Case Number: XXXXXX NYC Case Number: «Case»

**FINDINGS OF FACT AND DECISION**

Case Number: «Case»

Student’s Name[[1]](#footnote-1): «Last\_Name», «First\_Name»

Date of Birth: «DOB»

School District: N.Y.C. Dept. of Ed., District #

Hearing Requested by: «Parents\_Name» (“Parent(s)”)

Request Date/Date Complaint Filed: «Request\_Date»

Date(s) of Hearing: «Hearing\_Date»

Actual Record Closed Date: «Record\_Close\_Date»

Date of Decision: XX/XX/202X

Date of Distribution: XX/XX/202X

Time Sensitive Choose an item.

Impartial Hearing Officer: Corey Forster, Esq.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON «Hearing\_Date»

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

**JURISDICTION**

This proceeding arises under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400-1482; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, et seq.; Article 89 of the New York State Education Law; and the New York State regulations at 8 NYCRR § Part 200, et seq.

The undersigned Impartial Hearing Officer (“IHO”) is a certified New York State Special Education Hearing Officer, employed by the New York City Office of Administrative Trials and Hearings (“OATH”) as a Special Education Impartial Hearing Officer, and meets all of the qualifications and requirements outlined in both federal and state statute which grant the IHO the authority to adjudicate this hearing. Furthermore, the IHO is not currently, nor has ever been, an employee of the NYC Department of Education, and does not have any personal or professional interest or bias that conflicts with his objectivity to hear this matter.

**BACKGROUND**

Parent, through counsel, filed a Due Process Complaint (“DPC”) on or about «Request\_Date». In the DPC, Parent alleges that the New York City Department of Education (“DOE” or “the District”) failed to offer Student with a free appropriate public education (“FAPE”) for the «School\_Years» school year(s). Ex. XX.[[2]](#footnote-2)

Parent alleges, *inter alia,* that the DOE failed to: (i) implement services properly offered, (ii) provide appropriate parent training, (iii) allow Parent to properly participate in the IEP process, (iv) adequately assess and address Student’s behavioral management needs, (v) develop meaningful and measurable goals, and (vi) provide the appropriate services for student’s needs.

By way of relief, Parent seeks: a bank of hours of 24 sessions of Speech and Language Therapy (“SLT”) for three times a week at 30 minutes for each session, 16 sessions of Physical Therapy (“PT”) twice per week at 30 minutes for each session, 24 sessions of Occupational Therapy (“OT”) for three times per week at 30 minutes for each session, 2 sessions of Parent Counseling and Training (“PCT”)for once per month at an hour for each session, as well as 10 hours of Applied Behavioral Analysis (“ABA”) per week at home, 30 hours of ABA per week in school, Board Certified Behavior Analyst (“BCBA”) supervision for 2 hours per month, and BCBA parent training for 2 hours per month. In light of the foregoing and as more fully discussed below, I find that the DOE failed to meet its burden that it offered Student FAPE for the «School\_Years» school year(s) and the equities support the Parent’s requested relief.

**PROCEDURAL HISTORY**

I was appointed on «Appointment\_Date». On [DATE], I issued an Order directing Parent’s Representative and a DOE Representative (“the Parties”) to appear on «PHC\_Date» for a Settlement Conference and a Pre-Hearing Conference.[[3]](#footnote-3) My Order also included rules regarding how the Due Process Hearing (“DPH”) would be conducted. *See* IHO Ex. I. The Parties indicated that [THINGS]. [At that time, the parties jointly moved for an extension of the compliance period, which I granted].

On «Hearing\_Date», the Parties appeared for a virtual hearing. [DOE did not seek to introduce witness testimony nor any other evidence. DOE conceded it had failed to offer the Student an appropriate education for the school year(s) at issue.] OR [DOE submitted NUMBER exhibits into the record, but presented no witnesses for testimony.] Parent submitted NUMBER exhibits into the record [on consent of DOE], including [an] affidavit(s), from WITNESS, WITNESS, and WITNESS. DOE elected not to cross-examine the affiants. I accepted all affidavits into the record.] Parent rested and the DOE advised that it had no further statement to make or testimony or documents to offer. Parent’s counsel made an oral closing (*See* Tr. XX)[[4]](#footnote-4)

