

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Dates: 9/15/20, 9/16/20
)	Hearing Officer: Michael Lazan
)	Case No. 2020-0131
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Other Health Impairment (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on July 9, 2020. The Complaint was filed by the Student’s parent (“Petitioner” or “Parent”). On July 21, 2020, Respondent filed a response. The resolution period expired on August 8, 2020.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

¹Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

III. Procedural History

A prehearing conference was held on August 4, 2020. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on August 7, 2020, summarizing the rules to be applied in the hearing and identifying the issues in the case. The prehearing conference order was revised on August 20, 2020.

On August 6, 2020, Petitioner filed a Motion for Default and/or Motion to Deem All of Petitioner's Allegations as Admitted, and a Motion to Compel Education Records and/or Motion to Deem Specific Records as Non-Existent. By interim order dated September 1, 2020, the Motion for Default and/or Motion to Deem All of Petitioner's Allegations as Admitted was denied, and the Motion to Compel Education Records and/or Motion to Deem Specific Records as Non-Existent was granted.

The Hearing Officer Determination ("HOD") due date was originally September 22, 2020. On September 16, 2020, Respondent moved on consent for a six-day continuance. On September 21, 2020, the motion was granted and the HOD due date was changed to September 28, 2020. The matter proceeded to hearing on September 15, 2020, and September 16, 2020. Oral closing arguments were presented on September 16, 2020. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

During the proceeding, Petitioner moved into evidence exhibits P-1 through P-35 without objection. Respondent moved into evidence exhibits R-2, R-4, R-9 through R-14, R-17 through R-22, R-25, R-26, and R-31. Objections were filed in regard to exhibits R-2, R-4, R-9, R-11 through R-13, R-17 through R-22, R-25, R-26, and R-31. All objections were overruled. Exhibits R-2, R-4, R-9 through R-14, R-17 through R-22, R-25, R-26, and R-31 were admitted.

Petitioner presented as witnesses, in the following order: Witness A, a psychologist (expert in clinical psychology, including evaluations, special education programming, and compensatory education); Witness B, an independent education consultant (expert in special education, including developing of appropriate IEPs, programming, placements, evaluations, and compensatory education); Witness C, President and acting Head of School at School B; Witness D, a speech and language pathologist (expert in speech-language pathology, audiology, evaluations, programming, and appropriate compensatory education); and Witness E, an occupational therapist (expert in occupational therapy, including evaluations, programming, and appropriate compensatory education). Respondent presented as witnesses, in the following order: Witness F, an occupational therapist (expert in occupational therapy and evaluation needs, including the Student's appropriate placement); Witness G, a special education teacher; Witness H, a resolution specialist; and Witness I, a general education teacher.

IV. Issues

As identified in the revised Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did Respondent fail to provide the Student with an appropriate Individualized Education Program (“IEP”) in or about October, 2017, October, 2018, October, 2019, and May, 2020? If so, did Respondent act in contravention of 34 C.F.R. Sect. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioner contended that the above-mentioned IEPs failed to provide the Student with appropriate goals and baselines, writing goals, sufficient specialized instruction in an appropriate setting, sufficient occupational therapy, and extended school year (“ESY”) services. Petitioner contended that the Student has required a “full-time” placement since the 2017-2018 school year.

2. Did Respondent fail to comprehensively reevaluate the Student in all areas of suspected disability in or about September to December, 2017? If so, did Respondent violate 34 C.F.R. Sect. 300.304(b), 34 C.F.R. Sect. 300.304(c), and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the Student’s reevaluation did not contain adequate/any speech and language assessment(s), “Level 2” vocational assessment(s), psychological assessment(s), and occupational therapy assessment(s).

3. Did Respondent fail to implement the Student’s October, 2017, October, 2018, and October, 2019 IEPs? If so, did Respondent’s act or omission violate principles of law established in cases like Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the Student was not provided with all occupational therapy services for all three years, and/or all specialized instruction for the 2019-2020 school year.

4. Did Respondent fail to recommend an appropriate placement/program during the 2017-2018, 2018-2019, and 2019-2020 school years? If so, did Respondent violate the principles of law in 34 C.F.R. Sect. 300.17; 34 C.F.R. Sect. 300.39, 34 C.F.R. Sect. 300.115, 34 C.F.R. Sect. 300.116, 34 C.F.R. Sect.

300.323(c)(2), and cases such as Endrew F. and Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006)? If so, did Respondent deny the Student a FAPE?

As relief, Petitioner is seeking: an order directing Respondent to provide the Student with funding and placement at School B, with transportation. Petitioner also seeks independent assessments for the Student: a speech and language assessment, a “Level 2” vocational assessment, a psychological assessment, an occupational therapy assessment, and any additional assessments that such assessments recommend. Petitioner also seeks an IEP meeting within ten days of receiving the final independent assessment to review the assessments, redetermine the Student's eligibility, and develop an appropriate IEP. Petitioner also seeks compensatory education for the Student, and for all meetings to be conducted through counsel.

