

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Monroe Board of Education

Appearing on behalf of the Parent:

Pro se

Appearing on behalf of the Board:

Christine A. Sullivan, Esq.  
Berchem Moses, PC  
75 Broad Street  
Milford, CT 06460

Appearing before:

Patrick L. Kennedy, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Did the District deny a Free Appropriate Public Education (“FAPE”) to the Student for the 2016-17 school year by not providing an appropriate program for the Student (for the portion of the school year that is not more than two years before the hearing request)?
2. Did the District commit procedural denials of FAPE for the 2016-17 school year (for the portion of the school year that is not more than two years before the hearing request)?
3. Did the District deny FAPE to the Student for the 2017-18 school year by not providing an appropriate program for the Student?
4. Did the District commit procedural denials of FAPE for the 2017-18 school year?
5. Did the District deny FAPE to the Student for the 2018-19 school year by not providing an appropriate program for the Student?
6. Did the District commit procedural denials of FAPE for the 2018-19 school year?
7. If there has been a denial of FAPE, what remedies should be ordered?
8. Did the District commit a denial of FAPE in denying the Parents’ request for an Independent Educational Evaluation (“IEE”) in the area of Vocation/Transition?

9. If so, what remedies should be ordered?

**PROCEDURAL HISTORY:**

Case 19-0286 was commenced by the Parents on December 17, 2018. A prehearing conference was held on December 27, 2018. At the prehearing conference, a hearing date was set for February 11, 2019 and the decision date was determined to be March 1, 2019. The hearing was later cancelled at the request of the Parents.

Hearings were held on March 26, 2019; April 22, 2019; April 23, 2019; May 6, 2019; May 30, 2019; May 31, 2019; June 4, 2019 and June 5, 2019. The decision date was extended to April 1, 2019; May 1, 2019; May 31, 2019 and June 28, 2019.

On May 28, 2019, the Parents filed another due process request, Case 19-0551, which requested an IEE and constitutes the basis for Issues 8 and 9, above. On June 15, 2019, Hearing Officer Ann Bird ordered that case consolidated with Case 19-0286. Based on that consolidation, a new decision date of August 9, 2019 was established as a matter of law.

Additional hearings were held on June 24, 2019; June 25, 2019; July 17, 2019 and September 16, 2019. On October 1, 2019, the District moved to dismiss Case 19-0551 as it had expressly stipulated on the record that it would provide the requested IEE. Further hearings were held on October 8, 2019 and October 15, 2019. On October 21, 2019, the undersigned hearing officer issued an interlocutory dismissal of Case 19-0551 as moot. Further hearings were held on October 23, 2019; November 14, 2019 and March 9, 2020. The decision date was extended to September 10, 2019; October 10, 2019; November 8, 2019; December 9, 2019; January 8, 2020; February 7, 2020; March 6, 2020; April 7, 2020 and May 7, 2020.

At the conclusion of the Parents' case, the District rested without putting on a case. The District requested on the record that the hearing officer enter an order of compensatory education for the Student. Given the offer, the District declined to file a brief in this matter. The Parents filed a brief which set out their position on relief. The specific offers and demands for relief will be discussed below.

The following witnesses testified on behalf of the Parents: Karen Daley, Ken Rider, Danielle Hawley, Marissa Esteves, Michael Cercone, Laura Massey, Sean McDonald, Jamie Sherry, Anne Odoy, Joan Cohen, Lewis J. Kass, Julia Strong, Jennifer Parsell, Kay Moser, Lisa Derosa, Kathryn Gueli, Frances Pacheco, Student and Mother.

Hearing Officer HO-1 was entered as a full exhibit.

Parent exhibits P-3, P-12, , P-28, P-51, P-56 through P-57, P-59, P-61 through P-63, P-66, P-70, P-72 through P-75, P-73a, P-77 through P-78, P-80 through P-85, P-90 through P-92, P-94, P-95 through P-99, P-101 through P-111, P-114 through P-139, P-128a, P-

149 through P-155, P-157 through P-158, P-160 through P-172, P-176 through P-182, P-184 through P-194, P-196 through P-203, P-205 through P-210, P-213 through P-222, P-224, P-226 through P-228 and P-230 were admitted as full exhibits. Parent exhibits P-93 and P-223 were admitted in part.

