

**ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION UNIT**

**XXXXXXXXXX AND XXXXX XXXXXXXX  
AS PARENTS OF  
XXXXXXXXXXXXXXXXXX,  
Petitioner/Parents**

**VS.**

**NO. H-24-11**

**CONWAY SCHOOL DISTRICT,  
Respondent/District**

**HEARING OFFICER’S FINAL DECISION AND ORDER**

XXXXXXXXXX (“Student”) is a child with a learning disability who is eligible for special education services from the Conway School District (“District”). On August 28, 2023, Student’s parents XXXXXXXXXXXXX (hereinafter referred to as “Parents” or singly as “Father” or “Mother” where appropriate), filed a request for a due process hearing pursuant to the Individuals with Disabilities in Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”) alleging that District failed to comply with the IDEA, its implementing regulations, and regulations of the Arkansas Department of Education, Special Education Division (“Department”), thereby denying Student a free and appropriate education (“FAPE”) under the IDEA.

**I.  
ISSUES PRESENTED**

1. Whether District denied Student a FAPE in violation of the IDEA during the 2021-2022 and 2022-2023 school years;
2. Whether Student’s IEP for the 2023-2024 school year is necessary and appropriate and will provide Student a FAPE; and

3. Whether Compass Academy is an appropriate placement for Student, and if so, whether District should pay the tuition, fees, costs, and transportation for Student to attend Compass Academy.

## **II. NON-JUSTICIABLE ISSUES**

Parents also allege that District’s conduct constitutes disability discrimination in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165. Additionally, Parents assert a claim of racial/national origin discrimination in violation of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d. This Hearing Officer has no jurisdiction over these federal claims. Accordingly, to the extent Parents’ due process complaint raises disability discrimination claims and racial/national origin discrimination claims, those claims are DISMISSED WITHOUT PREJUDICE.

## **III. PROCEDURAL HISTORY**

On August 28, 2023, the Arkansas Department of Education (hereinafter referred to as “Department”) received from Parents a request to initiate due process hearing procedures. Parents requested the hearing because they believed that District failed to comply with the IDEA, as well as regulations set forth by the Department, by failing to provide Student with an appropriate IEP and services, and as a result “has been injured, traumatized, and suffered regression.” Complaint, p. 3. In its Response, District generally denied Parents’ allegations that District denied Student a FAPE and affirmatively stated that it has complied with the IDEA, state rules, and federal implementing regulations.

In response to Parents' request for a due process hearing, the Department assigned the case to the undersigned impartial Hearing Officer. After scheduling the hearing, three continuances were granted for good cause, and a four-day hearing was scheduled to begin on January 23, 2024. Parents requested and were granted a live translator for the hearing as Parents do not speak English.

Having been given jurisdiction and authority to conduct the hearing pursuant to the IDEA, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Cheryl L. Reinhart, J.D., Hearing Officer for the Department, conducted a closed impartial hearing. Present for the hearing were Parents, represented by Ms. Theresa Caldwell, of Caldwell Law Office, Little Rock, Arkansas, and Kelli Gordon, District Special Education Director, represented by Ms. Shastady Wagner, Chief Legal Counsel for District. Ms. Audra Alumbaugh was present as an advocate for Parents. Mr. Nicholas Durand, Certified Interpreter and Translator for Parents, was present throughout the hearing.

The hearing was held over seven days: January 23-26, 2024, March 1, 2024, March 4, 2024, and April 30, 2024. In addition to Parents and Gordon, the following witnesses testified in this matter: Whitney Burns, former teacher, Marguerite Vann Elementary School, Conway School District; Shanda New, Principal, Marguerite Vann Elementary School; Jalen Thomas, paraprofessional, Marguerite Vann Elementary School; Matthew Coatney, Assistant Principal, Marguerite Vann Elementary School; Amanda Townsend, nurse, Marguerite Vann Elementary School; Elizabeth Hart, physical therapist, Marguerite Vann Elementary School; Aimee Cloud, speech therapist, Marguerite Vann Elementary School; Meredith Moix, speech therapist, Marguerite Vann Elementary School; Stephanie Tibbs, occupational therapist, Marguerite Vann Elementary School; Grace Smith, interpreter, Marguerite Vann Elementary School; Sgt. Brittani

Little, Conway Police Department; Dr. Jeff Collum, Superintendent, Conway School District; Courtney Williams, Director, Compass Academy; and Sgt. Dan Worley, Conway Police Department, School Resource Officer for Marguerite Vann Elementary School. *See, generally*, Transcript Vols. I-VII.

