

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.*

**Pennsylvania Special Education Due Process Hearing Officer  
Final Decision and Order**

**CLOSED HEARING**

**ODR No. 30355-24-25**

**Child's Name:**

D.H.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

*Pro Se*

**Local Education Agency:**

Norristown Area School District  
401 N. Whitehall Road  
Norristown, PA 19403

**Counsel for the LEA:**

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**Hearing Officer:**

Brian Jason Ford

**Date of Decision:**

01/31/2025

## **Introduction**

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*

The Student's Parent (the Parent) and Student live within a Pennsylvania public school district that is not a party to this matter (the Resident District). The Resident District offered an Individualized Education Program (IEP) for the Student. The IEP called for the Student to receive one-to-one (1:1) paraprofessional support throughout the school day. The Parent rejected that IEP.

Shortly after the Parent rejected the Resident District's IEP, a court adjudicated the Student into a secure detention facility for juveniles (the Youth Center). Children within the Youth Center attended an educational program in a school within the Youth Center. That school is run by a Pennsylvania Intermediate Unit (the IU). The Youth Center is located within the Norristown Area School District (the Host District). The Host District is located within the IU. Under Pennsylvania regulations the Host District was the Student's Local Educational Agency (LEA) for many purpose and was responsible to ensure that the Student received a free, appropriate public education (FAPE) while residing in the Youth Center.

The Parent claims that the Student did not receive a FAPE while residing in the Youth Center. More specifically, the Parent claims that the Host District failed to implement the Student's IEP because the Student did not receive paraprofessional support in the Youth Center. The Parent also claims that the Student was confined while residing in the Youth Center in violation of the Student's right to be educated in the least restrictive environment (the LRE). The Parent argues that the Host District is responsible for these violations. The Parent's twice-amended due process complaint is fairly read to include a demand for compensatory education.

Pennsylvania regulations specify school districts' obligations when courts place children into residential facilities within their boundaries. Under the standards set by those regulations, and by parts of the IDEA concerning intrastate transfers, I find that the District satisfied its FAPE obligation to the Student. I find in the District's favor on that basis.

## **Issues Presented**

The following issues were presented for adjudication (see NT 22):

1. Did the District violate the Student's right to a FAPE by failing to provide 1:1 paraprofessional support while the Student attended the Youth Center's educational program?
2. Did the District violate the Student's right to be educated in the LRE when the Youth Center confined the Student?

### **Findings of Fact**

I reviewed the record of this matter in its entirety. I make findings of fact only as necessary to resolve the issues before me. It is noteworthy that the parties agreed about most of the underlying facts. There is no real disagreement about what happened. Rather the parties reach different conclusions about the legal implications of those facts. Many of the findings below indicate instances where there is no dispute about a fact, or that District agrees with a fact that the Parent alleges. Citation to the record as a whole is indicated by *passim*.

It is not typical to provide day-by-day finding of fact. Such findings are warranted in this case because the time in question covers a brief-but-intense period of the Student's life (17 full school days in total). This case should not be taken as a signal that it is wise to lose the forest for the trees in any other circumstances.

I find as follows:

1. On August 28, 2024, the Resident District issued an IEP for the Student (the August IEP). S-3.
2. The August IEP provided an itinerant level of emotional support and, among other things, 1:1 paraprofessional support in all classrooms, seven hours per day. See S-3 at 37.
3. On September 9, 2024, the Resident District sought the Parent's consent to implement the August IEP by and through a Notice of Recommended Educational Placement (NOREP). S-4.
4. On September 20, 2024, the Parent rejected the Resident District's NOREP. S-4.
5. Sometime between September 20 and 30, 2024, the Student was court-ordered to the Youth Center. *Passim*.

