

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

DECISION

Child's Name: M.B.

Date of Birth: [redacted]

Dates of Hearing: 9/14/2016

Closed HEARING

ODR File No. 17929-15-16

Parties to the Hearing:

Representative:

Parents
Parent[s]

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LEA Attorney
Unrepresented

Date Record Closed:
Date of Decision:

October 14, 2016
November 8, 2016

Hearing Officer:

Charles Jelley Esq. LL.M.

Introduction

During the 2015-2016 school year, the Student¹ was enrolled at the New Media Charter School (Charter School) for sixth grade. In June 2016, the Charter School closed. The Student is now enrolled in the Student's school district of residence and is repeating sixth grade. Student's mother (Parent) filed this due process request, pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA) and Section 504 of the Rehabilitation Act.

Parent asserts that the Charter School failed to comply with the IDEA, by failing to implement the Student's Individualized Education Program (IEP). Parent also asserts that the School failed to provide Student with a free appropriate public education (FAPE) as required by the IDEA. Parent seeks full days of compensatory education for the entire 2015-2016 school year. The Charter School is now closed and did not appear for the scheduled hearing. The Office for Dispute Resolution (ODR) and Parent's counsel provided the Charter School advanced notice of the hearing date, to an individual identified in ODR records as a contact for the School. The hearing was completed in one session with testimony from one witness. I have determined the credibility of the single witness and I have considered and weighed all of the written evidence in the record. I conclude that the Charter School failed to appropriately educate the Student.

Issues

1. During the relevant period from the first day of school in the School's 2015-2016 school year until the last day of school in June 2016, did the School fail to implement the Student's Individualized Education Program (IEP)?
2. During the relevant period, from the first day of school in the School's 2015-2016 school year until the last day of school in June 2016, did the School fail to provide Student with FAPE as defined by the IDEA and Section 504?
3. Should the hearing officer order the Charter School to provide the Student with compensatory education for of all or any part of the relevant period?

¹ The Parent filed six due process complaint notices in 30 days for three children. Three of the complaints were dismissed. The generic use of Student, rather than a name and gender-specific pronoun, is employed to protect the confidentiality of the student.

Findings of Fact

1. The Student was identified as a child with a disability by the [redacted] School District (District) who needed specially-designed instruction (P#1). When the Student enrolled at Charter School, the Charter School did not hold an Individualized Education Program (IEP) conference to discuss or review the District IEP (P#1).
2. The records show that prior to entering Charter School, the Student was identified as a student with an Emotional Disturbance and an Other Health Impairment (P#1 p.8).
3. The Parent provided Charter School with records and documents outlining the Student's educational background, including a history of outside diagnoses and participation in community based behavioral health services (P#1 p.8).
4. The Student has a significant history of struggling in school, including a lengthy history of school-based discipline (P#1 p.8).
5. Charter School was aware that the Student's Notice of Recommended Educational Placement (NOREP) and Student Profile (P#2 pp.2-3) noted the Student's need for specially-designed instruction and Supplemental Emotional Support.
6. The NOREP and Student Profile both indicated the Student should receive specially-designed instruction and Supplemental Emotional Support (P#6).
7. Between the first day of school and the development of the November 2015 IEP, the Student was involved in numerous discipline incidents. By October 2015, the Parent was receiving multiple calls per week asking that she pick up the Student early from school (NT 52-56).
8. Despite having knowledge that the Student's unique needs necessitated a high level of special education programming from Student's 1st day of school, Charter School failed to provide the Student with special education and an IEP until November 19, 2015 (P#5 p.7, P#5 p.3).
9. The November 2015 Charter School IEP failed to include mandated present levels of educational performance (PLEP) (P#5 pp.9-10). After reviewing the Special Factors and Considerations, the IEP team concluded the Student did not need a Positive Behavior Support Plan (PBSP) (P#5 p.9). The IEP included a math goal and a behavior goal, along with multiple specially-designed instruction strategies (P#5 pp.14-15).
10. The November 2015 Charter School IEP called for the Student to receive 90 minutes a month of one-on-one counseling. The November 2015 IEP included 480 minutes a week of Emotional Support in the regular class and 220 minutes a week of Emotional Support outside of the regular class (P#5 p.4).

