

**HEARING DECISION**

**CHILD:** A.W.

**PARENT:** J.P.

**PETITIONER'S ATTORNEY:** Honorable Max Cassady  
Cassady & Cassady, PC  
21 South Section Street  
Fairhope, Alabama 36532

Honorable William T. "Bo" Johnson III  
Kirby Johnson, P.C.  
1 Independence Plaza Drive, Suite 520  
Homewood, Alabama 35209

**LOCAL EDUCATION AGENCY:** E.C.B.O.E.

**RESPONDENT'S ATTORNEY:** Honorable Erika Perrone Tatum  
Hill, Hill, Carter, Franco, Cole & Black, P.C.  
P.O. Box 116  
Montgomery, AL 36101-0116

**HEARING DATES:** January 24, 2019;  
March 7, 2019;  
March 8, 2019; and  
April 22, 2019.

**DATE OF DECISION:** May 30, 2019

**HEARING OFFICER:** P. Michael Cole  
Wilmer & Lee, P.A.  
P.O. Box 710  
Athens, AL 35612

**TABLE OF CONTENTS**

|       |   |       |
|-------|---|-------|
| I.    | PROCEDURAL HISTORY- .....                   | 1-2   |
| II.   | EXHIBITS ADMITTED INTO EVIDENCE.....        | 2-6   |
|       | A.    PETITIONER’S EXHIBITS.....            | 2-3   |
|       | B.    RESPONDENT’S EXHIBITS.....            | 3-6   |
| III.  | WITNESSES.....                              | 6     |
|       | A.    PETITIONER’S WITNESSES.....           | 6     |
|       | B.    RESPONDENT’S WITNESSES .....          | 6     |
| IV.   | BURDEN OF PROOF .....                       | 6     |
| V.    | SUMMARY OF THE TESTIMONY AND EVIDENCE ..... | 6-13  |
| VI.   | ISSUES PRESENTED.....                       | 13    |
| VII.  | DISCUSSION OF THE ISSUES.....               | 13-17 |
| VIII. | SPECIFIC FINDINGS.....                      | 18    |
| IX.   | ORDER.....                                  | 18-19 |
| X.    | NOTICE OF APPEAL RIGHTS .....               | 20    |
| XI.   | CERTIFICATE OF SERVICE .....                | 21    |

## HEARING DECISION

### **I. PROCEDURAL HISTORY**

This due process hearing was conducted under the authorization of the Individuals with Disabilities Education Improvement Act (IDEA), 2004 Reauthorization, 20 U.S.C. § 1400 *et seq.*, implementing federal regulations at 34 C.F.R. Part 300, and implementing State regulations, the Rules of the Alabama State Board of Education, Chapter 290-8-9, *et seq.*

This matter has a unique procedural history in that this Hearing Officer was assigned the first due process complaint filed by the Parent against the District in 2017 (Case No. 17-49). The proceedings in the 2017 case commenced at the District's Office on January 24, 2018. Testimony was taken for one day. The proceedings were adjourned in order for the parties to participate in a mediation. The mediation resulted in a Settlement Agreement dated April 4, 2018 with a condition of the settlement being that it be adopted by this Hearing Officer as an Order. Pursuant to the Settlement Agreement, the parties presented the Settlement Agreement to this Hearing Officer for entry as an Order. On April 5, 2018, the undersigned Hearing Officer entered an Order adopting the terms of the Settlement Agreement.

A second due process complaint was filed by the Parent against the District in the Fall of 2018 alleging failure to comply with this Hearing Officer's April 5, 2018 Order. It was assigned by the State Superintendent to another Hearing Officer. It was dismissed by the Hearing Officer prior to the taking of testimony on procedural grounds.

On or about January 22, 2019, the Parent filed this due process complaint concerning the District's implementation of the Settlement Agreement and the April 5, 2018 Order. The undersigned Hearing Officer was assigned by the State Superintendent to hear this matter.

