DECISION

COVER SHEET

DUE PROCESS HEARING

DOCKET NUMBER:	D15-012
RESPONDENT/SCHOOL DISTRICT (LEA):	Putnam County Schools
SCHOOL DISTRICT COUNSEL:	Richard Boothby, Esquire
STUDENT:	Christopher Caldwell
PARENT:	Stephanie Caldwell
COUNSEL FOR STUDENT/PARENT	Lydia Milnes, Esquire Judith Gran, Esquire
INITIATING PARTY:	Parent/Student
DATE OF DUE PROCESS COMPLAINT:	March 6, 2015
DATE OF HEARING:	April 14 & 15, 2015
PLACE OF HEARING:	Putnam County School Board Office
OPEN vs. CLOSED HEARING:	Closed
STUDENT PRESENT:	No
RECORD:	Verbatim-Court Reporter
DECISION TYPE:	E-mail
DUE DATE FOR DECISION:	June 8, 2015
HEARING OFFICER:	James Gerl, CHO

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Docket No.: D15-012

PRELIMINARY MATTERS

The quality of legal representation for both parties in this case was consistently excellent throughout the proceeding. The hearing officer appreciates the professionalism and competence of the attorneys for both parties.

Prior to the hearing, the West Virginia attorney for the parent made a motion for admission pro hac vice on behalf of the parent's Pennsylvania attorney. Said motion was granted by letter dated March 18, 2015 after a determination that the motion complied with all requirements of Rule 8.0 of the West Virginia Rules of Admission to the Practice of Law. The letter granting said motion is incorporated by reference herein.

The parties jointly moved to extend the hearing officer's deadline for decision on three occasions. The most recent extension was necessitated by massive technology failures at the offices of counsel for Respondent. The most recent of these extensions required that the hearing officer's decision should be e-mailed to

counsel on or before June 8, 2015. The correspondence granting the extensions of the hearing officer decision deadline is incorporated by reference herein.

On March 17, 2015, a prehearing conference by telephone conference call was convened herein. The prehearing order resulting from said conference is incorporated by reference herein.

The parties filed a joint prehearing memorandum herein on April 2, 2015. Said prehearing memorandum includes a statement of issues, as well as the contentions of the parties and a number of stipulations. Said prehearing memorandum is incorporated by reference herein.

Subsequent to the hearing, both parties filed written briefs and proposed findings of fact. All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

NOTE: Personally identifiable information, including names of parties, schools and similar information is provided on the cover sheet hereto, which should be removed prior to distribution of this decision. FERPA, 20 USC §1232g; and IDEA §617(c).

ISSUES PRESENTED

The issues presented in this due process hearing were identified by the parties in the prehearing conference and in the prehearing memorandum. Because of the very large number of issues stated, the hearing officer restated the issues into three broad categories at the outset of the due process hearing herein. Counsel for both parties agreed with the hearing officer's restatement of the issues on the record at the hearing. Accordingly, the issues for decision herein are as follows:

1. Whether the school district denied the student the right to be educated with children who did not have disabilities to the maximum extent appropriate?

2. Whether the school district has denied the student a free and appropriate public education?

3. Whether the school district has violated the student's rights under Section 504 of the Rehabilitation Act?

FINDINGS OF FACT

Based upon the stipulations contained in the parties' joint prehearing memorandum, the hearing officer has made the following findings of fact:

1. The student is a 14 year old student with Down syndrome in the 8th grade at one of Respondent's middle schools. (Stip-3)

2. The student is eligible for special education and related services under IDEA and West Virginia Department of Education Policy 2419. (Stip-4)

Based upon all of the evidence in the record, the hearing officer has made the following findings of fact:

3. The student has a moderate intellectual disability. He also suffers from juvenile arthritis in his hands. The student's full-scale IQ is 53. The student has difficulties with articulation that sometimes make him difficult to understand when he speaks. His expressive language is delayed. He has difficulty with fine motor skills. He has difficulty generalizing skills. He does not have a strong working memory. (P-39; T of Respondent's school psychologist; P-31; R-19; T of student's mother; T of special education teacher). (References to exhibits shall hereafter be referred to as "P-1," etc. for the Petitioner's exhibits; "R-1," etc. for the Respondent's exhibits; references to testimony at the hearing is hereafter designated as "T".)

4. The student learns best by mimicking or imitating other people. (T of student's mother; T of parent's expert)

5. An individualized education program (hereafter sometimes referred to as "IEP") was developed for the student on March 28, 2013. Said IEP placed the student in a special education separate class environment 87.27% of the time. Said IEP provided for the overwhelming majority of the student's education to be provided in a special education separate class. The IEP provides for the following related services: occupational therapy- indirect 15 minutes per 9 weeks and direct 90 minutes per 9 weeks, and speech language therapy 120 minutes per 9 weeks. The IEP provides for extended year services because the student has problems with regression and recoupment after breaks. (R-19)

6. The student's IEP team met on June 5, 2013 in response to a parent request for a one-to-one aide and placement in another teacher's special education class. The IEP team refused the parent's requests in this regard. (R-28; R-29)

7. On July 25, 2013, the parent wrote to Respondent's special education director requesting among other things that the student be placed in "full inclusion in the general education setting" with a one-one-one paraprofessional. (R-30)

8. The parent repeated similar requests for full inclusion and/or a one-to-one aide a number of times during the relevant timeframe. (T of mother; P-36; P-47)

9. Respondent attempted to notice an IEP team meeting for September 17, 2013 to discuss the parent's request for inclusion and a one-one-one aid. Due to an apparent miscommunication, the parent did not receive notice of the IEP team

meeting and did not appear until very late in the meeting. The members of Respondent's staff on the student's IEP team convened the meeting without the parent or her attorney or her representatives. Despite the absence of the parent at the IEP team meeting, the school district members of the IEP team determined that the parent's requests should be refused and that the student's current placement and IEP were appropriate. Respondent's special education director issued a prior written notice on September 18, 2013, the day after the IEP team meeting which was held despite the absence of the parent, notifying the parent that the IEP team had decided to refuse her requests and that the IEP team determined to continue the current placement because the IEP team did not feel that the requests were in the best interest of the student. (T of parent; R-34; R-38; P-33)

