**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re:    Benjamin[[1]](#footnote-1)                                BSEA **#** 2401643

**DECISION**

 This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on January 4, 5, and 10 and February 15, 2024, before Hearing Officer Amy Reichbach. With the consent of both parties and agreement of all participants, one of the four days was held virtually, via Zoom videoconference; the other three were hybrid, with some participants on Zoom and others in-person at the Bureau of Special Education Appeals (BSEA). Those present for all or part of the proceedings were:

Mother

Father

Melissa Belsito Coordinator of Student Services, Center for Applied Behavioral Intervention (CABI)

Kayla Brennan Board Certified Behavior Analyst, CABI

Brian Doyle Executive Director, CABI

Jami Langley Associate Director of Exceptional Learning, Brockton Public Schools

Michelle Lanner Assistant Special Education Director of Out-of-District Placement, Brockton Public Schools

Connor Spilman Special Education Teacher, CABI

Paige Tobin, Esq. Attorney for Brockton Public Schools

Carol Kusinitz Court Reporter

Alexander Loos Court Reporter

The official record of the hearing consists of documents submitted by the Parents and marked as Exhibits P-1 to P-17; documents submitted by Brockton Public Schools and marked as Exhibits S-1 to S-3, S-4A through S-4H;[[2]](#footnote-2) S-5A through S-5N; S-6A through S-6C; and S-7 through S-10;[[3]](#footnote-3) approximately three and a half days of oral testimony and argument; a digital recording of this testimony and argument; and a four-volume transcript produced by court reporters. At the District’s request, the case was continued to February 22, 2024 and the record held open for submission of closing arguments. On February 22, 2024, Parents requested a one-day extension to February 23, 2024 due to technology issues, which I allowed. Closing arguments were received and the record closed on that date.

**INTRODUCTION**

On August 16, 2023, Parents[[4]](#footnote-4) filed a *Hearing Request* against Brockton Public Schools (Brockton, or the District) on behalf of Benjamin, then twenty-one years old,[[5]](#footnote-5) contending that he had missed a year of education and related services amid the COVID-19 outbreak, and requesting that he be allowed to remain in his current placement at the Center for Applied Behavioral Instruction (CABI) beyond the age of twenty-two as compensation. Specifically, Parents asserted that Brockton failed to implement Benjamin’s last agreed-upon individualized education program (IEP) during the 2021-2022 school year, as Benjamin was out of school from June 2021 to June 2022 following his termination from the Darnell School, and he did not receive special education and related services or tutoring during this period. Parents requested one additional year of education for Benjamin in the form of “COVID-19 Compensatory Education and Related Services.” The Hearing was initially scheduled for September 20, 2023.

On August 25, 2023, Brockton filed its *Response* *to the Hearing Request Filed by the Parent* (*Response*), asserting that it had provided and proposed appropriate IEPs for Benjamin for all relevant periods; that any procedural errors that had occurred were *de minimus* and did not deny Benjamin a free appropriate public education (FAPE); that Brockton had not discriminated against Benjamin on the basis of his disability; and that some of Parents’ claims were barred by the applicable statute of limitations. The District contended that at all times, it had proactively sought placements for Benjamin, and that when CABI, Parents’ preferred placement, accepted him but could not offer a definite start date, Brockton offered tutoring and, ultimately, proposed to send referral packets to additional placements. Parents consistently rejected the District’s attempts to provide services to Benjamin while awaiting a start date at CABI. They also rejected the IEPs proposed by Brockton between 2021 and 2023.

On September 1, 2023, Parents filed a rebuttal to Brockton’s *Response*, and on September 8, 2023, pursuant to the parties’ joint request, the Hearing was postponed for good cause to November 1, 2023. Following a Pre-Hearing Conference on September 13, 2023, and subsequent discussion, I issued an Order outlining the issues for Hearing. On October 6, 2023, the District filed a *Partial Motion to Dismiss* and *Memorandum of Law*, asserting that Parents’ claims for compensatory services for the period prior to August 8, 2021 must be dismissed as beyond the statute of limitations.[[6]](#footnote-6) On October 16, 2023, Parents filed their *Response*, maintaining, among other things, that Brockton wasresponsible for Benjamin’s termination from his extended evaluation, and that Mother had not been aware that Benjamin was entitled to COVID compensatory services until she spoke with another parent in August 2023.

On October 18, 2023, I issued a *Ruling on Brockton Public Schools’ Partial Motion to Dismiss*. In it, I outlined the following issues for Hearing:

1. Whether Mother has educational decision-making authority, and/or guardianship, with respect to Student[[7]](#footnote-7);
2. Whether Brockton failed to provide Student with a free appropriate public education (FAPE) between August 16, 2021 and the present and if so, what is the appropriate remedy;[[8]](#footnote-8)
3. Whether any award of compensatory services should be reduced or denied because of (i) Parent’s conduct in refusing education and related services or alternate placement or (ii) Parent’s obstruction of the placement process.

The matter was scheduled for an in-person Hearing at the BSEA Offices in Malden on November 1, 8, and 9, 2023. Mother was encouraged to file documents relevant to issue (A) prior to the commencement of the Hearing, as in the absence of educational decision-making authority or guardianship, Benjamin would be required to participate.

On October 30, 2023, in light of Counsel’s illness, Brockton filed an assented-to request to continue the first day of Hearing to permit the parties additional time to prepare. The request was allowed for good cause, and the Hearing was scheduled for November 8, 9, and 14, 2023. In the interim, the paperwork submitted by Parents failed to establish their ability to represent Benjamin at Hearing in his absence. Following discussion among the parties, Parents filed an assented-to request to postpone the Hearing for two months to allow Mother to obtain a full guardianship of Benjamin, inclusive of the ability to make educational decisions for him. The Hearing was continued, for good cause, to January 4, 5, and 23, 2024, and at the request of the District and CABI, several witnesses were granted the ability to participate virtually in the Hearing. A fourth date, January 10, 2024, was later added. Due to Benjamin’s illness and inability to attend school on January 23, 2024, on that date I allowed Parents’ assented-to request to postpone the last day of Hearing to February 15, 2024.

In the meantime, Parents submitted paperwork establishing Mother’s appointment as Benjamin’s guardian, and the parties held several additional conference calls to establish stipulated facts and narrow the issues for Hearing. Specifically, the parties stipulated that Benjamin was out of school between August 16, 2021 and July 25, 2022, his first day at CABI. On January 3, 2024, I issued a Final Pre-Hearing Order that set forth the following issues for Hearing:

1. Whether Brockton failed to provide Student with a free appropriate public education (FAPE) during the time he was out of school between August 16, 2021 and July 25, 2022 and if so, what is the appropriate remedy;
2. Whether any award of compensatory services should be reduced or denied because of (i) Parent’s[[9]](#footnote-9) conduct in refusing education and related services or alternate placement or (ii) Parent’s obstruction of the placement process.

For the reasons below, I conclude that although Benjamin was not provided with a FAPE between August 16, 2021 and July 25, 2022, while awaiting a start date at Parents’ preferred placement, Brockton attempted to locate other acceptable placements and offered tutoring and other services during this period to mitigate the impact of Benjamin’s time out of school, but Parents refused all such offers and attempts. Moreover, Brockton has, in good faith, offered and is providing six months of compensatory services for Benjamin during the pendency of this matter. As such, the District has met its obligations to Benjamin and no additional services, compensatory or otherwise, are owed to him.

