

**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

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STUDENT<sup>1</sup>,

Student,

Case No: 2021-DP-0033

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

██████████ SD ██████,

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**BACKGROUND**

The Student is a 10-year-old, male who is a 5th grade student in a self-contained special education classroom in a district school. He qualifies for special education services under the disability categories of intellectual disability (ID) and autism (ASD) pursuant to an eligibility and IEP meeting held on November 15, 2019. The Student previously qualified for special education services under the disability category of intellectual disability (ID). Autism was added to his eligibility category after an independent evaluation procured by Parent was completed and provided to the District on October 30, 2019. The Student exhibits delays across academic areas,

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<sup>1</sup> Personal identification information is provided in Appendix A.

speech/communication, and functional performance. He requires related services in the areas of speech language, occupational therapy, and social work. The Student is currently attending the RISE program at a district school. The RISE program is a self-contained special education classroom designed to support students with moderate to severe disabilities. The program focuses on math, literacy, and life skills support.

Parent maintains the following: The District's January 10, 2020 IEP failed to provide a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) for the Student thus denying him a free appropriate public education. Parent also maintained that remote learning was the Student's stay put placement and requested an order for same. (IHO Exhibit #1.)

The Parent filed a due process hearing request on September 9, 2020. (IHO Exhibit #1.) The District filed its response to same on September 21, 2020. (IHO Exhibit #4.) The parties participated in mediation on October 23, 2020. However, they were unable to resolve the outstanding issues. (IHO Exhibit #10.) The Stay Put Placement issue was resolved pursuant to this Hearing Officer's Order dated November 4, 2020. (IHO Exhibit #7.)

The District requested a continuance of the 45-day deadline on October 28, 2020 to continue the prehearing conference in order to accommodate a date for same on which District counsel was available. That date was subsequently advanced. The requested continuance was granted for good cause shown pursuant to this Hearing Officer's order dated November 4, 2020. (IHO Exhibit #7.) The Prehearing Conference was completed on November 17<sup>th</sup> and the Due Process Hearing was set by agreement for December 11, 2020. The decision due date is set for December 28, 2020. (IHO Exhibit #7, 10.)

The Parent opted for a closed hearing. The Due Process Hearing was held on December 11, 2020. Parent, Ms. [REDACTED], represented herself *pro se*. Ms. [REDACTED] of [REDACTED] represented the District. The parties presented their individual witnesses and several joint witnesses.<sup>2</sup> The Parent did not present any exhibits and none were admitted into evidence. The District presented the following Exhibits (SD): #1-16, 18-42 which were admitted into evidence. There were no Joint Exhibits presented. The Hearing Officer's Exhibits were: IHO Exhibits # 1-26. Parent submitted an oral closing statement and email thereof. Parent did not provide any caselaw or citations to same to support her position. The District submitted an oral closing statement, a written outline thereof, and provided citations to the case law relied upon.

### **ISSUES**

The issue raised by the Parent, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

(a) Whether the Student was denied FAPE when the January 10, 2020 IEP did not provide for a functional behavior assessment (FBA) and behavior intervention plan (BIP).

Parent maintains that the Student requires a functional behavior assessment and behavior intervention plan and ABA services in order to access the curriculum and receive a FAPE.

The District maintains that at all times in question the Student was provided a FAPE and that an FBA and BIP were not necessary to address the Student's unique educational needs given his current educational placement in a highly-structured self-contained classroom with behavioral supports as the current IEP and placement meet the Student's educational needs and allow him to make academic progress given those needs.

Parent requests the following relief:

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<sup>2</sup> Witnesses presented by both parties are identified in Appendix A.

- a. Order the District to conduct a functional behavior assessment (FBA) and draft a Behavior Intervention Plan (BIP) as needed;
- b. Order the District to retain a BCBA to conduct said functional behavior assessment (FBA);
- c. Provide compensatory education services in the form of private ABA services to compensate the Student for the period October 28, 2019 to the present.