6. There is no dispute that the Youth Center's educational program is operated by the IU. *Passim*.
7. There is no dispute that the Youth Center is located within the Host District. *Passim*.
8. There is no dispute that both the Youth Center and the Host District are located within the IU. *Passim, see also S-11*.
9. District personnel, IU personnel, and the Parent were all in frequent communication with each other, starting very soon after the Student entered the Youth Center. *Passim*.
10. Shortly after the Student was placed in the Youth Center, IU staff contacted the Resident District to request educational records. The Resident District sent the Student's transcript and attendance information, along with a prior Educational Report from the Youth Center.<sup>1</sup> S-11.
11. Nothing in the record indicates that the Youth Center received the August IEP from the Resident District in response to the records request. *See, e.g. S-11*.
12. On September 30, 2024, the Student entered the Youth Center and began the Youth Center's educational program. *Passim, see also S-9*.
13. One school day at the Youth Center consists of six periods. S-9.
14. September 30, 2024, was a Monday. The Student entered the Youth Center in time to attend one class period that day. S-9.
15. On October 1 and 2, 2024, (Tuesday and Wednesday) the Student attended all six class periods. S-9.
16. On October 2, 2024, the Host District invited the Parent to participate in an IEP team meeting. P-1.
17. On October 3, 2024, (Thursday) there was no school at the Youth Center. S-9.

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<sup>1</sup> Before the period at issue in this hearing, the Student was placed in the Youth Center from April 15, 2024, through May 14, 2024. The Youth Center generated an Educational Report for the Student during that time. The record indicates that the Youth Center sent that record to the Student's home school district, and then the home school district sent that record back to the Youth Center in response to the Youth Center's records request.

18. On October 4, 2024, (Friday) the Host District sent an aide to the Youth Center for the Student (the Aide). S-9, S-10.
19. Prior to working with the Student, the Aide did not have knowledge of the Student's disability or the contents of the August IEP.<sup>2</sup> NT 284. The Aide had training and continuing education in social work. NT 287.
20. On October 4, 2024, the Student was involved in an incident at the Youth Center that morning before the Aide arrived. Consequently, the Student was confined to the residential part of the Youth Center. Youth Center personnel directed the Aide to the classroom that the Student would have attended to acclimate the Aide to that environment. Youth Center personnel also gave schoolwork to the Aide and brought the Aide to the residential part of the Youth Center to work with the Student. The Student initially resisted doing schoolwork but ultimately completed some work with the Aide. See, e.g. S-10.
21. On October 7, 2024, (Monday) the Student attended two class periods. S-9.
22. On October 7, 2024, the District sent the Aide to the Youth Center. The Aide arrived during the Student's second class period. Youth Center personnel directed the Aide to the classroom. The Aide reported that, during the class, the Student initiated a physical altercation with other students, which quickly escalated to involve the entire class. The Student was restrained by Youth Center personnel. See, e.g. S-10.
23. After October 7, 2024, the Aide did not return to the Youth Center. *Passim* (see, e.g. NT 240-241).
24. On October 8 and 9, 2024 (Tuesday and Wednesday), Youth Center personnel did not permit the Student to attend class because of the behavior incident. See S-9.
25. On October 9, 2024, the Parent filed a due process complaint initiating these proceedings (the Complaint).
26. On October 10 and 11, 2024 (Thursday and Friday), there was no school at the Youth Center. S-9.

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<sup>2</sup> The record is not clear as to whether the Host District had the August IEP from the Resident District at this time.

27. On October 14, 2024 (Monday), the Student attended all six class periods. S-9.
28. Also on October 14, 2024, the parties and IU personnel met at an IEP team meeting. S-8.
29. During the IEP team meeting, the District developed an IEP for the Student (the October IEP). S-8.
30. The October IEP constitutes a full-time Emotional Support and Learning Support placement. The placement was a full-time placement as a function of the Student's court-ordered placement at the Youth Center. See S-8 at 38.
31. The October IEP did not include 1:1 paraprofessional support. S-8.
32. On October 15, 2024 (Tuesday), the Student attended one class period and then tried to leave class without permission. This resulted in an altercation between the Student and Youth Center personnel. See, e.g. S-7.
33. On October 15, 2024, the Parent amended the Complaint.
34. On October 16, 17, and 18 (Wednesday, Thursday, Friday), Youth Center personnel did not permit the Student to attend class because of the October 15 behavior incident. See S-9.
35. On October 21, 2024, (Monday) the Student attended all six periods. S-9.
36. On October 22 and 23, (Tuesday and Wednesday) Youth Center personnel did not permit the Student to attend class because of another behavior incident.<sup>3</sup> See S-9.
37. On October 22, 2024, the District offered the October IEP by and through a NOREP. S-8.
38. On October 23, 2024, the Parent rejected the NOREP. S-8.
39. On October 24 and 25, 2024, (Thursday and Friday), the Student attended all six periods. S-9.

