

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

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**Petitioner,**

v.

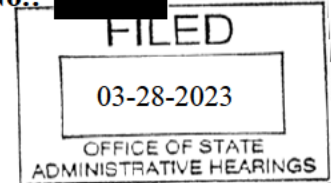
**DEKALB COUNTY SCHOOL  
DISTRICT,**

**Respondent.**

**Docket No.:** ██████████

██████████-OSAH-DOE-SE-44-Fry

**Agency Reference No.:** ██████████



**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY  
DETERMINATION, DENYING PETITIONER'S MOTION FOR SUMMARY  
DETERMINATION, AND DISMISSING CASE**

**FINAL DECISION**

**ORDER OF DISMISSAL**

**I. INTRODUCTION**

Petitioner filed a Due Process Hearing Request (DPHR) on November 29, 2022<sup>1</sup> alleging that Respondent did not provide Extended School Year (ESY) services to ██████████ since the first week of the 2022-2023 school year and since September 12, 2022, the implementation date of his operative Individual Education Plan (IEP). As the proposed remedy, Petitioner requested 13 weeks of third-party tutorial services, which he claimed was equivalent to what was stated in his IEP. Petitioner is seeking \$4,428.00-\$5,200.00 to pay for the third-party services. Based on the filing date, a hearing was to be held and a decision issued by February 23, 2023. The Petitioner filed a Motion for Summary Determination (MSD) on January 13, 2023. On February 1, 2023 following a pre-hearing telephone conference, the hearing was scheduled for February 9, 2023. Respondent filed a Response to Petitioner's Motion for Summary Determination on February 2,

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<sup>1</sup> In the Notice of Filing and Order, due to a clerical delay in processing, the Court set the presumptive filing date for the purposes of calculating deadlines as December 9, 2022.

2023. Respondent then filed a Motion for Summary Determination on February 7, 2023. Petitioner's response was due on February 27, 2023. A response has not yet been filed and would now be untimely in any event. The hearing was continued to March 27, to allow time to consider the cross motions. While there are ancillary disputed facts that are not material, such as who is at fault for the failure to provide ESY services or who is at fault for the failure of [REDACTED] to be present for such services, disputes as to such facts that are not material do not need to be resolved when the undisputed facts render summary determination and dismissal appropriate. Indeed, since both parties filed motions for summary determination, they essentially agree that there is no disputed issue of fact for resolution by the fact finder.

Thus, the issues as presented by the DPHR are limited to the following:

1. Is the District currently providing ESY services as the District agreed to provide pursuant to [REDACTED]'s applicable IEP? The Court concludes that it is.
2. Is [REDACTED]'s operative IEP which says he will receive four (4) hours of ESY services per week to the end of the 2022-23 school year (a total of 144 hours) adequate to address the fact that ESY services did not start at the beginning of the school year, irrespective of when they should have started and irrespective who is at fault for the late start and/or missed sessions? The Court concludes that since Petitioner requested 52 hours of private tutoring as the proposed remedy in the DPHR, 144 hours as provided in Petitioner's IEP is more than adequate.
3. Is there any genuine issue of material fact relating to conclusions 1 and 2 above that precludes summary determination of those conclusions. The Court concludes that there is no genuine issue of material fact that precludes summary determination of the above, which disposes of the issues in this case.

4. Does the Petitioner’s DPHR admit of any other relief that the Court could grant? The Court concludes that insofar as the issues for resolution that were presented by the DPHR filed in this case, the Court can grant no further or additional relief beyond what was requested and is being provided. The Court concludes that what is being provided in terms of ESY services provides all relief required to fully satisfy the relevant material claims in Petitioner’s DPHR.<sup>2</sup>