The parties requested to provide post-hearing briefs in lieu of closing arguments. The deadline for providing briefs was May 27, 2024, and briefs were filed on that day.

#### IV. FINDINGS OF FACT

##### **Background:**

At the time the due process complaint was filed in this case, Student was seven years of age, and assigned to Ellen Smith Elementary School, Conway School District as a second-grade student. Student is currently enrolled at Compass Academy, but at all times relevant to this proceeding, was a student at Marguerite Vann Elementary School, Conway School District.

Student and her family – Parents and one older sister – entered the U.S. on a political asylum from El Salvador in 2019. Tr. Vol. V, p. 150. Student’s home language is Spanish. Tr. Vol. V, p. 167. Her full name is XXXXXXXXXXXXXXXX. *See* Parent Exh., p. 254. Exhibits and witnesses at times refer to Student’s and Mother’s surnames “XXXXXXX” and “XXXXXXXX.”

Student was diagnosed at approximately age 4 with 14q11.2 microdeletion syndrome. Dist. Exh. 6, p. 9. While still living in El Salvador, Student received physical, speech/language, occupational, sensory, and feeding therapies. Parent Exh., p. 210. When Student first enrolled in District as a pre-K student, District conducted a comprehensive psychological evaluation to determine Student’s eligibility for special education. Parent Exh., p. 208. Student was also evaluated for physical therapy (Dist. Exh. 4) and occupational therapy (Dist. Exh. 3).

The comprehensive psychological evaluation, conducted on April 9, 2021, concluded that Student was eligible for special education and related services under the disability category of Multiple Disabilities. Id., p. 216. The report notes Student’s medical diagnoses as Corpus Collosum Agenesis, Chromosome Deletion 14q11.2, Developmental Delay, Seizure Disorder, and Oropharyngeal Dysphagia, “which cause delays in communication, cognition, motor, and orthopedic functions.” Id., pp. 216-217. Testing results were as follows:

- **Developmental Profile 4 Teacher Checklist and Spanish Parent/Caregiver Interview (DP-4)**. Student was rated on the teacher and parent checklists as being in the lower extreme of every category – physical, adaptive behavior, social-emotional, cognitive, and communication – with a General Development Score of <40. Parent Exh., pp. 212-213.
- **Adaptive Behavior Assessment System – Third Edition (ABAS-3) Teacher and Parent Ratings** – Student was rated on all domains by parent and teacher as lower extreme. Parent Exh., pp. 215-216.
- **Primary Test of Nonverbal Intelligence (PTONI)** – This test was attempted and discontinued. Parent Exh., p. 212.
- **Bracken School Readiness Assessment, Third Edition** – This test was attempted and discontinued. Id.

The report further notes that Student’s cognitive abilities were rated in the sub average range of intellectual function, with deficits in all areas of adaptive behavior, that she will require close supervision at all times, and that these deficits will adversely affect educational performance in all academic areas, adaptive behavior, and functional skills. Parent Exh., p. 216. Student is seen regularly by her personal care physician and a team of physicians and specialists at Arkansas Children’s Hospital including her Complex Care Pediatrician and specialists in neurology, audiology, dental, ophthalmology, speech therapy, psychology, physical medicine and rehabilitation, dietary, and genetics. Parent Exh., p. 218. Today, she is still primarily nonverbal and medically fragile.

