



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS FILED  
STATE OF GEORGIA OSAH

JAN 5 2016

C.C., by and through his parents, B.C. :  
and N.C.; B.C.; and N.C., :  
Petitioners, :

*K. Westray*  
Kevin Westray, Legal Assistant

v. :  
HOUSTON COUNTY SCHOOL :  
DISTRICT, :  
Respondent. :

Docket No.:  
OSAH-DOE-SE-1600119-76-Miller

FINAL DECISION

For Petitioners:

Chris E. Vance, Esq.  
Chris E. Vance, P.C.

For Respondent:

William R. Jerles, Jr., Esq.  
Daniel, Lawson, Tuggle & Jerles, LLP

I. OVERVIEW

On December 7, 2015, this Court entered an Order Granting Petitioners' Request for Relief Under the Individuals With Disabilities in Education Act ("Interim Order"),<sup>1</sup> which found that from June 30, 2013, to the present, the Houston County School District ("District") violated the Individuals With Disabilities in Education Act ("IDEA") by both failing to conduct evaluations in compliance with IDEA and failing to provide C.C. with a free appropriate public education ("FAPE"). The Court further found that C.C. was entitled to compensatory education to include, *inter alia*, a requirement that the District retain Dr. Michael Mueller, at its own expense, to oversee C.C.'s educational program at Matt Arthur Elementary School. However,

<sup>1</sup> The Interim Order is incorporated by reference herein in its entirety.

because the parameters of the Petitioners' proposal for Dr. Mueller's oversight were not fully developed during the due process hearing, the parties were ordered to present additional evidence and argument as to the following issues:

- (1) the proposed scope of Dr. Mueller's services, including the projected time frame and duration, as well as his proposed duties and responsibilities; and
- (2) Dr. Mueller's proposed rate of pay, including an estimate of the overall cost of his services.

An evidentiary hearing on the above issues was held on December 16, 2015, during which the Petitioners presented testimony from Dr. Mueller and the District presented testimony from Dr. Jenny McClintic, the District's director of student services.

After consideration of the evidence and for the reasons explained herein, the District is **ORDERED** to retain Dr. Mueller to develop, implement, supervise, and monitor C.C.'s educational program, as described more specifically below.

## **II. COMPENSATORY EDUCATION UNDER IDEA**

Equitable considerations are relevant in fashioning relief under IDEA, and courts enjoy "broad discretion in so doing." Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1285 (11th Cir. 2008), *citing* Sch. Comm. of the Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 369, 374 (1985). "Factors that should be taken into account include the parties' compliance or noncompliance with state and federal regulations pending review, the reasonableness of the parties' positions, and like matters." Burlington v. Dep't of Educ., 736 F.2d 773, 801 (1st Cir. 1984), *aff'd sub nom. Burlington*, 471 U.S. at 359.

Compensatory education is an equitable remedy available under IDEA. "[O]nce a court holds that the public placement violated IDEA, it is authorized to 'grant such relief as the court determines is appropriate.'" Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16

(1993), *quoting* 20 U.S.C. § 1415(i)(2)(C)(iii) (formerly § 1415(e)(2)). The Eleventh Circuit has held that compensatory education is considered ““appropriate relief where responsible authorities have failed to provide a handicapped student with an appropriate education as required by [the Act].”” Draper, 518 F.3d at 1280, *quoting* Todd D. ex rel. Robert D. v. Andrews, 933 F.2d 1576, 1584 (11th Cir. 1991).

An award of compensatory education must be sufficiently fact-specific and “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” Reid v. Dist. of Columbia, 401 F.3d 516, 524 (D.C. Cir. 2005); *see also* Branham v. Gov’t of the Dist. of Columbia, 427 F.3d 7, 9 (D.C. Cir. 2005) (holding that an inquiry into compensatory relief must be “qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student”). While “ordinary [educational programs] need only provide ‘some benefit,’ compensatory awards must do more—they must *compensate*.” Reid, 401 F.3d at 525 (emphasis in original).

Compensatory relief should not be fashioned using a strictly quantitative, “cookie-cutter” approach. *See Reid*, 401 F.3d at 527 (holding that a child who was denied FAPE was entitled to compensatory instruction in an amount not “predetermined by a cookie-cutter formula, but rather [by] an informed and reasonable exercise of discretion regarding what services he needs to elevate him to the position he would have occupied absent the school district’s failures”). Therefore, C.C.’s compensatory education must incorporate significant qualitative improvements to his educational program, as well as an increased quantity of instruction over a period of time that is sufficient to make up for the deficiencies in his educational program over the past two and one-half years.