V. Findings of Fact

1. The Student is an X-year-old who is currently eligible for services as a student with Other Health Impairment (Asthma). P-12-1. The Student has been described as social, and s/he tends to open up more in a smaller class setting. Testimony of Witness F; Testimony of Witness I. The Student is currently functioning in the “below basic” range in reading and well below grade level in written expression and mathematics. P-12-7; P-17-11; P-12-4.

2. On a PARCC assessment in mathematics during the 2016-2017 school year, the Student scored at the 22nd percentile for District of Columbia students (“Level 2”). This score was an improvement from the Student’s PARCC assessment in mathematics during the 2015-2016 school year, when s/he scored at the 15th percentile of students in the District of Columbia. P-6-3; P-6-5.

3. The Student attended School A during the 2017-2018 school year. On an i-Ready mathematics assessment dated September 11, 2017, the Student scored at “Level 2.” P-6-3. On a Scholastic Reading Inventory (“SRI”) assessment dated August 30, 2017, the Student scored at Lexile level 95, at the “below basic” range. P-6-5.

4. Respondent created a document entitled “Analysis of Existing Data” for the Student on October 16, 2017. The document reported that the Student would benefit from intensive intervention in mathematics. At the time, the Student could count from 1–120 and add and subtract two-digit numbers without regrouping. The document also stated that the Student could not write the entire lower-case alphabet from memory, but nevertheless read with a high level of engagement. P-18.

5. An IEP meeting was held for the Student on October 20, 2017. The Student was recommended for five hours of specialized instruction per week in reading, and five hours of specialized instruction per week in mathematics, both to be delivered outside general education. Parent attended this IEP meeting. The IEP that resulted from the meeting added accommodations, including preferential seating, location with minimal distractions, and extended time. The IEP also recommended 120 minutes per month of occupational therapy outside general education. No ESY services were recommended. The IEP stated that the Student was able to communicate effectively with peers and adults, and was functioning in the “limited to average” range in mathematics. The IEP also indicated that the Student was disruptive, off-task, and rarely finished assignments in mathematics, and that his/her overall reading ability was limited, in the “below basic” range. The IEP also noted that the Student had issues with writing the entire alphabet from memory, reversed letters, and typically omitted letters when writing. The IEP

included “Area of Concern” sections and corresponding goals in reading, mathematics, and motor skills/physical development. P-6.

6. An occupational therapy assessment report on the Student was issued on November 20, 2017. The evaluator interviewed Petitioner and two of the Student’s teachers, and conducted a “clinical assessment” of the Student. The evaluator also administered the Beery-Buktenica Developmental Test of Visual Motor Integration, 6th edition (“Beery VMI 6th Ed.”), where the Student scored in the below average range in motor coordination and visual-motor integration, but in the average range for visual perception. The evaluator’s summary concluded that the Student’s written work was neat, small, and on baseline, that the Student reversed and omitted letters, and that the Student was accurate when copying. P-13.

7. A Psychological Triennial Reevaluation report on the Student was issued on December 13, 2017. This report included a review of previous assessments, interviews with Petitioner, the Student’s teacher, and the Student, and a classroom observation. The Student expressed to the evaluator that his/her worst class was reading, and that s/he stuttered sometimes when s/he tried to read. In the classroom observation, the Student appeared to be engaged during his/her advisory class (working on history and geography) but did not look engaged in his/her reading resource class, which had two other students in the room. On the Woodcock-Johnson-IV Tests of Achievement (“WJ-IV”) administered by the evaluator, the Student scored in the very low range in broad reading (2.1 grade level equivalent), broad mathematics (2.4 grade level equivalent), and broad written language (2.1 grade level equivalent). The evaluator concluded that the Student might have a learning disability in reading but did not mention issues in

mathematics or written expression. The evaluator also administered the Behavior Assessment Scales for Children, Third Edition (“BASC-3”), per two different teacher rating scales. According to the BASC-3, the Student had no clinically significant behavioral issues, though s/he was “at-risk” for learning problems (one teacher), social skills (one teacher), leadership (both teachers), and study skills (both teachers). The report indicated that the Student’s grades were good, except in science and world history, where the Student was getting “D” grades. The evaluator suggested that the Student needed reading interventions but did not recommend interventions in mathematics or written expression. P-14; Testimony of Witness A.

8. The Student’s Evaluation Summary Report dated December 14, 2017 stated that the Student would benefit from intensive intervention in mathematics and could count, read, write, and represent numbers 1-120, as well as subtract two-digit numbers without regrouping. The report indicated that the Student could read with a “high level of engagement,” and had sufficient control of vocabulary and syntax to work on applying reading. The report also indicated that the Student had attentional issues and issues with handwriting, including writing all lower case letters from memory. The report’s summary indicated that the Student was functioning like a first-grade student and was not likely to be able to read words more than three letters long. The report also indicated that the Student likely did not understand the sounds that letters make and was unable to blend them into a word. R-20.

9. The Student’s grades for the 2017-2018 school year included an “F” in “World Geography and Cultures” (third term) and in “Reading Resource” (third term). Otherwise, the Student’s grades were in the “B” and “C” range, with a “D” in science for

the third term. The Student was absent thirty-five days and tardy eight days during this school year. P-19.

