



The University of the State of New York

The State Education Department

State Review Officer

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No. 21-224

Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:

The Cuddy Law Firm, PLLC, attorneys for petitioner, by Francesca Antorino, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Theresa Crotty, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which denied in part her requested relief for the 2019-20 and 2020-21 school years. The appeal must be sustained in part.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; *see* 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The parties' familiarity with the facts and procedural history of the case and the IHO's decision is presumed and will not be recited in detail. Briefly, a CSE convened on October 3, 2018 to develop an IEP for the student (Parent Ex. B). The CSE recommended a 12:1+1 special class placement along with related services including group counseling, individual occupational therapy (OT), group physical therapy (PT), individual and group speech-language therapy, adapted physical education, parent counseling and training, and the support of an individual paraprofessional for health and ambulation (id. at pp. 20-22).

In October 2019, the parent expressed a disagreement with the district's evaluations of the student conducted in 2018 and requested independent educational evaluations (IEEs) in a number of areas, including a neuropsychological evaluation, a speech-language evaluation, an assistive technology evaluation, an OT evaluation, an applied behavior analysis (ABA) assessment, a PT

evaluation, a functional behavioral assessment (FBA), and a feeding evaluation (Parent Ex. Y at pp. 1-2).¹

The parent then filed a due process complaint notice in a prior proceeding seeking the IEEs from the district, as well as alleging a denial of FAPE for the 2017-18, 2018-19, and 2019-20 school years (see Parent Exs. Z at p. 3; AA at p. 4). In a June 30, 2020 interim order, the IHO who presided over the prior proceeding awarded the parent the requested IEEs (Parent Ex. Z at pp. 3-4). The evaluations of the student were then conducted in July and August 2020 (see Parent Exs. D-K).

In a November 3, 2020 decision, the prior IHO found that the district denied the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years and, for the three-year denial of FAPE, the IHO ordered the district to fund 800 hours of compensatory tutoring services, 180 hours of feeding therapy, 90 hours of compensatory PT, 70 hours of compensatory OT, and 225 hours of compensatory speech-language therapy services (Parent Ex. AA at p. 22). The IHO also ordered the district to reconvene the CSE to consider the recommendations contained in the IEEs, as well as to consider placement in a nonpublic school, a behavior modification program, and the parent's request for PT, OT, and speech-language therapy services; however, the IHO noted that it was not her role to make specific recommendations for the student's program (id. at pp. 14-16, 22).

According to the information contained in the hearing record, the CSE next convened on November 17, 2020, to formulate the student's IEP for the remainder of the 2020-21 school year (see generally Parent Ex. C). The CSE recommended a 12:1+1 special class placement along with related services including individual and group counseling, OT, PT, individual and group speech-language therapy, adapted physical education, parent counseling and training, and the support of a paraprofessional as a group service for health to monitor the student's behavior and seizure (id. at pp. 13-15). During the 2020-21 school year, the student remotely attended a district special school (Tr. pp. 162-63, 348).

In a due process complaint notice, dated March 22, 2021, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2019-20 and 2020-21 school years (see Parent Ex. A).² The parent alleged that the district had failed to provide the

¹ When discussing the parties' respective requirements related to an IEE, Congress and the Second Circuit tended to use "evaluation" in the singular and the components of the evaluation as "assessments" in the plural (D.S. v. Trumbull Bd. of Educ., 975 F.3d 152, 157 [2d Cir. 2020]). However, the vast majority of parties and IHOs, including those in this case, tend to continue developing arguments and hearing records in which the components—the assessments conducted at different times or locations by different individuals—are referred to as evaluations in the plural or IEEs. The individuals conducting the assessments also tend to refer to the components as an evaluation rather than as an assessment (see, e.g. Parent Exs. D-I), largely ignoring the terminology as used in federal law.