**LEGAL STANDARDS AND FRAMEWORK**

Both the IDEA and the Education Law provide that children with disabilities are entitled to a FAPE. 20 U.S.C. § 1400 (d)(1)(A); Education Law §§ 4402(2)(a), (b)(2). A FAPE consists of specialized education and related services designed to meet a student’s unique needs, provided in conformity with a comprehensive IEP. 20 U.S.C. §§ 1401(9), (29). A school district has offered a student a FAPE when: (a) the board of education complies with the procedural requirements set forth in the IDEA; and (b) the IEP is developed through the IDEA’s procedures and is reasonably calculated to enable the student to receive educational benefits. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982). To meet its substantive FAPE obligations, a district must offer a student an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). If a procedural violation has occurred, relief is warranted only if the procedural violation affected the student’s right to a FAPE. *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 381-82 (2d Cir. 2003; *W.G. v. Bd. of Trustees of Target Range School Dist. No. 23,* 960 F. 2d 1479, 1484 (9th Cir. 1992);*J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 69 (2d Cir. 2000); 8 NYCRR § 200.5(4)(ii). School districts are obligated to provide the special education services listed in a student’s IEP. 20 U.S.C. § 1401(9)(D); 34 C.F.R. § 300.17(d).

The IDEA directs that, in general, an IHO’s decision must be made on substantive grounds based on a determination of whether the student received a FAPE. 20 U.S.C. § 1415(f)(3)(E)(i). A school district offers a FAPE “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Rowley*, 458 U.S. at 203. However, the “IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP.” *Walczak v. Florida Union Free* *School Dist.*, 142 F.3d 119, 130 (2d Cir. 1998); *Rowley*, 458 U.S. at 189. “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Endrew F.*, 137 S. Ct. at 1001. The IDEA ensures an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Walczak*, 142 F.3d at 132, quoting *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F. 2d 563, 567 (2d Cir. 1989). Additionally, school districts are not required to “maximize” the potential of students with disabilities. *Rowley*, 458 U.S. at 189; *Walczak*, 142 F.3d at 132. Nonetheless, a school district must provide “an IEP that is ‘likely to produce progress, not regression,’ and . . . affords the student with an opportunity greater than mere ‘trivial advancement.’” *Cerra v. Pawling Central School Dist.*, 427 F.3d 186, 195 (2d Cir. 2005) (quoting *Walczak,* 142 F.3d at 130). The IEP must be “reasonably calculated to provide some ‘meaningful benefit.’” *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2d Cir. 1997); *see also* *Endrew F.*, 137 S. Ct. at 1001 (holding that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”); *Rowley*, 458 U.S. at 192.

In actions brought under the IDEA alleging a denial of FAPE, “the court shall grant such relief as the court determines is appropriate”, limited only by the restriction that “the relief is to be appropriate in light of the purpose of the Act.” *Doe v. East Lyme Bd. of Educ*., 790 F.3d 440, 454 (2d Cir. 2015) (citation omitted). Equitable considerations are relevant in fashioning relief, and the court enjoys broad discretion in doing so. *Florence County Sch. Dist. Four v. Carter ex rel. Carter,* 510 U.S. 7, 16 (1993). Although an award of damages is not available under the IDEA (*see* *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.,* 288 F.3d 478, 486 [2d Cir. 2002]), “a court may award various forms of retroactive and prospective equitable relief, including reimbursement of tuition, compensatory education, and other declaratory and injunctive remedies.” *Doe v. East Lyme*, 790 F.3d at 454.

Under the Education Law, school districts have the burden of proof, including the burden of persuasion and the burden of production, in due process hearings, except that a parent or person in parental relationship seeking tuition reimbursement for a unilateral parental placement has the burden of persuasion and the burden of production on the appropriateness of such placement. Education Law § 4404(1)(c); *T.K. and S.K. ex rel. L.K. v. New York City Dept. of Educ.,* 810 F.3d 869, 875 (2d Cir. 2016); *C.F. ex rel. R.F. and G.F. v. New York City Dept. of Educ.*, 746 F.3d 68, 76 (2d Cir. 2014), *R.E. v. New York City Dept. of Educ.*, 694 F.3d 167, 184-85 (2d Cir. 2012).

