District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,[1]	)	
Petitioner,	)	
	)	**Case No.: 2019-0274**
v.	)	**Hearing Officer: Michael Lazan**
	)	**Dated: January 3, 2020**
District of Columbia Public Schools,	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Multiple Disabilities (the "Student").

A due process complaint ("Complaint") was received by District of Columbia Public Schools ("DCPS" or "Respondent") pursuant to the Individuals with Disabilities Education Act ("IDEA") on November 4, 2019. Filed with the Complaint was a motion to expedite the case. The Complaint was filed by the parent of the Student. Respondent filed a response on November 14, 2019. The resolution period expired on December 4, 2019.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of

[1]Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

the District of Columbia Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations ("DCMR"), Title 5-E, Chapter 30.

III. Procedural History

On November 7, 2019, Respondent filed opposition papers to Petitioner's motion to expedite the case. On November 20, 2019, this Hearing Officer denied the motion to expedite the case. On November 26, 2019, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing order was issued on December 3, 2019, summarizing the rules to be applied in this hearing and identifying the issues in the case. The prehearing order was revised as a result of Petitioner's email of December 3, 2019. Respondent had no objection to the changes suggested by Petitioner. The revised prehearing order was sent to the parties on December 9, 2019.

There was one hearing date: December 17, 2019. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence exhibits 1-113. Objections were filed in regard to exhibits 21-23, 25, 27-77, 81-99, and 108-113. Objections to exhibits 27 and 111 were sustained. Exhibits 1-26, 28-110, and 112-113 were admitted. Respondent moved into evidence exhibits 1-15. Since exhibit 14 is a regulatory citation and not evidence, it was excluded. Exhibits 1-13 and 15 were admitted. After the hearing on December 17, 2019, the parties presented closing statements.

Petitioner presented as witnesses: Petitioner; Witness A, a clinical and forensic psychologist (expert: psychology as it relates to evaluating and making recommendations for students with special needs); Witness B, an advocate (expert: special education

programming and placement); and Witness C, a legal assistant. Respondent presented as witnesses: Witness D, a local education agency ("LEA") progress monitor; and Witness E, a manager (expert: special education for students in the home and hospital setting).

IV. Issues

As identified in the Prehearing Order and in the Complaint, the Free Appropriate Public Education ("FAPE") issues to be determined in this case are as follows:

1. Did Respondent fail to implement the Student's Individualized Education Program ("IEP") after the Student was discharged from his/her school setting on November 1, 2019? If so, did Respondent's act or omission violate principles of law established in cases like Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did Respondent deny the Student a FAPE?

2. Did Respondent fail to provide the Student with an appropriate alternate school and/or placement in a timely manner or make any interim services available for the Student after s/he was discharged from his/her school setting on November 1, 2019? If so, did DCPS's act or omission violate 4 CFR 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

As relief, Petitioner is seeking an order requiring that DCPS: immediately place and fund the Student in a residential program with transportation; send out packets to programs that are not on the approved list of the Office of the State Superintendent of Education ("OSSE"); and provide interim services such as a 1:1 home aide, specialized instruction, and related services. Petitioner is also seeking compensatory education.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities (Emotional Disturbance, Other Health Impairment). The Student can be personable, kind, and intelligent, with a good sense of humor. The Student is generally well-liked by peers and school staff. The Student has been diagnosed with Schizophrenia, Childhood Onset, Attention Deficit Hyperactivity Disorder ("ADHD"),

Conduct Disorder, an eating disorder, and mild intellectual disability. The Student has trouble sleeping, appears to enjoy pain, has a history of auditory command hallucinations, has experienced suicidal and homicidal ideation, and has a history of making false allegations against school staff. The Student presents a danger to him/herself and others and needs access to care twenty-four hours a day, seven days a week. P-2-6; P-3-1; P-113; P-21-1; Testimony of Witness A; Testimony of Witness B.

2. During the 2017-2018 school year, the Student attended School A. The Student was frequently absent and received "1" grades in all academic subjects, indicating "below basic" skills. Testing in or about November, 2017, revealed that the Student's academic skills were below grade level in both reading and math, according to the Woodcock-Johnson Tests of Achievement-IV ("WJ-IV"). On the Wide Range of Assessment of Memory and Learning-2 ("WRAML-2"), the Student's Full Scale IQ was considered to be "borderline delayed." P-26-3; Testimony of Witness B.

