

October 8, 2020

Final Decision and Order 20-0485

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Watertown Board of Education

Appearing on behalf of the Parents: Self-Represented

Appearing on behalf of the Board: Attorney Linda Yoder, and
Attorney Julia Wilde
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Appearing before: Raymond J. Rigat, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board deny FAPE, for the 2019-2020 school year, by removing the Student from the Cross-Country team?
2. Did the Board deny FAPE, for the 2019-2020 school year, by failing to provide the Student with access to his on-line visual program?
3. Did the Board deny the Student FAPE, for the 2019-2020 school year, by limiting his speech therapy schedule to twenty (20) minutes per week, in contravention of the IEP?
4. Did the Board deny the Student FAPE, for the 2019-2020 school year, by denying the Student: music therapy sessions; summer camp; and full day ESY?
5. Did the Board deny denied FAPE for the 2018-2019, and 2019-2020 school years (and their respective extended school years) by failing to offer the Student outplacement services
6. Did the Board fail to provide procedural due process by failing to make available a video of the student, as requested by the Parent, for the October 24, 2019 PPT?

7. Did the Board fail to provide procedural due process by failing to allow the Parent to participate at the October 7, 2019, informal meeting?¹
8. Did the Board fail to provide procedural due process by failing to convene a PPT meeting by March 13, 2020?
9. Did the Board fail to develop an appropriate IEP by not having a functional behavioral analysis of the Student performed?
10. If so, is the Student entitled to compensatory education?

PROCEDURAL HISTORY:

On June 16, 2020 the Parent filed a Due Process Hearing concerning the special education program provided the Student.

A prehearing telephone conference was conducted on June 22, 2020. The initial mailing date was established as August 31, 2020, and extended to September 30, 2020 to facilitate completion of the hearing. The mailing date was further extended to October 7, 2020.

The hearing took place by video conference over four days: July 20th , and 23rd; August 4th , and September 11th , 2020. Both parties made opening statements, and presented closing arguments at the conclusion of the hearing.

The Parent called six witnesses: (1) herself; (2) the current Director of Special Education Services, (“Director”); (3) the Speech Language Pathologist, (“SLP”); (4) the Student’s Case Manager, and Special Education Teacher; (5) the PPT Administrator (and former Director of Student Services); and (6) the Student’s extracurricular Paraprofessional.

The Board was allowed to conduct both cross examination and direct examination of both Ms. Director and the Paraprofessional. It did not call any further witnesses.

Parent’s Exhibits 1-7; 9-66; and 71(page 1) were admitted as full exhibits. Parent’s Exhibits 8, 67-70, and 71 page 2, were marked for Identification, but not admitted as full exhibits. Board’s Exhibits 1-41 were admitted as full exhibits.

The Board and the Parents were given until September 21, 2020, to submit post-hearing briefs in support of their respective positions. Both parties submitted briefs on September 21st.

¹ This issue was initially framed as concerning an October 17th PPT meeting. However, there was no PPT meeting conducted on October 17th, rather the reference is to an informal team meeting which occurred on October 7th.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (MD. Tenn. 1985).

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

1. The Student is thirteen years old, was in the sixth grade at the time of his last Individualized Education Program, (“IEP”),² and functions, academically, at a second-grade level. (Board Ex. 17; Testimony of Director). He is identified as eligible for special education services under the IDEA under the category of autism. His inner distractions and perseverations interfere with his functioning throughout the school day. The Student has significant delays in cognitive, attention and communication skills; and requires an individualized program that provides 1:1 adult support throughout the school day to help him maintain attention and behavioral control. He needs minimal distractions or he can experience emotional dysregulation. When experiencing upset, the Student requires an environment with minimal sensory distractions; and the employment of calming strategies such as low lights, relaxing music, the use of a body sock, or of a bean bag chair. Broad language weaknesses affect his ability to communicate his needs or to understand changes in routine or novel situations. He needs a high level of support in this area. The Student relies on routines and becomes agitated in new situations. His attention to task is minimal without redirection and he can behave impulsively and will attempt to elope from school staff when dysregulated. For these reasons, he needs to be monitored closely by trained staff both inside and outside the school building. (Board Exh. 22).

² “School districts, through [a Planning and Placement Team, (‘PPT’), in Connecticut] are responsible for formulating a written IEP for every qualifying child. [*R.E. v. N.Y.C. Dep’t of Educ.*, 694 F.3d 167, 175 (2d Cir. 2012)]; see also 20 U.S.C. § 1414(d). The IEP ‘sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.’ To comply with the provisions of the IDEA, the IEP must ‘be reasonably calculated to enable the child to receive educational benefits.’” *Id.* (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982).” *L.O. v. New York City Dept. of Educ.*, 822 F.3d 95, 102-103 (2d Cir. 2016).

2. The Student is a sweet and energetic young man who needs considerable assistance to stay on task, and assistance to walk through hallways without charging through to get to the next class. (Testimony of Director). The Student experiences the world through continued practice and repetition of activity. (Testimony of Director). The Student has an interest, and a high degree of talent with music. He sings beautifully and can play on a keyboard. He has demonstrated that he can follow two-step directions playing chords to songs on a keyboard while singing, and can read lead sheets (lyrics and chord symbols). He can identify and play pitches, chords, and scales by ear, and has become familiar with a variety of complex musical terms. (Board Exh. 7). The Student experiences anxiety, difficulty with self-regulation, difficulty staying focused, poor impulse control, and will act out with changes in his routine. (Testimony of Director). The Student has a history of elopement, and leaving his assigned area. He can run across the street if something catches his attention, and needs the supervision of a behavioral therapist, (“BT”), throughout the school day. (Testimony of Director).
3. In order to prepare the Student to participate in the after school cross country for the Fall 2019 season, school staff gave the Student a picture of the running field, a picture of his assigned BT, and a picture of himself remaining after school to participate in running on the field and having fun. The idea was to prepare him for this extra curriculum activity through a picture story. (Testimony of Director). The Student attended the first cross country practice on September 13, 2018, (Board Exh. 22); but was overwhelmed by the experience and wanted to go on the bus to go home. He kept repeating “school over,” and could not understand why he was not being allowed to get on the bus despite attempts by staff to explain to him that he was now going to be able to participate in running. (Testimony of Director). The Student showed no interest in participating in cross country, and went through a nearby fence before being brought back to the area. (Testimony of Director). The school had safety concerns with the Student’s participation in cross country, and on October 3, 2019 the school informed the Parent that continued participation was a safety risk. (Board Exh. 14; Testimony of PPT Administrator).
4. The school also attempted to engage the Student with the Garden Club as a substitute extracurricular activity. On September 17, 2019, the Student remained after school so that he could attend Garden Club. (Board Exh. 22). Despite prompting and support from a 1:1 adult, the Student again demonstrated no interest in participating in the activity. He refused to stay in the area, became agitated and perseverated about wanting to use the elevator. (Board Exh. 22). He experienced anxiety, and attempted to pull away from his BT. (Testimony of Director; Testimony of BT). The Parent requested that a copy of the hall camera video of this incident be saved,³ and it was eventually made available for her

³ In her March 10, 2020 letter to the Parent, the Director states, that “[a]s a general practice, this security footage is not maintained by the district and this recording has not been used to determine the educational programming for your son.”; *see also* January 31, 2020 letter from the PPT Administrator to a representative of the Special Education Unit: “Although the district will continue to keep the recordings while [Parent] is claiming that she has a right to view them, the

to review. (Parent Exh. 59, March 10, 2020, letter from Director; Board Exh. 30; Testimony of PPT Administrator).

5. Following the attempt at Garden Club, school staff determined that the Student needed another after school plan, because with his autism the concern was that the Student would always associate after school activities with a bad time. (Testimony of Special Education Teacher). The school, therefore, paused after school activities until the right activity could be found for the Student, and decided to convene an informal group meeting to get proposals for a successful after school activity. (Testimony of Director).
6. The Parent requested that this informal group meeting be held on October 7, 2019; but then refused to attend, objecting to the presence of the Director, and the PPT Administrator. (Testimony of Director).⁴ The informal meeting went forward without the Parent, and it was decided that the first step to integrate the Student in extracurricular activities would be to work with him on staying after school. The informal group meeting identified a plan for pre-teaching and exposure during the school day to assist the Student with being comfortable after school. Yoga Club was proposed as an activity that would meet the Student's need for a calm, structured environment. (Board Exh. 16 and 28). The Student liked Yoga Club, showed an interest in it, and demonstrated leadership skills while engaged in the activity. (Testimony of Director).

district is not maintaining this recording as part of the student's educational file." (Board Exh. 22). I find that this video was not *maintained* as an educational record.

⁴ In an e-mail dated Monday, October 7, 2019, (8:53AM), from the PPT Administrator to the Parent's representative, (from the CT Parent Advocacy Center), the PPT Administrator states that meetings with the parent would include himself, and the Director of Special Education: "[g]iven the nature of the concerns that have been expressed by [the Parent] recently and given her adversarial stance with school team members in the past, coupled with her recent interactions with local news outlets... [w]e are concerned that in any instance when members of the school district team do not agree with a request made by [the Parent] she takes a position that mischaracterizes the intentions and values of those who work with her son and support her son's program. In many cases, she has attacked the ethics and morals of staff members. We will not have a situation where dedicated staff members are at risk of being demeaned and intimidated by [the Parent] in a meeting without me and members of our leadership team present. Please do your best to help [the Parent] understand that I, our leadership team, and those who work directly with [the Parent's] son have only one goal: to create an appropriate program for her son so that he can make progress towards his IEP goals and objectives and participate in extracurricular activities. That dedicated team will meet today and develop a comprehensive plan for [the Student] to meaningfully participate in extracurricular activities. ***You and [the Parent] are welcome to attend the meeting and we are hopeful you will both attend so we can work together in the best interest of [the Student].*** (Emphasis added). In that same e-mail, the PPT Administrator noted that both he and the Director of Special Education "have worked effectively with [the Parent] and have reached effective compromises on several occasions." (Board Exh. 15).