The due process hearing was conducted on March 7, March 8, April 8, and April 22, 2019 at the District's Office. The Parent was represented by the Honorable Max Cassady and the Honorable William T. "Bo" Johnson, III. The District was represented by the Honorable Erika Perrone Tatum. The Petitioner advised this Hearing Officer that it was the Petitioner's desire that the hearing be closed. The Petitioner also advised this Hearing Officer that he was waiving the Child's presence at said hearing.

Opening statements were made by both parties on March 7, 2019. At the completion of testimony on April 22, 2019, both parties were given the opportunity to submit to this Hearing Officer a Proposed Order or Brief by May 8, 2019. Both parties made their post hearing filings in a timely manner. This Hearing Officer has considered all the exhibits introduced into evidence, and all testimony offered as evidence at the hearing.

## **II. EXHIBITS ADMITTED INTO EVIDENCE**

### **A. Petitioner's Exhibits**

1. Petitioner's Exhibit 1: Special Education File (Part 1)
2. Petitioner's Exhibit 2: Special Education File (Part II)
3. Petitioner's Exhibit 3: Transcript of the January 24, 2019 Telephonic Hearing
4. Petitioner's Exhibit 5: Notice and Invitation for 8/20/2018 IEP Meeting

5. Petitioner's Exhibit 6: Notice and Invitation for 8/27/2018 IEP Meeting
6. Petitioner's Exhibit 20: 8/27/2018 IEP Minutes
7. Petitioner's Exhibit 21: Order and Judgment with Cover Letter
8. Petitioner's Exhibit 22: Notice and Invitation for 8/31/18 IEP Meeting
9. Petitioner's Exhibit 23: Minutes of the 8/31/2018 IEP Meeting
10. Petitioner's Exhibit 24: Office Referrals
11. Petitioner's Exhibit 25: Restraint Forms
12. Petitioner's Exhibit 26: 8/31/2018 IEP
13. Petitioner's Exhibit 28: 9/14/18 IEP
14. Petitioner's Exhibit 29: Minutes of the 9/14/2018 Resolution Meeting
15. Petitioner's Exhibit 30: Meeting Minutes of the 9/28/2018 IEP Meeting but it has a date on the Minutes of 10/28/2018.
16. Petitioner's Exhibit 31: 12/13/2018 IEP
17. Petitioner's Exhibit 34: Minutes of the 12/13/2018 IEP
18. Petitioner's Exhibit 35: 1/31/2019 IEP
19. Petitioner's Exhibit 37: 2/5/2019 IEP
20. Petitioner's Exhibit 38: Minutes of the 2/5/2019 IEP
21. Petitioner's Exhibit 39: Notice of Proposal and Refusal to Take Action by T.P. dated 2/7/2019
22. Petitioner's Exhibit 40: Student Code of Conduct
23. Petitioner's Exhibit 41: Student Code of Conduct

**B. Respondent's Exhibits**

1. Respondent's Exhibit 1: Response to Request for Due Process Hearing
2. Respondent's Exhibit 2: Functional Behavioral Assessment and Behavior Intervention Plan (5/8/18)
3. Respondent's Exhibit 3: Evaluations Completed by the District