### III. THE PARTIES' PROPOSALS

During the second-phase evidentiary hearing, the parties presented competing proposals for Dr. Mueller's oversight of C.C.'s educational program. On one hand, the Petitioners propose to give Dr. Mueller full responsibility for developing and implementing C.C.'s entire educational program for a period of five years, with essentially no participation from District staff. The District, on the other hand, has proposed to use its own, minimally-trained staff to implement an eighteen-month program only nominally supervised by Dr. Mueller. Regrettably, neither approach offers the integration of private and public services that the Court believes is necessary to provide C.C. with a FAPE and compensate him for past deficiencies while he continues to attend school in the District.

Given the District's history of intractable opposition to even the most reasonable suggestions made by the Petitioners' experts to improve C.C.'s educational program, the Court would have been inclined to order that C.C. be placed in a private school at the District's expense. However, neither party has suggested private placement as a possible remedy, presumably because the Houston County area lacks a private school that would meet C.C.'s needs. This leaves the Court with the unenviable task of crafting a form of compensatory relief that provides C.C. with a FAPE without removing him from the District.

#### A. The Petitioners' Proposal

The Petitioners presented testimony from Dr. Mueller,<sup>2</sup> who recommends a five-year program during which the entirety of C.C.'s educational services would be developed,

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<sup>2</sup> As noted in the Interim Order, Dr. Mueller testified during this proceeding's due process hearing as an expert regarding, *inter alia*, educational and skill-acquisition programs for children with autism, applied behavior analysis, functional behavioral assessment, functional behavioral analysis, behavior modification, data collection, and teacher and parent training. Dr. Mueller holds a doctorate degree in school psychology and is a board-certified behavior analyst at the doctorate level. He has published thirteen peer-reviewed articles and is the coauthor of the Assessment of Functional Living Skills, a curriculum guide and skills-tracking program. He has provided training

implemented, and supervised by private providers. (T. 1295, 1301, 1313-14, 1343.) C.C.'s program would operate year-round and would entail fifty hours of educational services per week, allocated as follows: (1) thirty-five hours of school-based instruction, consisting of behavior supports and skill acquisition programs, provided by Dr. Mueller and Southern Behavioral Group; and (2) fifteen hours of in-home instruction, consisting of skill training, generalization, behavioral supports, and parent training, provided by Bridgette Arno and Puzzle Pieces Intervention Center ("Puzzle Pieces"). (T. 1295-96, 1304, 1315-16.)

The Petitioners propose that Dr. Mueller develop C.C.'s educational program after conducting updated assessments, including the Assessment of Basic Language and Learning Skills - Revised ("ABLLS-R"); the Assessment of Functional Living Skills ("AFLS"); a functional behavior assessment ("FBA"); and formal preference assessments. (T. 1305-06, 1310.) Based on the results of the assessments, Dr. Mueller would select the skills to be taught, create a teaching protocol for each skill, develop a data-collection system and a method of analyzing the data, and design appropriate teaching materials and behavior supports. (T. 1310-11.) Because Dr. Mueller would be creating an entirely new educational program for C.C., program development would require significant time at the outset. After the program is established, however, each hour of program development would correlate with four to six hours of instruction. (T. 1312-13.)

Under the Petitioners' proposal, C.C.'s school-based educational program would consist of thirty-five hours per week of one-on-one instruction on as many as forty skills. (T. 1305,

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and consultation on the education of children with autism to many Georgia school districts. Currently, he also develops, implements, and oversees educational programs for individual children with autism in two counties. In December 2014, Dr. Mueller completed an independent Functional Behavior Analysis on C.C. after observing C.C. in the classroom for a total of sixteen hours. Dr. Mueller's testimony was credible and reliable. (T. 12-28, 55-57; Exs. P-8 to 29; J-509; Interim Order at 21, fn. 29.)

