This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Hearing Officer Final Decision and Order

ODR File Case Numbers

25132-20-21 & 25487-21-22

CLOSED HEARING

Child's Name:

Y.T.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

03/25/2022

Introduction, Background, and Procedural History

This special education due process hearing concerns the special education rights of a student (the Student). The Student's parent (the Parent) resides with the Student in the Norristown Area School District (the District). This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* The parties agree that the Student is a "child with a disability" and that the District is the Student's Local Educational Agency (LEA), as those terms are defined by the IDEA. 20 U.S.C. § 1401(3), (19). More specifically, the Student qualifies for, and is entitled to, special education as a child with Autism Spectrum Disorder and an Intellectual Disability.

Detailed background information is provided in a due process decision resolving a prior dispute between the parties. *See* ODR No. 20956-1819. I will summarize that background for context.

After receiving early intervention services, the Student enrolled in the District in the fall of 2014. A dispute between the Parent and the District arose in 2016. That dispute ended when the parties signed a settlement agreement and release. The Student attended a specialized private school for children with Autism at the District's expense starting in January 2017, pursuant to the settlement agreement. Pursuant to the same agreement, the District reevaluated the Student in 2018 and then proposed an Individualized Education Program (IEP) for the Student's return to the District's schools. The Parent raised substantive and procedural challenges to the proposed IEP through a prior due process hearing. At the prior hearing, the Parent demanded an order for the District to maintain the Student's private school placement. The prior hearing officer found that the 2018 reevaluation and the proposed IEP were substantively and procedurally appropriate and, therefore, the Parent was not entitled to the relief she demanded.

The Parent did not return the Student to the District after the prior due process hearing. Instead, the Parent homeschooled the Student during the 2018-19 school year. In the spring of 2019, the Parent told the District that the Student would return to the District's schools. The District permitted the Student to attend its Extended School Year (ESY) program in the summer of 2019. For reasons detailed below, the Student attended the ESY program for only two days. The Student then attended the District's schools during the 2019-20 school year until all Pennsylvania schools closed as part of the Commonwealth's COVID-19 mitigation effort.

The Parent alleges that the Student was denied a free appropriate public education (FAPE) in several ways:

First, the Parent alleges that the Student derived no benefit from the summer 2019 ESY program because the District failed to provide appropriate transportation for the Student, making the Student's attendance impossible. The Parent demands 54 hours of compensatory education (the total time of the ESY program) as a remedy for this violation.

Second, the Parent alleges that the District violated her right to meaningfully participate in the Student's IEP development before the start of the 2019-20 school year. The Parent demands 10 hours of compensatory education as a remedy for this violation.

Third, from the start of the 2019-20 school year through the COVID-19 closure, the Parent alleges that the District's practice of dismissing students with disabilities early resulted in 81 hours of missed instruction from September 2, 2019, to March 12, 2020. The Parent demands 81 hours of compensatory education to remedy this violation.

Fourth, the Parent alleges that the Student's augmentative and alternative communication (AAC) device broke in school in November 2020 and that the Student was without the AAC devise until January 23, 2021. The Parent alleges that the absence of an AAC devise violated the Student's right to a FAPE during that time and seeks 288 hours of compensatory education to remedy this violation.[1]

Fifth, the Parent alleges that the District violated the Student's right to a FAPE during the mandatory school closures in response to COVID-19 from March 13, 2020, through the end of the 2019-20 school year for failing to provide a PCA. The Parent demands compensatory education to remedy this violation, but it is not clear how much.

Sixth, the Parent alleges that the District's ESY program in the summer of 2020 violated the Student's right to a FAPE. The Parent demands 8 hours of compensatory education to remedy this violation.

Seventh, for the 2020-21 school year, the Parent alleges that the Student required a personal care assistant (PCA) during the school day (meaning remote instruction in the Student's home), but that the District did not

[1] The Parent also sees $22.00 for shipping costs incurred to fix the AAC device. I do not have authority to award such damages, but the Parent's demand is preserved as part of the record of these proceedings.

provide a PCA. The Parent demands 723 hours of compensatory education to remedy this violation.

Eight, the Parent alleges that there were 11 early dismissals during the 2020-21 school year, resulting in 8 hours of lost educational benefit. The Parent demands 8 hours of compensatory education to remedy this violation.

Ninth, the Parent alleges that the District failed to provide one-to-one (1:1) staff support for the Student in the Student's home during the Districts ESY program in the summer of 2021. The Parent alleges that the Student was entitled to four hours of 1:1 support per day over the District's 19-day ESY program, resulting in a demand for 76 hours of compensatory education to remedy this violation.

Tenth, the Parent demands an independent educational evaluation (IEE) at public expense.

As discussed below, I find in part for the Parent and in part for the District.

Issues

The issues presented for adjudication are:

1. Did the District violate the Student's right to a FAPE by failing to provide appropriate transportation to and from its ESY program in the summer of 2019?