Board exhibits B-1 through B-3, B-5, B-9 through B-14, B-16 through B-30, B-32 through B-33 and B-35 through B-75 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S&H Computer Systems, Inc.*, 605 F.Supp. 816 (M.D.Tenn. 1985); *Bonnie Ann F. v. Calallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

#### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

#### **FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student, whose date of birth is August 6, 2000, is a high-school student at Masuk High School who resides with his Parents within the District. (B-53.)
2. The Student is identified as eligible for special education and related services under a primary category of emotional disturbance. (B-53.)
3. Prior to January of 2016, the Student had been placed at Grove School, a therapeutic placement, in Madison. (P-51.)
4. The Student had been diagnosed with sleep apnea and restless leg syndrome by January of 2016 and was diagnosed with narcolepsy later in 2016. (Testimony of Kass, 6/4/19.)
5. The Parents requested that the placement at Grove be terminated at a planning and placement team meeting ("PPT") held on January 5, 2016 for various reasons,

- including the inability of the school to accommodate the sleep schedule of the Student, and that homebound instruction should be provided, a request that was refused by the PPT. (P-51.)
6. The Student was nonetheless withdrawn from the school and homebound instruction was provided on the basis of a request from the Student's doctor. (P-57.)
  7. During the summer of 2016, the Parents obtained a math evaluation from Miriam Cherkes-Julkowski Swenson, Ph.D. (P-59.)
  8. The evaluation found gaps between the Student's math reasoning ability and deficient acquisition of math skill and further found that he had mastered 22% of the common-core 6<sup>th</sup> grade math curriculum. (P-59.)
  9. The evaluation contained eight specific recommendations, including two with lengthy sub-recommendations, for Student's program. (P-59.)
  10. The next PPT was held on December 9, 2016. (B-1.)
  11. By that time, Doctor Gagan Joshi had evaluated the Student and concluded that he met diagnostic criteria for Autism Spectrum Disorder, Mood Disorder—Not Otherwise Specified and Anxiety Disorder—Not Otherwise Specified and Dr. Joshi's conclusions were reported to the PPT. (B-1.)
  12. Parents attempted to discuss the evaluation provided by Dr. Swenson, but the special education director dismissed it as inaccurate. (B-1.)
  13. The Student's Individualized Education Program ("IEP") recommended that the Student be placed at Woodhouse Academy, which was a therapeutic program. (B-1.)
  14. The Parents did not immediately sign the consent form for transfer of records to Woodhouse. (B-1.)
  15. The Parents requested IEEs for Academic Testing, Neuro-Psychological Evaluation and Assistive Technology as well as placement at Fusion Academy, all of which were denied by the PPT. (B-1.)
  16. The IEP provided homebound instruction of 8 hours per week and counseling of .5 hours per week while the referral to Woodhouse was taking place. (B-1.)
  17. Instruction was to include two hours per week of instruction in math. (P-62, P-63.)

18. Due to a scheduling conflict involving the teacher, Student only received one hour of math instruction per week. (P-66.)
19. Counseling was not included when the schedule was put together. (P-62, P-63.)
20. Counseling was not provided until October of 2017. (Testimony of McDonald, 5/6/19.)
21. The Parents did sign the consent form for transfer of records to Woodhouse Academy on March 20, 2017. (P-73a.)
22. On June 16, 2017, another PPT was held concerning the Student. (B-4.)
23. The PPT recommended that the Student receive 16 hours of instruction per week in reading, writing and math with a counseling component in an extended school year (“ESY”) program during summer of 2017. (B-4.)
24. Student’s sleep doctor, Dr. Lewis Kass, provided the PPT with a letter recommending that the Student attend school on a shifted schedule starting at noon due to the Student’s narcolepsy. (B-4.)
25. The PPT discussed possible hours of 11:00 am to 1:00 pm for the ESY program. (B-4.)
26. Parents declined the ESY program. (B-4.)
27. Parents signed another consent form for transfer of records to Woodhouse Academy at that time. (B-4.)
28. Parents renewed their request for placement of the Student at Fusion Academy and the request was again denied by the PPT. (B-4.)
29. Woodhouse Academy informed the District that its program would not be a “good fit” for the Student due to its inability to accommodate his narcolepsy on June 29, 2017. (P-84.)
30. The Parents were informed of Woodhouse’s rejection on August 5, 2017. (P-93.)
31. On September 6, 2017, another PPT was held concerning the Student. (B-6.)
32. The Student was in attendance at the PPT and commented that he learns best when provided instruction on a one to one basis. (B-6.)
33. The PPT recommended that the Student would attend Masuk High School from 12:00 pm to 2:00 pm for Resource, Counseling and Elective courses with a 1:1 paraeducator during that period. (B-6.)