1309, 1313, 1321-22, 1337, 1342.) This instruction would be provided by two master's level Board Certified Behavior Analysts ("BCBAs") from Southern Behavioral Group who would share the responsibility on different days of the week. (T. 1342-43.) To ensure consistency of implementation, these staff members would be supervised and monitored by Dr. Mueller or another doctorate-level BCBA for six to seven hours per week, spread over two visits (the equivalent of one hour of supervision for every five hours of instruction). (T. 1329, 1342-43.) Initially, the entirety of C.C.'s program would take place in a distraction-free environment, such as a separate room, with a long-term goal of integration into a small-group classroom with one-on-one support. At the end of five years, Dr. Mueller would take steps to "fade" the development and implementation of the program back to the District. (T. 1319-20, 1345-47.)

As to the home portion of C.C.'s educational program, Dr. Mueller would coordinate and share assessments and programming with Ms. Arno and Puzzle Pieces. (T. 1334; see also T. 175, 182-83, 394, 400; Exs. P-54 to 60, P-335 to 345.) The proposed fifteen hours per week of home-based services would overlap with the school-based services, with a greater emphasis at home on functional living skills such as bathing and self-care. (T. 1349.)

#### **B. The District's Proposal**

The District presented testimony from its director of student services, Dr. McClintic, who supervises its special education programs.<sup>3</sup> (T. 1361, 1377.) Dr. McClintic testified that the District would prefer a "collaborative" relationship with Dr. Mueller in developing C.C.'s educational program, and that Dr. Mueller would "oversee [C.C.'s] educational program and

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<sup>3</sup> Dr. McClintic has an undergraduate degree in learning disabilities, special education; a master's degree in intellectual disabilities; a specialist degree in middle grades education; and a doctorate in curriculum theory. (T. 1361.) Prior to serving as director of student services, she worked in the District as an interrelated special education teacher for nine years, a countywide autism support teacher for three years, and the District's program specialist/special education administrator for ten years. (T. 1377-78.) Dr. McClintic has served as director of student services since June 1, 2015. (T. 1377.)

monitor regularly.” (T. 1362, 1376, 1396.) Specifically, Dr. Mueller’s consultancy would last through the end of the 2016-2017 school year and would consist of the following duties:

- (1) help the District develop an “appropriate” behavior intervention plan (“BIP”) for C.C. and “further develop” C.C.’s Individualized Education Program (“IEP”) goals and objectives<sup>4</sup> as a member of C.C.’s IEP team;
- (2) develop a methodology for collecting data on C.C.’s progress and train the District’s staff on how to use it;
- (3) monitor data collection via classroom observation and direct consultation;
- (4) conduct an initial eight-hour training session with the District’s newly-certified Registered Behavior Technicians<sup>5</sup> (“RBTs”) and other staff who will work with C.C.;
- (5) lead quarterly parent training sessions and quarterly data review sessions;  
and
- (6) in addition to the initial eight-hour training, conduct additional observations and critiques of the District staff’s implementation of C.C.’s educational program for four hours each month.

(T. 1362-63, 1365-66, 1368, 1370, 1376, 1388, 1396, 1400-01.)

The District characterizes its proposal as a more “educational” approach, with fewer hours devoted to discrete trial training. (T. 1365, 1393.) Specifically, C.C.’s weekly program would consist of ten hours of discrete trial training and five hours of “natural environment training,” which would involve applying a learned skill in the classroom, the lunchroom, or some other setting. (T. 1366.) Additionally, Dr. McClintic recommends that C.C.’s school day be extended by one to two hours, to accommodate additional discrete trial training and avoid any

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<sup>4</sup> Dr. McClintic explained that because C.C. is on an alternate curriculum, his IEP needs to incorporate both goals and objectives. (T. 1362.)

<sup>5</sup> A Registered Behavior Technician is a designation by the Behavior Analyst Certification Board. It is a bachelor’s-level certification that requires supervision by a BCBA to implement skill acquisition programs. (T. 1351.)

difficulties in transitioning from a school-based to a home-based discrete trial program.<sup>6</sup> (T. 1367, 1372, 1388-89.) Dr. McClintic testified that she could not recommend a clinical model, with forty to fifty hours per week of discrete trial training, because C.C. needs to spend time working on socialization and on objectives relevant to the Georgia Alternate Assessment (“GAA”).<sup>7</sup> (T. 1369.) Dr. McClintic also recommends an extended school year program; daily therapy from a licensed and certified speech pathologist, to work on communication skills; and the continuation of C.C.’s occupational therapy. (T. 1368, 1386-87, 1391.)