**FINDINGS OF FACT**[[10]](#footnote-10)

1. Benjamin is 22 years old and resides in Brockton with his mother. His parents live separately but remain close, and Benjamin spends time with his father as often as possible. He is playful, fun-loving, friendly, energetic, personable and hard-working. He learns best through hand-on activities. (P-6; S-3, S-4AA; Doyle, II: 144-45; Spilman, II: 256)
2. Benjamin has significant and complex disabilities. He carries diagnoses of autism spectrum disorder (ASD) and intellectual disability and displays deficits in the areas of communication, behavioral impulse control, and adaptive life skills. Benjamin’s overall intellectual functioning is in the exceptionally low range, with relative strength in non-verbal intelligence. He displays deficits across all other areas of cognitive ability, including processing speed, working memory, language and visual/spatial/perceptual reasoning. (P-11; S-3, S-4AA; Doyle, II: 144) Benjamin has a history of aggression, PICA, food stealing, eloping, and environmental destruction. He has displayed many other characteristics associated with ASD, including cognitive, social skill, and self-care deficits; impaired sensory processing; impulsivity; decreased attention; language and communication deficits; poor self-regulation and emotional outbursts; poor safety awareness; low frustration tolerance; poor problem-solving; bolting; and flopping. (P-11; S-4AA, S-5E, S-5G, S-5L, S-6A, S-6B, S-6C; Doyle, II: 163-64)
3. Benjamin received applied behavioral analysis (ABA) through early intervention. His first IEP provided accommodations for learning, behavior, and communication deficits. (P-11; S-3)
4. Benjamin’s last fully accepted IEP, dated December 6, 2017 to December 5, 2018 (2017-2018 IEP), was developed by the Boston Public Schools. It contained goals in seven areas: Behavior (Goal 1); Social/Emotional (Goal 2); Mathematics (Goal 3); English Language Arts (Goal 4); Speech/Language (Goal 5); Independence/Pre-Vocational (Goal 6); and Occupational Therapy (Goal 7). The 2017-2018 IEP called for placement at CABI, an out-of-district DESE-approved special education day school. (P-7, P-15; S-4AA; Langley, I: 102-04)
5. At some point between 2016 and 2018, while attending CABI, Benjamin first met Executive Director Brian Doyle.[[11]](#footnote-11) During his time at CABI, Benjamin made progress in behavioral control, becoming more independent in his ability to navigate the school and work around areas that were difficult for him, such as food. (Doyle, II: 145-46, 166)
6. Subsequent to living in Boston, Benjamin’s family moved to Hingham. In October 2019, Hingham Public Schools (Hingham) placed Benjamin in the League School of Greater Boston’s Transitions Program for an extended evaluation to assess his functioning across multiple domains and to assist the IEP Team in the development of goals to facilitate his transition. (P-5, P-6, P-7, P-8, P-9; S-4B)
7. On January 13, 2020, Parents partially accepted the IEP dated December 16, 2019 to December 15, 2020 (2019-2020 IEP) developed by Hingham. Specifically, Parents rejected proposed Goals 3 (Communication); 4 (Vocational); 5 (English/Language Arts); and 6 (Math), implicitly accepting Goal 1 (Behavioral Intervention) and Goal 2 (Emotional Regulation). (S-4B)
8. Following Parents’ partial acceptance of the 2019-2020 IEP, Benjamin’s operative IEP consisted of Goals 1 and 2 (Behavioral Intervention and Emotional Regulation, respectively) from the 2019-2020 IEP and Goals 3 through 6 (Mathematics, English Language Arts, Speech/Language, and Independence/Pre-Vocational) from the 2017-2018 IEP. The 2019-2020 IEP omitted an occupational therapy (OT) goal as well as the direct OT services (2 x 30 minutes/week) and OT Consultation (1 x 15 minutes/week) contained in the 2017-2018 IEP, but proposed an OT Consult with staff (1 x 10 minutes/5 days) in connection with Goal 2. Parents did not reject this change.[[12]](#footnote-12) (S-4AA, S-4B) For ease of reference, I refer to this combination as Benjamin’s “operative IEP,” which constituted his “stay put.”
9. In or about February 2020, while Benjamin was undergoing the extended evaluation at the League School, he and his mother moved to Brockton, where Benjamin enrolled in school. (P-15; Lanner, IV: 424) By then, it was evident that the League School would recommend an out-of-district placement other than itself. Brockton met with Parents shortly thereafter to discuss sending packets to day schools, in addition to the packets that had been sent by Hingham. Schools subsequently closed in March 2020, due to the COVID-19 pandemic, before Benjamin had been accepted to a program. He was provided a Chromebook and offered remote services through Brockton’s in-district Life Skills program. Benjamin was provided with work and links to virtual meetings, but he accessed only one class. (Lanner, IV: 424-26, 478)
10. In September 2020, Brockton sent referral packets to the Darnell School for Educational and Behavioral Services (Darnell) and CABI. Benjamin was accepted at Darnell in October for a January 2021 start. Parents accepted this placement on December 9, 2020. (S-4B; Lanner, IV: 426-27)
11. Benjamin began attending Darnell on or about January 19, 2021. He was slated to spend his first two months undergoing evaluations to determine his educational and behavioral abilities. (S-4D, S-5; Lanner, IV: 421)
12. Parents did not accept the IEP proposed by Brockton for the period from January 11, 2021 to March 12, 2021, which had been developed to bridge the gap until Darnell completed its initial assessments. (S-4C)
13. Benjamin’s Team convened on April 8, 2021, after which Brockton proposed an IEP for the period from April 8, 2021 to April 7, 2022 (2021-2022 IEP), with placement at Darnell. Although the top of the first page of this IEP submitted into evidence by the District reads “unsigned,” the 2021-2022 IEP was, in fact, partially accepted on or about April 30, 2021. The Team convened to discuss rejected portions, and Parents subsequently rejected the IEP in full before its expiration, though they accepted the proposed placement. (S-4D, S-4E, S-4H) This IEP did not provide for direct OT services, as Darnell uses a consultative model for occupational therapy services. (S-5A)
14. On June 15, 2021, Darnell informed Mother that Benjamin’s placement had been terminated. (S-8; Langley, I: 56; Lanner, IV: 365, 428-29)
15. Mother contacted Brockton Out-of-District Coordinator Michelle Lanner[[13]](#footnote-13) to request that Brockton send a referral packet to CABI, and immediately, on June 16, 2021, Brockton did so. CABI informed Ms. Lanner that no movement would occur as to this referral prior to mid-July.[[14]](#footnote-14) Ms. Lanner asked Parents whether, given the delay, they wished to have referral packets sent to additional placements. Parents declined that offer. (S-2, S-8; Langley, I: 70; Belsito, II: 220-22; Lanner, IV: 368-69, 372, 374, 428-30)
16. CABI’s Admissions Team reviewed Benjamin’s referral packet in its usual manner, scheduled an intake meeting and tour, and accepted him on or about August 30, 2021.[[15]](#footnote-15) Given staffing shortages related to COVID-19, however, CABI could not bring in new students at that time, so Benjamin was accepted with a to-be-determined start date. (S-2; Doyle, II: 186-88; Belsito, II: 220, 226-28)
17. On August 30, 2021, Ms. Lanner asked whether, once CABI hired a 1-1 aide to work with Benjamin, Brockton could hire that person to tutor Benjamin virtually until he started. (S-8; Lanner, IV: 393, 432-33)
18. Despite Mother’s insinuations to the contrary, Brockton never asked CABI to deny or delay Benjamin’s admission or his start date for any reason. (Doyle, II: 215; Belsito, II: 239; Lanner, IV: 477) In fact, throughout the summer and fall (and until he actually began to attend CABI nearly a year later), Ms. Lanner maintained regular contact with both Mother and CABI Coordinator of Student Services Melissa Belsito[[16]](#footnote-16) regarding the availability of a start date for Benjamin. (S-8; Belsito II: 221-22, 228-29; Lanner, IV: 379-82, 430-32, 434) At the same time, CABI was advertising and interviewing aggressively, trying to hire new staff and develop internal safety protocols to help bring back staff members who were reluctant to return to the building following the COVID-19 school closings. (Doyle, II: 189; Lanner, IV: 431-32)