11. The Parent testified that the Student did not meet with the special education teacher (NT pp.59-60). The Parent also testified that the Student did not receive the promised specially-designed instruction in the regular education classroom. *Id.*
12. Although identified as a person with a disability, the Charter School continued to discipline the Student at the same rate as prior to the implementation of the November 2015 IEP (NT pp.60-61). Before and after the November 2015 IEP, the Student was suspended from school on multiple occasions (NT pp.60-61).
13. In January 2016, a manifestation determination meeting was held as the result of the Student's misbehavior and school-based discipline (P#6 pp.5-8).
14. The Charter School members of the manifestation determination team concluded that the Student's misbehaviors were not a manifestation of the Student's disability. When the Parent requested additional support, Parent was informed that the Student was receiving school-based counseling and that maybe Student could qualify for a Functional Behavior Assessment (FBA) (P#7 p.1).
15. Less than a month after the manifestation determination meeting, the Student was directed to go to the crisis center for making suicidal statements. The staff at the School told the Parent that the Student could not return to school until the Parent provided proof of a crisis center evaluation (NT p.69, P#7).
16. For the remainder of the school year, the Student continued to struggle academically and behaviorally (P#13 pp.1-2).
17. The Charter School Staff directed the Parent to take the Student to the crisis center, for similar statements, on two other occasions (P#13).
18. In the spring of 2016, Charter School completed a FBA and developed a PBSP (P#9.P#10). The PBSP and additional specially-designed instruction was not implemented. *Id.*
19. By the end of the school year, Charter School sent a letter to the Parent indicating that the Student could not even finish out the school year (P#12).
20. The Student's final report card included multiple failing grades and a notation that the Student should be retained in the 6th grade (P#14 p.1, NT p. 75).
21. The Student is now repeating the 6th grade this school year (P#14 p.1, NT p. 75).

Applicable Legal Principles

Conclusion of law and burden of proof

The burden of proof is composed of two considerations, the burden of going forward, and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties, must bear the risk of failing to convince the finder of fact. In *Schaffer v. Weast*, 546 U.S. 49, (2005), the court held that the burden of persuasion is on the party that requests relief in an IDEA case. The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer). A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. See, *Comm. v. Williams*, 532 Pa. 265, 284-286 (1992). This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in *Schaffer* called “equipoise”. On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. *Id.*

Credibility

It is the responsibility of the hearing officer to determine the credibility of witnesses. 22 PA. Code §14.162 (requiring findings of fact); *A.S. v. Office for Dispute Resolution*, 88 A.3d 256, 266 (Pa. Commw. 2014)(it is within the province of the hearing officer to make credibility determinations and weigh the evidence in order to make the required findings of fact). In this matter, I have weighed the evidence with attention to the reliability of the testimony. After listening to the Parent, I accord persuasive weight to Parent’s testimony for three reasons. Although some of that testimony was based upon personal interactions with the Student, administrators, and teacher reports, some of the testimony is also hearsay. Nevertheless, the exhibits corroborated the hearsay testimony. Second, the Parent displayed a clear memory of the school year, talking clearly about calls from the Charter School directing her to take the Student home on a number of occasions, which is also corroborated by the documentary record. Third, the Parent’s memory was precise for almost all events; therefore, I conclude that for events during the 2015-2016 school year her testimony is persuasive. The Parent’s demeanor and manner of answering questions gave me every reason to find her credible and sincere.

On several occasions, due to lack of a precise memory, Parent did not answer in a way that supported Parent’s position, about which Parent was forthcoming and

acknowledged. Therefore, I accord substantial weight to Parent’s testimony, as reflected in my findings of fact. On balance, I find that Parent’s testimony represents her best recollection of Student’s lengthy and complicated record of educational and behavioral health concerns. I note that I am watchful that this matter was unopposed at hearing because the Charter School is closed. While this observation affects the weight that I accord to Parent’s testimony, untested by cross-examination, it also establishes a record that is preponderant to the extent that I give weight to Parent’s testimony. Thus, all of the above findings are based upon a preponderance of the evidence. While some of the evidence is circumstantial, none of the testimony was contradicted by any documents. I conclude therefore, that I can derive inferences of fact from Parent’s lengthy restatement of Student’s struggles in school, in the home, and community, combined with evidence in the recent LEA evaluation report; I find that the record supports a finding of a denial of FAPE.