4. Respondent's Exhibit 4: Alabama Institute for Deaf and Blind Admissions Results of Evaluation and Admissions Review Committee Decision
5. Respondent's Exhibit 5: 2018-2019 IEP, Meeting Minutes and Notice of IEP Team's Decision regarding Reevaluation (8/20/18)
6. Respondent's Exhibit 6: 2018-2019 IEP (8/27/18)
7. Respondent's Exhibit 7: 2018-2019 IEP and Meeting Minutes (8/31/18)
8. Respondent's Exhibit 8: [REDACTED] Consent for Applied Behavior Analysis Services and Consultation Notes (8/22/18)
9. Respondent's Exhibit 9: 2018-2019 Discipline Report
10. Respondent's Exhibit 10: Documentation of 8/16/18 behaviors
11. Respondent's Exhibit 11: Documentation of 8/21/18 behaviors
12. Respondent's Exhibit 12: Documentation of 8/24/18 behaviors
13. Respondent's Exhibit 13: Documentation of 8/28/18 behaviors
14. Respondent's Exhibit 14: Documentation of 8/30/18 behaviors
15. Respondent's Exhibit 15: Letter to Parent Sending Assistive Technology Evaluation Report
16. Respondent's Exhibit 16: Assistive Technology Evaluation Report
17. Respondent's Exhibit 17: 2018-2019 IEP, Meeting Minutes and Notice of Proposal or Refusal to Take Action (9/14/18)
18. Respondent's Exhibit 18: Letter from Erika Tatum to Max Cassady regarding Neuropsychological Evaluation by Dr. [REDACTED] (10/12/18)
19. Respondent's Exhibit 19: Neuropsychological Evaluation Report
20. Respondent's Exhibit 20: Letters from Homebound Teacher to Parent
21. Respondent's Exhibit 21: Letter from T.M. to Parent seeking information from [REDACTED] Alabama Institute

for Deaf and Blind, and any additional facilities that have seen or treated the Child since April 2018

22. Respondent's Exhibit 22: 2018-2019 IEP, Meeting Minutes and Notice of Proposal or Refusal to Take Action (12/13/18)
23. Respondent's Exhibit 23: 2018-2019 IEP and Notice of Proposal or Refusal to Take Action (1/31/19)
24. Respondent's Exhibit 24: 2018-2019 IEP, Meeting Minutes and Notice of Proposal or Refusal to Take Action (2/5/19)
25. Respondent's Exhibit 25: [REDACTED] Records
26. Respondent's Exhibit 26: Alabama Institute for Deaf and Blind Records
27. Respondent's Exhibit 27: [REDACTED] Records
28. Respondent's Exhibit 28: 2018-2019 IEP and Meeting Minutes (9/28/19)
29. Respondent's Exhibit 29: Email from Dr. [REDACTED] to Hearing Officer and Counsel (3/15/19)
30. Respondent's Exhibit 30: *Alabama Administrative Code* 290-8-9.06(3) Least Restrictive Environment
31. Respondent's Exhibit 31: Email from T.M. to M.M. re the Child's Change of Placement (8/30/19)
32. Respondent's Exhibit 32: Text Messages Between Case Manager and Parent
33. Respondent's Exhibit 33: Letters from the District to the Parent

During the hearing the Petitioner introduced as Petitioner's Exhibit 19 the transcript of the January 24, 2018 due process hearing in Case No.#17-49. The stated purpose of the Petitioner's offering of Exhibit 19 was that it contained very descriptive incidences of conduct by this Child. The District objected to the transcript on the grounds of relevancy

and the desire to not relitigate the 2017 case. This Hearing Officer took under advisement the District's objection to Petitioner's Exhibit 19. This Hearing Officer is sustaining the objection of the District to Petitioner's Exhibit 19.

### **III. WITNESSES**

#### **A. Petitioner's Witnesses**

1. R.D.
2. A.J.
3. T.M.
4. P.S.
5. T.P.

#### **B. Respondent's Witnesses**

1. J.P.

### **IV. BURDEN OF PROOF**

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08 (c). The standard of proof is by a preponderance of the evidence.

### **V. SUMMARY OF THE TESTIMONY AND EVIDENCE**

Following is a summary of some of the pertinent facts presented to this Hearing Officer during this four day hearing. These facts are not the only facts considered by this Hearing Officer in making this decision. This Hearing Officer has heard all the testimony and has reviewed the transcript of said testimony. This decision is based on all testimony presented at the hearing as well as exhibits admitted into evidence during the hearing.



