

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 Due Process Hearing Officer

Final Decision and Order

ODR No. 24406-20-21

CLOSED HEARING

Child's Name:

J.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Ilene Young, Esquire
172 Middletown Blvd., Suite 204
Langhorne, PA 19047

Local Education Agency:

Central Bucks School District
16 Welden Drive
Doylestown, PA 18929

Counsel for the LEA:

Mark W. Cheramie Walz, Esquire
331 Butler Ave., P.O. Box 5069
New Britain, PA 18901

Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

04/09/2021

Introduction

This special education due process hearing concerns the educational rights of a student (the Student). This hearing was requested by the Student's parents (the Parents) against the Student's public school district (the District).¹

The Parents allege that the District violated the Student's right to a free appropriate public education (FAPE) in violation of 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.* More specifically, the Parents claim that the District's provision of special education to the Student in the past falls short of the IDEA's FAPE standard, and that future programming proposed by the District is not reasonably calculated to offer a FAPE going forward. The Parents demand compensatory education to remedy the past violations. Going forward, the Parents demand an order requiring the District to offer an Individualized Educational Program (IEP) that includes placement in a private program. The Parents view that private program as a necessary element of FAPE for the Student.

The District takes the position that it has not violated the Student's right to a FAPE, that its proposed programming is appropriate, and that no remedy is owed.

As explained below, I find in part for the Parents and in part for the District.

¹ Except for the cover page, identifying information is omitted to the extent possible.

Issues

The issues presented for adjudication are:

1. Did the District violate the Student's right to a FAPE? If so, what remedy is owed?
2. Must the District offer an IEP that includes placement in a private program as a necessary component of FAPE for the Student?

Findings of Fact

I reviewed the entire record. I make findings of fact, however, only as necessary to resolve the issues presented for adjudication.

At the end of this hearing, both parties filed extensive proposed findings of fact and a small number of stipulations in place of testimony from an additional witness. The parties' proposals focus on and highlight facts that support their divergent positions. However, a side-by-side comparison of the parties' proposed findings reveals significant agreement about the facts this case, particularly in terms of the chronology of events. The parties view the facts quite differently and reach different conclusions about their educational and legal implications. Nevertheless, I include this case among a host of others in which I wonder whether it would have been more efficient to proceed primarily on stipulations.

I find as follows:

Background and the 2017-18 School Year

1. There is no dispute that the Student is a child with disabilities as defined by the IDEA. The Student is diagnosed with Autism and Mixed Expressive/Receptive Language disorder. P-10. The Student's disabilities are severe and pervasive. *Passim*.
2. From October 2016 through the present, the Student received services from behavioral health agencies in addition to services provided by educational agencies. P-40.
3. The Student received IDEA Part C (birth to 3 years old) services and then Early Intervention services from an Intermediate Unit (the IU). The Early Intervention services started in November 2015 and continued through the Student's enrollment in the District in summer 2018. P-1.
4. From the start of Early Intervention through June 2017, the IU provided home-based Applied Behavioral Analysis (ABA) programming for ten hours per week; weekly instruction and therapies from a specialized instructor, a speech therapist, an occupational therapist, and a physical therapist; and behavioral support for the Student. P-1.
5. In addition to the IU-provided Early Intervention services, the Student also received one additional hour of support per week from a Board-Certified Behavior Analyst (BCBA) provided by local Behavioral Health agencies. The Parents also paid for weekly private speech and occupational therapy. P-1.
6. The Student exhibits articulation errors that can make the Student difficult to understand. *Passim*.

7. In April 2017, the IU introduced an Augmentative and Alternative Communication (AAC) device. Over time, the Student's ability to use the AAC device to communicate increased. Using the AAC device, the Student's overall ability to communicate (through means including the device itself) improved. However, the Student's ability to communicate verbally decreased as the Student relied upon the AAC device for communication. P-10.
8. During summer 2017, the Student did not receive services from the same ABA providers who worked with the Student in the 2016-17 school year, and services were sporadic. NT at 179.
9. At all times, the Student has exhibited behaviors that require environmental modifications. *Passim*. [Redacted] is one of those behaviors. During summer 2017, the Student started [redacted], which was a new behavior. Both [redacted] had decreased by September 2017, despite the irregular summer services. P-1.
10. After a summer of irregular services, the IU documented regression in several skills at the start of the 2017-18 school year. P-1, P-2.
11. On September 17, 2017, the Student switched from a home-based program to an IU-run, center-based Early Intervention program. The Student attended the center-based program for four days per week, from 9:00 a.m. to 3:00 p.m. There, the Student received 10 units per week of specialized instruction, speech therapy twice per week, occupational therapy for two hours per week, physical therapy,

behavioral support, and “one to one assistance throughout the day.”
P-2.