2. Did the District violate the Parent's right to meaningfully participate in the development of the Student's IEP before the start of the 2019-20 school year?

3. Did the District dismiss the Student early, resulting in a loss of educational benefit, from September 2, 2019, to March 12, 2020?

4. Did the District violate the Student's right to FAPE by failing to provide an AAC device to the Student in school between November 2020 and January 23, 2021?[2]

[2] Those dates come from the Parent's closing brief and do not correspond with the evidence. Below, I will examine whether the District's failure to provide a AAC devise resulted in a denial of FAPE at any time.

5. Did the District violate the Student's right to a FAPE by failing to provide a PCA in the Parent's home between March 13, 2020, and the end of the 2019-20 school year?

6. Did the District violate the Student's right to a FAPE through its ESY program in the summer of 2020?

7. Did the District violate the Student's right to a FAPE by failing to provide a PCA in the Student's home during the 2020-21 school year?

8. Did the District violate the Student's right to a FAPE by dismissing the Student early during the 2020-21 school year?

9. Did the District violate the Student's right to a FAPE by failing to provide 1:1 support in the Student's home for the District's ESY program in the summer of 2021?

10. Is the Student entitled to an IEE at public expense?

Findings of Fact

I reviewed the record in its entirety. I make findings of fact, however, only as necessary to resolve the issues before me. I find as follows:

Background: General Background and the 2017-18 School Year

1. There is no dispute that the Student is a child with a disability as defined by the IDEA. The Student's primary disability identification is Autism and secondary disability identification is Intellectual Disability.

2. The Student attended a specialized private school for children with Autism during the 2017-18 school year.

3. On August 23, 2018, Hearing Officer Skidmore issued a final decision and order in a due process hearing that the Parent initiated against the District. *In re: Y.T., a Student in the Norristown Area School District,* ODR No. 20956-1819-KE (2018).[3]

4. Hearing Officer Skidmore determined that an IEP that the District proposed for the Student's return to the District's schools for the 2018-19 school year was appropriate (the 2018 IEP). Hearing Officer

[3] The District entered an unredacted copy of ODR No. 20956-1819 into evidence as S-2.

Skidmore also ordered the parties to meet an IEP team meeting so that the Parent could provide information to the District regarding the Student's present education levels, and then ordered the District to revise the IEP based on the information that the Parent shared. *Id.*

Background: the 2018-19 School Year

5. Rather than return the Student to the District's school under the District's IEP, the Parent chose instead to home school the Student during the 2018-19 school year. *Passim*.

6. In May 2019, the Parent informed the District that the Student would return to the District's schools and re-enrolled the Student. The District arranged for the Parent to meet with building-level staff and tour the school building that the Student would attend. NT 128- 129, 379-380, 503.

7. Upon reenrollment, the Parent asked the District for an IEP team meeting. The District informed the Parent that it would implement the 2018 IEP until such time as it could reevaluate the Student and update the IEP to address the Student's needs. *See, e.g.* S-165 at 5-6; P-35; NT 121-122, 326-327, 334, 337-338. At the same time, the District sought information from the Parent about the Student's progress during the year of homeschooling. The Parent was not responsive to the District's inquiries. NT 225-226, 380; P-35 A, P-35.

8. The 2018 IEP included the District's determination that the Student was eligible for summer ESY services. *See, e.g.* S-165 at 89. To comply with that provision of the 2018 IEP, the District invited the Student to its ESY program for the summer of 2019.[4]

9. Ultimately, the Parent agreed to send the Student to the District's ESY program. *Passim*.

The Summer 2019 ESY Program

10. The District's ESY program began on July 1, 2019. The District provided transportation to and from the ESY program, which was located about a mile from the Parent and Student's home. The District

[4] District personnel testified that it offered ESY in the summer of 2019 to assist with the Student's transition back to school. While that may be what the District had in mind, as discussed below, the District's legal obligation to offer ESY in the summer of 2019 flows from the 2018 IEP.

assigned two adults to the bus: the bus driver and an aide. The aide was assigned to the bus, not to the Student. There were several other students on the bus as well. The ride from the Student's home to the ESY program was uneventful.

11. The same day, the Student engaged in a behavioral incident upon boarding the bus to return home. This happened after the Student boarded the bus and while other students were boarding. There is no dispute that the Student's behaviors were a function of the Student's disability.

12. Specifically, the Student attempted to elope from the bus and, despite the intervention of the bus aide and five other adults, and with other children boarding, the Student successfully eloped from the bus. The bus was not moving, the Student did not get far from the bus, and was always surrounded by adults. However, this behavior was alarming and objectively dangerous.

13. As the incident developed, District personnel contacted the parent by FaceTime (a mobile video conferencing service) so that the Parent could help the Student deescalate. This was successful, and the Student ultimately took the bus home. NT 134- 135, 231.

14. School Personnel contacted the Parent the same day, explaining that the District would make two changes to the Student's transportation: First, the District would change the bus aide. Second, the District would make sure that the Student boarded the bus last at dismissal, decreasing the amount of time that the Student would wait on the bus. NT158, 324, 333-336, 395.