## II. FINDINGS OF FACT

1. [REDACTED] (“Student”) is eighteen (18) years old. He was born on [REDACTED], 2004. *See* Business Records Certification, Exhibit A-6 to Respondent’s MSD, p. 1.<sup>3</sup> Student is a resident of the District and has been enrolled as a student at [REDACTED] during the current school year. *Id.* Student is a senior whose anticipated graduation date is May 2023. *Id.*, p. 11. Student is eligible to receive special education services under the categories of Other Health Impairment (“OHI”) and Specific Learning Disability (“SLD”). *Id.*, p. 1.
2. The relevant time period for this DPHR claim is from August 2, 2022, which is the end date of the relevant time period for [REDACTED]-1 (OSAH Docket No. 2224023) to the effective filing date of this case, which is December 9, 2022. Petitioner’s DPHR in this case admits of no other claims outside that time frame although it does allege that the failure to provide ESY services has occurred for four consecutive years. Any claims based on history prior to August 2, 2022, subject to the Court’s limitation rulings in [REDACTED]-1, are the subject of that case and not this one. Hence, to the extent Petitioner’s DPHR could be read to raise claims that occurred prior to August 2, 2022, those claims are not the subject of this matter. Petitioner’s

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<sup>2</sup> Petitioner is also receiving compensatory services from the bank of compensatory services provided in the December 2021 Settlement Agreement. Those services were not the subject of the November 29, 2022 DPHR.

<sup>3</sup> The Respondent’s exhibits to its MSD included with the Business Records Certification are numbered A-1 to A-10. They will be referred to herein by their alpha-numeric designation. Respondent’s MSD also includes Exhibit B and C, which are also cited herein.

Motion for Summary Determination also raises claims regarding events that occurred prior to August 2, 2022. To the extent that those are included, the Court will consider them as background information and not as claims raised for adjudication in this case.

3. On August 10, 2022, the Court issued an order substituting [REDACTED] as sole petitioner in [REDACTED] 1, noting August 2, 2022 as the presumptive filing date for the thrice amended [REDACTED]-1 DPHR. Thus, all facts regarding the Student's ESY services prior to August 2, 2022 are considered, to the extent they are considered at all, as background. The provision of ESY service hours prior to August 2, 2022 is the subject of a separate DPHR that is currently in the process of being adjudicated via a hearing. The relevant time period for the current DPHR, [REDACTED]-3, therefore, is from after August 2, 2022 to the date of filing of [REDACTED]-3, which the Court has listed as December 9, 2022. *See* December 9, 2022 Notice of Filing and Order.
4. On August 5, 2022, the Student's IEP team reconvened after the summer to discuss ESY services, to review evaluation reports, and to amend the Student's IEP as needed. Although the team was able to engage in some discussion regarding the Student's educational program, the IEP was unable to finalize the ESY hours in the IEP. The District agreed to reschedule the meeting to accommodate the family's request. *See* Exhibit A-5, pp. 18-20. The District provided prior written notice regarding the family's requests and concerns on or about August 26, 2022, including ESY services. *See* Exhibit A-8. Although not relevant for the purposes of the ESY claims presented here, the prior written notice also included a then-current accounting of how many hours of compensatory services the Student had remaining, noting that the Student had sixty-four and one-half (64.5) hours remaining of his bank of one hundred and eighty (180) compensatory hours from the 2021 Settlement Agreement, and that they were not due until May 25, 2023. *Id.*

5. The IEP team convened again over a series of dates including September 8, 2022, and September 23, 2022 to continue reviewing recent evaluations and complete an eligibility meeting. After reviewing and considering evaluations in the areas of psychological/educational and communication, as well as information gathered from observations, parent input, and other relevant information, the team discussed that the Student met eligibility criteria under the following categories: OHI and Specific Learning Disability (“SLD”). The parent wanted the Student to be eligible under the category of Intellectual Disability (“ID”), but the Student does not meet the criteria for being eligible under that category. *See Exhibit A-6, pp. 24-26.*
6. After completing the eligibility meeting, the team revised the Student’s IEP. As previously discussed with the parent, the team did consider ESY services and decided on goals during this IEP meeting. The team decided that the Student would receive four (4) hours per week of ESY services until the end of the school year, for a total of thirty-six (36) weeks. This totaled one hundred and forty-four (144) hours of ESY services. The team identified eight (8) total goals that would be targeted with these ESY services, including six (6) math goals and two (2) reading goals. *See Id., pp. 23-26.*
7. Petitioner was absent from school for the entire time from August 17, 2022 to September 19, 2022. *See Ex. C to Respondent’s MSD, ¶ 5; see also Ex. A-10.* These absences are identified on Petitioner’s attendance record as excused absences. Between the end of this period, according to his attendance record, Petitioner was absent for two more periods, out of the four periods per day, on the following days: 9/20, 9/21, 9/22, 9/30, 10/3, 10/4, 10/5, 10/6, 10/14, 10/24, 10/25, 10/28, 10/31, 11/11, 11/16, 11/17, 11/18, 12/5, 12/6 and 12/7. *Id.*