By way of introduction, the Child is a [REDACTED]-year-old student who resides in the District with [REDACTED] Mother. The Mother is a single parent who works full time in Montgomery. The Child has a diagnosis of [REDACTED] and there is presently no dispute that the Child is a student with a disability who is eligible for Special Education Services under the IDEA. According to the Child's teacher, the Child has "multiple disabilities."

The Child has a long and well-documented history of behavioral issues. Prior to April 5, 2018, the Child had [REDACTED]

[REDACTED] As early as October 2009, the District was aware of aggressive behavior by the Child. In 2014, the Alabama Institute for Deaf and Blind ("AIDB") reported that the Child's tantrums were becoming more violent. AIDB detailed a number of behaviors including [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

On August 19, 2014, according to a student discipline report, the Child [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Police had to be called to the bus.

According to an observation performed on October 22, 2014, the Child was placed in the timeout room after [REDACTED]

[REDACTED]

[REDACTED] This document is part of the Child's special education file.

According to a Fall 2014 Special Education Re-Eligibility Determination: (a) the Child "gets frustrated with [REDACTED] work," (b) "tantrums can be severe and include aggression and destruction of property, and (c) "documentation of emotional impairment [has been] exhibited over a long period of time." The document noted that the Child was "currently in an alternative school due to [REDACTED] severe behaviors," "[REDACTED] has had severe behavior problems since preschool," and "[t]here has been a long history of aggression toward others and defiance."

On March 14, 2015, the Child's IEP was amended due to [REDACTED]  
[REDACTED]

On March 13, 2016, the Child's IEP described behavior of [REDACTED]  
[REDACTED]

Based upon the foregoing, the District was aware of the Child's severe behavioral difficulties long before the initiation of the 2017 due process hearing.

On December 7, 2017, the IEP team met to discuss the Child's behavior. The IEP noted numerous violate outbursts numerous violent outbursts with out-of-control behavior which include[d] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] The IEP team decided to place the Child on homebound services for the duration of the third quarter of the 2017-2018 school year.

In response to the IEP team's decision for homebound placement, the Parent filed a due process complaint, which ultimately resulted in the Settlement Agreement and the undersigned Hearing Officer's accompanying Order of April 5, 2018. Among many other things, the Order provided that if the IEP team determines homebound is the Child's least restrictive environment, the homebound services shall be provided to the Child at a school or school district facility within the jurisdiction of the District. At the due process hearing, Petitioner presented evidence that the District has not included a copy of the April 5, 2018 Order in the Child's special education file.

On May 8, 2018, the IEP team published the Child's IEP for the 2018-19 school year. The mother participated in the IEP meeting by telephone. The Child's IEP placed [REDACTED] in a least restrictive environment of "separate school public day school fifty percent of the day." In particular, the Child was to be educated at [REDACTED], the District's therapeutic placement. [REDACTED] was the facility where the Child was educated for a full day of school before the first due process hearing. The [REDACTED] facility was not a homebound program but an alternative school for students with behavioral problems.

A week later, on May 14, 2018, another IEP meeting was held. At that meeting, the IEP team decided to change the Child's placement from [REDACTED] to [REDACTED]

In August 2018, the Child began attending [REDACTED]. for a full day. [REDACTED] was transported to and from school on a bus.

On August 20, 2018, the IEP team called the mother and asked her to come to the school that same day for an IEP meeting. The mother was cooperative in doing so. At the IEP meeting, the Child's IEP team reviewed a behavioral episode that had occurred on

August 16, 2018. On that date, the Child was little agitated when [REDACTED] arrived at school. [REDACTED] calmed down and ate [REDACTED] breakfast. However, [REDACTED] continued to get agitated at P.E. When [REDACTED] returned to the classroom, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] The teacher blocked the doorway and restricted the Child from leaving. [REDACTED] behavior continued to escalate, and [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] The administration was called to the classroom. The Child was restrained for approximately 12 minutes after [REDACTED] and [REDACTED] [REDACTED]. The sign language interpreter helped [REDACTED] calm down briefly, but [REDACTED] soon became agitated and started [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The Child was then restrained for a period of approximately 26 minutes, until [REDACTED] received some food and calmed down. The episode concluded at approximately 10:05 a.m. Notwithstanding this episode, the Child's placement was not changed at the August 20th IEP meeting.