### **FINDINGS OF FACT**

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 10-year-old male who is currently a 5th grade student at a District school. He qualifies for special education services under the disability categories of intellectual disability (ID) and autism (ASD) pursuant to eligibility and IEP meetings on November 15, 2019 and January 10, 2020. (Testimony of LEA1<sup>3</sup>, LEA2<sup>4</sup>; SD # 3-10, 12-13.) He exhibits delays across academic areas, speech/communication, and functional performance. The Student also requires related services in the areas of speech language, occupational therapy, and social work. (Testimony of LEA1, LEA2, SW<sup>5</sup>, SPED<sup>6</sup>, PSY<sup>7</sup>; SD #3-10, 12-13.)

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<sup>3</sup> LEA1 is the Assistant Director for Student Services. In that capacity, she supports special education programming across the District. She has been employed by the District for 25 years. She holds a Bachelor's Degree in Psychology and Master's Degrees in Clinical Psychology and School Leadership. She is an Illinois licensed school psychologist and holds a K-12 general administrative license. (Testimony of LEA1; SD #41.)

<sup>4</sup> LEA2 is the Assistant Principal at [REDACTED] Arts. She holds a Bachelor's Degree in English and Secondary Education and Master's Degrees in Urban Education and Educational Leadership. (Testimony of LEA2; SD# 42.)

<sup>5</sup> SW is the school social worker. She has been employed by the District for 4 years. She holds a Bachelor's Degree in psychology and a Master's Degree in school social work. She holds MSW and LCSW credentials. She was

2. The Student has been enrolled in and regularly attending the RISE program at a District school for the last and current school years, school years 2019-2020 and 2020-2021.

(Testimony of SPED; SD # 1, 5, 7, 9, 12-13.)

3. The RISE program is a self-contained, highly structured special education program for students with moderate to severe disabilities. It provides a high teacher to student ratio, modified curriculum focusing on math, literacy, and life skills. It is the most supportive special education program the District offers providing both academic and behavioral supports. The program provides interaction with general education peers for social emotional learning, fine arts, and lunch/recess. (Testimony of SPED, LEA1, LEA2, SW, PSY, BCBA<sup>8</sup>.)

4. The RISE program utilizes Applied Behavior Analytics (ABA) strategies and interventions built into the curriculum including: a visual or picture schedule; a token economy; positive reinforcement; use of timers to alert students in advance to transitions in instruction; break down of tasks; structured teaching; modeling; planned ignoring of unwanted behavior; use of the Zones of Regulation; movement and sensory breaks. (Testimony of SPED, PSY, BCBA, SW; SD#3-10, 12-16, 20-23, 24-30.)

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previously employed by Applied Behavior Consulting providing ABA programming to children with autism. (Testimony of SW; SD# 38.)

<sup>6</sup> SPED is the Student's special education teacher in the RISE program. She was his special education teacher as a 4<sup>th</sup> grader and is now his teacher in 5<sup>th</sup> grade. She has been employed by the District for 17 years. She previously taught at a therapeutic day school in another district working with students with severe physical, intellectual, and emotional disabilities. She holds a Bachelor's Degree in communication and business and a Master's Degree in education. She holds an LBS1 license and has received rigorous training in picture exchange communication for students with autism. She has also received TEACH training through Have Dreams which is training in structured teaching for students with autism. (Testimony of SPED.)

<sup>7</sup> PSY is the school psychologist. She is nationally licensed as a school psychologist. She holds a Bachelor's Degree in psychology and a Master's Degree in school psychology. Prior to her employment with the District, she was employed as a Behavioral Therapist working with non-verbal children with autism. (Testimony of PSY; SD# 39.)

<sup>8</sup> BCBA is a Board Certified Behavior Analyst. She is employed by the District as a school psychologist and has been so employed for 13 years. She holds a Bachelor's Degree in special education and child development and Master's Degrees in educational psychology and school psychology. She is also a licensed LBS1. (Testimony of BCBA; SD#40.)

5. These ABA strategies and interventions have been and continue to be provided to the Student during both in person and remote instruction.<sup>9</sup> (Testimony of SPED, PSY, BCBA, SW; SD# 3-10, 12-13, 16, 20-23, 27, 29, 30.)

6. The purpose of a Functional Behavior Assessment (FBA) in the school setting is to assess the antecedents, behavior, and consequences of an identified maladaptive or problematic behavior that is impeding the Student's learning or that of others. (Testimony of LEA1, PSY, SW, BCBA.)