The District further proposes to work with outside third parties in implementing C.C.’s new educational program. (T. 1373, 1375, 1383-85, 1397-99.) Primarily, the District proposes to utilize services provided by the Early Autism Project, which Dr. McClintic testified has at least four BCBA’s on staff and an office in close proximity to the District. (T. 1375, 1392.) According to Dr. McClintic, the District has worked with the Early Autism Project for “many years,” although no witness from the Early Autism Project testified at the hearing, and the Early Autism Project has never been involved in C.C.’s education. (T. 1389.) The District also proposes to contract with a third party that specializes in assistive technology. (T. 1373.)

#### IV. ANALYSIS

In establishing the parameters of Dr. Mueller’s oversight of C.C.’s educational program, the Court has given careful consideration to the testimony of Dr. Mueller and Dr. McClintic, as well as the seriousness of the underlying FAPE violations and C.C.’s existing educational deficits and behavioral issues. In this case, the equities weigh heavily against the District, given

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<sup>6</sup> Dr. McClintic explained the transition as follows: “[T]ypically what a school would develop, . . . a very intensive morning discrete trial training program, the afternoon would not be as rigid and then they would come home to another intensive discrete trial program, and it would be very difficult for that child to transition from the intensity to the more relaxed back to an intense environment.” (T. 1367.)

<sup>7</sup> Dr. McClintic testified that, for the GAA, state educators are required to create tasks and pick objectives for students based on a curriculum provided by the State Department of Education. (T. 1381-82.) The GAA tasks are modified to meet each child’s specific needs. (T. 1381.)



its refusal to depart from its inappropriate educational program and to implement even the most basic recommendations of qualified experts. Even when Dr. Mueller broke from his long-standing protocol and asked the District to make simple changes to C.C.'s classroom environment before his evaluation was complete, the District refused, preferring instead to continue with a thoroughly ineffective program which provided no more than a *de minimis* educational benefit to C.C. As a result, the District's proposal to "collaborate" with Dr. Mueller while continuing to maintain control over C.C.'s educational program must be soundly rejected.

At the same time, the Petitioners' proposal for a five-year program of exclusively private instruction provided at taxpayer expense in a public school setting is likewise inappropriate. The Petitioners have chosen not to seek private placement at public expense, and they must therefore accept the limitations of the public school environment.

**A. Development of Program**

At the outset, Dr. Mueller will be fully responsible for the development of C.C.'s educational program, including all necessary assessments. Dr. Mueller is highly qualified for this task in light of his expertise with educational programs for children with autism, and he is already familiar with C.C.'s developmental deficits and behavioral issues after completing an independent FBA in 2014. (T. 12-28, 55-57; Exs. P-8 to 29, J-509.) Beginning on December 1, 2017, the District will assume responsibility for program development, in collaboration with Dr. Mueller.

1. Assessments

As a precursor to program development, updated assessments are necessary to establish a baseline of C.C.'s existing skills and identify the skills he still needs to acquire. (T. 1304-05.) Therefore, Dr. Mueller and his staff at Southern Behavioral Group are tasked with conducting a

new ABLLS-R, an AFLS, an updated FBA, and formal performance assessments. (T. 1304-06, 1310); see Elizabeth M. v. William S. Hart Union High Sch. Dist., 2003 U.S. Dist. LEXIS 25786 at \*12 (C.D. Cal. Sep. 22, 2003) (ordering a current assessment to be done of student “to determine the nature and extent of the remedial services she presently requires”). Dr. Mueller is the appropriate choice to conduct these evaluations, given the District’s inability to complete a valid FBA (or even recognize the deficiencies of the FBAs it attempted) and its history of failing to perform necessary assessments such as the ABLLS-R. (See Interim Order at 36-39.) At Dr. Mueller’s discretion, additional or updated assessments of C.C. may be performed in conjunction with program development on an as-needed basis.