**A. 2021-2022 School Year (August 28, 2021, to June 30, 2022) – Kindergarten**

The statutory timeline for this proceeding begins on August 28, 2021, when Student was enrolled in kindergarten at Marguerite Vann Elementary School (“Vann”). Student’s initial IEP, dated 8/16/21 to 5/26/22, provided the following special education and related services programming:

- Assigned to a 1:10 self-contained special education classroom;
- 100 minutes five days per week direct instruction in literacy;
- 55 minutes five days per week direction instruction in each of math, fine motor/writing, daily living, and adapted behavior;
- 210 minutes per month each of speech therapy, occupational therapy, and physical therapy;
- 120 minutes five days per week of personal care; and
- 2 sessions per day, five days a week of transportation support.

Parent Exh., pp. 90-136. The IEP notes that Student “is fully dependent on others for her personal care (feeding, toileting, hygiene, grooming) and will be provided personal care in the special class setting by [the teacher and two] paraprofessionals.” Id., p. 92. Student required the daily use of items from home to assist or support her at school -- a special “activity” chair for feeding and support, and a helmet that she wore outside. Parent Exh., p. 92. On student’s IEP dated May 5, 2022, the IEP team notes that Student “[e]xpresses some wants and needs through simple gestures or vocalizations other than crying,” and “[u]nderstands one or more simple signals presented tactually.” Parent Exh., p. 5.

Student’s attendance at school is frequently interrupted by medical appointments that are required due to her complex medical condition. Parent Exh., p. 41. District argues, however, that, despite missing sixty-two (62) days of school in kindergarten, Student made progress on all of

her goals in kindergarten and mastered some. District Post-Hearing Brief, p. 11; *See* Dist. Exh. 8, pp. 17-32.

**B. 2022-2023 School Year (July 1, 2022, to June 30, 2023) – First Grade**

Student's IEP Annual Review was conducted on May 5, 2022 (IEP dated 8/21/22 to 5/30/23). Parent Exh., pp.1-30. The IEP team also met on September 29, 2022 (Parent Exh., p. 35), and again on December 7, 2022, to review the results of Student's speech reevaluation (Parent Exh., p. 42). The IEP was amended to provide only 120 minutes per month of speech therapy services. There is no explanation either in the IEP or by the speech therapist as to why Student's speech therapy services were placed in the IEP at 120 minutes per month as opposed to the 180-210 minutes recommended by the speech therapist, discussed below, and the 210 minutes Student previously received. Parent Exh., p. 45-46; Tr. Vol. III, p. 191.

On November 8, 2022, Aimee Cloud, MS CCC-SLP, Speech-Language Pathologist for District, produced a report of her speech/language reevaluation of Student. Parent Exh., p. 265. The report states that Student's expressive language and receptive language skills are severely delayed, and recommends 180 to 210 minutes per month of speech-language therapy. Parent Exh., p. 269. In particular, the report identifies the following results of the evaluation:

- Receptive Language: [Student] is unable to understand basic concepts, comprehend words and attention commands ...unable to identify objects ... inconsistently responds to her name when it is called.
- Expressive Language: [Student] is a nonverbal communicator. Her quality of self-expression must be inferred through cries, gestures such as pushing something away or vocalizations of pleasure and displeasure.
- Pragmatic/Social Language: She is unable to initiate conversation, answer questions, and initiate topics. Id.

Parents assert that Student's IEP written for the first grade, dated 8/21/22 to 5/01/23, carries over the same goals as the previous IEP for kindergarten, and fails to address Student's need to learn a communication system. Parents Post-Hearing Brief, p. 5. The goals are not identical, however. For example, Student mastered objective 1 for her speech-language goal, so that was not included in the first grade IEP. On other goals, Student progressed but did not master them; those were updated to increase the progress percentages. Parent Exh., pp. 99-115. Student's physical, speech, and occupational therapists all testified that Student did make some progress, even the speech therapist who had Student for only four months. Tr. Vol. III, pp. 153 (Hart), 217 (Cloud), 229 (Moix).