8. Petitioner cites an October 16, 2022 email from Dr. Donnielle Howard-Thomas stating that Ms. [Ava] Moore (who had been providing compensatory services) would provide both compensatory and ESY services until the ESY tutor is approved by HR as evidence that the District was unable to provide ESY services and was not, as of October 16, not providing ESY services. *See* Petitioner’s MSD ¶ 3, subparagraph 4 and accompanying footnotes and Petitioner’s exhibits. Thus, there is no genuine issue of material fact that District had not started ESY services at that time due to the timing of completion of the ESY plan in late September, due to Petitioner’s absences from school and the family’s refusal to allow Ms. Moore to provide ESY services.
9. At this stage the timing of the start of ESY services is irrelevant since there is no genuine issue of fact that they have started and are being provided. The email exchange is also significant because it shows, first, that the District was fully able and prepared to provide both ESY and compensatory services. Second, the October 16 email was sent in response to an email from Petitioner’s mother on October 11, 2022 in which she states that [REDACTED] is now back in school. *Id.* The text of the email from Petitioner’s mother reads as follows: “Has the district selected an Extended School Year service provider for [REDACTED]? He has returned to school today after we received his finalized IEP on Friday. He is scheduled to receive 4 hrs per week to address his ESY goals. Given the fact that [REDACTED] is currently in class I am communicating on his behalf but he is copied on this email as well. Thank you.” This further confirms that Petitioner was not available before October 11, 2022 to receive ESY services because, according to his mother, his IEP was not finalized until the Friday before October 11, 2022.

10. Petitioner also cites 34 C.F.R § 300.106(a)(1)-(3) for the proposition that,

1. The IEP Team shall determine if ESY services are needed as part of the child's FAPE. In doing so, it shall consider the individual needs of the child. 2. If the IEP Team determines that ESY shall be provided, it shall: (i) Indicate which goals are being extended or modified to deliver FAPE; and, (ii) State the specific services needed, the amount of time for each service, the ***beginning and ending dates for the services and the service provider and location.*** 3. The LEA shall provide ESY services as required by the child's IEP and all necessary transportation at no cost to the parent. [34 C.F.R. § 300.106(b)(2)]

See Petitioner's MSD, ¶ 3, subparagraph 1, footnote 1 (emphasis in original).

That Code section is set forth in full below:

§ 300.106 Extended school year services.

(a) *General.*

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not -

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* As used in this section, the term extended school year services means special education and related services that -

(1) Are provided to a child with a disability -

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

Contrary to Petitioner's representation however, that section is silent as to the "beginning and ending dates for the services and the service provider and location." There may be authority that supports that assertion, but it is not 34 C.F.R § 300.106(a)(1)-(3) and it is not the cross reference to [34 C.F.R.] §§ 300.320 through 300.324.

