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

ODR No. 28292-23-24

CLOSED HEARING

Child's Name:
C.L.

Date of Birth:
[redacted]

Parent/Guardian:
[redacted]

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Hearing Officer:
Brian Jason Ford, JD, CHO

Date of Decision:
January 26, 2024

Introduction and Procedural History

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parents (the Parents) requested this hearing. The Parents allege that the Student's public school district (the District) violated the Student's rights under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*.

The Parent's original due process compliant was broad, alleging multiple and ongoing violations of the Student's right to a free appropriate public education (FAPE). At the outset of the hearing, it became apparent that few, if any, material facts were in dispute. This realization prompted renewed, fruitful negotiations. The parties were able to resolve all disputes about the Student's current and ongoing special education rights. The parties were unable to resolve two issues concerning the 2022-23 school year. The Parents then amended their complaint to reflect the remaining issues and presented that narrower dispute for adjudication.

I applaud the parties' efforts to resolve as much of this matter as possible through negotiation. It is far better for all involved – especially the Student – that disputes concerning the Student's current special education program and placement were amicably settled. The parties' accomplishment is a wonderful illustration of how to move forward in the midst of an ongoing dispute.

Issues

Described above, the issues presented for adjudication in this matter narrowed over time as the parties were able to resolve much of their dispute. By the close of the record, the only claim remaining for adjudication was whether the District violated the Student's right to a FAPE during the 2022-23 school year in two specific ways:[1]

1. Did the District fail to implement the Student's Individualized Education Program (IEP) by not providing an "ABA trained" aide, resulting in a substantive violation of the Student's right to a FAPE?

2. Did the District not appropriately respond to the Student's excessive use of the bathroom during the 2022-23 school year, resulting in a substantive violation of the Student's right to a FAPE?

[1] The parties use somewhat different wording in their closing briefs to describe these issues, but there is no question as to what issues are presented. My parsing of the issues more closely tracks the Parent's language. *See Parent's Closing Argument* at 1-2.

The Parent argues that the answer to both questions is "yes," and that the Student is entitled to compensatory education to remedy the violations. The District argues the opposite.

Findings of Fact

The record of this matter is large in relation to the narrow issues presented. I reviewed the record in its entirety but make findings of fact only as necessary to resolve the narrow issues before me. I find as follows:

The 2021-22 School Year

1. On February 22, 2022, the Student's IEP team (which included the District and the Parents) developed an IEP for the Student. J-6.

2. On March 23, 2022, the IEP team met and revised the IEP. J-6.

3. On April 28, 2022, the IEP team met and revised the IEP again. J-6.

4. On May 16, 2022, the IEP team met and revised the IEP again. J-6.

5. On August 15, 2022, the IEP team met and revised the IEP again. J-6.

6. The Parents were represented by an attorney or participated with the assistance of a non-attorney advocate at most of the 2021-22 school year IEP team meetings. J-6.

The 2022-23 School Year

7. The Student started the 2022-23 school year under the revised IEP. *See* J-6.

8. The revised IEP was reasonably calculated to provide a FAPE to the Student when it was drafted.[2]

[2] This fact is typically viewed as a mixed question of fact and law. The parties agree that the revised IEP was appropriate when it was put in place. I present this lack of a dispute as a "fact" to provide necessary context. The parties' agreement is documented in several places, but perhaps nowhere as clearly as in the Parents' closing brief. *See Parents' Closing Argument* at 1.

9. The revised IEP called for the Student to receive an "ABA trained 1:1" aide for 6.2 hours per school day, starting on August 29, 2022. J-6 at 59.[3]

10. The revised IEP also established a protocol for the parties to determine if an ABA trained 1:1 aide was necessary for field trips, what services the aide would provide during field trips, and how to resolve disputes about those issues. J-6 at 61.

11. The revised IEP includes several other references to an ABA-trained aide. *See* J-6 at 8, 11-12, 29-30. Those references are comprised of the District's verbatim inclusion of the Parent's concerns and feedback and its responses to those concerns within the body of the IEP. The only guarantees in the revised IEP, however, were the ABA trained 1:1 aide during the school day and the protocol for deciding if an ABA trained 1:1 aide was necessary for field trips. J-6.

12. The term "ABA trained" is not defined in the IEP or in any other document in the record of this case. *Passim*.

13. At the start of the 2022-23 school year, the District provided a 1:1 aide for the Student. The Aide was not a Registered Behavioral Technician (RBT) or an Assistant Board Certified Behavior Analyst (BCBA).[4] NT at 50, 206. The Aide did, however, attend a District-wide ABA training session before she began working with the Student. *See, e.g.* NT at 65.