**FINDINGS OF FACT AND DECISION**

After a full review of the record generated at hearing, I make the following findings of fact and determinations. Unless otherwise noted, I found the witness(es) to be credible.

*Burden*

In IDEA impartial due process proceedings conducted in New York, the burden is on the DOE to establish that it provided a student with a FAPE. *M.W. ex rel. S.W. v. New York City Dept. of Educ.*, 725 F.3d 131, 135 (2d Cir. 2013); *A.M. ex rel. E.H. v. New York City Dept. of Educ.*, 845 F.3d 523, 535 (2d Cir. 2017). Since DOE did not present a case or present any witness testimony, and provided no context for the documents they submitted, DOE failed to address or sustain its burden under the Education Law and failed to demonstrate it provided the Student with a FAPE for the «School\_Years» school year(s). Furthermore, DOE did not object to or contest the evidentiary material submitted by Parent in support of their claims, and it accepted the affidavit testimony from Parent’s witnesses without presenting any rebuttal testimony. Accordingly, Parent is entitled to a presumption as to the truth of the asserted facts underlying her claims that are contained in the documentary evidence and testimony to the extent they are credible and are not contradicted by the hearing record. Based on the foregoing and the DOE’s failure to sustain its burden under the Education Law, I am constrained to find that the DOE failed to provide Student with a FAPE for the «School\_Years» school year(s).

*Requested Relief*

The Supreme Court has emphasized that relief under the IDEA depends, in part, on “equitable considerations.” *See Sch. Comm. of Town of Burlington, Mass. v. Dept. of Educ. of Mass.*, 471 U.S. 359, 374 (1985); *Carter*, 510 U.S. at 15-16. As previously discussed, “when a school district denies a child a FAPE, the courts have ‘broad discretion’ to fashion an appropriate remedy.” *Boose v District of Columbia*, 786 F. 3d 1054, 1056 (D.C. Cir. 2015) (citing *Carter*, 510 U.S. at 15-16). In actions brought under the IDEA alleging a denial of FAPE, “the court shall grant such relief as the court determines is appropriate,” limited only by the restriction that “the relief is to be appropriate in light of the purpose of the Act.” *Doe v. East Lyme*, 790 F.3d at 454.

An appropriate equitable remedy for a denial of FAPE can include an award of compensatory education. *E.M. v. New York City Dept. of Educ.*, 758 F.3d 442, 451 (2d Cir. 2014). The Second Circuit has stated, “[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and we have held compensatory education is an available option under the Act to make up for denial of a free and appropriate public education.” *P. ex rel. Mr. & Mrs. P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 (2d Cir. 2008). Compensatory education is “prospective equitable relief” that requires a school district to fund education “as a remedy for any earlier deprivations in the child’s education.” *Somoza v. New York City Dept. of Educ.*, 538 F.3d 106, 109 n.2 (2d Cir. 2008). Courts “may award various forms of retroactive and prospective equitable relief, including reimbursement of tuition, compensatory education, and other declaratory and injunctive remedies.” *Doe v. East Lyme*, 790 F.3d at 454. Unlike ordinary IEPs “that need only provide ‘some benefit,’ compensatory awards must do more -- they must compensate”, and “hearing officers may award ‘educational services . . . to be provided prospectively to compensate for a past deficient program.’” *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 522, 525 (D.C. Cir. 2005). “If IDEA permits reimbursement for educational services, courts have reasoned, then it must also allow awards of the services themselves.” *Reid*, 401 F.3d at 522 (citations omitted). Compensatory education, therefore, is a “replacement of educational services the child should have received in the first place.” *Reid*, 401 F.3d at 518.

There are generally two approaches to fashioning a compensatory education award, viz, the “quantitative” approach followed in the Third Circuit (*see*, *e.g.*, *M.C. ex rel. J.C. v. Cent. Reg’l Sch. Dist.*, 81 F.3d 389 [3d Cir. 1996] [holding that a student denied a FAPE is entitled to compensatory education equal to the period of deprivation]), and the “qualitative” approach relied on by the Sixth and D.C. Circuits. (*see*, *e.g.*, *Reid*, 401 F.3d at 518, 524 [requiring a flexible, fact-specific approach in which the award relies “on individual assessments” and is “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place”]).