On Friday, August 24, 2018, the mother was notified of an IEP meeting to occur on Monday, August 27, 2018. The mother attended the meeting by telephone. At the IEP meeting, the IEP team reviewed a behavioral episode that occurred on August 21, 2018. On that date, the Child came into the classroom in the morning and began [REDACTED] [REDACTED] [REDACTED]. [REDACTED] was redirected to [REDACTED] seat and worked quietly for a few minutes. Eventually, however, [REDACTED] started walking around the classroom and tried to leave. [REDACTED] behavior continued to escalate, and [REDACTED] [REDACTED]. The Child was transitioned to P.E. class, where [REDACTED] behavior continued to

escalate. [REDACTED]. The teacher walked the Child back to the classroom, where [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] After ten minutes, the Child was able to calm down and wanted to return to P.E.

Throughout the remainder of the day on August 21, 2018, the Child continued to need redirection. In the afternoon, the Child [REDACTED]

[REDACTED]  
[REDACTED] The Child was then restrained for a period of time. The Parent was called to the school and administered a paddling. Subsequently, the Child [REDACTED]

[REDACTED]. The Parent eventually took the Child home early.

The Child's teacher testified that she attributed at least some of the Child's behaviors, including episodes of frustration, to one or more of [REDACTED] disabilities. The District did not conduct any manifestation determination hearing regarding the Child's behaviors.

As a result of the IEP meeting held on August 27, 2018, the IEP team changed the Child's LRE to a homebound placement. Under that placement, the Child was to attend one (1) hour per day at [REDACTED], and then be transported home to receive homebound services for the remainder of the day. The District requested a location from the Parent to which the Child could be transported for homebound services. However, because Parent is a single mother who works during the day, she was unable to furnish a location where

the Child could receive homebound services within the District. This Hearing Officer notes that the provision of homebound services at any location other than a school or school facility clearly violates his Order of April 5, 2018. The IEP team discussed a potential placement at [REDACTED], which the Child had attended in the past. At the due process hearing, the Special Education Director could not recall why the IEP team rejected that placement. No BCBA, psychologist, counselor, psychiatrist was present at the August 27, 2018 IEP meeting. The proposed transition plan was not discussed with the BCBA prior to the IEP meeting. The minutes of the August 27, 2018 IEP meeting indicate that “no danger to others” was listed as the “pro” of changing the Child to a homebound placement.

Aside from the Child’s behavior being difficult for the District to manage, the District provide little rationale supporting the decision to change the Child’s LRE to a homebound placement. The Special Education Director testified: [REDACTED] behavior prohibited [REDACTED] from coming a full day. That’s why the team decided for homebound and put the plan in action, in place for transition to occur with the support of a BCBA.” The Child’s teacher testified that she could not recall who on the IEP team suggested that the Child go to school for only one hour each morning. According to the Child’s teacher, the Child’s behavior “came to the point where [REDACTED] was a harm to [REDACTED] and others.”

The Child has been unable to attend school since the IEP team’s determination that the Child be limited to homebound placement with one hour per day at school. Instead, the Child has been in a relative’s home in [REDACTED] during the school day. The District’s Special Education Director indicated that the District would not schedule services until the Parent gave to the District a location within the District where homebound services could

be provided in a home setting. (“Those services would have been determined once we were able to set up the schedule with Mom to know when – where we’d be able to drop [REDACTED] off.”).