34. The Student was further to receive tutoring at Masuk in Math, English, Science and History from 2:00 pm to 4:00 pm four days per week. (B-6.)
35. Notwithstanding the IEP, one hour of tutoring per week was not provided due to a mandatory staff meeting which took place from 2:00 pm to 3:00 pm on Wednesdays. (P-118.)
36. On October 5, 2017, another PPT was convened concerning the Student. (B-7.)
37. At that time, the PPT reviewed the IEP and kept the current program in place, which Parents were in agreement with. (B-7.)
38. In December of 2017 and January of 2018, the Student was evaluated for academic literacy by Joan Cohen, M.A., F/AOGPE, CDT of Literacy How, Inc. (B-11.)
39. The evaluation noted that the Student had, over several years, been previously diagnosed with Learning Disorder: Not Otherwise Specified (Nonverbal Learning Disorder); Developmental Coordination Disorder, Depression; Nonverbal Learning Disability (NVLD); Mood Disorder NOS (with depression and anxiety) R/O Bipolar Disorder, Bipolar Disorder; Dysgraphia/Disorder of Written Expression; Learning Disorder, Not Otherwise Specified (executive process, slow processing speed and fluency); Attention-Deficit/Hyperactivity Disorder, Combined Type; Reading Disorder; Disruptive Behavior Disorder, secondary to Bipolar Disorder of Childhood; Disruptive Mood Dysregulation Disorder; Unspecified Disruptive, Impulse Control, Conduct Disorder; Anxiety Disorder—Not Otherwise Specified; Autism Spectrum Disorder; Sleep apnea and Type I Diabetes. (B-11.)
40. The Student is a highly motivated student, but has anxiety and lack of confidence concerning his academic abilities. (B-11, Testimony of Cohen, 5/31/19, B-13.)
41. The Student presents a classic dyslexic profile with difficulties in the areas of working memory, processing speed and fluency. (Testimony of Cohen, 5/31/19.)
42. The evaluation report made seven specific recommendations, some of which contained sub-recommendations, which had a heavy emphasis on phonetic instruction, individualized or small-group instruction and assistive technology. (B-11.)
43. A subsequent addendum to the report noted that the Student had also been diagnosed with narcolepsy and cataplexy and made three further recommendations, with sub-recommendations, containing detailed descriptions of what Student's literacy program should contain, with further recommendations that Student's instructor have structured literacy training as well as extensive

- experience working with students with social/emotional disabilities and significant dyslexia/dysgraphia and that the Student's instruction be increased over time to an hour and a half to two hours per day. (B-12.)
44. During October, November and December of 2017, the Student was given a neuropsychological evaluation by Michael N. Fulco, Ph.D., with a report provided on February 5, 2018. (B-13.)
  45. The report noted that, "by parental report", Student was diagnosed with Type I Diabetes, Narcolepsy, Asperger's Disorder and Mood Disorder and that he also had been diagnosed with Dyslexia, Nonverbal Learning Disorder (NLD), ADHD-Combined and Obsessive-Compulsive Disorder. (B-13.)
  46. The report provided diagnoses of Unspecified Bipolar Disorder; Other Specified Neurodevelopmental Disorder—Executive Processing Disorder; Attention-Deficit Hyperactivity Disorder; Specific Learning Disorder with impairment in reading-decoding, fluency, comprehension and Specific Learning Disorder with Impairment in written language—spelling, punctuation, output. The report also noted that features of Autism Spectrum Disorder Level I were present. (B-13.)
  47. The report made 22 specific recommendations to the District concerning the Student's program as well as two which were directed to the Parents. (B-13.)
  48. Six of the recommendations pertained specifically to vocational/transitional matters and included substantial work on life skills, job interviews and placement in real jobs. (B-13.)
  49. On February 8, 2018, another PPT was convened to discuss the Student's program. (B-15.)
  50. The IEP provided that the Student would attend Masuk from 12:00 pm to 2:00 pm every day and receive instruction in Guided Learning, Adjusted Curriculum Language Arts and Elective courses with a 1:1 paraeducator during this period. (B-15.)
  51. The IEP further provided that the Student would receive tutoring at Masuk for three hours per week of math and one hour of biology and that he would attend Unified Sports and the Buddies Club. (B-15.)
  52. The Parents were in agreement with the IEP. (B-15.)
  53. Subsequent to the PPT, Dr. Fulco amended his report to make some corrections of historical fact or documentation but those did not affect any of the report's formulations or recommendations. (B-14.)