The Second Circuit has not taken a preferred approach, opting instead as a general practice to “leave the mechanics of structuring the compensatory education award to the district court’s sound discretion”, so long as “the relief is [] appropriate in light of the purpose of the Act.” *Doe v. East Lyme*, 790 F.3d at 454, 457; accord *L.O. ex rel. K.T. v. New York City Dept. of Educ.*, 822 F.3d 95, 125 (2d Cir. 2016); *see also Student X. v. New York City Dept. of Educ.*, 2008 WL 4890440, at \*26 (E.D.N.Y 2008) (noting that “the Second Circuit has not articulated a test for determining how [compensatory education] services are calculated”, and awarding compensatory relief equal to the amount of time the student was deprived of services). In calculating an award, a court can also consider “whether compensatory education should be limited to the kinds of services specified in the [IEP], or encompass analogous educational services appropriate to the Student’s currents needs”; however, the ultimate award “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Doe. v. East Lyme*, 790 F.3d at 457 (internal citations omitted).

Under New York law, the DOE has the burden of proof in an administrative hearing regarding the appropriateness of a compensatory education award under the IDEA. Education Law § 4404(1)(c). However, the Parent also has a responsibility to identify the specific remedy she is seeking so that the IHO can craft an appropriate remedy for the DOE’s failure to provide the student with a FAPE for the years at issue. *See JKG by JK and JKG v. Wissahickon Sch. Dist.*, 2021 WL 1122526, at \*8 (E.D. Pa. 2021) (noting that “[w]hile the Court has discretion to fashion a remedy that it deems appropriate, the Court cannot unilaterally supply the facts necessary to reach such a decision”); *Butler v. Dist. of Columbia*, 275 F. Supp. 3d 1, 5 (D.D.C. 2017) (holding that a hearing officer “must solicit the evidence necessary to determine the student’s specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits”) (internal quotes and citation omitted). Here, Parent has identified the specific remedy they seek and has provided documentary evidence and testimony in support of this request.

Despite the DOE’s failure offer any documentation or witness testimony to challenge Parent’s request for relief, courts have looked with disfavor at decisions that award all of the relief requested by a parent in IDEA cases due to the lack of a contrary or alternative position from the school district. *See Branham v. Gov’t of the Dist. of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005) (holding that “[c]ourts fashioning discretionary equitable relief under the IDEA must consider all relevant factors”, and reversing the district court’s default judgment, its “unexamined lump sum grant of compensatory education”, and its award of a private school placement, because it failed to engage in a qualitative, fact-intensive analysis to determine whether the remedy was carefully tailored to the student’s needs). “The purpose of compensatory education is not to punish school districts . . ., but to compensate students with disabilities who have not received an appropriate education.” *C.W. ex rel. Louise W. v. The Rose Tree Media School Dist.*, 395 Fed. App’x 824, 828 (3d Cir. 2010).

The IDEA ensures an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Walczak*, 142 F.3d at 132, (quoting *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F. 2d 563, 567 (2d Cir. 1989)). Additionally, school districts are not required to “maximize” the potential of students with disabilities. *Rowley*, 458 U.S. at 189; *Walczak*, 142 F.3d at 132. Nonetheless, a school district must provide “an IEP that is ‘likely to produce progress, not regression,’ and . . . affords the student with an opportunity greater than mere ‘trivial advancement.’” *Cerra v. Pawling Central School Dist.*, 427 F.3d 186, 195 (2d Cir. 2005) (quoting *Walczak*, 142 F.3d at 130). The IEP must be “reasonably calculated to provide some ‘meaningful benefit. *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2d Cir. 1997); *see also Endrew F.*, 137 S. Ct. at 1001 (holding that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”); *Rowley*, 458 U.S. at 192.