15. School Personnel also suggested that the Student could use a harness on the bus. The Parent rejected this proposal and a harness was not used. *Id*.[5]

16. On July 2, 2019, the Student took the bus to the ESY program without incident.

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[5] I must note that use of transportation harnesses for children with disabilities, without proper training and supervision, is exceptionally dangerous and can be deadly. *See, e.g. Susavage v. Bucks Cty. Sch. Intermediate Unit No. 22*, CIVIL ACTION NO. 00-6217, 2002 U.S. Dist. LEXIS 10869 (E.D. Pa. June 18, 2002). There is nothing in the record about the training and supervision of the people who would have put the Student into the harness had the Parent accepted the District's offer, but the District's casual approach to this offer (both at the time and on the stand) is alarming.

17. On July 2, 2019, the Student engaged in another incident when boarding the bus to return home. Although the bus aide was different and the Student boarded last, the Student would not remain seated, attempted to elope, and successfully left the bus again. The Student was able to leave the bus despite what the District properly characterizes as the "substantial efforts" of its staff. As the incident developed, the District called the Parent and asked the Parent to come to the ESY program to take the Student home. NT 128-172, 230-238, 325-341.

18. The Parent does not drive and, because of the Student's ongoing behaviors, the walk home was dangerous for both the Parent and the Student. NT 141-145.

19. On or around July 2, 2019, the Parent informed the District that she would not send the Student back to the ESY program until appropriate transportation supports were in place. The Parent continued to seek an IEP team meeting from the District. *Passim (see, e.g. id*.).

20. The District invited the Parent to an IEP team meeting on July 16, 2019. The invitation stated that the purpose of the meeting was to "Discuss possible changes to your child's current IEP and revise it as needed." S-5.

21. When the Parent arrived at the meeting, District personnel told the Parent that that the meeting was not an IEP team meeting (despite what written on the invitation), but rather the purpose of the meeting was for the District to secure the Parent's consent to evaluate the Student and gather information from the Parent. The District again told the Parent that it would not make changes to the IEP until an evaluation was complete. NT 123-124, 126-128, P-35a.

22. There is no evidence in the record that the District discussed or offered any additional or alternative transportation services to the Student in the summer of 2019.[6]

23. There is no dispute that the Parent did not send the Student back to the District's ESY program.

[6] The District points to NOREPs at S-6 and S-9 as agreements with the Parent about ESY services following the July 16, 2019, meeting. Those documents indicate an agreement that the Student qualified for ESY services and full time Autistic Support during the upcoming school year – nothing more. They provide no information at all about the particulars of the services that the District was offering and completely silent as to transportation services.

24. During the 2019-20 school year, before the COVID-19 school closures, the District provided different transportation services that were successful for the Student.

IEP Development

25. On August 29, 2019, the Parent and District met at an IEP team meeting. The Parent was assisted at the meeting by an advocate. The meeting was lengthy, and the Parent came to the meeting with a written list of concerns. The IEP team discussed those concerns, the Student's needs, and abilities, and various programming options. S-10, S-11.

26. At the time of the IEP team meeting, the District's reevaluation was still pending. *See* S-10, S-11.

27. The District used the information obtained in the IEP team meeting, information from the private school that the Student attended in the 2017-18 school year, information from a 2018 reevaluation report (the 2018 RR) to draft a new IEP for the Student. S-12.

28. The District issued the proposed IEP to the Parent with a NOREP. The Parent rejected the NOREP on September 20, 2019, stating that information was missing from the IEP and that she wanted changes in the IEP (the NOREP itself did not say what changes the Parent wanted). S-16.

29. The IEP team convened again on October 2, 2019. At that meeting, the District proposed a revised IEP that included significant changes in response to the Parent's concerns and information that the Parent shared. S-24.

30. The District proposed the October 2019 Revised IEP with a NOREP. The Parent did not return the NOREP, but in an email to the District stated her understanding that the District would implement the IEP.[7] S-29.

31. The District completed its reevaluation and issued a reevaluation report on October 25, 2019 (the 2019 RR). The 2019 RR included an Occupational Therapy evaluation, a Physical Therapy evaluation, input

[7] I do not discuss this IEP or any of its multiple revisions in detail because there is no dispute about its substantive appropriateness. No relief is demanded for any defect in this IEP or its revisions. The particular alleged violations for which relief is demanded are listed above.

from the Parent and teachers, a review of records, and multiple, standardized, normative assessments of the Student's intellectual ability, academic achievement, and behavioral presentation. S-27.

32. The full IEP team, including the Parent and the District's psychologist who was the primary author of the 2019 RR, reviewed the 2019 RR together during at least three meetings, each of which was several hours in duration. S-36, S-45, S-57; NT 391, 657-658.