10. The IEP team was reconvened on November 18, 2013. (P-35; P-36)

11. At the November 18, 2013 IEP team meeting, the student's teacher in tech ed, which was a general education class, asserted that the student was not able to understand the materials. Counsel for the parent inquired as to what attempts the tech ed teacher had made at curriculum modification, and he stated that he had not attempted any curriculum modification. The parent's counsel also pointed out that there were no specific curriculum modifications provided for in the student's IEP. Counsel for the parent stated that the student obviously would not be able to succeed in general education classes without supplementary aids and services, such as

curriculum modification. The parent's attorney also pointed out that although the parent's eventual goal was full inclusion, that what she was requesting at that time instead was a series of incremental steps toward that goal. In other words, the parent was seeking that the student should be placed in one or two general education core academic classes with appropriate curriculum modifications and other supplementary aids and services. The Medicaid waiver worker who worked closely with the student and who had experience in analyzing problem behaviors drafting behavior plans attended the November 18, 2013 IEP team meeting and offered to help with the drafting a behavior plan for the student because he had worked so closely with him. The Medicaid worker repeated his offer to help with the student's behavior issues on several other occasions. Respondent's staff refused the offer of the Medicaid waiver worker to help with the student's behaviors. (P-36; T of the student's Medicaid waiver worker)

12. On February 14, 2014, a functional behavioral assessment of the student was conducted by Respondent's staff. On February 25, 2014, a behavior intervention and support plan was developed for the student by Respondent's school psychologist. The behavior plan included a crisis intervention plan that provides for the use of physical restraint only when the student is aggressive or threatening and only as a last resort. Input from the student's Medicaid waiver worker was not considered in the

development of the student's behavior plan. (P-40, P-42; T of the student's Medicaid waiver worker)

13. An IEP team meeting was convened for the student on April 9, 2014. At the meeting, the student's special education teacher and speech language therapist noted that his behaviors had improved substantially and that the reward system implemented by the behavior plan seemed to be working well. During the meeting, the IEP team chair stated that generally Respondent tried for a 50/50 split for academics and functional skills for all significantly impaired special education students. At the meeting, the student's mother stated that research shows that students with Down syndrome that are included in general education with a one-to-one aide do so much better. The response of the IEP team chair to the mother's statement was, "So, you don't want Henderson House." Henderson House is a housekeeping type functional skills program offered by Respondent and rejected by the parent. At the meeting, the parent's attorney again requested an increase in general education classes for the student. The response of the special education director was, "We tried it and it didn't work." The special education director quoted the general education teacher from the tech ed class at the November 18, 2013 meeting. (P-47, P-45).

14. The IEP developed at the April 9, 2014 meeting provides that the student will receive 87% of his education in a special education environment,

specifically, in a special education separate class. The April 9, 2014 IEP requires that the student's progress toward his IEP goals will be provided to his parent every nine weeks. The IEP includes the same related services as the previous IEP except that 30 minutes per month of indirect speech language therapy was added. The IEP provides for extended year services because the student has significant regression and recoupment issues after breaks. (R-67)

15. On April 11, 2014, the school district issued a prior written notice refusing additional general education classes in the 2014-2015 school year for the student because of behaviors and because his ability "falls into moderate-severe range, present behaviors." (P-48)

16. A large number of the goals and objectives in the student's April 9, 2014 IEP are identical to or substantially similar to the goals and objectives contained in the student's March 28, 2013 IEP. (T of student's mother; P-61; P-19, P-45)

17. The aide who works with the student and a number of other students is an autism mentor. He provides instruction to the children including basic reading, writing and arithmetic. He also works with their behavior and assists them in doing their work. (T of Aide)

18. The parent's expert observed the student at school for five hours on May 27, 2015. The classroom aide was not present that day, but it was otherwise a typical day. The special education teacher only worked with the student on one of his

thirty IEP goals and objectives that day. The student's IEP was not being implemented. The student did not use his augmentative communication device (iPad with Touch Chat) that day. The expert asked the special education teacher if the student had a communication system, and the teacher removed the iPad from a drawer; the teacher had difficulty operating the device, and he gave it to the student who turned it on and found Netflix within twenty seconds. The expert observed that the student's behavior plan was not being implemented. The parent's expert noted that a majority of the student's IEP goals were repeated from the previous year's IEP. The parent's expert recommended that the student's IEP be changed to include age-appropriate goals and supplementary aids and services to permit him to be included in general education classes and that an assistive technology communication system be used during instruction and during social interactions. (P-61; T of Parent's expert)

19. An IEP team meeting was convened on June 5, 2014 for the student. At the meeting, the special education teacher and the aide who primarily dealt with the student stated that they only use the iPad with the Touch Chat software when the student is acting out and not for any educational purposes in the classroom. The device, which is an iPad with Touch Chat software, never goes with the student to physical education or his other interactions with nondisabled peers. It was noted that the student's behaviors were escalating. The problem behaviors included defiant behaviors and inappropriate sexual behavior. The aide who worked primarily with the

student complained at this meeting that he was not able to document everything regarding the student's behaviors because it was time consuming and that he had responsibilities with other students. The special education teacher also noted that it was very time consuming and that he could not document everything. The aide who worked with the student admitted that he improperly restrained the student in violation of the student's crisis intervention plan by picking him up to move him to an elevator when the student was being defiant. (P-50; R-76; P-44)

20. The March 28, 2013 IEP for the student lists the following supplementary aids, services or program modifications: adult assistance for toileting; communication assistive technology; extended time to complete classwork, homework or tests; verbal and nonverbal prompting. The listed services are actually accommodations and not supplementary aids or services, and they were not considered for the purpose of placing the student in general education for an additional amount of time. (R-19; T of special education teacher; T of special education director)

21. The IEP developed for the student on April 9, 2014 lists the same supplementary aids, services or program modifications as the previous IEP with the exception that it also adds a positive support behavior intervention plan. The services listed on the IEP are actually accommodations, and they were not supplementary aids

and services used to help the student spend more time in general education classes. (R-67; T of special education teacher; T of special education director)