19. Given the absence of a start date for Benjamin at CABI, both Parents and Brockton were concerned that he was not receiving educational services. As the months went on, Brockton encouraged Parents to consider granting consent to send packets to other placements that had openings, but in each instance Parents refused. Several times, Mother reached out to request tutoring. Each time, and in additional instances, Brockton offered to provide academic tutoring and OT and/or speech and language services. Mother refused the times offered, and suggested different times and locations but then when new logistics were arranged, she stated those would not work, or failed to follow up with tutors. Ultimately, Parents did not cooperate with Brockton’s attempts to provide academic, OT, or speech and language services to Benjamin while he was out of school awaiting an opening at CABI. (S-8; Langley, I: 74-75; Lanner, IV: 371, 385-87, 399, 403-04, 411, 418, 433, 455-56) Specifically, the following interactions occurred:
	1. On September 10, 2021, Ms. Lanner emailed Parents to let them know she had checked, but at the time Brockton was offering only virtual tutoring. Parents declined virtual tutoring and requested, instead, that the District contract with an outside tutor who could provide in-person services. Brockton investigated but reported back that the District was having difficulty finding an in-person tutor. Mother suggested using a community-based agency, but when Ms. Lanner contacted the agency, no one was available to work with Benjamin. (S-8; Lanner, IV: 411, 435-38)
	2. On October 11, 2021, Mother contacted Ms. Lanner to ask what the District could do for Benjamin while he remained out of school. Ms. Lanner responded that Brockton was still offering virtual tutoring only. Mother asked about speech and OT. Ms. Lanner explained that there was still no start date for CABI and offered to send out additional referral packets. She also offered to meet with Mother to discuss the situation the following day. Mother declined the meeting. (S-8; Lanner, IV: 401-02, 438-39, 441)
	3. On October 12, 2021, Ms. Lanner informed Parents that she had identified someone who might be able to tutor Benjamin in functional academics at the Brockton Public Library. Mother expressed interest in having a tutor work with him and asked what the plan would be. Ms. Lanner explained that the tutor would work with Benjamin on his IEP goals and objectives. [[17]](#footnote-17) (S-8; Lanner, IV: 402-05, 442)
	4. It is unclear what happened for the remainder of October. On November 8, 2021, Mother emailed Ms. Lanner to express concern that Benjamin had not received services since June. Ms. Lanner responded by offering in-person tutoring focused on functional academics, as well as virtual speech and OT services. Parents agreed to virtual speech and OT services and requested the schedule, goals, and objectives to review. Ms. Lanner explained, again, that tutoring would be provided in accordance with Benjamin’s IEP and re-sent the IEP to Parents. Mother pushed back about the content of the tutoring and, when asked directly whether Ms. Lanner should schedule tutoring, she did not respond. (S-8; Lanner, IV: 406-08, 442-43)
	5. On November 22, 2021, Ms. Lanner informed Parents that Brockton had engaged Marc Abbott, an occupational therapist who specializes in working with sensory dysregulation, to meet with Benjamin between the hours of 10 and 11:30 AM once per week in-person and twice per week virtually. (S-8; Lanner, IV: 408-09, 444-46)
	6. On the morning of Friday, December 3, 2021, Mother and Benjamin met virtually with Ms. Lanner and Mr. Abbott. Later that day, Ms. Lanner sent an email summarizing the discussion. Pursuant to the email, Mother and Ms. Lanner agreed that beginning on December 6, 2021, Mr. Abbott would provide in-person services to Benjamin from 9:30 to 10:00 AM on Mondays and Wednesdays at the Plouffe School, where Mr. Abbott’s office and sensory space was located. (S-2; Lanner, IV: 409-10, 448, 448)
	7. That Sunday morning, Mother emailed Ms. Lanner to state that she was uncomfortable dropping Benjamin off for services in an unknown environment with unfamiliar staff. Ms. Lanner responded the same day, asking Mother for any suggestions that might help. Around 1:00 AM on Monday, Mother sent an email requesting that either she or Benjamin’s brother stay with him during services. At 6:00 AM, Ms. Lanner responded to confirm that this would work, and offered to meet with Mr. Abbott, Benjamin, his brother, and Mother at the Plouffe at 9:30 that morning so Benjamin could meet Mr. Abbott and see the building. Mother did not respond, nor did she or Benjamin attend the meeting or tutoring session that day. (S-8; Lanner, IV: 387, 409-10, 448-50)
	8. Benjamin did not begin tutoring or occupational therapy services during the week of December 6. On Friday, December 10, 2021, Ms. Lanner emailed Mother again to ask whether she could bring Benjamin to the Plouffe at 9:30 the following Monday to meet the tutor and see the building. Mother asked whether she could bring Benjamin in the afternoon instead, but Ms. Lanner explained that the tutor was only available in the morning. Notwithstanding the agreement reached at the meeting on December 3, 2021 regarding the schedule, a week later Mother emailed Ms. Lanner, stating “I am sorry…[Benjamin] is not available at that time. He is available Monday-Friday between 12:30-3:30.” (S-8; Lanner, IV: 450-51)
	9. As Benjamin had never started working with Mr. Abbott, Laurie Mason, then-Director of Special Education, emailed Mother on December 13, 2021 to recommend tutoring three days per week and OT services through Easter Seals. These services would be scheduled around Benjamin’s availability and delivered in the home. Ms. Mason also indicated that she was working on scheduling speech services, which might have to be virtual, and she recommended that Parents consider an alternative placement given the lack of availability at CABI. She asked Mother to provide a list of schools to which Brockton could send packets. (S-8; Lanner, IV: 451)
	10. Mother responded by asking whether Parents had options regarding the location of tutoring services; Ms. Mason explained that Brockton was using the library for tutoring services, and Mother agreed to the location. Ms. Mason provided the names of two tutors that had been secured to work with Benjamin, and Parent asked that they be given her contact information to arrange for tutoring. By this point, the tutors had begun preparing by reviewing Benjamin’s IEP and purchasing supplies. Ms. Mason also requested permission to send the IEP to Easter Seals. (S-8; Lanner, IV: 442-43, 451-53)
	11. As of January 4, 2022, Ms. Mason had set up tutoring for Benjamin to take place at the library on dates and times that worked for the family. She informed Mother of this, and one of the tutors contacted Mother the same day. She did not respond. On January 19, 2022, the other tutor reported to Ms. Lanner that he had not received a callback or email reply from Mother. (S-8; Lanner, IV: 403, 454)
	12. Also on January 4, 2022, Ms. Mason explained to Mother that OT services could not be set up through Easter Seals without a current IEP. She sent Parents an updated version of the 2021-2022 IEP, incorporating objectives Parents had requested. In the accompanying N1, the District noted that weekly check-ins with CABI were occurring. As there was still no start date, Ms. Mason reiterated her request that Parents provide additional schools to which packets could be sent. Ms. Mason explained that Brockton needed “to move forward with a placement if CABI cannot hire staffing within a reasonable time for placement.” (S-4H, S-8)
20. As no movement on any front had occurred and the tutors had been unable to establish contact with Parents, on January 14, 2022, Ms. Lanner emailed Mother to set up a Team meeting to discuss tutoring, placement, and Benjamin’s IEP. Mother asked for more specifics about intended topics. Ultimately, a meeting was scheduled for January 21, 2022; Mother responded on that date that she was not available, and Ms. Lanner asked for her availability on January 28, 2022. No Team meeting took place on or around this date, as Parents did not attend. (S-8; Lanner, IV: 454-57)
21. Subsequently, on or about January 18, 2022, Parents rejected the 2021-2022 IEP in full, noting that “[t]he school that proposed this I.E.P. (*sic*) could not support him or meet his needs,” and that the IEP “does not reflect [his] current academic skill level.” On the same date, Parents signed the Placement Consent Form (PL1) accepting placement at “CABI – waiting for a date.” (S-4E)
22. Around this time, Parents requested updated evaluative information regarding Benjamin. On February 1, 2022, Brockton sent them an evaluation consent form. Parents did not return it, but on March 4, 2022, they requested an independent educational evaluation (IEE). The District approved the request and, on March 10, 2022, sent the accompanying paperwork. No IEE occurred, as Parents did not follow up. (S-8; Lanner, IV: 456-58)