7. In October 2019, the District and Parent agreed to engage an outside provider to conduct a neuropsychological evaluation of the Student. (Testimony of LEA1; SD# 2, 31.)

8. The District IEP team met to review the outside neuropsychological evaluation on November 1<sup>st</sup> and 15<sup>th</sup> 2019 and January 10, 2020. Based upon the neuropsychological evaluation, the IEP team revised the Student's eligibility categories to include Autism, along with the existing disability category of Intellectual Disability. Parent was accompanied and assisted by an educational advocate at these meetings. (Testimony of LEA1, SPED, SW, PSY; SD# 2-9, 11.)

9. At the November 15, 2019 IEP meeting, the IEP team reviewed the recommendations of Dr. S, the outside evaluator, which included the recommendation for disability categories of ASD and ID; individual and small group speech language therapy to develop expressive, receptive, and pragmatic language skills; occupational therapy to assist with motor development and to identify if the Student would benefit from a sensory diet; individual and small group social work support; and resource support for the academic areas of reading, mathematics and written expression. These recommendations were incorporated into the Student's eligibility

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<sup>9</sup> Due to the COVID 19 pandemic, the District is providing remote instruction when in-person attendance is not possible.

determination and IEP, via goals and accommodations, by the team. (Testimony of LEA1, SPED, PSY, SW; SD# 2-13.)

10. Dr. S recommended that the Student would benefit from Applied Behavior Analysis (ABA) therapy to help develop strategies to better deal with self and behavioral regulation. This recommendation was for ABA therapy outside of the school setting as it was clearly separated in the report from the school-based recommendations. (Testimony of SW, PSY, BCBA; SD# 2.)

11. ABA strategies and interventions are built into the RISE program curriculum and said interventions are incorporated into the Student's IEPs through goals and accommodations. (Testimony of SPED, PSY, SW, BCBA; SD #3-10, 12-13.)

12. The Student attends school, participates, and responds well to the ABA interventions in both the in person and remote learning environments. If an issue arises, he is easily redirected and he is highly motivated to earn and receive points via the token economy supports used during both in person and remote learning. (Testimony of SPED, SW; SD# 29.)

13. At each of the IEP meetings in question, the IEP team reviewed the Student's behavior and determined that his behavior did not impede his learning or that of others. (Testimony of SPED, LEA1, LEA2, SW, PSY, BCBA; SD# 2-13, 28, 30.)

14. The District tracks behavioral and disciplinary incidents through a software program called Branching Minds. Said report reflects that the Student did not have any behavioral or disciplinary incidents during the 2019-2020 or to date in the 2020-2021 school years. (Testimony of SPED, LEA2; SD# 28.)

15. No testimony was presented at hearing regarding any maladaptive or problematic behaviors exhibited by the Student. (Testimony of SPED, PSY, SW, BCBA, LEA1, LEA1, MM; SD# 28.)

16. The Student's IEPs dated November 1, 2019, November 15, 2019, January 10, 2020, November 12, 2020 and Individual Remote Learning Plans (IRLPs) dated April 15, 2020, September 29, 2020 and October 15, 2020 contain goals for the Student in the areas of phonics and word recognition, reading comprehension, math, occupational therapy, speech language/communication, adaptive physical education, and social work. The goals were derived based upon the Student's present levels of performance. Related services in the areas of need are being provided including speech language, occupational therapy, and social work services. The Student's progress toward his goals is tracked by SPED, SW and his other teachers and service providers. SPED collects data on the Student's progress and functioning. She charts goals and benchmarks and tracks same with tally marks, review of Student work product, assessments and data check points. (Testimony of SPED, SW, PSY, LEA1, LEA2; SD# 14-15, 24-27, 29-30.)

17. The Student is making sufficient progress toward meeting all of his goals. The RISE program and its supports are meeting the Student's educational needs and allowing him to make progress toward his goals. (Testimony of SPED, SW, PSY, LEA1, LEA2; SD# 14-15, 24-30.)

18. The testimony of SPED, PSY, SW, BCBA, LEA1 and LEA2 was uncontroverted by the Parent at hearing.

19. Special education teachers, school social workers, and school psychologists are all trained and qualified to collect data and perform a Functional Behavior Assessment (FBA). (Testimony of BCBA.)