The Child’s teacher testified that the Child can trace simple words, write [REDACTED] name, say “I am hungry,” and can indicate a need to use the bathroom. On tests performed in the Spring of 2018, the Child scored less than the one percentile range, with an age equivalent of one to three years old. The test resulted indicated a pre-school level despite that fact that the Child was in Sixth Grade. The Child’s sign language ability is very limited. The Child’s teacher is not fluent in sign language. The Child’s sign language interpreter testified that she was essentially unable to communicate with [REDACTED]. The interpreter was unable to make any progress with the Child. According to the Child’s teacher, the Child’s inability to communicate effectively resulted in a complete inability to receive education.

## **VI. ISSUES PRESENTED**

The issue before the Hearing Officer is whether the District implemented and complied with the Settlement Agreement and accompanying Order of April 5, 2018, and, if not, whether the failure to do so resulted in a denial of FAPE to the Child.

## **VII. DISCUSSION OF THE ISSUES**

When Congress enacted the IDEA, it found that “the educational needs of millions of children were not being fully met because ... the children were excluded entirely from the public school system and from being educated with their peers.” 20 U.S.C. § 1400(c)(2). To ensure that the students with disabilities receive a Free and Appropriate Public Education (“FAPE”), Congress enacted the IDEA which mandates the creation of

individualized education programs (“IEPs”) for those students. *See Jefferson Cty. Bd. Of Educ. v. Bryan M.*, 706 F. App’x 510, 512 (11<sup>th</sup> Cir. 2017) citing 20 U.S.C. § 1412(a)(4). The IDEA requires school districts to include student’s parents in the IEP team, 20 U.S.C. 1414(d)(1)(B), and treat them as equal partners, *see M.M. ex el. C.M. v. Sch. Bd.*, 437 F.3d 1085, 1095 (11<sup>th</sup> Cir. 2006) (“During the IEP development process, parental involvement is critical; indeed, full parental involvement is the purpose of many of the IDEA’s procedural requirements.”). To meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L.Ed. 2d 335 (2017).

As part of the IDEA, the school district must provide the services recommended by the IEP in the “least restrictive environment” possible. *Jefferson Cty.*, 706 F. App’x at 512 (citing 20 U.S.C. § 1412(a)(5)). For that reason, the IEP must identify a student’s least restrictive environment (“LRE”). *Id.* citing 20 U.S.C. § 1436(d)(5). If a student’s parents believe the IEP has incorrectly identified that environment, they can challenge the IEP’s designation. *Id.* Under the IDEA, the Parent has a substantive right to challenge both the placement and the particular site where the IEP is to be implemented. *See R.L. v. Miami-Dade Cty. Sch. Bd.*, No. 07-20321-CIV, 2008 WL 3833414, at \*30 (S.D. Fla. Aug. 12, 2008), *aff’d*, 757 F.3d 1173 (11<sup>th</sup> Cir. 2014).

In this case, the dispute concerns the District’s compliance with the April 5, 2018 Order of the Hearing Officer. The Petitioner alleges several violations of the April 5, 2018



Order. The alleged violation which concerns this Hearing Officer the most arises from item 8:

The IEP team shall make decisions regarding [the Child's] placement pursuant to IDEA regulations. If the IEP team determines homebound is [the Child's] least restrictive environment, the homebound services shall be provided to [the Child] at a school or school district facility within the jurisdiction of the [District].

Consistent with item 8, the Eleventh Circuit has recognized the permissibility of providing "homebound" education at a school facility. *See Jeffrey S. v. State Bd. of Educ. of Georgia*, 896 F.2d 507, 509 n.4 (11th Cir. 1990) ("A homebound program is a one-on-one program where the homebound child is placed into a classroom alone with one teacher. A homebound child has no interactions with other students.").