22. The student attended a nine week general education Spanish class in 7th grade. The student's special education teacher modified the curriculum for the Spanish class in order to make it relevant for the student's IEP goals and objectives. An aide attended this class with the student. The student did very well in the general education Spanish class and received a grade of A. The student's behavior in this general education class was appropriate and not a problem. (T of special education teacher; P-1; T of special education director)

23. Pursuant to his IEPs for the last two years, the student has been in general education classes for related arts, which includes Spanish; digital technology, music, tech ed and art, and for physical education and advisory/flex (a study class). At lunchtime, the special education separate class students do not eat with or interact with the general education students. The special education students do not interact with the general education students during advisory/ flex class. (T of special education teacher; P-1; P-61; T of Aide; T of parent's expert)

24. The school district has not attempted to modify the curriculum for the student's general education classes for the last two years with the exception of the nine week Spanish class. (T of special education teacher; P-36; P-47; T of special education director)

25. The student's IEPs for the 2013-14 and 2014-15 school years required that he have an assistive technology communication device in all environments. The student was able to communicate successfully with an iPad with Touch Chat software, and his mother and a previous speech therapist, who had successfully used the parent's iPad with Touch Chat for sixth grade speech therapy, had asked the special education director to include it on his IEP because it helps him communicate. The iPad with Touch Chat software that Respondent purchased remains in the special education classroom at all times and was not available to the student when he was around non-disabled peers. The device was only used by the student's special education teacher and aide in the special education classroom when the student had a serious behavioral incident; it was not used for any educational purposes. The device was stored in a drawer in the special education classroom. The iPad is dedicated to the separate special education classroom and was not specifically for the student's use. (P-19, P-45, P-50; T of special education teacher; P-17; T of student's mother; T of parent's expert)

26. When the student was attending general education classes, his behavior was appropriate. (T of special education teacher; P-61; T of parent's expert)

27. The student has had a number of behavioral incidents in the separate special education class. Some of the incidents were serious. The incidents primarily involved defiant behavior and inappropriate sexual behavior. (P-50)

28. The behavior intervention plan developed for the student is not being implemented by the school district. The autism mentor/aide who works with the student does not collect the necessary behavior data for the student because he has responsibilities for other students. The student needs a one-to-one aide.(P-50; T of student's mother)

29. The school district did not consider or use supplementary aids and services for the purpose of placing the student in additional general education classes. (T of parent's expert; P-61; T of special education teacher; T of special education director; T of the school district diagnostician; P-36; P-47)

30. The school district has a policy of not providing a one-to-one aide for any student. (T of student's mother; P-15; T of the school district diagnostician)

31. Students who participate more in general education classes have better outcomes. (T of parent's expert; P-63; T of student's mother)

32. Respondent's special education teacher, who is the student's primary teacher, has not sent any progress reports concerning the student's progress toward his IEP goals to the student's mother for the entire 2014-2015 school year. (T of special education teacher)

33. The student made no more than trivial progress under his IEPs for the last two years. In some instances, the student has regressed. (T of parent's expert; R-30; T of student's mother)

34. The student's placement under his IEPs for the last two school years was not in the least restrictive environment. (Record evidence as a whole)

35. The student's IEPs for the last two school years were not reasonably calculated to confer more than trivial educational benefit. (Record evidence as a whole)

36. The school district discriminated against the school district on the basis of a disability by failing to place him in the least restrictive environment and by not providing him with IEPs that were reasonably calculated to confer educational benefit. (Record evidence as a whole)

37. The student has been educationally harmed by Respondent's failure to place him in the least restrictive environment and to provide him with IEPs that were reasonably calculated to confer educational benefit. (Record evidence as a whole)

38. Because Respondent failed to provide more general education classes for the student with appropriate supplementary aids and services, the student suffered educational harm. If he had received a free and appropriate education in the least restrictive environment, he would have had a more formal communication system, and he would know how to communicate, and he would be more literate than he is now. (T of parent's expert)

39. The IEP team members agreed that the student needed extended school year services because of his problems with regression and recoupment over breaks,

but the student's mother declined to have him participate in extended school year services. The parent instead enrolled him in other enrichment programs, but there is no evidence that the enrichment programs that the student attended during the summer addressed the issues of regression and recoupment. The parent's decision in this regard was not reasonable, and the lack of extended school years services adversely affected the student's educational progress. (T of student's mother; P-19, P-45; T of student's mother)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, the hearing officer has made the following conclusions of law:

1. A school district must "…to the maximum extent appropriate (ensure that) children with disabilities…are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); Individuals With Disabilities Education Act (hereinafter sometimes referred to as "IDEA") § 612(a)(5)(A); Policy 2419, Ch 5, §2(J) Regulations for the

Education of Students with Exceptionalities (West Virginia Department of Education, effective September 15, 2014) (hereafter sometimes referred to as "Policy 2419"). The starting point for a placement decision is general education with supplementary aids and services. Policy 2419, Ch 5, §2(J).

2. Supplementary aids and services are any material/curricular/human resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionality's placement. Supplementary aids may include but are not limited to large print books, positive behavioral interventions, assistive technology devices, auditory trainers, curriculum accommodations, services and other supports …to enable students in need of special education services to be educated with students without exceptionalities to the maximum extent appropriate…Supplementary services may include but are not limited to direct instruction, peer tutoring and note taking. Policy 2419, Ch 5, Section 2(G).

3. In determining the educational placement of a child with a disability, a school district must ensure that the child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116(e).

4. The United States Court of Appeals for the Fourth Circuit has held that least restrictive environment is one of the core mandates of IDEA. AB by DB v

Board of Education of Anne Arundel County, 354 F.3d 315, 40 IDELR 121 (4th Cir. 2004); DeVries v. Fairfax County School Board 882 F.2d 876, 441 IDELR 555 (4th Cir. 1989). Indeed, least restrictive environment is a substantive requirement of IDEA. See TM by AM and RM v. Cornwall Central School District, 752 F.3d 145, 63 IDELR 31 (2d Cir. 2014)

5. The United States Court of Appeals for the Fourth Circuit has ruled that where a local education agency has made good faith attempts to utilize supplementary aids and services in the general education setting, but the student still could not receive a free and appropriate public education there, that the LEA may place the student outside of the general education setting. DeVries, supra; Hartman by Hartman v. Loudon County Board of Education, 118 F.3d 996 (4th Cir. 1997). The Fourth Circuit Court of Appeals has not hesitated, however, to reverse district courts and hearing officers that have ignored or not fully applied the congressional mandate for least restrictive environment. See AB by DB v Board of Education of Anne Arundel County, supra.