12. The center-based Early Intervention program did not explicitly include ABA programming. P-2.
13. To enable the Student’s transition from the home-based program (inconsistent as it was in summer 2017) to the center-based program, the IU continued to provide one-to-one ABA four times per week, two hours a session, with behavioral consultant support. The IU kept these services in place in addition to the center-based program for one month. P-2.
14. On October 20, 2017 the IU issued a Reevaluation Report (the 2017 RR), with comprehensive assessments of cognitive, skill and functional levels. P-1.
15. According to the IU’s documentation of the Student’s progress, the Student lost verbal communication skills from the start of the 2017-18 school year through December 2017. By December 2017, the Student was comfortable with the AAC device and had stopped communicating verbally or with verbal approximations. P-9, P-10.
16. On January 13, 2018, the Parents notified the District of their intent to register Student for Kindergarten for the 2018-19 school year. P-5, P-55.
17. During the 2017-18 school year, the IU tracked the Student’s progress toward six goals in an IFSP/IEP. The IU reported baselines for all of

those goals in November 2017. The IU reported the Student's progress towards all of those goals in March 2017. The IU also reported in March 2017 that the Student's [redacted] was easily redirected. P-7.

18. On March 16, 2018, the Parents attended an intake meeting at the District. The Parents received a Permission to Reevaluate form from the District and provided consent for the District to conduct a reevaluation the same day. P-5, P-55.
19. On April 19, 2018, the IU and Parents met to discuss the Student's progress. The IU and Parents agreed to increase the Student's services in an effort to improve the Student's verbal communication. Specifically, the IU added a verbal imitation goal to the Student's IFSP/IEP and an additional 30 minutes per week of one-to-one speech therapy to help the Student achieve that goal. The IU also added an extra hour of behavioral support, including a home visit, to target generalization of skills across settings. P-9.
20. The District reevaluated the Student after the Parents provided consent in March 2018. The District then drafted a reevaluation report dated May 18, 2018 (the 2018 RR). P-10.²

² The Student's father testified that the Parents did not receive the 2018 RR until they worked with an advocate to obtain a copy of the Student's records in 2020. That allegation also appears in the Parents' Complaint to explain when and how the Parents came to know what information the IU provided to the District prior to the Student's enrollment. The only claim raised in regard to the Parents late receipt of the 2018 RR is that their receipt of the document sets the KOSHK (knew or should have known) date for any statute of limitations analysis. In their closing brief, however, the Parents argue that the District's failure to provide a copy of the 2018 RR is a FAPE violation in and of itself for which compensatory education is owed. This issue was not presented in the Parents' complaint or when I confirmed the issues for adjudication at the outside of the hearing. NT at 41-43. The date of the Parents' receipt of the 2018 RR is, therefore, not relevant to the issues presented and I decline to make a finding as to when the Parents received that document.

21. The District's 2018 RR incorporates substantial portions of the IU's 2017 RR, information solicited from the educators and therapists who worked with the Student in the 2017-18 school year, and the record of an observation conducted for the District by a School Psychologist and a Speech-Language Pathologist. P-10.
22. Throughout the Student's time in Early Intervention, the IU assessed the Student's skills using an assessment called the VB-MAPP (Verbal Behavior – Milestones Assessment and Planning Program). The VB-MAPP measures the Student's ability to perform a wide range of specific skills that children typically acquire in their first 48 months of life. Those same skills are targeted through the curriculum. VB-MAPP data over time can show a child's acquisition and retention (or loss) of those skills. *Passim, see e.g.* P-51.³
23. The District received VB-MAPP data from the IU as part of the 2018 RR. P-10.
24. The Parents and District met at an IEP team meeting on May 31, 2018 to develop an IEP for the 2018-19 school year (the 2018 IEP). During that meeting, the District presented a 52 page IEP. The first 23 pages of that document are an extensive review of the Student's educational history and prior evaluations, including nearly all of the information contained within the 2018 RR.⁴ P-12.

³ The Parents argue that the District withheld VB-MAPP data. I will not resolve this issue for the same reasons that I will not resolve the question of when the Parents received the 2018 RR. *See above.*

⁴ Again, I decline to resolve the question of when the Parents received the 2018 RR. However, by May 31, 2018, the Parents had actual knowledge of the substantive information contained within that document, including the reports of the District's observations and the Student's then-current VB-MAPP data.

25. The 2018 IEP includes two speech therapy goals, an instructional stamina goal, a "Following Directions" goal, a social and play goal, a behavior goal, and two occupational therapy goals. Most of these goals included multiple short-term objectives. All of the goals were objective and measurable. P-12.
26. In the 2018 IEP, only the occupational therapy goals included baselines. Most of the other goals included a statement to the effect that baselines would be established when the Student began programming in the District. P-12.
27. The 2018 IEP did not include a verbal communication goal. P-12.
28. The 2018 IEP included program modifications and specially designed instruction (SDI) that, for the most part, directly related to the IEP's goals. These included continued training on the AAC device, encouragement for verbal output (although there was no verbal communication goal), a sensory diet, visual supports, various teaching methods to be used in all settings, and a toilet schedule (although there was no toilet training goal). P-12.
29. The 2018 IEP also included use of unspecified positive behavior supports in the SDI section with a note that the District would wait until school started in the fall to determine if a functional behavioral assessment (FBA) was needed to address the Student's repetitive behaviors. The 2018 IEP did not include a Positive Behavior Support Plan (PBSP). P-12.