14. Early in the 2022-23 school year, it became apparent to the parties that they did not share a common understanding of what the term "ABA trained" meant. There is a robust record of the parties' back-and-forth discussion about this issue and the Parents' concerns about what they viewed as a lack of training for the Aide. *Passim*.

15. At the start of the 2022-23 school year, District personnel noted that the Student would frequently ask to use the bathroom and would remain in the bathroom for long periods of time. *See, e.g.* S-13.

16. On October 14, 2022, the parties discussed the Student's excessive use of the bathroom. At that time, the parties suspected that the

[3] "ABA" is Applied Behavior Analysis. "1:1" or "one-to-one" means that the aide was to be assigned specifically to the Student, as opposed to a classroom aide who is available to with the Student.

[4] There is no dispute that RBTs receive 40 hours of ABA training or that RBTs and Assistant BCBAs are supervised by BCBAs. As the name implies, BCBAs are certified by the Behavior Analyst Certification Board after receiving substantial additional training.

Student might have been using the bathroom to obtain peer interaction, so they agreed that the Student should use a bathroom in an Emotional Support classroom.[5] *See, e.g.* S-13; NT 77, 245, 448.

17. On November 3, 2022, the Parents sent a doctor's note to the District explaining that the Student was being evaluated for gastro-intestinal (GI) issues and should be given additional time in the bathroom. *See, e.g.* P-14 at 3.

18. On November 30, 2022, the Parents asked the District to hire a private ABA provider who had worked with the Student in the past to train the Aide. *See* P-3.

19. On December 12, 2022, the District declined the Parents' request to fund private ABA training for the Aide. Instead, the District told the Parents that it would retain the Intermediate Unit (IU) in which the District is located for training. The Parents disagreed with this plan and requested ODR mediation. *See, e.g.* J-11.

20. On January 23, 2023, the IEP team reconvened and drafted an annual IEP for the Student (the 2023 IEP). Functionally, this IEP was a revision to and continuation of the prior, revised IEP. *See* J-7A.

21. By the time of the January 2023 IEP team meeting, the District had started collecting data about the frequency and duration of the Student's bathroom breaks, and was under the impression that the Student was requesting bathroom breaks to avoid nonpreferred activities. *Passim (see, e.g.* J-7A).

22. The 2023 IEP included a bathroom protocol and schedule. J-7A at 71-75; *see also* S-18. The purpose of the bathroom schedule was to reduce the frequency and duration of the Student's trips to the bathroom by pre-planning bathroom breaks. The protocol also called for consideration of whether the request to use the bathroom was a function of the Student's behavior/anxiety, or a biological need.[6]

23. On February 3, 2023 (after the IEP team meeting, but before the 2023 IEP was finalized and approved), the parties participated in ODR mediation to resolve their dispute about training for the Aide. The

[5] At this time, the Student was receiving a portion of instruction in an Emotional Support classroom. There are no claims about the Student's Emotional Support placement.

[6] There is evidence that the parties discussed the bathroom protocol and schedule as early as December 24, 2023. The bathroom protocol was first incorporated into the Student's IEP during the January 23, 2023, IEP team meeting. *See* S-13, S-14, J-7A.

mediation was successful, resulting in a Mediation Agreement specifying that the IU would train the Aide and what training the IU would provide. J-11.

24. The Mediation Agreement explicitly references 34 C.F.R. 300.506(b)(6)(i).[7] J-11.

25. The parties finalized the IEP in February 2023 after some back-and-forth editing (attorneys remained involved in the IEP process). The District proposed the final 2023 IEP with a Notice of Recommended Educational Placement (NOREP) on February 14, 2023. The Parents approved the NOREP the same day. J-8 at 21-23.

26. Throughout the remainder of the 2022-23 school year, the District continued to monitor the frequency and duration of the Student's bathroom breaks. February 2023 was the first full month in which data was systematically collected. In February 2023, the Student went to the bathroom on about 78 occasions and spent more than 900 minutes in the bathroom. In March, the number of trips to the bathroom increased to 91, but the total time in the bathroom dropped to 748 minutes. In April, the number of trips to the bathroom reduced to 46, and the Student spent less than 393 minutes in the bathroom. In May, the Student went to the bathroom about 25 times (not counting "Take 5 breaks") and spent less than 300 minutes in the bathroom. *See* J-13-I and J-13-II.[8]

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

[7] *See* Discussion below.