## 2. Program Characteristics

At present, a highly intensive educational program is necessary to compensate C.C. for the past two and one-half years of his education, during which time he received no more than a *de minimis* educational benefit from the program implemented by the District. Significant qualitative improvements to C.C.’s program, in conjunction with a year-round program of instruction, are necessary to provide him with adequate compensatory education. (T. 1385-87, 1390, 1394.) As noted in the Interim Order, the District’s previous program for C.C. was not reasonably calculated to confer educational benefits, as it included only a small number of inadequate IEP objectives; collected inadequate data; and ignored C.C.’s communicative and behavioral needs. (See Interim Order at 21-22.) His compensatory education, therefore, must address these deficiencies in his educational program’s quality and delivery. At the same time, C.C. also requires a greater quantity of instruction to compensate for his program’s past deficiencies. Thus, this Court adopts Dr. Mueller’s proposal to develop an educational program

for C.C. that includes, at least initially, a year-round schedule of thirty-five hours per week of school-based one-on-one instruction in a distraction-free environment.<sup>8</sup> (T. 1296, 1309.)

A program of this intensity is necessary to address C.C.'s lack of skill development during the past two and one-half years. As detailed in the Interim Order, C.C. must learn the prerequisite skills of attention and compliance before he can benefit from instruction. His educational program must therefore take swift action to address his interfering behaviors; and, because his behavioral issues stem from his considerable deficits in language and communication, he must be taught a method of functional communication. (T. 1296, 1303, 1371-72.) After attention and compliance have been established and C.C.'s disruptive behaviors have been minimized, his educational program must address his deficits in basic self-help skills, functional skills, adaptive skills, and academic skills. Time is of the essence in this regard. As Dr. Mueller testified, "the older you get[,] the more difficult it is to teach some of the things that are more easily acquired when students are young."<sup>9</sup> (T. 1303.)

Furthermore, consistency is of the utmost importance in implementing any new program of behavioral supports and skill reinforcement for C.C., as a program delivered in an inconsistent manner can solidify and exacerbate a child's behavioral problems.<sup>10</sup> (T. 1299, 1356.) C.C.'s

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<sup>8</sup> Although the District proposes fewer hours of discrete trial training so as to make room for more socialization opportunities, this approach ignores C.C.'s multiple disruptive behaviors, which would render any meaningful interactions extremely difficult. (T. 1364-65.) Also, the District's adherence to the National Autism Center's generalized recommendation for incorporating socialization time into an autism student's schedule disregards C.C.'s unique needs, to which his compensatory education must be tailored. (T. 1365.) See Branham, 427 F.3d at 9. Dr. Mueller's approach is therefore preferred, as it calls for the eventual integration into small groups and the classroom, but only after C.C. is able to access the curriculum in a meaningful way. (T. 1321-22, 1338.)

<sup>9</sup> Language, especially, is a skill that becomes more challenging to acquire as children get older. Additionally, behavioral supports are significantly more difficult to implement when children become bigger and stronger. Strategies that would require only one adult to implement when a child is young might require two or three adults when the child reaches puberty. (T. 1300, 1303.)

<sup>10</sup> For instance, the District's history of inadvertent, intermittent reinforcement of C.C.'s interfering behaviors has likely increased his resistance to the extinction of those behaviors. As Dr. Mueller explained, "if you have behaviors that are reinforced consistently, those are easier to change than behaviors that are reinforced intermittently or

program must be “consistent<sup>11</sup> and intensive and long-term to really treat [his behaviors] effectively.” (T. 1299.) As the District has proven unable thus far to provide either intensity or consistency, Dr. Mueller and Southern Behavioral Group must be fully responsible for the implementation of C.C.’s educational program for approximately eighteen months, through the summer of 2017.

When Dr. Mueller is developing C.C.’s program, it is essential that he take into account other aspects of C.C.’s education at Matt Arthur Elementary School. (T. 1357.) This Court finds credible Dr. Mueller’s testimony that he is capable of developing a program that supports the District in meeting state-mandated curriculum objectives. (T. 1359-60, 1369-70.) As C.C. is currently in his first year of the state-mandated GAA, Dr. Mueller will coordinate with the District’s staff to ensure that C.C. meets all requirements of the GAA curriculum. (T. 1357-58, 1369, 1381-82.)

Additionally, in-house instruction from Ms. Arno and Puzzle Pieces will be incorporated into C.C.’s overall educational program, to ensure that skills taught in the classroom will be consistently reinforced and generalized in the home environment. (T. 1334, 1349.) C.C. and his parents have already developed a rapport with Ms. Arno, which will enable the in-home instruction to progress quickly. (T. 1315.) While fifteen hours per week will be provided at the outset, the in-home services will be reduced over time, as it is expected that C.C.’s behavior and

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sporadically. It takes longer because essentially the child doesn’t know what to expect . . . .” (T. 1298.) Similarly, if the same educational program is implemented differently on different days, or not at all on other days, it “can actually create more long-term problems,” as “the same supports that would have been effective if implemented consistently for lesser behaviors may not work when used for treating the more severe behaviors that are reinforced inconsistently.” (T. 1298-99, 1356.)