*ABA Instruction and Services*

Parent seeks a number of ABA-related services as relief. The hearing record establishes that Student is diagnosed with ASD and is “exhibiting several symptoms such as… maladaptive behaviors as well as stimulus overselection (e.g., excessive self-stimulatory behavior) that have been found to interfere with his learning across multiple settings.” P-C-6. Student engages in biting his own palms during assessments, “has tantrums in school” and would “elope on a daily basis.” Id. at 4. He is known to rock or run back and forth, make repetitive sounds, and have restricted interests such as obsessions with certain fast food establishments. Id. at 1. As of his 2021 psycho educational evaluation, Student was shown to have an intelligence quotient of forty which placed him “within the Extremely Low range of intellectual functioning and there is a 95% change that his true IQ is between 37-48. Overall, [Student] performed in the Extremely Low range with respect to his Verbal Comprehension, Visual Spatial, Fluid Reasoning, Working Memory, and Processing Speed indices.” DOE-13-8.

For the latest school year IEP, the CPSE convened on April 19, 2023 and classified Student as a Student with a Disability. P-B-1. It indicated that Student was diagnosed with ASD, had issues with maladaptive behavior, struggled to focus on his work unless he was worked with individually in a distraction-free setting. Id. Student is “minimally verbal,” can become anxious or become aggressive to the point of becoming self-injurious when he is frustrated or no longer interested in engaging. Id. at 2-3. The IEP recommended student have a 6:1:1 placement along with Occupational Therapy of 3 times per week for 30 minutes, individual service, Parent Counseling and Training once per month for 60 minutes, group service, Physical Therapy 2 times per week for 30 minutes, individual service, and Speech-Language Therapy 3 times per week for 30 minutes, individual service and an additional Speech-Language Therapy once per week for 30 minutes in the Special Education Classroom, individual service. Id. at 33-34. Student should also have a paraprofessional for behavior support all day as well as an assistive speech generation device all day. Id.

Student’s ABA evaluations indicate that Student’s learning was “facilitated when he worked individually in a distraction-free setting with the present examiner, as he attended to instruction and showed desire to obtain his choice of reinforcers.” P-C-6. Further “[s]ignificant decreases in attentive behavior while significant increases in on-task behavior were observed when ABA procedures were used to help [Student] engage in several 1:1 learning opportunities.” Id. Therefore, Student was recommended to receive 10 hours of 1:1 ABA at home and 30 hours ABA in school along with additional hours of supervision at home and parent training. Id. at 7-8.

This was echoed by the BCBCA Analyst who observed Student’s learning to be greatly increased with 1:1 ABA support and his non-compliance and self-harm behaviors decreased in proportion to the amount of 1:1 support he received. P-E-4. Student has a number of challenges including “the lack of toilet training, the lack of a communication system, the self-injury, the excessive biting of the hands, and the tantruming behavior.”[[5]](#footnote-5) The BCBA stated the importance of home ABA was to help create a program that continues what is learned not only at school but reinforces skills practiced at home: “…it is what he needs is a wrap around program that also works on these skills in the home. At school, what he learns at school, is not necessarily being taught in the home, so wiping after defecating, that has to be explicitly trained. Learning to communicate in moment-to-moment situations with the parent and choosing not to self-injure or engaging in more pro-social behavior is another area that needs to be addressed.”[[6]](#footnote-6) The recommended ten hours a week of home ABA would be split in two hours a day that would continue to reinforce not engaging in self-injuring behavior or working with social skills continued from his school setting education.

BCBA Analyst believes that Student should continue to receive 10 hours of home 1:1 ABA therapy as well as 2 hours of per month of parent training and two hours per month of BCBA supervision for 2 hours per week. P-E-7. This is conjunction with the 30 hours suggested by the ABA evaluation. See P-C-7-8. Finally, Parent also requested a different 6:1:1 program as the one Student is currently in but did not provide a great deal of information as to why that was necessary, other than to say it was related to all the issues Student is having at his current placement.

Parent also requested compensatory hours for services that were not provided during the extended school year months of July and August. P-F-2. These services were recommended by the operative IEP for the current school year. P-B-33,34. The DOE did not present any witness testimony or documentary evidence to explain why these services were not provided and they did not present any evidence or testimony to challenge or rebut the BCBA evaluation recommendations.

I find BCBA Analyst’s affidavit and testimony to be credible as well as the evaluation and Parent’s testimony; Parent’s request for compensatory education for related services not provided as well as ABA services is appropriate. Accordingly, I find that that Student is entitled to receive a bank of 24 sessions of SLT, 16 sessions of PT, 24 sessions of OT, 2 sessions of PCAT, as well as, 10 hours of home ABA, 30 hours of ABA per week in school, BCBA supervision for 2 hours per month, and BCBA parent training for 2 hours per month.