[8] The Parents complied the data from J-13 I and II into a spreadsheet. P-7. During the hearing, the District challenged the Parent's compilation because it comingled unscheduled bathroom breaks with scheduled bathroom breaks and Take 5 breaks. The District filed a graph of the data in J-13 I and II that separates those breaks. The District is correct that there are differences in the totals, and that the District's charting more accurately reflects the Student's behaviors. However, the difference is very small and ultimately has no impact on the outcome of this case. Both the Parents' spreadsheet and the District's graph show that the frequency of the Student's bathroom breaks spiked in March and then were cut in half by May. Both the Parent's spreadsheet and the District's graph showed that the amount of time that the Student spent in the bathroom decreased significantly every month and was cut by more than half over a three-month period.

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. To the whatever extent that witnesses contradicted each other, the differences are attributable to genuine differences in recollection or opinion. Moreover, in this case, no material facts were truly in dispute. The parties' dispute flows from differences in how they view a set of undisputed facts. As a result, the outcome of this case in no way hinges on a credibility determination.

Applicable Laws

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), *citing Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

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

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. 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 F.* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when "the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." *Id* at 3015.

Third Circuit consistently interpreted Rowley to mean that the "benefits" to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child's potential. *See T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew F.* decision in no different.

A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. *See, Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than "trivial" or "de minimis" benefit. *See Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). *See also Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. *See, e.g., J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew F.,* the Supreme Court effectively agreed with the Third Circuit by rejecting a "merely more than de minimis" standard, holding instead that the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id* at 1000. In terms of academic progress, grade-to-grade

advancement may be "appropriately ambitious" for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

Discussion

The Aide's ABA Training – Lack of Jurisdiction

I must dismiss the Parents' claims concerning the Aide's ABA training for lack of jurisdiction. At the very beginning of the hearing, I found that I had no jurisdiction to enforce an IDEA mediation agreement. *See, e.g.* NT at 31. At that point in time, there was no stipulation as to what the mediation agreement covered, and I did not dismiss any claim outright. Now at the end, the record of this case only supports my day-one analysis.

There seems to be no dispute that the parties are bound by the Mediation Agreement. To whatever extent a dispute exists, I find that the parties are bound by the Mediation Agreement. Under current case law, I have authority to determine if the parties are bound by an enforceable agreement, but I do not have authority to interpret or enforce any such agreement. *See, I.K. v. Sch. Dist. of Haverford Twp.*, 961 F. Supp. 2d 674 (E.D. Pa. 2013); *A.S. v. Office for Dispute Resolution Quakertown Cmty.*, 88 A.3d 256 (Pa. Commw. Ct. 2014).

I find that the parties are bound by the Mediation Agreement because it includes all mandatory elements of written mediation agreements required by the IDEA. Written IDEA mediation agreements must include three elements: they must be "legally binding," they must state that "all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding," and they must be "signed by both the parent and a representative of the agency who has the authority to bind such agency." 34 C.F.R. § 300.506(b)(6). The Mediation Agreement satisfies all three elements.

Regarding the first element, the mediation agreement says, "We, the undersigned, understand that this mediation agreement is legally binding

and enforceable in a state court of competent jurisdiction or in a district court of the United States." The parties understood that they were signing a legally binding agreement.

Regarding the second element, the mediation agreement cites to 34 C.F.R. § 300.506(b)(6)(i), which is the requirement to include a statement about confidentiality in the mediation agreement. In addition to the citation, the mediation agreement explains that mediation discussions are confidential and cannot be used in subsequent legal proceedings.[9]

Regarding the third element, the mediation convened remotely. The mediator signed the document electronically for both of the Parents and for the District's Director of Pupil Services. There is no dispute as to the validity or authenticity of those signatures. Both parties proceeded with an understanding that they had signed the document. *See, e.g.* NT at 304).

Having found that the parties are bound by the Mediation Agreement, under current case law I must also find that I have no authority to interpret or enforce the agreement. This divests me of all authority to determine whether the Aide's training after February 3, 2023, was consistent or inconsistent with the Mediation Agreement. Educational harms to the Student, if any, resulting from the District's breach of the Mediation Agreement, if any, are now contract damages that fall outside of my jurisdiction.