7. The Parent requested that the Director, the PPT Administrator, and the Special Education Teacher not engage in any more e-mail communication with her. (Board Exh. 20; Testimony of Director; Testimony of PPT Administrator). A representative from the CT Parent Advocacy Center, attempted to informally mediate between the Parent and school staff through collaborative practices, but could not do so successfully. (Board Exh. 18 and 19). At one point the Parent contacted the police concerning an e-mail communication with the Director, the police responded by contacting the school over the complaint of the Parent. (Testimony of Director).
8. Summer camp was offered the student as part of his IEP in 2017; and for one week in 2018, (but not as part of his IEP). (Testimony of Director; Board Exh. 2). Summer camp was also not offered in the Student's current IEP, because the Student made no regression in 2018 when he didn't have it; and there were also safety concerns over the lack of trained staff, (aside from the paraprofessional sent by the school to assist). (Testimony of Director).
9. The Board convened a PPT meeting on February 13, 2020, for its triennial review of the Student's IEP. The Parent participated in this meeting. (Board Exh. 27). The PPT added several more goals and objectives to the IEP which focused on: increasing his independence; transitioning safely; demonstrating flexibility with changes in routine, and with adults; and utilizing sensory strategies to increase time on-task without disruptive or dangerous behaviors.⁵ The PPT further recommended that a Board Certified Behavior Analyst, ("BCBA"), complete an updated Functional Behavioral Analysis, ("FBA"). (Board Exh. 27, 29; and Testimony of Director). The FBA, however, could not be completed because of the COVID school closure. (Testimony of Director).
10. The February 13, 2020, IEP set an ambitious set of 18 separate goals, together with 54 separate benchmark objectives for the Student; this was increased from the previous IEP, (October 24, 2019), which listed 13 goals, and 41 benchmark objectives. The student still requires 1:1 adult supervision, and his triennial evaluation demonstrated test scores in the very low range in nearly every tested category. (Board Exh. 23 and 33) His language deficits are of such severity that the IEP specifically takes special notice that that he requires a high level of support, (to include continual adult prompting), in order for him to succeed with his education program. The District was required, by the terms of the current IEP, to provide the Student with the following special education and related services for the 2019-2020 school year to include the extended school year, ("ESY"), as follows:

Special Education

- Self-Contained Academic and Behavioral Instruction 1xweek, 14 hrs, 30min from 3/2/20 to 11/7/20
- Academic Support (individual) 2xdaily 42 min. from 03/02/20 to 11/7/20
- Academic Support (small group) 3xweek 42 min from 03/02/20 to 11/7/20
- Self-Contained Academic and Behavioral Instruction 1xweek, 11hrs,45m from 06/29/20 to 7/23/20

⁵The Student's present level of performance, his goals and objectives, and the special education services offered the Student in the current IEP are listed in Addendum II.

- Self-Contained Academic and Behavioral Instruction 1xweek, 5hrs, 45m from 08/03/20 to 8/13/20

Related Services

- | | | |
|-------------------------------|--------------------|--------------------------|
| • Occupational Therapy | 12xmonthly, 30m | from03/02/20 to 11/7/20 |
| • Music Therapy (small group) | 1xweekly, 30 m | from 11/8/19 to 11/7/20 |
| • Music Therapy (individual) | 1xweekly, 30 m | from 11/8/19 to 11/7/20 |
| • Speech/Language Pathology | 1xweekly, 4hrs,40m | from 03/02/20 to 11/7/20 |
| • Counseling | 1x weekly, 30m | from 11/8/17 to 11/7/20 |
| • Music Therapy (small group) | 1xweekly, 30m | from 6/29/20 to 7/23/20 |
| • Music Therapy (individual) | 1xweekly, 30m | from 8/3/20 to 7/23/20 |
| • Speech/Language Pathology | 4xweekly, 45m | from 6/29/20 to 7/23/20 |
| • Speech/Language Pathology | 4xweekly, 45m | from 8/3/20 to 8/13/20 |
| • Occupational Therapy | 1xweekly, 45m | from 6/29/20 to 7/23/20 |
| • Occupational Therapy | 1xweekly, 45m | from 8/3/20 to 8/13/20 |

(See Addendum I, 2/13/2020 IEP, Board Exh. 27; cf. the previous IEP crafted on 10/24/2020, Board Exh. 17). The special education and related services to be provided, under the terms of the current IEP, require the 1:1 assistance of a special education teacher with a Behavioral Therapist, or Behavioral Specialist, to keep the Student focused on task and to prevent him from eloping.

11. Regular school stopped on March 12, 2020, as a result of the Governor’s order concerning the COVID-19 outbreak, and for two weeks no educational services were offered to any students, (although there was an outreach to ensure that students had the technical ability, chrome books, etc., to participate in on-line distance learning when educational services resumed). (Testimony of Director). The Board provided students with virtual services to students starting on March 30, 2020, and distance learning was made available to the Student. (Testimony of SLP).
12. The SLP attempted to deliver remote speech language services to the Student, in lieu of the full IEP requirements, due to restrictions in program services imposed by the COVID-19 outbreak. (Testimony of SLP). It was left up to the SLP to design a plan for the Student’s speech language program during COVID; and no further PPT meeting, or other informal group meeting including the Parent, was held concerning the implementation of the Student’s IEP during the COVID outbreak. PPT’s were, however, made available to other special education students during this time. (Testimony of SLP).
13. The Student was also provided, sometime after March 30th, with “Boom” deck cards, through a log-in website, and was also provided access to the Hear Builder program which he could use at home. (Testimony of SLP). Boom deck is an on-line word game program that allowed the Student to identify antonyms, synonyms, through visual association. Google Classroom was also made available to the Student from March 30th to April 3rd, and received various assignments in math, science, reading, and functional skills. (Board Exh. 34). On May 5th, the Parent informed the school that some of the work provided the Student was not accessible. (Board Exh. 34). The parent provided further feedback to the school on May 18th that the Student was not engaging in any of the materials that were being provided to him, and requested that “iReady” be made available for him. The Student was provided with access to iReady, but as of June 8th there was no

evidence through “Teacher Account” that the Student had begun the diagnostic testing that would allow access to iReady. (Board Exh. 34). The Parent reported having further trouble with her printer and requested hard copies of worksheets for the Student on June 4th. (Board Exh. 34). On March 30th the SLP offered the Student 20 minutes per week of on line speech language services, (and was prepared to extend the length of the session if she determined more time was appropriate). (Testimony of SLP). As it turned out, the SLP conducted two virtual sessions with the Student: the first session started late, and lasted only 13 minutes; the second session started on time, but the Student walked away twice, coming back with the Parent’s assistance, and the session ended early. (Testimony of SLP). The Student was also provided a Word meeting platform for other educational services, (Testimony of Parent), but the exact nature and full extent of these other services have not been provided by either party. On July 6th, the Parent reported to the school that she was having trouble accessing the link to GoogleMeet through the classroom, and was also having trouble logging into iReady, (There was a typographical error in the username sent to the Parent by e-mail—which was corrected). (Board Exh. 38). The Parent provided further feedback to the school on June 8th that the Student was not engaging with any of the virtual assignments through Google Classroom. (Board Exh. 38). The Student received music therapy, but only after May 30, 2020. (Testimony of Parent). The Parent refused to respond the SLP’s request to schedule additional speech therapy sessions. (Testimony of the SLP).

14. There were, also some behavior intervention training provided the Parent by the BT from Connecticut Behavioral Health, mostly by telephone check-ins, one meeting at a grocery store on May 20, 2020, and a home visit on June 9, 2020. (Board Exh. 41: “I went to the home for in-person training on using the schedule board, token board, and the appropriate use of adaptive escape. We discussed the importance of differential reinforcement and generalizing differential reinforcement strategies in non-academic settings.”).
15. In May, the Parent requested training with the Fast ForWord program, an interactive computer game program that had been used with the Student during the school year with the SLP, so she could assist the Student, but this training was not provided to the Parent. In an e-mail dated May 12, 2020 at 4:36 PM, the SLP explained to the Parent, that: “I understand your concerns. Please let me explain in more detail why I believe [the Student] should not complete Fast ForWord at home. In school, I am able to sit there with him and closely monitor during the entire 30 minutes to see what his strengths /weaknesses are for each game. The Fast ForWord application also assesses [the Student’s] progress while he completes the activities so it is important that he is focused and attending to the tasks. While he uses Fast ForWord in school, I (along with his behavior therapist) use behavior management techniques (i.e., his token board) to keep him on task, we redirect frequently, and take breaks. When he has difficulty with a concept, I am able to provide remediation in that specific area using various resources/activities. This specific program requires remediation in areas of difficulty in order for students to advance through the levels and ultimately enhance their skills.”

(Board Exh. 32; Testimony of SLP). A tense e-mail exchange later erupted between the Parent and the SLP over the issue concerning the Fast ForWord program.⁶

16. The Parent challenged the Board's unilateral decision to provide the Student with "20 minutes per week of speech [therapy] reducing his speech [therapy] by 93% outside of a PPT meeting." (Board Exh. 32, pgs. 1- 2). The Parent specifically expressed her dissatisfaction with the Board's failure to implement the 4 hours and 40 minutes (per

⁶ Wed., Jun 3, 2020 at 8:37 PM, the SLP wrote: "Hi Ms.[], I noticed that [the Student] has not completed any of the Boom activities I've assigned. Please let me know if you need help with these or Hear Builder over the next two weeks. Also, would you like to schedule a speech session please let me know."

Wed., Jun 3, 2020 at 8:55 PM, [Parent] to the SLP: "8:37 and still on your mind... is there an SLP [Speech Language Pathologist] that will follow his IEP and agree to deliver services since you have refused to? Let me know because I heard #watertowncares and I'm sure in spite of what you've put in writing you really want to see him succeed right? Is there an SLP that will follow his IEP since you have refused to deliver services resulting in due process and litigation costs? (A badge of honor in Watertown, I know) What did you decide his speech time will be? Still reduced it by 93% to 20 minutes per week of a session to determine if he's worthy of even having the instruction? An SLP who couldn't be bothered to do her job, was too good to answer any questions and who ended a session abruptly because she was too good to work during the closure and instead threw her paid vacation/paid maternity leave in our faces.....Shame on you. So [the Student] will not be receiving any services due to your refusal to follow the IEP and that fact that you will end a session whenever it's convenient for you. Again, what's his speech schedule and with whom did you collaborate to reduce it by 93% (because you surely didn't ask for the parent's input before modifying the IEP outside of the PPT process). Annette [Ms. Dillon] is the only person proud of you right now, and that's not saying an awful lot."