10. The Student's IEP Progress Reports for the 2017-2018 school year indicated progress on most academic goals, though no mastery of goals. P-15. The reports also indicated that the Student was refusing to read (earlier in the year), had issues reading alone, and was not progressing in handwriting, in part because s/he did not regularly attend school. P-15-4; P-15-9; P-15-10; P-15-19; P-15-21.

11. The Student was offered monthly occupational therapy during the 2017-2018 school year as follows: 120 minutes in October, 2017; sixty minutes in November, 2017; forty-five minutes in December, 2017; sixty minutes in January, 2018; ninety minutes in February, 2018; 120 minutes in March, 2018; ninety minutes in April, 2018; ninety minutes in May, 2018; and seventy-five minutes in June, 2018. P-7.

12. The Student continued at School A for the 2018-2019 school year. On an i-Ready test in mathematics on September 14, 2018, the Student scored 436, at "Level 3," an increase from prior testing. P-8-1, P-8-3. On an SRI test in reading on September 28, 2018, the Student scored a Lexile level of 256, an improvement over the prior year's score of 95, though still in the "below basic" range. P-8-5.

13. An IEP meeting was held for the Student on October 16, 2018. Parent attended the meeting. The Student was again recommended for five hours of specialized instruction per week in reading, and five hours of specialized instruction per week in mathematics, to be delivered outside general education, with preferential seating, location with minimal distractions, and extended time, among other accommodations. The IEP also recommended sixty minutes of occupational therapy per month outside general

education, a fifty percent reduction from the previous year. Again, no ESY services were recommended. The IEP again included “Area of Concern” sections and goals in reading, mathematics, and motor skills/physical development. Reading goals included two goals in written expression. P-8.

14. The Student’s grades for the 2018-2019 school year included “F” grades in “World Geography and Cultures” (third term) and science (second and third terms). The Student also received a final grade of “F” in “Reading Resource.” Otherwise, the Student’s grades were in the “B” and “C” range. P-20.

15. The Student’s IEP Progress Report for the first term of the 2018-2019 school year indicated progress on most academic goals that were introduced, though the report also stated that the Student often did not comprehend what s/he read. P-16.

16. The Student was offered monthly occupational therapy during the 2018-2019 school year as follows: 180 minutes in September, 2018; sixty minutes in October, 2018; forty-five minutes in November, 2018; sixty minutes in December, 2018; 120 minutes in January, 2019; sixty minutes in February, 2019; 120 minutes in March, 2019; and sixty minutes each in April, 2019, May, 2019, and June, 2019. P-9.

17. The Student continued at School A for the 2019-2020 school year. On September 9, 2019, the Student scored 390 on SRI testing, an improvement from the prior year, though still in the “below basic” range. On September 10, 2019, the Student scored 424 on i-Ready testing in mathematics (at “Level 2”), indicating a regression from prior i-Ready testing. P-10-3; P-10-5.

18. An IEP meeting was held for the Student on October 15, 2019. Parent attended the meeting, together with Witness G and Witness I. P-10-1. The team noted

the regression in the Student's mathematics testing, and school staff decided to implement "standard" math interventions to address the difficulties. Witness G stated that the Student had made progress in his/her classwork. Testimony of Witness G. The Student was again recommended for five hours of specialized instruction per week in reading, and five hours of specialized instruction per week in mathematics. However, the specialized instruction was now to be delivered inside general education. The same accommodations were recommended for the Student, including preferential seating, location with minimal distractions, and extended time. Again, no ESY services were recommended. The IEP also reduced the Student's occupational therapy services to thirty minutes per month of "consultation." A Post-Secondary Transition Plan was annexed to the IEP. The IEP indicated that the Student had regressed in mathematics per the i-Ready assessment and needed "intense individualized instruction" for skills and concepts related to quantitative reasoning and representation, among other things. The IEP indicated that the Student got frustrated if s/he did not understand a concept automatically in mathematics, that the Student's overall reading ability was in the "below basic" range, and included "Area of Concern" sections and goals in mathematics, reading, and motor skills/physical development. The IEP also stated that the Student performed best in a small group setting with few distractions and simple but specific directions. P-10.

19. During the 2019-2020 school year, the Student took general education classes, including mathematics (daily) with a special education teacher in the room, science (daily), social studies (daily), English language arts (daily) with a "support specialist" in the room, and a reading support class with a special education teacher in the

room. The Student was engaged in mathematics class, which included the use of technology and small group instruction. Testimony of Witness G.

20. The Student's general education classes during the 2019-2020 school year usually had 15–20 children in the classroom, though the Student's science class had 5–8 students. The science class included reading every day. Certain handouts were differentiated for students based on their SRI Lexile levels for reading, ranging from mid-600 to 1100. The Student would “very much struggle” in reading during the class. The Student also struggled with critical thinking, though the Student's grades were relatively good. Since the class size was small, the Student's science teacher would sometimes be able to provide him/her with individual help. Testimony of Witness I.

21. Most of the Student's grades for the 2019-2020 school year were in the “A” and “B” range, though the Student received a “C+” and “F” in “Reading Workshop,” and an “F” in “Spanish Language and Culture” for the third term. P-21.

