

**KENTUCKY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND EARLY LEARNING**

STUDENT¹,

Student,

Case No: 2425-21

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

██████████ District,

School District.

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.*, the Kentucky Revised Statutes, KRS Chapter 13B, and the Kentucky Administrative Regulations, 707 KAR 1:290 *et seq.*

BACKGROUND

The Student is a 16-year-old, female high school student at a District high school. She qualifies for special education services under the disability category of Functional Mental Disability. She is diagnosed with Autism Spectrum Disorder (ASD), intellectual disability, intermittent explosive disorder, and Fragile X. The Student is non-verbal with developmental and behavioral impairments.

Parents maintain that the District violated the mandates of the IDEA and the Kentucky Administrative Regulations when it determined that the Student was not eligible for Extended

¹ Personal identification information is provided in Appendix A.

School Year (ESY) services for Summer 2025 thus denying her a free and appropriate public education (FAPE). (IHO Exhibit #1, 8.)

Parents, through legal counsel, filed a due process hearing request on April 21, 2025. (IHO Exhibit #1-2.) The District filed its response to the due process hearing request on April 26, 2025. (IHO Exhibit #3.) The parties participated in a resolution session on May 5, 2025; however, they were unable to resolve the outstanding issues in this matter. (IHO Exhibit #8.) The Prehearing Conference commenced and was completed on May 29, 2025. (IHO Exhibit #8.)

The original 45-day timeline expires on July 5, 2025. The Due Process Hearing was set by agreement for June 18-19, 2025, and was completed on those dates. (IHO Exhibit #8, 19-22.)

The Parents opted for a closed hearing. The Due Process Hearing was held on June 18-19, 2025, via Zoom video conference. [REDACTED] Esq. represented Parents.

[REDACTED]

[REDACTED] represented the District. The Parents presented four individual witnesses.² The District presented four individual witnesses.³ Parents presented the following Parent Exhibits (PE) # 1, 3-16, 33-36 which were admitted into evidence. The School District presented the following District Exhibits (SD) # 1-5, 7-12, 14-15, 17, 19-20, 23-26 which were admitted into evidence. Parent Exhibits PE # 28-29 were not admitted into evidence, over Parents' objection, as no witness presented or testified to the contents of those two exhibits. The Hearing Officer's Exhibits are: IHO Exhibits # 1-24. Both parties submitted oral closing statements and a written outline thereof and provided citations to any case law relied upon.

² The Student also appeared briefly on the Zoom video conference to meet this Hearing Officer. She did not testify at hearing and is not included as a witness in this proceeding.

³ Witnesses presented by both parties are identified in Appendix A.

ISSUE

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

(a) Whether the District denied the Student a free and appropriate public education (FAPE) when it determined that she was not eligible for Extended School Year (ESY) services for Summer 2025.

Parents maintain that the Student qualifies for Extended School Year (ESY) services for Summer 2025 due to signification regression in behaviors targeted and addressed via her IEP goals and the District's determination that she was ineligible for ESY services resulted in a denial of FAPE to the Student.

The District maintains that, at all times at issue, it provided with Student with a free and appropriate public education (FAPE). Specifically, it considered the Student's eligibility for ESY and found her ineligible for same.

Parents request the following relief:

- a. Order the District to provide the Student with twenty-seven (27) instructional days of Extended School Year (ESY) services that mirror the services she is currently being provided in Summer 2025, as compensatory education (resulting from an agreement in a prior due process proceeding that was settled by the parties).

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard on June 18-19, 2025, when writing this decision⁴. Therefore, the following is based upon this Hearing Officer's personal notes 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 Parents' counsel and District counsel, this Hearing Officer's Findings of Fact are as follows:

⁴ Counsel for both parties and this IHO agreed that time is of the essence for the decision in this matter and therefore, this IHO would not wait for the transcript to prepare this Final Determination & Order.

1. The Student is a 16-year-old female who recently completed her freshman year of high school at a District high school. She qualifies for special education and related services under the disability category of Functional Mental Disability. She is diagnosed with Autism Spectrum Disorder (ASD), intellectual disability (ID), intermittent explosive disorder, and Fragile X. The Student is non-verbal with developmental and behavioral impairments. (Testimony of Dr. ■⁵, Father, Mother, BS⁶, LBD⁷, DSPED⁸, SPED1⁹, SPED2¹⁰; PE # 1, 6-14, 33-35; SD # 1-2, 5, 8-9, 11-12, 14-15.)
2. The Student is funny, bubbly, loves music of all kinds, and enjoys family. She experiences sensory overload which leads to intense behaviors. (Testimony of BS.)
3. Most impairing to the Student on a daily basis is her behavioral disorder combined with her intellectual disability. The Student's behavioral difficulties are the most significant impediment to her ability to learn. The Student is the most impaired female Fragile X patient Dr. ■ has treated in his twenty years of practice. (Testimony of Dr. ■, BS; PE # 1, 5-14.)

⁵ Dr. ■ is the Director of the Fragile X Program at ■ Hospital and is the Student's treating physician. Dr. ■ is considered to be one of the foremost experts in Fragile X. The Student has been treated by Dr. ■ for approximately the past six (6) years. The Student's treatment is functionally focused including medication management for interfering behavior and mental health and behavioral therapy focused on social and behavioral skills. Dr. ■ is qualified as an expert in Fragile X. (Testimony of Dr. ■ PE # 4.)

⁶ BS is an outside behavioral specialist who provides individualized behavioral supports to the Student and her family either on a consult basis or in the community. She holds a master's degree in special education for students with moderate to severe disabilities. She holds a degree in Applied Behavior Analysis (ABA) from ■. She was previously the Student's classroom teacher from 2018-2021 and has known the Student and her family since that time. (Testimony of BS; PE # 15.)

⁷ LBD is related to the Student. She is employed as a special education teacher at a ■ school. She holds a master's degree in special education. (Testimony of LBD; PE # 16.)

⁸ DSPED is the District Director of Diverse Learning and Special Education. She has been employed by the District in this capacity for the last six (6) years. Prior to this position, she was a special education teacher in the District. DSPED holds a master's degree in special education – learning and behavior disorders and an Education Specialist (EdS) degree. (Testimony of DSPED.)

⁹ SPED1 is a District special education teacher. She is certified to teach Learning and Behavior Disorders K-12 students. She was the Student's special education teacher during the 2023-2024 school year. She has been employed as a special education teacher for the past twenty-two (22) years. (Testimony of SPED1.)

¹⁰ SPED2 is employed as a special education teacher for students with moderate to severe disabilities at the District high school. She worked with the Student as her primary teacher and case manager during the 2024-2025 school year. SPED2 holds a master's degree in special education – Learning and Behavior Disorders for students with moderate to severe disabilities. (Testimony of SPED2.)

4. The Student struggles with communication, hypersensitivity, mood and anxiety (extended periods of crying/highly anxious and on edge), eating of non-food items. (Testimony of Dr. ■, Father, BS, LBD, SPED1, SPED2; PE #1, 5-14.)
5. The Student is nonverbal. She communicates with picture exchange and adaptive supports. She can learn and her receptive communication is better than her expressive communication. She can understand and act. She requires practice and consistent repetition to learn new skills. If she has a lapse in reinforcement of a skill, retention of that skill is more challenging. She requires consistent reinforcement to gain new skills and maintain those skills. She requires consistent learning of communication and adaptive behavioral skills to stabilize her behavior and allow for progress. (Testimony of Dr. ■ PE # 1, 5-14.)
6. Without a consistent, structured schedule, the Student regresses in her communication and behavioral skills. (Testimony of Dr. ■, BS, Mother, Father; PE # 1, 3, 5-14.)
7. The Student has a history of hospitalizations that follow her absence from school during summer breaks. She has been hospitalized five (5) times as a result of self-injurious and aggressive behaviors over the summer months (in 2020, 2022, 2023, and 2024). Her most recent hospitalization was in Fall 2024. (Testimony of Dr. ■ Father, BS, LBD; PE #1, 5-14.)
8. The Student's IEP provides goals that address the areas of functional communication, behavioral skills, vocational task completion, and feeding. (Testimony of Dr. ■ SPED1, SPED2; SD # 2, 9, 12, 15.)
9. During her inpatient hospitalizations, Dr. ■ clinical team works with the Student on the same skills as those targeted by her IEP goals – functional communication, activities of daily living (ADLs), feeding, self-care, and addressing her interfering behavior. They develop and teach

replacement behaviors and redirect the Student to address her interfering behaviors. (Testimony of Dr. ■ PE # 1, 3, 6-12.)

10. During the 2023-2024 and 2024-2025 school years, the Student did not master her IEP goals. She made no progress toward her IEP goals during that period. (Testimony of SPED1, SPED2, DSPED; SD # 7, 10, 17, 20.)

11. An extended break of more than two weeks over the summer months causes significant communication and behavioral regression for this Student. The regression she experiences is beyond that of the average student due to her low intellectual functioning combined with her significant behavioral challenges. The Student has a longer than average recoupment time for lost skills due to her significant intellectual disability and behavior challenges. It takes significant, consistent interventions for the Student to display behavioral improvements. The Student is capable of progress however, progress will be inconsistent, will fluctuate, and the Student will experience setbacks related to her disability. (Testimony of Dr. ■ PE # 1, 3, 6-12.)

12. The average non-disabled general education student requires six to eight weeks of instruction to recoup skills lost over summer breaks. (Testimony of DSPED, SPED1, SPED2.)

13. The Student does not receive extended school year services from the District. The IEP team determined that she is not eligible for same due to a lack of skill regression over the summer months. (Testimony of DSPED, SPED1, SPED2; SD # 2, 9, 12, 15.)

14. At the ARC meeting held on April 14, 2025, the IEP team considered ESY services for the Student at the request of Parents' counsel and determined that she was not eligible for same. ESY services for this Student were not discussed or considered at any other ARC meetings held during the 2023-2024 and 2024-2025 school years. (Testimony of Mother, Father, DSPED; SD #1-2, 5, 8-9, 11-12, 14-15; PE # 34.)

15. The Student does not benefit from virtual or home-based educational instruction due to her disabilities. She requires a highly structured educational/school setting, five days per week for the longest period she can tolerate (working up to a full, traditional school day), routine, and consistent repetition and reinforcement of the skills addressed by her IEP goals and Behavior Intervention Plan (BIP) including functional communication, adaptive behavior, and self-care skills. (Testimony of Dr. ■; PE #1, 3, 5-12.)

16. The District developed a Behavior Intervention Plan (BIP) for the Student on May 5, 2025, and began the implementation of same prior to summer break. (Testimony of Dr. ■; PE # 33-36.)

17. For Summer 2025, the Student is receiving educational services from the District as compensatory education (resulting from the settlement of a separate due process hearing matter) as follows: Twenty (20) instructional days, for four (4) hours each day from 8:00 a.m. to 12:00 p.m., including transportation between the Student's home and school. The instruction is scheduled to occur during the first two weeks and last two weeks of the District summer break. The Student received the first two weeks of instruction during which SPED2 worked with the Student on her IEP goals at the District high school the Student regularly attends. There is a gap in services to the Student from June 11 through July 20th; a total of twenty-seven (27) possible instructional days. (Testimony of DSPED; SD #19, 24-26.)

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). 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 decision-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, Parents’ due process complaint notice does not allege any procedural violations of the IDEA.

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.); *Deal v. Hamilton County Board of Ed.*, 392 F3d. 341 (6th Cir. 2004).

“[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 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an

individualized education program.” *Endrew 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 IEP is the “centerpiece” of the IDEA. The IEP is constructed only after careful consideration of the child’s present levels of performance of achievement, disability, and potential for growth. For a child not integrated into the regular education classroom, a child’s IEP may not need to aim for grade level advancement if that is not a reasonable prospect for the child. *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The child’s program, however, “must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* The goals can differ; however, the goals should provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than *de minimis* progress from year to year “can hardly be said to have offered an education at all.” *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206–207, 102 S.Ct. 3034.

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Board of Educ. v. Rowley*, 458 U.S. at 189, 102 S.Ct. at 3042. What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533–34 (school districts “need not provide the optimal level of services, or even a level that would confer additional

benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity’”) (*quoting Board of Education v. Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048).

A school district is not required to provide a student with the “best conceivable” individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603,616 (7th Cir. 2004), *cert. denied*, 125 S.Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program, the courts look, at least in part, to whether the student is making progress toward the goals included in the student’s IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458(9th Cir. 1996). *See also Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F.Supp.2d 734, 738 (N.D. Ill. 2011), *quoting Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits “include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time period’”). Goals, short-term objectives, and descriptions of present levels of the student’s performance should reflect the student’s progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

Extended School Year (ESY)

Kentucky's Administrative Regulations govern the provision of Extended School Year (ESY) services and provide: "An LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended school year services shall be made on an individual basis. In making this determination, the LEA shall not: (1) Limit the provision of extended school year services to a particular category(s) of disability; or (2) Unilaterally limit the type, amount, or duration of those services." 707 KAR 1:290 § 8. Extended School Year services are "specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents." 707 KAR 1:002 § 1(26).

Sixth Circuit case law interpreting these regulations provides additional guidance. A free and appropriate public education (FAPE) "consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034. "More specifically, an ESY would be appropriate if it would prevent significant regression of skills or knowledge retained by the child so as to seriously affect his progress toward self-sufficiency." *Cordrey v. Euckert*, 917 F.2d 1460, 1470 (6th Cir. 1990). "[T]he regression standard is best interpreted not to require absolutely that a child demonstrate that he has regressed in the past to the serious detriment of his educational progress in order to prove his need for a summer program. Instead, where there is no such empirical data available, need may be proven by expert opinion, based upon a professional individual assessment." *Id.* at 1472; *Rettig v. Kent City School Dist.*, 539 F. Supp. 768, 788 (N.D. Ohio 1981), *aff'd in part, vacated in part on other grounds*, 720 F.2d 463 (6th Cir. 1983). "Providing an ESY is the exception and not the rule under the regulatory scheme." *Id.* at 1472-73. "[T]herefore, it is

incumbent upon those proposing an ESY for inclusion in the child's IEP to demonstrate, in a particularized manner relating to the individual child, that an ESY is necessary to avoid something more than adequately recoupable regression. More specifically, it must be shown that an ESY is necessary to permit the child to benefit from his instruction." *Id.*; *Bd. of Educ. of Fayette County, Kentucky v. L.M.*, 478 F.3d 307 (6th Cir. 2007). "Claimants can rely on expert opinion testimony to make this showing and are not required to present empirical proof of actual prior regression." *Id.* at 1471-72; *Bd. of Educ. v. L.M.*, 478 F.3d 307 (6th Cir. 2007.)

The testimony and documentary evidence presented at hearing reveals the following. The Student is a 16-year-old female with a complex medical and learning profile. She is diagnosed with Autism Spectrum Disorder (ASD), intellectual disability (ID), intermittent explosive disorder, and Fragile X. The Student is non-verbal with developmental and behavioral impairments. (FF #1.) Most impairing to the Student on a daily basis is her behavioral disorder combined with her intellectual disability. The Student's behavioral difficulties are the most significant impediment to her ability to learn. (FF #2.) As the Student is nonverbal, she communicates with picture exchange and adaptive supports. She can learn and her receptive communication is better than her expressive communication. She requires practice and consistent repetition to learn new skills. If she has a lapse in reinforcement of a skill, retention of that skill is more challenging. She requires consistent reinforcement to gain new skills and maintain those skills. She requires consistent learning of communication and adaptive behavioral skills to stabilize her behavior and allow for progress. (FF # 3-5.) Without a consistent, structured schedule, the Student regresses in her communication and behavioral skills. (FF #6.)