30. The 2018 IEP included individual Speech and Language Therapy and individual Occupational Therapy sessions. Each of those would convene twice per week for 30 minutes per session. The 2018 IEP also included 15 minutes per month of consultative Occupational Therapy. P-12.
31. The 2018 IEP included transpiration as a related service with an adult in addition to the driver on board. P-12.
32. The 2018 IEP included 6.7 hours per day of paraprofessional support to address the Student's behaviors and safety. P-12.
33. Through the 2018 IEP, the District determined that the Student was eligible for extended school year (ESY) services, and tentatively planned for individual Speech and Language therapy once per week in summer 2019. The 2018 IEP noted, however, that the IEP team would develop a more specific ESY plan in February 2019. P-12.
34. The 2018 IEP offered a supplemental level of Autistic Support. The Student would spend 30% of the school day in regular education settings and the remainder in specialized classrooms. P-12.
35. The Parents approved the 2018 IEP via a Notice of Recommended Educational Placement (NOREP) on May 31, 2018. S-2.

The 2018-19 School Year

36. Within six weeks of the start of the 2018-19 school year, the Student's behaviors deteriorated. The Student's [redacted] increased significantly and, as a result, the Student developed a fungal infection.

New behaviors including elopement, biting, and grabbing immersed, and the Student was often dysregulated at home after the school day. See, e.g. P-55.

37. In October 2018, the Parents requested an FBA. The District agreed, and the IU conducted an FBA on the District's behalf, resulting in an FBA Summary dated November 5, 2018. The FBA addressed particular "behaviors of concern" which included licking, biting self, biting others (or trying to bite others), grabbing, and elopement. S-4.
38. The FBA Summary found high levels of licking and self-biting throughout the school day with lower but still problematic levels of elopement, grabbing and biting others. S-4.⁵
39. The FBA summary included a hypothesis of function of the Student's behaviors and four behavioral strategies: 1) a highly structured routine, 2) daily, proactive, non-contingent sensory activities, 3) noise cancelling headphones, and 4) a chewy tube (that is, something for the Student to chew on instead of the [redacted]). S-4.
40. The Student's IEP team met on November 14, 2018, to review the FBA and progress data, and to revise the Student's IEP (the November 2018 Revised IEP). P-13.

⁵ Elopement and biting others (or trying to) are particularly dangerous behaviors that are problematic even at low levels. The fact that elopement and biting others occurred much less frequently than licking and biting self does not make elopement or biting others any less concerning.

41. By the November 14, 2018 IEP team meeting, data collected by the District revealed significant, generalized⁶ regression in all domains measured by IEP goals (including the Student's ability to communicate through the AAC device) and the VB-MAPP in comparison to the Student's levels at the end of the center-based early intervention program. *Compare* P-9, P-13.
42. The 2018 Revised IEP edits the Student's goals by reducing what the Student must accomplish to show mastery. *Compare* P-12, P-13.
43. The 2018 Revised IEP maintained the same program modifications and SDI as the original 2018 IEP. *Compare* P-12, P-13.
44. As an additional support for school personnel (which are services provided for the educators working with the Student), the District added weekly consultation between the Occupational Therapist and Speech Therapist. P-13.
45. The Parents approved the 2018 Revised IEP on November 25, 2018 via a NOREP. S-5.
46. The IEP team met again on February 21, 2019 and revised the Student's IEP (the February 2019 Revised IEP). As planned in the 2018 IEP, the District offered a more specific ESY program. The IEP team also changed the Student's goals and SDI. P-13.

⁶ The Student's progress in abilities to perform a handful of specific tasks is irrelevant in comparison to the substantial, global regression evidenced by the District's data.

47. Regarding the Student's goals, the standard for mastery was reduced again in response to the Student's actual progress. Some objectives were discontinued without mastery. P-13.
48. Two items were added to the modifications and SDI section of the IEP: use of an "iPad/core board" as a new form of AAC and use of a slant board. These additions represent a shift in technology, not a change to the type or amount of special education that the Student received. P-13.
49. The Parents approved the February 2019 Revised IEP via a NOREP on March 7, 2019.
50. VB-MAPP data collected at the end of the 2018-19 school year shows that a few skills assessed by that measure improved slightly over the course of the school year. On the whole, the VB-MAPP data shows stagnation in the skills that test measures. *See, e.g.* P-35.

The 2019-20 School Year

51. The Student started the 2019-20 school year under the Revised 2019 IEP. *Passim.*
52. On September 15, 2019, the Parents wrote to the District to request changes to the Student's IEP, request an FBA and PBSP, and request coordination between the District and the therapists that the Student was seeing outside of school. *See* P-56.