22. The Student's IEP Progress Reports for the 2019-2020 school year indicated progress on goals that were introduced, including transition goals. P-17. It was reported that the Student was able to write a paragraph using two pieces of textual evidence. P-17-10. For the fourth reporting period, the Student did not log into distance learning, and no progress could therefore be reported. P-17-13-16.

23. On an SRI test on January 13, 2020, the Student's Lexile level increased to 417, a gain of twenty-seven points from his/her score in September, 2019. P-12-7. On i-Ready testing in mathematics conducted on February 5, 2020, the Student remained at the second-grade level, with 8% progress toward “annual typical growth” and 3% progress through “stretch growth.” P-22.

24. An IEP meeting was held for the Student on May 26, 2020. Parent attended the meeting with her attorney appearing by phone. Parent expressed concerns about the Student's programming, and Respondent expressed concerns that the Student was not engaged in distance learning, which was due in part to a lack of access. Witness G reviewed the Student's IEP section by section, and Witness B "pushed" for the Student to receive a full-time IEP. Testimony of Witness B.

25. After the IEP meeting on May 26, 2020, Witness B sent a follow-up note to Witness G reiterating her concerns, including with the goals in the Student's IEP. Based on this correspondence, the goals were revised and the Student's specialized instruction was increased to a total of twenty hours per week: five hours in reading and five hours in mathematics inside general education, and five hours in reading and five hours in mathematics outside general education. The IEP again recommended thirty minutes per month of occupational therapy "consultation." The IEP also required the Student's instruction to be delivered with new accommodations, including "Universal Design for Learning Strategies" in the general education curriculum. The IEP further recommended providing the Student with multiple means of representation, engagement, and action for each assignment, a human scribe, speech-to-text software, a "human signer," external assistive technology for selected responses on ELA/Literacy Assessments, "read aloud" on all assignments, preferential seating, location with minimal distractions, and extended time. Again, no ESY services were recommended. A Post-Secondary Transition Plan was attached to the IEP. The IEP indicated that the Student's handwriting was now legible with good letter line orientation and spacing, though the Student continued to display issues with letter omission when copying. The IEP included

“Area of Concern” sections and goals in reading, mathematics, and motor skills/physical development and continued to indicate that the Student performed best in a small group setting with few distractions and with simple but specific directions. P-12; P-28.

26. The Student was offered monthly occupational therapy during the 2019-2020 school year as follows: thirty minutes in August, 2019; no services in September, 2019, or October, 2019; thirty minutes each in November, 2019, and December, 2019; no services in January, 2020, or February, 2020; and sixty minutes in March, 2020. P-11.

27. School B is a small school in an old building. School B serves children with special needs, except for students with autism. The school offers instruction through the DCPS curriculum and provides classes with one teacher and one aide. Classes are small, with a maximum ratio of one teacher per four students. Testimony of Witness C.

VI. Conclusions of Law

The burden of persuasion in District of Columbia special education cases was changed in 2014. The District of Columbia Code now states that “(w)here there is a dispute about the appropriateness of the child’s individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that the party requesting the due process hearing establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). The burden of persuasion for Issue #1 and Issue #4 is therefore on Respondent, provided that Petitioner presents a *prima facie* case. The burden of persuasion is on Petitioner for Issue #2 and Issue #3, since these issues do not directly involve the appropriateness of the child’s IEP or placement. Schaffer v. Weast, 546 U.S. 49 (2005).

1. Did Respondent fail to provide the Student with an appropriate IEP in or about October, 2017, October, 2018, October, 2019, and May, 2020? If so, did Respondent act in contravention of 34 C.F.R. Sect. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), and Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the above-mentioned IEPs failed to provide the Student with appropriate goals and baselines, writing goals, sufficient specialized instruction in an appropriate setting, sufficient occupational therapy, and ESY services. Petitioner also contended that the Student has required a “full-time” placement since the 2017-2018 school year.

October, 2017, IEP.

This IEP was created on October 20, 2017, more than two-and-a-half years prior to the date the Complaint was filed (July 9, 2020). Respondent therefore contended that the Complaint is barred by the applicable statute of limitations, which requires parents to “request an impartial due process hearing within two years of the date the parent...knew or should have known about the alleged action that forms the basis of the complaint.” 20 U.S.C. Sect. 1415(f)(3)(C), 20 U.S.C. Sect. 1415(b)(6), and 34 C.F.R. Sect. 300.507(b).

This defense requires hearing officers “to make determinations, on a case-by case basis, of factors affecting whether the parent ‘knew or should have known’ about the action that is the basis of the complaint.” Analysis and Comments, Federal Register Vol. 71, No. 156 (August 14, 2006) at 46706; Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 45 (D.D.C. 2016) (citing K.H. v. N.Y. City Dep’t of Educ., No. 12-cv-1680 (ARR)(MDG), 2014 WL 3866430, at *16 (E.D.N.Y. Aug. 6, 2014) (requiring a hearing officer to conduct a “fine-grained analysis” to determine such date).