**ORDER**

NOW, THEREFORE, IN LIGHT OF THE ABOVE FINDINGS OF FACT, IT IS HEREBY **ORDERED THAT**:

1. The District shall fund twenty-two (22) hours of ABA services per week for the remainder of the 42-week 2023-2024 extended school year or until the CSE determines an appropriate placement for Student after reconvening as per section 10 of this Order, whichever occurs first, to be provided by an independent qualified BCBA selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the DOE of the provider’s invoice for such services;
2. The District shall fund a total of one-thousand-six-hundred-eighty (1,680) hours of compensatory ABA services, to be provided by an independent qualified BCBA selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of the Parent’s submission to the District of the provider’s invoice for such services; and provided, that the one-thousand-six-hundred-eighty (1,680) hours of compensatory ABA services shall be fully used within three (3) years of the date of this Decision;
3. The District shall fund at an enhanced rate of $200 per hour, for the remainder of the 42-week 2023-2024 extended school year, five (5) hours per week of direct SETSS at home by an ABA-trained provider selected by Parent and one (1) hour per week of indirect SETSS by an ABA-trained provider selected by Parent; such payment shall be made within thirty-five (35) days of Parent’s submission to the DOE of the provider’s invoice for such services;
4. The District shall fund a total of eight-hundred-twenty (820) hours of compensatory SETSS delivered by an ABA-trained provider selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services; and provided, that the eight-hundred-twenty (820) hours of compensatory SETSS shall be fully used within three (3) years of the date of this Decision;
5. The District shall fund a total of ten (10) hours of compensatory Counseling services to be administered by a licensed provider selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services; and provided, that ten (10) hours of compensatory Counseling services shall be fully used within three (3) years of the date of this Decision;
6. The District shall fund a total of ten (10) hours of compensatory OT services to be administered by a licensed provider selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services; and provided, that ten (10) hours of compensatory OT services shall be fully used within three (3) years of the date of this Decision;
7. The District shall fund a total of ten (10) hours of compensatory PT services to be administered by a licensed provider selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services; and provided, that ten (10) hours of compensatory PT services shall be fully used within three (3) years of the date of this Decision;
8. The District shall fund a total of ten (10) hours of compensatory SLT services to be administered by a licensed provider selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services; and provided, that ten (10) hours of compensatory SLT services shall be fully used within three (3) years of the date of this Decision;
9. If at any time Parent requests assistance finding a provider to administer the services listed in numbers 5-8 of this Order, the District must locate three providers who are ready, willing, and able to begin administering the services to Student according to the terms of this Order. If Parent presents a good faith basis for rejecting the three providers, the District must locate two additional providers from which Parent may choose. The District shall not be required to identify more than five providers in any given six-month period. Nothing stated here prevents Parent from locating and utilizing a provider of their own choosing;
10. Within sixty (60) days of the date of this Decision, the District shall convene a meeting of the CSE to consider a possible deferral to the CBST to recommend an appropriate State-approved nonpublic school program that offers ABA instruction and an evidence-based, multi-sensory approach to literacy and numeracy instruction. In making its determination of whether a deferral to the CBST is appropriate, the CSE shall consider the recommendations contained in Student’s most recent FBA, and whether it is in Student’s best interests to receive the supports and services ordered by this Decision in a public school setting or in a State-approved nonpublic school that offers the appropriate supports and services.
11. The District shall fund an independent qualified provider selected by Parent to conduct an updated FBA at a rate not to exceed $2,300 and formulate a new BIP at a rate not to exceed $1,750;
12. The District shall fund, for the remainder of the 42-week 2023-2024 extended school year, one (1) hour of Parent Training and Counseling per week by an independent qualified BCBA/LBA selected by Parent, who shall be paid at reasonable market rates; such payment shall be made within thirty-five (35) days of Parent’s submission to the District of the provider’s invoice for such services.
13. Parent shall be provided a bank of hours of compensatory education with a provider of Parent’s choosing, to be funded by the District at a market rate:
    1. 24 sessions of Speech Language Therapy;
    2. 16 sessions of Physical Therapy;
    3. 24 session of Occupational Therapy;
    4. 2 sessions of Parent Counseling and Training; and
14. The District shall pay for all services within 60 days of submission of proof of attendance and use of such services;
15. The District shall fund, at market rate, for an extended school year, ABA services by a private provider of the parents choosing:
    1. 30 hours of at school, push-in Applied Behavioral Analysis therapy;
    2. 10 hours of at home Applied Behavioral Analysis therapy;
    3. Board Certified Behavior Analysis supervision for 2 hours per month;
    4. BCBA Parent training for 2 hours per month; and
16. The District shall pay for all services within 60 days of submission of proof of attendance and use of such services; and
17. The CSE shall reconvene within 35 days of this decision to consider Student’s continued eligibility for special education and/or related services, and if eligible, to develop an IESP or IEP in accordance with the IDEA and State law.