53. The IEP team met on September 18, 2019. A comment was added to the IEP to reflect that an FBA would be completed. A short-term objective in the Student's Occupational Therapy goal was also revised. The Student's overarching goals and educational program were not changed. P-22.
54. The District conducted the requested FBA, resulting in another FBA Summary (the 2019 FBA). P-21.
55. The behaviors of concern in the 2019 FBA were licking, biting self, elopement, and ear slapping. Ear slapping was a new behavior in which the Student slaps open hands against the ears. This behavior is dangerous in that it can damage the ear. See *e.g.* NT at 218.
56. The 2019 FBA included prevention strategies that are substantively similar to those included in the prior FBA. Some of the prevention strategies were already a part of the Student's IEP. P-21.
57. On October 24, 2019, the Student's IEP team met again. The team incorporated the FBA and what the District characterizes as a Positive Behavior Support Plan (PBSP) into the IEP (the October 2019 Revised IEP). P-22. The documents characterized as the 2019 FBA Summary and the PBSP are the same document, and that document was attached to the end of the Student's IEP. P-21, P-22, S-16.
58. The October 2019 Revised IEP yielded no substantive changes to the program that the Student received, and, despite the attachment of

what the District characterizes as a PBSP, the behavioral interventions used with the Student did not change. See, e.g. P-22.⁷

59. On February 19, 2020, the IEP team met to plan the Student's summer 2020 ESY program. P-22.
60. On February 25, 2020, the IEP team met again to update the Student's present education levels and, ostensibly, update the behavior support plan (the February 2020 Revised IEP). The resulting IEP included no changes to the PBSP. Compare S-15, S-19.
61. On March 13, 2020, the District complied with Governor Wolf's order to close schools in response to the COVID-19 pandemic. *Stipulations.*
62. Between March 13 and April 5, 2020, the Student received no services. *See stipulations.*
63. On April 6, 2020 the District began to provide Continuity of Education services in compliance with Governor Wolf's order. These services were provided via synchronous video conference sessions and included sessions with the Special Education Teacher to work towards IEP goals (three sessions per week, 15 minutes per session), individual speech therapy (one session per week, 15 minutes per session), individual

⁷ Around the time of the October 2019 IEP revision, the District assigned a new paraprofessional aide to the Student. The Student's IEP still called for paraprofessional support to address the Student's behaviors and safety. The parties agree that the new paraprofessional was deaf. The Parents were concerned about the paraprofessional's ability to model communication for the Student. The paraprofessional's job, however, was not to model communication or instruct the Student. The paraprofessional's job was to help ensure the Student's safety and her deafness, therefore, is irrelevant to this case. I include this footnote only because failure to address this issue would be striking, given the testimony about this point.

occupational therapy (one session per week, 15 minutes per session).
Stipulations.

64. These Continuity of Education services continued through the end of the 2019-20 school year. *See stipulations.*
65. The IEP team met on April 29, 2020 for the Student's annual IEP meeting (the April 2020 IEP). S-24, S-26.
66. Although technically a "new" IEP, the April 2020 IEP is a continuation of the February 2020 Revised IEP. The goals, modifications, SDI, and PBSP remained substantively identical. *Compare S-19, S-26.*
67. Baseline and progress mentioning data reported in the April 2020 IEP, taken as a whole and viewed globally in conjunction with the continuation of all goals, shows that the Student did not make meaningful progress towards IEP goals under the February 2020 Revised IEP. S-26.
68. There is some ambiguity in the record as to whether the Parents rejected the April 2020 IEP or allowed the District to implement that IEP by not rejecting it. An unsigned NOREP for the April 2020 IEP is in evidence. Given the timing of the IEP team meeting relative to Pennsylvania schools shutting down, this ambiguity is understandable and in no way outcome determinative.
69. The District continued to provide Continuity of Education services through summer 2020 ESY. Those services were the same, except the

sessions with the Special Education Teacher and occupational therapy increased from 15 to 30 minutes. *See stipulations.*

70. The Student did not (or was not able to) attend to instruction via video conference for the full time allotted during 2019-20 or summer 2020 ESY Continuity of Education. *See stipulations; P-57.*

The 2020-21 School Year

71. The District convened an IEP team meeting at the Parents' request on July 2, 2020. Having directly observed the Student during Continuity of Education services for several months, the Parents requested funding for an intensive, one-to-one ABA program. The District declined, but the IEP team updated the present levels in the IEP to reflect the conversation (the July 2020 Revised IEP). S-26.
72. The District issued the July 2020 Revised IEP with a NOREP. The Parents rejected the NOREP and requested a due process hearing. S-26. The Parents began working with an advocate around the same time. The Parents ultimately withdrew their due process request in an effort to work cooperatively with the District.
73. A series of IEP team meetings then convened on August 31, October 5, and November 11, 2020. Taken together, these meetings represent the parties' efforts to come to an agreement about the services that the Student should receive. Throughout these meetings, the District agreed to more frequent testing and reporting (especially using the VB-MAPP), and a more granular explanation of what SDI the District

would provide (an explicit prompt hierarchy is one example). By November, the Student's draft IEP had grown to 129 pages. P-34.