6. A school district violates IDEA's least restrictive environment mandate where it merely pays lip service to the requirement and where the school district staff could not identify the supplementary aids and services considered. See Hannah L. by George L. and Susan L. v. Downingtown Area School District, 63 IDELR 254 (E.D. Penna. 2014)

7. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in IDEA and an analysis of whether the Individualized Educational Plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable a child to receive educational benefit. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); School Board of Henrico County v. Z.P., 399 F.3d 298, 42 IDELR 299 (4th Cir. 2005); see Strum v. Bd. of Educ. of Kanawha County, 51 IDELR 192 (W. Va. S. Ct., December 2, 2008). The educational benefit must be more than trivial, but the IEP need not maximize the student's potential. M.S. by Simchick v. Fairfax County Sch. Bd. 553 F.3d 315, 51 IDELR 148 (4th Cir. 2009)

8. To the extent that violations of IDEA are procedural violations, they are actionable as a denial of FAPE only when they cause educational harm to the student or seriously impede the parent's right to participate in the IEP process. IDEA § 615(f)(3)(E)(ii); Policy 2419 Ch 11, §4(M); Gadsby v. Grasmick, 109 F.3d 40, 25 IDELR 621(4th Cir. 1997); In re Student with a Disability 58 IDELR 270 (S.E.A. W.V. 2012).

9. Where a school district predetermines the result of an IEP or placement prior to the IEP team meeting, it deprives the parents of a meaningful opportunity to

participate in the process in violation of IDEA. Deal v. Hamilton County Bd. of Educ., 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd. of Educ., 48 IDELR 159 (S.D.W.V. 2007).

10. A school district is required to make periodic progress reports to the parents of a child with a disability concerning the progress that the child is making on his IEP goals and specify the reporting in the student's IEP. 34 C.F.R. §300.320(a)(3); Policy 2419 Ch. 5 §2(E).

11. Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability shall solely by reason of her or his disability be excluded from participation and/or be denied the benefits of or be subjected to discrimination under any program that receives federal funds. 29 U.S.C. § 794; 34 C.F.R. § 104.33. FAPE under §504 means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met. 34 C.F.R. § 104.33(b). Under §504, a school district must place a student with a disability in the regular educational environment operated by the district unless it demonstrates that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 104.34(a). In order to prove a violation of Section 504, parents must show (1) that the student is disabled, (2) that the student was otherwise

qualified to participate in school activities, (3) that the student receives federal financial assistance, and (4) that the student was excluded from participation and/or denied benefits of education as a result of discrimination by the school district. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); 29 U.S.C. § 794; 34 C.F.R. 104.33(b)(1); Constantine v. George Mason University, 411 F.3d 474, 105 L.R.P. 25490 (4th Cir. 2005).

12. A due process hearing officer has broad equitable discretion to fashion an appropriate remedy when there has been a violation of IDEA or Policy 2419. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (U.S. 6/22/2009); School Committee, Town of Burlington v. Department of Educ., 471 U.S. 358, 369, 105 S. Ct. 1996, 556 IDELR 389 (1985); Garcia v. Bd. of Educ. of Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); Dist. of Columbia Public Schools, 111 LRP 76506 (SEA D.C. 2011); In re Student with a Disability, 111 LRP 40544 (SEA W.V. 2011).

13. Compensatory education and other relief under IDEA should be flexible and qualitative in nature. Such relief should be designed to remedy the educational harm suffered as a result of the violation of the special education laws. Compensatory education awards should be tailored to the specific facts and circumstances of a particular case, the nature, period and severity of the violation and the nature and

severity of the student's disability. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

14. IDEA requires that a School District provide extended school year services where the benefits a disabled child gains during the regular school year will be significantly jeopardized if he or she is not provided with an extended school year program. JH by JD and SS v. Henrico County School Board, 326 F.3d 560, 38 IDELR 261 (4th Cir. 2003); Policy 2419, Chapter 5, § 2(H).

15. Respondent has failed to comply with the least restrictive environment mandate for the placements it has offered the student for the last two school years.

16. The IEPs developed by Respondent for the student for the last two school years are not reasonably calculated to confer more than trivial benefit and are therefore in violation of the requirement that the school district provide a free and appropriate public education to the student.

17. Respondent discriminated against the student on the basis of his disability by failing to provide him with a free and appropriate public education in the least restrictive environment.

DISCUSSION

1. Merits

Issue No. 1: Whether the school district denied the student the right to be educated with children who do not have disabilities to the maximum extent appropriate?

IDEA requires that a school district must "…to the maximum extent appropriate (ensure) children with disabilities…are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); IDEA § 612(a)(5)(A); Policy 2419, Ch 5, §2(J)

In the instant case, the parent has demonstrated that the school district has violated the least restrictive environment (hereafter sometimes referred to as "LRE") mandate of the Act. The parent requested on a number of occasions that the student be placed in more general education classes. On each occasion, the school district refused, insisting that the student could only be educated in a separate class. The record evidence reveals that Respondent's placement was not the least restrictive environment appropriate for this student.

