set forth at length.

3. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 28760-23-24