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<sup>3</sup> The record does not include preponderant evidence of the specifics of this behavioral incident.

40. On October 24, 2024, the Parent amended the Complaint again.
41. On October 28, 2024, (Monday), the Student attended all six periods. S-9.
42. On October 29, 2024, (Tuesday) the Student attended three school periods and then was discharged from the Youth Center. S-9.

### **Witness Credibility**

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses.” *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (“[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

### **Applicable Legal Principles**

#### ***The Burden of Proof***

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if

the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

Applied in this case, the Parent is the party with the burden of proof.

### ***Free Appropriate Public Education***

The IDEA requires the states to provide a free appropriate public education to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child’s individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew* case was the Court’s first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id* at 3015.

Third Circuit consistently interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew* decision is no different.

A school district is not required to maximize a child’s opportunity; it must provide a basic floor of opportunity. See, *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than “trivial” or “de minimis” benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d

Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. *See, e.g., J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 1000. In terms of academic progress, grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child’s circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student’s circumstances.

### ***Least Restrictive Environment (LRE)***

The IDEA requires LEAs to “ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a). That continuum must include “instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions.” 34 C.F.R. § 300.115(b)(1); *see also* 34 C.F.R. § 300.99(a)(1)(i). LEAs must place students with disabilities in the least restrictive environment in which each student can receive FAPE. *See* 34 C.F.R. § 300.114. Generally, restrictiveness is measured by the extent to which a student with a disability is educated with children who do not have disabilities. *See id.*

In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit held that LEAs must determine whether a student can receive a FAPE by adding supplementary aids and services to less restrictive placements. If a student cannot receive a FAPE in a less

restrictive placement, the LEA may offer a more restrictive placement. Even then, the LEA must ensure that the student has as much access to non-disabled peers as possible. *Id* at 1215-1218.

More specifically, the court articulated three factors to consider when judging the appropriateness of a restorative placement offer:

"First, the court should look at the steps that the school has taken to try to include the child in a regular classroom." Here, the court or hearing officer should consider what supplementary aids and services were already tried. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216 (3d Cir. 1993)

"A second factor courts should consider in determining whether a child with disabilities can be included in a regular classroom is the comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom. The court will have to rely heavily in this regard on the testimony of educational experts." The court cautioned, however, that the expectation of a child making greater progress in a segregated classroom is not determinative. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216-1217 (3d Cir. 1993).

"A third factor the court should consider in determining whether a child with disabilities can be educated satisfactorily in a regular classroom is the possible negative effect the child's inclusion may have on the education of the other children in the regular classroom." The court explained that a child's disruptive behavior may have such a negative impact upon the learning of others that removal is warranted. Moreover, the court reasoned that disruptive behaviors also impact upon the child's own learning. Even so, the court again cautioned that this factor is directly related to the provision of supplementary aids and services. In essence, the court instructs that hearing officers must consider what the LEA did or did not do (or could or could not do) to curb the child's behavior in less restrictive environments. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1217 (3d Cir. 1993)

There is no tension between the FAPE and LRE mandates. There may be a multitude of potentially appropriate placements for any student. The IDEA requires LEAs to place students in the least restrictive of all potentially appropriate placements. There is no requirement for an LEA to place a student into an inappropriate placement simply because it is less restrictive. However, LEAs must consider whether a less restrictive but inappropriate placement can be rendered appropriate through the provision of supplementary aids and services.

## ***Nonresident Students in Institutions***

Sometimes, non-educational agencies place children into residential facilities for non-educational reasons. For example, a child may require residential treatment for physical or mental health conditions or, as in this case, a child may be court-ordered into a secure detention facility.<sup>4</sup> Under these circumstances, a child's family may reside in one school district, but the residential facility is located in another school district. When this happens, Pennsylvania regulations delineate the school districts' responsibilities to the child. Those regulations are found at 24 P.S. § 13-1306 (Section 1306).