33. In addition to the meetings to review the 2019 RR, the District continued to convene IEP team meetings both at the Parents request, and to revise the IEP to include or refine important items like a PCA. During this time, the Parent expressed no particular objection to any of the District's proposed programs, but rather stated her belief that the documents had not been completely reviewed. *See, e.g.* S-30, S-31, S-34, S-36, S-45, S-47, S-48; NT 345- 346, 391-392, 524, 655-656.

34. Ultimately, the District determined that the IEP team had thoroughly reviewed the documents, and so it issued a NOREP on January 7, 2020. On February 10, 2020, the Parent approved the provision of services in the then-current version of the IEP without conceding that those services were appropriate. S-61.

Early Dismissal – September 2, 2019, through March 12, 2020

35. I take judicial notice that Governor Wolf closed all Pennsylvania school on March 13, 2020, to mitigate the spread of COVID-19. The Governor extended the school closure order through the end of the 2019-20 school year. The Parent's claims concerning early dismissal cover the period of time from the start of school on September 2, 2019, through March 12, 2020 (a Thursday).

36. District personnel testified that, during the 2019-20 school year, low incidence special education students, like the Student in this case, would begin their day at 8:00 a.m. and conclude their day at 2:45 p.m. Most other students would begin their day at 8:30 a.m. and end their day at 3:15 p.m. Despite a "staggered bell schedule" all students received 6.25 hours of instructional time per school day. 377-378.

37. The Parent testified that the Student's transportation to school did not arrive at the family's home until 8:00 a.m. and, on days when the Parent picked the Student up in the afternoon, the Student was dismissed at 2:50 p.m. *See, e.g.* NT 206-207.

38. To resolve this conflicting testimony, I note that the Parent's testimony concerned the particular pickup and drop off times for the Student, while the District employee's testimony concerned his understanding of the District's policies and practices. In other words, the District could only testify as to what should have happened while the Parent testified to what actually happened. I also look to the contemporaneously drafted emails. In those emails, the Parent raised concerns at the time about Student coming to school late and leaving school early. The District acknowledged the concern and stated that it was working to fix the problem. S-25 at 33.

39. I make no findings concerning the District's general practices. Rather, I find that the Parent presented a preponderance of evidence that the Student was regularly picked up at home around 8:00 a.m. was regularly dismissed early. Whatever the District's intention or policy, I find that the Student missed 81 instructional hours as a result of the District's transportation and scheduling. Compensatory education is an appropriate remedy for this violation, and an appropriate order follows.

AAC Device

40. There is no dispute that the Student uses an AAC devices as one method of communication.

41. In the 2019-20 school year, the Student brought an AAC device that the Parent owned to school. The glass screen of the AAC device was damaged in school sometime in December 2019. Thereafter, the Parent would not permit the Student to use the AAC device, fearing it was unsafe. [8] NT 244, 398, 534-535.

42. When the Parent discontinued the AAC device, the District made a flip book containing the same images as the AAC device as a temporary replacement. NT 398-399, 477, 534- 535.

43. Shortly thereafter, the District went on winter break. During the break, the District ordered a new, identical AAC device for the Student's use in school. NT 244-246, 399-400, 477, 534-535; S-60.

[8] The parties describe the damage differently and dispute whether it was safe to use the AAC devise with a cracked screen. I make no finding concerning of the safe use of cracked screen.

In-Home PCA – March 13, 2020, Through the End of the 2019-20 School Year

44. There is no dispute that the Student's IEP required the District to provide a PCA during the school day.

45. There is no dispute that the District shifted to remote instruction after schools closed on March 13, 2020.

46. There is no dispute that the District did not provide a PCA in the Student's home from March 13, 2020, through the end of the 2019-20 school year.

The Summer 2020 ESY Program

47. The District found the Student eligible for ESY services in the summer of 2020. All ESY services were remote, as the District remained closed for in-person instruction. Citing to the negative experience in the summer of 2019, the Parent declined the District's ESY offer. S-46, S-69; NT 172-173, 368, 402.

The 2020-21 School Year – In-Home PCA

48. The District remained closed, providing remote instruction at the start of the 2020-21 school year. The District later offered families the option of hybrid instruction in which some instruction would occur in school and some remotely. Citing health concerns and the Student's inability to tolerate masking, the Parent declined hybrid instruction and the Student received remote instruction for the entire school year. *Passim* (see, e.g. NT 173, 368, 402; S-56).

49. The only dispute concerning the Student's program in the 2020-21 school year is the provision of 1:1 PCA support in the Student's home. *See, e.g. Parent's Closing Brief*. Looking at the pleadings as a whole, the Parent argues that the District's failure to provide this accommodation is a *per se* violation of the Student's IEP and the Student's right to a FAPE. Alternatively, the Parents argue that the absence of a PCA made it impossible for the Student to participate in remote instruction. I, therefore, make no findings concerning the efficacy of remote instruction itself for the Student, or the quantum of progress that the Student made during the 2020-21 school year.

50. The District contracted with a private company to provide PCA support in the Student's home at the start of the 2020-21 school year. That

company sent a PCA to the Student's home for roughly seven weeks. *See, e.g.* S-81.