11. In reviewing Petitioner's attendance record, between the end of the period of his excused absences between August 17 and September 19, 2022, and October 11, when his mother reported he was back in school, he missed two periods on 9/20, four periods on 9/21, two periods on 9/22, all four periods on 9/28, 9/30 and 10/3, two periods on 10/4, four periods on 10/5, and three periods on 10/6. Based on the attendance record, between September 19 and October 11, Petitioner was in school for only six full days out of sixteen available school days, 9/23, 9/26, 9/27, 9/29, 10/7 and 10/10. *See* Exh. A-10.
12. Shortly after Dr. Howard-Thomas's October 16 email, the family told Ms. Moore that they did not want her to provide both ESY and compensatory services, despite that Ms. Moore confirmed to the District that she could provide both services. *See* Affidavit of Dr. Donnielle Howard-Thomas, attached to Respondent's MSD as Exhibit B, ¶¶5-9; see also Affidavit of Ms. Ava Moore, attached to Respondent's MSD as Exhibit C, ¶6. Thus, the District was unable to provide ESY services to the Student as agreed upon during the September 8 and 23, 2022 IEP meetings due to the family refusing ESY services from Ms. Moore and because the ESY goals, services and hours were not finalized and agreed upon until the September 23, 2022 meeting. *See Id.* Petitioner has provided no evidence or reason why Ms. Moore was not fully capable and qualified to provide both ESY and compensatory services and has provided no valid explanation for refusing those services.
13. In his DPHR, Petitioner claims that he is failing half of his classes. While he did receive a notice mid semester that he was failing half his classes. *See* Petitioner MSD ¶ 3, subparagraph 6. However, Petitioner did not fail his classes during the Fall 2022 semester. In fact, he passed all of his courses, except for Biology for which he received an Incomplete. He is currently working to complete the Biology course. *See* Ex. B, ¶ 10.



14. Ms. Moore worked with the family to schedule and provide a compensatory service session over the winter break in the 2022-2023 school year. *See* Ex. C, ¶ 7. After the session, the parent asked Ms. Moore why she and the Student weren't working on ESY hours, which surprised Ms. Moore, as she recalled that the parent had previously stated that Ms. Moore was not to provide ESY services to the Student. *Id.*, ¶¶ 8-9. Ms. Moore contacted the District to update them that the family appeared to have changed their minds regarding Ms. Moore providing ESY services, and she worked with the Student to schedule additional sessions to provide those services. *Id.*, ¶ 10. However, the Student did not attend the additional sessions scheduled with Ms. Moore over winter break of the 2022-2023 school year. *Id.*, ¶ 11.
15. Ms. Moore then worked with the family and the District to create a schedule for providing both ESY and compensatory services to the Student. *Id.*, ¶ 12. Ms. Moore currently provides ESY services to the Student, and another staff member provides compensatory services. *Id.*, ¶ 13. The fact that Ms. Moore had previously been providing compensatory services to Petitioner and is now providing ESY services further supports the conclusion that she was fully capable of providing both services as set forth in Dr. Howard-Thomas' October 16 email.
16. As ESY is provided only when an IEP team decides it is necessary, and the Student's IEP team did not determine that he was to receive ESY during the periods listed by the Petitioner in the DPHR, the Student was not owed ESY until after the team agreed upon it and the goals and hours to facilitate providing ESY.
17. Under the circumstances, given that ESY services are now being provided and given the availability of Ms. Moore to provide ESY (and compensatory) services and Petitioner's

absences from school, whether the District failed to provide ESY during weeks prior to August 17, 2022 or since September 12, 2022, is no longer relevant and not material.

18. As a result of (a) the efforts on the part of the District to provide ESY services during the applicable claim period for this case, (b) the failure of the Petitioner to attend school for a substantial number of days when such services could have been provided, (c) the family's refusal to allow a capable, qualified and available tutor to provide ESY services during a substantial part of the claim period, (d) the District's agreement, as set forth in the September IEP to provide 144 hours of ESY services, well in excess of the 52 hours of private tutoring Petitioner requested and (e) the undisputed fact that the District is currently providing ESY services, the Court finds that there has been no material failure on the part of the District to provide the ESY services set forth in Petitioner's IEP. Absent such a material failure to provide ESY services, the Court finds that there is no genuine issue of material fact that the District did not fail to provide FAPE by starting Petitioner's ESY services as it did.
19. Respondent has argued that because ESY was not owed to the Student until at least September 2022, because Petitioner has failed to show that any alleged failure to provide ESY services led to a denial of FAPE, and because Petitioner fails to acknowledge the family's obstruction of the District's education of the Student, including regarding ESY services, Petitioner's claims should be dismissed with prejudice.
20. Since Petitioner did not file a response to Respondent's Motion for Summary Determination and did not respond to the Respondent's statement of facts and the supporting affidavits and evidence, those facts are deemed to have been admitted.