The school district that the family lives in is called the "resident district" and the school district in which the facility is located is called the "host district." Section 1306 divides responsibilities between the resident district and host district. The Pennsylvania Department of Education's Bureau of Special Education offers guidance and interpretation of Section 1306 via a Basic Educational Circular titled "Nonresident Students in Institutions" (BEC).

Responsibilities to nonresident students with disabilities in institutions are outlined in Section 1306 and discussed in detail in the BEC. For IDEA-eligible students (that is, students with disabilities who need specially designed instruction), the BEC explains that "the host school district is responsible for providing the student with an appropriate program of special education and training consistent with Chapters 14 and 342 of the Pennsylvania regulations and standards." The resident district, however, is responsible for funding the program. Section 1306 "allows the host school district to charge the full cost of providing special education programs and services for all institutionalized students."

The host school district is responsible for making decisions regarding the goals, programming, and educational placement for each student. As with typical IEP development, this is done in collaboration with parents. The host school district is also responsible for seeking advice from the resident school district about the student, and keeping the resident school district informed of its plans to educate the student.

In sum, when third parties place an IDEA-eligible student in a residential facility for non-educational purposes, the host district is responsible for providing a FAPE through the development and implementation of the student's IEP.

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<sup>4</sup> The IDEA also addresses the rights of students with disabilities who are incarcerated in adult prisons. See, e.g. 20 U.S.C. § 1414(d)(7)(B). Those sections of the IDEA are not applicable in this case. One must not conflate Pennsylvania regulations concerning nonresident students in institutions and IDEA sections pertaining to incarcerated students.

## ***Section 1306 and Intrastate Transfers***

Section 1306 and the related BEC specify that host school districts are responsible for providing a FAPE to nonresident students in institutions through a process akin to IEP development. Neither Section 1306 nor the BEC address what services host school districts must provide to children with disabilities before they develop and implement their own IEPs. That brief period is controlled by the IDEA regulations concerning children who transfer from one school district to another within the same school year. Intrastate transfers are addressed in the IDEA at 20 U.S.C. § 1414(d)(2)(C)(i)(I) and in federal regulations at 34 C.F.R. § 300.323(e).<sup>5</sup>

The applicable IDEA provisions contemplate children who enroll in a new LEA within the same state during the academic year. When that happens, the IDEA at 20 U.S.C. § 1414(d)(2)(C)(i)(I) requires that the new LEA:

shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

The students contemplated in Section 1306 do not technically enroll in a new LEA, but the circumstances are completely analogous. In both situations, a new LEA becomes obligated to provide a FAPE to a student mid-year. While the FAPE obligation attaches instantly, the new LEA may not have its own IEP ready on day one – especially if the student is placed into a residential facility by court or other third party. The IDEA accounts for this by requiring the new LEA, or the Host District as applied in this case, to provide comparable services until it can develop its own program or adopt the incoming IEP.

## **Discussion and Legal Conclusions**

### ***No FAPE Violation for Lack of 1:1 Support***

The record of this case establishes that the Host District acted in conformity with its substantive obligations to the Student.

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<sup>5</sup> The IDEA includes similar, but not identical, provisions for interstate transfers at 20 U.S.C. § 1414(d)(2)(C)(i)(II).

The Student entered the Youth Center on Monday, September 30, 2024, and left the Youth Center four weeks and one day later, on October 29, 2024. However, the Student's attendance and behaviors, and the school's schedule and calendar, reveal that the time in question comes down to days, not weeks.

Adding it all up, the Student spent 17 full school days in the Youth Center.<sup>6</sup> The Youth Center did not permit the Student to attend school on eight of those days because of the Student's behavioral infractions. Student attended only one or two periods before removal after behavioral incidents on two additional days. On the remaining seven days, the Student attended six full periods of school.