Parents argue that none of Student's IEPs addressed Student's communication needs and specifically failed to address the use of assistive technology device. Parents Post-Hearing Brief, p. 6. Student's first grade speech therapist Cloud testified (and Parents counsel agreed) that there was a lot of work to do with Student before she was ready for an assistive technology device. Tr. Vol. III, p. 166. The kindergarten speech therapist also testified that sign language or an AAC device would have required Student to have more foundational skills, "pre-linguistic skills," than she had. Tr. Vol. III, p. 239. Compass Academy Director testified that she was not ready Vol. VI, p. 47.

### **Self-contained Classroom Environment**

Student was placed in a self-contained classroom which was staffed with one licensed special education teacher and two paraprofessionals for ten special education students. Student's first grade special education teacher, Ms. Burns, testified that of the ten students, two were girls (Student in first grade and the other in second grade), and eight were boys, three of whom were fourth grade level and "adult-sized," and five who were kindergarteners. Tr. Vol. I, pp. 21-24.

Seven of the ten students were nonverbal, eight were autistic, and all were intellectually impaired. Id. Three were on feeding tubes and four were not potty-trained. Id. Three students had “behavior problems,” and JQ, the boy who hit and kicked Student, had a behavior plan. Id., p. 31.

Burns testified that before becoming employed at District, she had fifteen years in education, eight of those in self-contained special education classrooms. Tr. Vol. I, pp. 16-17. The first time in her career that she had ten students in a self-contained classroom was at District. Other districts kept the number of students in a self-contained classroom to about six. Id., p. 120. Burns described her 1:10 classroom environment as “pure chaos.” Id., p. 171. Burns stated, “...we never really got past safety to get to the education... it's hard to educate a child when 100 percent of my brain power, all day, every day, is keeping everybody safe and calm and, you know, getting our basic needs met, is everybody changed, is everybody fed, ... do we have a high level of care. Id., p. 153.

Burns stated that she thought Student should have a one-on-one paraprofessional (Tr. Vol. I, pp. 58-59), yet Burns never requested one at an IEP meeting (Tr. Vol. I, p. 162). She described Student as being “very unsteady on her feet... she fell a lot.” Burns wanted Student to stay in her activity chair for safety. Tr. Vol. I, pp. 105-106.

Burns also testified that Student had been pushed or hurt at school multiple times. Tr. Vol. I, p. 109. She relayed that Student lacks personal safety awareness and has poor balance, which is why she wears a helmet on the playground. On one day, Student was not wearing the helmet during physical education and fell flat on her face on the gym floor. Id., p. 107-108. The accident report stated that she was taken to the nurse crying, and had a “golf-ball sized knot” in the center of her forehead, “with start of some bruising.” Tr. Vol. I, p. 224; Dist. Exh. 24, p. 2;

*See also* Parent Exh., pp. 517-523 for pictures. Burns stated that after that, she had Student wear the helmet indoors, not just on the playground, for her safety. Tr. Vol. I, p. 105.

The full-time classroom paraprofessional, Jalen Thomas, testified that JQ, one of the adult-sized fourth-grade boys in Student's self-contained classroom, "went for the more fragile kids," because he knew that would get a response. Tr. Vol. II, p. 160. He also stated that JQ "has days when he attacks [Student]." Tr. Vol. II, p. 161.