Even without the case law establishing the boundaries of my authority to hear a contract claim, the result would be the same. The IDEA itself places disputes about mediation agreements in court, not in due process hearings. IDEA regulations specify that a "written, signed mediation agreement under this paragraph [establishing requirements for IDEA mediation] is enforceable in any State court of competent jurisdiction or in a district court of the United States." 34 C.F.R. § 300.506(b)(7). The Mediation Agreement includes identical language. So, under both IDEA regulations and the terms of the Mediation Agreement, disputes about the Mediation Agreement or enforcement thereof must go to court and cannot be the subject of a due process hearing.

The mediation agreement was signed on February 3, 2023, but it also divests my authority to hear claims about the Aides' training arising before that date. On one hand, reaching conclusions about the scope of the mediation agreement may constitute interpretation and enforcement that

[9] The confidentiality provision itself, which is nearly identical, is found at § 300.506(b)(8). The parties, with help from counsel, were careful to not repeat what was said during mediation.

goes beyond my authority. On the other hand, the record establishes that the entirety of the dispute about the Aide's training from the start of the 2022-23 school year was resolved through mediation. The Parents were concerned about the Aide's training at the very beginning of the 2022-23 school year. The Parents were in constant communication with the District and raised those concerns immediately. The Parents concerns about the Aide's training quickly escalated into a dispute with the District. By November 2022, the Parents asked the District to fund private ABA training for the Aide. The District rejected that request and offered to secure IU training for the Aide. When the parties reached an impasse, they chose to patriciate in IDEA mediation through ODR to resolve this dispute. With the help of [an ODR-contracted mediator], the parties executed a Mediation Agreement resolving their dispute. The mediation agreement spells out what training the Aide was to receive, and by whom. The Parents cannot sign a legally binding IDEA mediation agreement resolving a dispute, and then request a due process hearing to litigate the same dispute.

In sum, the dispute about the Aide's training spans two periods: the start of the 2022-23 school year through February 3, 2023, and February 3, 2023, through the end of the 2023-23 school year. For the first period, I cannot hear the claim because the dispute about the Aide's training was resolved through the Mediation Agreement. For the second period, I cannot hear the claim for two reasons. First, under both the IDEA and the Mediation Agreement itself, disputes about enforcing the mediation agreement must go to court, not to a due process hearing. Second, under case law, I have authority only to determine that the parties are bound by the Mediation Agreement but do not have enforcement authority. Under either mechanism, disputes about the District's adherence to the Mediation Agreement and harms allegedly caused by the District's breach of the same fall outside of my jurisdiction.[10]

The District's Response to the Student's Bathroom Use

The Parents characterize the Student's excessive use of the bathroom as a new behavior that immerged at the start of the 2022-23 school year. The Parents argue that the District's response to this new behavior was impermissibly slow and ineffective, and that the IDEA required something more. The District agrees that the Student's excessive use of the bathroom

[10] A significant part of the record of this case concerned the training that the Aide received pursuant to the mediation agreement, and whether or how the Aide used that training with the Student. I make no findings of fact about those aspects of the record because I have no authority to determine if the District breached the mediation agreement, what harms (if any) were caused by the breach, or what contract damages (if any) are owed to the Student.

was new at the start of the 2022-23 school year but argues that its response was appropriate.

The Student's excessive bathroom use was apparent to both parties from the very beginning of the 2022-23 school year. By October 2022, the parties were discussing the possible reasons for the Student's bathroom use and different strategies to decrease the frequency and duration of the Student's time in the bathroom. In November 2022, the Parent provided medical information explaining that the Student was being treated for GI issues, and that the Student should be allowed to have "additional bathroom time and 'breaks' within reason where [Student] may consult with the school counselor." P-14 at 3. This placed the District in a difficult position.

The District suspected a behavioral element to the Student's bathroom use (at first, a desire to seek social interaction and then a mechanism to avoid non-preferred activities) and agreed with the Parents that services should be put in place so that the Student would spend less time in the bathroom. At the same time, the Parents were providing information from medical doctors urging the District to permit more time in the bathroom to accommodate an unspecified GI issue. This placed the District in a position where it would have to figure out whether each of the Student's bathroom requests were a function of a problematic behavior or of a biological need. The District's effort to make that determination on an instant-by-instant basis is laudable and goes beyond the Student's right to a FAPE. Additionally, it would be inappropriate for the District to outright deny a bathroom request from a student with a documented GI issue. The possible outcomes of such a refusal could be socially and emotionally devastating to the Student.