Dated: \_\_\_\_\_\_

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Corey Forster

Impartial Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

Within 40 days of the date of this decision, the parent and/or the Public School District has a right to appeal the decision to a State Review Officer (SRO) of the New York State Education Department under section 4404 of the Education Law and the Individuals with Disabilities Education Act.

If either party plans to appeal the decision, a notice of intention to seek review shall be personally served upon the opposing party no later than 25 days after the date of the decision sought to be reviewed.

An appealing party’s request for review shall be personally served upon the opposing party within 40 days from the date of the decision sought to be reviewed. An appealing party shall file the notice of intention to seek review, notice of request for review, request for review, and proof of service with the Office of State Review of the State Education Department within two days after service of the request for review is complete. The rules of procedure for appeals before an SRO are found in Part 279 of the Regulations of the Commissioner of Education. A copy of the rules in Part 279 and model forms are available at http://www.sro.nysed.gov.

**APPENDIX A- REDACTION IDENTIFICATION PAGE**

|  |  |
| --- | --- |
| **Term Used In FOFD** | **Redacted Information** |
| Student | «First\_Name»«Last\_Name» |
| Parents/Guardians | «Parents\_Name» |
| Parent Attorney/Representative | «Parents\_Counsel» |
| District Attorney/Representative | «DOE\_Attorney» |
| School |  |
| Private School | «SchoolName» |
| Service Provider |  |
| District, DOE | «DOE\_CSE» |
| Director (for the Rebecca School) |  |
| Chairperson |  |
| Principal |  |
| Case Manager |  |
| Psychologist |  |
| Occupational Therapist |  |
| Physical Therapist |  |
| Speech-Language Therapist |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |

**Submit this page to the parent and doe only.**

**Do not submit this page to nysed.**

**APPENDIX B- DOCUMENTATION ENTERED INTO THE RECORD**

**PARENT EXHIBITS**

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| **Exhibit** | **Title of Document** | **Date** | **Number of**  **Pages** |
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**DOE EXHIBITS**

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**IHO EXHIBITS**

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1. Personally identifiable information is attached as Appendix A, “Redaction Identification Page,” to this decision and must be removed prior to public distribution. [↑](#footnote-ref-1)
2. Exhibits shall be referred to as follows: Ex. followed by lettered designations for Parent’s Exhibits, numbered designations for DOE’s Exhibits, and roman numeral designations for Impartial Hearing Officer’s Exhibits. Exhibit designations will be followed by the page numbers as needed and appropriate. For example, Parent’s Exhibit A, page 1, will be referred to as Ex. A-1. [↑](#footnote-ref-2)
3. Settlement conferences are conducted by an OATH Settlement Officer or OATH IHO not assigned to the case whose purpose is to aid the parties in exploring and facilitating a resolution to the DPC.  Settlement Conference discussions are confidential, and the parties are directed to attend with knowledge of the dispute and settlement authority should there be an interest in resolution.  Settlement conferences are not recorded. [↑](#footnote-ref-3)
4. The instant decision is being issued prior to the completion of the «Hearing\_Date» transcript. OR References to the transcript of the DPH conducted on «Hearing\_Date» are denoted “Tr.” [↑](#footnote-ref-4)
5. Tr. 40, 17-23. [↑](#footnote-ref-5)
6. Tr. 40, 23-25, Tr. 41, 1-5. [↑](#footnote-ref-6)