Fri, Jun 5, 2020 at 2:57 PM, the SLP replied: "I maintain the recommendation of a 20-minute tele-health session for each of the remaining two weeks of school. I am available Thursday the 11th at 9:30 and Friday the 12th at 2. Please confirm if and which time you would like by the end of the day Monday. Thank you."

Friday, June 5, 2020 at 3:11 PM, [Parent] to the SLP: "And how did you come to the determination that he should get 20 minutes per week, reducing his speech by 93% outside of a PPT meeting? Did you reduce all students' services by this much or just [the Students]? Do you deny all students access to their computer programs used during speech? Are you going to offer me parent training to support my child with his computer program? Would this be acceptable for your child? I'll wait. Do you hang up on all parents when you don't feel like working on your paid vacation? Did you really provide him with services to the greatest extent possible? I'll be expecting answers to all my questions since you continue to engage me. And why do you never answer if he could have an SLP who's willing to service him and support him during the closure? If this is how you treat students and families being a first-year, non-tenured employee I'd hate to see how you behave once tenured. #watertowncares #shame onyou." (Board Exh. 32)

week) of speech therapy that the Student was required to receive) through his IEP. (Board's Exh. 32, pgs.5-7).

17. The regular school year was scheduled to end on June 17, with two Extended School Year, ("ESY"), programs offered special education students over the summer. The first session starts in the first week of July, from 9:00am to 1:00pm, and is four weeks long. The Student's on-line participation was hampered by log-in issues experienced by the Parent, and difficulties with perseverating, scripting behaviors, and elopement. The July 6, 2020, went well with support from the Parent, but on July 8th, while the Parent was able to keep him seated for 17 minutes in front of the computer screen, the Student was not actively engaged with learning. (Board Exh. 38). The second session covers two weeks in August, from 9:00am-11:30am. (Testimony of Director). The Student's current IEP called for him to be enrolled in both ESY sessions for the summer. (Board Exh. 27). The Student, however, was not provided with in-person instruction during the ESY services, even though in-person instruction was provided to ten other students during the August 2020 second ESY session. The Board did not offer in person instruction to the Student, because it did not have enough staff. (Testimony of Ms. Dillon).⁷
18. The Parent, on July 22, 2020, asked if the August ESY program was being opened for live, in-person instruction, because she had heard this was being contemplated by the District. She was informed by the Board's Special Education Office, that "No. Session 2 was virtual," the Parent was told by a staff member, that "I had only signed up to do virtual instruction for both sessions that I have not been in any conversations about 'in building' for Session 2 and have no information about it-mom kept pushing for information and I kept responding the same way." (Board Exh. 38, p. 7).
19. There were virtual ESY sessions provided the Student, with a live instructor using the iReady program, on the following dates: July 6th, 8th, 13th, 15th, and 16th, 2020. The Student did not participate in the virtual sessions offered on: July 14th, 16th, 20th, and 21st, 2020. On July 22, 2020, the instructor and the Parent tried to engage the Student for fifteen minutes, but he kept eloping, and was not focused. (Board Exh. 38).

CONCLUSIONS OF LAW AND DISCUSSION:

1. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities. This funding is conditioned on the establishment of reasonable educational goals for students, and compliance with enumerated procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v.*

⁷ Ms. Dillon testified as follows, when asked if Watertown opened for in-person instruction during the ESY in August: "Watertown offered in-person instruction to ten of the 22 students that were participating in ESY session 2." When asked why in-person instruction was not offered to the Student, when it was in his IEP, she replied: "Because I did not have the staff who were willing to participate in in-person instruction to deliver for your son." 09/11/2020 T. pgs. 203-204.

Rowley,⁸ the Supreme Court established both a procedural and a substantive test to evaluate compliance with the IDEA:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206-207. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity."
Rowley, 458 U.S. at 200-201.

2. The Supreme Court has clarified the substantive prong of this two-part *Rowley* test:

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... [H]is educational program must be appropriately ambitious in light of his circumstances...

Andrew F. v. Douglas County Sch. Dist. RE-1.⁹

3. The issues presented in this matter touch upon both the procedural and substantive requirements of the IDEA, and each will be analyzed in turn under the appropriate rubric.

Removal from Cross Country

4. The Parent claims that the Board denied the Student FAPE for the 2019-2020 school year by removing him from the Cross-Country team; but the Student, given the features of his disability, cannot benefit from this particular extracurricular activity. The Board attempted to accommodate the Parent's request that the Student be allowed to participate in cross country; but this activity did not interest the Student who tried to elope from the running field. He could not understand why he was not getting on the bus to go home, and suffered great anxiety. The Board attempted to prepare him to participate in this activity by providing him with a picture story, and had a paraprofessional accompany him to practice, to no avail. (Finding of Fact 3). Therefore, there is no reasonable modification that would allow the Student to take part in cross country at this time; perhaps in a few years he will not find the experience so unsettling, and it can be tried again.
5. There is no doubt that the Student has a right to participate in extracurricular activities: "Students with disabilities are entitled to participate in nonacademic and extracurricular services such as counseling, recreation, athletics, transportation, health services and clubs on an equal basis with their peers who are not disabled (34 C.F.R. § 300.107). While

⁸ 458 U.S. 176 (1982).

⁹ 580 U.S. ___, 137 S.Ct. 988, 999-1000 (2017).

courts have refused to permit students with disabilities to participate in activities from which the students cannot benefit unless unreasonable modifications are made (*Rettig v. Kent School District*, [788 F.2d 326 (6th Cir.1986)], the courts have allowed children to take part if the required modifications are reasonable (*Crocker v. Tennessee Secondary School Athletic Association*, [735 F.Supp. 753 (M.D. Tenn. 1990), *affirmed without published opinion sub nom. Metropolitan Government of Nashville and Davidson County v. Crocker*, 908 F.2d 973 (6th Cir. 1990)].” Here, the Board went to great efforts to find an activity that he could participate in safely, and one that would interest him.

6. The Board has further attempted to identify, through trial and error, other extracurricular programs that might engage the Student’s interest and be safe for his participation. Other activities explored included the Garden Club, and the Yoga Club (the Student appeared to enjoy Yoga, and displayed some leadership potential with this activity). (Findings of Fact 5, & 6). Given the Student’s unique needs the District’s heuristic approach was warranted.
7. The Board did not deny the Student FAPE for the 2019-2020 school year by removing him from the Cross Country team. Given his lack of interest, and his history of elopement and pulling away behaviors, the Student was unable to safely participate in the activity. Finally, the Parent was not denied the procedural safeguards of the IDEA, because she herself made an independent decision not to participate in the October 7, 2019 informal group meeting. (Findings of Fact 6).

Music Therapy Sessions, Summer Camp, and Full Day ESY

8. The Parent claims that the Board denied the Student FAPE for the 2019-2020 school year by not providing the Student with: music therapy sessions; summer camp; and full-day ESY. While the Board denied FAPE by its failure to provide music therapy sessions from March 30th to May 30th, 2020; and by its failure to implement the ESY called for in the Student’s IEP for the 2019-2020 school year, (as more fully explained below); it did not deny the Student FAPE with respect to summer camp, and full-day ESY.
9. Summer camp had previously been offered the Student as part of his PPT in 2017, and for one week in 2018, (which was not as a part of his IEP). Summer camp was not made part of the current IEP, because it was no longer needed to effectuate his IEP goals and objectives, and there were safety concerns with his participation without trained staff. (Finding of Fact 8). Full day ESY was also determined not to be necessary by the PPT; and the parent was not excluded from meaningful participation in the development of the IEP. (Finding of Fact 9). “Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of a child.” 34 C.F.R. § 300.501(c)(1).¹⁰ “Parental ‘participation means

¹⁰ “Notably, the regulations make no requirements on how to implement the parental involvement requirement, other than by fulfilling the notice requirements listed in C.F.R. § 300.322(a)-(b)(1), 34 C.F.R. § 300.501(c)(2).” *J.C. ex rel. C. v. New Fairfield Bd. of Educ.*, Civil

something more than mere presence; it means being afforded the opportunity to be an equal collaborator, whose views are entitled to as much consideration and weight as those of other members of the team in the formulation and evaluation of their child's education.” *J.C. ex rel. C.*, at *16.¹¹ “[T]he parental participation requirements do not equate to a mandate for the provision of recommended services, if the services that are otherwise being provided constitute an (sic) FAPE.’ [Thus, while the Parent] may attend and participate collaboratively... they do not have the power to veto or dictate the terms of an IEP.” *J.C. ex rel C.*, at *16, citing *V.W. v. Favolise*, 131 F.R.D. at 659. Here, the Parent was able to participate at the February 13, 2020 PPT, (no evidence was presented to the contrary), and the IEP developed at that meeting was both ambitious and appropriate to meeting the educational needs of the Student.

Outplacement Services

10. The Parent claims that the Board denied FAPE for the 2018-2019, and 2019-2020 school years, (and each of their respective extended school years), by failing to offer the Student “outplacement services.” This claim was both vague and broad, and there was no evidence presented by the Parent suggestive that the Student was in need of outplacement services. I find, therefore, this claim to have been waived. Moreover, the IEPs for both 2018-2019, and the 2019-2020 school years were well-crafted, and met the extensive special education needs of this particular student. The Parent was offered the opportunity to participate in the PPT meetings when the Student's IEPs were developed—and did participate in most of those meetings (even if sometimes only by telephone).

Surveillance Video

11. The Parent claims that the Board failed to provide her with the procedural protections required by the IDEA by not making a hall surveillance video of the student available for the PPT meeting that took place on October 24, 2019. While “[a] parent has a right to inspect ‘education records.’” 34 C.F.R. § 300.613(b), including the “right to a response from the participating agency to reasonable requests for explanations and interpretations of the records,” *Id.*; it is not clear that the hall surveillance video qualifies as an “educational record,” directly related to the Student¹² The IDEA borrows the definition of “education records” from the Family Educational Rights and Privacy Act (“FERA”). 34 C.F.R. § 300.611(b). FERPA defines education records as those records that are ‘directly related to a student’ and “*maintained* by an educational agency or institution or

Action No. 3:08-cv-1591 (VLB), 2011 WL 1322563, *16, (Bryant, J.)(D. Conn. March 31, 2011).