### III. CONCLUSIONS OF LAW

1. Petitioner bears the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs 160-4-7-.12(3)(l); Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 161-1-2-.21(4).
2. The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 et seq.; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 et seq.; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. 160-4-7-.01. -.21.
3. Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.02(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living . . . .’” *C.P. v. Leon County Sch. Bd.*, 483 F.3d 1151 (11<sup>th</sup> Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A).
4. The 4th, 5th, 8th, 9th, and 11th U.S. Circuit Courts of Appeal have held that only a material implementation failure will qualify as a denial of FAPE. Accordingly, in our Circuit a district will not be held liable for insignificant or insubstantial deviations from a student's IEP. *See, e.g., L.J. v. School Bd. of Broward County, Fla.*, 74 IDELR 185 (11th Cir. 2019) (The mother of a middle schooler with autism could not show that a Florida district denied her son FAPE by failing to provide every service and support required by his stay-put IEP. The difference between the services required by the IEP and the services actually provided was not significant enough to constitute a material implementation failure.)

## **A. Standard on Summary Determination**

5. Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

(1) Any party may move, based on supporting affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

GA. COMP. R. & REGS. r. 616-1-2-.15(1).

6. On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party “is entitled to a judgment as a matter of law on the facts established.” *Pirkle v. Envtl. Prot. Div., Dep’t of Natural Res.*, OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at \*6-7 (OSAH 2004) (citing *Porter v. Felker*, 261 Ga. 421 (1991)); *see generally Piedmont Healthcare, Inc. v. Ga. Dep’t of Human Res.*, 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is “similar to a summary judgment” and elaborating that an administrative law judge “is not required to hold a hearing” on issues properly resolved by summary adjudication); *G.J. v. Muscogee County Sch. Dist.*, 2010 U.S. Dist. LEXIS 28764 (N.D. Ga. 2010); *A.B. v. Clarke County Sch. Dist.*, 2009 U.S. Dist. LEXIS 47701 (N.D. Ga. 2009).<sup>4</sup>

7. Further, pursuant to OSAH Rule 15:

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<sup>4</sup> The federal district court in *A.B. v. Clarke County School District* rejected the argument that a School District may not seek summary determination in a due process hearing. 2009 U.S. Dist. LEXIS 47701, at \*20-21 (“an ALJ need not conduct an evidentiary hearing if there is no genuine issue of material fact”). Thus, although the Court is aware of a recent opinion letter from the Office of Special Education Programs of the Department of Education (“OSEP”) that states that summary determination proceedings are only appropriate in due process hearings when both parties agree to their use, this Court will follow the interpretation of the federal court and conclude that the School District’s Motion is permissible under applicable Georgia laws and regulations. OSEP 22-04, Letter to Zirkel (Apr. 15, 2022), 122 LRP 13029. *See generally Brown v. District of Columbia*, No. 1:17-cv-00348, 2018 U.S. Dist. LEXIS 24300, \*35 (D.D.C. 2018) (OSEP opinion letters are “‘entitled to respect’ . . . but only to the extent that those interpretations have the ‘power to persuade’” under *Christensen v. Harris County*) (citations omitted). Nevertheless, in applying the standards for summary determination, the Court has considered OSEP’s position that among the extensive procedural rights guaranteed to parents under IDEA is the right to present evidence and confront and cross-examine witnesses during a hearing before an impartial adjudicator.

(3) When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

GA. COMP. R. & REGS. r. 616-1-2-.15(3). See *Guy Lockhart v. Dir., Evtl. Prot. Div., Dep't of Natural Res.*, OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at \*3 (OSAH 2007) (citing *Leonaitis v. Stateke Farm Mutual Auto Ins. Co.*, 186 Ga. App. 854 (1988)).