3. The Student was assessed through a confidential psychiatric evaluation on May 29, 2018. The psychiatrist's DSM-V "diagnostical impression" indicated that the Student had Attention Deficit Hyperactivity Disorder (predominantly hyperactive/ impulsive presentation) and Conduct Disorder. The psychiatrist also indicated that Autism Spectrum Disorder, Psychotic Disorder due to another medical conditions, and schizophrenia should be "ruled out." The psychiatrist reported that voices have told the Student to kill his/her father and brother as well as a teacher and principal at his/her school, and the psychiatrist recommended a residential setting for the Student. P-20.

4. To address the Student's behavioral issues, in or about May, 2018, the Student entered a program at Hospital A. Although the Student was given 1:1 staff and

constant monitoring during this program, the Student continued to engage in severe outbursts and exhibit self-harm. Even so, the Student made progress in the hospital setting, including a reduction in violence and reported psychotic symptoms, and was ready to step down to a less intensive level of care (though the Student needed to be sent directly to a residential treatment center). P-2-4; P-20-1; P-21-1; Testimony of Petitioner.

5. The Student was admitted to School B, a residential treatment center, on or about December 20, 2018. At School B, the Student was able to make progress in math, where his/her "level of participation" was considered to be at the 94th percentile during one quarter. The Student was also able to add and subtract two-digit numbers, count currency up to over $700.00 using place values, and identify certain polygons. The Student also made progress in writing, where s/he improved his/her ability to identify sight words and write multi-page assignments. The Student was also able to answer comprehension questions with support and worked well with a peer tutor. Despite this progress, the Student also engaged in severe behaviors at school. The Student's behavior support plan, as revised on August 12, 2019, stated that the Student was particularly prone to behavior issues when s/he was required to complete non-preferred activities, and tended to work better with females. The plan stated that the Student should be directed to, among other things, use the bathroom every thirty minutes, receive prompting with respect to activities of daily living, and receive a visual schedule. The plan also stated that the Student should receive verbal warnings, appropriate modeling and praise, and breaks. The plan identified the Student's behaviors as noncompliance; physical aggression (including choking, hitting, biting, or scratching); self-injury (including headbanging, hitting self, kicking self, attempting to pull out his/her teeth, and pouring

scalding water over him/herself); sexualized behaviors (inappropriate touching, verbally encouraging another to engage in sexual acts); and elopement. The Student was restrained eight times in September, 2019, and then seven times in the first two weeks of October, 2019. P-2-1; P-2-5-7; P-3; Testimony of Petitioner.

6. On or about September 23, 2019, Respondent learned that the Student was going to be discharged from School B because it was not able to manage the Student's behaviors. At about the same time, Petitioner also learned that School B was going to discharge the Student. On or about September 27, 2019, a meeting took place between Respondent and School B staff, who indicated that the Student could not continue at the school, even with an aide, and that the Student needed to be in an even more restrictive setting. The school indicated that the Student was a "clear and present threat" to the safety of him/herself and others. P-1; P-31-3; Testimony of Witness C; Testimony of Petitioner.

7. On October 4, 2019, Respondent received a formal letter from School B expressing its intent to discharge the Student. As a result, on or about October 11, 2019, Respondent sent out referrals to residential schools that had a "Certificate of Approval" from OSSE. R-2; R-12-5; Testimony of Witness C.

8. On October 10, 2019, a "Comprehensive Treatment Plan" was updated for the Student. The plan referenced a Functional Behavior Assessment ("FBA") which indicated that the Student's behaviors were caused by non-preferred activities. The plan indicated that the Student had been restrained twelve times from August 7, 2019, to October 4, 2019. During this period, the Student was the aggressor in eighteen different assaults. The plan noted that these figures actually represented an improvement from the

Student's behaviors from January 28, 2019, to April 23, 2019, when the Student had to be restrained sixteen times, and was the aggressor in thirty-five assaults. The plan recommended family treatment weekly, individual treatment twice a week, a psychiatric appointment every six weeks, weekly group therapy, life skills classes daily, and a residential setting. P-8-2-3, 10.

9. An IEP was written for the Student on October 10, 2019. The IEP indicated that the Student experienced symptoms of schizophrenia, including visual and auditory hallucinations, defiant behavior, and avoidant behavior that could include the destruction or tearing up of clothes and toys. It noted that the Student was performing below grade level expectations and had difficulty accessing curriculum at the same rate and level as his/her peers, without accommodations and modifications. The IEP noted that the Student benefited from frequent prompting, breaks, visual supports and "anchor charts," chunked work, organizers, repeated instructions, and a highly structured classroom. The IEP contained goals in reading, math, written expression, speech and communication, emotional, social and behavioral development, and motor skills/physical development. The Student was recommended for specialized instruction outside general education for 27.75 hours per week, with speech and language therapy for sixty minutes per week, occupational therapy for thirty minutes per week, physical therapy for thirty minutes per week, and behavior support services for ninety minutes per week. A full-time dedicated aide was also recommended. The services were to be provided in a residential setting per a hearing officer order. P-26.