¹¹ Citing *W.A. and M.A. v. Pascarella*, 153 F.Supp.2d 144, 154 (D.Conn. 2001) (quoting *V.W. v. Favolise*, 131 F.R.D. 654, 659 (D.Conn. 1990).

¹²Although one court at least has found that a surveillance recording of a school bus incident was an education record under FERPA. *See Byrner v. Canyons Sch. Dist.*, 351 P.3d 852 (Utah. App. 2015).

by a third party acting for the agency or institution.’ 34 C.F.R. § 99.3.” *L.B. v. Kyrene Elementary School District*, Docket No. CV-17-00316-PHX-SMB No. 28, 119 LRP 33914, *10 (D. Arizona, September 4, 2019)(emphasis added).

12. “The Supreme Court has interpreted the word ‘maintained’ in FERPA as ‘to keep in existence or continuance; preserve; retain’ and reasoned that ‘[t]he word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.’” *Burnett as Guardian ad Litem for S.B. v. San-Mateo-Foster City School District*, 72 IDELR 147, at *4, (9th Cir. 2018) citing *Owasso Indep. Sch. Dist. No 1-011 v. Falvo*, 534 U.S. 426 (2002). Here, the surveillance video was not “maintained” by the District. The video was saved at the express request of the Parent, and not kept by the school as an educational record. Moreover, the Parent was provided the opportunity to review it. (Finding of Fact 4). Therefore, the Parent was not denied the procedural protections of the IDEA from any failure to have the surveillance video made available for the October 24, 2019 PPT. On March 10, 2020, the Director, wrote the Parent, stating: “If you would like to view the video, the district will provide an opportunity for you to do so within the (sic) through March 31, 2020. Please contact Rose Rizvani during normal business hours or through e-mail correspondence to make an appointment.” (Parent Exh. 59).

The October 7, 2019 informal Group Meeting

13. The parent claims that the Board failed to provide her with the procedural protections of the IDEA by not allowing her to participate at the October 7, 2019, informal meeting. This is simply not true. The Parent requested the October 7th group meeting to help design an appropriate extracurricular activity for the Student, but then made the voluntary decision not to attend. (Finding of Fact 6). As a result of her decision not to participate, she cannot now claim to have been denied the procedural protections of the IDEA.

Reassessment of the FBA

14. The Parent claims that the Board failed to develop an appropriate IEP by not having a functional behavioral analysis, (“FBA”), of the Student performed. An FBA is an assessment to determine the purpose or reason for behavior of a child in order to identify new interventions that may assist a child. *L.B. v. Kyrene Elementary School District*, Docket No. CV-17-00316-PHX-SMB No. 28, 119 LRP 33914, *9 (D. Arizona, September 4, 2019), citing *D.O. v. Escondido Union Sch. Dist.*, 3:17-cv-2400-BEN-MDD, 2018 WL 6653271 (S.D. Cal. 2018); IR 332 at 1972. Failure to conduct an FBA, however, does not make an IEP inadequate as long as the IEP “adequately identifies a student’s behavioral impediments and implements strategies to address that behavior.” *M.W. v. N.Y.C. Dept. of Educ.*, 725 F.3d 131, 140 (2d Cir. 2013).
15. The Student experiences anxiety, difficulty with self-regulation, staying focused, has poor impulse control, and will act out with changes in his routine. (Finding of Fact 2). The school properly identified and addressed all of these behaviors by providing the

student with 1:1 teaching, retention of a behavioral therapist, and an accompanying paraprofessional to attend the Student in school, and during after school extracurricular activities. The school used picture stories to prepare the Student before new activities. (Finding of Fact 3). The Student's behavioral impediments were carefully identified, and responsible strategies were implemented by trained professionals to address the Student's behaviors.

16. Moreover, the triennial review of the IEP held in February, discussed the skills the Student needed in order to be able to participate in after school activities, and indicates that the FBA was to be reviewed by the PPT. The FBA, however, could not be completed because of the COVID school closure. (Finding of Fact 9). It is not reasonable to expect an FBA to be conducted while the Student was isolated at home, and could not be observed under normal school conditions while engaged in activities. Now that the school has reopened the FBA can be reviewed. The Student's IEP was appropriate, as the Board properly addressed his behavioral impediments, and took reasonable steps to review the previous FBA.

Failure to Convene a PPT by March 13, 2020

17. The Parent claims that the Board failed to provide her with the procedural protections of the IDEA by not convening a PPT meeting by March 13, 2020. This claim is complicated by the impact the COVID-19 outbreak has had on the ability of the District to fully implement the procedural requirements of the IDEA. The COVID outbreak presents the unique question of to what extent the District could provide PPT's and fully implement the Student's IEP. It is important to recognize from the start that the COVID crisis has been in a state of continual change as reflected by the limited guidance from the Federal Department of Education, and the three policy guidelines issued by the State of Connecticut Department of Education Special Education Unit.¹³ If infinitesimal calculus is the mathematical study of continuous change, the calculus of reasonableness must be determined by the relevant area under the COVID time curve; that is, the particular time frames, that services were able to be offered and to what extent they were offered by the district. This claim is further complicated by the extent to which the policy guidance provided by both OSERS, and the Special Education Unit of the Connecticut Department of Education, applies to this particular student; and to the extent to which they may change the procedural rubrics of the IDEA.

¹³ Policy guidance documents issued by the U.S. Department of Education do not have binding effect on IDEA Hearing Officers, but they are nevertheless often found to be persuasive by courts that interpret the IDEA. See e.g. Perry A. Zirkel, Impartial Hearings Under the IDEA: Legal Issues and Answers, Dec. 15, 2018, JOURNAL OF THE NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDICIARY, Vol. 38, Issue 2, Article 2, pg. n 4; Perry A. Zirkel, The Courts' Use of OSEP Policy Interpretations in IDEA Cases, 344 EDUC. L. REP. 671 (2017). *But cf. Seth B. v. Orleans Parish Sch. Dist.*, 810 F.3d 961, 968 (5 th Cir. 2015) (relying on the relevant regulation rather than the "questionable" OSEP interpretation).

Policy Guidance from the U.S. Department of Education:

18. It is significant, that in September 2017, prior to the COVID outbreak, the U.S. Department of Education issued a document entitled “*Non-Regulatory Guidance on Flexibility and Waivers for grantees and Program Participants Impacted by Federally Declared Disasters,*” to address situations involving “extended closures due to the disaster’s impact.” *Id.* p. 2. It states, in relevant part: “If a school continues to provide instruction to the general school population during an extended closure due to disaster, but is not able to provide services to a student with a disability in accordance with the student’s IEP, ***the student’s IEP Team determines which services can be provided to appropriately meet the student’s needs. The IEP Team may meet by teleconference or other means to determine if some, or all, of the identified services can be provided through alternate or additional methods.***” *Id.* at p. 14. (Emphasis added).
19. It is further significant, that OSERS advised in its March 12, 2020 published guidance, that its guidance was “not intended as a replacement for careful study” of the IDEA. (OSERS Q & A at p. 1), and that the IDEA did not specifically address the possibility of school closures for an extended period of time due to exceptional circumstances, (such as COVID).

The March 24, 2020 Policy Guidance from the Director of the Special Education Division of the Connecticut Department of Education:

20. The first policy statement by the Director of the Special Education Division to the Superintendents of School was issued on March 24, 2020, and was designated “*a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing Federal guidance updates.*” (Emphasis in the original) (p. 1). School districts were exhorted, that “All members of our school communities must continue to consider what is appropriate under the current circumstances and reasonable within their resources, to determine what constitutes providing continued educational opportunities, to the greatest extent possible, consistent with state and federal guidance.” (p. 1) It was explained in this document that “what is appropriate and reasonable ***will include the individual child’s circumstances, as well as the circumstances related to the pandemic emergency.***” (p. 2). While this initial policy statement recognized that the “IDEA does not specifically address a situation in which school would be closed for an extended period of time,” (p. 2), that school districts nevertheless “must provide a free and appropriate public education ... consistent with the need to protect the health and safety of students, and those individuals providing education, specialized instruction, and related services to these students.” (p. 2) (emphasis added).

21. The March 24, 2020, policy statement provided specific guidance with respect to PPT meetings:

During school closure, the Office of Special Education and rehabilitative Services (OSERS) has indicated that if all students are receiving continued educational opportunities, and therefore the general education population has moved to virtual, online, or distance learning, school districts are not *required* to revise an IEP because all students are receiving an alternate mode of instructional delivery of the general education curriculum. This would obviate the need to conduct PPT meetings related to the instructional delivery method in those cases and would not constitute a change in placement. This also allows school staff to focus on the provision of supports and services, rather than engaging in numerous PPT meetings. ***If a parent or the school district wishes to discuss the students continued educational opportunity, the parent and school district have flexibility to use other means of conferring with one another rather than convening a PPT for a meeting.*** (Emphasis added).

22. The policy directive, however, further recognized that:

There may be unique instances, however, when a school; district and a parent agree that a PPT meeting is necessary. In such cases, the parties may agree to conduct the meeting via an alternate means of meeting participation, such as video conference or conference call.

The April 24, 2020 Guidance from the Director of the Special Education Division of the Connecticut Department of Education:

23. The second policy statement by the Special Education Division Director informed districts that because “the federal Office of Special Education and Rehabilitation Services has not communicated to states any temporary flexibility or waiver from the requirements of the [IDEA],” that “a district should not adopt any policy or practice that results in the cancellation of all PPT meetings during this extended school closure.” (p. 1). Districts were advised, that ***“[t]he decision whether to convene a PPT meeting during this time should be an individual, student-centered decision.*** Each individually based decision should be made with parent input after considering the child’s needs and [various factors, to include whether the purpose of the PPT meeting needs to be convened; will the PPT members be able to meaningfully participate; and whether the PPT meeting could be convened in a manner that guarantees privacy and confidentiality].”(pgs. 1-2). It was “also recommended that the district and parent agree to amend the [IEP] without convening a PPT meeting when appropriate. If there is a need to revise an IEP during the school closure, the parent of a child with a disability and the school district may agree not to convene a PPT meeting for the purpose of making those changes, via an IEP amendment.” (p. 2). (Emphasis added).
24. The April 24, 2020 policy guidance reminded districts that “continued educational opportunities are not required to be determined or documented as part of the PPT process.