### **Incident of January 5, 2023**

Thomas testified that on the morning of January 5, 2023, JQ had a behavioral outburst in which he threw a chair across the room during circle time. Tr. Vol. II, p. 103. Burns confirmed that JQ threw the chair over the heads of children sitting in the circle. Tr. Vol. I, p. 120. When JQ was being removed from the classroom, he hit and kicked Burns, and cursed her. *Id.* Burns left the classroom and went home after that, leaving the classroom without a teacher or substitute. Tr. Vol. I, p. 123. Principal New testified that the district did not try to find a substitute, and instead "looked at options within the building." Tr. Vol. I, p. 217. Thomas testified that on that same morning, JQ hit Student twice, hard, in the face. Tr. Vol. II, p. 161. JQ was removed from class, but later that morning, Assistant Principal Coatney returned JQ to the classroom, as provided in JQ's behavior plan. Tr. Vol. II, p. 262. Soon after JQ came back to the classroom, between recess and lunch, JQ kicked Student "in the lower leg." Tr. Vol. II, pp. 161-162. There were no other witnesses to the incident other than Thomas, and it was not reported to the school nurse. As a result, the school nurse did not examine Student, and no one contacted Parents. Nurse Mandy did note that in the afternoon Student was pulling at her sleeve. She checked her arm for signs of a problem, but finding none, determined there was nothing wrong. Tr. Vol. III, p. 54. Nurse

Mandy testified that Thomas changed Student's diaper that afternoon (Tr. Vol. III, p. 52), so she did not see any bruising on her legs or crotch area (Tr. Vol. III, pp. 18-19).

When Student arrived home from school that afternoon, she behaved as though she was in pain, and upon inspection Parents saw bruising in Student's inner thigh, crotch, and private parts, and began to believe she had been sexually assaulted. Tr. Vol. V, pp. 180-181. Parents then took Student to Arkansas Children's Hospital ("ACH") where she was examined and told that ACH believed she was sexually abused. Id. While the examining doctor ultimately concluded that there was not a sexual assault, she confirmed that Student had suffered a "vaginal injury" and bruising on her right knee and left surface of the pubic bone. Parents Exh., pp. 489-494. A Conway Police Department investigation into the resulting child maltreatment hotline report found no there was no information that two staff members interviewed were perpetrators of possible sexual abuse. Tr. Vol. V, pp. 10, 30; Parent Exh., p. 484.

The remainder of the evidence of what happened to Student on January 5 lies primarily in the category of what did not happen. No one other than Thomas testified that they witnessed Student being punched in the face or kicked. Even Burns stated that "there is no way for me to ... tell you exactly who [JQ] hit" before she left the school that morning. Tr. Vol. I, p. 122. No one testified that they saw Student crying or in distress after being punched in the face or kicked. No one made a report to the nurse about Student being punched in the face or kicked. *See* Tr. Vol. III, p. 17. Nurse Mandy only noted that Student was pulling at her sleeve, and checked her arm for signs of a problem. School Principal Shanda New testified that her first discussion with Parents about the incident occurred by phone on February 2, 2024, almost one month later, at Parents' request. Tr. Vol. I, p. 190. No other District employee talked to Parents about Student being punched in the face or kicked. The IEP team did not discuss Student being punched in the

face or kicked on January 5, as Principal New told Mother that the IEP meeting “was not the appropriate forum for that.” Tr. Vol. I, p. 227.

### **2/2/23 IEP Amendment:**

On January 18, 2023, District received a letter from Dr. Eduardo Ochoa, Student’s complex medicine physician, recommending that Student receive homebound education for the remainder of the school year, due to her medical condition and “a recent traumatic incident.” Parent Exh., p. 47. On February 2, 2023, the IEP team met to discuss Dr. Ochoa’s recommendation for homebound placement, and amended the IEP to provide Student four hours per week (240 minutes) of specialized instruction “in the areas of Math, Reading, Literacy, Daily Living, and Adaptive Behavior (Parent Exh., p. 50), instead of the 1,600 minutes per week she had been receiving in the self-contained classroom (Parents Exh., p. 9). Arkansas Children’s Hospital was also represented at the meeting and requested, along with Mother, that the related services be provided privately. Tr. Vol. VI, p. 109. Therefore, the IEP no longer reflects any related services. Parent Exh., p. 50.

### **3/3/23 IEP Amendment**

On March 3, 2023, the IEP team met again to review Student’s homebound services. Parent Exh., p.58. The homebound teacher told the IEP team that "many of [Student]'s goals are difficult to achieve over a virtual format . . ." and that Student became fatigued after about 20 minutes of virtual instruction. Parent Exh., p. 50. Therefore, the IEP team amended the length of Student’s sessions to 45 minutes. Id. This further reduced Student's specialized instruction from 240 minutes per week to 180 minutes per week. Parent Exh., p. 60. As a result, the IEP provided less than seven percent of her previous special education services.