<sup>11</sup> Generalization is the opposite side of the consistency coin and is necessary to ensure the application of skills across settings. The use of two therapists to implement C.C.’s program will provide generalization, while consistency will be maintained by using a supervisor to ensure that both therapists implement the program in the same way. (T. 1329-30.)

skill mastery will improve significantly through his enhanced school instruction. (T. 1295.) Moreover, the Court is not persuaded that home-based services with the sustained intensity proposed by the Petitioners are required to compensate C.C. for the past deficiencies in his educational program. Rather, home-based services as a component of compensatory education are necessary only to ensure that C.C.'s parents are able to implement consistency across settings.

**B. Implementation and Supervision of Program**

Dr. Mueller and Southern Behavioral Group will both implement and supervise C.C.'s educational services through the summer of 2017. The program will be implemented by two master's-level BCBAs<sup>12</sup> for a combined total of thirty-five hours per week and supervised by Dr. Mueller or another doctorate-level BCBA for up to seven hours per week. This structure, in addition to ensuring that C.C.'s educational program meets the crucial requirements for consistency and intensity, will minimize the need for on-site supervision by Dr. Mueller.<sup>13</sup> C.C.'s speech therapy and occupational therapy services will also be integrated into the program, with Dr. Mueller and Southern Behavioral Group providing training to the District's therapists regarding the implementation of behavioral supports. (T. 1313.)

As noted above, Dr. Mueller's direct implementation of C.C.'s educational program is necessary at the outset to ensure that the program is effective. Nonetheless, the Court is not persuaded that the direct-implementation program should persist for five years. Rather, after

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<sup>12</sup>These BCBAs have greater experience than the District's proposed team, which consists of newly certified RBTs with no discrete trial training experience and other staff members who will have received only eight hours of training. (T. 1343, 1370, 1375, 1403.)

<sup>13</sup> The District's suggestion that Dr. Mueller should supervise either the District's own staff or employees of the Early Autism Project is simply not workable. Given the District's rejection of Dr. Mueller's past recommendations and his lack of organizational control over third parties, it is unrealistic to expect that adequate supervision of individuals not employed by Southern Behavioral Group could entail anything less than Dr. Mueller's full-time observation of C.C.'s program. (T. 1330-31.)

approximately eighteen months, during which time it is expected that C.C.'s interfering behaviors will be extinguished and he will acquire a foundation of critical skills, Dr. Mueller and Southern Behavioral Group will begin training District staff to assume responsibility for the implementation of C.C.'s program. Hence, at the start of the 2017-18 school year, Dr. Mueller shall begin transitioning, or "fading," the implementation of C.C.'s educational program to the District staff. (T. 1319-1320.) During the transition period, District staff will observe daily instruction, practice data collection, and eventually deliver instruction under the supervision of Dr. Mueller or a Southern Behavioral Group staff member. Then, beginning on December 1, 2017, and continuing through July 31, 2019, C.C.'s educational program will be developed and implemented solely by District staff, with Dr. Mueller continuing to monitor the program by assessing the learning environment, observing for fidelity of implementation, and offering assistance as needed. Dr. Mueller will initially monitor the program for up to seven hours per week. Over time, his monitoring will decrease incrementally. This gradual, multi-year "fade back" approach will provide District staff with experience in delivering services while ensuring that C.C.'s educational program does not suffer degradation due to the District's learning curve.

Furthermore, Dr. Mueller's work must not exist in a vacuum with regard to communicating with the District and C.C.'s parents. Open communication between all parties is essential, particularly since Dr. Mueller and his staff eventually will transition the servicing of C.C.'s educational program to District staff. Therefore, data on C.C.'s progress will be shared on a weekly basis. (T. 1336-37, 1373.) Also, meetings with Dr. Mueller and his staff, the District's staff, and C.C.'s parents shall be held on a quarterly basis for a more in-depth review of relevant data, as well as to discuss any concerns or other issues pertaining to C.C.'s education.