² While the parent alleged a denial of FAPE during the 2019-20 "school year," the parent noted that the allegation related to the period "from December 10, 2020 on" (Parent Ex. A at p. 1). Accordingly, it is unclear if the parent intended to raise allegations regarding the 2019-20 school year, which had ended long before December 2020 as the 2020-21 school year in New York began on July 1, 2020 (Educ. Law § 2[15]). The fact that the parent had previously received a decision regarding her prior complaint related to the 2019-20 school year (which was filed in June 2020) adds further confusion to this issue as the parent had already received compensatory relief related to that school year (see Parent Ex. AA). However, the due process complaint notice in this matter included a

student with a program that provided an appropriate placement or related services, had prevented the parent from participating in the development of the student's program and had failed to provide the student with mandated services during the COVID-19 pandemic (*id.* at pp. 3-6). For relief, the parent requested a finding that the district had denied the student a FAPE during the 2020-21 school year, an order for the district to develop an IEP with a particular set of services, an order for the CSE to "defer the student's case to the Central Based Support Team (CBST) to identify an appropriate non-public school," an order providing a suite of compensatory services, and an order for reimbursement for the cost of a desktop computer to access remote learning and funding for behavior support services, speech-language therapy, OT, PT, feeding therapy, parent counseling and training, counseling, and assistive technology training (*id.* at pp. 6-8).³

An impartial hearing convened on May 28, 2021 and concluded on July 29, 2021 after four days of proceedings (Tr. pp. 13-364).⁴ In a decision dated October 1, 2021, the IHO determined that the district failed to provide the student with a FAPE for the 2019-20 and 2020-21 school years, that the evidence demonstrated that the student's public school placement was not providing her with an opportunity to acquire educational benefits, and that the student had not made progress in reading or math for two years (IHO Decision at pp. 3-10).

As relief, the IHO ordered the district to "immediately defer this case to the CBST for an approved private school placement that can provide ABA throughout the day and feeding therapy" (IHO Decision at p. 11). In the event the CBST is unable to locate a nonpublic school within "the time frame required for it to do so" the IHO ordered that "the parent shall place the child in a placement of her choice which is able to meet all of the mandated related and ABA services as listed herein to be funded by the [district]" (*id.*). The IHO also ordered the district to convene a CSE and add a particular list of services to the student's IEP including specific frequencies and durations for OT, PT, and speech-language therapy services, as well as feeding therapy, assistive technology, and assistive technology devices (*id.*). The IHO further ordered that "until such time as the [student] is placed in a private school, she will receive ABA for ten hours a week at home if the parent so chooses to be paid for by [the district] or in her current school and a 1:1 para" (*id.*).

With respect to compensatory education, the IHO ordered the district to provide "a bank of 30 minute[] sessions to be paid for by the [district] at a rate not to exceed \$150.00 per hour to be delivered at home or at school as the parent can arrange based upon the recommendations of the evaluators who evaluated the [student] in 2020" (IHO Decision at p. 12). The IHO noted that "the recommendations made by the providers for compensatory related services would not be adopted"

specific allegation related to the 2019-20 school year in that the parent alleged the student did not receive mandated services after March 16, 2020, when schools were closed and students transitioned to remote learning, as well as a request for related service encounter records for the 2019-20 and 2020-21 school years (Parent Ex. A at pp. 5-6).

³ Although not defined in the hearing record in this matter, CBST likely refers to the district's central based support team, an entity which facilitates placement in nonpublic schools (*see, e.g., Application of a Student with a Disability*, Appeal No. 15-054; *Application of a Student with a Disability*, Appeal No. 15-051).

⁴ Status conferences took place on April 7, 2021 and May 7, 2021; the district did not appear for the first conference (Tr. pp. 1-12).

(*id.* at n. 1). The IHO ordered the district to fund a total of 81 sessions of OT, 46 sessions of PT, 92 sessions of speech-language therapy, and 92 sessions of feeding therapy, as well as reimbursement to the parent for the cost of obtaining a computer she purchased for use in remote learning (*id.*).

IV. Appeal for State-Level Review

The parent appeals from the IHO's decision and argues that the IHO erred when she denied portions of the relief sought by the parent. The parent's primary assertions of IHO error and requested relief concern the IHO's award of compensatory education. The parent contends that the IHO erred in relying on extrinsic evidence and closing the impartial hearing before the parent was able to bring witnesses regarding the rate to be ordered for compensatory services and then erred in arbitrarily reducing the rates for compensatory OT, PT, speech-language therapy, feeding therapy, and parent counseling and training. Additionally, the parent contends that the IHO erred in failing to order any compensatory ABA and counseling services.