23. On March 31, 2022, Parent filed a written statement of concern with the Problem Resolution Session (PRS) division of Massachusetts Department of Elementary and Secondary Education (DESE) regarding Benjamin’s proposed special education placement. Among other things, Mother alleged that Brockton failed to implement Benjamin’s agreed upon IEP by failing to provide special education or tutoring services since June 2021, in violation of 603 CMR 28.05(7)(b). (S-2; Langley, I: 105)
24. After reviewing the evidence, on December 28, 2022, DESE issued a closure letter, explaining that it would not address the issue of Benjamin’s placement, as it was within the jurisdiction of the BSEA, and finding that Brockton had not violated 603 CMR 28.05(7)(b). Specifically, DESE determined that Brockton had “offered the student copious tutoring opportunities within the bandwidth of the school day,” but Parents had responded that Benjamin could not attend virtual tutoring and could not attend in-person tutoring at the local library, that Mother and Benjamin’s brother would have to attend all tutoring services, and that Benjamin’s and Mother’s schedule would not allow for tutoring during morning hours. According to DESE, “[s]tudents are expected to be available during operational school hours;” the District offered to provide tutoring services during these hours through multiple means, including specialized transportation to in-person services, but Parents continually counteroffered. Brockton “made multiple, good faith efforts to arrange tutoring and related services to the student.” Moreover, Mother “would not agree to sending referral packets to any other special education placement besides CABI.” (S-2; Langley, I: 105-07; Lanner, IV: 472)
25. In the meantime, Benjamin’s Team met on April 13, 2022 with a Transition Coordinator from the Department of Developmental Services (DDS) and CABI’s Coordinator of Student Services, to discuss an update as to Benjamin’s anticipated start date at CABI and whether, given the delay, Parents were interested in exploring DDS adult services in the alternative. The Team also discussed the partially rejected IEP, options available from DDS, and the status of the approved IEE. At that time, there was no proposed start date for CABI, but CABI agreed to complete academic, speech and language, and OT evaluations, as well as a functional behavioral assessment (FBA) upon Benjamin’s enrollment. Because CABI could not complete Benjamin’s psychological assessment, Parents stated they would investigate and inform the District as to where this would occur as an IEE. (S-4H, S-8; Langley, I: 135-36; Belsito, II: 229-231; Lanner, IV: 413-17, 459-62)
26. Following this meeting, with input from CABI staff, Benjamin’s Team proposed an IEP for the period from April 14, 2022 to April 13, 2023 with placement at CABI. Parents submitted requested changes to the draft, which Ms. Lanner incorporated. On or about April 20, 2022, Parents accepted the placement but rejected the proposed IEP in full. Specifically, Parents requested stay-put “on the last fully excepted I.E.P. (*sic*)” and requested a three-year evaluation to be completed by CABI within 45 days. (S-4F, S-8; Langley, I: 132-33; Belsito, II: 237-38; Lanner, IV: 460, 462-64)
27. Benjamin began attending CABI on July 25, 2022. Brockton provided CABI with Benjamin’s operative IEP. (S-8; Lanner, IV: 370, 464, 464) In preparation for his start, a clinical meeting was held to develop Benjamin’s initial behavior support plan (BSP) and review the operative IEP. Although CABI was familiar with Benjamin from his previous attendance there, due to concerns about the length of his absence from a structured school program and recent behavioral history as reported within referral documentation, Benjamin was staffed at a 2-to-1 staff-to-student ratio (an increase from his previous 1:1 ratio), and his BSP was highly structured. (S-4B, S-4C, S-6A; Doyle, II: 163-64; Brennan, III: 342-43)
28. As Benjamin’s CABI start date approached, Parent expressed concern to Ms. Mason that she had not “seen an IEP that reflects his goals for this placement.” She requested copies of the last fully accepted IEP and the “new proposed IEP with this placement” to permit her to review and decide what is best for Benjamin. (P-10)
29. When Benjamin started attending CABI in July 2022, his program was very individualized, and he needed a lot of attention for the first three months to help him self-manage his behaviors. (Doyle, II: 166-67) At that time, Benjamin needed support from Board-Certified Behavior Analysist (BCBA) Kayla Brennan[[18]](#footnote-18) to address his significant behavioral presentation in order to permit him to be in class with other students. (Brennan, III: 296-97) During her time working with Benjamin between July 2022 and May 2023, Ms. Brennan assessed his goals, evaluated his behaviors, and created data sheets and protocols to track and reduce those behaviors. (Brennan, III: 330)
30. CABI performed Benjamin’s three-year evaluation in the fall of 2022. (S-4G, S-5E, S-5F, S-5G, S-5H, S-5I; Doyle, II: 153-55) Benjamin’s teacher, Connor Spilman,[[19]](#footnote-19) conducted the Assessment of Functional Living Skills, and concluded that Benjamin requires objectives and teaching in functional living skills, including basic communication, health and safety skills, technology, and toileting, etc. Mr. Spilman also conducted the Woodcock-Johnson Test of Achievement; Benjamin presented in the lowest percentile in each category. On the Ed-A and Ed-B evaluations, Benjamin demonstrated deficits in memory, attention, and communication. (S-5E, S-5F; Spilman, II: 265-67) Ms. Brennan conducted the FBA and noted significant aggression, environmental destruction, bolting, noncompliance, and food stealing. (S-5G; Brennan, III: 332-33)
31. The Team convened on November 28, 2022, to discuss the results of the above assessments, as well as speech and language and OT evaluations conducted by CABI. The Team proposed a transition from direct speech and language and OT services to an integrated model and consultation services, but Mother did not agree. She expressed concern about Benjamin’s lack of progress, particularly behaviorally. She also expressed concern that the Team was not working on the objectives in the 2017-2018 IEP; the District explained that it was working on Goals 3 through 6 from that IEP and Goals 1 and 2 from the 2019-2020 IEP. (S-4G, S-4H; Lanner, IV: 474-75)
32. In the meantime, in October 2022, Parents privately obtained a neuropsychological evaluation performed by clinicians at the Brenner Center for Psychological Assessment & Consultation. Generally, the recommendations from that report were consistent with the services and accommodations CABI was already providing. Additional recommendations include a formal transition plan as Benjamin approached termination of eligibility at age 22, and a 688 referral to ensure appropriate transitional planning steps. The report, which was completed on November 28, 2022, also recommended Assistive Technology and Vocational evaluations.[[20]](#footnote-20) (S-3; P-11; Lanner, IV: 397-98, 466, 479-80)
33. An IEP reflecting input from Benjamin’s providers at CABI was proposed for the period from November 28, 2022 to November 27, 2023, with placement at CABI. There is no evidence that Parents responded to this IEP. (S-4G, S-4H; Belsito, II: 238) As such, CABI continued to implement the operative IEP, which consisted of a combination of the 2017-2018 and 2019-2020 IEPs. Services included speech/language (2 x 30 minutes per week) and OT (2 x 30 minutes per week)[[21]](#footnote-21). (S-4AA, S-4B; Langley, I: 104; Doyle, II: 150-53, 157-58, 165, 167-70, 191-95; Belsito, II: 232-33, 240-41)
34. According to Mr. Spilman, it is difficult to work from an IEP that is over six years old, as the subject matter for a 22-year old should be more functional. (Spilman, II: 263) Similarly, Ms. Brennan testified that although Benjamin has surpassed the objectives in his operative IEP, she is required to continue working with him on them because Parents have not accepted an IEP in years. (Brennan, II: 330-32)
35. Benjamin’s Team convened on May 23, 2023, to review Assistive Technology and Academic evaluations and a Vocational assessment. Mother did not agree with the academic assessment and requested an IEE. Rather than accept the Team’s recommendation to reconvene to develop an IEP, Mother expressed a preference to meet with CABI staff for a parent clinic to review her concerns as to Benjamin’s academic goals. Mother did not, however, attend the parent clinic, nor did she accept any proposed changes to the IEP that reflected information garnered from these evaluations. (S-4H; Belsito, II: 233-35; Lanner, IV: 475)