The District argues that its empirical data, in the form of progress monitoring of the Student's IEP goals, reveals that the Student made no progress toward her IEP goals during the

2023-2024 and 2024-2025 school years (FF # 10), displayed regression during the school year, and therefore, there is no evidence of regression during the summer months warranting ESY services. Based upon this data and lack of regression, the IEP team concluded that the Student is not eligible for ESY services. (FF #13-14.) However, it is the finding of this Hearing Officer that this argument is without merit. *Endrew F.* instructs that provision of a free and appropriate public education (FAPE) requires IEP goals that provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than *de minimis* progress from year to year “can hardly be said to have offered an education at all.” *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The Student’s lack of progress toward her IEP goals is a denial of FAPE. The argument that there is no regression because there is no progress is contrary to the intent of the IDEA, contrary to the directives of *Endrew F.*, and is without merit.

The District further argues that there is no evidence that the Student recoups lost skills at a rate different from that of her general education peers. However, this argument disregards the Student’s repeated inpatient hospitalizations which coincide with summer breaks when the Student is not provided with special education and related services. During those hospitalizations the Student is provided with individualized interventions which target the same skills as those of her IEP goals - her interfering behaviors, functional communication, activities of daily living, feeding, and self-care. Redirection and replacement behaviors are developed, taught, and consistently reinforced to address the Student’s behavioral difficulties and increase her availability for skill acquisition. (FF # 1-9.) It is the finding of this Hearing Officer that the level of intensive services provided to the Student during her repeated, weeks long hospitalizations (lasting two to three

weeks in duration) illustrate that the Student requires a level of intervention far beyond what the average non-disabled peer would require to recoup skill deficits over the summer months.

The testimony and documentary evidence introduced at hearing illustrates that the District fundamentally misunderstands the learning profile of this Student and what is required to provide her with a FAPE. SPED2, the Student's current special education teacher, testified that she does not know how the Student learns or what is required for her to make educational gains – she is “still trying to figure it out”. The District fails to recognize and appreciate the significance of the intensive interventions that the Student requires, via repeated, weeks long inpatient hospitalizations over summer months, to address regression in her functional communication and escalation of self-injurious and aggressive behaviors in order restore her to a position in which she is available for learning and skill acquisition. (FF # 1-11, 15.)

At hearing, Parents provided the testimony of Dr. ■ Dr. ■ is the Director of the Fragile X Program at ■ Hospital. He has been the Student's treating physician for approximately the past six (6) years. He is considered one of the foremost experts in Fragile X. (FF #1-3.) While Dr. ■ conceded that he is not an educator and he has never observed the Student in the educational setting, he knows this Student well and has extensive experience working with a special education population as most of his patients (who come from across the country and around the world) have Individualized Education Programs (IEPs). Dr. ■ is intimately familiar with both the Student's medical and learning profiles. The Student has severe intellectual and behavioral impairments. She requires practice and consistent repetition to learn new skills. If she has a lapse in reinforcement of a skill, retention of that skill is more challenging. She requires consistent reinforcement to gain new skills and maintain those skills. She requires consistent learning of communication and adaptive behavioral skills to stabilize her behavior and allow for

progress. (FF #5.) Without a consistent, structured schedule, the Student experiences regression in her communication and behavioral skills. (FF #6.) Her repeated regression over the summer months is evidenced by repeated inpatient hospitalizations over the summer months of weeks long durations. (FF #7.) During the inpatient hospitalizations, Dr. [REDACTED] clinical team works with the Student on the same skills as those targeted by her IEP goals – functional communication, activities of daily living (ADLs), feeding, self-care, and addressing her interfering behavior. They develop, teach, and reinforce redirection and replacement behaviors to address the Students interfering behaviors and restore her to a position in which she is available for new skill acquisition. (FF # 8-10.) The Student has a longer than average recoupment time for lost skills due to her significant intellectual disability and behavior challenges. It takes significant, consistent interventions for the Student to display behavioral improvements. (FF #11-12.) The duration of her inpatient hospitalizations and the intensity of the interventions required during same are far beyond what a non-disabled general education peer would require to recoup lost skills over summer break. An extended break of more than two weeks over the summer months causes significant communication and behavioral regression for this Student. (FF #11-12.) The Student does not benefit from virtual or home-based educational instruction due to her disabilities. She requires a highly structured educational/school setting, five days per week for the longest period she can tolerate (working up to a full, traditional school day), routine, and consistent repetition and reinforcement of the skills addressed by her IEP goals and Behavior Intervention Plan (BIP) including functional communication, adaptive behavior, and self-care skills. (FF # 15-16.)