Petitioner did not reference this section of the law during closing argument and did not testify to the effect that she was surprised by any information that was presented to her after the October, 2017, IEP was created. In fact, Petitioner did not testify at all. Instead, Petitioner simply argued that she could bring such claims because the effective term of the IEP ran from October 24, 2017, to October 19, 2018. However, Petitioner did not present any legal authority to support this broad view of statute of limitations accrual. Moreover, caselaw suggests that the accrual date for IEP claims should ordinarily be the date of IEP formation, unless the parent did not have access to important facts about the IEP at the time. As one court explained, the limitations period is two years from the date that the parents knew or should have known of the complained of action, not two years from the date the parents knew the action taken was wrong. Bell v. Bd. of Educ. of the Albuquerque Pub. Sch., No. CIV06-1137JB/ACT, 2008 WL 4104070, at *17 (D.N.M. Mar. 26, 2008); J.P. v. Enid Public Schools, 2009 WL 3104014 at *6 (W.D. Ok. 2009) (same). It is worth adding that adjustments to the accrual date for statute of limitations purposes often involve misleading evaluations. Cty. Sch. Bd. v. R.T., 433 F. Supp. 2d 657, 663, 675–76 (E.D.Va.2006) (school district “greatly misunderstood” the Student’s cognitive capacity). Though Petitioner argued that Respondent failed to adequately reevaluate the Student from September through December, 2017, she did not contend that the failure to reevaluate caused her to delay filing the Complaint. Accordingly, this Hearing Officer finds that all claims relating to the creation of the October 20, 2017, IEP are time-barred by the applicable statute of limitations and must be dismissed.

October, 2018, IEP.

In Rowley, the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” 458 U.S. at 204. The Court’s decision in Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017), expanded on the doctrines established in Rowley. The Court found that parents can fairly expect those authorities to offer a “cogent and responsive explanation” for their decisions, and that the IEP should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,” the Court held that IDEA “demands” a higher standard. Id. (citing to Rowley). Still, the Court cautioned that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001.

The record indicates that the Student was recommended for ten hours per week of specialized instruction in the October, 2018, IEP, all outside general education, meaning that the Student would spend much of the week in general education classes without any special education teacher in the room to modify his/her work. This continued the Student’s specialized instruction mandate from the October, 2017, IEP, which also recommended that the Student receive ten hours of specialized instruction per week.

Respondent did not call any witnesses who were at the October, 2018, IEP meeting to explain the basis for their decision to offer the Student ten hours of specialized

instruction per week. Moreover, the record suggests that the Student should not have been placed in general education academic classes at this time. The Student's Evaluation Summary Report of December 14, 2017, states that the Student "is currently able to function on an academic level that is commensurate with that of first grade student. In the classroom, it is likely that [s/he] is not able to read words that are more than three letters, it is likely that [s/he] does not understand the sounds that letters make and unable to blend them into sound out a word." Respondent argued that this IEP was nevertheless appropriate because the Student made progress in both reading and mathematics under the earlier program, as evidenced by the Student's scores on the SRI test for reading and the i-Ready test for mathematics. But the Student received reading and mathematics instruction in special classes during the 2017-2018 school year. Respondent did not show that the Student was able to manage his/her general education classes during the 2017-2018 school year. In fact, the record shows that the Student struggled in general education classes during the 2017-2018 school year, including an "F" grade in "World Geography and Cultures" and a "D" grade in science during the third term. This Hearing Officer agrees with Witness B's testimony that the Student was not provided with adequate specialized instruction in the October, 2018, IEP.

Petitioner also argued that the Student's IEP goals were insufficient during the school year. Through Witness B, Petitioner argued that the Student's baselines did not correspond to the Student's goals, which were therefore not measurable. Petitioner also argued that the Student's IEP lacked written expression goals.

However, there is no requirement for IEP goals to contain "baselines" in the IDEA. Instead, the IDEA regulations simply state that an IEP must include "(a)

statement of measurable annual goals, including academic and functional goals” that are written to “(m)et the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum” and “(m)et each of the child’s other educational needs that result from the child's disability. 34 C.F.R. Sect. 300.320. While courts do require that IEP goals be measurable, a review of the goals in this case reveals that they were in fact measurable. For instance, one of the Student’s mathematics goal states that s/he will add, subtract, multiply, and divide fractions with eighty percent accuracy in four out of five trials. A special education teacher would easily be able to create a test to measure the Student’s performance on this specific goal.

Moreover, though this IEP does not contain an “Area of Concern” section for written expression, it does contain written expression goals in the IEP’s “Area of Concern: Reading” section. One goal relates to writing a paragraph of at least five sentences with a graphic organizer, another relates to using sentence starters to write the theme of a text and list details about it, and a third goal relates to writing a five-to-seven-sentence paragraph that identifies the setting of a story and how it impacts a character and a plot point. Accordingly, this Hearing Officer finds that Petitioner did not present a *prima facie* case on the claims relating to IEP goals in the October, 2018, IEP.

Petitioner also contended that this IEP did not provide the Student with sufficient occupational therapy services because it reduced the services from the prior IEP (which required 120 minutes of occupational therapy per month). Witness E testified that even 120 minutes per month was not sufficient, and that the Student needed 180 minutes of occupational therapy per month. Witness E, who had not met the Student, also contended

that the Student's occupational therapy hours should not have been cut because s/he did not master the goals on the October, 2017, IEP. However, Witness E did not clearly connect the request for additional occupational therapy services to the Student's issues in the classroom. More convincing was the testimony of Witness F, from DCPS, who provided the Student with occupational therapy during this time. Witness F convincingly testified that the Student's occupational therapy services were appropriately reduced because the Student's handwriting had become legible and because the Student's November 20, 2017, occupational therapy reevaluation indicated improvement in visual perceptual skills, motor coordination, and copying. Accordingly, this Hearing Officer finds that Petitioner's claim relating to the reduction in occupational therapy services has no merit.

Finally, Petitioner contended that the Student should have received ESY services in the October, 2018, IEP. Witness B stated that the Student should have been entitled to such services, but did not focus on the legal standard and did not point to any regression that the Student experienced over the summer months or during long breaks in prior school years. ESY services are necessary to an offer of FAPE only when the benefits a disabled child gains during a regular school year will be jeopardized during the summer months. S.S. ex rel. Shank v. Howard Rd. Acad., 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008) (quoting MM v. Sch. Dist. of Greenville County, 303 F.3d 523, 537-38 (4th Cir.2002)). Accordingly, this Hearing Officer finds that Petitioner did not meet the burden to present a *prima facie* case on this issue.

In sum, Respondent's October, 2018, IEP denied the Student educational benefit, and therefore a FAPE, only to the extent that it did not provide the Student with sufficient specialized instruction.

October, 2019, IEP.

This IEP also required that the Student receive ten hours of specialized instruction per week, but changed the delivery of these services to be provided inside general education. Again, Respondent contended that the Student had progressed in the earlier program and did not need any additional specialized instruction. Witness G, who attended the IEP meeting, testified that the Student was able to manage general education classes without any special education teacher in the room. However, while Witness G is a special education teacher, she did not teach the Student in general education classes. In contrast, Witness I, who did teach the Student in his/her general education science class without any special education support, testified that the Student, though hard working, "really struggles to read," which was a "big hurdle" in class. Witness I testified that he was sometimes able to help the Student with daily reading assignments because the class happened to have a small class size. However, Witness I's testimony also made clear that the Student was unable to read the classroom handouts, which were differentiated for, and accessible to, students reading at SRI Lexile levels from the mid-600s to the 1100s. At the time, the Student's SRI Lexile level was 390, well below the level of the simplest handouts. This is consistent with the Student's grades during the 2018-2019 school year, which included an "F" grade in "World Geography and Cultures" for the third term, and "F" grades in science for second and third terms.

Moreover, the record indicates that the Student did not benefit from such a favorable teacher-to-student ratio in his/her other general education classes. Witness I testified that the Student's general education classes usually had between fifteen and twenty children in the classroom. It is further noted that the IDEA does not allow a school district to "rehabilitate a deficient IEP after the fact" by showing that a child "would, in practice, have received the missing services." Lofton v. District of Columbia, 7 F. Supp. 3d 117, 124 n. 6 (D.D.C. 2013) (quoting R.E. v. New York City Dep't of Educ., 694 F.3d 167, 186 (2d Cir. 2012)). This Hearing Officer agrees with Petitioner that the Student should have received more than ten hours per week of specialized instruction in the October, 2019, IEP.

Petitioner also contended that the goals in this IEP were not measurable, that there were no written expression goals, that the goals were too difficult for the Student, and that the Student's transition goals were meaningless. As with the IEP from October, 2018, this Hearing Officer finds that the goals in this IEP were measurable, since they set forth criteria for measurement. For example, mathematics Annual Goal 1 asked the Student to use the properties of integer exponents to generate an equivalent numerical expressions and the final integer correctly for four of five expressions. Additionally, though the IEP again had no "Area of Concern" section devoted to written expression, it did have written expression goals in the "Area of Concern: Reading" section. Witness B contended that all of these goals were inappropriate for the Student since they were inappropriately based on grade-level standards, but this was not the case. The goals were broadly written so that teachers could adapt them to the Student's academic level. For instance, a reading goal required the Student to read an independent level text and then

write a response explaining connections between different parts of the text. There was no requirement in this goal that the Student should read or write at grade level.

Petitioner also contended that the Student's transition goals were meaningless and not measurable. Transition services are defined as "a coordinated set of activities for a child with a disability" that is a "results oriented process" and that is "based on the individual child's needs." 34 C.F.R. Sect. 300.43. If transition services are required, an IEP must include appropriate, measurable, post-secondary goals based upon appropriate transition assessments relating to training, education, employment, and, where appropriate, independent living skills. 34 C.F.R. Sect. 300.320(b). However, a review of the Student's Post-Secondary Transition Plan shows that the Student's transition goals appropriately focused on identifying schools in the Student's area of interest. No baselines were necessary for these goals. Petitioner pointed out that there was no independent living goal in the IEP. However, such a goal would be necessary only if "appropriate," and there is no evidence in the record to suggest that the Student will be living independently in the near future. It is also noted that a defective transition plan is ordinarily considered a procedural violation that does not amount to denial of a FAPE. Patterson v. District of Columbia, 965 F. Supp. 2d 126, 131 (D.D.C. 2013). This Hearing Officer therefore finds this claim to be without merit.