10. The Student was officially discharged from School B on November 1, 2019, because "the services" there were "no longer helpful." The discharge summary

form for the Student indicated that the Student had borderline intellectual functioning, child onset schizophrenia, attention deficit hyperactivity disorders, and "other conduct disorders" listed as "Unspecified, Disruptive, Impulse Control Disorder." The form also indicated that the Student was discharged to Petitioner's care pending residential placement. P-2-1-2.

11. On November 6, 2019, a planning meeting was held for the Student. At the meeting were representatives from Respondent and School B. During this meeting, the participants indicated that Petitioner would need training to work with the Student at home while Respondent looked for a residential setting for the Student. P-107-3.

12. On November 12, 2019, the Student was admitted to Hospital B, where s/he remained until December 3, 2019. In late November, 2019, Respondent asked Hospital B whether the Student could receive instruction. By the time the Student was discharged from Hospital B, the Student was considered to be medically and psychiatrically able to return to school. R-9; P-103-6; Testimony of Witness B; Testimony of Witness D; Testimony of Witness E.

13. School C, a school approved by OSSE, has indicated that it would accept the Student when a "bed" opens up. As of the date of hearing in this case, it was unclear exactly when the school would be able to accept the Student. All of the other "approved" schools that Respondent has applied to have rejected the Student, except for two schools, which had not made a decision on the Student's admission as of the date of the hearing. R-2; R-12-5; Testimony of Witness C.

14. In or about November, 2019, Petitioner asked Respondent to pursue placements for the Student that were not approved by OSSE. On November 19, 2019,

Respondent contacted OSSE and asked whether it could apply to placements that were not approved by OSSE. OSSE responded by indicating that all approved placements needed to be rejected before it could allow Respondent to pursue non-approved placements. R-6; Testimony of Petitioner.

15. Petitioner, through counsel, attempted to find a residential placement for the Student by sending out "placement packets" to non-approved schools. Some of the schools would not consider the Student's application because the application was not sent under the auspices of Respondent. Most of the schools that received "placement packets" from Petitioner would not admit the Student. School D required that the Student receive an updated psychiatric evaluation before admitting him/her. Respondent agreed to fund such psychiatric evaluation, which is currently being completed. School E indicated that it would accept the Student when the Student turns Y years old. R-13; Testimony of Witness C.

16. The day before the hearing, the Student was hospitalized because s/he was looking for a knife to stab him/herself to death. The Student has not received any academic services since s/he was discharged from School B. P-11-; P-101; P-103-6; Testimony of Witness A; Testimony of Witness B; Testimony of Petitioner.

VI. Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student

Rights Act of 2014 which states that "(w)here there is a dispute about the appropriateness of the child's individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement" provided that the party requesting the due process hearing establishes "a *prima facie* case." D.C. Code Sect. 38-2571.03(6)(A)(i). Both Issue #1 and Issue #2 in this case involve challenges to the Student's placement. Respondent therefore bears the burden of persuasion, provided that Petitioner presents a *prima facie* case.

1. Did Respondent fail to implement the Student's IEP after the Student was discharged from his/her school setting on November 1, 2019? If so, did Respondent's act or omission violate principles of law established in cases like Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did Respondent deny the Student a FAPE?

"Failure to implement" claims are actionable if a school district cannot materially implement an IEP. A party alleging such a claim must show more than a *de minimis* failure, and must show that material, or "substantial or significant," portions of the IEP could not be implemented. Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where District's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007). Courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import of the specific service that was withheld. Garmany v. Dist. of Columbia, 935 F. Supp. 2d 177, 181 (D.D.C. 2013).

There is no dispute that Respondent has not provided the Student with any educational services since the Student was discharged from School B. Respondent's defense was premised on the impossibility of providing the Student with a FAPE during

this period of time. Respondent argued that it tried to place the Student in a private residential setting and applied to all schools that were approved by OSSE at the time, but that no school settings would accept the Student. Respondent contended further that it could not apply to non-approved schools because a local regulation (5-A DCMR Sect. 2844.1(b)) prevented it from unilaterally placing students at non-approved schools, and that it nevertheless did seek permission from OSSE to look for non-approved schools that might accept the Student.