51. As a precondition to receiving in-home PCA services, the District required the Parent to sign a "Affirmation for Personal Care Services in the Home." Through that affirmation, the Parent agreed to wear a face mask while the PCA was in the home, comply with social distancing, supervise the Student, provide a 30-minute "student free" lunch break, refrain from tobacco, drug and alcohol use when the PCA is in the house, complete a daily COVID self-disclosure form daily, and complete a daily temperature check. S-79.

52. The Parent signed the Affirmation on September 1, 2020. S-79.

53. The private PCA then resigned. The parties hotly dispute the reason why the private PCA resigned. I do not resolve that dispute because the reason for the PCA's resignation is irrelevant to these proceedings.[9]

54. Around the time of the private PCA's resignation, the District revised the Affirmation required before it would place a District-employed PCA in any family's home.[10] There were two changes: first, the family would have to submit a negative COVID test for every family member living in the home. Second, the family would have to agree to a walk-through safety inspection in which the District would check for safe egress and open weapons. *See* P-38; NT 189, 406-407.

55. The Parent refused to sign the new Affirmation, raising concerns about its intrusiveness, and the difficulty of testing the Student for COVID-19. The District and the Parent discussed these concerns. The District offered to inspect only the portion of the home where the PCA would work and offered to provide less intrusive "quick tests" for the Student. The Parent still refused. *See, e.g.* NT 355-357.

56. As a result of the Parents refusal to sign the new Affirmation or comply with its terms, the District did not provide a PCA for the Student. NT 192-193, 409.

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[9] The amount of time waisted during the hearing on this issue is prepositus and will inform my practice going forward.

[10] The record reveals that the change in the Affirmation was the result of negotiations between the District and the teacher's union but, as with the reason for the Private PCA's resignation, the reason why the District changed the Affirmation is not relevant.

57. In its closing statement, the District correctly summarizes the Student's participation in remote instruction during the 2020-21 school year after the private PCA departed: "Following the PCA's departure, [the Student's] attendance became sporadic, at best, and eventually became non-existent. (S-147). As a result of [] absences, [the Student's] progress was hindered due to the limitations on access to [the Student] and the ability to provide any sort of instruction or intervention to [the Student]. (NT: 365-366; 546)."[11]

The 2020-21 School Year – Early Dismissal

58. It is not immediately clear how the concept of early dismissal applies during a year of remote instruction. I interpret this issue to relate to a loss of instructional hours during the 2020-21 school year as a result of late starts or early stops to synchronous remote instruction and make findings accordingly.

59. There is no preponderant evidence in the record that the Student missed instructional time during the 2020-21 school year because of anything that could be considered early dismissal. There is overwhelming evidence that the Student stopped participating in remote instruction after the private PCA resigned. Those issues are distinct and should not be conflated.

The Summer 2021 ESY Program

60. The record is nearly silent about the summer 2021 ESY program (in comparison to other issues). Even so, the Parent raises the same argument about the provision of an in-home PCA during the summer of 2021.

61. Facts concerning the provision of an in-home PCA during the summer of 2021 are identical to the facts concerning an in-home PCA during the 2021-22 school year.

62. On June 30, 2021, the Parent filed a due process complaint initiating this matter. The Parent was not represented by an attorney at that time.

63. The Parent retained an attorney and filed an amended due process complaint on July 27, 2021.

[11] Again, I make no determination about the actual quantum of progress that the Student made during this time.

Independent Educational Evaluation (IEE)[12]

64. Under Pennsylvania regulations, children with Intellectual Disabilities must be reevaluated every two years. As a result, the Student was due for a reevaluation during the 2021-22 school year.

65. On August 30, 2021, the District issued a form seeking the Parent's consent to reevaluate the Student. When the Parent did not respond, the District sent the form twice more (one of those transmissions was by email). S-136, S-140, S-141, S-183. Although the Parent never signed a permission form, the District commutated that it would evaluate the Student and the Parent participated in the evaluation by returning some (but not all) rating scales and communicating with the District and its evaluator. *See, e.g.* S-170.

66. Several of the assessments that the District intended to complete as part of the reevaluation required in-person testing and could not be completed remotely. NT 667-668, 684-685.

67. With the exception of a meeting on September 9, 2021, the Parent refused to make the Student available for in-person testing at the District. The parties briefly discussed an alternative location for in-person testing but found no mutually agreeable location. *See, e.g.* NT 299-300, 429-430, 505, 561-566, 570-572, 576-577, ; S-137, S-139, S-176

68. The District completed the reevaluation using the information it could gather and issued a reevaluation report on October 25, 2021 (the October 2021 RR). S-170.