#### **4/24/23 IEP Annual Review**

At the annual review of Student's IEP conducted on April 24, 2023, the IEP team noted that the team would meet again in August to determine if student is able to return to in-person instruction (on campus) based on information from her doctor. Parent Exh., p. 75. If Student returned to in-person instruction, she would again be placed in a 1:10 classroom. Id.

#### **C. 2023-2024 School Year (July 1, 2023, to August 28, 2023) – Second Grade**

At the beginning of the second grade, Parents began the process of enrolling Student in Compass Academy, a private school. Until her acceptance at Compass, Parents re-enrolled Student in District for in-person instruction for the second grade, this time at Ellen Smith Elementary. Tr. Vol. V, pp. 201-202. Kelli Gordon, District's Special Education Director, testified that the 1:10 classroom at Ellen Smith Elementary had an experienced special education teacher and that the other students were "at a similar level of need" as Student. Tr. Vol. VI, p. 125. Mother brought Student's activity chair and some personal care items to the school. Tr. Vol. V, pp. 201-202. Student missed the first week of school at District due to an illness. Tr. Vol. V, p. 205. District received a notice from Student's doctor on August 30, 2023, asking that her absences for the first week be excused. Tr. Vol. V, pp. 203, 206; District Exh. 32. Mother testified that she did not tell anyone at District that Parents were in the process of trying to enroll Student at Compass. Tr. Vol. V, p. 203.

On August 28, 2023, before Student could return to school, Parents filed the Complaint for Due Process, giving District written notice of Parents' intent to enroll Student in Compass. Complaint, p. 11. On September 18, 2023, Parents enrolled Student in Compass. Parents Post-

Hearing Brief, p. 15. As of September 18, 2023, the IEP team had not met again to discuss Student's return to in-person instruction.

Courtney Williams, Director, Compass Academy, testified that Compass opened in 2015 as a school choice option for students with disabilities. Tr. Vol. VI, p. 39. After a three-day trial at the school, Compass moved Student to a five-student classroom where occupational, physical, speech, and ABA therapists push in to provide services. Id., p. 42. The classroom has one teacher and one paraprofessional, so a 2:5 ratio. Compass uses a buddy system at recess and encourages social interaction with her classmates and other children at the school. Id. pp. 46-47. Compass works with Parents to promote consistency with what the school does for Student. Id., pp. 48-49. Students are grouped by age and ability, not necessarily by grade. Id., p. 52. Students that are higher functioning are sometimes moved around to provide a peer model experience, so that students can engage with peers other than their non-verbal classmates. Id. Student's goals at Compass include feeding and toilet training, interaction with peers and adults, attention to task, increased safety awareness, and ultimately self-sufficiency and independence. Id., p. 58. Compass charges nine thousand five hundred dollars (\$9,500.00) for annual tuition, plus a one-time \$200 new student enrollment fee and a \$50 annual renewal fee. Id., p. 53. Parents may also apply for scholarships through the Department, which could potentially pay for all of Student's tuition, less the enrollment fee. Id.

## V. LAW AND DISCUSSION

The IDEA was enacted to ensure that all children with disabilities have available to them a free appropriate public education (a "FAPE") that emphasizes special education and related services designed to meet their unique needs....". 20 U.S.C. § 1400(d)(1)(A). A child is eligible

for special education and related services under the IDEA if: (a) the child has a disability; and (b) because of the disability needs special education and related services. Autism is among the disabilities contemplated by the IDEA (20 U.S.C. § 1401(3)), which defines it as:

...a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. 34 CFR 300.8(c)(1); 20 U.S.C. 1401(9).