Providing the parent with prior written notice for decisions made about these opportunities is not necessary because all students are receiving an alternate mode of instructional delivery of the general education curriculum.” (p. 2). This policy guidance may have been sufficient for many special education students who were able to meaningfully receive their IEP’s through alternate means; but here virtual instruction could not implement the IEP given the Student’s intensive special needs. The program offered by the school throughout the COVID outbreak was therefore substantially changed by Board’s attempt to offer virtual instruction, and the Parent was not offered an opportunity to participate in making decisions effecting those changes.

The May 20, 2020 Guidance for the Extended School Year (ESY) Services:

25. The May 20, 2020 policy guidance, states, that: “For students who have already been determined eligible for ESY, the school district should, to the greatest extent possible, provide the ESY services identified in the student’s IEP.” Further, “[a]ll members of our school communities need to consider what is reasonable, appropriate, and equitable under the current circumstances and public health restrictions... Moreover, parents and students may have concerns or issues related to transportation, classroom instruction and safety requirements. ***As a result, ESY services may need to be delivered virtually or as a hybrid of in-person and virtual services.***” (Emphasis added).
26. The Board’s decision to severely limit the instruction and related services provided to the Student during the COVID outbreak was unilateral, and not made in consultation with the Parent, who had specifically requested the Fast ForWord program for the Student’s use while at home, and the implementation of the IEP “to the greatest extent possible.” (Findings of Fact 40, and 41). It should be noted, that: “Any change that substantially alters an IEP or results in its not being implemented as written triggers the procedural protections of the IDEA. Parents must be notified of any change in a student’s educational placement ***and must be given an opportunity to participate in making the changes*** (20 U.S.C.A. § 1415(d)(4)(A)(ii); 34 C.F.R. § 300.503). A change in the IDEA and its regulations now permits changes to IEPs to be made by means of video conferences and conference calls (20 U.S.C.A. § 1414(d)(7)(f); 34 C.F.R. §300.328).”¹⁴
27. It was improperly left up to the SLP to determine the special education services to be provided the Student during the COVID outbreak. (Finding of Fact 12). While deciding the teaching methodology is not up to the Parent, the Parent has a right to expect the implementation of the IEP, which must be developed through an IEP team meeting to include the Parent.

¹⁴ Osborne, Allan G., and Russo, Charles J., *Special Education and the Law: A Guide for Practitioners, Second Edition*, Corwin Press, 2006, at page 93. (Emphasis added); *see also J. C. ex rel. C. v. New Fairfield Bd. of Educ.*, Civil Action No. 3:08-cv-1591, 2011 WL 1322563, at *16, (Bryant, J.), (Dist. Conn, Mar. 31, 2011) (“[each] public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of a child.”) (citing 34 C.F.R. § 300.501(c)(1)).

28. The Board, however, was not required to have convened a PPT by March 13, 2020, (under the circumstances a ten day delay was not unreasonable)—but the Board should have conducted some kind of meeting with the Parent, (by either telephone conference call, or video conference), to discuss the proposed implementation of the Student’s IEP by May 1, 2020. Speech, language therapy began on May 22, 2020, following a difficult 22 day period where the SLP attempted to work with the Parent to set up available sessions. (Finding of Fact 13). Problems in delivery of speech/language therapy were ongoing well into June 2020. This was a period where the Board should have initiated a conference with the Parent.
29. I am aware that the April 24, 2020 policy guidance reminded districts that “continued educational opportunities are not required to be determined or documented as part of the PPT process... because all students are receiving an alternate mode of instructional delivery of the general education curriculum.” But the requirements of the Students IEP were of such nature that the limited services offered by the District constituted significantly less than “an alternate mode of instruction.” He was not getting meaningful instruction given the nature and extent of his disabilities. Policy Guidelines issued by the Special Education Unit inform districts that “the decision whether to convene a PPT meeting during this time should be an individual, student-centered decision,” and that individually based decision should be made with parent input after considering the child’s needs and [various factors].” The difficulties attendant to the delivery of the IEP to this Student required the District to convene another PPT, or at least have a conference with the Parent to discuss the implementation of services.
30. It is significant, that the school physically opened for in person instruction for ten students during the second ESY session in August. (Finding of Fact 17). Things were going back to a more normal situation, and this was a second window of opportunity for the District to conduct a conference with the Parent to discuss IEP implementation during the ESY. This did not occur, and again violated the spirit of the May 20, 2020, Policy Guidelines issued by the Special Education Unit.
31. In matters alleging procedural violations, a due process hearing officer may find that a student did not receive FAPE only if the procedural violation did one of the following: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. 34 C.F.R. 300.513(a)(2); *L.M. v. Capistrano Unified School District*, 556 F.3d 900, 909 (9th Cir. 2008).
32. The Parent asked if the August ESY program was being opened for live, in-person instruction, because she had heard this was being contemplated by the District. She was informed by the Special Education office, that “No. Session 2 was virtual,” the Parent was told by staff, that “I had only signed up to do virtual instruction for both sessions that I have not been in any conversations about ‘in building’ for Session 2 and have no information about it-mom kept pushing for information and I kept responding the same way.” (Finding of Fact 18) The second session was in fact opened for live, in-person

instruction for ten other students. The Parent was denied a significant opportunity to participate in the decision-making process with respect to the Student being afforded the same opportunity. The on-line ESY program offered the Student at home, where there was no BT always available to assist him staying on task, was not meaningful given the features of his disability. If live in-person instruction was opened for other students, then the Parent should have been afforded an opportunity to participate in the decision that was made finding him ineligible for the same educational opportunity.

Failure to Implement the IEP and the Denial of FAPE

33. “The term ‘free appropriate education’ means special education and related services, that:
- (A) have been provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of the State educational agency;
 - (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
 - (D) *are provided in conformity with the individualized education program required under section 1414(d) of this title.*”

L. J. by N.N.J v. School Board of Broward County, 927 F.3d 1203 (2019) (citing 20 U.S.C. § 1401(9)).

34. In *Van Duyn*, 502 F.3d at 821, the court found the phrase “in conformity with” to suggest general agreement or congruence with the Student’s IEP, and not perfect adherence. The court concluded that the phrase “in conformity with” counsels “against minor implementation failures [being] actionable.” *Id.*, see also 34 C.F.R. § 300.323(c)(2) (requiring education “in accordance with” the IEP).
35. OSERS, and the Special Education Unit, gave school districts guidance concerning the delivery of special education and related services to qualified students, but they made no change to existing law regarding the requirements and standards for providing students a FAPE. Guidance to districts that they should “do their best in adhering to IDEA requirements to the maximum extent possible,” and insure implementation of IEPs “to the greatest extent possible,” were simply goals. Therefore, the relevant inquiry in this case remains whether the District adequately implemented the Student’s IEP and provided him with FAPE under the pre-COVID-19 standards set forth in [*Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 815 (9th Cir. 2007)], and [*N.D. v. Hawaii Dept. of Education* 600 F.3d 1104, 1117 (9th Cir. 2010)].
36. There was no suggestion by OSERS, or the Special Education Unit, that complying with their policy guidance would be sufficient to establish that the Student received FAPE.

The impossibility of full implementation of a student's IEP is not a defense that relieves the District of its obligation to provide the Student FAPE, even with the unforeseeable emergence of the COVID-19 pandemic. *See District of Columbia Pub. Schs.*, 120 LRP 8116 (SEA DC 01/03/20) (“School districts cannot use an ‘impossibility’ defense to thwart a parent’s claim of FAPE denial”); *see also Schiff v. District of Columbia*, 2019 WL 5683903 (D.D.C. Nov. 1, 2019).

37. Indeed, “the guidance issued from OSERS [and the State] clearly contemplated that, even if it did its best, a district might be unable to provide a student a FAPE under the IDEA and the [State’s] Education Code requirements. In instances where this occurred, OSERS and [the State] instructed that once the regular school session resumed, districts would need to make individualized decisions regarding whether an affected student required compensatory services.” *Parent on Behalf of Student v. Los Angeles Unified School District*, Case No. 2020050465, at p. 18, before the Office of Administrative Hearings, State of California, (Martin, Robert G., ALJ), August 24, 2020.

38. During the COVID school closure, the District provided the Student with:

- “Boom” cards for use at home, without the services of a behavioral therapist;
- Two on-line speech language sessions with Ms. Marrata, the first lasting only 13 minutes, and the second less than twenty minutes, (Finding of Fact 13);
- Some access to Google classroom, and iReady;
- Limited services by a BT, to include: telephone check-ins, one meeting at a local grocery store, and one home visit on June 9, 2020, (Finding of Fact 29; B. Exh. 41); and
- Limited virtual ESY sessions.

These services, however, did not provide the Student with FAPE given the extensive requirements of his IEP.

39. The Student has just entered the seventh grade, but functions academically at a second grade level. (Finding of Fact 1). The IEP has 18 goals with 54 objectives. (Finding of Fact 10). The Student’s special education program is demanding, and he is particularly vulnerable to any extended gap in his special education.

40. Therefore, two 20 minute on-line sessions with a speech therapist,¹⁵ access to Google Meet (without the benefit of a BT), limited virtual ESY sessions, and a deck of “Boom”

¹⁵ The SLP testified that one of the contemplated 20 minute sessions session lasted only 13 minutes; and the other session something less than the full twenty minutes. (Finding of Fact 13).

cards—over nearly six months—is simply not an acceptable substitute for the comprehensive program of special education specified in the Student’s IEP.¹⁶ It certainly does not comply with the IDEA’s mandates, which require a FAPE to provide “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *See Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, --- U.S. ---, 137 S.Ct. 988, 1001 (2017). I find, therefore, that the District failed to implement the IEP under the IDEA.