On at least one occasion, the school district made the placement decision for the student at an IEP team meeting that the parent did not attend. There was a miscommunication concerning the scheduling of the IEP team meeting, and the parent was not at the beginning of the meeting. Despite the absence of the parent, however, the school district members of the IEP team on September 17, 2013 made a decision to deny the parent's request for additional general education classes without any input or participation from the parent. Confirming that the decision was made without the input of the parent or her representatives, a prior written notice was issued by the school district's special education director the next day refusing the parent's requests. The special education director testified that no decisions were made or substantive matters were discussed or decided at this IEP team meeting. The testimony of the special education director in this regard is not credible or persuasive, however, because it is directly contradicted by the documentary evidence. The aforesaid prior written notice, issued the next day by the special education director, states that the IEP team had decided to reject the parent's request for an increase in general education and a one-to-one aid for the student. Thus, as the prior written notice documents, the IEP team in fact did make the placement decision despite the absence of the parent and her representatives. The predetermination of the placement decision without the parent's input is in itself a violation of IDEA because it deprives the parent of her right to meaningful participation in the determination of LRE. Deal

v. Hamilton County Bd. of Educ., 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd. of Educ., 48 IDELR 159 (S.D.W.V. 2007)

Moreover, the school district did not at any meeting consider supplementary aids and services that could help the student learn in general education classes. The credible and persuasive testimony of Petitioner's expert witness was that no supplementary aids or services were considered by Respondent. In addition, the testimony of the school district educational diagnostician who ran many of the IEP team meetings for the student was that the school district did not consider supplementary aids and services to determine whether the student could be placed in additional general education classes.

This fact is not disputed by the school district. To the extent that there are differences concerning the evidence in this case, however, the testimony of the parent and her witnesses is more credible than the testimony of the school district witnesses. Particularly credible is the testimony of the parent's expert witness. Parts of the testimony of the school district's special education teacher and the testimony of the aide who worked primarily with the student are not credible based upon their demeanor, as well as additional factors which will be discussed below.

The special education teacher could not in his testimony identify any supplementary aids and services that were considered by the IEP team to place the student in more general education classes. The special education teacher did identify

some aids and services that are employed in the separate special education classroom but not any that were considered by the team to help place the student in general education classes.

The failure to consider supplementary aids and services as a means of placing the student in additional general education classes is a violation of IDEA. Indeed, this case is similar in many respects to Hannah L. by George L. and Susan L. v. Downingtown Area School District, 63 IDELR 254 (E.D. Penna. 2014) in which the school district merely paid lip service to the least restrictive environment requirement and could not identify the supplementary aids and services it had considered.

It should be noted, in addition, that in this case the parent and her lawyer suggested a number of supplementary aids and services to the IEP team that could be used in order to help the student be placed in additional general education classes. Among the suggestions from the parent were the following: curriculum modification; a one-to-one aide; and assistive technology. The school district rejected each suggestion.

The parent and her attorney requested that the school district modify the curriculum of certain general education classes to enable the student to participate in general education classes. The school district, however, refused this request.

The special education director testified that it would be too difficult to modify the curriculum because of the severity of the student's disability and because the

modifications would be too hard. The school district's refusal to consider curriculum modifications in this regard is in violation of IDEA. 34. C.F.R. § 300.116(e).

The refusal of the school district to consider additional curriculum modification is particularly surprising in view of the fact that the school district did successfully modify the curriculum for one nine week class in Spanish for the student in 7th grade. The student's Spanish class was a general education class with a modified curriculum during which he had the service of an aide. The student did well in the class, earned a grade of A and behaved very well in the Spanish class. This was a case, therefore, in which the school district had successfully used curriculum modification as a supplementary aid and service to place the student in a general education class in the past. Given the success of this Spanish class, it is even more disappointing that the school district outright refused additional curriculum modifications as a supplementary aid or service to place the student in additional general education classes. The school district simply assumed that it wouldn't work based upon stereotypes about the student's ability despite clear evidence of the student's past success in a general education class.

Another supplementary aid or service suggested by the parent on a number of occasions was a one-to-one aide. In the past, a former special education administrator told the parent that the school district does not provide one-to-one aides for students with Down syndrome. Although this comment was made outside the timeframe of

the statute of limitations for this particular case, it is consistent with the current policy of the school district which is that one-to-one aides are not available to any student regardless of their needs. The testimony of the school district's educational diagnostician was that the school district does not provide one-to-one aides to any student. This testimony is confirmed by an e-mail from the educational diagnostician to the special education director on January 15, 2013 discussing the parent's request for a one-to-one aide that states in part, "I explained to her why we do not provide one-to-one aides." Respondent's blanket policy prohibiting one-to-one aides is in contravention of the basic mandate of IDEA that an IEP should be designed to meet the individual needs of a child with a disability.

The record evidence in the instant case, moreover, indicates that the student needs a one-to-one aide. The school district contends that the student receives adult supervision at all times and therefore does not require a one-to-one aide. The evidence reveals, however, that the aide who spent most of his time with the student complained strongly at the June 9, 2014 IEP team meeting that he could not collect behavior data for the student because he had a number of other students that he had to attend to. It is clear from this evidence that the aide was clearly not spending sufficient time with the student in order to deal with and in record his behavior needs, as required by his behavior intervention plan, and that the aide was occupied with

duties pertaining to other students that prevented him from attending to the student's needs.

The school district contends in its post hearing brief that one-to-one aides can cause dependence. There is no evidence in the record, however, that this student is dependent upon an aide or any other adult working with him. If dependence were to become a problem for this particular student at a later date, the IEP team could deal with it by providing training to the aide to ensure that the student does not become dependent upon the aide. The school district's argument concerning dependence is rejected and it is concluded that the student needs a one-to-one aide as a supplementary aide or service in order to attend additional more general education classes.

An additional supplementary aide or service that was suggested by the parent and her counsel was the use of assistive technology. In particular, the parent and her attorney suggested that an augmentative communication device could help the student participate in additional general education classes. The student does not speak clearly, but he can communicate with an iPad with Touch Chat software. A former speech therapist of Respondent urged the special education director to add the iPad with Touch Chat to the student's IEP because he had successfully used it on the parent's iPad in speech therapy. Despite the parent's request, the student's IEP team did not consider whether assistive technology might help the student participate in general

education classes. The student's IEP eventually did provide that he needed assistive technology and that he would receive an iPad with Touch Chat software for communication purposes in both special and general education classes. Unfortunately, the student only had access to the Touch Chat/iPad in the special education separate class and there only when the student had a behavioral meltdown. It was not used for any educational purposes as the special education teacher and aide acknowledged at the June 5, 2014 IEP team meeting. The failure of the special education teacher and the aide to use the Touch Chat iPad pursuant to the terms of the student's IEP is a material failure to implement his IEP inasmuch as the student has problems with expressive language. The student does successfully operate and use the Touch Chat software, but the Touch Chat/iPad assistive technology device stays in a drawer in the special education classroom. It is not used in any of the student's interactions with nondisabled peers, such as in physical education. More importantly, the use of Touch Chat/iPad, or other assistive technology devices to serve as augmentative communication devices, was not considered by the IEP team to help the student participate in general education classes. The Touch Chat/iPad is now used only when the student has a meltdown in the separate special education classroom. It is concluded that the school district failed to properly consider assistive technology as a supplementary aid and service to help the student participate in additional general education classes.