Free Appropriate Public Education

The IDEA requires that a state receiving federal education funding provide a “free appropriate public education” (FAPE) to disabled children. 20 U.S.C. §1412(a)(1). FAPE is “special education and related services”, at public expense, that meets state standards, provide an appropriate education, and are delivered in accordance with an IEP. 20 USC §1401(9).

School districts must provide FAPE by designing and administering a program of individualized instruction that is set forth in an IEP 20 USC §1414(d). The IEP must be “reasonably calculated” to enable the child to receive “meaningful educational benefits” in light of the student’s “intellectual potential”. *Shore Reg’l High Sch. Bd. of Ed. v. P.S.* 381 F.3d 194, 198 (3rd Cir. 2004) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3rd Cir. 1988).

“Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning”. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child’s IEP must describe specially-designed educational instruction tailored to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Board of Education v. Rowley*, 458 U.S. 176, 181-82 (1982). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3rd Cir. 1996).

A school district is not required to provide the best possible program to a student, or to maximize the student's potential. *Ridley Sch. Dist. v. MR*, 680 F.3d 260, 269 (3rd Cir. 2012). An IEP is not required to incorporate every program, aide, or service that parents desire for their child. *Ibid.* Rather, an IEP must provide a “basic floor of opportunity” for the child. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 532 (3rd Cir. 1995).

The law requires only that the program and its execution were reasonably calculated to provide meaningful benefit. *Carlisle Area School v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995) (appropriateness is not judged prospectively so that lack of progress does not in and of itself render an IEP inappropriate.) The appropriateness of an IEP must be determined as of the time at which it was made, and the reasonableness of the program should be judged only based on the evidence, known to the school district at the time at which the offer was made. *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3rd Cir. 2010); *D.C. v. Mount Olive Twp. Bd. Of Educ.*, 2014 U.S. Dist. LEXIS 45788 (D.N.J. 2014).

Implementing Transfer Student's IEP

The IDEA regulations define how schools can provide FAPE to students who transfer from one school to another during the school year. Under these regulations, the new school must provide FAPE, that includes “comparable services” to those described in the student's prior IEP, until the district conducts an evaluation pursuant to 34 C.F.R. §§300.304-300.306 and then develops, adopts, and/or implements a new IEP if appropriate 34 C.F.R. §300.323.; 20 USC 1414(d)(2)(C)(i)(2). The Office of Special Education and Rehabilitative Services, U.S. Department of Education (OSERS) interprets the word “comparable” to have the “plain meaning” of the word, which is “similar” or “equivalent”. Therefore, “comparable” services mean services that are “similar” or “equivalent” to those that were described in the child's transfer IEP from the previous public agency, as determined by the child's newly-designated IEP Team in the new public agency. 71Fed. Reg., No. 156 at 46681 (Aug. 14, 2006). The Office of Special Education Programs (OSEP) has also opined that the requirement to provide “comparable services” can include a duty to provide “temporary goals aligned with the annual goals in the student's prior IEP.” *Letter to Finch*, 56 IDELR 174 (OSEP Aug. 5, 2010). When the student enrolls in the new school, the new school district conducts an initial evaluation, not a reevaluation, which requires parental consent. 71Fed. Reg., No. 156 at 46682 (Aug. 14, 2006).

While not directly on point, the status of a transfer student's out-of-state IEP was addressed by the Third Circuit in *Michael C. v. Radnor Twp. School District*, 202 F.3d 642 (3rd Cir. 2002). In the *Radnor Twp.* the court held that in the case of an interstate transfer student, the new school district is not required to consider the out-of-state IEP as continuing in effect in the new state. *Id.* 202 F.3d at 651. In reaching that

decision, the court approved the reliance on both the administrative rulings. *Id.* 202 F.3d at 649-650. The school district may choose to provide special education services while it pursues an initial evaluation.² *Id.*

The court gave great weight to the OSEP policy memorandums noting that after enrolling a student with an IEP from another state, the transferee school district's first step is to determine whether it will adopt the out-of-state evaluation and eligibility determination or conduct its own evaluation. After the evaluation, the district and the Parents must meet to develop an IEP. Once the IEP is developed, the district must provide the parent Prior Written Notice *Id.* These basic principles apply equally when the student moves from one local education agency (LEA) to another in the same state.