Based upon Dr. [REDACTED] with the Student and many patients with similar disabilities and identified needs, in his twenty (20) years of practice, this Hearing Officer finds the testimony of Dr. [REDACTED] to be credible and

overwhelmingly persuasive. Further, Dr. ■■■ testimony is corroborated by the testimony and observations of Mother and Father, and BS who has known the Student since 2018 and who is called upon to provide additional behavioral supports to the Student during the summer months on a recurring basis.

Based upon the above findings and the testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the Student qualifies for and is entitled to extended school year (ESY) services for summer 2025. The District shall provide twenty-seven (27) instructional days coinciding with the District calendar for providing extended school year services, for a period of no less than four (4) hours each day and including transportation of the Student to/from home and the District high school. These instructional days will be beyond the twenty (20) instructional days the District is currently providing as compensatory education resulting from the settlement of a separate due process hearing matter.

Claims raised pursuant to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act

In the due process hearing request, Parents raise claims pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA). Pursuant Title 707 of the Kentucky Administrative Regulations, at 707 KAR 1:290 *et seq.* and Kentucky Revised Statutes, at KRS Chapter 13B, this Hearing Officer is not vested with jurisdiction to adjudicate claims raised pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) or Title II of the Americans with Disabilities Act (ADA). Parents' claims brought pursuant to these statutes are hereby dismissed for lack of Hearing Officer jurisdiction to adjudicate same.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, the Student is found eligible for Extended School Year (ESY) services for summer 2025. The credible and overwhelmingly persuasive testimony of Dr. ■ along with that of Mother, Father, and BS, and the documentary evidence supporting same, illustrates that the Student regresses in her communication and behavior skills over the summer months leading to repeated in-patient hospitalizations where she requires intense, individualized services to address same. The regression is the direct result of the lack of special education and related services over the summer months to address the Student's behavioral disorder and intellectual disability related to her Fragile X diagnosis. Further, the Student's significant intellectual disability and interfering behaviors require a longer than average recoupment time to regain those lost skills. Therefore, the Parents requested relief of twenty-seven (27) instructional days coinciding with the District calendar for providing extended school year (ESY) services, for a period of no less than four (4) hours each day and including transportation of the Student to/from home and the District high school is hereby granted. These days are in addition to the twenty (20) instructional days the District is providing as compensatory education resulting from settlement of a separate due process hearing matter.

ORDER

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

The District shall provide to the Student twenty-seven (27) additional instructional days during summer 2025, for a period of no less than four hours each day, including transportation to/from the Student's home and the District high school. If any of the ordered hours are not provided during the remainder of summer 2025, same will be provided as compensatory education to the Student during the 2025-2026 school year.

Parents' claims raised pursuant to Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act (ADA) are hereby dismissed for lack of Hearing Officer jurisdiction to adjudicate same.

NOTICE OF RIGHT TO APPEAL

Pursuant to Title 707 of Kentucky Administrative Regulations, Chapter I:340, Section 13, a party to a due process hearing that is aggrieved by this hearing decision may appeal the decision to members of the Exceptional Children Appeals Board (ECAB) as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, via certified mail, a request for appeal within thirty (30) calendar days of the date of the Hearing Officer's decision. The appeal request shall be submitted to:

Kentucky Department of Education
Office of Legal Services
300 Sower Blvd., 5th Floor
Frankfort, KY 40601

A decision made by the ECAB shall be final unless a party appeals the decision to state circuit court or federal district court.

Dated: June 27, 2025

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Email: [REDACTED]

APPENDIX A

██████████ v. ██████████ School District
Case No: 2425-21

[illegible]

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V.

SD,

Janet K. Maxwell-Wickett,

I, Janet Maxwell-Wickett, certify that on June 27, 2025, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

[REDACTED] -
[REDACTED]
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Kentucky Department of Education
kdelegal@education.ky.gov

/s/: Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Email: [REDACTED]