36. As of the spring of 2023, Brockton personnel acknowledged that the District owed some level of compensatory services to Benjamin for the time he had been out of school awaiting placement. For this reason, at the May 23, 2023 meeting, the Team proposed three months of compensatory time for Benjamin, ending on December 23, 2023.[[22]](#footnote-22) The Team’s recommendation for a three month period was based on its review of the neuropsychological evaluation from the previous year, specifically its discussion of realistic expectations for Benjamin and his rate of progress, in addition to his current performance level and data maintained by Darnell and CABI. (S-4H; Langley, I: 83-84, 97-99, 109-10; Belsito, II: 236-37; Brennan, III: 353-54; Lanner, IV: 394-95, 397-98, 468-69, 471-72)
37. No compensatory services plan was developed at this time, as Parents indicated multiple times that they would not sign an agreement with Brockton. (Langley, I: 104-05; Lanner, IV: 398-99, 470)
38. On August 16, 2023, Parents filed the instant *Hearing Request*. Brockton Associate Director of Exceptional Learning Jami Langley[[23]](#footnote-23) reached out to Mother shortly thereafter to attempt to schedule a resolution meeting, hoping to come to an agreement regarding the provision of compensatory services. She invited CABI representatives, as CABI would have to agree to any decision regarding compensatory services since such would be delivered there. Mother refused to attend if CABI representatives were present. (Langley, I: 92-93, 114-16)
39. At times, Mother has refused to attend Team meetings at CABI with Brockton, though Dr. Doyle tried to explain to her how important it was to update Benjamin’s IEP. During at least one Team meeting that did occur, in May 2023, Mother became argumentative with service providers and Ms. Belsito had to request that Dr. Doyle join the meeting. (Doyle, II: 213-14; Belsito, II: 235-36)
40. As Benjamin’s twenty-second birthday (and the end of his eligibility for special education) approached, and as the parties were exploring potential avenues to resolve Parents’ *Hearing Request* but had not reached an agreement, Brockton proposed a time-limited extension of Benjamin’s enrollment at CABI. Without waiving its defenses to the *Hearing Request*, Brockton considered “the period of time [Benjamin] was without a placement due to CABI’s lack of sufficient staffing and Parents’ decision not to allow the district to send referral packets to other potential placements,” in addition to the impact on Benjamin of losing the CABI placement pending the BSEA litigation. Specifically, in September 2023, Brockton proposed to provide Benjamin with compensatory services through continued support for his placement at CABI as a day student for three months beyond his twenty-second birthday, including transportation, and to seek a waiver from DESE to permit Benjamin to remain there. By email, Parents agreed to this proposal. When Parents inquired about which IEP CABI would be implementing during this period, Ms. Langley responded that because Benjamin would no longer be eligible for services within his IEP, Parent and CABI would remain in communication to determine the appropriate services. (S-4H; Langley, I: 95-97; Lanner, IV: 470)
41. To effectuate Brockton’s proposal, Ms. Langley spoke with CABI to determine whether CABI would be willing to extend services past Benjamin’s twenty-second birthday, and CABI confirmed that it would. On Benjamin’s twenty-second birthday in September 2023, Brockton sought approval from DESE’s Office of Approved Special Education Schools to extend special education services for him for a three-month period. In its request to DESE, the District explained that although it had sent referral packets to over a dozen schools, Benjamin had not been enrolled in a program for a year due to his complex needs and staffing shortages in programs, and it had agreed to fund his placement and transportation costs to address services lost. (S-1; Langley, I: 93-94, 100, 118-10; Lanner, IV: 470-71)
42. Shortly after Benjamin’s twenty-second birthday, Mother emailed Dr. Doyle to request a meeting to discuss Benjamin’s education plan. Dr. Doyle responded that he would be happy to meet with her, but that at this point CABI would not adjust anything until after the hearing had concluded. At Hearing, Dr. Doyle explained that when he wrote that email, it was not that he was unwilling to meet with Mother, but he would not alter goals and benchmarks without knowing how long Benjamin would be at CABI, which would permit CABI personnel to determine which goals could be reasonably achieved. (P-14; Doyle, II: 182-84)
43. Although the initial extension of Benjamin’s special education services expired at the end of December 2023, when the Hearing was postponed beyond November to permit Mother to obtain full guardianship of Benjamin, Brockton discussed a second extension with CABI and applied for a further waiver from DESE. (Langley, I: 100; Lanner, IV: 472)
44. Despite Mother’s preference to communicate directly with CABI about Benjamin without Brockton’s involvement, CABI has kept the District apprised of his progress and behavioral incidents. (Langley, I; 101-02, 119) Ms. Lanner has continued to maintain communication with CABI and has visited Benjamin there. (Langley, I: 100-01, 121)
45. Comparison of the KTEA-3 given to Benjamin while he was at Darnell in March 2021 with that given to him at CABI in March 2023 demonstrates growth in certain areas, such as letter and sound recognition and math concepts and applications, despite Benjamin’s time out of school; in other areas, such as reading comprehension, spelling, and written expression, test scores demonstrate maintenance of skills. (S-5B, S-5N; Doyle, II: 209-12, 214-15)
46. CABI has produced quarterly progress reports throughout Benjamin’s attendance, based on the operative IEP. Benjamin has been making slow progress on his goals and objectives. Data contained in the progress reports, which track his behavior progress as to aggression to others, environmental destruction, bolting, noncompliance, and food stealing, demonstrates that although his behavior is somewhat variable, Benjamin has been making meaningful progress in all of these areas.[[24]](#footnote-24) He made progress in terms of social activities. He is now able to navigate the school more independently, with staff shadowing him at different points and distances, and he can be around food items “without the impulse to go take those items and barrel through staff.” (P-12; S-6B, S-6C, S-10; Doyle, II: 173, 176-77, 196-200, 203-04, 206, 208; Belsito, II: 239; Spilman, II: 258-60, 262-63, 268-69; Brennan, III: 285, 293, 296, 303-04, 314, 340-46)
47. At the same time, Benjamin has continued to experience behavioral challenges at CABI and during transportation to his program, resulting in incident reports and, in one case, the intervention of State Police on the Massachusetts Turnpike. He has also broken windows in the gym, slammed doors, thrown walkie-talkies, and injured staff. Ms. Belsito has communicated with both Parents and Ms. Lanner regarding these incidents and CABI’s concerns about Benjamin’s behavior. (P-16; Langley, I: 61-63; Belsito, II: 241-43; Brennan, III: 304-05, 345) Through questioning of witnesses at Hearing, Parents expressed dissatisfaction with Benjamin’s limited progress in, and access to, vocational programming and community outings at CABI since his return to school in July 2022. According to CABI personnel, they have been working to improve Benjamin’s behavior in school to eventually reach the goal of his going out into the community. However, Benjamin’s unpredictable and sometimes explosive behavioral presentation creates safety concerns that need to be ameliorated for him to engage in specific vocational tasks and to leave school grounds. This is particularly an issue with regard to Benjamin’s continued bolting; he is much faster than CABI staff and does not always respond to directives to stop, thereby creating a significant safety concern. (Doyle, II: 156-57, 172-73, 175-76. 207-08; Belsito, III: 302-03; Brennan, III: 313-18, 343-45)
48. Ms. Lanner receives, and reviews, Benjamin’s progress and incident reports from CABI. She also participates in weekly phone calls with CABI to monitor his progress and has performed an observation there this year. There is no evidence of any failure by CABI to implement any portion of Benjamin’s IEP. (Lanner, IV: 473-74)
49. To date, by continuing to fund Benjamin’s full-time placement at CABI following his twenty-second birthday, Brockton has provided him with approximately six months of compensatory services. (Lanner, IV: 421, 472)