74. On August 31, 2020, the District reopened for the Student and a small number of other children with disabilities. S-27.
75. In their closing brief, the Parents present a grid of VB-MAPP data over time by the District and other agencies. The data presented in that grid is accurate. The grid is a clear illustration that the Student lost skills or remained stagnant in every domain assessed by the VB-MAPP from the Student's entry into school-age programming through December 2020. That is true even if data collected by other agencies after the Student's enrollment in the District is ignored. (The grid appears at pages 17 and 18 in the Parents' proposed findings of fact.)
76. I take judicial notice that the United States Department of Education has issued an opinion holding that school closures related to COVID-19 do not abrogate the rights of children with disabilities and that the Pennsylvania Department of Education issued guidance to Pennsylvania schools that they should determine whether children with disabilities are owed "COVID Compensatory Services" as a result of the statewide school closure.
77. By November 30, 2020, the District determined that the Student is owed 27 hours (3 hours per week over 9 weeks) of "1:1 instruction related to goal areas identified on VBMAPP [sic]." P-34 at 105.
78. On December 9, 2020, the Parents requested this due process hearing.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses.” *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (“[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

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

Applicable Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular 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 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 *Andrew F.* decision is no different.

In *Andrew 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.” *Andrew 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.

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 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 the student in the position that she or he 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 what may be a 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.

Discussion and Conclusions of Law

The 2018 IEP

The Parents argue that the District ignored a wealth of information about the Student when drafting the 2018 IEP. When the 2018 IEP was drafted, the District not only had a lot of information about the Student in its possession, but the District also wrote that information into the 2018 IEP. The Parents argue that the District failed to use the information at hand to draft more specific, baselined goals for the Student.

I agree with the Parents that the District could have drafted better goals than those appearing in the 2018 IEP. However, whether better goals could have been drafted is not the standard that I am obligated apply. Rather, my task is to determine whether the 2018 IEP was reasonably calculated to provide a FAPE at the time it was offered – not whether anything better could have been done. *See Tucker v. Bayshore, supra.*

Shifting the focus from what might have been better to what was necessary, the Parents argue that the information available to the District when it wrote the 2018 IEP revealed that an intensive, one-to-one, ABA program was a necessary component of FAPE. I cannot agree.

The Student moved from a home and community based, one-to-one, ABA program to the IU's center-based program in the 2017-18 school year following a difficult summer in 2017. When the Student started the center-based program, the IU noted a loss of verbal communication skills. The timing establishes that the Student did not lose verbal communication skills as a result of placement in the center-based program but rather as the result of the inconsistencies in the summer 2017 ABA program.

The evidence shows that both the Parents and the IU were not satisfied with the Student's inability to recover the verbal communication skills lost in the

summer of 2017. It was appropriate for the IU to add services targeting verbal communication and it is unfortunate that the Student did not fully recover all prior verbal communication skills while in the Early Intervention program. The record does not, however, establish a causal connection between the termination of the one-to-one ABA program and the Student's inability to recover verbal communication skills. Rather, the record illustrates that the Student shifted from communicating verbally to communicating with the AAC device. As the Student increased skills with the AAC device, the Student's verbal communication skills lagged. Taken as a whole, however, the Student's total communication skills (counting all forms of communication, including the AAC device) improved. Other important domains, including repetitive behaviors, improved as well.

When developing the 2018 IEP, it was reasonable for the District to target the Student's total communication and build on the improvements seen in the Early Intervention program. I acknowledge that this topic can be controversial, and I understand the Parents' position that verbal communication should not be sacrificed to improve total communication. At the same time, the 2018 IEP reflects an intentional choice by the District to focus on total communication by setting goals and objectives tied to the Student's ability to communicate using the AAC device. I can only find that choice was intentional, given the information that the District had about the Student. That, in conjunction with well-settled case law holding that I may not "substitute [my] own notions of sound educational policy for those of the school authorities," yields the conclusions that the Student's goals for improving total communication were appropriate when they were written. *Rowley, supra* 458 U.S. at 206.

Similarly, the 2018 IEP's inclusion of vague positive behavior supports without a PBSP does not make the 2018 IEP inappropriate. The Student's repetitive behaviors were diminished and easily redirected in the center-based IU program. The record does not establish that a higher level of behavioral support was needed at the time that the District wrote the 2018 IEP.

For all of these reasons, I find that the 2018 IEP was appropriate when it was drafted.

The 2018-19 School Year: Start to November 14, 2018

Almost immediately at the start of the 2018-19 school year, the Student's behaviors deteriorated, and skills regressed. The Parents and District were in frequent communication about the Student's behaviors. By October 2018, the parties had agreed to an FBA conducted by a third party. That FBA was complete by November 5, 2018, and the IEP team met nine days later on November 14, 2018 to review data and revise the Student's IEP.

The above process is what the IDEA requires. The Student started the school year with an IEP that was reasonably calculated to provide a FAPE at the time it was offered. Then, when the Student's response was unexpected, the Parties communicated with each other, called in experts to gather data, and revised the IEP. All of that took place over a reasonable period of time. I find no violation from the start of the 2018-19 school year through November 14, 2018.