Of the seven days that the Student attended a full day of school in the Youth Center, two occurred before the Host District assigned the Aide. Those two days, October 1 and 2, 2024, were the first two weekdays (let alone school days) after the Student's adjudication to the Youth Center. While the IDEA requires the timely provision of comparable services, it does not require reassignment of school personnel instantly upon a court's adjudication of a child into a secure detention center. Such court proceedings happen, by necessity, without the Host District's knowledge or control. While there can be no "bright line" rule establishing how quickly a host district must put personnel in place (and there may be cases where any delay can result in a FAPE violation), I find no FAPE violation for failure to secure paraprofessional support for the Student on October 1 and 2, 2024.

The record reveals that the Student attended school at the Youth Center successfully and without incident on October 1 and 2, 2024. Even assuming that the absence of a paraprofessional on those two days was a procedural violation of the Student's IDEA rights, the record contains no evidence of a substantive violation and so compensatory education cannot be awarded. See, e.g. 20 U.S.C. § 1415(f)(3)(E)(ii).

The Host District's actions between October 1 and 3, 2024, were remarkable. The Host District (both through its own initiative and through IU personnel working at the Youth Center) contacted the Resident District, obtained educational records, communicated with the Parent, started work to draft an IEP, scheduled an IEP team meeting, invited the Parent to the IEP team meeting, and reassigned the Aide to work with the Student at the Youth

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<sup>6</sup> 17 full school days discounts September 30, when the Student entered the Youth Center with enough time to attend only one class, and October 29, when the Student was discharged after attending three classes. On the calendar, the Student spent 22 weekdays in the Youth Center. The school in the Youth Center was closed on three of those days.

Center. These fast, thorough actions are consistent with what the IDEA and Section 1306 require.

The Student entered the Youth Center on a Monday. By that Friday, the Aide was working with the Student. At that time, the Host District did not have anything from the Resident District establishing that the Parent approved the August IEP. If such a document exists at all, it is not part of the record of this case. Rather, based on its initial communications with the Parent, the Host District understood that full-time, 1:1 paraprofessional support was a component of the comparable services that it owed to the Student. It is commendable that the Host District sent the Aide to the Youth Center immediately.

In most cases, paraprofessional aides do not provide direct instruction. The August IEP from the Resident District included paraprofessional support to help the Student manage behaviors in a regular school classroom environment – not to teach. Although the Aide did not have a copy of August IEP or information about the Student’s disability before meeting the Student, the Aide understood that his work was to help the Student attend to schoolwork while in class. The Aide had the requisite background and training to serve in that capacity.

On the first day that the Aide went to the Youth Center, the Student was already out of class due to a disciplinary incident. Outside of the school classroom within the Youth Center, the Aide had no obligations to the Student. Nevertheless, the Aide brought work from the classroom to the Student in the residential section of the Youth Center and helped the Student attend to the work. This kindness was in excess of the Aide’s obligations.

The next week started on Monday, October 7, 2024, with a fight in the Youth Center’s school classroom. The Aide was with the Student in the classroom when the fight started. After Youth Center personnel reestablished control, the Youth Center did not permit the Student to come back to class. The Aide’s task was to help the Student in the classroom, and so the Aide cannot be faulted for leaving the Youth Center once the Student’s school day ended. The Youth Center did not permit the Student to come back to school for two days because of the Student’s behavior, and the Youth Center’s school was closed two days after that. In sum, during the week of October 7, the Host District sent an aide to the Youth Center’s school on the only day that the Student attended school that week.

For the remainder of the Student’s time at the Youth Center, the Student attended school on five days without paraprofessional support from the Host District. Two of those days – October 14 and 21 – came before the Host

District issued its NOREP on October 22, 2024. On both of those days, the Host District was obligated to provide comparable services. By this point, however, the record indicates that the Host District had reason to consider 1:1 paraprofessional support to *not* be a fundamental component of comparable services. The record does not clearly reveal exactly when the Host District came into possession of the Resident District's August IEP or rejected September NOREP, but the record suggests that the District had a more complete picture of the circumstances by mid-October 2024. At some point, the Host District came to know that the Parent rejected the Resident District's NOREP. The Host District had no obligation to provide services comparable to those that the Parent had rejected prior to the Student's adjudication.