To strike a balance between reducing the Student's excessive time in the bathroom and accommodating the Student's GI difficulties, I find that the District's argument is correct: The amount of time that the Student spends in the bathroom is expected to be greater than that of a typical student because the Student has a medical GI issue, but the frequency and duration of the Student's time in the bathroom should decrease with implementation of appropriate behavioral supports. That is exactly what happened.[11]

[11] I reject other aspects of the District's argument. The District argues that the Parents actively thwarted its effort to decrease the Student's excessive bathroom use by constantly shifting their preferences and requiring the District to change bathroom strategies before any strategy could prove effective. There are facts in the record supporting this argument, but the argument lacks merit under the IDEA. There are ways that parents can thwart with an LEA's provision of special education that mitigate against liability for a FAPE violation. The clearest example is a parent who refuses to send a child to school when an appropriate program is in place. This case is different from those cases. The District's obligation was (and is) to provide a FAPE for the Student. The District's acquiescence to parental preferences is not a defense.

The Parents' data analysis (P-7) – an analysis that the District claims inflates the Student's bathroom use and obscures the Student's progress – paints a clear picture. In February 2023, the Student took 78 trips to the bathroom, an average of 4.33 bathroom visits a day, and spent 938 minutes (over 15 hours) of the school day in the bathroom. By May 2023, the Student took 43 trips to the bathroom, an average of 2.39 visits a day, and spent 300 minutes (5 hours) of the school day in the bathroom. In four months, the Student's average daily trips to the bathroom were cut nearly in half, and the amount of time that the Student spent in the bathroom was reduced by more than two thirds. This was not a happy coincidence, but rather was the result of a concerted, diligent, effort on the part of school personnel. That effort was also well-documented; first through informal communications with the Parents, then through rigorous data collection, and ultimately through the 2023 IEP. None of this is to say that the Student's use of the bathroom was resolved in the 2023 school year. Both party's analysis indicates that there is still work to be done.[12] But the issue before me is narrow. I find that the District's actions vis-à-vis the Student's use of the bathroom in the 2022-23 school year were substantively appropriate and consistent with the Student's IDEA rights.

Summary and Legal Conclusions

The overarching issue in this case is a question of whether the District violated the Student's IDEA right to a FAPE during the 2022-23 school year. The Parents allege that the District violated the Student's right to a FAPE in two ways. First, the Parents allege that the District failed to implement the Student's IEP because it did not provide an ABA trained 1:1 aide for the Student. The Parents allege that this IEP implementation failure resulted in substantive educational harm to the Student. Second, the Parents allege that the Student began exhibiting a new and problematic behavior (excessive bathroom use) at the start of the 2022-23 school year, and the District's response to the Student's new behavior fell short of IDEA mandates. The Parents allege that the District's insufficient response to the Student's excessive bathroom use also resulted in a substantive violation of the Student's right to a FAPE.

I dismiss the Parent's claims concerning the Aide's on jurisdictional grounds. The parties resolved issues concerning the Aide's training through a Mediation Agreement. The Mediation Agreement terminates my jurisdiction in two distinct but related ways. First, under current case law, I have authority to determine that the parties are bound by the Mediation

[12] May 2023 was the last full month of data. The five hours that the Student spent in the bathroom in May 2023 is a lot by any measure. But what matters most is the Student's trajectory.

Agreement, but I do not have authority to interpret or enforce that agreement. Second, both the IDEA and the terms of the Mediation Agreement itself put disputes concerning Mediation Agreement in court directly, not in due process hearings.

Regarding the Student's excessive bathroom use, I find that the District's actions were appropriate. The timeline of the District's actions was consistent with its IDEA obligations. Both parties recognized the problem in September, the District proposed informal strategies by October, adjusted based on medical documentation that the Parents provided in November, and made IEP changes and began robust data collection in January. Substantively, the Student's actual progress is not evidence that any plan was appropriate at the time it was offered but is evidence about whether the District needed to change what it was doing. The Parents' own analysis of the data establishes that the District's plan was working, resulting in a significant reduction of the Student's trips to the bathroom and the time that the Student spent in the bathroom. There is no preponderance of evidence in the record supporting a substantive or procedural violation of the Student's right to FAPE in this domain during the 2022-23 school year.

ORDER

Now, January 26, 2024, it is hereby **ORDERED** as follows:

1. All claims concerning IEP implementation failures predicated on the training of the Student's aide are **DISMISSED** for lack of jurisdiction.

2. All claims concerning a FAPE violation in the 2022-23 school year predicated on the District's response to the new behavior of the Student's excessive bathroom use are **DENIED.**

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

/s/ Brian Jason Ford
HEARING OFFICER