69. After issuing the October 2021 RR, the District attempted to convene meetings to review the reevaluation, update the Student's IEP, and discuss the Student's placement. Broadly, the Parent refused to participate, citing the pendency of these proceedings. *Passim* (see, e.g. NT

70. On October 27, 2021, the District concluded that it should reevaluate the Student again to obtain information that was missing from the

[12] The Parent's demand for an IEE at public expense relates to an evaluation that occurred during the 2021-22 school year. The Parent raises no other issue concerning the 2021-22 school year in her complaint, and makes no argument concerning the appropriateness of programming the District offered in the 2021-22 school year.

October 2021 RR. The District issued another permission to evaluate form. S-174. When the Parent did not return that permission form, the District re-sent the form on November 9 and 19, 2021. S-178, S-185. The Parent acknowledged receipt of those forms but refused to sign them without changes. S-184. The Parent never returned the forms.

71. On January 18, 2022, the District revised the RR (the January 2022 RR). The District characterizes this as a new RR. The primary changes are the addition of information about the District's proposed programming and the Districts efforts to obtain more information about the Student's needs. S-179.

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 contradictions.

This does not mean that I assign equal weight to all testimony. Hearsay, no matter how fervently believed by the witness, cannot form the basis of this decision. Further, in this case, portions of the Parent's testimony were speculative in nature. The contradictions between the Parent's testimony and the testimony of District employees is notable, but the areas of disagreement are not outcome determinative. To the extent that my findings

of fact are derived from testimony alone (as opposed to documentary evidence or a combination of both), the weight that I assign to each witnesses' testimony is reflected in my findings above.

General Legal Principles

The Burden of Proof

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

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.

The hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. *See Reid ex rel.Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). In *Reid*, the court concluded that the amount and nature of a compensatory education award must be crafted to put students in the position that they would be in, but for the denial of FAPE. *Reid* remains the leading case on this method of calculating compensatory education.

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 embraced the *Reid* method in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid* to explain 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 *Reid* or "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., 39 F. Supp. 3d 584, 608 (M.D. Pa. 2014).

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.*, 39 F. Supp. 3d 584, 609 (M.D. Pa. 2014). *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 establishing the position that the student would be in but for the denial, or evidence establishing the amount and type of compensatory education needed for remediation, the hour-for-hour approach is a necessary default. Alternatively, full-day compensatory education can also be an appropriate remedy if the full-day standard is met.

In all cases, however, 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 revaluations. 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).

Discussion

The Prior Due Process Decision

Analysis of the issues presented in this matter necessary starts with Hearing Officer Skidmore's prior decision. Hearing Officer Skidmore determined that the 2018 IEP was appropriate for the Student at the time it was offered. The Parent did not appeal that decision, but also did not permit the District to implement the 2018 IEP, choosing instead to homeschool the Student during the 2018-19 school year. This contextualizes the District's obligations to the Student upon reenrollment at the end of the 2018-19 school year.

Families move, and so the IDEA and Pennsylvania regulations anticipate students with disabilities moving from LEA to LEA both interstate and intrastate. While the return to the District's program from a year of homeschooling is not technically a transfer, the circumstances are similar. Were this an LEA-to-LEA transfer, the District would be obligated to implement the Student's IEP (or provide comprisable services) until it could conduct its own evaluation and issue its own IEP. The District's decision to implement the 2019 IEP, which included summer ESY services, upon the Student's reenrollment is consistent with the IDEA.

2019 Summer ESY

The record reveals no dispute about the substantive appropriateness of the District's ESY program in the summer of 2019. Rather, the dispute concerns the District's alleged failure to provide appropriate related services to enable the Student to attend the ESY program. Both transportation and paraprofessional support are related services under the IDEA.

There is no doubt that this is an emotionally charged issue for the Parent. The transportation incidents in the summer of 2019 were dangerous for the Student and legitimately caused the Parent some amount of emotional distress. That distress was exacerbated by the District's lack of empathy in response to what the Parent perceived as a crisis. The Parent may not have trusted the District before this incident, but the Parent's lack of trust was nearly absolute from this point forward. Even so, the Parent's mistrust and the District's empathy are not factors in my decision. Rather, I look to determine whether the District offered a FAPE, and that analysis concerns the Student's needs and the District's program.

It was appropriate for the District to provide transportation to and from the ESY program in accordance with the 2018 IEP for the start of the program. The Parent presents no argument that the transportation offered by the

District is inconsistent with the 2018 IEP. However, an IEP that is reasonably calculated to provide a FAPE when it is offered may still fail to work as expected. When this happens, LEAs have an obligation fix the problem. This is typically accomplished through a combination short-term, mutually agreeable fixes, reevaluations, and IEP revisions. In this case, it was immediately obvious that the District's transportation to and from the 2019 ESY program was inappropriate for the Student at the time of implementation, even if the 2018 IEP was appropriate when it was offered.

After the second day of the ESY program, the District is charged with knowledge that the transportation services in place for the Student were inappropriate. Even if the Student was adjusting to a significant change from homeschooling in the 2018-19 school year, the District was still obligated to work with the Parent to revise its transportation accommodations. The District did not do this, and so the Student had no way to access the District's ESY program.