Petitioner also contended that the occupational therapy services in this IEP were inappropriate because DCPS eliminated the Student's direct occupational therapy services and replaced them with thirty minutes of occupational therapy "consultation" each month. Witness E again testified that the Student needed 180 minutes of direct services per month in this IEP, but did not clearly explain which school issues prompted

the need for this much occupational therapy. As noted previously, this Hearing Officer was more convinced by the testimony of Witness F, who indicated that, by this point, the Student's deficits (largely in omitting letters) were more rooted in his/her reading ability than his/her abilities related to occupational therapy. Witness F stated that, if the Student copied anything, it was "beautiful."

Petitioner also contended that the Student should have been recommended for ESY services in this IEP. There is evidence that the Student regressed over the summer of 2019 in mathematics, since s/he scored 424 on an i-Ready test on September 10, 2019, a decrease from his/her score of 436 the year before. The IEP itself stated that the Student had regressed in mathematics and needed "intense individualized instruction" for skills and concepts related to quantitative reasoning and representation. Respondent did not call any witnesses who directly addressed this ESY claim to rebut this contention. This Hearing Officer agrees with Petitioner that this IEP should have included ESY services for the summer of 2020.

In sum, the October, 2019, IEP denied the Student educational benefit, and therefore a FAPE, because it failed to provide the Student with sufficient specialized instruction and ESY services.

May, 2020, IEP.

In this IEP, Respondent increased the Student's specialized instruction hours to twenty hours per week. Respondent also added a wide variety of new accommodations designed to address the Student's needs in the general education environment. Petitioner contended that this increase was not enough and that the Student has needed a "full-time" special education placement since the 2017-2018 school year. However, Petitioner did

not show that the Student could not manage non-academic classes without a special education teacher in the room, or that the Student needed a special school to address his/her academic or emotional issues. Petitioner also did not consider that the Student benefitted from his/her interactions with non-disabled peers at School A, as suggested in the testimony of Witness F and Witness I. As in Jackson v. District of Columbia, No. CV 19-197 TJK/DAR, 2020 WL 3318034, at *14 (D.D.C. June 2, 2020), report and recommendation adopted, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020), where a parent wanted full-time special education instruction for a student who was placed outside general education most of the time but spent “specials,” lunch, and recess with nondisabled peers, Petitioner could not explain how DCPS could have comported with the least restrictive environment requirement “[t]o the maximum extent possible” by writing an IEP that required total isolation from nondisabled peers. 20 U.S.C. Sect. 1412(a)(5)(A). Accordingly, this Hearing Officer agrees with Respondent that this IEP correctly recommended twenty hours of specialized instruction per week outside general education.

Petitioner also raised the same objections to the Student’s IEP goals and occupational therapy services as she did with the October, 2019, IEP. As stated in connection to the earlier IEPs, there is no requirement for goals to have “baselines,” and the IEP goals themselves contain language that points to measurement criteria, such as a reading goal that asks the Student to answer reading comprehension questions with eighty percent accuracy in three of four assessments. And again, while this IEP has no “Area of Concern” section for written expression, it does contain two writing goals, which were repeated from the prior IEP (a point not emphasized by Petitioner). Moreover, as with

the earlier IEP, the transition goals did provide the Student with a reasonable template for his/her post-school plans. In fact, the Student's transition goals were revised to state that the Student planned to work full time after completing school, and would like to live independently in an apartment close to the job.

Finally, Petitioner again contended that the Student should have received a recommendation for ESY services in this IEP. For the same reasons discussed in connection to the October, 2019, IEP (which addressed the Student's right to ESY during the summer of 2020), this Hearing Officer finds that there is evidence of regression in the record and that Respondent should therefore have recommended ESY services for the Student, noting again that Respondent's witnesses did not clearly defend its position that the Student did not need ESY services after the reported drop in his/her i-Ready testing in September, 2019. As a result, this Hearing Officer finds that the May, 2020, IEP denied the Student educational benefit, and therefore a FAPE, by failing to recommend ESY services for the summer of 2020.

2. Did Respondent fail to comprehensively reevaluate the Student in all areas of suspected disability in or about September to December, 2017? If so, did Respondent violate 34 C.F.R. Sect. 300.304(b), 34 C.F.R. Sect. 300.304(c), and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioner contended that the reevaluation did not contain adequate/any speech and language assessment(s), "Level 2" vocational assessment(s), psychological assessment(s), and occupational therapy assessment(s). However, as with the claims relating to the October, 2017, IEP, these claims relate to actions or occurrences that took place more than two years prior to the filing of the Complaint, and Petitioner did not testify to explain why the accrual date for these claims should be altered because she did

not know of the claims. Nor did Petitioner specifically allege that Respondent's 2017 evaluations were misleading in any way, or that she did not receive her procedural safeguards relating to her right to file a due process complaint prior to this time. Swope v. Cent. York Sch. Dist., No. 1:10-CV-2541, 2012 WL 10583, at *3 (M.D. Pa. Jan. 3, 2012) (since school district provided a mother with procedural safeguards, the student could not seek relief for an alleged IDEA violation more than two years later.). This claim must therefore be dismissed.