To ensure that program consistency extends to the home environment, Dr. Mueller and Southern Behavioral Group will coordinate the provision of home-based services through Ms. Arno and Puzzle Pieces. However, as the focus of C.C.'s educational program is necessarily school-based, the need for home-based services will abate relatively quickly. Therefore, these sessions will taper from fifteen hours per week to one hour per month, ending on December 1, 2017.

#### V. ORDER

For the reasons explained above, the District is **ORDERED** to retain Dr. Mueller and Southern Behavioral Group,<sup>14</sup> at its own expense, to develop, implement, supervise, and monitor C.C.'s educational program, beginning on the date of entry of this Final Decision and continuing through July 31, 2019, as specified herein. See Draper, 518 F.3d at 1280; see also P. v. Newington Bd. of Educ., 546 F.3d 111, 117, 121-23 (2d Cir. 2008) (affirming order for a school board to retain an inclusion expert for a year as an appropriate compensatory-education remedy under the IDEA); Sch. Dist. of Phila. v. Williams, 2015 U.S. Dist. LEXIS 157493, at \*2, 6-7, 25-26 (E.D. Pa. Nov. 20, 2015) (affirming hearing officer's order for school district to contract with an expert who would train a student, his parent, and faculty on how best to use an iPad to develop the student's writing and communication skills); Bell v. Bd. of Educ. of the Albuquerque Pub. Schs., 2008 U.S. Dist. LEXIS 108748, at 102 (D.N.M. Nov. 28, 2008) (ordering the school district to pay for a consultant to devise an "appropriate scheme" to remedy fifteen-month deficiency in education). The oversight of C.C.'s educational program by Dr. Mueller and Southern Behavioral Group shall be subject to the following parameters:

- (A) Assessments. On or before January 31, 2016, Dr. Mueller and his staff at Southern Behavioral Group shall conduct assessments of C.C., including

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<sup>14</sup> In the event Dr. Mueller becomes unable or unwilling to continue his duties in accordance with this Order, the parties shall jointly select another doctorate-level BCBA employed by Southern Behavioral Group to take his place.

the ABLLS-R, the AFLS, an updated FBA, and a formal preference assessment. The District shall fully cooperate with Dr. Mueller to ensure that these assessments are completed in a timely manner.

- (B) Program Development. The results of the assessments specified in paragraph A shall be used to develop C.C.'s educational program, including his IEP goals and objectives, protocols, data collection methodologies, and physical support materials. Dr. Mueller shall complete the initial development of C.C.'s educational program on or before February 15, 2016. The District shall compensate Dr. Mueller and Southern Behavioral Group for up to forty hours of their time spent during the initial phase of assessments and program development. After the initial program development has been completed, the District shall compensate Dr. Mueller and Southern Behavioral Group for up to eight hours per week of program development through November 30, 2017, inclusive of any subsequent assessments administered at the discretion of Dr. Mueller and Southern Behavioral Group.
- (C) Implementation. Immediately upon the completion of the assessments and program development specified in paragraphs A and B, and continuing through the summer of 2017, Dr. Mueller and his staff at Southern Behavioral Group shall exclusively develop, implement, and supervise C.C.'s educational program, which shall consist of thirty-five hours per week of school-based instruction for fifty weeks per year. At Dr. Mueller's discretion, the program shall begin with one-on-one instruction in a distraction-free environment and shall progress to small-group instruction, as appropriate. Two master's-level BCBAs employed by Southern Behavioral Group shall be responsible for C.C.'s daily instruction during this time period. In addition, Dr. Mueller or another qualified doctorate-level BCBA employed by Southern Behavioral Group shall supervise and monitor the program implementation for up to seven hours per week, which may be divided between two days. Dr. Mueller and Southern Behavioral Group shall consult regularly with District staff to ensure that the educational program developed for C.C. incorporates any mandated GAA objectives and/or other state requirements.
- (D) Transition. As of the first day of the 2017-18 school year, Dr. Mueller and Southern Behavioral Group shall begin transitioning the development and implementation of C.C.'s educational program to the District. During the transition period, which shall last until December 1, 2017, Dr. Mueller shall conduct training sessions with designated District staff, have District staff observe C.C.'s daily instruction, allow District staff to practice data collection, and eventually have District staff begin delivering C.C.'s educational program under the supervision of Dr. Mueller or a designated Southern Behavioral Group staff member. At Dr. Mueller's discretion, he and/or Southern Behavioral Group may provide such services for up to



thirty-five hours per week during the transition period. However, as of December 1, 2017, District staff shall have assumed full responsibility for C.C.'s program development and direct instruction; provided, however, that C.C.'s educational program shall continue to consist of at least thirty-five hours per week of school-based instruction for fifty weeks per year, through July 31, 2019.