**DISCUSSION**

It is not disputed that Benjamin is a student with a disability who is entitled to special education services under state and federal law. To determine whether Parents are entitled to a decision in their favor, I must consider substantive legal standards governing special education. As the moving party in this matter, Parents bear the burden of proof.[[25]](#footnote-25) To prevail on their claim, they must establish that Brockton failed to provide Benjamin with a FAPE between August 16, 2021 and July 25, 2022, and that he is entitled to compensatory services for such failure.

I address the delineated issues below, incorporating the factual findings above to avoid repetition.

1. FAPE and Implementation of IEPs

Parents do not contend that Brockton proposed inadequate IEPs during the relevant time period; their assertion focuses on Brockton’s failure to provide special education and related services between August 16, 2021, following his termination from Darnell, and July 25, 2022, his first day at CABI. This is, essentially, a claim that Brockton failed to implement the operative IEP during this time frame.

*A. Legal Standard*

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”[[26]](#footnote-26) FAPE is delivered primarily through a child’s IEP, which must be tailored to meet his unique needs after careful consideration of his present levels of academic achievement and functional performance, disability, and potential for growth.[[27]](#footnote-27) As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, the IEP must “describe how the child’s disability affects the child’s involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child’s progress toward meeting those goals will be gauged.”[[28]](#footnote-28) “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”[[29]](#footnote-29) The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”[[30]](#footnote-30) Moreover, “the IDEA manifests a preference for mainstreaming disabled children,” such that the goal is to place a student in the “least restrictive environment that will accommodate the child’s legitimate needs.”[[31]](#footnote-31)

Where, as here, the substantive content of an IEP is not in dispute, the analysis shifts to implementation. “To provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements.”[[32]](#footnote-32) Not all deviations from a child’s IEP constitute violations of a FAPE. However, a “material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”[[33]](#footnote-33)

*B. Benjamin Was Deprived of a FAPE Between August 16, 2021 and July 22, 2022*

In the present case, Brockton has stipulated that Benjamin did not receive the services contained in his operative IEP while he was out of school awaiting an opening at CABI. It is evident that a material failure to implement Benjamin’s IEP occurred.[[34]](#footnote-34) As such, the focus of the dispute is the appropriate remedy for the District’s failure to provide Benjamin with a FAPE between August 16, 2021 and July 25, 2022.

II. Legal Standards for Relief

A. *Compensatory Education*

My finding that Benjamin did not receive a FAPE while he was out of school awaiting an opening at CABI for eleven months during the relevant time period does not translate to an award of eleven months of school following his twenty-second birthday. “[C]ompensatory education is not an automatic entitlement but, rather, a discretionary remedy for nonfeasance or misfeasance in connection with a school system’s obligations under the IDEA.”[[35]](#footnote-35) “Such an award requires balancing of the equities and consideration of the reasonableness of the parties’ conduct by assessing the totality of the circumstances.”[[36]](#footnote-36)

First, Brockton argues that Parents’ failure to establish a causal link between Benjamin’s interruption in services and his deficits undermines their claim to compensatory services for a deprivation of FAPE. In the alternative, the District argues that any award of compensatory services I might be inclined to order should be reduced or denied because of Parents’ conduct. Specifically, according to Brockton, the District acted in good faith throughout the relevant time period by contacting CABI on a weekly basis to inquire as to Benjamin’s start date, offering tutoring and related services in the interim, and suggesting that additional referral packets be sent. However, Parents’ refusal to explore alternative placements when CABI could not identify a start date for Benjamin obstructed the placement process, and Parents refused education and related services that might have mitigated the impact of his time out of school awaiting placement.

B. *Parental Obstruction*

The IDEA entails a collaborative process between school districts and parents in the provision of a FAPE.[[37]](#footnote-37) Consistent with this maxim, in formulating the IDEA, Congress “expressly declared that if parents act unreasonably in the course of that [interactive] process, they may be barred from reimbursement.”[[38]](#footnote-38) Like reductions in reimbursement, compensatory services constitute an equitable remedy, to which the same principle applies; “hearing officers routinely take the actions of parents into consideration when they make decisions about equitable compensation under the IDEA.”[[39]](#footnote-39) As such, to determine whether Parents are entitled to reimbursement in the form of compensatory education in the present matter, I must determine whether they acted unreasonably in refusing to explore alternatives to CABI during the extended wait for an opening, and/or in failing to make Benjamin available for in-person academic and related services.[[40]](#footnote-40)

Several courts have reduced, or altogether denied, reimbursement and/or compensatory services where parents’ well-intentioned actions have interfered with school districts’ ability to provide a FAPE to their children. Examining these cases is instructive here.

In *C.G. ex rel. A.S. v. Five Town Community School District*, the United States Court of Appeals for the First Circuit affirmed the denial of compensatory services where a school district proposed an incomplete IEP for a student.[[41]](#footnote-41) Despite acting “expeditiously,” the school district been unable to complete the student’s IEP because parents had refused “to cooperate fully in the collaborative process.”[[42]](#footnote-42) The judge in the court below had “found that the parents harbored a fixed purpose: to effect a residential placement for their daughter at the School District’s expense, come what may.”[[43]](#footnote-43) As the parents were not interested in exploring alternatives proposed by the District, and consequently elected not to participate actively in the development of an initial IEP, the judge concluded that the resulting deficits within the IEP were “due to the parents’ obstruction of the developmental process.”[[44]](#footnote-44) The school district was not required to reimburse parents for their unilateral placement or provide compensatory services to the student.[[45]](#footnote-45)

*Hogan v. Fairfax County School Board*, a case decided by the United States District Court for the Eastern District of Virginia, presented a situation more similar to the present matter.[[46]](#footnote-46) In that case, the school district did not provide any educational services to a student for a full school year and acknowledged its failure to provide a FAPE; the District had encountered difficulty locating an appropriate placement for the student when she exited a unilateral placement; evaluations were not completed and no IEP was finalized, as parent did not respond on a timely basis and communication between the parties broke down.[[47]](#footnote-47) According to the Court, “the Parent’s actions, though they may have been well-meaning, were at times obstructive, . . . [and] the Parent bears some responsibility for the non-provision of a FAPE.”[[48]](#footnote-48) Although the school district was ultimately responsible for the failure to provide a FAPE to the student, parent’s obstructive and uncooperative behavior, in the aggregate, justified a finding of unreasonableness and consequent reduction in reimbursement.[[49]](#footnote-49) “Considering all the circumstances in [the] case, the Court [found] that eight weeks of summer-level education is an appropriate equitable compensation for the Student’s loss of a FAPE during the 2005-2006 school year.”[[50]](#footnote-50)

Similar cases have come before the BSEA. Hearing Officers have generally limited, or declined to order, compensatory services in situations where a student is discharged from a program and is without a placement for a period of time, when the school district offers interim services and makes reasonable efforts to secure a new placement, yet parents reject appropriate interim services and/or hamper the placement process.[[51]](#footnote-51)

Specifically, in *Student v. Quincy & Andover Public Schools*,a case before Hearing Officer Sara Berman, a student was without educational services for four months and parents sought compensatory services from the school district for this time.[[52]](#footnote-52) The Hearing Officer examined the school district’s actions and determined that it had “made reasonable and timely efforts to secure a new placement, and acted reasonably in the face of unavoidable delays.”[[53]](#footnote-53) The parents had signed releases and participated fully in attempting to locate a new placement.[[54]](#footnote-54) However, the parents had also rejected interim services proposed by the school district, and there was no evidence that those proposed interim services were inappropriate.[[55]](#footnote-55) For these reasons, Hearing Officer Berman concluded that under the totality of the circumstances, the school district was not liable for compensatory services corresponding to this period of time.[[56]](#footnote-56)

Similarly, in a BSEA matter where a student was “extremely difficult to place” because of his multiple special education needs, including maladaptive and aggressive behaviors, parent filed a *Hearing Request* after the student had been out of school for six months following an emergency termination from a collaborative placement.[[57]](#footnote-57) The school district had offered compensatory physical therapy services, as it had been unable to find a provider during the student’s time out of school, as well as compensatory speech-language and OT services to reflect the time gap before those services commenced, but parent also sought compensation for a year’s loss of education.[[58]](#footnote-58) Hearing Officer Raymond Oliver described the school district’s efforts to locate a subsequent placement, and found that such efforts were hampered by parents’ delay in consenting to several referrals.[[59]](#footnote-59) He noted that “over the five-month period after [Student]’s termination at LABBB . . ., [the school district] used its best efforts to locate and secure an alternative placement for him.”[[60]](#footnote-60) The Hearing Officer concluded that the school district had “provided [Student] with a FAPE to the extent that circumstances have permitted and to the extent Mother has allowed [it] to do so.”[[61]](#footnote-61) As such, parent was not entitled to compensatory services for that time, beyond those offered and agreed to by the school district.[[62]](#footnote-62)

I am mindful of the guidance provided by the aforementioned cases as I assess the totality of the circumstances in the matter before me.

C. *Where Brockton Engaged in Substantial Efforts to Locate and Secure an Alternative Placement and Interim Services for Him, Benjamin’s Entitlement to Compensatory Services is Limited by Parents’ Refusal to Accept Measures Proposed by the District to Mitigate His Educational Loss*

 As discussed above, the evidence demonstrates that Benjamin was deprived of a FAPE when he remained without a placement and without any tutoring or educational services between August 16, 2021 and July 25, 2022. The need for additional behavioral supports (including a 2:1 staffing ratio) at the time he began attending CABI demonstrates the deleterious impact of his time out of school. Although Benjamin has made progress commensurate with his abilities since his return to CABI, it would be difficult for me to conclude that Benjamin did not experience any academic or behavioral loss while he remained at home for a full year. Even Brockton personnel concluded, in light of Benjamin’s most recent neuropsychological evaluation, rate of progress, and then-current performance levels, that three months of compensatory services were warranted.