For relief, the parent requests that the relief granted in the IHO's decision be amended to include the following compensatory services:

1. 92 30-minute sessions of speech-language therapy at a rate of \$210 per hour;
2. 53 30-minute sessions of OT at a rate of \$210 per hour;
3. 46 30-minute sessions of PT at a rate of \$210 per hour;
4. 29.4 hours of counseling at a rate of \$360 per hour;
5. 4 hours of parent counseling and training at a rate of \$300 per hour;
6. 92 30-minute sessions of feeding therapy at a rate of \$250 per hour;
7. 10 hours of assistive technology training at a rate of \$250 per hour; and
8. 807 hours of ABA services at a rate of \$300 per hour.

In an answer, the district does not contest the parent's request for relief as made in the request for review, with the exception of the request for 807 hours of compensatory ABA services at a rate of \$300 per hour.

V. Applicable Standards—Compensatory Education Services

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). The purpose of an award of compensatory education is to provide an appropriate remedy for a denial of a FAPE (see E.M. v. New York City Dep't of Educ., 758 F.3d 442, 451 [2d Cir. 2014]; Newington, 546 F.3d at 123 [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; see also E. Lyme, 790 F.3d at 456; Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994]). Likewise, SROs have awarded compensatory education services to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied

through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation (Bd. of Educ. of City Sch. Dist. of Buffalo v. Munoz, 16 A.D.3d 1142 [4th Dep't 2005] [finding it proper for an SRO to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]). Accordingly, an award of compensatory education should aim to place the student in the position he or she would have been in had the district complied with its obligations under the IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]).

VI. Discussion

As an initial matter, the district agrees to the parent's request to amend the IHO's decision to provide for increases in the rates for the provision of compensatory speech-language therapy, OT, PT, and feeding therapy (Answer ¶¶ 11-13).⁵ In addition, the district consents to the parent's request for compensatory counseling, parent counseling and training, and assistive technology training (*id.* at ¶13). Accordingly, the parent's requests as to these services will be granted as agreed to by the parties and the sole remaining issue is whether the IHO erred in failing to order 807 hours of compensatory ABA services at a rate of \$300 per hour.

Turning to the request for 807 hours of ABA services, the parent contends that the IHO erred in failing to order compensatory ABA services, noting that the hearing record supported a finding, based on calculations made by the parent, that the district had failed to provide the student with "807 hours of mandated paraprofessional services from December 10, 2019 to May 20, 2021" (Req. for Rev. ¶¶ 59-64).⁶ First, the parent did not request compensatory ABA services—to

⁵ The parent's contention that the IHO erred in failing to continue the impartial hearing so the parent could present additional witnesses with respect to the rates for compensatory services need not be reached because the district does not contest the rates the parent seeks and affidavits for these witnesses were submitted with the parent's post hearing brief and are a part of the hearing record (Answer ¶¶11-13; see Parent Post-Hr'g Br. Exs. A-B). This decision is not an endorsement of the rates charged by the parents' privately-selected providers and only notes that the parties themselves have no dispute regarding most of the relief sought by the parents, including the rates.

⁶ In the request for review, the parent cites to Parent Exhibits FF and GG as evidence of the number of hours of paraprofessional services that were missed (Req. for Rev. ¶60). Although these exhibits were identified as proposed exhibits during the impartial hearing, the district objected to their admission because the documents included charts that were not readily understandable and included "interpretation of the calculations by the parent's attorney" (Tr. pp. 201-10). Ultimately the IHO sustained the district's objection to three identified proposed parent exhibits (Proposed Parent Exhibits EE-GG) and they were not made a part of the hearing record in this matter (*id.*). The parent later presented a witness to explain the proposed exhibits; however, the testimony left the IHO

remedy a failure to provide a paraprofessional or otherwise—in the due process complaint notice that initiated the impartial hearing (see Parent Ex. A at pp. 6-8). Rather, this request appears in the parent's post hearing brief, and it is clear that the IHO was aware of the request, given that she specifically noted that the parent requested compensatory ABA services in her decision (Parent Post-Hr'g Br. at p. 22; see IHO Decision at p. 3).