20. While Parent repeatedly requested that a Functional Behavior Assessment (FBA) be conducted and a Behavior Intervention Plan (BIP) be implemented, the hearing record is completely devoid of any evidence of maladaptive or problematic behaviors by the Student in the school setting. Further Parent and her educational advocate agreed, after extensive discussion

and consideration of the outside evaluation report, at the November 15, 2019 IEP meeting, that the Student's behavioral needs could be appropriately met via the accommodations contained in the IEP. (Testimony of SPED, SW, PSY, LEA1; SD# 7-9, 31-37.)

21. In response to Parent's repeated requests, PSY observed the Student on three separate dates in November 2020 during remote learning in speech, occupational therapy, social work, and reading. During those observations, PSY observed the Student's behavior and tracked the Student's progress toward his IEP and IRLP goals and benchmarks. The Student responded well to the structure and supports in place, engaged in the tasks at hand, was making expected progress toward his IEP goals, and no behavioral difficulties were noted. (Testimony of PSY, SPED, SW; SD# 30.)

22. In response to Parent's repeated requests, LEA2 reached out to the Student's current and prior school year teachers, paraprofessionals, and service providers; reviewed the Branching Minds system for behavior and disciplinary information; obtained and reviewed both qualitative and quantitative data from those sources and determined that no behavior problems were noted. The Student exhibited exemplary behavior in class and his IEP and IRLP were appropriate and continued to meet the Student's needs. (Testimony of LEA2, SPED, SW, PSY; SD#1-16, 18-37.)

23. This Hearing Officer finds the testimony of SPED, PSY, SW, BCBA, LEA1 and LEA2 to be credible and persuasive. The testimony was consistent among all these individuals and was uncontroverted. Based upon their respective educational backgrounds, experience, and detailed, consistent testimony, this Hearing Officer finds that the Student did not have any maladaptive or problematic behaviors that impeded his learning or that of others.

24. During the hearing, Parent called MM, a Board Certified Behavior Analyst (BCBA) to testify. When this Hearing Officer asked MM what she understood the Student’s problematic or maladaptive behaviors to be, Parent immediately terminated the testimony of MM and did not allow her to respond to the question. (Testimony of MM.)

25. No testimony was presented by Parent at hearing related to her compensatory education claims. (Testimony of MM.)

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments of Parents’ counsel and District counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

#### **Free Appropriate Public Education (FAPE)**

The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent's child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent does not allege any procedural violations of the IDEA. While during the course of these proceedings Parent alleged that she was impeded in her presentation of evidence and denied the ability to introduce certain records at hearing, same were not specifically identified and were not disclosed to the District prior to hearing. This was after extensive discussions during Status Conferences and at the Prehearing Conference regarding the IDEA five (5) day disclosure requirement and after same was clearly memorialized in multiple orders issued by this Hearing Officer. Further, while Parent alleged that records she sought were not provided by the District, Parent could never specify which records were absent and how same related to the issues before this Hearing Officer. However, both Parent and District counsel agreed that Student records related to an FBA and a BIP did not exist as the District IEP team determined that an FBA and a BIP were not necessary in order for this Student to progress in the educational setting given his unique educational needs. That was the only issue certified by this Hearing Officer for the Due Process Hearing. (IHO Exhibits # 6, 10, 15, 17, 22.)

Therefore, the inquiry turns to the District's substantive obligations. "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. See *Andrew F.*, 137 S. Ct. 988, 999. The IEP "must respond to all significant facets of the student's disability, both academic and behavioral." *Alex R., ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 613

(7<sup>th</sup> Cir. 2004) (*citing CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8<sup>th</sup> Cir. 2003)). The IEP team is required to assess whether the student’s disability-related “behavior impedes his or her learning or that of others” in the classroom. 20 U.S.C. 1414(d)(3)(B)(i); *Id.* at 613. The child’s circumstances are described by such information and drive the educational planning.

The IDEA provides a specific framework for Individualized Education Programs (IEPs), composition of the IEP team, and development of the IEP among other things. See 34 C.F.R. §§300.320-300.325. Under IDEA, an IEP must include “(1) a statement of the child’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum” and “(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. 300.320(a). “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . . The instruction offered must be ‘*pecially designed*’ to meet a child’s ‘*unique needs*’ through an *individualized* education program.” *Andrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Rowley at 3042*. The statute guarantees an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Tucker v. Bay*

*Shore Union Fee Sch. Dist.*, 8873 F.2d at 567; *see also Carlisle Area School v. Scott P.*, 62 F.3d at 533-34. “The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child.” *Rowley* at 207. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297.