 However, the evidence also demonstrates that Brockton acted in good faith during all relevant time periods to secure an appropriate placement and services for Benjamin. After his placement at Darnell was terminated, Brockton immediately completed a referral packet for Parents’ placement of choice. The District was diligent in monitoring the status of Benjamin’s acceptance at CABI, checking in weekly. Even as the months passed without an opening, Parents were so intent on Benjamin’s return to CABI that they were unwilling to consider other options offered by Brockton that might have allowed him to receive services pursuant to his IEP in an appropriate placement. Though Parents’ preference to return Benjamin to a program in which he had been successful in the past is understandable, their refusal to allow Brockton to send referral packets to additional schools became unreasonable as the months ticked by.

 Moreover, by September 2021, less than three months after Benjamin’s placement at Darnell was terminated, the District was reaching out to Parents regularly, attempting to schedule tutoring in functional academics and occupational therapy. Mother appeared to be receptive, but each time, after she agreed that a particular place and time would work for Benjamin, she cancelled, or she failed to respond to tutors’ attempting to set up meetings. As in *Student v. Quincy & Andover Public Schools*, Benjamin did not participate in services requested by Parents, which the District offered, and there is no evidence to suggest those proposed services were inappropriate.[[63]](#footnote-63) I find that Parents’ unwillingness to cooperate with Brockton’s attempts to provide interim services was unreasonable.

Where Brockton was only partially responsible for Benjamin’s inability to access academic tutoring or related services, much less a FAPE, for 11 months, placing the entire burden for compensatory education on the District would constitute an unfair penalty.[[64]](#footnote-64) Moreover, the evidence shows that Benjamin has made progress on his IEP goals commensurate with his abilities since July 2022. Further, and despite Parents’ decision to invoke stale stay-put IEP goals (which, per the testimony of Mr. Spilman, hampered CABI’s efforts to serve Benjamin by the constraints of an outdated IEP), there is no evidence before me to suggest that Benjamin has not received a FAPE for the past year and a half. Finally, the evidence demonstrates that Brockton has, in good faith, maintained Benjamin’s placement at CABI for six months past his twenty-second birthday.

 As Parents, albeit well-meaning, acted unreasonably, and as Brockton has already provided six months of compensatory services to Benjamin voluntarily, with no evidence before me to suggest that more services are legally warranted, I find that Parents have not met their burden to establish that they are entitled to the equitable remedy of additional compensatory services.

**CONCLUSION AND ORDER**

After reviewing the record in its entirety in the context of relevant case law, I conclude, given the totality of the circumstances, that Parents have not met their burden to prove that Benjamin is entitled to compensatory services from Brockton for the time he remained out of school during the relevant time period.

 *So ordered.*

By the Hearing Officer:

 /s/ Amy M. Reichbach

Dated: March 13, 2024

1. “Benjamin” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. As pages were missing from the document initially submitted as S-4A, the District offered, and I accepted, the complete document into evidence and labeled it S-4AA. [↑](#footnote-ref-2)
3. Parents objected to proposed Exhibit 10, which was offered after the due date, on grounds of relevance and authenticity. After deferring my Ruling until these objections could be addressed through witness testimony, I admitted the document. [↑](#footnote-ref-3)
4. The *Hearing Request* was initially filed by Benjamin’s mother and although his father was included in all correspondence from the BSEA, he did not respond to any of it. As such, interim orders referred to “Parent” or “Mother.” Father did, however, appear at the Hearing; for this reason, the decision refers to “Parents” rather than “Parent.” [↑](#footnote-ref-4)
5. Benjamin has since turned twenty-two. [↑](#footnote-ref-5)
6. In its *Partial Motion to Dismiss*, Brockton referenced August 8, 2023, which is the date that appears on the signature line of Mother’s *Hearing Request*. The *Hearing Request* was actually received by the Bureau of Special Education Appeals (BSEA) on August 16, 2023, however, making this the operative date for statute of limitations purposes. [↑](#footnote-ref-6)
7. See note 4, *supra*. [↑](#footnote-ref-7)
8. The issues for Hearing were not entirely clear from Parents’ *Hearing Request*. At one point, it appeared that Parents were asserting a FAPE claim regarding the period from July 25, 2022 to the date the *Hearing Request* was filed. The parties later clarified the issues for Hearing, and I issued a final Pre-Hearing Order reflecting that clarification, as described on the next page. [↑](#footnote-ref-8)
9. See note 4, *supra.* [↑](#footnote-ref-9)
10. I have carefully considered all evidence presented in this matter. I make findings of fact with respect to the documents and witness’ testimony, however, only as necessary to resolve the issues presented. [↑](#footnote-ref-10)
11. In addition to a doctorate degree in education, specifically in child and youth studies, Dr. Doyle has a bachelor’s degree in psychology and rehabilitative services, a master’s degree in health care administration, and an education specialist degree in applied behavior analysis (ABA). He has spent over thirty years working in the field of autism spectrum disorders in a variety of settings (including community-based, residential, and public schools) and capacities (including as an assistant instructor, teacher, residential support worker, supervisor, and consultant). In 2014, Dr. Doyle founded CABI specifically to provide school-based services for individuals on the autism spectrum with accompanying disorders, particularly behavioral issues that impede their ability to access less restrictive environments. (Doyle, II: 185-86) [↑](#footnote-ref-11)
12. The 2019-2020 IEP also proposed, and Parents accepted, 1 x 300 minutes/5 days of services provided by OT/Sped Teacher in connection with Goal 2. These services became part of the operative IEP. Although the omission of Goal 7 was not rejected and as such, the operative IEP did not contain a separate OT goal, it appears from the evidence at Hearing, including subsequent proposed IEPs and the services offered during Benjamin’s time out of school, that direct OT services were maintained. (S-4B, S-4C, S-4E, S-4F) [↑](#footnote-ref-12)
13. Michelle Lanner has a master’s degree in special education and a CAGS in Educational Leadership. She holds multiple Massachusetts certifications: Elementary (1-6), Special Needs (N-9), Principal/Assistant Principal (PreK-6), and Supervisor/Director (all levels). She has served as the Brockton Public Schools Out-of-District Coordinator and/or Assistant Special Education Director of Out-of-District Placement since 2013. In this capacity, her responsibilities include locating out-of-district placements and sending referral packets as needed; maintaining communication with parents, out-of-District schools and residential programs; and monitoring the progress of, and participating in Team meetings for, students placed out-of-District. Ms. Lanner has worked with Benjamin and his family throughout his time in Brockton. (S-9; Langley, I: 88-90; Lanner, IV: 422-24) [↑](#footnote-ref-13)
14. Once CABI receives a complete referral packet for a student, a team reviews it. That team meets approximately every other week to determine which students it can accept, and prioritizes packets by date received, in combination with several factors that affect the existing student body such as age, staffing, etc. (Doyle, II: 147-48) [↑](#footnote-ref-14)
15. Although Ms. Lanner testified at one point that Benjamin was accepted at CABI on August 5, 2021 (Lanner, IV: 372-73), other evidence establishes that the acceptance occurred on August 30, 2021. As no start date was provided in connection with Benjamin’s acceptance, I find that this inconsistency is not relevant to the issues before me. [↑](#footnote-ref-15)
16. Melissa Belsito has been working with children with ASD since approximately 1996 and has served in both behavior specialist and administrative roles in public schools and at CABI. She has been at CABI since 2018 as Coordinator of Student Services, Team Chair, and Administrative Director. (Belsito, II: 224-25) [↑](#footnote-ref-16)
17. Around the same time, Ms. Lanner worked with Parent to set up a psychological evaluation of Benjamin at the Brockton Public Schools Central Office, for purposes of a Chapter 688 referral. (S-5K; S-8; Lanner, IV: 435-36, 440) She continued communicating weekly with Ms. Belsito regarding an opening at CABI and again contacted Parents, offering to explore other potential placements for Benjamin. (S-8) [↑](#footnote-ref-17)
18. Kayla Brennan has a master’s degree in ABA and has been a practicing board-certified behavior analyst (BCBA) for three and a half years. She began working at CABI as a part-time behavioral instructor in the spring of 2018, working in classrooms as needed. In June 2022, Ms. Brennan became a full-time behavior analyst in a classroom. (Brennan, III: 329-30) [↑](#footnote-ref-18)
19. Connor Spilman is a special education teacher at CABI. He began working there in 2019 as a Registered Behavior Technician, then enrolled in a master’s degree program in 2021. In 2022, he became a long-term substitute at CABI. In March 2023, Mr. Spilman received emergency licensure from the Massachusetts Department of Elementary and Secondary Education (DESE) as a special education teacher. (Spilman, II: 260-61) [↑](#footnote-ref-19)
20. Although no N1 appears in the evidence, Ms. Lanner testified this neuropsychological report was discussed at a Team meeting on or about February 13, 2023, resulting in the assistive technology evaluation that occurred that spring. (Lanner, IV: 397, 466-67) [↑](#footnote-ref-20)
21. See note 12, *supra.* [↑](#footnote-ref-21)
22. Although the N1 associated with the May 23, 2023 meeting mentions COVID compensatory services, at the meeting itself the Team clarified that it was proposing compensatory services for the period between Benjamin’s termination from Darnell and his first day at CABI. (S-4H; Lanner, IV: 394-95, 398, 468, 480) [↑](#footnote-ref-22)
23. Jami Langley has masters’ degrees in Mental Health Counseling and Educational Policy and Leadership. She has initial certification as a special education administrator and has served in her current role as Associate Director of Exceptional Learning, which includes the responsibilities of Director of Special Education, at Brockton Public Schools since July 2023. (S-9; Langley, I: 52-53, 86-87) [↑](#footnote-ref-23)
24. Food stealing often precipitates other problematic behaviors, as certain food items appear to cause Benjamin gastrointestinal pain and staff must try to block or remove them from him. (Doyle, II: 208; Brennan, III: 337) [↑](#footnote-ref-24)
25. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008). [↑](#footnote-ref-25)
26. 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-26)
27. See *Endrew F. ex rel. Joseph F. v. Douglas Cty. Reg’l Sch. Dist.*, 580 U.S. 137, 389 (2017); *D.B v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012). [↑](#footnote-ref-27)
28. 580 U.S. at 391 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III). [↑](#footnote-ref-28)
29. *Endrew F.,* 580 U.S. at 399. [↑](#footnote-ref-29)
30. *Id*. at 402. [↑](#footnote-ref-30)
31. *C.G. ex rel. A.S. v. Five Town Comty. Sch. Dist*., 513 F.2d 279, 285 (1st Cir. 2008). See, e.g., 20 U.S.C. § 1412(a)(5)(a); *Honig v. Doe*, 484 U.S. 305, 321 (1988); *Bd. of Educ.* v. *Rowley,* 458 U.S. 176, 202-03 (1982); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 987 (1st Cir. 1990). [↑](#footnote-ref-31)
32. *Colón-Vazquez v. Dep’t of Educ*., 46 F. Supp. 3d 132, 143-44 (D. P.R. 2014); see *In Re Stewart*, BSEA # 2101061 (Reichbach 2021). [↑](#footnote-ref-32)
33. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007). [↑](#footnote-ref-33)
34. See *id.* [↑](#footnote-ref-34)
35. *C.G.*, 513 F.2d at 290. See *Hogan v. Fairfax County. Sch. Bd.*, 645 F. Supp. 2d 554, 571-72 (E.D. VA 2009) (citing *G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003) (“The remedy of compensatory education ‘involves discretionary, prospective, injunctive relief crafted by a court to remedy . . . an educational deficit created by an . . . agency’s failure over a given period of time to provide a FAPE to a student.”) See also *In Re Ross*, BSEA #080880 (Oliver 2008) (“Compensatory services are basically a remedy to make up to a student what was lost as a result of not having received the requisite special education services, and is (*sic*) an equitable remedy involving discretion in determining what relief is appropriate after considering all aspects of the case.”) [↑](#footnote-ref-35)
36. *In Re Student v. Acton-Boxborough Regional School District*, BSEA # 2103253 (Figueroa 2021) [hereinafter *In Action-Boxborough*]; see *In Re Student v. Andover & Quincy Public Schools*, BSEA #1602494 (Berman 2017) [hereinafter *Andover & Quincy*]. [↑](#footnote-ref-36)
37. See *C.G.*, 513 F.2d at 288 (“Congress deliberately fashioned an interactive process for the development of IEPs”); see also *Sytsema v. Academy Sch. Dist.*, 538 F.3d 1306, 1312 (10th Cir. 2008) (“State school officials develop each IEP through a collaborative process that is a central characteristic of the IDEA framework”). [↑](#footnote-ref-37)
38. *C.G.*, 513 F.2d at 288. [↑](#footnote-ref-38)
39. *Hogan*, 645 F. Supp. 2d at 571, 572 (equitable nature of compensatory education “demands a close look at the actions of all parties involved in the denial of a FAPE”). [↑](#footnote-ref-39)
40. See *Acton-Boxborough* (“While hearing officers are authorized to grant compensatory relief when appropriate, compensatory relief is an equitable remedy and as such principles of equity and fairness guide the determination of whether this form of relief should be awarded”). *Cf.* *In Re Ross* (“The development of an IEP is a collaborative effort and it is not proper to hold a school district liable for the procedural violation of failing to complete an IEP when such failure was caused by the lack of cooperation and obstruction of the parent of the IEP process and such obstruction can relieve a school from its obligation to have an IEP in place”). [↑](#footnote-ref-40)
41. *C.G*., 513 F.2d at 282. [↑](#footnote-ref-41)
42. *Id*. at 282, 286. [↑](#footnote-ref-42)
43. *Id*. at 287. [↑](#footnote-ref-43)
44. *Id*. at 282. [↑](#footnote-ref-44)
45. *Id.* at 288, 290. See *Kasenia R. ex rel. M.R. v. Brookline Sch. Dist.*, 588 F. Supp. 2d 175, 190 (D.N.H. 2008) (where parents “unreasonably withheld their cooperation in developing [student’s] IEP; they objected to all of the evaluations proposed by the district; they breached the clearly-worded settlement agreement . . . and they insisted on unreasonable conditions that the District could not agree to . . . [the] court conclude[d] that the parents acted unreasonably during the IEP process. As any delay in the development of [student’s] IEP is substantially attributable to her parents’ conduct, this alleged procedural flaw did not violate the IDEA.”) [↑](#footnote-ref-45)
46. See 645 F. Supp. 2d at 554. [↑](#footnote-ref-46)
47. See *id*. at 560, 563-65. [↑](#footnote-ref-47)
48. *Id*. at 566. [↑](#footnote-ref-48)
49. See *id*. at 570-71. [↑](#footnote-ref-49)
50. *Id*. at 575. [↑](#footnote-ref-50)
51. See *Andover & Quincy*; *In Re Ric*, BSEA # 1809434 (Oliver 2018). [↑](#footnote-ref-51)
52. See *Andover & Quincy*. [↑](#footnote-ref-52)
53. *Id*. [↑](#footnote-ref-53)
54. See *id.* [↑](#footnote-ref-54)
55. See *id*. [↑](#footnote-ref-55)
56. See *id*. [↑](#footnote-ref-56)
57. See *In Re Ric.* [↑](#footnote-ref-57)
58. See *id*. [↑](#footnote-ref-58)
59. See *id*. [↑](#footnote-ref-59)
60. *Id*. [↑](#footnote-ref-60)
61. *Id*. [↑](#footnote-ref-61)
62. See *id.* The Hearing Officer also denied compensatory services for the period of time following the student’s acceptance at the May Institute, five months after his emergency termination with a start date a month later, on the basis that that parent had obstructed the placement process. She had not accepted an IEP Amendment or behavior/restraint policies that would have been necessary for him to attend. [↑](#footnote-ref-62)
63. See *Andover & Quincy*. [↑](#footnote-ref-63)
64. See *Hogan*, 645 F. Supp. 2d 554, 572-73 (“a refusal to recognize the effect that parents may have on the IEP process could unfairly burden the school district”). [↑](#footnote-ref-64)