Although the parent contends that the IHO "failed to make a determination as to whether [the student] was entitled to compensatory ABA," that claim is belied by a reasonable reading of the IHO's deliberations on crafting an appropriate remedy (Req. for Rev. ¶ 64; IHO Decision at pp. 3-8). In finding that the district had failed to offer the student a FAPE, among the IHO's reasoning was that a private evaluator had recommended a 1:1 paraprofessional for the student, yet the district had recommended a classroom paraprofessional in a setting with a larger teacher-student ratio than the evaluator had recommended (IHO Decision at p. 8; see Parent Exs. J, K). The IHO also noted the evaluator's recommendation that the student should "receive ABA throughout the school day in addition to ten hours a week of home ABA services" (IHO Decision at p. 8). In accordance with those facts, the IHO ordered as part of the relief granted—which the parent has not appealed—that as of October 2021 the district shall, among other relief, locate an approved nonpublic school that can provide the student ABA services "throughout the day" and feeding therapy (id. at p. 11). In the event the district cannot locate an approved nonpublic school, the IHO went further and authorized the parent to unilaterally select a nonpublic school that could offer the designated services at district expense (id.). Moreover, until placement of the student in a nonpublic school occurred, the IHO directed the district to fund 10 hours of ABA per week in the home or the student's "current school" along with the services of a "1:1 para" (id.). Thus, moving forward the IHO ordered either ABA services "throughout the day" or 10 hours of ABA instruction per week in addition to 1:1 paraprofessional services in the event the student was not placed in an approved nonpublic school. Although this order did not take the exact form of the compensatory education that the parent sought in her post hearing brief, it nonetheless provides for a shift to a substantial level of ABA services going forward in the student's educational programming after the date of the IHO's decision.

It is also apparent from the IHO's decision that she considered a number of factors in determining a compensatory education award, including the nature of the student's current educational program, as well as the student's capacity to "make very substantial progress in her behaviors" during remote instruction, although "she was unable to function in academic learning" during the same period (IHO Decision at pp. 10-11). For example, the IHO noted that in determining compensatory relief both qualitative and quantitative factors may be considered and that in this matter the student had a "very complex profile" that included a frail health condition due to nutritional struggles and that feeding therapy, speech-language therapy, and ABA services should be given priority (IHO Decision at pp. 10-11). The IHO also noted that the student's parent

noting that "this chart is less than useful for me" and there was no indication that the proposed exhibits were entered into evidence (Tr. pp. 323-24; see Tr. pp. 302-28). Further, the parent has neither submitted these exhibits with her request for review nor appealed from the IHO's decision not to accept these exhibits into the hearing record. Additionally, while the parent requested 807 hours of compensatory ABA services in her closing brief, she only indicated that the district failed to provide 207 hours of paraprofessional services (Parent Post-Hr'g Brief at pp. 16, 22). Accordingly, without the exhibits and a proper foundation, it is impossible to determine the extent of the missed services.

believed that the student could "tolerate a lot of services in one day" (*id.* at p. 9). However, the IHO was wary of awarding compensatory hours in the full amount recommended by the private evaluators, noting that there was "no requirement that compensatory related service be awarded to make up for each and every session which the [student] allegedly missed or . . . to award services extending over the next [six] years of the [student's] life" (*id.* at p. 12 n. 1). Having considered the hearing record, I agree with the IHO's findings on this point and moreover, I note that the IDEA confers broad discretion on administrative agencies to fashion appropriate compensatory relief (see Sch. Comm. of Burlington v. Dep't of Educ. of the Commonwealth of Mass., 471 U.S. 359, 369 [1985] [noting that, while the IDEA "confers broad discretion on . . . court[s]" and administrative agencies to fashion "appropriate" relief, an agency or court may not delegate this responsibility to a school district]; see e.g., Application of a Student with a Disability, Appeal No. 20-149). Additionally, an outright default judgment awarding the relief requested, such as the specific compensatory education award being requested in this matter, without question, is a disfavored outcome even where the district's conduct in denying the student a FAPE and in failing to sufficiently participate in the impartial hearing process is troubling (see Branham v. Govt. of the Dist. of Columbia, 427 F.3d 7, 11-12 [D.C. Cir. 2005]). Indeed, an award ordered so blindly could ultimately do more harm than good for a student (see M.M. v. New York City Dep't of Educ., 2017 WL 1194685, at *8 [S.D.N.Y. Mar. 30, 2017] [noting that "[c]ommon sense and experience teaches that services that may be valuable for, or even critical to, a child's educational achievement when provided in small to moderate amounts may become close to useless, or even burdensome, if provided in overwhelming quantity"]).