It should be noted that this is not a case where the student's behaviors were disruptive in general education classes. The student has had no problem behaviors in general education classes. He was particularly successful with regard to his behaviors in the general education Spanish class. The student has experienced some problem behaviors at school, but they were in his separate special education class.

The student has a behavior intervention plan in place; however, at the November 18, 2013 IEP team meeting and on multiple other occasions, the student's Medicaid waiver worker offered to help the school district IEP team members work on a behavior plan for the student. The Medicaid waiver worker works with the student and he is familiar with creating behavior plans. The school district refused the input of the parent's Medicaid waiver worker and created the behavior intervention plan without any input from the parent's waiver worker. The refusal of the school district to even consider the input of the Medicaid waiver worker violates the parent's right to meaningful participation.

In addition, there are serious issues concerning the school district's implementation of the behavior plan for the student. At the June 9, 2014 IEP team meeting, the student's aide, who works closely with the student, complained strongly about having to collect behavior data for the student. He noted that he has responsibilities for other students and that he is not able to collect all the data required by the student's behavior plan. In addition, the special education teacher of

the school district, at the same meeting, complained that it is hard to teach the rest of the class when you are documenting everything concerning behavior issues by the student because it is very time consuming. The aide went on to note that he has responsibilities with other children and that prevents him from documenting behaviors "all day long." During the same meeting, the special education teacher and the aide could not identify the antecedents of the behaviors that they were describing for the student. In addition, at the same IEP team meeting, the special education teacher and the aide noted that they do not implement the behavior plan. For example, on one occasion when the student was misbehaving, the aide restrained him by picking him up and moving him to an elevator contrary to his crisis intervention plan. As the parent's expert credibly testified, the school district has not implemented the behavior intervention plan that it has in place. The testimony of the parent's expert in this regard is corroborated by the comments made by the teacher and the aide at the June 9, 2014 IEP team meeting.

In any event, to the extent that the student has had behavior issues or meltdowns, they have been in the separate special education class and not in his general education classes.

It is concluded that the school district has violated the least restrictive environment mandate of IDEA by failing to properly consider the use of

supplementary aids and services to assist the student in attending additional general education classes.

Some of the other arguments raised by the school district in its post hearing brief need to be addressed. The school district argues in its brief that the student has not demonstrated a benefit from placement in additional general education classes. It is not required, however, that a parent or student demonstrate benefits from general education. As the Fourth Circuit Court of Appeals has noted, least restrictive environment placement is not only a laudable goal, but also a requirement of IDEA. AB by DB v. Board of Education of Anne Arundel County, 354 F.3d 315, 40 IDELR 121 (4th Cir. 2004); Michael DeVries by Marjorie Ann DeBlaay v. Fairfax County School Board, 882 F.2d 876, 441 IDELR 555 (4th Cir. 1989).

In any event, the parent has demonstrated that students who participate in general education classes have much better outcomes than other students. The credible and persuasive testimony of Petitioner's expert, as well as the research study she cited, demonstrates the benefits. The argument concerning benefit to the student is rejected.

Respondent offered a study about inclusion that was located by its school psychologist on the internet. Said study is not persuasive. Unlike the research submitted by the parent, which was supported by the credible and persuasive testimony of the parent's expert, the study submitted by the Respondent pertained to

education in the United Kingdom and was developed for reasons related to persuading Parliament regarding a particular policy. No weight is given to the study submitted by Respondent.

Respondent also contends in its post hearing brief that the type of "full inclusion" requested by the parent is not required by IDEA. The school district contends that the parent sought full inclusion in the sense of placement of the student in all general education classes full time. Inclusion in this sense is not required by IDEA or Policy 2419. Although the parent has used "full inclusion" language, the parent's attorney clarified at the November 18, 2013 IEP team meeting that the parent was not seeking a full-time general education placement right away. Rather, the parent's attorney noted that the parent was seeking an incremental approach with a series of steps that could possibly eventually end with the goal of full-time general education placement. The parent's attorney informed the IEP team that the current request of the parent was for one or two additional general education classes with supplementary aids and services. A fair reading of the evidence is that the parent was seeking one or two general education classes at first and not a full-time general education placement. Because the parent was seeking an incremental approach, the school district's argument fundamentally misunderstands the parent's position. Accordingly, this argument is rejected.

Another argument made by the school district in its brief is that the language of certain Fourth Circuit decisions supports the school district's position. The two cases cited are Michael DeVries by Marjorie Ann DeBlaay v. Fairfax County School Board, 882 F.2d 876, 441 IDELR 555 (4th Cir. 1989), Mark Hartmann by Roxanna Hartman and Joseph Hartman v. Loudoun County Board of Education, 118 F.3d 996, 26 IDELR 167 (4th Cir. 1997). These cases, however, are distinguishable. The analysis contained in the two cited decisions makes it clear that in both cases, the school district had made extensive unsuccessful attempts to educate the student with a disability in the general education setting with supplementary aids and services prior to the more restrictive placement. Thus, the facts of the two cases are substantially different than those of this case where the school district has made no serious effort to employ supplementary aids and services to place the student in general education classes, with the sole exception of the nine week Spanish class in which the student did very well. Respondent's argument is rejected.

It is concluded that the school district violated the least restrictive environment mandate of IDEA by failing to consider the use of supplementary aids and services to keep the student in additional general education classes.

Issue No. 2: Whether the School District Has Denied the Student a Free and Appropriate Public Education?

The Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA and an analysis of whether the student's IEP is reasonably calculated to enable the child to receive educational benefit. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); School Board of Henrico County v. Z.P., 399 F.3d 298, 42 IDELR 299 (4th Cir. 2005); See, Strum v. Bd. of Educ. of Kanawha County, 51 IDELR 192 (W. Va. S. Ct., December 2, 2008). The educational benefit must be more than trivial, but the IEP need not maximize the student's potential. M.S. by Simchick v. Fairfax County Sch. Bd. 553 F.3d 315, 51 IDELR 148 (4th Cir. 2009)

In the instant case, the parent has proven both substantive and procedural violations of IDEA. It was the persuasive and credible testimony of the parent's expert that the IEPs developed for the student in the relevant timeframe were not reasonably calculated to confer educational benefit. It was the credible and persuasive testimony of Petitioner's expert further that the student made only trivial progress at best under his IEPs for the last two school years. This testimony is corroborated by the testimony of the student's mother as well as a letter by the parent to the special

education director on July 25, 2013 demonstrating several instances of regression by the student.

In addition, it is significant that the student's IEPs during the last two years have in many instances merely repeated the same IEP goals. It is clear that he has not made progress on the goals so that they would be changed. The fact that the student's IEP goals have not changed over the years is additional strong evidence that the student was not making any more than trivial progress under his IEPs. It is concluded that the IEPs developed for the student by the school district during the last two school years were not reasonably calculated to confer education benefit and that they in fact did not confer any more than a trivial benefit upon the student.

In its post hearing brief, the school district asserts that the student made significant progress under his IEPs. This argument is rejected.

The testimony of the aide who worked most closely with the student over the last few years, and who is employed by the school district, was that that he has seen no progress by a student in the last three years. The testimony of the aide in this regard contradicts the position of Respondent and corroborates the opinion of the parent's expert.

Moreover, the school district's argument that the student made progress is vitiated by the testimony of the school district's special education teacher. He admitted under questioning by counsel for the parent that he had not sent any

progress reports concerning the student to the student's mother for the entire school year. Respondent's special education teacher had an extremely evasive demeanor when asked why he did not send home progress reports for the student saying that "I do not have an answer" for that. The special education teacher acknowledged that he understood that reporting concerning the progress of special education students to their parents is required by federal law under IDEA, yet he became extremely uncomfortable and had no answer for his failure to inform the student's mother of the student's progress. The failure of the student's teacher to submit any progress reports to the student's mother for an entire school year is strong evidence that the student was not in fact making progress. It is concluded that the student made no more than trivial progress under his IEPs during the relevant timeframe.

Moreover, the failure of the special education teacher to submit progress reports to the student's mother is a significant procedural violation of IDEA. Procedural violations are only actionable as a denial of FAPE when they cause educational harm to the student or seriously impede the parent's right to participate in the IEP process. IDEA § 615(f)(3)(E)(ii); Policy 2419 Ch 11, §4(M); Gadsby v. Grasmick, 109 F.3d 40, 25 IDELR 621(4th Cir. 1997); In re Student with a Disability 58 IDELR 270 (S.E.A. W.V. 2012). Here, the failure to report the student's progress completely deprived the parent of any information concerning the student's progress toward his IEP goals and, therefore, seriously impeded the parent's right to participate

in the IEP team process. Without the basic required information of how well the student was progressing toward his IEP goals, the student's parent was severely compromised as an effective IEP team member. The failure to report the student's progress by the special education teacher coupled with its impact of severely impeding the parent's right to meaningful participation constitutes an actionable denial of FAPE.

A number of other substantive and procedural violations were discussed in detail in the previous section concerning LRE and are relevant to the FAPE analysis as well. The discussion in the previous section pertaining to the school district's predetermination of the student's placement in a full-time separate special education class without any participation by the parent or her representatives is incorporated by reference herein. Said predetermination and its corresponding serious infringement upon the parent's participation rights constitutes an additional denial of FAPE by the school district.

The discussion in the previous section pertaining to the school district's material failure to implement the student's behavior intervention plan and the assistive technology portions of the student's IEP is incorporated by reference herein. The material failures by the school district to implement the student's IEP and behavior plan constitute an additional denials of FAPE by the school district.

The discussion in the previous section pertaining to the school district's failure to consider the input of the student's Medicaid waiver worker in developing his behavior plan is incorporated by reference herein. The failure to consider the input of the parent's IEP team representative significantly impeded the parent's participation in the IEP process, and, accordingly constitutes an additional denial of FAPE by the school district.

The discussion in the previous section pertaining to the school district's blanket policy of refusing to provide one-to-one aides contravenes the basic requirement of the Act that requires that children with disabilities needs be determined on an individual basis. Because the student needs a one-to-one aide, the school district's blanket policy and resulting denial constitutes an additional denial of FAPE.

Because of the procedural and substantive violations of IDEA outlined above, it is concluded that Respondent denied the student a free and appropriate public education.

Issue No. 3: Whether the school district has violated the student's rights under Section 504 of the Rehabilitation Act?

This hearing officer only has jurisdiction over Section 504 of the Rehabilitation Act to the extent that identical factual allegations are made concerning alleged violations of IDEA. In order to show a violation of Section 504, parents must prove the following:(1) that the student is disabled, (2) that the student was otherwise

qualified to participate in school activities, (3) that the student receives federal financial assistance, and (4) that the student was excluded from participation and/or denied benefits of education as a result of discrimination by the school district. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); 29 U.S.C. § 794; 34 C.F.R. 104.33(b)(1); Constantine v. George Mason University, 411 F.3d 474, 105 L.R.P. 25490 (4th Cir. 2005).

In this case, it is undisputed that the student has a disability, Down syndrome, and that the disability substantially limits one or more life activities, including learning. It is apparent from the discussion of the first two issues above that Respondent's violations of IDEA by not providing an LRE placement and by failing to provide FAPE under IDEA, also constitute evidence that the student was discriminated against and denied FAPE under Section 504 and that his placement violated the Section 504 LRE requirement. By failing to provide an IEP that was reasonably calculated to confer more than trivial educational benefit and by failing to provide the LRE placement for the student, the school district failed to provide the student with regular or special education and related aides and services that are designed to meet the needs of disabled individuals as adequately as the needs of nondisabled persons are met. It is concluded that in so doing, respondent has violated Section 504.