41. The limited implementation of the Student’s IEP was tantamount to a near wholesale denial of special education for this Student from March 30th, to September 8th, 2020. I realize that it was not always possible to offer more educational services, other than on-line, virtual education without home visits (at least until June)—but nevertheless the Student did not get what he was entitled to under his IEP. The federal and state policy guidelines allow school districts to use on-line, virtual learning to provide educational services to meet a student’s IEP when it is appropriate to do so. It may be, that the substitution of virtual learning is adequate for many, if not most, other students entitled to FAPE. But *this* Student fits into a category of disability where it was not possible for him to receive meaningful educational benefit from the limited services that were offered. It is important to emphasize again that this Student is particularly vulnerable to interruptions with his education given his disability. As observed by the Director, the Student experiences the world through continued practice and repetition of activity. (Finding of Fact 3). He needs 1:1 instruction and the presence of a BT or BS to keep him focused and on task. Further, the Student has a history of elopement, significant anxiety, difficulty with self-regulation, and lacks impulse control. (Finding of Fact 2).
42. It is significant, that the Student was entitled to ESY as part of his current IEP. Extended School Year is specifically designed to prevent a segment of special education students from regression in their education by losing the gains they have made in the regular school year.¹⁷ It is important to recognize that not every special education student

While the SLP reached out to the Parent to attempt to schedule more sessions with the Student, the evidence before me does not suggest an increase from the originally contemplated 20 minutes per week. The Student was unable to meaningfully participate in these sessions anyway, so to the extent that the Parent did not reschedule with the SLP, I do not find this to prohibit an award of compensatory education.

¹⁶ “Current research indicates that full development of reading and other skills will more likely occur with learning disabled children, like the child at issue here, if adequate remedial services are provided in the early primary grades. Later intervention generally appears to require special services over a longer period of time to achieve a similar rate of remediation. Some skills must be learned early in the brain’s maturation process for them to be learned well, or in some cases at all. Delay in remedial teaching is therefore likely to be highly injurious to such children.” *Town of Burlington v. Department of Educ. for Com. of Mass.*, 736 F.2d 773, 798 (1994) (citing 121 Cong.Rec. 37412, 37416 (Nov. 19, 1975)).

¹⁷ “An extended school year program is generally necessary when a student regresses and the time necessary to recoup lost skills interferes with a child’s overall progress toward the attainment of his or her IEP goals and objectives.” Osborne, Allan G., and Russo, Charles J.,

requires ESY, but some, like this Student do need ESY, and to deny the Student the full implementation of ESY—despite the COVID outbreak—is especially egregious.

43. The Board argues that it was relieved of its responsibility to provide the full panoply of special education and related services as a result of the COVID-19 outbreak. It argues that the Commissioner of the Connecticut Department of Education, and the Special education unit of that agency, issued guidelines in conformity with the Governor’s emergency directives and the concomitant the school closure. But as discussed above, there is nothing in the IDEA to suggest that the State has the authority to suspend its obligation to provide special education to students with qualifying disabilities during a pandemic.¹⁸
44. It is further significant—and more than a little troubling—that the Board offered live instruction to ten other special education students in the second ESY session, but could not offer live instruction to the Student due to “lack of staff.” (Finding of Fact 17). This is not a sufficient basis for not providing the Student with similar live instruction.
45. The Board bears the burden of proof that it implemented the IEP, ¹⁹*a fortiori* it bears the burden of demonstrating that it implemented the Student’s IEP “to the greatest extent possible” in conformity with the guidance issued by the CSDE, Bureau of Special Education. Here, the Board, other than indicating that it lacked sufficient staff to allow the Student to attend the second ESY session in August, presented no evidence that it could not provide the student with better implementation of the IEP. The BCBA physically went to the home on June 9, 2020 to provide in-person training. (Finding of Fact 29; B. Exh. 41). It is not clear why the Board did not consider providing limited

Special Education and the Law: A Guide for Practitioners, Second Edition, Corwin Press, 2006, at page 37, citing *Battle v. Pennsylvania*, 629 F.3d 269 (3rd Cir.1990). The Student in this case was enrolled in both sessions of the Board’s ESY program for the summer of 2020. The paucity of services offered him for an extended time—nearly six months—could not fail to have had a significant negative impact on his ability to achieve overall progress toward the attainment of his IEP goals and objectives due to regression.

¹⁸ At least one Administrative Law Judge has found it significant, that: “OSERS did not state that a school district could satisfy the IDEA’s requirements for providing a FAPE by ‘mak[ing] every effort’ to provide special education and related services, or by providing them ‘to the greatest extent possible.’ No such safe harbor, or other waiver or relaxation of pre-COVID-19 IDEA requirements was suggested. Instead, OSERS acknowledged that local educational agencies might not be able to provide FAPE to some students through educational programs developed in response to COVID-19, and would need to evaluate whether those students needed compensatory education as a result.” See *Parent on Behalf of Student v. Los Angeles Unified School District*, Case No. 2020050465, at p. 8, before the Office of Administrative Hearings, State of California, (Martin, Robert G., ALJ), August 24, 2020.

¹⁹ “In Connecticut, the party who filed for due process, in this case the parent[], has the burden of going forward with the evidence, **but the public agency has the burden in all cases of proving the appropriateness of the IEP.** Conn. Agencies Regs. 10-76h-14(a).” *Mr. P v. West Hartford Board of Education*, 885 F.3d 735, 742 n. 4 (2018)(Emphasis added).

home visits to the Student by the speech pathologist, or any other special educator by June.

Compensatory Education

46. Compensatory education is available as a remedy when a Board has violated the IDEA, its purpose is to put the Student in the position he would have occupied if the IDEA violation had not occurred. *Copeland v. Dist. of Columbia*, 64 IDELR 37 (D.D.C. 2014). The Board argues that the standard for compensatory education is an egregious denial of a denial of FAPE. While there is an increasingly narrowed minority view that the denial of FAPE must be gross, *see e.g., Mrs. C. v. Wheaton*, 916 F.2d 69, 63 Ed.Law Rep. 93 (2d Cir 1990), more recent decisions of the Second Circuit have interpreted the gross denial standard as only applying to students beyond age 21 by the time of the completion of litigation. *See Doe v. E. Lyme Bd. of Educ.*, 790 F.d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015); *P. v. Newington Bd. of Educ.*, 546 F.3d 111, 238 Ed. Law Rep. 517 (D. Conn. 2007), *aff'd on other grounds*, 546 F.3d 111 (2d Cir. 2008); *A. v. Hartford Bd. of Educ.*, 68 IDELR 40 ¶ 40 (D.Conn. 2016). In any event, I find that the denial of FAPE in this matter, while not in bad faith, was nonetheless a gross denial of the Student's IEP, and thus a gross deprivation of FAPE.
47. The difficulties attendant with the COVID outbreak in providing all aspects of the Student's IEP from mid-March to early June, are certainly worthy of consideration when balancing the equities²⁰ when determining appropriate compensatory education.
48. Also, “[i]mportant to the equitable consideration is whether the parent [] obstructed or [was] uncooperative in the school district's efforts to meet its obligations under the IDEA.” *G.S. by and through L.S. v. Fairfield Board of Education*, Civil Action No. 3:16-cv-1355, 2017 WL 2918916, (Hall, J.) (D. Conn. 2017).²¹ I don't find that the Parent's actions prevented the full implementation of the IEP during the COVID outbreak, but I

²⁰ The evolving role of the “equities” in calculating compensatory education is not entirely settled, but reason dictates that some consideration be given to the impact of the COVID outbreak in preventing full implementation of the Students IEP. *See e.g. R.L. v. Miami Dade Cty. Sch. Bd.*, 757 F.3d 1173, 307 Ed.Law.Rep. 596 (11th Cir. 2014); *Torda v. Fairfax Cty. Sch. Bd.*, 517 F.App'x 162 (4th Cir. 2013); *S.C. v. Chariho Reg'l Sch. Dist.*, 298 F.Supp. 3d 370, 354 Ed.Law Rep. 295 (D.R.I. 2018); *French v. N.Y.S. Dep't of Educ.*, 476 F. App'x 468, 283 Ed. Law Rep. 821 (2d Cir. 2011); *Dep't of Educ. v. M.F.*, 840 F.Supp. 2d 1214, 281 Ed. Law Rep. 886 (D. Haw. 2011); *T.B. v. San Diego Unified Sch. Dist.*, 56 IDELR ¶ 152 (S.D. Cal. 2011); *In re Student with a Disability*, 120 LRP 257 (Nev. SEA 2020); *cf. Horen v. Bd. of Educ.*, 61 IDELR ¶ 103 (N.D. Ohio 2013) (no denial of FAPE where parents impeded IEP process); *Great Valley Sch. Dist.*, 55 IDEL ¶ 86 (Pa. SEA 2010) (unclear effect). Cases collected, Education Law Into Practice, Compensatory Education: The Latest Annotated Update of the Law, Zirkel, P., EDUCATION LAW REPORTER, Education Law Association, 376 Ed.LawRep. [850] (June 25, 2020).

²¹ Citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 840 (2d Cir. 2014) (citing *Warren G. ex rel. Tom G. v. Cumberland Cty. Sch. Dist.*, 190 F.3d 80, 85-86 (2d Cir. 1999).

do find that the Parent made it difficult for the District to implement the Student’s IEP “to the greatest extent possible,” by directing the Director to have no e-mail communication with her. The e-mail communications that the Parent sent to the SLP were also not in the collaborative spirit envisioned by the IDEA, and made it difficult for the SLP to offer longer on-line speech and language sessions with the Student.²² But the services offered the Student by the Board were nevertheless not sufficient given his unique needs.