The record indicates that DCPS sent "packages" to all "approved" residential schools within weeks of learning of School B's decision to discharge the Student, and there is nothing in the record to suggest that DCPS had any control over the acceptances to these schools. Moreover, local regulations do indeed prohibit DCPS from placing Students at residential schools that are not approved by OSSE. However, Respondent provided no authority for the argument that an LEA can avoid liability when it provides a Student with no placement at all, even if the LEA acts in good faith. To the contrary, a court in this jurisdiction recently found that school districts cannot use an "impossibility" defense to thwart a parent's claim of FAPE denial where no private school will accept a child. Schiff v. District of Columbia., No. 18-CV-1382 (KBJ), 2019 WL 5683903, at *7 (D.D.C. Nov. 1, 2019). It is noted that the applicable federal regulation simply states that an LEA is required to provide a residential placement to a student with a disability at no cost to the parents if such a placement is necessary to provide the student with special education and related services. 34 C.F.R. Sect. 300.104. DCPS denied the Student educational benefit, and therefore a FAPE, when it failed to implement the Student's October 10, 2019, IEP after the Student was discharged from School B.

2. Did Respondent fail to provide the Student with an appropriate alternate school and/or placement in a timely manner or make any interim services available for the Student after s/he was discharged from his/her school setting on November 1, 2019? If so, did DCPS's act or omission violate 4 CFR 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the United States Supreme Court found that an IEP must be reasonably calculated to enable the child to receive benefit. In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an "appropriate" level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 137 S. Ct. 988 (2017). In keeping with Rowley, in Endrew F., the Court held that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Id. at 1001. The Court made clear that the standard is "markedly more demanding than the 'merely more than *de minimis*' test" applied by many courts. Id. at 1000.

This Hearing Officer has already found that DCPS denied the Student a FAPE by failing to locate a residential school for the Student after the Student was discharged from School B on November 1, 2019. Petitioner seeks an additional finding that DCPS's failure to provide the Student with an interim service plan during this time also denied the Student a FAPE. While it can be appropriate for school districts to mitigate a student's educational deprivation so that children like the Student receive some instruction during a period of FAPE denial, the failure to provide such service does not create an independent claim of FAPE denial. It is noted that Petitioner provided no authority for the proposition that a school district's failure to provide an interim services plan in this context amounts to FAPE denial. This claim must therefore be dismissed.

RELIEF

Petitioner is seeking placement for the Student at a non-approved residential school. Petitioner is also seeking interim services until the Student is placed at a residential school, as well as compensatory education. When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to "grant such relief as [it] determines is appropriate." School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be "appropriate." 20 U.S.C. Sect. 1415(i)(2)(C)(iii).

As compensatory education, Petitioner seeks an award corresponding to every day that the Student missed school after September 24, 2019. Petitioner seeks three hours per day of tutoring; one hour per day of behavior support services; one hour per week of occupational therapy and physical therapy; and thirty minutes per week of speech and language therapy. Under the theory of compensatory education, courts and hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from the special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to

craft an award tailored to the unique needs of the disabled student"). A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010). Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Though Petitioner's compensatory education plan (Exh. P-104) is helpful in determining an award, it is "quantitative" in nature. The plan, as explained by Witness B, does not quite acknowledge the "qualitative" standard enunciated in Reid. Witness B did not assess the extent to which the Student failed to benefit from instruction and did not present a plan to explain how the Student might make up for the lack of such instruction. Additionally, Petitioner's compensatory education proposal relates to the time period beginning on September 24, 2019, whereas the issues in the prehearing order clearly state that the period of harm in this case started on November 1, 2019. Also considering that this Hearing Officer Determination awards the Student interim services going forward, this Hearing Officer shall modify the proposed compensatory education request and order that the Student receive seventy-five hours of compensatory tutoring, to be provided with a 1:1 behavioral aide, at a reasonable and customary rate in the community, together with thirty hours of compensatory behavioral support services and fifteen hours of compensatory occupational therapy, physical therapy, and speech and language therapy. It is noted that Petitioner asked for more occupational therapy and physical therapy than speech and language therapy, even though the Student's IEP required more speech and

language therapy than occupational therapy or physical therapy. All related services are to be provided at a reasonable and customary rate in the community.[2]