8. In considering a motion for summary determination, “the court must view all evidence and draw all reasonable inferences in the light most favorable to the non-moving party.” Floyd v. SunTrust Banks, Inc., 878 F. Supp. 2d 1316, 1321 (N.D. Ga. 2012) (citing Patton v. Triad Guar. Ins. Corp., 277 F.3d 1294, 1296 (11th Cir. 2002)). See also Lau’s Corp v. Haskins, 261 Ga. 491, 491 (1991). Moreover, at the summary determination stage, “[i]t is not sufficient if the evidence merely preponderates toward defendant’s theory rather than plaintiff’s or if it does no more than disclose circumstances under which satisfactory proof of plaintiff’s case on trial will be highly unlikely.” Whisenhunt v. Allen Parker Co., 119 Ga. App. 813, 820 (1969) (quoting Watkins v. Nationwide Mut. Fire Ins. Co., 113 Ga. App. 801, 803 (1966)). Finally, in administrative hearings, the court has discretion to determine that the matter is “better resolved by an evidentiary hearing and is inappropriate for summary determination.” Ga. Comp. R. & Regs. 616-1-2-.15(5)(b); see generally Madyun v. Thompson, 657 F.2d 868, 877 n.18 (7th Cir. 1981) (courts may “exercise a sound discretion in denying a motion for summary judgment although on the record the movant has made out a case therefor”); McLain v. Meier, 612 F.2d 349, 356 (8th Cir. 1979) (“The court has no discretion to Grant a motion for summary judgment, but even if the court is convinced that the moving party is entitled such a judgment the exercise of sound judicial discretion may dictate that the motion should be Denied, and the case fully developed.”).

9. The Court has reviewed the claims set forth in the due process complaint and considered them in the light most favorable to Petitioner. The Court also has taken into account that Petitioner is unrepresented by counsel and is an 18 year old senior in high school. In light of the narrow issues presented by Petitioner's DPHR and undisputed evidence in this case during the relevant claim period, however, the Court concludes that a ruling on the cross motions for summary determination is appropriate.

### **B. Petitioner's DPHR and Motion for Summary Determination**

10. As noted above, the only material issues raised by Petitioner's DPHR is whether ESY services are being provided, should they have been provided during certain periods in the fall of 2022 and what is the remedy for failure to start as alleged. These are also the only *material* issues raised by Petitioner's Motion for Summary Determination. As noted above, however, the alleged failure to start ESY services in light of the undisputed facts is no longer relevant and has ceased to be a material issue. Under the circumstances, since the District is providing ESY services as required by ■■■'s IEP, Petitioner's Motion for Summary Determination regarding the failure to start ESY at the beginning of the school year and after September 12, 2022 is **HEREBY DENIED** on that claim.

11. The District documented in Petitioner's September 2022 IEP that he was to receive 144 hours of ESY services between the end of September 2022, and the end of the school year, an amount that is substantially in excess the 52 hours of private tutoring requested by Petitioner. Accordingly, Petitioner's Motion for Summary Determination as to the private tutoring is **HEREBY DENIED** on the requested relief.

### **C. Respondent's Motion for Summary Determination**

12. Petitioner's Motion for Summary Determination and the claims in the DPHR that Respondent did not provide ESY services for the first week of school in the fall and since

September 12, 2022, seek relief regarding an issue that is irrelevant at this stage. In light of the fact that the District is currently providing ESY services pursuant to [REDACTED]'s IEP, which provides more than Petitioner's requested remedy and the other undisputed facts as set forth above regarding the District's efforts to provide ESY services and Petitioner's absences and refusal to allow a qualified, capable and available tutor to provide ESY services, the District's Motion for Summary Determination is **HEREBY GRANTED** on the issue of the commencement of ESY services and the claim in the DPHR on which it is based is **HEREBY DISMISSED**.

13. Accordingly, there is no genuine issue of material fact that precludes a final decision and dismissal.

#### IV. DECISION

Based upon the foregoing, Petitioner's Motion for Summary Determination on the provision ESY services is **HEREBY DENIED**. Respondent's Motion for Summary Determination is **HEREBY GRANTED**. There being no other issues to be decided, this case is **HEREBY DISMISSED**.

**SO ORDERED**, this 28th day of March, 2023.

  
  
**John Fry**  
**Administrative Law Judge**