54. On March 5, 2018, an Assistive Technology (AT) Evaluation was provided by Nicole Feeney, M. Ed., of New England Assistive Technology (NEAT). (B-21.)
55. The report made recommendations which were discussions at length under seven different categories and specifically urged that there be consistent training for the recommended technologies. (B-21.)
56. On May 14, 2018, another PPT was convened at which Dr. Fulco and Ms. Cohen were in attendance and which Ms. Feeney participated in by telephone, which PPT included a discussion by all evaluators concerning their findings. (B-34.)
57. The IEP provided that the Student would continue to receive instruction at Masuk from 12:00 pm to 2:00 pm every day with instruction in Guided Learning and Workshop with a 1:1 paraeducator during this period. (B-34.)
58. The IEP further provided that the Student would receive tutoring at Masuk for four days per week in English, math, history and biology and counseling one time weekly for .75 hours. (B-34.)
59. The IEP further provided for ESY services from July 9, 2018 to August 2, 2018 for eight hours of instruction per week in Math, Language Arts and History. (B-34.)
60. Ms. Feeney recommended that assistive technology tools be introduced slowly and recommended two tools that would immediately benefit Student; the District AT specialist stated that she would work with Student and consult with the evaluator as needed. (B-34.)
61. The PPT further recommended evaluations in the areas of Vocational/Situational Assessment and Autism but Parents did not sign the consent forms. (B-34, B-35.)
62. The IEP contained goals and objectives for Independent Living, Employment and Postsecondary Education/Training but did not specify a particular program for accomplishing these and particularly did not provide specific amounts of time for vocational and transitional education. (B-13.)
63. The teachers who provided instruction in language arts did not have training in structured literacy. (Testimony of Daley, 3/26/19; Testimony of Rider, 4/22/19; Testimony of Massey, 4/23/19.)
64. On June 20, 2018, another PPT was convened. (B-41.)
65. Parents requested an autism evaluation with a different doctor than the one who had previously been recommended by the District. (B-41.)

66. The District denied the request and provided the Parents with another consent form which they did not sign. (B-41, B-42.)
67. At the request of the Parents, the PPT referred the Student to the Collaborative Center for Learning in Stamford to provide Student with tutoring in Language Arts and Math during the 2018 ESY. (B-41.)
68. During August of 2018, the Student was provided with literacy tutoring services by Ms. Cohen, who thereafter submitted a report with specific recommendations concerning assistive technology and further reading instruction. (B-46.)
69. Another PPT was held on September 18, 2018 which generally discussed Student's progress. (B-53.)
70. Parents and Student requested that the District hire an educational consultant for Student but that request was not acted on. (B-53.)
71. The PPT again discussed the recommended Comprehensive Autism Evaluation which had been proposed and the Parents were again given a consent form to sign but did not sign it. (B-53.)

#### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. **Claim of failure to provide an appropriate program for the 2016-17 school year and the 2017 ESY.**

While Parents' brief is not clear about separating procedural claims from those that are substantive, Parents appear to claim violations which would appear to fall under the heading of failure to provide an appropriate program. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. vs. Douglas County School District*, 137 S.Ct. 988, 1001 (2017).

First, Parents claim that providing Student with homebound instruction constituted a failure to educate him in the least restrictive environment during this period. However, Student himself believed that he needed one-to-one instruction. (Finding of Fact 32.) Contrary to the representation of Parents in their brief, homebound instruction was requested by Student's physician. (Finding of Fact 6.) Further, homebound instruction was provided as a temporary measure while placement at a therapeutic program was investigated. (Finding of Fact 16.) The undersigned therefore finds no violation in the providing of homebound instruction to the Student during the 2016-17 school year.