The testimony and documentary evidence presented at hearing illustrate that the Student’s unique educational needs have been identified and that IEPs and IRLPs have been created and implemented to meet those needs. The Student’s IEPs dated November 1, 2019, November 15, 2019, January 10, 2020, November 12, 2020 and Individual Remote Learning Plans (IRLPs) dated April 15, 2020, September 29, 2020 and October 15, 2020 contain goals for the Student in the areas of phonics and word recognition, reading comprehension, math, occupational therapy, speech language/communication, adaptive physical education, and social work. The goals were derived based upon the Student’s present levels of performance. Related services in the areas of need are being provided including speech language, occupational therapy, and social work services. The Student’s progress toward his goals is tracked regularly by SPED, SW and his other teachers and service providers. (FF# 16.) The Student is making sufficient progress toward meeting all of his goals. The RISE program and its supports are meeting the Student’s educational needs and allowing him to make progress toward his goals. (FF# 17.) This is uncontroverted by Parent. (FF# 18.)

The IEP team is not obligated to adopt the IEE evaluator’s recommendations or conclusions. *T.S. v. Bd. of Ed. Of the Town of Ridgefield*, 20 IDELR 889 (2<sup>nd</sup>. Cir. 1993); *G.D. v.*

*Westmoreland Sch. Dist.*, 17 IDELR 751 (1st Cir 1991). However, in the instant matter, the IEP team carefully reviewed the IEE evaluation's recommendations on three separate occasions. (FF# 8.) All of the school-based recommendations were incorporated into the Student's IEPs at issue via either IEP goals, related services or accommodations. (FF#8-11.) The testimony and documentary evidence on this point was undisputed by Parent. (FF# 18.)

The IEP must include certain information: present levels of performance; measurable annual goals, including academic and functional goals; the goals must meet the child's needs and allow him to progress; it must confer educational benefit; the progress contemplated must be appropriate in light of the child's circumstances. The testimony and documentary evidence presented at hearing was overwhelming and undisputed by Parent. Based upon same, this Hearing Officer finds that at all times in question, the District provided the Student with an IEP reasonably calculated to enable the Student to make progress in light of his circumstances and has thus met its obligation to provide the Student with a FAPE.

### **Functional Behavior Assessment (FBA) & Behavior Intervention Plan (BIP)**

FBA's and BIP's are not required components of the IEP. 34 C.F.R. 300.320, 71 Fed. Reg. 46,629 (2006). In developing an IEP, the IDEA requires that IEP teams address behavior management whenever a student's behavior is interfering with the child's ability to benefit from his educational programming. Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning or that of others." 34 C.F.R. §300.324(a)(2)(i). While an FBA may help the IEP team address behavioral issues, the IDEA does not require the IEP team to conduct an FBA in order to meet this requirement. 71 Fed. Reg. 46,683 (2006). The mere fact that an FBA could maximize a child's educational benefits does

not mean that an FBA is required for a student to receive FAPE. *See, e.g., Coleman v. Pottstown Sch. Dist.*, 62 IDELR 105 (E.D. Pa 2013). “The district’s strategy for dealing with [the student’s] problematic behavior “is precisely the type of issue upon which the IDEA requires deference to the expertise of the administrative officers.” *T.M. on behalf of T.M. v. Quakertown Cmty. Sch. Dist.*, 251 F. Supp. 3d 792, 803-807 (E.D. Pa. 2017).