The first obligation of a school district is to identify, locate, and evaluate children with disabilities or children who are reasonably suspected of having disabilities regardless of their severity. 20 U.S.C. § 1412(a)(3) (emphasis added); 34 C.F.R. § 300.111; Rules of the Arkansas Dept. of Education, Special Education and Related Services, 3.0 Child Find, 3.01.1. After determining that a child is eligible under the IDEA because the child has a disability and, by reason thereof, needs special education and related services (20 U.S.C. § 1401(a)(3)), a school district team of professionals will develop and implement an IEP for the child that meets the requirements of state and federal law and regulations.

### **A. Procedural Rights and Violations**

Throughout the process of evaluating the child, developing an IEP, and implementing the IEP, eligible children and their parents are afforded specific procedural rights under the IDEA. The basic procedural rights include: (1) the opportunity for parents to examine all records relating to their child; (2) the opportunity for parents to attend meetings regarding identification, evaluation, and educational placement of their child, and the provision of a FAPE; (3) the opportunity to obtain an independent educational evaluation; (4) prior written notice of proposals

or refusals to initiate a change in the identification, evaluation, and educational placement of their child; and (5) the opportunity to present and resolve complaints. 20 U.S.C. § 1415(b)-(e).

Procedural inadequacies are violations if they:

- impede the child's right to a FAPE;
- significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- cause a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

Parents did not raise any specific procedural violations in their due process complaint. It is, therefore, the conclusion of this Hearing Officer that District did not procedurally violate the IDEA.

## **B. Substantive Violations**

The failure of a school district to meet the requirements for a student's IEP is a substantive violation of the IDEA and a denial of FAPE. A district must develop a student's IEP pursuant to IDEA requirements, and be "reasonably calculated to enable the student to make appropriate progress in light of his specific circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197, L. Ed. 2d 335 (2017). The IDEA requires every IEP to include the following: (1) a statement of a student's present levels of academic achievement and functional performance; (2) a description of how a student's disability affects his or her involvement and progress in the general education curriculum; (3) annual goals that are measurable, as well as a description as to how progress toward stated goals will be measured; and (4) a description of special education and related services to be provided to student. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV).

Student's IEPs for the 2022-2023 school year and the 2023-2024 school year, before amending for homebound services, considered the 1:10 classroom environment with older, larger

students, some of whom had aggressive maladaptive behaviors as an appropriate placement for Student. Student had been pushed, hit, and kicked by other students in this environment. Student was not adequately supervised in physical education and suffered an injury to her head. Rather than have the IEP team assess Student's placement, District staff instead determined that Student should stay in her activity chair and wear a helmet indoors at all times. Ultimately, Student suffered a "traumatic incident" that resulted in her being a homebound student. District did not even communicate to Parents about the January 5, 2024, incident, leaving Student's non-English speaking Parents to find bruising in Student's private area and fearing the worst - that someone had sexually abused their non-verbal special needs daughter. In fact, District prevented Parents from even discussing their safety concerns with the IEP team.

At Parents' request and in accordance with Student's doctor, District began providing Student's services under the IEP to Student at home. It was not reasonable for the IEP team to expect that this nonverbal child, who had difficulty with eye contact and responding to adults in person, would receive meaningful educational benefit under her existing IEP for homebound, virtual educational services. Although Parents requested that homebound services be provided virtually, the IEP team is ultimately responsible for the development and implementation of an IEP that meets the requirements of the IDEA. If the District and Parents do not agree as to placement, District may also file a request for a due process hearing. 34 CFR § 300.507; Ark. Dep't of Education Rules, Special Education and Related Services (February 9, 2024), Section 10.03.1.

District did not amend Student's IEP in anticipation of her return to in-person instruction. District did advise Parent that, for the second grade, Student would be placed in a different school (Ellen Smith Elementary), in a 1:10 self-contained classroom, with students "at a similar

level of need” as Student. District states in its Post-Hearing Brief (p. 6) that the classroom had one teacher and three paraprofessionals, but this information is not in evidence. There is otherwise no evidence that the IEP team has taken or will take sufficient steps to ensure Student’s safety at school given her medically fragile condition. District did not offer any evidence that it intended anything other than to continue the first-grade practice of having Student stay in her activity chair and wear a helmet indoors at all times.