Comprehensive assessment in all areas of unique need

When Students are thought to have a disability the regulations included a requirement that the evaluators “[u]se technically sound instruments that may assess the *relative contribution of cognitive ... factors*” (emphasis added). The U.S. Department of Education further advises that a disability must be determined “on a case-by-case basis, depending on the unique needs of a particular”.³

The eligibility inquiry must take into account a broad array of measures. The eligibility inquiry must “[d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior”.⁴ The evaluation must include “standardized, individualized testing (not just criterion-based testing or functional assessments)”. The comments to the regulations note, “Nothing in the [IDEA] or ... regulations would preclude the eligibility group from considering results from standardized tests when making

² See also, Memorandum 96- 5, 24 IDELR 320 (OSEP 1995), Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 09/01/11), Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 47 IDELR 166 (OSERS 2007), Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations 54 IDELR 297 (OSERS 2010).

³ Letter from Alexa Posny to Catherine D. Clarke, Director of Education and Regulatory Advocacy, American Speech and Hearing Association, U.S. Dep't of Educ. (Mar. 8, 2007)

<https://www2.ed.gov/policy/speced/guid/idea/letters/2007-1/clarke030807disability1q2007.pdf>

⁴ 34 C.F.R. §300.306(c)(1)(i); see also *id.* § 300.304(b)(1) (noting that the evaluation of whether the child is a child with a disability must “[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child”)

eligibility determinations.⁵ Stated simply, just as no single assessment or measure could support a finding of a disability, no single assessment or measure may undermine a finding of “in need of special education” where other measures or factors could support such a finding.⁶

The statute specifies that a child must “need []” special education “by reason [of]” the disorder as identified under, 20 U.S.C. § 1401(3)(A)(ii), and that special education must be designed “to meet the *unique needs* of [the] child with a disability,” *id.* § 1401(29) (emphasis added).

Charter School Responsibilities

Charter schools must comply with Pennsylvania and federal regular education, special education, federal civil rights and disability laws. Chapter 711 *et. seq.* of the Pennsylvania School Code, “Charter School and Cyber Charter School Services and Programs for Children with Disabilities”, contains regulations specific to individuals with disabilities being educated in charter schools and cyber charter schools. Chapter 711 incorporates by reference all of the IDEA regulations at 22 Pa. Code 711.3. Chapter 711 also incorporates relevant antidiscrimination provisions from Section 504 and its implementing regulations. Charter schools and cyber charter schools also must comply with 22 Pa. Code Chapter 4 relating to academic standards and assessment, 22 Pa. Code Chapter 11 relating to pupil attendance, and 22 Pa. Code Chapter 12 relating to discipline of students 22 Pa. Code §711. *et. seq.*

<http://education.pasenategop.com/files/2014/03/Summary-Charter-Bill.pdf>.

Charter School’s IDEA Requirements

Under the IDEA, all LEAs must locate, evaluate, and educate children with a disability. 20 U.S.C. §1412(a)(1)(A). If the evaluation identifies a disability and that the child is in need of specially-designed instruction, the LEA must provide the student with a free appropriate public education. The IDEA directs the LEA to prepare, develop, and implement an Individualized Education Program (IEP). *Id.* The child's IEP must be developed by a team that includes the child's parents, at least one regular education teacher, at least one special education teacher, a representative of the LEA, and the child himself or herself, if appropriate. 20 U.S.C. §1414(d)(1)(B).

The IEP should state the child's present levels of achievement and performance, provide annual goals, and explain how progress will be measured. 20

⁵ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46540, 46651 (Aug. 14, 2006)

⁶ See generally 34 C.F.R. § 300.304(c)(2) (emphasizing “assessments and other evaluation materials [to] include those tailored to assess specific areas of *educational need* and not merely those that are designed to provide a single intelligence quotient”).