Petitioner also seeks an order placing the Student in a non-approved residential setting if available. Respondent already attempted to place the Student in residential settings approved by OSSE, to no avail. Respondent also indicated that it is seeking to place the Student at a non-approved residential setting (assuming that none of the approved residential settings accept the Student). None of the witnesses in this case could state with certainty that the Student would be placed in an OSSE-approved residential setting going forward. In fact, Witness E indicated that she anticipated a decision from OSSE allowing Respondent to apply to non-approved residential settings for the Student. A hearing officer may order a placement in a nonpublic special education school or program that lacks a valid Certificate of Approval from the State Educational Agency ("SEA") if the hearing officer has determined that there is no public school or program able to provide the student with a FAPE, and that there is no nonpublic special education school or program with a valid Certificate of Approval that can provide the Student with a FAPE. D.C. Code Sect. 38-2561.03. Especially given the safety concerns that this Student presents, this Hearing Officer will order that Respondent immediately apply and/or "send packages" to all known, appropriate, non-approved residential settings that could implement the Student's IEP, including all non-approved

[2]Respondent argued that the compensatory proposal was baseless because the Student was unavailable for education while at Hospital B, and because the time period for the FAPE denial was only two months. However, Witness A testified that students in hospital settings ordinarily receive educational services, and the record does not sufficiently establish that the Student could not benefit from *any* educational services while s/he was hospitalized after November 1, 2019. In particular, no witnesses were called from Hospital B to establish that the Student was entirely unavailable for instruction during this time. Additionally, there is no correspondence in the record from Hospital B that states that the Student could not be educated at all at the facility.

residential settings suggested by Petitioner, until the Student is finally placed at an appropriate residential setting.

Finally, Petitioner seeks an interim services plan going forward. Petitioner suggested that the Student receive five hours per day of home-based tutoring by a special education teacher with training on how to manage students with emotional disturbance, together with a 1:1 behavior technician. Petitioner also suggested providing the Student with three hours per week of counseling, one hour per week of occupational therapy and physical therapy, and thirty minutes per week of speech and language therapy. All of these services were to be provided in the home or hospital setting.

Witness E, an expert in providing special education for students in the home and hospital setting, cautioned against providing the Student with too many hours of individualized tutoring per day, out of concern that such a mandate would be too demanding and might worsen the Student's behavioral issues. Witness E pointed out that individual tutoring is more demanding and intense than participation in group instruction. Witness E also suggested that the Student start with services from a social worker only, for a transition period. Under the circumstances, Respondent will be ordered to provide the Student with at three hours of services from a certified social worker during the week of January 6, 2020, to prepare the Student for individualized home-based instruction. Respondent shall then provide the Student with three hours of individual tutoring each weekday by a certified special education teacher, together with a 1:1 behavior technician/aide. Additionally, since there is nothing to suggest that the Student cannot benefit from related services during this period, Respondent shall also provide the Student with three hours per week of counseling, one hour per week of occupational

therapy, one hour per week of physical therapy, and thirty minutes per week of speech and language therapy. Such services must be in effect by January 13, 2020, unless Respondent receives a formal written correspondence from a duly licensed psychiatrist which states that the Student is currently unavailable for instruction.

VII. Order

As a result of the foregoing:

1. Respondent shall fund seventy-five hours of compensatory tutoring, to be provided with a 1:1 behavioral aide, together with thirty hours of compensatory behavioral support services and fifteen hours of compensatory occupational therapy, physical therapy, and speech and language therapy. All services are to be provided at a reasonable and customary rate in the community and must be used by June 30, 2021;

2. Respondent shall submit applications to all known, appropriate, non-approved residential settings that can implement the Student's IEP, including all non-approved residential settings suggested by Petitioner, until the Student is placed at an appropriate residential setting;

3. Respondent shall provide the Student with the following services going forward, until the Student is placed at a residential setting: for the week of January 6, 2020, the Student shall receive three hours of counseling by a certified social worker; after January 13, 2020, the Student shall receive three hours per weekday of individual tutoring by a certified special education teacher, together with a 1:1 behavior technician/aide; three hours per week of counseling; one hour per week of occupational therapy and physical therapy; and thirty minutes per week of speech and language therapy. Such plan must be in effect unless Respondent receives a formal written

correspondence from a duly licensed psychiatrist which states that the Student is currently unavailable for instruction.

Dated: January 3, 2020

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Petitioner's Representative: Attorney A, Esq.
Respondent's Representative: Attorney B, Esq.
OSSE Division of Specialized Education
[redacted]

VIII. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety days from the date of the Hearing Officer Determination in accordance with 20 USC Sect.1415(i).

Date: January 3, 2020

Michael Lazan
Impartial Hearing Officer