Parents further claim that the Student was denied an appropriate program in that the PPT denied their request that the Student be placed at Fusion Academy. However, Parents withdrew their request for placement at Fusion at the initial hearing of March 26,

2019 and never submitted any evidence concerning the appropriateness of that school. Therefore, that issue is one that has been abandoned.

The PPT did recommend placement of the Student in the District's program for the 2017 ESY which would have provided 16 hours per week of instruction. (Finding of Fact 23.) The District was aware that the Student's narcolepsy precluded him from participating prior to noon. (Finding of Fact 24.) Nonetheless, the response of the PPT was to suggest that Student participate only from 11:00 am to 1:00 pm on the basis of the program's hours of 9:00 am to 1:00 pm. (Finding of Fact 25.) Rather than confine itself to placing the Student in the existing program, which could provide no meaningful benefit to the Student given his circumstances, the District should have made some attempt to find a program or otherwise provide services in a manner consistent with Student's medical issues. Therefore, the undersigned finds that the District failed to offer an appropriate program for the 2017 ESY.

**2. Claim of procedural violations resulting in a denial of FAPE for the 2016-17 school year and 2017 ESY**

20 U.S.C. §1415(f)(3)(E)(ii) provides, "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits."

Parents claim that the delay of six months between the December 2016 PPT and the referral of the Student to Woodhouse Academy should be considered a procedural violation. However, half of that delay was attributable to Parents' failure to sign the consent form until March of 2017. (Finding of Fact 21.) The remaining three-month period of time for the District to submit the referral was still longer than it should have been but not so long as to deprive the Student of educational benefit or significantly impeded the ability of the Parents, who were extremely active in the determination of the program to be provided to the Student, to participate in the decision-making process. Accordingly, the undersigned finds no procedural violation in the delay in accomplishing the referral to Woodhouse Academy.

Under the IEP, Student was to receive tutoring including two hours per week of math. (Finding of Fact 17.) Student, however, only received one hour per week due to a scheduling conflict involving the teacher. (Finding of Fact 18.) In view of the math deficiencies which had already been identified by the time of the PPT, the undersigned finds the failure to provide the services which were supposed to have been provided to be a material violation which deprived the Student of educational benefit. (Findings of Fact 7-9.)

Under the IEP, Student was to receive counseling of .5 hours per week. (Finding of Fact 16.) The counseling was not provided during that school year. (Findings of Fact

19-20.) As Student is identified with a primary disability of emotional disturbance and was being referred to a therapeutic placement at Woodhouse after having been in another therapeutic placement at Grove, the undersigned finds the failure to provide the services which were supposed to have been provided to be a material violation which deprived the Student of educational benefit. (Findings of Fact 2-3, 13.)

3. **Claim of failure to provide an appropriate program for the 2017-18 school year and the 2018 ESY**

The primary deficiency alleged in the Student's subsequent program for the 2017-18 school year involves the provision of language and literacy instruction to the Student. By the PPT of February 8, 2018, the team had been provided the report of Ms. Cohen and she was present at the PPT of May 14, 2018. (Findings of Fact 38, 56.) The evaluator had specifically recommended that Student's instructor have structured literacy training as well as extensive experience working with students with social/emotional disabilities and significant dyslexia/dysgraphia and that the Student's instruction be developed over time to an hour and a half to two hours per day. (Finding of Fact 43.) The IEP, however, only generally provided for tutoring in subjects including language arts. (Finding of Fact 58.) The teachers who provided instruction to the Student in language arts did not have training in structured literacy. (Finding of Fact 63.) Therefore, the undersigned finds that the District did not provide an appropriate program in language arts for the second half of the 2017-18 school year.

For 2017-18, Parents' argument concerning counseling seems to be that it was ineffective. However, their basis for that contention is "[Student] testified that the school counselor was not helpful and the school made no attempt to offer another counselor to work with [Student]." A mere subjective belief by the Student that counseling was not effective is not sufficient to find that the counseling component of the IEP was insufficient to provide appropriate benefits. Therefore, the undersigned finds no failure to provide appropriate counseling for the 2017-18 school year.

Concerning assistive technology, Parents generally allege that the District "failed its obligation to consider [Student's] assistive technology (AT) needs" without providing any specifics or citations to the record to support that vague contention. The undersigned finds no failure to provide appropriate assistive technology instruction for the 2017-18 school year.