***The 2018-19 School Year:
November 14, 2018 through End***

The Parents argue, and presented expert testimony, that the 2018 FBA proposed recommendations to accommodate the Student's problematic behaviors but failed to propose recommendations to address the Student's sensory needs. The Parents and their expert point to the chew tube as a particularly clear example. The chew tube is an accommodation in that enables the Student to replace the [redacted] with something less likely to injure the Student. That accommodation does nothing to reduce or eliminate the Student's need for sensory stimulation satisfied by the [redacted] and, according to the Parents' expert, could make the problem worse.

I am persuaded that recommendations like a chew tube are accommodations, not specially designed instruction. I also agree that the recommendations in the FBA are spartan. I cannot agree, however, that the FBA was devoid of recommendations to reduce the Student's sensory needs. The FBA recommended proactive strategies to reduce the Student's stimulus-seeking behaviors. Such recommendations could have been more robust, but they are present. I find that the 2018 FBA was appropriate.

Unfortunately, the 2018 Revised IEP drafted after the 2018 FBA was inappropriate at the time it was written. By the time that the IEP team reconvened in November 2018, there was abundant data that the Student's behaviors were deteriorating and that the Student's skills were not improving. The FBA found that additional behavioral accommodations and interventions were necessary. The District's own data showed that, minimally, progress was well behind the expected pace. Viewed globally, the District's data paints a picture of a young child with overwhelming needs

who, in November 2018, was losing essential skills. The District's primary response to this data, as reflected in IEPs, was to lower its expectations of the Student.

Programmatically, the 2018 Revised IEP changed nothing. There were no new modifications. There were no new SDI. Functionally, SDI is the special education that the District provides to enable the Student to obtain IEP goals. When the 2018 IEP was revised, the District knew that the SDI in place was either the wrong amount or the wrong type to enable the Student to achieve IEP goals. But, instead of working to improve the Student's program, the District left the program unchanged while lowering the Student's goals.

Analysis is identical for the February 2019 Revised IEP. Despite a technology shift, the February 2019 Revised IEP does not represent a substantive change in the District's programming. More importantly, for the second time during the 2018-19 school year, the District's primary response to the Student's lack of progress was to lower expectations. The 2019 Revised IEP was inappropriate at the time it was written for the same reasons that the 2018 Revised IEP was inappropriate.

In making this determination, I acknowledge the District's argument that the VB-MAPP data shows some scattered progress and that the Student's problem behaviors decreased over the course of the school year. That argument is not an answer to the District's lack of response to the Student's lack of progress toward the goals that the District targeted through the 2018, 2018 Revised, and February 2019 Revised IEPs. Moreover, I reject that argument as it pertains to the Student's behavioral progress. Behavioral data collected in the 2018-19 school year, read in the light most favorable to

the District, shows that the Student's behaviors were consistently inconsistent and problematic throughout the school year. The data does not evidence a trend of behavioral improvement.

Similar logic applies to the VB-MAPP data. The pervasive, global impact of the Student's disabilities must not be forgotten when examining the Student's actual progress. It is not realistic to expect perfectly linear gains over time, and the VB-MAPP data does show modest skill acquisition in sporadic domains over the 2018-19 school year. Those particular bright spots are rightly celebrated, but do not evidence a provision of a FAPE when viewed as part of the record of this matter in its totality (which includes evidence of skills that the Student had and lost along the way).

The 2019-20 School Year: Start Through the COVID-19 Shut Down

Analysis of the 2019-20 school year though the COVID-19 shut down is essentially the same as the analysis for the later parts of the 2018-19 school year. During this time a new FBA was completed, but no substantive changes were made to the Student's IEP (or to the Student's program in practice). As a result, the Student continued to be educated pursuant to an IEP that was inappropriate at the time it was drafted, resulting in a substantive denial of FAPE.

Again, in reaching this conclusion, I acknowledge the District's argument that the Student's actual progress in some domains was meaningful relative to the Student's abilities, and despite the fact that a more global view reveals stagnation at best. Given the pervasive impact of the Student's disabilities upon the Student's skills, the District's argument has some merit. As noted above, in my experience, linear progress across all domains is not

realistic for the Student. The extent of the Student's disabilities, however, does not alter the District's obligations.

For roughly a school year and a half, the District collected data showing that the Student's progress did not match expectations set in the Student's IEPs. The District's obligation was to determine how the Student's program should change to accelerate the Student's progress. Alternatively, the District could have undertaken a rigorous evaluation to gain a better understanding of what quantum of progress is meaningful for the Student. The District also could have pursued both choices simultaneously, but the District did neither. Rather, it lowered what constituted success for the Student while keeping the Student's program substantively unchanged. These actions run afoul of the Student's substantive right to a FAPE.

The 2019-20 School Year: Continuity of Education

There is hardly a dispute as to whether the services that the District provided to the Student for Continuity of Education during the COVID-19 shutdown were appropriate: they were not. At this point, however, legal mandates and real-world options diverge. Bluntly, under the circumstances, it is reasonable to question what more the District could have done. The District was obligated to close its buildings and many of the services that the Student received in person were no longer safe (physical, hand-over-hand prompting for a student who repetitively licks hands is the clearest example). Yet at the same time, the United States Department of Education unambiguously held that children impacted by school closures lost none of their IDEA rights. The Pennsylvania Department of Education's guidance for COVID Compensatory Services should be read in the context of the U.S. Department of Education's broader holding.