2. Relief

An IDEA hearing officer has broad equitable authority to award appropriate relief upon finding of violation of IDEA. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (U.S. 6/22/2009); School Committee, Town of Burlington v. Department of Educ., 471 U.S. 358, 369, 105 S. Ct. 1996, 556 IDELR 389 (1985); Garcia v. Bd. of Educ. of Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); Dist. of Columbia Public Schools, 111 L.R.P. 76506 (SEA D.C. 2011); In re Student with a Disability, 111 L.R.P. 40544 (SEA W.V. 2011.

The following relief shall be provided by the school district in order to remedy the violations found herein:

a. The student's IEP:

1) The student's IEP team shall meet within 10 days of the date of this decision and consider whether any revisions or modifications to the student's behavior plan are appropriate. In so doing, the IEP team shall fully consider and discuss any input given by the student's Medicaid waiver worker or the student's parent. If appropriate, the IEP team shall make amendments to the student's behavior plan. Respondent shall insure that all of its staff who have responsibilities under the behavior plan fully understand their responsibilities.

2) Within 21 days of the date of this Order, the student's IEP shall be amended to provide that he will have the services of a full-time one-to-one aide.

3) Within 21 days of the date of this Order, the student's IEP team shall review whether any appropriate assistive technology device might help the student attend general education classes. In the event that the IEP team cannot agree as to this matter, the school district shall provide for the exclusive use of the student an iPad with Touch Pad or similar software and make it available for use by the student in all classes, including general education classes.

4) Within 45 days of the date of this Order, the student's IEP team shall meet and determine one general education core academic class that the student will attend beginning next school year. The IEP team shall review and consider modification of the curriculum in order to make the student better able to attend this general education class. The IEP team shall also review and consider any other appropriate supplementary aides and services that might assist the student in participating in the general education class. The IEP Team shall also develop appropriate goals for the student's general and special education classes. In the event that the parties cannot agree as to the one general education class that will be attended by the student, or to the curriculum modifications and other supplementary aids and services, or to the IEP goals, the school district shall hire and pay for an independent expert with qualifications similar or identical or superior to those of the expert who

testified on behalf of the parent in this case. Said independent expert shall, in that case, be responsible for determining which class the student will attend in general education, what curriculum modifications will be made, and the IEP goals.

5) In any event, all of the changes to the student's IEP as provided above shall be implemented by the school district as of the student's first day of class for the 2015-2016 school year. Respondent shall take any and all steps necessary to achieve the results stated herein, including but not limited to any necessary training of its staff.

b. Compensatory Education:

Compensatory education should be flexible and geared to the educational harm caused by the violation of IDEA. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

It was the credible and persuasive testimony of the parent's expert witness that the student would likely be more literate and be functioning at a higher level and have better social skills if he had properly been included in additional general education classes and been provided FAPE. The student's disability is significant. The period of deprivation of FAPE and failure to meet the least restrictive environment mandate is two years, from the March 28, 2013 IEP to the present. An award of compensatory education is appropriate based upon the facts and circumstances of this case.

However, in fairness, it is also clear from the record evidence that the parent failed to take advantage of extended school year services for the student that were offered by the school district. All parties agree that the student has significant problems with regard to recoupment of information and retention of information after long breaks. Extended school year services were appropriate and necessary for the student. Accordingly, at least some portion of the student's deficits are very likely the result of the parent's failure to take advantage of and avail the student of extended school year services. Because it would be unfair to attribute such deficits to the school district, approximately one-quarter of the relief that would be awarded for compensatory education shall be subtracted from the total.

It is concluded that the period of compensatory education or services for the educational harm suffered by the student should be two school years of services based on the period of deprivation of FAPE and LRE. It would be appropriate given the severity of the student's disability, the period of deprivation and the other evidence in the record, to require compensatory education one day per week for one hour for a period of two years. Because of the deduction for failure to take advantage of extended school year services, compensatory education shall be awarded for a total period of one and a half years.

Because compensatory education should be flexible, the parties have the option to agree to change any component of the compensatory education award by

agreement of the parties. The compensatory education or services ordered shall be as follows:

Unless the parties agree otherwise, the school district shall provide compensatory education or services one day a week for one hour for a total period of one and one half years. The compensatory education and/or services should be in the form of either tutoring, or other assistance, in academics or training, or other assistance, in social skills. The parties are ordered to confer within seven days of the date of this Order to begin considering compensatory education. In the event that the parties do not agree as to the nature or type of the compensatory education or services to be provided within 21 days of the date of this Order, the school district shall hire and pay for an independent expert with qualifications similar to or identical to or superior to those of the expert witness who testified herein on behalf of the parent in this case. In the event that the parties do not agree as to the nature or type of compensatory education or services within 21 days of the date of this Order, said independent expert shall select the nature or type of compensatory education and services.

The hearing officer concludes that the compensatory education, as set forth above, shall adequately remedy the violations of IDEA, Policy 2419 and Section 504, as found herein, while at the same time not requiring Respondent to be responsible for the failure of the parent to avail the student of extended school year services.

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. Unless the parties agree otherwise, relief as stated above is hereby awarded;

2. All other relief requested by the Petitioner herein is denied; and

3. Within 180 days of the date that this decision is issued, the Respondent shall submit a written report to the West Virginia Department of Education documenting all steps that it has taken to comply with the Order. Said report should be addressed to the Office of Special Programs.

APPEAL RIGHTS

Any party aggrieved by the findings and decisions made herein has a right to bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety (90) days of the issuance of this decision. Policy 2419, Chapter 11, § 4(N).

ENTERED: June 8, 2015

James Gerl

James Gerl, Certified Hearing Official

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing DECISION by e-mailing a true and correct copy thereof addressed as follows:

Richard Boothby, Esquire
rboothby@bowlesrice.com

Lydia Milnes, Esquire
lydia@msjlaw.org

on this 8th day of June, 2015

James Gerl

James Gerl, Certified Hearing Official
Hearing Officer

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