U.S.C. §1414(d)(1)(A)(i). The IEP should also state “the special education and related services and supplementary aids and services . . . to be provided to the child” and “the anticipated frequency, location, and duration of those services and modifications”. *Id.* § 1414(d)(1)(A)(i)(IV), (VII). The student’s progress must be regularly monitored and reported to the parents. *Id.* Once an IEP is created, it may only be amended by the entire IEP team or by agreement between the parents and the LEA. 20 U.S.C §1414(d)(3)(F).

IDEA also requires the states to provide a dispute resolution system should a parent or LEA disagree whether the child is a person with a disability in need of specially-designed instruction. 20 U.S.C. §§1415(b)(6), (c)(2), (d), (e), (f). Either party may seek mediation or present a complaint to a hearing officer, who will then adjudicate the parties’ disagreement in a due process hearing. *Id.* The procedural safeguards recognize the LEA and the parent as the parties at the due process hearing. *Id.* Any party aggrieved by the hearing officer’s findings can file an action in a court of competent jurisdiction. §1415(g);§1415(i)(2).

Compensatory Education

In *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015) the court endorsed a “complete” make whole remedy favoring relief for the entire period of the violation *G.L.* 802 F.3d at 626. Compensatory education “accrue[s] from the point, that the school district knows or should know of the injury to the child, and the child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem”.⁷ One approach to calculate the compensatory education relief is to adopt the *MC* “cookie cutter” approach. The second option is to employ the *Reid* “qualitative” approach. The third compensatory education calculation option is to review the record as a whole, make equitable adjustments, and then formulate a make whole remedy, grounded in the pure equitable powers of the fact finder, to grant appropriate relief.

Compensatory education is appropriate relief that is intended to compensate a disabled student, who has been denied the individualized education guaranteed by the IDEA.⁸ Compensatory education should place the child in the position they would

⁷ *G.L.* at 618-619 quoting *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996) (citations omitted).

⁸ *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 276 (D.D.C.2011) (citing *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir. 2005)).

have been in but for the violation.⁹ The make whole calculation requires some evidence about the type and amount of services needed to place the student in the same position he or she would have occupied but for the LEA's violations of the IDEA.¹⁰ Also after *GL* following *MC*, the parents must establish when the District either "knew or should have known" the child was not receiving FAPE.¹¹ Assuming a finding of a denial of FAPE, the LEA, on the other hand, must produce evidence on what they suggest is the length of a reasonable rectification period. *Id.* Whether the parents follow *Reid* or *MC*, the make whole remedy must be supported by the record evidence. *Id.*

Each alternative is acceptable, if, the relief granted makes the student whole. Implicit in each alternative is the assumption that the record is properly developed to support the award of the equitable relief ordered.

In this matter, the evidence is insufficient to apply the *Reid* "make-whole" remedy; the Parent did not offer an expert opinion testimony on what remedial and special education services are needed to bring the Student's academic, social and behavioral skills to the level at which they would have been found in the absence of the deprivation of FAPE.

As the School is closed and did not respond, the Parent must work with the SEA as described in the Student's companion action to access the relief ordered herein. The SEA, in the companion action agreed to provide the Student with appropriate relief, if ordered. 34 C.F.R. §300.227.

⁹ *Boose v. District of Columbia*, 786 F.3d 1054, 2015 U.S. App. LEXIS 8599 (D.C. Cir. 2015) IEPs are forward looking and intended to "conform[] to . . . [a] standard that looks to the child's present abilities", whereas compensatory education is meant to "make up for prior deficiencies". *Reid*, 401 F.3d at 522-23. Unlike compensatory education, therefore, an IEP "carries no guarantee of undoing damage done by prior violation", IEPs do not do compensatory education's job.