The Petitioner alleges the District failed to comply with the Settlement Agreement and accompanying Order because the IEP team determined the Child's appropriate placement to be homebound but refused to provide the necessary homebound services at a school or school district facility. The Hearing Officer agrees with the Petitioner. The Hearing Officer finds that the District breached the Settlement Agreement and violated his April 5, 2018 Order when the District attempted to place the Child in a homebound placement and refused to provide the homebound services at a school or school district facility for more than one hour per day.

The District maintains that the IEP team properly determined the Child's least restrictive environment to be a homebound placement. However, the April 5, 2018 Order of this Hearing Officer is perfectly clear. Under the IDEA, a "homebound" placement

simply means that the student is educated in an environment with a one-on-one teacher and no interaction with other students. *See Jeffrey S. v. State Bd. of Educ.*, 896 F. 2d 507, 509 n. 4 (11<sup>th</sup> Cir. 1990). Thus, the fact that the IEP team determined the appropriate placement to be “homebound” did not alleviate the District of the requirement of the Settlement Agreement and accompanying Order that the homebound services be provided at a school or school district facility. Therefore, the District contention that its properly determined the Child’s placement to be homebound does not excuse the District’s breach of the Settlement Agreement or its violation of the accompanying Order.

After hearing all of the testimony and evidence in this matter, it is the Hearing Officer’s opinion that the District decided to ignore the key provisions of the Settlement Agreement and Order of April 5, 2018 when it determined that it would provide homebound services for only one hour per day at the school. There is no doubt that the District experienced great difficulty managing the Child’s behaviors. However, based upon the records presented at the due process hearing, the District was well-aware of the Child’s behaviors prior to entering into the Settlement Agreement with the Petitioner, and prior to entry of the Hearing Officer’s Order of April 5, 2018.

The District had a duty to comply with the agreed-upon terms of the Settlement Agreement with Petitioner; and, if that were not enough, the District certainly had a duty to comply with the April 5, 2018 Order of the Hearing Officer. If the circumstances became such that the District believed this Hearing Officer’s Order needed to be amended or modified, then, in the view of this Hearing Officer, the proper procedure would have been for the District to petition for a due process hearing pursuant to *Ala. Admin. Code. R. 290-*

8-90.08(9)(c). In any event, there was no legally permissible procedure by which District could have unilaterally removed the Child from the last agreed-upon placement, over the objection of the Parent, in order to relegate him to a disputed homebound placement which clearly did not comply with the terms of the Settlement Agreement or the accompanying Order of April 5, 2018.

As explained above, the Hearing Officer finds that the District breached the Settlement Agreement and violated the Order of April 5, 2018. Citing *E.D. ex rel. Dukes v. Enterprise City Bd. of Educ.*, 273 F.Supp.2d 1252 (M.D. Ala. 2003), the District argues that breach of an IDEA Settlement Agreement only entitles the non-breaching party to relief if the breach results in a denial of FAPE. In this case, the Hearing Officer finds that the Child suffered a denial of FAPE. In particular, the Child was removed from his agreed-upon placement, over the objection of the Parent, and forced into a disputed placement that did not comply with my Order of April 5, 2018. For its part, the District does not specify the manner in which the Child has supposedly received FAPE during the 2018-2019 school year. The record indicates that the Child has been unable to attend school or receive the services previously ordered by the Hearing Officer and has instead been in [REDACTED] staying with a relative during the school day. The District's Special Education Director indicated that the District would not schedule services until the Parent gave to the District a location within the District where homebound services could be provided in a home setting.

## **VIII. SPECIFIC FINDINGS**

The Hearing Officer finds that the District breached the Settlement Agreement and violated the Hearing Officer's accompanying Order of April 5, 2018. This Hearing Officer further finds that the District has denied FAPE to the Child.

## **IX. ORDER**

The Hearing Officer finds in favor of the Petitioner and hereby ORDERS the following relief:

1. The District shall place of copy of the Settlement Agreement dated April 4, 2018 and this Hearing Officer's Order dated April 5, 2018 in the Child's special education file. A copy of this Order shall also be placed in the Child's special education file. The Orders of the Hearing Officer shall be available for review by the Child's IEP team in order to ensure that any future IEPs are compliant.