I will not rely upon ambiguities in the record to resolve this case. Instead, I will make an assumption in the Parent's favor: I will assume that the absence of a 1:1 paraprofessional aide on October 14 and 21, 2024, constitute a violation of the Student's procedural rights. That is, I will assume that the Host District was obligated to provide 1:1 support in school on both of those days. With that assumption in place, the analysis is the same as it was for October 1 and 2, 2024. There is no evidence in the record of any substantive harm that the Aide's absence cause on October 14 or 21, 2024. As with the Student's first two days in the Youth Center, the Student attended school successfully and without incident on those two days. Without evidence of a substantive violation, compensatory education cannot be awarded. See, *e.g.* 20 U.S.C. § 1415(f)(3)(E)(ii).

The last three days in question, October 24, 25, and 28, came after the Parent rejected the Host District's NOREP. Under the unique facts of this case, I find that the Host District's issuance of that NOREP along with the October IEP does not alter the analysis. The Host District was obligated to offer comparable services only until it proposed its own IEP. At that point, were it not for the procedural history of this case, the inquiry would hinge on the appropriateness of the Host District's offer (which did not include 1:1 support). The wrinkle in this case is that the Parent requested a due process hearing before the Host District offered an IEP and a NOREP. The Parent's due process complaint triggered the IDEA's pendency rule, prohibiting the Host District from unilaterally altering the Student's program. See 20 U.S.C. § 1415(j). To whatever extent the Host District was obligated to provide 1:1 paraprofessional support as part of comparable services under the IDEA's intrastate transfer clause, the existence of this due process hearing extended that obligation until the Student was discharged from the Youth Center.

Analysis for October 24, 25, and 28, is identical to the other days in question. Assuming that the Host District was obligated to provide 1:1 paraprofessional support, there is no evidence in the record that the District's failure to do so resulted in any type of substantive, educational harm to the Student. These were some of the only days that the Student attended school without incident. Without evidence of substantive harm – a substantive FAPE violation – compensatory education cannot be awarded. See, e.g. 20 U.S.C. § 1415(f)(3)(E)(ii).

### ***No LRE Violation***

In assessing the Parent's LER claims, one must be careful to not confuse or conflate the multiple agencies involved in this case. Sometimes the distinction makes no difference, but sometimes the distinction is critical.

The Host District was the Student's LEA under Section 1306, but only in the sense that it was responsible for the provision of a special education *program*. The Host District did not choose, recommend, or control the Student's *placement*. That placement – the Youth Center – was selected by the authority that adjudicated the Student. The Host District had no say in the matter.

The school within the Youth Center was operated by the IU, not the Host District. That is a distinction without a difference. The IU was like the Host District's agent for IDEA purposes, even if the school in the Youth Center does not operate under the Host District's control. The District was obligated to make a FAPE available to the Student inside of the Youth Center even if IU personnel operated the program. If the IU violated the Student's right to a FAPE, the Host District is responsible.

The other party directly involved in the Student's program during the time in question was the Youth Center itself. The Youth Center is not part of the IU or the Host District. Unlike the IU, the Youth Center is not like the Host District's agent for IDEA purposes. Rather, the Youth Center and its personnel served a non-educational function: provision of a secure detention facility pursuant to a court's order. The record establishes that Youth Center personnel decided when the Student could attend school and when the Student was confined to the residential portion of the facility. There is no evidence that the Youth Center consulted with, let alone took direction from, the Host District or the IU when excluding the Student from school. Each incident of exclusion from school was decided and effectuated by the Youth Center.

If a child has an IEP, and a third party prevents the child from attending school, the school has not violated the child's right to a FAPE in the LRE. In this case, the Youth Center, a third party, prevented the Student from attending school on several days. Those actions have no implications regarding the Student's right to a be educated in the least restrictive environment.

### **ORDER**

Now, January 31, 2025, it is hereby **ORDERED** as follows:

1. The Host District did not violate the Student's right to a FAPE vis-à-vis provision of 1:1 paraprofessional support for the Student.
2. The Host District did not violate the Student's right to be educated in the least restrictive environment.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER