



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 01384-23

AGENCY DKT. NO. 2023-35388

**D.T. ON BEHALF OF L.T.,**

Petitioner,

v.

**LAWNSIDE BORO**

**BOARD OF EDUCATION,**

Respondent.

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**Jamie Epstein, Esq.**, for petitioner

**Emily Strawbridge, Esq.**, on the summation brief, and **William Morlok, Esq.**, at the hearing for respondent (Parker McCay, attorneys), having replaced initial counsel, who withdrew, **Rita F. Barone, Esq.** (Flanagan Barone O'Brien, attorneys)

Record Closed: February 9, 2024

Decided: March 12, 2024

**BEFORE ELAINE B. FRICK, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, D.T. on behalf of L.T. (parent and the student), filed a due process petition pursuant to the Individuals with Disabilities Education Act (IDEA) asserting that the student's June 9, 2022, Individualized Education Program (IEP) for the 2022-2023

third grade school year failed to provide a free appropriate public education (FAPE) and is seeking an appropriate IEP, compensatory education, and fees. Respondent, Lawnside Boro Board of Education (the District or the BOE) acknowledged that in a prior due process hearing with the same parties, a Final Decision issued on January 19, 2023, determining a lack of FAPE under the student's 2021-2022 IEP.<sup>1</sup> Since the IEP at issue here is nearly identical to the 2021-2022 school year IEP, the District has stipulated that there has been a lack of FAPE. At issue is what is an appropriate compensatory education award regarding lack of FAPE from the June 9, 2022, IEP for the 2022-2023 school year.

### **PROCEDURAL HISTORY**

Petitioner's due process petition was received by the Department of Education, Office of Special Education (OSE) on January 23, 2023. It was transmitted thereafter to the Office of Administrative Law (OAL) where it was filed on February 15, 2023, as a contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

During the initial telephonic conference with counsel for the parties on February 24, 2023, they agreed that petitioner's request for relief shall be limited to the issues raised in the due process petition, for the time frame of July 1, 2022, through June 30, 2023, as per their stipulations. The hearing date was scheduled. The parties requested to participate in a settlement conference with a settlement conference Administrative Law Judge (ALJ). The parties participated in a settlement conference on March 8, 2023, and multiple dates thereafter through approximately the beginning of May 2023, with a settlement conference ALJ, the Honorable Barry Moscovitz, Acting Director and Chief ALJ. A Pre-Hearing Order (PHO) was entered May 2, 2023, confirming the hearing date and procedures to be followed.

The hearing was scheduled to begin in person on May 9, 2023. Late in the day prior to the hearing date, the District's then counsel, Rita Barone, forwarded correspondence seeking to adjourn the proceeding, as she was advised that day by the

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<sup>1</sup> D.T. o/b/o L.T. v. Lawnside Board of Education, EDS 00267-2022, Final Decision issued January 19, 2023, by the Honorable Elaine B. Frick, ALJ, referred to as "DT1" herein. (J-1.)

BOE that it intended to hire other counsel going forward. Given the late hour of the submission of the letter, the hearing was unable to be adjourned and petitioner's counsel and Ms. Barone appeared in person on May 9, 2023. The hearing was adjourned that day, and additional proceeding dates were scheduled. Petitioner has since submitted a motion for sanctions on October 31, 2023, related to that hearing date, which will be decided herein.

A substitution of counsel was submitted thereafter for the BOE, with William Morlok, Esquire, replacing Rita Barone, Esquire. During a telephonic conference with counsel on May 16, 2023, the District's counsel sought to confirm the dates to be covered for the compensatory education sought by petitioner. Petitioner's counsel would not honor the stipulations he entered into with respondent's prior counsel and asserted that a summary decision motion was necessary. A motion briefing schedule was set. Briefs were submitted. The hearing date of June 1, 2023, was converted to be presentation of oral argument on the motion, which was done via Zoom.

An Order issued on June 8, 2023, granting in part the District's motion for partial summary decision. It was ordered that petitioner may not assert any claim for relief in this matter for the 2021-2022 school year, since that was adjudicated and determined in the prior FD of January 19, 2023. (J-1.) It was further ordered that respondent's request to limit the compensatory education claim for the 2022-2023 school year to the date L.T. was enrolled in out of district placement in March 2023, was denied. The time frame for the relief sought in this petition, had been stipulated between counsel at the outset, as for the 2022-2023 school year, beginning as of July 1, 2023, (for ESY) through the date of this petition, which petitioner has asserted is January 21, 2023, which was a Saturday. The DOE acknowledges the receipt date of the due process petition as January 23, 2023.

On June 9, 2023, a telephonic conference was conducted with counsel, at which time the parties confirmed that the District would stipulate that FAPE was not delivered by the District to L.T. The hearing would be a proof hearing on the issue of compensatory education from July 1, 2022, through the ESY program of 2022, and the start of the 2022-2023 school year in September, through the filing of the petition on January 23, 2023.

On June 20, 2023, the hearing began, via Zoom as demanded by petitioner. The District asserted a preliminary motion to bar petitioner's expert report of June 13, 2023, by Dr. Russell, which had been provided to the District on that date, contrary to the Pre Hearing Order. In the alternative, the District sought an adjournment of the proceeding, to permit them leave to obtain an expert rebuttal report. Petitioner opposed the motion. The District's request to bar the expert report was denied, as I asserted I wanted all available tools presented to make a determination in the matter. The District's request for leave to obtain a rebuttal expert report was granted. Petitioner specifically objected to an observation of the student. The District was not permitted to set up an observation of the student, not because of petitioner's objection, but given the timing of the end of the school year and when ESY was scheduled to begin. A schedule was set for the production of the District's expert report. Opening statements were then heard on June 20, 2023, and the proceeding adjourned for that day.

On August 17, 2023, the hearing continued via Zoom. In the early morning hours of August 31, 2023, which was the next scheduled hearing date, petitioner's counsel sent an email indicating he was having a medical emergency and would be unable to appear for the hearing, seeking an adjournment. The adjournment was granted, without objection by the BOE.

A few days thereafter, a telephonic conference was conducted with counsel to schedule a continuing hearing date. Three potential hearing dates were secured as mutually agreeable to the parties, subject to petitioner advising which date their expert could appear. Petitioner's counsel advised shortly thereafter that the expert was available on October 24, 2023.

The hearing continued via Zoom on October 24, 2023. At the conclusion of petitioner's witnesses, petitioner sought to call their expert back as a rebuttal witness. The District opposed the request. The objection was sustained. Petitioner demanded to call their witness and the parties were directed to submit legal briefs on the issue of petitioner's demand to call their expert as a rebuttal witness. A telephonic conference was scheduled for November 16, 2023, to discuss the scheduling status of the matter.

During that phone conference, the next hearing date of December 19, 2023, was scheduled.

Petitioner's submission on the motion to recall its expert as a rebuttal witness, was misleadingly mischaracterized as a submission to reconsider the imposition of a sanction of barring its expert from providing direct or rebuttal factual evidence. An Order Regarding Petitioner's Request to Call Rebuttal Witness issued on November 29, 2023, denying petitioner's request. The order also provided:

The next scheduled hearing date is December 19, 2023. Each party has indicated there are no further witnesses to be called. Each party shall provide written confirmation within four days of the date of this order as to whether they need to proceed on the next hearing to confirm the entry of documentary evidence, or whether the date may be adjourned, and the undersigned will set a schedule for the submission of written summations.

(Order of November 29, 2023, paragraph 3.)

On November 29, 2023, the BOE counsel submitted an email, consistent with the order, confirming that respondent entered their evidence during the prior hearing dates and did not need to proceed on the December 19, 2023, scheduled hearing date, which could be adjourned. Petitioner's counsel had not responded within the four-day timeframe specified in the November 29, 2023, order. My assistant followed up with petitioner's counsel on December 15, 2023, requesting petitioner's position as to whether they needed to proceed on the upcoming scheduled hearing date.

On the morning of December 19, 2023, petitioner's counsel sent an email communication indicating that they did not intend to call any further witnesses. Given the late timing of petitioner's responsive communication, the matter commenced via Zoom on December 19, 2023, at which time petitioner confirmed there were no further witnesses to present. The BOE confirmed their documentary evidence was entered. Petitioner's counsel confirmed their evidence was in, but a master list of the confirmed evidence entered would be completed between the parties. Petitioner's counsel had a proposed master list, which he indicated would be forwarded later that day to respondent's counsel.

The parties were directed to confer and confirm the master evidence list and to submit the agreed upon list by noon on December 21, 2023.

A schedule was set for the submission of written summations, over the objection of petitioner requesting to present oral summations. The parties were directed to have written summations provided to the OAL by January 31, 2024, and to be exchanged with one another on February 1, 2024. A telephonic hearing date was scheduled for February 12, 2024, to address any issues the parties may encounter regarding submission of their written summations as scheduled, and if the summations were in, the telephonic proceeding of February 12, 2024, would be cancelled.

An agreed upon master evidence list was never submitted by the parties.

Petitioner's written summation was submitted on February 1, 2024. Upon follow up with respondent's counsel, it was determined that Mr. Morlok, counsel who appeared for the hearing, had "abruptly" left the firm, and the date for the written summation to be submitted was miscommunicated to counsel in the firm who took over the handling of the file. Respondent's counsel indicated the summation would be submitted within a day. Petitioner's counsel sent multiple superfluous email communications, asserting objections to new counsel appearing and asserting he would not recognize her as counsel. Respondent's summation was submitted, and the record closed February 9, 2024.

### **FACTUAL DISCUSSION AND FINDINGS**

The following facts were established from the testimony and documentary evidence as undisputed, and thus I **FIND** as **FACTS**:

Petitioner, L.T., was born on June 2, 2014, and is nine years old. L.T. is classified as "other health impaired" (OHI) due to a diagnosis of Down Syndrome. The IEP for the school year in question, 2022-2023, was completed at the June 9, 2022, meeting. (R-8.) The IEP was identical to the IEP for the 2021-2022 school year.

The IEP for the 2021-2022 school year was found to have failed to provide FAPE, as per the Final Decision in DT1. (J-1.) The parties have stipulated in this proceeding that since the IEP for the 2022-2023 school year was the same as the prior year, FAPE has failed to have occurred. The determination to be made herein is what is appropriate compensatory education since there is stipulated lack of FAPE under that IEP.

The DT1 decision was confirmed to cover compensatory education for the 2021-2022 school year IEP from October 2021 through June 30, 2022. The parties stipulated that the compensatory education claim in this matter, regarding the lack of FAPE under the 2022-2023 school year IEP, commences on July 1, 2022, for the ESY program, and for the school year starting September 2022 through the filing of this petition in January 2023. The parties stipulated that petitioner's asserted claims regarding the 2021-2022 school year for compensatory education were withdrawn.

The IEP for the 2022-2023 school year placed L.T. in third grade, in the district school, in a multiply disabled (MD) classroom. (R-8 at 1.) L.T. was provided a one-to-one personal aide. Related services were listed in the IEP for L.T. Occupational therapy (OT) was to be provided individually, for fifty sessions during the year for thirty minutes, and OT in a group setting ten times per year for thirty minutes. Physical therapy (PT) was in a group setting for twenty-six sessions, for a duration of thirty minutes each session. Speech Language (S/L) therapy was to be provided in a group setting twenty-six times per year for thirty minutes and S/L in an individual setting fifty times per year for thirty minutes. ESY was to be provided to L.T. from July 5, 2022, through August 12, 2022, with special education and enumerated special services. (R-8 at 1, 13-17.)

L.T.'s classification was OHI, with a diagnosis of Down syndrome as noted in the IEP. (R-8.) He has since also had a diagnosis of autism spectrum disorder (ASD), as was developed during the DT1 proceeding, by Dr. Mary Pipin, whose report with the diagnosis was authored on March 30, 2022. (P-40.) L.T. has sensorineural hearing loss and was prescribed hearing aids, which he did not tolerate and thus did not wear. He also had prescription eyeglasses but did not wear them because he did not tolerate them. (R-8.)

The parent, D.T., and her attorney, Mr. Epstein, attended the June 9, 2022, IEP meeting. D.T. responded “no” if there were any questions or concerns to address at the meeting. (R-8 at 4.) Mr. Epstein indicated that D.T. would address the IEP in writing. (R-8 at 4.) D.T. and her attorney left the meeting without providing any objection or requested services or modifications to the IEP.

L.T. is currently attending the Durand Academy (Durand) in an MD classroom special education program and receives supplemental support and related services of a one-to-one paraprofessional, and OT, PT, S/L, and BCBA services.

### **Testimony**

**Eliza Cadorette-Rawley** testified on behalf of the District. She holds a Master of the Arts degree in Special Education, has an endorsement as Learning Disabilities Teacher Consultant (LDTTC), possesses a Supervisor Certification/Principal Certification, and School Administrator Certificate of Eligibility. She is a doctoral candidate, anticipated to be completed in May 2025. (R-13.) She has been involved in the field of education for approximately twenty years. She is currently the director of curriculum in a K-12 school district. Prior to that, she was director of special services for a K-12 district, servicing students from the age of three to twenty-one. Before that she was director of special services in another K-8 district. Prior to that, she was an LDTTC consultant on child study teams for two districts and had previously been an inclusion facilitator in a K-12 district. She also was an elementary fifth and second grade teacher and a basic skills instruction (BSI) teacher. (R-13.) She testified as having attended many IEP meetings, probably in the high hundreds to a thousand such meetings during her educational career. She was qualified as an expert in special education, recognizing that compensatory education is a component of her expertise.

Cadorette-Rawley authored an “Expert Opinion Report” dated August 7, 2023. (R-14.) She asserted that her expert opinion was appropriate and formulated within a reasonable degree of her expertise.



She reviewed documentation and information and conducted interviews, as outlined in her report. (R-14 at 2.) She confirmed during her testimony that she did not conduct an observation of L.T., as she would have done, because the observation was not allowed to be completed as ordered in the proceeding. She was able to review the documentation, interview related service providers, special education teachers, and view the IEP meeting video, to gain further insight into L.T., without having the ability to observe him directly.

She concluded in her report:

In summary, based upon the collective materials reviewed and analyzed within this report, in my professional opinion it is evident, LT's low cognitive abilities exhibit challenging behaviors when the duration of tasks exceeds his frustration tolerance. This can be due to a combination of cognitive, emotional, and environmental factors as well as limitations in processing information, problem-solving, and attention span. Complex or lengthy tasks will overwhelm LT's cognitive capacity, making it difficult for him to complete the tasks effectively.

In the overall understanding of LT's strengths, weaknesses, severe cognitive and developmental delays, compensatory education should target what LT needs in his capacity and not focus on frequency and duration for quantity purposes.

(R-14 at 15.)

Cadorette-Rawley endorsed and opined that compensatory education should be based on a qualitative method, due to L.T.'s cognitive capacity, and his severe cognitive and developmental delays. She asserted that compensatory education should target L.T.'s needs, and not be calculated in a rote quantitative fashion. She indicated that an integrated approach, using a VB-MAPP foundation and ABA principles such as positive reinforcement, prompting, shaping, fading, and discrete trial teaching, should increase L.T.'s communication and language capabilities and reduce his targeted challenging behaviors. (R-14 at 11.)

She recognized that L.T.'s current placement, at Durand is in a program based upon ABA-based instruction, with curriculum emphasizing functional academics,

supervision by BCBA's, and trained specialized speech therapists skilled in augmentative and alternative communication. She opined that such placement does serve as compensatory education. (R-14 at 12.) She did not recommend that there was a need to provide compensatory education for special education programming. She disagreed with the calculation that an hour for hour replacement of special education was necessary as compensatory education, given that the student was educated during the time period in question, and was not completely devoid of any learning or educational experience.

Cadorette-Rawley disagreed with a minute for minute, hour per hour calculation of compensatory education. She emphasized this is not a situation where L.T. was not receiving any education. He was being educated at Lawnside for the 2022-2023 school year then was placed at Durand, in March 2023, pursuant to the determination made in DT1. This is not a situation where, for example L.T. did not receive twenty sessions of S/L therapy and those sessions needed to be replaced.

She reviewed the time frame in question from the DT1 matter, where there was determined to be no FAPE. That totaled forty-five weeks of no FAPE for the ESY summer 2021 and the 2021-2022 school year from September 2021 through June 30, 2022. She looked at the timeframe for compensatory education awarded in DT1, which covered twenty-four weeks and divided that by forty-five weeks, and got a value of .533, which represented each week FAPE was not provided. She took that into consideration when fashioning her recommendations for compensatory education here.

Cadorette-Rawley reviewed the materials and resources regarding the related therapies and L.T.'s status. She determined he had a frustration tolerance ceiling of twenty-five minutes. She broke down L.T.'s duration to attend to a task to be approximately five to seven minutes with positive reinforcement, engagement, and high interest tasks. Considering that if a third-party provider is engaged to provide services, they are generally contracted by the hour. Such a block of time would allow L.T. a twenty-five-minute session, allow for expansion within the one-hour block for additional time as L.T. builds up tolerance, and allows the therapist time to conduct high interest, positive reinforcement, documentation of progress, and provide some consultation time.

She focused on L.T.'s primary diagnosis of ASD and his communication deficiencies. She honed in on S/L compensatory education to be awarded. She recommended that S/L should be the highest priority for compensatory education of related services therapies. She acknowledged she did not specifically recommend compensatory education for related therapies in the areas of OT and PT. She would not take issue if her recommendation for related service therapy for S/L services was spread out amongst other therapies, such as for OT and PT as well. She opined that for the timeframe of July 1, 2022, to January 19, 2023, representing twenty-six weeks (accounting for school breaks) multiplied by the .533 factor she derived for each week of lack of FAPE from the DT1 decision, fourteen weeks of three sessions per week would be appropriate compensatory education for related services therapies. That would be a total of forty-two sessions.

Cadorette-Rawley suggested that the additional time be infused into L.T.'s school day at Durand, in whatever pockets of time could be accommodated. She recognized that with the transportation time to and from Durand, the opportunity for before or after school time would be limited. She was posed with the query that Durand may not agree to implement fitting in such additional services. She reiterated she was agreeable to having a third-party service provider give in home or in office services for L.T. She indicated that the average county cost to obtain S/L services was estimated at \$70 per hour, for a total cost of services estimated to be \$2,940 if 42 sessions were provided. (R-14 at 16.) She was familiar with the cost, having worked with commissions in Gloucester, Camden, and Burlington Counties.

She noted that L.T.'s tolerance of twenty-five minutes would be accommodated in a one-hour session. During the session, the additional time would allow the therapist or provider to employ techniques to build L.T.'s endurance and learning and would allow the provider time to complete documentation and consultation time.

Cadorette-Rawley further opined that ABA services in home should also be occurring. She identified that Perform Care was a recommended provider, and was the same provider recommended to the parent by Dr. Pipin. It was unclear as to whether the parent had already availed herself of the services of Perform Care. Cadorette-Rawley

explained that Individual Support Services (ISS) through Perform Care are in-home services available to youth with intellectual and developmental disabilities and may be covered through outside insurance. (R-14.) ISS addresses adaptive behavior and skill development for activities of daily living (ADLs). She opined that fourteen hours of ABA in-home services should be provided as a component of compensatory education.

She did not make a recommendation for additional BCBA sessions or consultation time. BCBA services are integrated into Durand's educational program.

Petitioner attempted to discredit Cadorette-Rawley's expert opinion as if she intentionally did not perform an observation of the student and failed to conduct her own standardized testing of the student. This was inappropriate and mischaracterized the circumstances of the expert being prevented from doing an observation due to petitioner's late hour in the production of their expert report. The repeated objections by petitioner's counsel during the direct examination of this expert witness and his conduct during cross-examination, including repeated condescending commentary, for which counsel was reprimanded and directed to discontinue, were ineffective in attempting to discredit this expert witness.

**Lori Seminara** testified for the District. She has been involved in the field of education for forty-one years. She has served as a special needs teacher in a self-contained classroom; was a resource center teacher in a class support classroom; and then was a learning consultant. She has also served as a case manager and was employed by Lawnside. She retired as of June 2023.

Seminara was L.T.'s case manager for the 2022-2023 third grade school year. She testified in the first proceeding, DT1. She knew L.T. to be a sweet young man who enjoyed being with and playing with his friends in school. She affirmed that for his academics and performance in related therapies, he was "consistently inconsistent." His performance depended upon his level of motivation. Sometimes he would demonstrate knowing exactly what he needed to do and other times he would need reinforcers to get a response from him. She confirmed he was significantly behind for his grade level. For

example, he was in third grade but was working on readiness skills, which are skills to prepare a student to understand language.

A re-evaluation planning meeting was conducted by the Child Study Team (CST) regarding L.T.'s IEP for his upcoming third grade 2022-2023 school year. (R-7; R-10.) No additional assessments were necessary. L.T. had been classified as OHI, with a diagnosis of Down syndrome. During the DT1 proceeding, Dr. Pipin's diagnosis of autism spectrum disorder was issued at the end of March 2022. The CST wanted to change L.T.'s classification from OHI to multiple disabilities, identifying the disabling condition of ASD and OHI, with the diagnosis of Down syndrome.

Seminara was present at the IEP meeting, and D.T. and her counsel, Mr. Epstein, were present. The IEP for L.T.'s third grade year, 2022-2023, was presented at the meeting. (R-8.) Neither D.T., nor her counsel offered any input or concerns about the IEP during the meeting. Mr. Epstein indicated he would write down the concerns of the parent about the IEP. She acknowledged that the additional evaluations developed through the DT1 litigation were not specifically enumerated in the IEP of June 9, 2022. (R-8.) She indicated that with the timing of the notice of the reevaluation meeting and when the meeting was conducted, she had not had the opportunity to list those evaluations. She asserted they were later identified.

The IEP largely mirrored the 2021-2022 school year IEP, with the exception of changing two of the related services, which were increased for an extra session of OT and extra session of S/L.

She recalled that the Functional Behavioral Assessment (FBA) completed by Christen Russell, which was an independent evaluation utilized in DT1 was considered by the CST when they discussed what evaluations may be needed, in preparation for the 2022-2023 IEP meeting. She recalled that they did not identify Russell's FBA in the IEP, since it was just from a snapshot in time. They did not want to put recommendations in the IEP from Russell's FBA, since L.T. was working with a new aide, and they wanted a more current FBA.

L.T. attended Lawnside as of July 1, 2022, for ESY and from September 2022 through January 19, 2023. He was in an MD classroom and received his related services. He had a one-to-one aide. He received progress reports for the school year. (R-9.)

Seminara recalled that in the fall of 2022, L.T.'s classroom had five students and three adults in the room. She did not observe any major behavioral incidents with L.T. She was not aware of any major behavioral incidents occurring from the fall of 2022 through January 19, 2023. None of L.T.'s teachers or related service providers raised any issues to Seminara at that time regarding L.T. and his programming. She recalled that L.T. also was receiving additional outside therapy at some point during that school year, believed to be for S/L, two times per week off sight from the school, at the request of the mother.

**Ronn H. Johnson** was called to testify by petitioner. He has served as Superintendent/Principal of the Lawnside school district for thirteen years. There are 350 students in the District. He confirmed the District received the Final Decision issued in DT1, towards the end of January 2023. (J-1.)

His recollection was that after the DT1 decision was issued, D.T. and Mr. Epstein met with the solicitor of the District to go through the compensatory education services which were ordered in DT1. (J-1.) He believed that an agreement had been reached on most of the items for compensatory education. He understood that the parent or Mr. Epstein preferred to have certain providers of services and that everything had been discussed, agreed upon, and should have started.

He had received an email communication from the BOE counsel, Mr. Morlok, sent on August 16, 2023, to petitioner's counsel, Mr. Epstein, offering for L.T. to begin compensatory education services regarding the decision in DT1. (R-15.) At the time of his testimony, Johnson was not aware of petitioner taking the District up on their offer for L.T. to receive compensatory services.

**Christen Russell** testified for petitioner. She testified in the DT1 matter and was qualified as an expert. She holds a BA in psychology and an MS in psychology,

specializing in applied behavioral analysis (ABA). She received her PhD in May 2022 in ABA. She has research experience as a graduate student in the area of behavioral analysis. She has teaching experience for masters and doctoral students related to the field of ABA. She has developed continuing education courses for BCBA certifications. She has been self employed as a behavioral scientist with Affecting Behavior Change for fifteen years. She has also served as clinical director for another company and clinical manager at another office group, providing ABA services. (P-28.) She was qualified, without objection, as an expert in the field of ABA, as applied to the special education population.

Russell previously completed an FBA of L.T. in 2021, which was entered in DT1. (P-17.) She completed an FBA Addendum report, authored on June 13, 2023, for this matter. (P-43.) Her addendum report provides an update for L.T. regarding his 2022-2023 school year. She reviewed reports and documentation, as outlined in her addendum report, interviewed L.T.'s teacher at Durand, observed L.T. in his classroom on June 13, 2023, for two hours, and reviewed the behavioral recordings completed by a BCBA from direct observations of L.T. In formulating her opinions, she relied upon her review of the independent evaluations which were completed for DT1, which included her own FBA (P-17), the S/L evaluation (P-18), the OT evaluation (P-19), the PT evaluation (P-41) and Dr. Pipan's report (P-40). She conducted the observation of L.T. to ensure her prior FBA was still relevant, and to assess what compensatory education hours would be appropriate. She authored her addendum report based upon such investigation and document review. She provided recommendations for compensatory education for L.T. in her addendum report. (P-43.) Russell affirmed that since the District's expert had not observed L.T., as she did, that affects the reliability of the other expert's opinion.

L.T. attended Lawnside school for the 2022-2023 school year, until he was placed at Durand in March 2023 under the DT1 decision. When Russell observed him on June 13, 2023, L.T. was still receiving the same programming at Durand, from the 2021-2022 IEP, which was found to deny him FAPE. She was not aware of a new IEP having been completed for L.T. after the DT1 decision issued and up to the time of her observation.

To her knowledge, L.T. was not receiving compensatory education nor had any

parental training occurred at the time of her observation, on June 13, 2023, as had been ordered in DT1. She acknowledged that she has been made aware that the District had offered compensatory education, and that the offer was not responded to.

She confirmed that during the time she previously observed L.T. in 2021, and during the 2022-2023 school year up to the date of the filing of the petition here, L.T. had been assigned to have a one-to-one aide with him at Lawnside. She asserted that since she did not observe L.T. during the time in question here for compensatory education, from July 1, 2022, through the filing of the petition in January 2023, she could not state for sure whether L.T. was receiving his IEP program and related services through Lawnside. She conceded that she based her opinions about compensatory education upon the records she reviewed pertinent to that timeframe. She never thought of taking into account the actual services L.T. was receiving during the time period she calculated for a compensatory award. She thought about the lost time from the perspective of an independent evaluator's recommendation. She testified that she based her recommendations on the belief that L.T. was not "receiving appropriate services." She further confirmed that to find a new out-of-district placement for a student, it does take time to view the schools and find an acceptable placement.

Russell found L.T.'s behavior and abilities "extremely similar" to the timeframe of the original evaluations in 2021. Yet she testified that in her observation of L.T., there was a definite decrease in his target behaviors, such as being off task. There was some off task behavior seen, such as L.T. trying to lean out of his seat, but overall, his target behaviors "had decreased significantly." Some of the academic skills were pretty similar across the board from when she originally assessed him.

The Durand teacher reported to Russell that L.T. was using multiple modes of communication and engaging in a lot of activities throughout his school day and week, which he enjoyed. The teacher reported that some of the targeted behaviors sought to be decreased, such as elopement, had definitely decreased over the time L.T. was at Durand. Russell opined that L.T. should be provided with special education programming and related services that his IEP failed to provide him, to compensate him for his lack of progress. (P-43.) She testified that she agreed with Dr. Pipan's recommendations made



during DT1 for school and home-based services, and parental training.

Russell asserted it is critical that L.T. be allowed a three-year compensatory education duration, to enable him to receive the hours of special education programming and related services Russell opined were necessary for replacement programming. She found it reasonable that L.T. could complete his compensatory education in three years, for his lost twenty-three weeks, which computes to 115 days, or 690 total hours of special education and related services. (P-43 at 6.)

Russell explained how she calculated L.T.'s lost time. She noted that his 2022 ESY program was a six-week program. L.T. was to have a personal aide every day, which calculates to be a total of 300 minutes daily. The 2022-2023 IEP provided for 90 minutes of Mild/Moderate Learning or Language Disabilities class (MMLLD) for reading/language arts; 1 time per day of a sixty-minute MMLLD for math; three times per week for thirty minutes of MMLLD for science and three times per week for thirty minutes of MMLLD for social studies.

For the period of September 6, 2022, the start of the 2022-2023 school year, through January 20, 2023, the date Russell utilized as the petition submission date, totaled seventeen weeks. A one-to-one aide was to be provided daily, again totaling 300 minutes each day. The IEP provided for math in the MD class daily for sixty minutes; science and social studies in the MD class three times/week, each for thirty minutes; and language arts in the MD class daily for ninety minutes.

Russell added the six weeks of 2022 ESY to the 17 weeks during the 2022-2023 school year, to total twenty-three weeks of lost time needed for compensatory education. She asserted L.T. "did not receive" 300 minutes daily of special education, which is five hours per day, or twenty-five hours per week of special education programming. She recommended that L.T. receive ten hours per week of individual special education instruction for the twenty-three weeks of lost time, which is 230 hours of such instruction. (P-43.) She derived ten hours per week for such time by considering how home instruction is typically implemented, as a supplemental education in an individualized setting, rather than being in a group of full classroom setting. Thus, she recommended

ten hours, rather than specifically the twenty-five hours per week she calculated as to the actual programming she calculated that L.T. did not receive.

As for the recommended therapies of OT, S/L, and PT, Russell indicated that the IEP for 2022-2023 did not have the duration and sessions as she had recommended in the 2021 FBA she authored for DT1. Her recommendations were for three to four sessions of S/L; two to three sessions of OT; and two to three sessions of PT, per week. For purposes of compensatory education, she recommended the lower range of therapies with the understanding they would be individually provided and not in a group setting. (P-43 at 7.)

Russell recommended compensatory education for L.T. for having an ABA aide, overseen by a BCBA. She testified that a registered behavior technician (RBT) should be with L.T. during his replacement special education programming, along with the teacher, and overseen by a BCBA. She recommended less ABA hours for L.T. over a three-year period, versus what she calculated as a minute by minute "loss" for such services during the time in question. She recommended the BCBA should provide services the equivalent of two hours per week for twenty-three weeks. (P-43 at 7.)

In total, Russell considered the hours of replacement special education programming and related services and providers and multiplied those hours by twenty-three weeks. She ultimately asserted that doing the calculation in this manner, L.T. should receive replacement compensatory education hours, to be used over a three-year period of the following:

1. Special Education programming of 230 hours (10 hours per week x 23 weeks)
2. PT for 46 hours (2 hours per week x 23 weeks)
3. OT for 46 hours (2 hours per week x 23 weeks)
4. S/L for 69 hours (3 hours per week x 23 weeks)
5. Behavioral therapist for 230 hours (10 hours per week x 23 weeks)
6. BCBA for 46 hours (2 hours per week x 23 weeks)

Russell testified that the plan for compensatory education "needs to be written out"

with what the specific teaching procedures are to be. A schedule must be laid out to coordinate who is responsible for providing what services. It was imperative to allow L.T. three years to complete the recommended lost time, given his attention span and inability to work consistently for an extended period of time. This allows flexibility in the delivery of the compensatory services to him.

Her recommended hours of compensatory education, average over a three-year period of having one hour per week of special education, one hour per week of behavioral therapy, with a behavioral technician, and flexibility for as little as ten minutes per related service therapies of PT, OT, and S/L. She testified if he did one half hour a week over three years for those therapies, the time she recommends would be fulfilled. She acknowledged that it is difficult to find related service providers who will agree to work in seven-minute increments. She indicated that even if his attention span is only seven to ten minutes, a service provider can engage in rapport and relationship building with L.T., to gain his motivation and interest back, and then start back to embed the specific tasks into the session. There are always things that can be worked on by the provider, based upon the motivation of the student, if the provider is unable to get the student to attend to a specific task. They must be flexible. The provider can pivot at work on other areas, such as social skills and leisure skills, if L.T.'s attention tolerance has lasted for about five to seven minutes, for a specific targeted task.

**D.T.**, mother of L.T., testified. She testified that the DT1 decision required the District to provide parent training. As of the date of her testimony, she did not receive any such training. She asserted that as of the date of her testimony, L.T. had not received any compensatory education regarding the decision issued in DT1. Because of this, D.T. does not want Lawnside to be authorized to implement compensatory education from this case. She also asserted that for safety reasons, she does not trust the Lawnside school.

D.T. wants an order for the creation of a compensatory education trust fund which would allow her to pay for L.T.'s compensatory education award in this matter. She wants to select the service providers for L.T. She agreed with her expert, Russell's recommendations for compensatory education, and wants Lawnside to finance the compensatory education. She wants to control payment to the compensatory education

providers. She asserted that the staff members at Lawnside are very rude towards her and towards L.T. She finds them to be unprofessional and does not want Lawnside to directly pay the providers.

D.T. indicated that the first time she saw the email from the BOE's counsel to her attorney, Mr. Epstein, which was sent on August 16, 2023, was on the day she was testifying. (R-15.) She acknowledged that she had received correspondence from Dr. Henderson, from the Lawnside District, regarding parent training. D.T. stated that she did speak to Dr. Henderson about parental training during the re-evaluation meeting. D.T. also received another email from Dr. Henderson, just prior to her testimony in this matter. She confirmed having received Dr. Henderson's September 28, 2023, email. (R-16.) She believed she responded to Dr. Henderson's email regarding parent training, but would need to check her emails. D.T. asserted she responded to the email, because she wanted to communicate with her expert, Russell, about recommendations for parent training. She then indicated she did not recall if she had responded to the September 28, 2023, email from Dr. Henderson, regarding the parent training that was to be done regarding the DT1 decision.

Based upon the foregoing, and having had the ability to observe the witnesses as they testified, and review the documents entered into evidence, I further **FIND**:

L.T. received the special education programming and enumerated services in the June 9, 2022, IEP for the 2022-2023 school year, including 2022 ESY, in district at Lawnside, through March 2023, when L.T. was placed out of district, pursuant to the determination in DT1. L.T. was enrolled in Durand and received his special education and related services there from March 2023, through the end of the 2022-2023 school year. The programming L.T. received at Durand was pursuant to the June 9, 2022, IEP for the 2022-2023 school year.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Federal IDEA, 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to a free appropriate public education (FAPE). 20 U.S.C. §

1412(a)(1). FAPE includes special education instruction and related services designed to meet the needs of the child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. The primary method of ensuring delivery of FAPE is through an IEP. 20 U.S.C. § 1414(d)(1)(A). An IEP outlines the child's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); C.H. v. Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010).

In this matter, the parties have stipulated that lack of FAPE occurred pursuant to the June 9, 2022, IEP for the 2022-2023 school year. This dispute involves the determination of compensatory education for the student.

In the matter of Sch. Committee of Burlington v. Dept. of Education, 471 U.S. 359 (1985), the Supreme Court held that a power granted to a reviewing court under 20 U.S.C. § 1415(e)(2), includes the power of school authorities to reimburse parents for their expenditures on private special education for a child, if the court determines that such placement, rather than in district under a proposed IEP, is appropriate. Compensatory education has been described as a method for school districts to "belatedly pay expenses that [it] should have paid all along." M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996), citations omitted.

Compensatory education is often awarded in the form of tuition reimbursement or requirement for a school district to pay for private school tuition or other services. Ferren C. v. Sch. Dist. of Philadelphia, 595 F. Supp. 2d 566, 577 (E.D. Pa. 2009), aff'd, 612 F.3d 712 (3<sup>rd</sup> Cir. 2010). Compensatory education also comes in other forms, such as an award of specific services. It has been noted by courts that the aim of compensatory education is to replace, in an equitable form, the educational services the student should have received. Ferren C., 595 F. Supp. 2d at 577, citations omitted. Courts are given broad discretion under IDEA in awarding relief. Id. at 578.

Equitable considerations are relevant in fashioning an appropriate award of compensatory education relief. Sch. Committee Burlington, 471 U.S. at 374 (1985). A fact finder must weigh the interests of both sides and make an equitable determination.

Ferren C. at 578. That requires a balancing of the interests of finality, efficiency, and use of the school district's resources versus the compelling needs of the student and family. Id. at 578-579.

Courts have been cautioned not to utilize a cookie-cutter approach by awarding a rote block of time equal to the time lost during the deprivation of FAPE. Such an approach runs counter to the broad discretion under the IDEA for remedial provisions to be fashioned by courts, balanced with the IDEA's provisions to ensure substantive FAPE. See Ferren C. at 577-578. As succinctly stated in the Ninth Circuit, "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." Parents of Student W. v. Puyallup Sch. Dist., No. 3, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994).

In this matter, the parties specifically requested to attend a settlement conference with a settlement conference judge, after the matter was already assigned to this hearing judge. The request was granted, and the parties thereafter engaged in multiple settlement conference sessions with a settlement conference judge. They also agreed from the outset, although motion filings still ensued, as to the time frame for compensatory education to apply in this matter. Ultimately, their stipulation was confirmed that the compensatory education would cover the 2022-2023 school year, which the parties have agreed would be July 1, 2022, (ESY 2022) and from September 2022 through the submission date of the petition to the OSE, which was received on January 23, 2023.

Due to the timing of the hearing, and the date of this decision issuing, the compensatory education awarded herein will cover the 2022-2023 school year, from July 1, 2022, for ESY programming, through the end of the school year for 2023, approximately June 30, 2023. It is recognized this goes beyond the date of the petition filing of January 23, 2023. I **CONCLUDE** such an award is done in the best interests of the child student here, and to reduce the unnecessary continued litigation since if this determination only went until the filing date of the petition, it would only trigger petitioner to file another due process petition, to address compensatory education through the end of the 2022-2023 school year. The parties presented testimony and information regarding the child's

educational status through the end of the 2022-2023 school year. I thus **CONCLUDE** this compensatory award herein is necessitated to address the entire year, beyond the date of the petition, given the behavior of petitioner's positioning and posturing, evident since the IEP meeting for the IEP in question. Petitioner's counsel and petitioner exited the meeting, without raising any issue of concern to the other members of the CST about implementation of the proposed 2022-2023 IEP as presented. This was in the midst of the litigation for DT1, contending the same IEP from the prior year was inappropriate. If the best interest of educating this student was at the forefront of mind during the meeting when the June 9, 2022, IEP was proposed, issues would have been addressed by petitioner at the meeting, instead of making a tactical maneuver to deal with the matter later through this continued litigation.

The student was educated by the Lawnside district, in district, during the course of the 2022-2023 school year, from September 2022, through sometime in March 2023, when the child began out-of-district placement, pursuant to the determination in DT1. (J-1.) The child is attending Durand school and completed the 2022-2023 school year at Durand. Although the parties have stipulated FAPE was not provided under the IEP, the student was not left without any education whatsoever. The student was attending class at Lawnside and getting special services. The student received that education and services in school, in person. The education and services needed to be adjusted, as per the award in DT1, through the placement at Durand, which began as of March 2023. I **CONCLUDE** that appropriate compensatory education is a continuation of the out-of-district placement, at the Durand school, which shall be satisfied by the student attending Durand for the 2024-2025 school year. This shall serve as the "replacement" for the 2022-2023 school year, during the time the child was attending school in district at Lawnside. It is recognized that the student did begin at Durand in March 2023. That period of time is considered a transitional period, consistent with DT1 determination, for purposes of assessing compensatory education here, and is not to be seen as a "double dip" of compensatory time from March through the end of the school year in June 2023. I further **CONCLUDE** that attendance at ESY, through Durand, anticipated to occur in July-August 2024, will serve as compensatory education for the July 2022 ESY time. Even if L.T.'s current or anticipated IEP will have the student placed at Durand for 2024 ESY and continued placement attendance for the 2024-2025 school year, this does not

“nullify” this award of compensatory education. Attendance out of district at Durand serves as compensatory education in and of itself with respect to the circumstances of this matter, and it is the appropriate compensatory relief to be provided.

In addition to the 2022 ESY compensatory award for L.T. to attend ESY at Durand for the 2024 ESY program, L.T. should be enrolled in a one week day camp program, or a once per week type of programming, designed for individuals with needs such as L.T. sometime in the summer of 2024, that does not conflict with 2024 ESY scheduling. Such a program will provide L.T. with additional interaction with peers and provide an opportunity for L.T. to continue learning during the summer, even though it may not necessarily be a school-based “academic” program. The week of day camp setting, or perhaps a once per week program, is anticipated to include activities for L.T. to be among peers, staffers, and other community members. This will provide a learning component for L.T.’s behaviors and communication with others, while doing activities and projects which teach him new skills or strengthen his behavior and skills in OT, PT, and S/L, with anticipated activities such as music, sports, active play or engagement with others, arts and crafts, or community outings such as to a park or playground or setting such as a zoo, or attendance at an activity or performance suitable to his diagnosis and consideration for his cognitive status and limited duration tolerance.

I **CONCLUDE** the sum of up to \$1,000 shall be paid by the District, for use by D.T. for L.T. during the summer of 2024, as a component of 2022 ESY compensatory education awarded herein, to be used for a one-week day camp program or other program that may, for example, meet weekly, or other type of summer program schedule, in a program designed for individuals with needs such as L.T. The parent D.T. shall arrange for such attendance at such programming, within the award of up to \$1,000. If the program exceeds that cost, the parent shall be responsible to cover the excess cost. The parent shall immediately begin researching such types of day camp programs, as this programming is to occur in the summer of 2024. If the parent has not made arrangements, or otherwise does not chose to enroll L.T. in such a day camp like program for the summer of 2024, the \$1,000 shall be returned to the District.



Parent education has been considered as a component of compensatory education here. It is recognized that some parent education should be occurring, by having D.T. simply attending and observing some of L.T.'s services and getting trained on how to use his augmentative device, with such training integrated into the child's current placement. If the parent believes she needs guidance from L.T.'s teacher or service providers, she should communicate directly with them and ask them questions about how she can implement the methods they are utilizing with L.T. in school.

The parent was previously urged by her expert Dr. Pipin, from CHOP, a year ago, to explore programming and services that could be provided in home for parent training and to address L.T.'s needs, such as through Perform Care. It has not been explained why the parent has not availed herself of the programs as suggested by her own expert. The parent did not explain why she did not pursue parental training as the District offered to arrange for her under DT1, except that she wanted to talk to her expert to determine whom or what program her other expert would suggest. I **CONCLUDE** that there is no parental programming to be awarded as part of this compensatory education award. The parent can avail herself to programs which her expert previously suggested. There shall be no further onus upon the District to provide funding or specific programming separate from what is anticipated or expected to be integrated into the child's placement at Durand, and what other programming may be suggested to her by her experts, or available to her, which may or may not be covered by private insurance or other community service providers or funding.

Consideration has been given to additional compensatory education to be awarded for the special services from the 2022-2023 school year, for S/L, OT, PT, and ABA and BCBA services petitioner seeks. The student is receiving related services at Durand, since March 2023, which were continued under the June 9, 2022, IEP. The student's IEP was apparently not updated until July 2023. The out of district placement of the student at Durand which began as of March 2023, was in and of itself compensatory education, without having to "make up" hour per hour, minute per minute of special education programming.

Petitioner's expert opinion from Dr. Russell, regarding the status of L.T. is well respected. Her suggestion for compensatory education, however, merely is a minute by minute, hour by hour, calculation of time for special educational programming and related services and is overreaching. She candidly remarked she had not looked at the matter from the perspective that the student was actually receiving some education and programming. She did take into consideration that due to L.T.'s duration tolerance level, and the number of hours of compensatory education she was suggesting, that L.T. should be permitted three years to complete the hour by hour, minute by minute replacement she suggested. In contrast, the BOE expert, Cadorette-Rawley viewed compensatory education with a more qualitative perspective, rather than a rote quantitative calculation. Even though she was unable to observe L.T., she was able to recognize and appreciate his tolerance level and the need to implement appropriate responses and incentives to enhance good behaviors and decrease challenging behaviors. Hence, with these two opinions, and pursuant to the guidance of case law that equitable consideration shall be considered for compensatory education, and not just a rote calculation of claimed lost time, a blend of the experts' opinions is considered in this compensatory education award.

Given that part of the compensatory education award herein is the continued placement at Durand for the 2024-2025 school year, the recommendation by Cadorette-Rawley for additional replacement hours to enhance related services is appropriate. It has been taken into consideration that although the student was being educated and receiving related services, the amount of each session for such programming as was recommended by the independent evaluators was lacking, and overall, the programming has been stipulated to have failed to provide an appropriate education. This award also takes into consideration the practicality of the child's tolerance, current skill level, and effective replacement learning. I **CONCLUDE** that three hours per week of related services shall be awarded. I **CONCLUDE** that in order to quantify the related services, it is appropriate to calculate three hours per week, for thirty-six weeks, which is the number of weeks for the September 2022 through end of June 2023 school year, which equals 108 hours of related services. Again, this is not to be seen as a "double dip" for petitioner for compensatory education and shall be awarded to cover for the entire school year 2022-2023, recognized as going beyond the January 23, 2023, due process petition submission date. Such an award is within the equitable purview of this tribunal, to stem

further litigation in this matter. It is evident these parties lack the ability to effectively communicate, or at least the tactical methods employed for litigation gamesmanship have begat further litigation. Petitioner could not even recall having seen an email directed to her counsel from a district representative regarding confirmation or arranging parent training time.

I further **CONCLUDE** that the related services programming can be utilized by the parent, for the related services she, with anticipated guidance she should seek from her experts and the child's teachers and related providers, deems appropriate to target L.T.'s needs. Thus, the programming can be arranged for OT, PT, S/L, or ABA services, by appropriately certified individuals, by the mother.

I **CONCLUDE** the amount of \$100 per session shall be utilized for the estimated cost per session, considering the \$70 per session opined by the District's expert was the cost assessed to a school district, where a private provider, anticipated to be employed by petitioner, may charge more than that per session. I thus **CONCLUDE** that \$100 per session, multiplied by 108 sessions, equals \$10,800, to be awarded as compensation for compensatory education to be arranged by petitioner. It is further noted that this is not required to be an exact replacement of 108 one-hour sessions. The sum of \$10,800 has been quantified using such calculations. The parent may be able to secure more than 108 sessions, or may choose to use programming in OT, PT, S/L, and ABA, for fewer sessions, within the amount of \$10,800.

Taking into consideration both experts' opinions regarding how to implement compensatory education, and the duration of time needed to implement such additional programming for L.T., I **CONCLUDE** that petitioner shall have two years, or twenty-four months, to utilize the \$10,800 to be paid by the District for related services for L.T. in whatever combination or specific programming the parent arranges for OT, PT, S/L, and ABA programming, with certified providers. It is anticipated that over the course of two years petitioner will be able to engage at least one therapy related service for L.T. per week, which takes into consideration L.T.'s specific conditions and tolerance. If after the two years the \$10,800 is not utilized in full, the remaining funds shall be returned to the District.

I further **CONCLUDE** that the two years shall begin to run from the date the District deposits the funds into a trust fund account established by the mother, specifically to be used for the benefit of L.T. for this compensatory education. The parent shall be required to provide a monthly summary and invoices to the District, and the monthly bank account statement, demonstrating use of the funds for L.T.'s related services, to be provided by certified individuals. Even if no services have been utilized for the month, the parent should provide such information to the district, and should maintain a monthly practice of keeping the District informed as to the status of the use of the funds for L.T. for this compensatory education, with appropriate confirming documentation, including the monthly bank account statements.

I further **CONCLUDE** that petitioner's request for BCBA consultation services as part of the compensatory education award is a reasonable request, considering the award that has been fashioned herein. The student is receiving BCBA services as integrated into the programming at Durand. However, given that the parent is now being awarded a sum of money for the additional related services of OT, PT, S/L and ABA programming, to be determined by the mother as she sees fit for L.T., it is appropriate to provide funds for her to consult with her BCBA expert over the two years she is being awarded to utilize such funds for L.T. I **CONCLUDE** that petitioner should be allowed quarterly consultation time with her BCBA over the two years, which would be six one-hour sessions with the BCBA. Petitioner's expert charges \$185 per hour, anticipated to be the cost of BCBA consultation services for petitioner. Thus, I **CONCLUDE** the District shall provide payment of \$1,110 to cover the cost of BCBA consultation services during the two-year time period set forth herein for D.T.'s use of the \$10,800 for L.T.'s compensatory education related services.

Petitioner filed a motion for sanctions, seeking the imposition of sanctions upon the District, and prior counsel, Rita Barone, to pay petitioner's counsel fees and costs incurred when petitioner's counsel appeared for the first scheduled hearing date of May 9, 2023. At that time, counsel Barone requested to adjourn because the District was terminating her services and hiring other counsel for the hearing. The District opposes the motion. Attorney Barone submitted opposition as well.

An ALJ may impose sanctions in an administrative law proceeding, either by a sua sponte motion, or upon a motion of a party, pursuant to N.J.A.C. 1:1-14.14. Sanctions may be imposed when there has been an unreasonable failure to comply with an order of the court or other provisions of the administrative code. N.J.A.C. 1:1-10.5. Sanctions that may be imposed by the ALJ upon a party or party's counsel, for the "unreasonable failure to comply with any order" or any requirements of the administrative code, include entry of an order for "costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party" or imposition of other "appropriate case related action." N.J.A.C. 1:1-14.14(a)4 and N.J.A.C. 1:14.14(a)5.

At first blush, it sounds reasonable that petitioner seeks sanctions and payment of their counsel fees for petitioner's counsel having appeared on what was to be the first hearing date and the District's counsel sought to adjourn as the District chose to change counsel. However, with the benefit of seeing this litigation unfold, it is evident it was a tactical move for petitioner's counsel to appear on what was the first scheduled hearing date. The parties had engaged in settlement negotiations from March through a few days prior to the first scheduled hearing date of May 9, 2023. The matter was not resolved. Petitioner's counsel merely showed up. Petitioner was not prepared to go forward. Petitioner did not even appear on that date. Petitioner did not produce their expert report until June 13, 2023, after the first hearing date that they are now demanding sanctions to be imposed. This late production, contrary to the PHO, forced the District to assert a motion to bar the report, or in the alternative permit them time to obtain a report, which further delayed the proceeding because of petitioner's disregard of the PHO.

The entire purpose of this case was for compensatory education. Petitioner should have had their report done from the outset and certainly prior to the scheduled hearing date of May 9, 2023. They did not. Moreover, the multiple obstructive objections done during the hearing, which were asserting argument instead of objection, and other tactics utilized in the hearing, such as petitioner's counsel reading into the record a portion of the DT1 decision, yet refusing to identify the page number when asked by opposing counsel, then jousting with me that it was my order as if I should have the page number memorized, further highlights the spiteful, unprofessional behavior, creating unnecessary delay and

hostility, and losing sight of the best interests of this student for the sake of litigation showmanship. Petitioner's counsel did not comply with the order from November 16, 2023, and failed to inform this tribunal within four days as to whether the December hearing date was necessary. To demand now that sanctions should be imposed from the May 9, 2023, date is inappropriate and unwarranted. I thus **CONCLUDE** that the motion for sanctions is **DENIED**.

To summarize, the compensatory education award is as follows:

1. One year of out of district placement, at Durand, to occur during the 2024-2025 school year, which covers compensatory education for the entire 2022-2023 school year. The placement at Durand shall be paid for by the District.
2. ESY provided by Durand, during July 2024, shall be compensatory education for the 2022 ESY programming, to be paid for by the District.
3. The amount of \$1,000 shall be paid by the District for use by L.T. in the summer of 2024, for a day-camp type of program, as compensatory education. That amount shall be utilized in the summer of 2024.
4. The amount of \$10,800 shall be paid by the District for use by D.T. for L.T. for related services of OT, PT, S/L, and ABA, to be utilized in two years from the date of the funds having been deposited into the trust account established by the mother for L.T.
5. The amount of \$1,110 for BCBA consultation sessions for D.T. on behalf of L.T., shall be paid by the District. Such amount shall be utilized by petitioner within two years from the date the funds are deposited into the trust account.

The funds shall be deposited by the District into a trust account the mother has established for L.T. The parent is permitted to withdraw from the account for the 2024 summer day camp program, the additional programming the mother arranges within two years from the date of the deposit of the funds, with certified providers, and for her BCBA consultation services. All invoices, clearly indicating the provider, therapist, or program

with the cost for same, and the provider's contact information shall be provided by the parent to the District on a monthly basis, and copies of the monthly bank statement for the trust account. If any portion of the funds as assessed herein are not utilized within the time frames ordered, they shall be returned to the District. Any services employed by the mother for compensatory education that exceed the amount awarded shall be the sole responsibility of the mother and the parent cannot seek additional payment from the District.

The parent's request for parental education as compensatory education is **DENIED**. Petitioner's request for the entry of sanctions regarding the May 9, 2023, hearing date having been adjourned is **DENIED**.

### **ORDER**

It is **ORDERED** that compensatory education, for the 2022-2023 school year, which covers the school year from July 1, 2022, for ESY and September 2022 through June 30, 2023, shall be as follows:

1. One year of out of district placement for L.T., at Durand, to occur during the 2024-2025 school year, to be paid for by the District.
2. ESY at Durand for 2024, to be paid for by the District.
3. The amount of \$1,000 shall be paid by the District for use by L.T. in the summer of 2024, for a day-camp type of program.
4. The amount of \$10,800 shall be paid by the District for use by D.T. for L.T. for related services of OT, PT, S/L, and ABA, to be utilized in two years from the date of the funds having been deposited into the trust account established by the mother for L.T.

5. The amount of \$1,110 for BCBA consultation sessions for D.T. on behalf of L.T., shall be paid by the District. Such amount shall be utilized by petitioner within two years from the date the funds are deposited into the trust account.

It is further **ORDERED** that any other relief sought by petitioner as compensatory education is **DENIED**.

It is further **ORDERED** that petitioner's motion for sanctions is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2022) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2022). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.



March 12, 2024  
\_\_\_\_\_

DATE

\_\_\_\_\_

**ELAINE B. FRICK, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

EBF/gd



**APPENDIX**

**WITNESSES**

**For petitioner**

Ronn H. Johnson, PhD  
Christen Russell, PhD  
D.T.

**For respondent**

Eliza Cadorette-Rawley  
Lori Seminara

**EXHIBITS**

**Joint**

J-1 Final Decision, D.T. on behalf of L.T. v. Lawnside Board of Education,  
OAL Dkt. No. EDS 00267-2022, by Elaine B. Frick, ALJ, dated January  
19, 2023

**For petitioner**

P-1 through P-16 Pre-marked, not utilized  
P-17 Program and Functional Behavior Assessment by Affecting Behavior  
Change, LLC, Christen Russell, undated (observations September 10,  
2021, and September 15, 2021)  
P-18 Speech and Language Evaluation by Rizza Miro-Lemonakis, date of  
evaluation November 18, 2021, and November 19, 2021  
P-19 Occupational Therapy Evaluation by Felicia Castagna and Rizza Miro  
Lemonakis, date of evaluation January 14, 2022  
P-20 through P-27 Pre-marked, not utilized  
P-28 Curriculum vitae, Christen Russell  
P-29 through P-39 Pre-marked, not utilized

- P-40 Developmental Behavioral Evaluation, March 31, 2022, by Mary Pivan, MD, of CHOP, with curriculum vitae as of May 27, 2019
- P-41 Physical therapy report recommendations from Helen Milligan, physical therapist at CHOP, dated March 31, 2022
- P-42 IEP from June 9, 2022
- P-43 Program and Functional Behavior Assessment Addendum report, June 13, 2023, by Christen Russell

**For respondent**

- R-1 through R-7 Pre-marked, not utilized
- R-8 IEP June 9, 2022, for 2022-2023 school year, third grade
- R-9 Progress reports 2022-2023 school year
- R-10 Reevaluation Planning-Additional Assessment not warranted, May 2, 2023
- R-11 Pre-marked, not utilized
- R-12 Pre-marked, not utilized
- R-13 Curriculum vitae, Eliza Cadorette-Rawley
- R-14 Expert opinion report by Eliza Cadorette-Rawley, dated August 7, 2023
- R-15 Email from counsel Morlok to counsel Epstein, dated August 16, 2023
- R-16 Email from Carmen Henderson, Director of Special Services, LDTC, Lawnside to DT, regarding parent training, dated September 28, 2023