The testimony and documentary presented at hearing illustrates that the Student’s educational programming in the RISE program provided both academic and behavioral supports designed to meet his unique educational needs. (FF# 2-5, 11-12.) The District carefully monitored the Student’s academic and behavioral progress. (FF# 13-17.) The Student’s behavior in the educational setting was reviewed and discussed at all of the IEP meetings held during the time period in question and the IEP team repeatedly determined that the Student did not exhibit any maladaptive or problematic behaviors that impeded his learning or that of others. (FF# 13-15.) The Student responded well to the ABA supports embedded in the RISE program. (FF# 11-12.) Further, in response to Parent’s multiple unsubstantiated requests for an FBA and a BIP, the District undertook further review of the Student’s behaviors on several additional occasions and reached the same conclusion. (FF# 21-23.) This was uncontroverted by Parent at hearing. (FF# 18, 20.) Throughout the course of these proceedings, Parent has not been able to articulate what she believes the Student’s problematic behaviors to be. During hearing, when Parent called MM to testify, this Hearing Officer asked MM what she understood the Student’s problematic behaviors to be. Parent immediately terminated the questioning of MM and did not allow her to respond to this IHO’s query. (FF# 24.)

Based upon the testimony and documentary evidence presented at hearing, it is clear that the behavioral support, including ABA strategies and interventions, embedded in the Student’s

RISE program and contained within his IEPs in the goals, related services, and accommodations, was specially designed to meet his unique educational needs and allow him to make educational progress. There was no need for a Functional Behavior Assessment (FBA) or a Behavior Intervention Plan (BIP). SPED tracked the Student's academic and behavioral progress routinely in her classroom, either in person or via remote learning, and PSY conducted additional observations of the Student in November 2020, confirming the IEP team conclusion that an FBA and BIP were not warranted.

The IDEA does not specify who is qualified to conduct FBAs. States or even districts must determine who conducts the assessments. In Letter to Janssen, 51 IDELR 253 (OSERS 2008), the Office of Special Education and Rehabilitative Services stated that there is no requirement that a BCBA, or any other specified individual, conduct an FBA. "The IDEA ... does not require special education service providers to have every conceivable credential relevant to every child's disability." *T.W. v. Unified School Dist. No. 259, Wichita, Kan.*, 136 Fed. Appx. 122, \*129 (2005) (citing *Hartmann ex rel. Hartmann v. Loudoun County Bd. of Educ.*, 188 F.3d 996, 1004 (4<sup>th</sup> Cir. 1997)). SPED, SW, and PSY are all qualified to conduct an FBA. Even in the absence of a need for same, they conducted ongoing progress monitoring and observations of the Student. (FF# 18-19, 21-23.) As the testimony overwhelmingly confirms, the Student did not display any maladaptive or problematic behaviors which would warrant an FBA or a BIP and an outside BCBA was certainly not needed to provide same. Especially when there were several District employees who were qualified in that capacity and who were in fact BCBA's.

As no evidence was presented to support Parent's contentions that (1) FAPE was denied due to lack of a FBA and BIP and (2) ABA services beyond those embedded in the Student's

RISE program were required to provide same (FF# 20, 23-25), there is no basis for this Hearing Officer to award compensatory education. It is the finding of this Hearing Officer that, at all times in question, the District provided the Student with a free and appropriate public education (FAPE).

### **CONCLUSION**

Based upon the Findings of Fact and Conclusions of Law, it is the determination of this Hearing Officer that, at all times in question, the District provided the Student with a FAPE. Parent's assertions to the contrary are unsupported by the evidence and Parent's requested relief is hereby denied.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Parent's requested relief is denied and the complaint is dismissed with prejudice.

### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may 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 one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: December 23, 2020

/s/: Janet K. Maxwell-Wickett\_\_\_\_\_

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

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**APPENDIX A**

[REDACTED] v. [REDACTED] SD [REDACTED]  
Case No: 2021-DP-0031

Child	[REDACTED]
Attending School	[REDACTED] School ([REDACTED] Arts)
District School	[REDACTED] School ([REDACTED] Arts)
Child's Parent/Petitioner	[REDACTED] (Parent/Mother)
<b>Parent Witnesses:</b>	
BCBA	[REDACTED] (MM)
<b>District Representative:</b>	Dr. [REDACTED]
<b>District Witnesses:</b>	
School Social Worker	[REDACTED] (SW)
School Psychologist/BCBA	[REDACTED] (BCBA)
School Psychologist	[REDACTED] (PSY)
<b>Joint Witnesses:</b>	
Assistance Principal/LEA	[REDACTED] (LEA 2)
Assistant Director of Student Services/LEA	[REDACTED] (LEA 1)
Special Education Teacher	[REDACTED] (SPED)