Through its offer of COVID Compensatory Services, the District all but acknowledges that that the Student received something less than a FAPE through Continuity of Education. The District's offer of 27 hours of direct, one-to-one instruction targeting VB-MAPP skills is an appropriate remedy, considering the Student's ability to attend to educational programming and that the COVID Compensatory Services are provided in addition to, and not in place of, whatever is required for the Student to obtain a FAPE.

Additionally, and for clarity, it is the Parents burden to prove that the offered COVID Compensatory Services are insufficient to remedy educational harms attributable to the Continuity of Education program. There is no preponderant evidence in the record that the offered COVID Compensatory Services, when paired with an appropriate IEP, are insufficient.

The 2020-21 School Year

Had either party raised the issue, I would be compelled to consider whether a 129-page IEP is inappropriate *per se*. An IEP must be a functional document – something useable. An IEP forms a blueprint for the Student's education. A blueprint for a house does not show the location of every nail and does not incorporate a title history. In the same way, IEPs lose functionality by explicitly detailing the minutia of a child's program and copy/pasting evaluation reports in their entirety. An IEP must state the child's present educational levels, must include meaningful, objective goals, and must say what special education the school will provide in order for the child to achieve those goals. I understand that IEP teams walk a fine line while collaboratively drafting documents with multiple audiences in mind. Regardless, I urge the parties to consider how any IEP will be used in the

real world by the Student's educators before agreeing to something as unwieldy as P-34.

I commend the parties' efforts to resolve their dispute through a series of IEP team meetings from the summer of 2020 through November 2020. That effort failed because the Parents believe that the Student requires a private placement that provides intense, one-to-one ABA instruction and the District believes that such a placement is not necessary. My task, therefore, is to determine the appropriateness of the evolving IEP that the District presented over this period of time.

During the time in question, the IEP expanded – primarily at the request of the Parents and their advocate – to include a number of elements. Some of those elements, such as a new toileting plan, were new. Others were a more detailed, nuanced description of services already in place. In the end, I agree with the Parents that the IEP, at its core, remained the same. As such, there can be no reasonable expectation that the IEP was calculated to provide a FAPE at the time it was written. The last IEP offered by the District before the Parents requested this hearing was inappropriate for this reason.

Remedies

Compensatory Education

Discussed above, compensatory education is an appropriate remedy for substantive denials of FAPE. The District violated the Student's substantive right to a FAPE from November 14, 2018 through March 12, 2020. From March 13, 2020 through August 30, 2020, the Student received Continuity of Education services that also fell short of a FAPE but, for that period of time,

the District has offered appropriate COVID Compensatory Services. The District's violation then resumed from August 31, 2020 through the present.

The Parents argue that the Student requires compensatory education in the form of one-to-one ABA programming to be made whole. The Parents presented expert testimony and a report in support of that argument. It is striking, therefore, that the District offered one-to-one programming targeting the VB-MAPP (a program derived from ABA principles). This is as close to preponderant *Reid*-type evidence as this hearing officer has ever seen. Through its actions, the District shows a basic agreement with the Parents that one-to-one programming is the method by which the Student can be made whole.

If one-to-one programming is the method of compensatory education, the remaining question is: how much? For the nine weeks of the 2019-20 school year that the District was closed on the Governor's order, the District offered three hours per week of one-to-one programming in addition to the services otherwise provided through the Student's IEP. I find that this is the best evidence of the amount of compensatory education required to make the Student whole.

I note the Parents' argument that any appropriate placement for the Student includes at least 25 hours per week of one-to-one instruction. The function of compensatory education is not to take the place of an appropriate program. The Student is entitled to an appropriate program regardless of any entitlement to compensatory education. The three hours per week of compensatory education are in addition to, not in place of, whatever the Student currently requires in order to receive a FAPE.

I caution both parties to seriously consider the amount of time per day that the Student is able to attend to instruction when planning the compensatory education hours.

Placement

Having found that the Student's current placement is not appropriate, I turn to the Parent's demand for a private placement. The Parents do not demand tuition reimbursement; they have not enrolled the Student in a private school. While the Parents were careful to avoid the words "prospective placement," their demand for an order holding that a private placement is necessary for the Student to receive a FAPE is an artfully pleaded demand for prospective placement. The burden on parents who demand prospective placement is high.

Prospective placement as a remedy is extremely rare, but not unheard of. *See, e.g. A.D. v. Young Scholars – Kenderton Charter School*, ODR No. 15202-1415KE (2014). Prospective placement was also an issue in one of the two cases that form the core of the test for tuition reimbursement: *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). Also, prospective placement is permissible under Third Circuit precedent. *See D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553 (3d Cir. 2010) (upholding a New Jersey ALJ's order of prospective placement).