49. Impartial Hearing Officers have broad discretion to fashion appropriate remedies in due process cases, including to award compensatory education as an equitable remedy for denial of FAPE. *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285 (11th Cir. 2008); *Reid ex rel. Reid v. District of Columbia*, 401 F. 3d 516, 523 (D.C. Cir. 2005).
50. “Designing [the Student’s] remedy will require a fact-specific exercise of discretion.” 401 F.3d at 524, and the Hearing Officer is required “to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Id.*, quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).
51. Compensatory education 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.” *Mr. and Mrs. G. v. Canton Bd. of Educ.*, 74 IDELR ¶ 8 (D.Conn. 2019) see also *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518, 524-27 (D.C. Cir. 2005) (Compensatory education should be designed as a “replacement of educational services the child should have received in the first place”

²² I am deeply concerned that the parties “have a near toxic lack of trust,” (*see Albright as next Friend of Doe v. Mountain Home School District*, 926 F.3d 942, 950 (2019)), as evidenced by the numerous e-mails exchanged between them well attest. Many of these e-mails have been entered as full exhibits. The 60 page due process complaint is likewise laden with inappropriate, repeated ad hominem side swipes directed particularly at the Director. In her opening statement on the first day of the hearing, the Parent accused the Director of having been a “thorn in her side” since 2016, and that she has a personal “vendetta” directed against the Parent. The Parent continued in this hyperbolic vein throughout the presentation of her case; and while questioning witnesses, had to be reminded repeatedly to focus her questions in a less argumentative manner. The Parent’s closing argument was indeed a virtuoso performance of both harsh vitriol and hard invective all directed against her personal nemesis—the Director. Despite the Board’s entreaty that the Parent’s closing argument be stricken, I did not act on that request, as it indeed spoke volumes (and should be kept as a part of the record should this decision be subject to any further review). Nonetheless, while the Parent’s boorish behavior in this regard—mean spirited as it was—does not absolve the Board from its responsibility to implement the Student’s IEP during the COVID outbreak. The Parent is, however, respectfully reminded that the goals of the IDEA can only be fully realized when parents and school officials work collaboratively together on behalf of the Student. I would be remiss in this decision if I did not mention, that despite my finding on the issue of IEP implementation, that the Director, the SLP, the Special Education teacher, the Paraprofessional, and the PPT Administrator are all highly qualified and competent professionals, who demonstrated deep care and concern for the Student. They have done absolutely nothing to deserve the hail of abuse that has been hurled at them by the Parent.

and should “elevate [the Student] to the position he would have occupied absent the school board’s failures.”) An award of compensatory services is not based on an established logarithm, but instead on equitable considerations. *Id.* at 524.

52. Balancing these equities, I find that the Student is entitled to the following compensatory education:

- 40 hours of speech language therapy. (Speech language therapy is perhaps the most critical need of this Student. He was entitled to 4 hours and 45 minutes per week from March 30th to June 17th , and nine hours for the first ESY session, but only received two, twenty minute, virtual sessions from March 30th to the re-opening of school in September); and
- 8 hours of individual music therapy, (to make up for the failure to provide individual and group music therapy from March 30th to May 30th, 2020).

FINAL DECISION AND ORDER

1. The Board did not deny FAPE, for the 2019-2020 school year, by removing the Student from the Cross-Country team.
2. The Board denied FAPE, for the 2019-2020 school year, by failing to provide the Student with access to his on-line visual program as required by the Student’s IEP.
3. The Board denied the Student FAPE, for the 2019-2020 school year, by limiting his speech therapy schedule to twenty (20) minutes per week, in contravention of the Student’s current IEP.
4. The Board denied the Student FAPE, for the 2019-2020 school year, by denying the Student his music therapy sessions and his full day ESY as required by his IEP; but the Board did not deny the Student FAPE by not providing the Student with summer camp.
5. The Board did not deny FAPE for the 2019-2020 by failing to offer outplacement services for the school year, and for both the 2018-2019, and the 2019-2020 extended school years.
6. The Board did not fail to provide procedural due process by failing to make available a video of the student, as requested by the Parent, for the October 24, 2019 PPT.
7. The Board did not fail to provide procedural due process by failing to allow the Parent to participate at the October 7th, 2019, team meeting.
8. The Board did not fail to provide procedural due process by failing to convene a PPT meeting by March 13, 2020, but it did fail to provide the Parent the procedural

- protections of the IDEA by not convening a PPT by May 1, 2020, to discuss the implementation of the Student's IEP during the COVID outbreak.
9. The Board did not fail to have functional behavioral analysis of the Student performed, and therefore it developed an appropriate IEP for the Student.
 10. The Board shall provide the Student with the following compensatory education:
40 hours of speech language therapy; and
8 hours of music therapy.

Addendum I
2019-2020 School Year IEP

2/13/2020

(B. Exh. 27)

Present Levels of Academic Achievement and Functional Performance

Strengths

The Student is able to comprehend “who, what, where” questions, can sequence up to three events, and can engage in word work activities. He is able to perform multi digit addition and subtraction problems with and without regrouping, can skip count, tell time, write and identify numbers, to include place value, with accuracy, and can count coins and bills.

The Student enjoys playing the keyboard, and has an intrinsic motivation to follow directions in order to play patterns and songs on the keyboard.

The Student is well-liked by peers, and can remember peers from his previous school. His peers enjoy his company and will engage him in conversation, or choose him as a “buddy” to ride the elevator. He is able to choose to sit at two different tables at lunch and is often invited by peers to sit with them.

The student has receptive language skills, understands synonyms, plurals, articulation, and uses a variety of sentence types.

The Student thrives with routine and visuals. He is able to complete a variety of fasteners, manipulate small objects and classroom tools. He does well with typing and technology. His writing is legible and functional for the work he needs to complete.

The Student follows routines, visual schedules, requests basic needs, and takes care of belongings.

Concerns/Needs

The Student needs special instruction with cause/effect, beginning/middle/end of story, supporting details of a story, writing a simple sentence to relay the meaning of a picture, writing a sequence of simple sentences relating to images to tell a short story (e.g wordless book.)

The Student requires special instruction with functional money skills (making a purchase/money exchange), solving one step word problems, interpreting simple graphs, understanding placement terms (e.g first, second, third).

The Student's inner distractions and perseverations interfere with his functioning throughout the school setting. While his communication with peers is spontaneous at times, he often requires prompting and a verbal or nonverbal cue to socially engage with a peer and then to reciprocate. He requires frequent prompts to return his attention and focus to task. At times he becomes emotionally upset but has difficulty expressing the cause. He shows anxiety and regression when experiencing novel or unexpected changes to routine and people. He requires adult proximity in all aspects of his day to prevent elopement and redirect him to task

The Student requires specialized instruction with expressive language, sentence length, antonyms, vocabulary, sentence comprehension, word structure, and social communication/pragmatics.

There are concerns with how the Student's visual attention impacts his fine motor skills, and his ability to self-regulate.

The Student requires adult prompting to maintain attention to tasks and complete activities. His attention to the completion of tasks is minimal without redirection. The Student has potential to impulsively throw out his lunch tray in the garbage can in the cafeteria. On occasion, he will refuse to eat lunch despite being given several options for food. The Student has a history of "elopement" from staff and must be supervised at all times throughout the building.

Impact of Disability

The Student's language and comprehension weaknesses, as well as his difficulty attending to tasks, makes it difficult for him to be successful in all academic areas without support and modifications

The Student's language weaknesses and difficulty attending to tasks makes it difficult for him to be successful in all academic areas without support and modifications.

The Student's limited communication, adaptive skills and attention inhibit his ability to be available to learn and to successfully participate in general education classes.

The Student's broad language deficits and social communication skills continue to prevent him from accessing the curriculum and communicating effectively with peers and adults across all settings. Support is still required in order to help the Student be successful.

Difficulties with functional motor coordination activities and self-regulation negatively impact independence in completing school tasks without interventions, modifications, and assistance.

The student has significant delays in cognitive, attention, and communication skills and requires an individualized program that can provide 1:1 support in order to academically progress.

2019-2020 Goals and Objectives

Goal No. 1

The Student will demonstrate an increase in reading skills as measured by the following objectives.

Objective # 1 The Student will demonstrate comprehension of a text by matching sentences from a story with the correct corresponding image from the story. He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #2 When presented with three images from a familiar story, the student will demonstrate his understanding that stories have a beginning, and middle by ordering them using a graphic organizer. He will do this with 80% accuracy in 4 out of 5 sampled opportunities.

Objective #3 The Student will retell 3 detail/story elements that have been read aloud (e.g., characters, setting, time of day, location) by sorting images that are from and not from the story. He will do this for 4 out of 5 sampled opportunities.

Objective #4 Given a choice of visuals and a graphic organizer (e.g. sorting board), the Student will identify the main idea from a short story that has been read to him. He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #5 Given 10 paired images and a graphic organizer, the Student will identify the effect of a given cause. He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #6 The Student will read words with silent letters in context (e.g., sight, wrap) with 80% accuracy. He will do this for 4 out of 5 sampled opportunities.

Objective #7 The Student will read words that contain the hard and soft "c" and "g" sounds in context with 80% accuracy. He will do this for 4 out of 5 sampled opportunities.

Objective #8 The Student will read complex word structures (e.g., compound words, contractions, affixes, roots and plurals) with 80% accuracy. He will do this for 4 out of 5 sampled opportunities.

Goal No. 2

The Student will demonstrate an increase in his writing skills as measured by the following objectives.

Objective #1 When given an image and a set of word tiles, the Student will compose a sentence to relay the idea portrayed in the images. He will do this for at least 4 related images with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #2 When given a wordless book with images, the Student will write a simple story with a beginning, middle and end. He will do this with 75% accuracy for 4 out of 5 sampled opportunities.

Goal No. 3

The Student will demonstrate an increase in his math skills as measured by the following objectives.

Objective #1 The student will solve one step addition word problems. He will solve 5 problems with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #2 The Student will solve one step subtraction problems. He will solve 5 problems with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #3 The student will answer questions related to simple graphs with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #4 The student will demonstrate an understanding of placement terms (e.g. first, second, third, etc.) He will do this for 5 examples with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #5 The Student will solve basic single digit multiplication problems (e.g. 1-3 times tables) using manipulative with 80% accuracy. He will do this for 4 out of 5 sampled opportunities.

Goal No. 4

The Student will demonstrate an improvement in his listener response skills during Music Therapy as measured by the following objectives.

Objective #1 When given 4 two-step directions without visual support, the Student will correctly follow the direction with one prompt. He will do this with 75% accuracy for 4 out of 5 sampled opportunities.

Objective #2 Given the activity of the day, the Student will answer 3 consecutive (e.g. who, what, where) questions related to peers and their actions in Music Therapy with one prompt. He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #3 Given the actions related to various songs, the Student will make a noun/verb statement related to the action completed (e.g. Tommy drumming). He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #4 When the Music Therapist and/or peer waves to Student, he will look in the direction of the person, maintain appropriate eye contact, and greet them with one prompt. He will do this with 75% accuracy for 4 out of 4 sampled opportunities.