Parents further assert that the District did not provide an adequate program in the area of vocation/transition. While a specific assessment was not made in the area of vocation/transition, the neuropsychological evaluation of Dr. Fulco contained a lengthy discussion of Student's vocational and transitional needs. (Finding of Fact 48.) Although it was clear from the testimony and the IEPs that the Student met with his transition counselor, the extent of transition activity was unclear and the IEP contained no specifics as to how much in the way of transition services was to be provided. (Finding of Fact 62.) Therefore, the undersigned finds that the District did not provide an

appropriate program in the area of vocation/transition services for the second half of the 2017-18 school year.

4. **Claim of procedural violations resulting in a denial of FAPE for the 2017-18 school year and the 2018 ESY**

Upon review of Parents' brief and the evidence presented, the undersigned finds any claims of purely procedural violations for this period to be waived due to the lack of substantial evidence and argument.

5. **Claim of failure to provide an appropriate program for the 2018-19 school year**

There was no change in Student's program between the 2017-18 and 2018-19 school years that would be material to the analysis of whether the school system failed to offer an appropriate program to the Student during the 2018-19 school year. Accordingly, the undersigned finds that the violations identified for the 2017-18 school year continued into the first half of the 2018-19 school year up to the point where the instant due process hearing request was filed.

6. **Claims of procedural violations resulting in a denial of FAPE for the 2018-19 school year**

Upon review of Parents' brief and the evidence presented, the undersigned finds any claims of purely procedural violations for this period to be waived due to the lack of substantial evidence and argument.

7. **Other claims of violation**

As there are statements in Parents' brief—including in the proposed findings of fact—that could be viewed as underdeveloped claims of violation, the undersigned expressly finds for the District on any other claims of violation not discussed above.

8. **Remedies**

As stated above, the District made an offer of compensatory education at the conclusion of the case. While Parents' brief asks for compensatory education and certain other orders as a fallback position, their primary demand is that the District be ordered to pay the sum of \$500,000 into a special needs trust to be administered by the Parents on behalf of the Student.

First of all, Parents' request for payment of money into a trust fund is not contained in Parents' original hearing request. While the claim for relief contains a standard request for "any relief that the hearing officer deems appropriate", the undersigned sees that as properly being applied to ancillary relief and not such a substantial change in what is claimed. Parents did not even attempt to raise this issue

until the very last day of the hearing when they unsuccessfully attempted to enter an exhibit spelling out their monetary claim.

Even assuming arguendo that the relief requested is proper, it should be observed that there is little basis for the amount claimed by the Parents even if a cash payment were a proper form of relief. The Parents claim that 2000 hours of compensatory education should be provided over a two-year period which should be valued at \$200 per hour. Further, they claim that they should be paid \$50,000 per year in transportation expenses. While the Parents provide a basis for their claim of compensatory education hours—which will be discussed below—the figure of \$200 per hour is one which is pretty much plucked from the air. As for the transportation figure, there is not only no basis for the amount, but it is self-evidently preposterous.

For the propriety of the demand for money to be paid into a trust fund, Parents cite a passage from one case seeming to indicate that it is a permissible remedy but do not provide the citation so it is impossible to determine the context in which it was written. The Second Circuit case which Parents cite, *Doe v. East Lyme Board of Education*, 790 F. 3d 440 (2d Cir., 2015), cuts against their position. In that case, the court found that a stay-put violation should be remedied by reimbursement for actual expenses incurred plus compensatory education for education not received at all. In short, it stands for the proposition that compensatory education should be actually provided, not monetized.

In any event, if the trust fund remedy might be proper in extraordinary cases, the undersigned does not see this as an appropriate case as there is no reason that compensatory education would not be a sufficient remedy. Accordingly, the undersigned denies Parents' claim for relief that the District be ordered to pay \$500,000 into a special needs trust for the Student.

Turning to compensatory education, the District offered compensatory education on a weekly basis for a period of one year. The undersigned orders that compensatory education be provided for 345 hours of Orton-Gillingham instruction, 23 hours of math instruction, 46 hours of counseling and 690 hours of transition services. Compensatory education may be accessed by the Student over a period of two years after the end of the school year in which he earns the credits necessary to graduate. All education shall be provided no earlier in the day than 12:00 noon. If Student is unable to make scheduled sessions due to health issues, they may be made up during the two-year period. In no event shall the District's obligations extend beyond June 30, 2024. The District may provide such compensatory education with its own personnel but should hire private contractors if it does not have personnel available to perform the services.