Lastly, as the district points out, the argument for even more ABA services is premised upon the district's failure to provide a paraprofessional, but the evidence does not show that an order to provide ABA services would be an appropriate compensatory service for the district's failure to provide the student with paraprofessional services. State regulations no longer define the term "paraprofessional" as the term "paraprofessional" was replaced with the term "supplementary school personnel" (see "'Supplementary School Personnel' Replaces the Term 'Paraprofessional' in Part 200 of the Regulations of the Commissioner of Education," VESID Mem. [Aug. 2004], [available at http://www.p12.nysed.gov/specialed/publications/policy/suppschpersonnel.pdf](http://www.p12.nysed.gov/specialed/publications/policy/suppschpersonnel.pdf)). Supplementary school personnel "means a teacher aide or a teaching assistant" (8 NYCRR 200.1[hh]). A teaching assistant may provide "direct instructional services to students" while under the supervision of a certified teacher (8 NYCRR 80-5.6[b], [c]; see also 34 CFR 200.58[a][2][i] [defining paraprofessional as "an individual who provides instructional support"]). A "teacher aide" is defined as an individual assigned to "assist teachers" in nonteaching duties, including but not limited to "supervising students and performing such other services as support teaching duties when such services are determined and supervised by [the] teacher" (8 NYCRR 80-5.6[b]).

Turning to the reasoning behind the recommendations for a paraprofessional for the student, the October 2018 CSE recommended the support of an individual paraprofessional for health and ambulation and the November 2020 CSE recommended the support of a group paraprofessional for health to monitor the student's "behavior and seizure" (Parent Exs. B at p. 22; C at p. 15). These recommendations appear to fit within the description of what services a teacher aide may provide. In particular, State guidance indicates that a teacher aide may perform duties such as assisting students with behavioral/management needs ("Continuum of Special Education Services for School-Age Students with Disabilities," at p. 20, Office of Special Educ. [Nov. 2013],

available at <http://www.p12.nysed.gov/specialed/publications/policy/continuum-schoolage-revNov13.pdf>). Considering the above, the missed paraprofessional services in the student's home while school buildings were closed at the beginning of the pandemic would not align with the provision of 1:1 ABA services, which is one particular methodology used when delivering direct instruction.⁷ However, the student was receiving remote instruction at the time of the missed services and, as found by the IHO, the student was able to make progress, in terms of her behaviors, which was the target area that the paraprofessional services were intended to support. Thus, for this reason as well as the other reasons described above, I would not award the 807 hours of ABA services as the missed paraprofessional services do not sufficiently align with the parent's request for further compensatory ABA services and go well beyond the relief already awarded by the IHO including placement going forward in a private school with ABA services throughout the day.

Based on the foregoing, there is no reason to further disturb the IHO's order for both direct relief in the form of prospective placement and IEP modifications, along with the compensatory relief as enhanced herein by the agreement of the parties, because the overall relief awarded for the student herein is sufficient to remedy the denial of FAPE and provide the student with an appropriate program and services moving forward. While the district conceded it failed to offer the student a FAPE in this matter, the IHO was not required to award all of the relief that the parent sought.

VII. Conclusion

Having determined that the parties have agreed to modify portions of the compensatory education relief awarded by the IHO and having further determined that the remaining relief sought by the parent is not warranted, the necessary inquiry is at an end.

I have considered the parties' remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED

IT IS ORDERED THAT the IHO's decision dated October 1, 2021 is modified by amending that portion which directed the district to fund OT, PT, speech-language therapy and feeding therapy at a rate not to exceed \$150 per hour to instead provide, as agreed to by the parties, that the district shall fund the following compensatory educational services:

1. 92 30-minute sessions of speech-language therapy at a rate of \$210 per hour;
2. 53 30-minute sessions of OT at a rate of \$210 per hour;
3. 46 30-minute sessions of PT at a rate of \$210 per hour;
4. 29.4 hours of counseling at a rate of \$360 per hour;
5. 4 hours of parent counseling and training at a rate of \$300 per hour;
6. 92 30-minute sessions of feeding therapy at a rate of \$250 per hour; and

⁷ At times, delivery of direct instruction may be necessary to compensate for the failure to provide supplementary supports, to the extent that the failure to deliver those supplementary supports could impact the student's ability to receive an educational benefit.

7. 10 hours of assistive technology training at a rate of \$250 per hour.

Dated: **Albany, New York**
 January 12, 2022

JUSTYN P. BATES
STATE REVIEW OFFICER