Therefore, this Hearing Officer finds that Student’s IEPs for the 2022-2023 and 2023-2024 school years did not meet the substantive requirements of the IDEA, leading to a denial of a FAPE for Student.

### **C. Unilateral Private School Placement by Parents**

The IDEA requires Parents to provide written notice of their intent to place a student in a private school at public expense at least ten (10) business days prior to removing the child from public school. 20 U.S.C. § 1412(a)(10)(C)(iii)(I)(bb). Here, Parents filed the Complaint on August 28, 2023, and enrolled Student in Compass Academy on September 18, 2023, giving District twenty-one days’ written notice.

### **D. Relief**

A student is entitled to compensatory education and services to remedy any educational or other deficits that result from the denial of FAPE. *See School Comm. of Burlington v. Department of Education*, 471 U.S. 359, 374, (1985); *Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489 (9th Cir. 1994) (ruling that “the hearing officer’s ability to award relief [is] coextensive with that of the court...”(citing *Cocores v. Portsmouth, NH, School Dist.*, 779 F. Supp. 203 (D. N.H. 1991))). Compensatory education awards “should aim to place disabled

children in the same position they would have occupied but for the school district's violations of IDEA." *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 518 (D.C. Cir. 2005).

The U.S. Supreme Court held that private school tuition reimbursement is an allowable remedy under the IDEA because "[r]eimbursement merely requires the [public agency] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP." *Burlington*, at 371. Following its decision in *Burlington*, the Court held in 2009 that private school tuition is an appropriate remedy, as long as the public agency violated the IDEA and the private school placement is proper under the Act. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 246 (2009).

As previously stated, this Hearing Officer finds that Parents have met the burden of proving that the public agency violated the IDEA and denied Student a FAPE by failing to develop IEPs for the 2022-2023 and 2023-2024 school years that meet the substantive requirements of the IDEA.

This Hearing Officer determines that Compass Academy is an appropriate placement for Student, given the severity of her special needs. Compass will provide a much smaller, and safer, classroom environment for learning and social interaction, with push-in services for occupational, physical, and speech therapies. Additionally, Compass communicates regularly with Parents and will be working with Parents to ensure consistency with school programming efforts at home. Parents have one or more scholarships available for tuition assistance, and District should pay the remainder of the cost of tuition and provide transportation or reimburse Parents for the cost of transportation they provide.

## **VI. ORDER**

Therefore, after the consideration of the evidence, testimony, and arguments of counsel, it is determined that District failed to provide Student a FAPE during the 2022-2023 and 2023-2024 school years, and that Compass Academy is an appropriate placement for Student. District is **ORDERED** to pay the balance of tuition, fees, and costs, after the deduction of any scholarship funds, and the cost of transportation to and from the school, for Student to attend Compass Academy from and after the date of Student's enrollment at Compass on September 18, 2023. Parents are **ORDERED** to cooperate with requests from District concerning the annual amount of scholarship funds that Parents receive.

**IT IS FURTHER ORDERED** that Parents' claims filed under Title II of the Americans with Disabilities Act, and § 504 of the Rehabilitation Act of 1973, and racial/national origin discrimination in violation of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d), are hereby **DISMISSED WITHOUT PREJUDICE**.

## **VII. FINALITY OF ORDER AND RIGHT TO APPEAL**

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's decision is filed with the Department. 34 C.F.R. §300.516.

Pursuant to Section 10.20.9, Ark. Dep't of Education Rules, Special Education and Related Services (February 9, 2024), the Hearing Officer has no further jurisdiction over the parties to the hearing.

**IT IS SO ORDERED.**

/s/ Cheryl L. Reinhart

**Cheryl L. Reinhart  
Hearing Officer**

**June 22, 2024**