The District offered six hours per week of Orton-Gillingham instruction for a period of one year. Parents contend that the District should provide 7.5 hours of instruction per week of structured literacy instruction for two years, a total of 690 hours (based on an estimate of 46 weeks in a school year including ESY).

For this and all other awards, the undersigned accepts Parents' estimate of 46 weeks per year as reasonable. The deprivation of FAPE was, as discussed above, approximately a year from the performance of Joan Cohen's evaluation to the filing of this action, so the undersigned accepts the District's position as to the proper amount of time to compensate for. The figure of 7.5 hours per week advocated by the Parents is consistent with the lower end of Ms. Cohen's recommendation for weekly instruction. (Finding of Fact 43.) Accordingly, the undersigned orders that the Student be provided with a total of 345 hours of Orton-Gillingham instruction based on 7.5 hrs/wk x 46 weeks x 1 year. The undersigned further orders that the Student's instructor be certified in Orton-Gillingham instruction.

The District did not make an offer of compensatory education for mathematics. The Parents request 460 hours based on a computation of five hours per week over a two-year period. The undersigned finds that, based on the finding that the Student was denied an hour per week of math instruction for half of a year due to the District's failure to implement the IEP, that Student should receive 23 hours of math instruction and orders the District to provide the same.

The District offers one hour per week of counseling for one year while Parents claim that two hours of counseling should be provided for two years. The violation found with respect to counseling was failure to implement the IEP which resulted in the loss of a half-hour of counseling per week for roughly half a year. In view of that, the District's offer of one hour per week for one year more than compensates for the violation and the District is therefore ordered to provide 46 hours of counseling to the Student.

The District offered to provide 15 hours of transition services per week for a period of one year while the Parents request 15 hours per week for two years, a total of 1380 hours. Based on the information provided in Dr. Fulco's evaluation concerning the substantial amount of transition services which the Student requires, the undersigned finds that 15 hours per week of transition services should be provided. As the period in which the Student was provided inadequate services is the roughly one-year period from the completion of Dr. Fulco's evaluation to the filing of this action, those services should be provided based on a period of one year. Therefore, the undersigned orders that the District provide 690 hours of transition services to the Student.

In addition to compensatory education, Parents make some other miscellaneous requests for relief. Parents request that the District be ordered to hire an educational consultant to manage Student's program. The undersigned orders that as long as the District provides the compensatory education required, the question of the personnel that it uses to administer the program is a matter for the District to determine.

Parents further request that the District be ordered to "Provide transportation for all of the services or pay the IRS rate for mileage if [Student] obtains his driver's license." The District is ordered to provide transportation to Student from any point in Monroe to the place where services are being provided. If Student chooses to provide his

own transportation there is no obligation to reimburse him and the District is not responsible for providing transportation from outside Monroe.

Finally, the Parents make the odd request that the District be ordered “not to include the compensatory education ordered in any bankruptcy filing.” Putting aside the fact that this is an extremely speculative and remote contingency, jurisdiction over bankruptcy matters resides exclusively within the United States Bankruptcy Court. Accordingly, Parents’ request is denied.

**FINAL DECISION:**

1. The undersigned finds that the District failed to offer an appropriate program for the 2016-17 school year and 2017 ESY.
2. The undersigned finds that the District committed procedural violations amounting to a denial of FAPE for the 2016-17 school year and 2017 ESY.
3. The undersigned finds that the District failed to offer an appropriate program for the 2017-18 school year and 2018 ESY.
4. The undersigned finds that the District did not commit procedural violations amounting to a denial of FAPE for the 2017-18 school year and 2018 ESY.
5. The undersigned finds that the District failed to offer an appropriate program for the 2018-19 school year.
6. The undersigned finds that the District did not commit procedural violations amounting to a denial of FAPE for the 2018-19 school year.
7. The undersigned finds that compensatory education is the appropriate remedy for the denials of FAPE which have been found.
8. Issue number 8 is dismissed as moot.
9. Issue number 9 is dismissed as moot.

**ORDER:**

1. The District is ordered to provide compensatory education of 345 hours of Orton-Gillingham instruction, 23 hours of mathematics instruction, 46 hours of counseling and 690 hours of transition services to the Student.
2. Case 19-0551 is dismissed.