Objective #5 The Student will respond to stimulus, "What do we do today..." He will provide at least 4 details/comments related to the session (e.g. including peers, instruments, songs, activities). He will do this with 75% accuracy for 4 out of 4 sampled opportunities.

Goal No. 5

The Student will demonstrate an improvement with expressive vocabulary skills.

Objective #1 When prompted with "Tell me the opposite of _____," the student will provide an appropriate antonym (given a matching visual) for a group of 15 targeted words. (B.L.: CASL Antonyms=12/27, 44%).

Objective #2 When provided with a visual, the Student will name 20 school-related items in 3 minutes or under across 3 consecutive sessions.

Goal No. 6

The Student will demonstrate an ability to use a variety of word structures.

Objective #1 Given a sentence fill-in with word bank and visual, the Student will read the sentence using the appropriate objective pronoun. (B.L. CELF 5-8 Word Structure=0/3).

Objective #2 Given an up-coming social event, the Student will indicate that it is occurring in the future by using the word "will" in 3 out of 4 opportunities. (B.L.: CELF 5-8 Word Structure=0/2).

Objective #3 When provided with a fill-in sentence with choices or a matching activity, the Student will correctly identify the irregular past tense for 8 items (eat, drink, swim, fly begin, build, catch, ride). (B.L. CELF 5-8 Word Structure=0/1).

Goal No. 7

The Student will demonstrate an improvement with functional communication skills as evidenced by achievement of the following objectives.

Objective #1 When provided with a picture and one visual prompt (hand waving), the Student will initiate a greeting to a peer in 3 out of 4 opportunities.

Objective #2 The Student will improve his use of declarative language by commenting on his actions and the actions of others with less than 2 prompts (i.e., “I found it”, “I can’t find _____”).

Objective #3 The Student will initiate direct requests in a small group, structured setting and wait for peer/adult response, generalized to 3 other settings.

Goal No. 8

The Student will demonstrate an improvement with his expressive communication as evidenced by achievement of the following objectives.

Objective #1 Using information from the Weekend Events paper, the Student will verbalize and write about the weekend using the sentence starter “This weekend, I _____.”

Objective #2 Given a visual and bank of prepositional phrases, the Student will increase his sentence length following the prompt “Tell me more.”

Goal No. 9

The student will demonstrate an improvement with auditory comprehension skills.

Objective #1 Given visual support, the student will identify the setting, characters, and 4 details following presentation of a short paragraph.

Goal No. 10

The Student will demonstrate a decrease in scripting behaviors within the school setting as measured by the following objectives.

Objective #1 With alternative strategies available (e.g. sensory item, stereotypy break), the Student will participate quietly within instructional contexts for 10 minutes. He will do so with 75% accuracy for 5 consecutive school days.

Objective#2 With alternative strategies available (e.g. sensory item, stereotypy break), the Student will participate quietly within instructional contexts for 10 minutes. He will do so with 75% accuracy for 5 consecutive opportunities across 3 different settings and at least 2 different adults.

Goal No. 11

The Student will demonstrate an improvement in his ability to maintain attention to task in a variety of circumstances as measured by the following objectives.

Objective #1 The Student will reference visuals (e.g. Whole Body Listening poster) when working on seated work with no less than two prompts from an adult. He will do this with 80% accuracy for 4 out of 5 sampled opportunities across 5 consecutive days.

Objective #2 The Student will reference and respond to a visual cue from an adult (e.g. look, listen, quiet hands, quiet body image cards) when seated in a small group activity with no more than two prompts. He will do this with 80% accuracy for 4 out of 5 sampled opportunities across 5 consecutive days.

Objective #3 The Student will reference and respond to a visual cue from an adult (e.g. look, listen, quiet hands, quiet body image cards) and complete a short activity with no more than two prompts when given contrived situations. He will do this with 80% accuracy for 4 out of 5 sampled opportunities across 5 consecutive days.

Goal No. 12

The Student will respond to the presence of others through verbal or nonverbal behavior (e.g., visual tracking, smiling, verbalizing) when given no more than 1 verbal/nonverbal prompt by an adult or peer.

Objective #1 The student will display an awareness of others by verbally responding when spoken to when given no more than 1 verbal/nonverbal prompt by an adult or peer.

Goal No. 13

The Student will communicate and interact in a positive manner with peers (e.g., appropriate eye contact, appropriate turn-taking, listening without speaking) for 2-3 conversational exchanges when given a nonverbal cue (i.e. sentence starter or picture cue) for 1 minute.

Objective #1 The Student will offer to share toys with others by inviting them to play and stating “Do you want to play _____ with me?” when given a picture cue and sentence strip.

Objective #2 The Student will initiate conversations or social interactions with peers for 1 minute during unstructured activities through engaging in 2-3 conversation exchanges following a sentence strip (i.e. “Hi _____. Do you want to play _____ with me?”) and no more than 2 prompts from an adult.

Objective #3 The Student will end social interactions with peers in an appropriate manner (e.g., verbally explain that it is time to leave or end activity, say or wave good-by, etc.) when shown a picture cue.

Goal No. 14

The Student will adapt o changes in his environment.

Objective #1 Given contrived scenarios, the Student will tolerate changes to schedule/routine/people as evidenced by the absence of problematic target behaviors (e.g. non-compliance, elopement, aggression, property destruction, chinning). He will do so for 75% of opportunities across 3 consecutive school days.

Objective #2 Given incidental/natural changes to routine/familiarity (e.g., absence of a preferred person, unexpected schedule change, field trip), the Student will tolerate the changes as evidenced by the absence of problematic target behaviors (e.g. non-compliance, elopement, aggression, property destruction, chinning). He will do so for 75% of opportunities across 3 consecutive school days.

Goal No. 15

The Student will complete functional motor tasks with greater success and independence in the school environment.

Objective #1 The student will independently fold clothes and place in a pile, following a verbal prompt.

Objective #2 The Student will utilize utensils when appropriate to successfully pierce/scoop foods without spillage for at least 5 attempts, given a reminder from an adult.

Goal No. 16

The Student will independently use calming strategies with the educational environment.

Objective #1 Given 1 direction by an adult, the Student will utilize a calming sensory strategy when feeling overstimulated.

Objective #2 Given a choice between 2 sensory strategies, the Student will choose one and appropriately engage in the activity in order to complete a calming break.

Objective #3 Using visuals as necessary, the Student will complete a fitness routine involving at least three balance, motor coordination, and strength building activities (i.e. ball twists, weights, yoga, various fitness equipment) with decreasing verbal prompts and assistance from an adult.

Goal No. 17

The Student will increase his daily living skills as measured by the following objectives.

Objective #1 The Student will count various combinations of currency for specified amounts in order to make a purchase in either real world or contrived situations. He will do this with 80% accuracy in 4 out of 5 sampled opportunities.

Objective #2 The Student will use a calculator to add money amounts in both real world and contrived situations. He will do this with 80% accuracy for 4 out of 5 sampled opportunities.

Objective #3 The Student will locate measuring cups and spoons and state correct names for 1/4c, 1/3c, 1/2, 1c, IT, 1 teas., 1/2t, 1/4t. He will do this in both real world and contrived situations with 80% accuracy for 8 out of 10 sampled opportunities.

Objective #4 The Student will follow steps to complete a simple recipe with 100% accuracy in 6 out of 6 sampled opportunities.

Objective #5 The Student will follow a picture schedule to complete a laundry routine with 100% accuracy in 6 out of 6 sampled opportunities.

Goal No. 18

The Student will increase his independence to transition within the classroom and throughout the school building.

Objective #1 The Student will transition directly and safely from one room to another with 1 adult following two feet away from him. He will do so for 80% of opportunities across 3 consecutive school days.

Objective #2 Within the classroom, the Student will independently transition from one activity to another within 30 seconds of the initial prompt to do so. He will do so for 80% of opportunities across 3 consecutive school days.

2019-2020 Special Education, Related Services, and Regular Education

	<u>Goal(s)#</u>	<u>Frequency</u>	<u>Implementor</u>	<u>Start Date</u>	<u>End Date</u>
<u>Special Education Serv.'s</u>					
1. Self-Contained Academic and Behavioral Instr.	1-3, 5-18	1xweek, 30 hrs	BT	11/8/19	11/7/20
2. Academic Support (Inclusion)	7,11-14, 18	2xdaily 42 m	BT	“	“
3. Academic Support (Small group)	1-3,5-18	3xweek, 42 m	Reg. Ed., BT	“	“
4. Self-Contained Academic and Behavioral Instr.	1-3, 5-18	1xweek, 11hrs 45m	“	06/29/20	7/23/20

5. Self-Contained Academic and Behavioral Instr. 1-3, 5-18 1xweek, 5hrs, 45m “ 08/03/20 8/13/20

	<u>Goal(s)#</u>	<u>Frequency</u>	<u>Implementor</u>	<u>Start Date</u>	<u>End Date</u>
<u>Related Services</u>					
1. Occupational Therapy	15-16	12xmonthly, 30m	OT, BS	11/8/19	11/7/20
2. Music Therapy	4	1xweekly, 30 m	MT, BS	11/8/19	11/7/20
3. Music Therapy	4	1xweekly, 30 m	MT, BT	11/8/19	11/7/20
4. Speech/Language Pathology	5-9	1xweekly, 4hrs,45m	SLP, BT	11/8/19	11/7/20
5. Counseling	12-13	1x weekly, 30m	SP/SW	11/8/17	11/7/20
6. Music Therapy	4	1xweekly, 30m	MT, BT	6/29/20	7/23/20
7. Music Therapy	4	1xweekly, 30m	MT, BT	8/3/20	7/23/20
8. Speech/Language Pathology	5-9	4xweekly, 45m	SLP,BT	6/29/20	7/23/20
10 Occupational Therapy	15-16	1xweekly, 45m	OT	6/29/20	7/23/20
11. Occupational Therapy	15-16	1xweekly, 45m	OT	8/3/20	8/13/20

*OT, Occupational Therapist
 SLP, Speech Language Pathologist
 BT, Behavioral Therapist
 BS, Behavioral Specialist
 MT, Music Therapist
 SP/SW, School Psychologist/Social Worker
 Reg. Ed., Regular Education Teacher