¹⁰ *Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011), citing *Reid, supra.* (the parent, as the moving party, has the burden of "propos[ing] a well-articulated plan that reflects the student's current education abilities and needs and is supported by the record."); *Phillips ex rel. T.P. v. District of Columbia*, 736F.Supp.2d 240, 248 (D.D.C.2010) (citing *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 583 F.Supp.2d 169, 172 (D.D.C.2008) (Facciola, Mag. J.); *Cousins v. District of Columbia*, 880 F.Supp.2d 142, 143 (D.D.C.2012). (the burden of proof is on the parents to produce sufficient evidence demonstrating the type and quantum of compensatory education that makes the child whole).

¹¹ . *G.L.* at 618-619 quoting *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996) (citations omitted).

Discussion

In August 2015, the Charter School was aware the Student was a person with a disability in need of specially-designed instruction. The Charter School failed to schedule an IEP meeting to review the Student's transfer IEP. This fundamental error denied the Student FAPE.

The record is preponderant; the Student has a long history of a variety of behaviors that interfere with learning. The delay in developing a comprehensive behavioral strategy, ultimately led to the Student being suspended and completely excluded from school.

The November 2015 IEP failed to include PLEP. The failure to include PLEP and baseline data prevents any hope of progress monitoring. This fundamental error denied the Student FAPE. The SDIs and the PBSP failed to include sufficient strategies to teach the Student how to focus, increase time on task, and transition from class to class or subject to subject. The failure to develop and implement an IEP contributed to the Student's misbehavior. Charter School was aware the Student was making suicidal statements yet they failed to conduct an assessment or work with the crisis center to develop interventions.

In sum, after listening to the limited testimony and reviewing the exhibits the evidence is preponderant that the Charter School denied the Student FAPE. As to the determination of the form of the appropriate relief, the evidence is also preponderant that relief can be calculated with sufficient particularity to avoid a windfall.

Compensatory Education

To remedy the denial of FAPE, the Parent is suggesting an hour-for-hour remedy for the entire school year. The IEP notes the Student should receive school-based counseling and Emotional Support. The November 2015 IEP provides that the Student should receive 90 minutes a month of one-on-one counseling. The November 2015 IEP included 480 minutes a week of Emotional Support in the regular class and 220 minutes a week of Emotional Support outside of the regular class (P#5 p.4).

The failure to hold an IEP meeting in August of 2015 was a denial of FAPE. After reviewing the IEP, the PBSP, and the FBA, I find the November 2015 IEP was legally insufficient at the time it was written. The record is preponderant that the IEP goals are inadequate and vague. [Charter School] was aware when the Student enrolled the Student needed specially-designed instruction yet it failed to provide FAPE. The

Student did not receive the agreed upon support. Therefore, the compensatory education claim accrued in August of 2015. I find that the Student is entitled to one school year of compensatory education.

Compensatory education may take the form of any appropriate developmental, remedial, or instructional services, product, or device, selected at the discretion of Parent, which furthers or supports the Student's education. Services in the amount set forth above may be provided after school hours, on weekends, or during summer months when convenient for Student or Parent. The services ordered above shall be provided by appropriately qualified, and appropriately, Pennsylvania certified or licensed, professionals, selected by Parent. The cost of any such services shall not exceed the rate for privately retained professionals qualified.

Conclusion

In sum, I find that the LEA deprived the Student FAPE from August 2015 through the end of the 2016 school year. Therefore, I find the Student is entitled to an award of compensatory education from August 2015 to the last day of school. The Student's behavioral needs were the contributing factor to repeated removals from school, interfered with learning, and created peer and adult difficulties. Therefore, I find that the Student should be awarded one full year of compensatory education. The IEP provides that the school day is 6.8 hours each day (P#5 p.6). Therefore, the Student is awarded 1224 hours of compensatory education.¹²

¹² The Student attends school for 34 hours per week (6.8 hours a day x 180 days a year = 1224 hours. The compensatory education claim accrued on the first day of school.

ORDER

The Student should receive the following compensatory education services:

1. The Student should be provided 1224 hours of compensatory education. The Parent can select the service provider. The responsible educational agency should pay the provider, the rate charged for the services in the location in which the services are provided.

It is **FURTHER ORDERED** that any claims that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

Date: November 8, 2016

Charles W. Jelley, Esq. LL.M.
Hearing Officer