- (E) Monitoring. Beginning on December 1, 2017, and continuing through July 31, 2019, Dr. Mueller and Southern Behavioral Group shall conduct on-site monitoring of the District staff's development and implementation of C.C.'s educational program. Dr. Mueller and Southern Behavioral Group shall provide feedback to District staff based on their observations. The monitoring hours shall start at a maximum of seven hours per week and gradually decrease, as follows:

As of December 1, 2017: up to seven hours per week  
As of December 1, 2018: up to seven hours per month

During the monitoring period, the District shall collaborate with Dr. Mueller regarding the development and implementation of C.C.'s educational program. As of August 1, 2019, the District shall assume full responsibility for all aspects of C.C.'s educational program.

- (F) Data Sharing. Beginning on February 15, 2016, or on the date of implementation of C.C.'s educational program, whichever is earlier, and continuing until the first day of school for the 2017-18 school year, Dr. Mueller and Southern Behavioral Group shall share current data with District staff on a weekly basis. During the subsequent transition period, Dr. Mueller, Southern Behavior Group, and the District shall share current data with each other, as appropriate, on a weekly basis. Beginning on December 1, 2017, and continuing until July 31, 2019, the District shall share current data with Dr. Mueller and Southern Behavioral Group on a weekly basis.
- (G) Meetings. Beginning on February 15, 2016, and continuing through November 30, 2017, quarterly meetings shall be held during which Dr. Mueller and Southern Behavioral Group, the District's staff, and C.C.'s parents may conduct a more in-depth analysis of the data and discuss any other issues pertaining to C.C.'s progress. Beginning on December 1, 2017, and continuing through July 31, 2019, quarterly meetings shall not be required, but shall be scheduled promptly upon request by Dr. Mueller, C.C.'s parents, or District staff. These quarterly meetings shall be in addition to C.C.'s IEP meetings. The District shall compensate Dr. Mueller for his attendance at all quarterly meetings and IEP meetings held through July 31, 2019.


- (H) Parent Training. Dr. Mueller and Southern Behavioral Group shall provide training to C.C.'s parents as needed, beginning on the date of entry of this Final Decision and continuing until December 1, 2017. The District shall compensate Dr. Mueller and Southern Behavioral Group for up to twelve hours of parent training per year. As of December 1, 2017, parent training shall be provided by District staff on an as-needed basis.
- (I) Payment and Invoicing. For all duties and responsibilities performed in accordance with this Order, Dr. Mueller and Southern Behavioral Group shall be paid at their standard rates, which shall not exceed \$150 an hour for instructional time and \$80 per hour for travel time, with one hour of travel per day provided at no cost to the District. Travel expenses for each staff member shall not exceed \$240 per day. Further, Dr. Mueller and Southern Behavioral Group shall actively seek ways to minimize the cost of travel, including utilizing staff who live in closer proximity to the District. Dr. Mueller and Southern Behavioral Group shall provide detailed invoices to the District on a not less than monthly basis.
- (J) In-Home Services. In conjunction with C.C.'s school program, Ms. Arno and Puzzle Pieces shall provide in-home services in collaboration with Dr. Mueller and Southern Behavioral Group. These in-home services shall begin on or before March 1, 2016, and shall consist initially of up to fifteen hours per week, with the following tapering schedule:

Fifteen hours per week for two weeks;  
Ten hours per week for two weeks;  
Five hours per week for two weeks;  
One hour per week for one month;  
One hour per month until December 1, 2017.

For in-home services provided in accordance with this Order, Ms. Arno and Puzzle Pieces shall be paid at their standard rate of \$95 per hour, including travel time, and shall provide detailed invoices to the District on a not less than monthly basis.

All other requested relief not specifically granted above is hereby denied.

SO ORDERED, this 5<sup>th</sup> day of January, 2016.

  
KRISTIN L. MILLER  
Administrative Law Judge