Like Hearing Officer Skidmore in *Young Scholars*, I conclude that prospective placement is a remedy within my jurisdiction to order. As Hearing Officer Skidmore reasoned: hearing officers enjoy broad discretion to fashion an appropriate remedy under the IDEA. *See, e.g., Forest Grove v. T.A.*, 557 U.S. 230, 240 n. 11 (2009); *Ferren C., supra*, at 718. Case-specific analysis

is required to determine whether it is appropriate for the hearing officer to use discretionary powers to issue extraordinary remedies. *See, e.g., School Committee of Burlington v. Department of Education*, 471 U.S. 359, 370 (1985); *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285-86 (11th Cir. 2008); *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 248-49 (3d Cir. 1999).

I further agree with Hearing Officer Skidmore that, while the tuition reimbursement test may not be directly applicable, its prongs provide guidance for evaluating this type of claim. Tuition reimbursement (a vastly more common remedy in comparison to prospective placement) hinges on the three-part "*Burlington-Carter test*," named for *Burlington, supra* and *Florence County School District v. Carter*, 510 U.S. 7 (1993).

The first step in applying the *Burlington-Carter test* is to determine whether the program and placement offered by the LEA is appropriate for the child. The second step is to determine whether the program obtained by the parents is appropriate for the child. The third step is to determine whether there are equitable considerations that merit a reduction or elimination of a reimbursement award. *See also, Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007). The steps are taken in sequence, and the analysis ends if any step is not satisfied.

Prospective placement in a private school, however, requires something more. Unlike parents in tuition reimbursement cases, parents in prospective placement cases do not face the same risk of financial loss – a factor that courts consider in many of the tuition reimbursement cases cited above. More importantly, the cases cited above concerning compensatory education illustrate the well-established remedies for denials of FAPE: compensatory

education to remedy past denials and IEP changes to stop ongoing denials. Since past and ongoing denials of FAPE can be fully remedied without prospective placement, prospective placement must be viewed as an extraordinarily remedy.

To support such an extraordinary remedy, the record must establish that the LEA is not in a position to make timely and reasonable revisions to its special education program in order to offer and provide FAPE. This does not mean that the Parent must establish that the LEA cannot “in theory” provide an appropriate program. *Draper, supra*, at 1285 (quoting *Ridgewood, supra*, at 248-49). Such standards are impossible. Rather the nature of prospective placement must be a heavier burden for parents than tuition reimbursement under current case law. Parents seeking prospective placement must prove both that the District has failed to offer a FAPE and that the time it would take for the District to provide a FAPE would compound the harm in a way that requires unique relief. *See Ferren C., supra* (discussing hearing officers’ authority to award unique relief).

The Parents did not satisfy their high burden to establish the necessity of a private placement in this case. Rather, the record as a whole supports a finding that the District is capable of quickly providing services that are more in line with what the Parents view as appropriate. Examples include the one-to-one instruction that the Student receives through the various IEPs and the District’s offer of COVID Compensatory Services.

This conclusion leaves this matter in an unsatisfactory state. The District takes the position that its program is appropriate. The Parents’ preponderant evidence proves that it is not. But the Parents have not met their burden for a prospective placement. I cannot accept either party’s position on what the

Student requires going forward but leaving the parties in limbo runs contrary to the purposes of this hearing and the IDEA itself.

To enable the parties to move forward, I highlight the fact that the Student has not had a comprehensive educational evaluation since 2018. The Parents cannot point to their expert's conclusion about what the Student needs because the expert's conclusion was based upon a review of records (how past programs met past needs), not current assessments (what the Student's needs are today). To understand the Student's current needs, I order the District to fund an independent educational evaluation (IEE). I order the parties to then use the IEE to craft an appropriate IEP for the Student.

An order consistent with the foregoing follows.

ORDER

Now, April 9, 2021, it is hereby **ORDERED** as follows:

1. To remedy the denials of FAPE detailed in the accompany order, the Student is awarded three hours of compensatory education for each week that the District was in session from November 14, 2018 through March 12, 2020.
2. To remedy the denials of FAPE detailed in the accompany order, the Student is awarded three hours of compensatory education for each week that the District was in session from August 31, 2020 through the date of this Order.

3. Compensatory education shall take the form of direct, one-to-one instruction using ABA methodologies to target VB-MAPP skills. This instruction shall be provided by District personnel unless the parties agree otherwise. This instruction may be provided at any time or location the parties find to be mutually convenient.
4. To determine what placement the Student requires going forward, the District shall fund a comprehensive independent educational evaluation (IEE) of the Student in accordance with these terms:
 - a. Within 10 days of this order, the District shall propose a list of at least three independent evaluators who satisfy agency criteria in accordance with 34 C.F.R. § 300.502.
 - b. Within 10 days of receipt of the District's list, the Parents shall choose an independent evaluator from the District's list.
 - c. After receipt of the Parents' choice, the District shall contract with the independent evaluator to conduct the IEE as soon as is practicable. The contract shall specify that the independent evaluator shall reduce his/her/their findings to a report and shall transmit that report to both parties simultaneously.
5. Within 10 days of receipt of the independent evaluator's report, the District shall convene the Student's IEP team to review the report and develop an appropriate IEP for the Student.

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

/s/ Brian Jason Ford

HEARING OFFICER