The Parent has proven by preponderant evidence that the District was obligated to offer an ESY program to the Student in the summer of 2019, and that the District failed to provide appropriate related services in the domain of transportation so that the Student could receive a FAPE during the ESY program.

The Parent's demand for 54 hours of compensatory services to remedy this violation is granted.

Parental Participation in IEP Development

There is no evidence whatsoever that the District violated the Parent's right to meaningfully participate in the development of the Student's IEP. The evidence is overwhelmingly to the contrary. Poor communication and rescheduled meetings are simply not evidence of a violation of the Parent's right to participate. The record unambiguously establishes that the District provided not only a forum for the Parent to speak, but that it listened to what the Parent had to say. The District actively sought the Parent's input and used that input to design the Student's special education program.

The Parent's meaningful participation claim is denied and dismissed.

Early Dismissal – The 2019-20 School Year Through the COVID-19 Closure

The conflicting testimony concerning early dismissals between September 2, 2019, and March 12, 2020 – and my resolution of that conflict – is discussed

above. Under a preponderance of evidence standard, the Parent has established that the Student did not receive a full day of instruction during the period in question, and that this diminution of educational benefit happened consistently.

I accept the Parent's calculation that this violation resulted in a loss of 81 instructional hours, and so the Parent's demand for an additional 81 hours of compensatory education is granted.

Provision of an AAC Device

Ignoring conflicts between the record and the Parent's argument about when the AAC device was damaged, I look to see if the absence of an AAC device resulted in a denial of FAPE. The Parents have not proven that the brief time that the Student did not have an AAC device in school resulted in substantive educational harm. The record is silent as to the educational impact of not having an AAC device in school within this narrow window (the record is equally silent about the educational impact of the replacement flip book that the District used during this time).

The Parent's demand for additional compensatory education for the District's failure to provide an AAC device is denied.

In-Home PCA – March 13, 2020, to End of 2019-20 School Year

The most challenging aspect of this case is whether the District can be held liable for its failure to send a PCA into the Student's home. Analysis for the period from March 13, 2020, to the end of the 2019-20 school year is quite different from analysis for the 2020-21 school year.

Described above, compensatory education is an equitable remedy. This is part of the reason that the District is entitled to a reasonable rectification period from the time that it knows a student is not receiving a FAPE to the time that compensatory education begins to accrue.

In this case, the Student received remote education from the District at home for the first time when schools closed. The District had information from the Parent about the Student's experience during homeschooling, but remote instruction was entirely different. It was not possible for the District to know exactly how the Student would respond to remote instruction, or what related services the Student would need to benefit from remote instruction. On top of that, the District had no way to know how long the school closure would last when the Governor issued the closure order.

The Parent has preponderantly proven that the District failed to implement the Student's IEP after the school closure. Under the unique, student-specific facts of this case, I find it would not be equitable to award compensatory education for this failure during the period of March 13, 2020, to the end of the 2019-20 school year. The District's time to assess the Student's need for related services at home, determine that a PCA remained a necessary component of FAPE, and then retain a PCA qualified to work with the Student all while all semblance of normality was upended mitigates against compensatory education completely during this period.

Analysis for the 2020-21 school year, below, is different.

ESY 2020

The Parent did not meet their burden to establish that the District failed to offer a FAPE for the Student in the summer of 2020. There is no preponderance of evidence establishing what ESY services would have been appropriate, whether the Parent accepted the District ESY offer (or what conditions were placed on that acceptance), or how the ESY program may or may not have been contingent upon the Parents acceptance of the District's second Affirmation.

The Parent's demand for compensatory education to remedy a denial of FAPE in the summer of 2020 is denied.

In-Home PCA – 2020-21 School Year

There is no question that the Student's IEP required the District to provide PCA support. Whatever reasonable rectification time the District had starting on March 13, 2020, was over by the start of the 2020-21 school year.

The Parent is correct that the District substantively violated the Student's IEP *per se*. Both parties all but explicitly agree that the absence of a PCA in the Student's home during the 2020-21 school year (after the private PCA resigned) had significant, adverse educational consequences for the Student. And yet, the record also establishes that the District's failure to provide a PCA is directly attributable to the Parent's refusal to sign the District's updated Affirmation and submit to an inspection of the area in which the PCA would work.

There was nothing unreasonable about the District's second Affirmation. Moreover, the record establishes that the District did not take an absolutist approach to the second Affirmation. Rather, it was willing to work with the Parent to find compromises. The Parent's refusal to sign the Affirmation and

submit to the District's minimal requirements – modified for the Parent – for the protection of its staff was unreasonable.

The United States Department of Education under two administrations has consistently taken the position that schools' responses to COVID-19 in no way abrogate the rights of children with disabilities. The Pennsylvania Department of Education (PDE) has taken the same position. And even though parents have substantive rights under the IDEA, the right to special education belongs to the child. My choice, therefore, is to either punish a child with disabilities for a parent's unjustifiable obstinance or deplete the resources of a public school that went out of its way to compromise and cooperate. There are no good answers here.