2. The IEP team shall, at the earliest date and time agreeable to the Parent, hold an IEP meeting to review the Child's least restrictive environment. The IEP team shall also review the Child's communication and behavioral needs to determine what additional services or assistive equipment may be provided in order to enable the Child to make progress in the areas of behavior and communication, so that the Child can receive a FAPE. The District shall ensure that appropriate behavior and communication professional attend and participate in the IEP meeting. The expense of these professionals shall be borne by the District.

3. If the IEP team determines that a homebound placement is the Child's least restrictive environment, the District is ORDERED to comply with the following:

A. The District shall ensure that any homebound services are provided at a school or school facility of the District as set forth in the Hearing Officer's Order of April 5, 2018. In the event the Parent and the District are unable to agree regarding the specific school or school district facility at which the Child may receive homebound services, the District shall provide the services at the school the Child would attend if ■ were not disabled.

B. The District shall provide transportation to and from the location where the homebound services are to be provided.

C. If the Child's LRE is determined to be homebound, the District shall at a minimum provide the Child with a one-to-one teacher who is fluent in sign language and a one-to-one paraprofessional. Additional services may be determined by the IEP team.

D. The Child shall remain at the school or school facility for the full school day (normally an 8-hour day) unless otherwise agreed by the Parent.

4. As compensatory education, the District shall provide Extended School Year services to the student each summer for a full school day, and the District shall provide the necessary transportation to and from school each day.

5. The District shall immediately comply with this Order, as well as the Hearing Officer's Order of April 5, 2018.

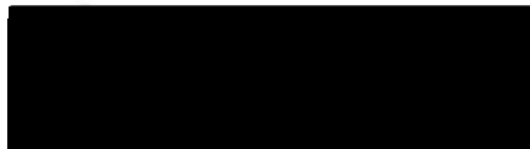
6. Petitioner is the prevailing party.

7. The undersigned has no authority to award relief under the ADA, Section 504, or Section 1983, accordingly, that requested relief is hereby denied.

**X. NOTICE OF APPEAL RIGHTS**

Any party aggrieved by the findings and decision made herein has the right to bring a civil action in the appropriate Court under 20 U.S.C. Section 1415. *The Alabama Administrative Code* 290-8-9.08 (9) (c)16 provides an aggrieved party shall file a notice of intent to file a civil action with all parties to the Impartial Due Process Hearing within **thirty (30) calendar days** upon receipt of the decision of the Impartial Due Process Hearing Officer. The Code further provides that a civil action in a court of competent jurisdiction must be filed within **thirty (30) days** of the filing of the notice of intent to file a civil action.

**DONE and ORDERED** this the 30th day of May, 2019.



P. Michael Cole  
Hearing Officer

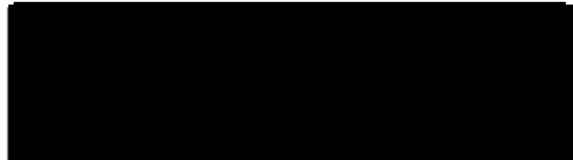
**XI. CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Decision has been forwarded to the following individuals by First Class U.S. Mail with postage prepaid as well as by electronic mail on this the 30th day of May, 2019.

William T. "Bo" Johnson III, Esq.  
Kirby Johnson, P.C.  
1 Independence Plaza Drive, Suite 520  
Homewood, Alabama 35209

Max Cassady, Esq.  
Cassady & Cassady, PC  
21 South Section Street  
Fairhope, Alabama 36532

Erika Perrone Tatum, Esq.  
Hill, Hill, Carter, Franco, Cole & Black, P.C.  
P.O. Box 116  
Montgomery, AL 36101-0116



**P. Michael Cole**  
**Due Process Hearing Officer**