In *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 127 S. Ct. 1994 (2007), the Supreme Court found that IDEA affords rights directly to parents, not just students. Even so, the substantive, educational right to a FAPE belongs to the child. When a child's right to a FAPE is violated, a remedy is owed to the child. That remedy, compensatory education, is equitable in nature. Therefore, I take the Parent's actions into consideration when crafting the remedy.

There are some parental actions that negate a district's obligation to provide a FAPE or terminate a district's liability for not providing a FAPE. *See, e.g.* 20 U.S.C. § 1414 (concerning consent for evaluations). None of those apply here, and so the Parent's actions cannot completely remove the District's liability after the rectification period ends. In this case, however, the Parent's actions significantly thwarted the District's effort to educate the Student.

If the District had simply failed to provide a PCA to the Student, the Student would be entitled to one hour of compensatory education for each hour that the District provided instruction to all students during the 2020-21 school year, starting the day after the private PCA quit. Although the Parent prevented the District from providing a PCA, the result to the Student is the same. The Student must have a remedy, but it is simply unfair to hold the District completely liable when the violation of the Student's right to a FAPE is directly attributable to the Parent. To resolve this, I reduce the compensatory education award by 75%.

The Student is entitled to compensatory education for the period from the day after the private PCA resigned through the last day of the 2020-21 school year. For that time, the Student is owed 15 minutes of compensatory education for each hour of instruction that the District provided to its non-disabled students, through whatever means.

Early Dismissal – The 2020-21 School Year

Based on the findings above, the Parent has not presented preponderant evidence that the Student lost instructional time as the result of early dismissal during the 2020-21 school year. The Parent's demand for additional compensatory education for this violation is denied.

ESY 2021

Analysis for ESY in the summer of 2021 is identical to analysis for ESY in the summer of 2020. The Parent's demand for additional compensatory education for any violation of the Student's right to a FAPE in the summer of 2020 is denied.

Independent Educational Evaluation

It is rare in a special education due process hearing to see so much evidence put forth by an LEA of its dissatisfaction with its own evaluations. As with the provision of PCA support, the District wanted to do more but was stopped by the Parent; first by the Parent's unresponsiveness and then by the Parent's refusal to make the Student available.

The Parent cannot refuse to take minimal measures to ensure the safety of District staff in her home and then challenge the RR for its failure to include an in-home observation.

Analysis is similar for the Parent's refusal to make the Student available for in-person testing after the District offered student-specific accommodations to assuage health concerns. I do not fault the Parent for being cautious. But there is a line between reasonable caution and obstinance for its own sake. The Parent's staunch refusal to consider the accommodations that the District offered to enable in-person testing crossed that line.[13]

A more complete evaluation is necessary, but the Parent has not established entitlement to an IEE at public expense. An IEE at public expense is an available remedy only upon a showing that the District's RR was inappropriate. Deficiencies in the District's RR are attributable to the Parent's

[13] The same behavior is seen in the Parent's responses to the District's various efforts to obtain consent for evaluations. At some point, the Parent must choose between battles over the non-substantive minutia of the District's forms and obtaining actionable information about the Student.

actions and inactions. The Parent cannot simultaneously stand in the way of a complete evaluation and then challenge the evaluation for its incompleteness.

I will order the District to (yet again) seek the Parent's consent to reevaluate the student, targeting any domain that the District was unable to assess during its prior reevaluation. Should the Parent withhold consent, the District's options are spelled out by the IDEA itself. *See* 20 U.S.C. § 1414.

Use of Compensatory Education

The Parent may direct the use of the compensatory education awarded herein for any appropriate developmental, remedial, or enriching educational service, product, or device that furthers the Student's educational and related service 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 the Student's IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and during the summer months when convenient for the Student and the Parent.

Services and products funded by compensatory education must be acquired at or below market rates in the District's geographical area. Any compensatory education not used before the end of the school year in which the Student reaches 21 years old is forfeited.

ORDER

Now, March 25, 2022, it is hereby ORDERED as follows:

1. The District violated the Student's right to a FAPE during the summer of 2019. The Student is awarded 54 hours of compensatory education as a remedy.

2. From September 2, 2019, through March 12, 2020, the Student lost instructional time, and therefore educational benefits, because of regular late school starts and early dismissals. The Student is awarded an additional 81 hours of compensatory education as a remedy.

3. During the entire 2020-21 school year, the District violated the Student's right to FAPE by failing to provide a PCA in the Student's home. I attribute 75% of that failure to the Parent's unreasonable actions and inactions. The Student is awarded 15 minutes of compensatory education for each instructional hour of the 2020-21 school year.

4. All compensatory education awarded herein shall be used or forfeited in accordance with the accompanying Decision.

5. Within 20 days of this Order, the District shall propose a special education reevaluation of the Student, targeting any information that the District was unable to obtain as part of its most recent re-evaluation.

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

/s/ Brian Jason Ford

HEARING OFFICER