3. Did Respondent fail to implement the Student's October, 2017, October, 2018, and October, 2019 IEPs? If so, did Respondent's act or omission violate principles of law established in cases like Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)? If so, did Respondent deny the Student a FAPE?

"Failure to implement" claims are actionable if a school district cannot materially implement an IEP. A party alleging such a claim must show more than a *de minimis* failure, and must show that material, or "substantial or significant," portions of the IEP could not be implemented. Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where district's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007). Courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld. Garmany v. Dist. of Columbia, 935 F. Supp. 2d 177, 181 (D.D.C. 2013).

For the 2018-2019 school year², the Student should have received 120 minutes of occupational therapy in September, 2018, then sixty minutes per month of occupational therapy for the remainder of the school year, except for October, 2018, when services changed from 120 minutes per month to sixty minutes per month on October 16, 2018. The service trackers in the record indicate that the Student was offered the following occupational therapy services during the 2018-2019 school year: 180 minutes in September, 2018; sixty minutes in October, 2018; forty-five minutes in November, 2018; sixty minutes in December, 2018; 120 minutes in January, 2019; sixty minutes in February, 2019; 120 minutes in March, 2019; and sixty minutes each in April, 2019, May, 2019, and June, 2019. Since there is no dispute about the accuracy of the service trackers, this Hearing Officer concludes that the Student was offered his/her mandate of occupational therapy services during every month of the school year except in November, 2018 (when s/he did not receive fifteen minutes of services).

In October, 2018, the Student was also arguably shortchanged, since s/he was due to receive 120 minutes of services at the start of the month but only received sixty minutes, per the new IEP. However, the Student was offered more than the mandated sixty minutes per month in January, 2020, and March, 2020. This means that the Student was actually offered more occupational therapy services during the 2018-2019 school year than s/he was entitled to. Petitioner argued that the Student missed services because

²Since the Complaint was filed on July 9, 2020, all claims relating to the 2017-2018 school year accrued more than two years prior to filing and are time-barred for the reasons set forth earlier in the discussion relating to the Student's October, 2017, IEP and the 2017 reevaluation.

of absences and that such services should have been made up, but failed to point to any authority in support of this position.

For the 2019-2020 school year, the Student was entitled to occupational therapy “consultation” for thirty minutes per week. According to the service trackers in the records, the Student received services as follows: thirty minutes in August, 2019; no services in September, 2019, or October, 2019; thirty minutes each in November, 2019, and December, 2019; no services in January, 2020, or February, 2020; and sixty minutes in March, 2020. The Student therefore did not receive ninety minutes of occupational therapy consultation services during the 2019-2020 school year. However, the “goal and import” of the occupational “consultation” service is not entirely clear from the record, and Petitioner does not provide any authority in support of the proposition that the intermittent delivery of occupational therapy “consultation” services amounts to FAPE denial. Under the circumstances, this Hearing Officer is not convinced that Petitioner has established a failure to implement claim on this basis.

Petitioner also claimed that the Student did not receive occupational therapy services or specialized instruction services during the COVID-19 pandemic. The record suggests that this is accurate, but not because the services were not made available to the Student. Instead, the record indicates that the Student could not access a computer or a “hot spot” in order to access the services that were offered. Petitioner did not point to any authority suggesting that a school district has a legal obligation to provide students with laptops or hotspots during the COVID-19 pandemic.

In sum, this Hearing Officer finds that DCPS did not fail to implement the Student’s IEPs in the 2018-2019 and 2019-2020 school years. This claim is dismissed.

4. Did Respondent fail to recommend an appropriate placement/program during the 2017-2018, 2018-2019, and 2019-2020 school years? If so, did Respondent violate the principles of law in 34 C.F.R. Sect. 300.17; 34 C.F.R. Sect. 300.39, 34 C.F.R. Sect. 300.115, 34 C.F.R. Sect. 300.116, 34 C.F.R. Sect. 300.323(c)(2), and cases such as Endrew F. and Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006)? If so, did Respondent deny the Student a FAPE?

Most cases involving FAPE denial focus on the IEP, the “centerpiece” of the Act. Honig v. Doe, 484 U.S. 305, 311 (1988). Nevertheless, courts hold that parents may also bring claims based upon an inappropriate school placement. Although a school district has some discretion with respect to school selection,³ that discretion cannot be exercised in such a manner as to deprive a Student of a FAPE. Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3d Cir. 2004) (denial of FAPE based on the likelihood that a proposed placement would subject a student with an emotional disability to continued bullying because of his perceived effeminacy); M.L. v. Federal Way School District, 394 F.3d 634 (9th Cir. 2005) (if a teacher is deliberately indifferent to the teasing of child with a disability and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE).

There is no such contention here. Petitioner’s placement-based claims appear to be premised on the argument that School A was inappropriate because the Student required a “full-time placement.” However, as discussed, there is nothing in the record to suggest that the Student required such a restrictive setting, and there is no testimony or evidence in the record to suggest that the Student needs specialized instruction during

³See Jalloh v. District of Columbia, 968 F. Supp. 2d 203 (despite complaints about, among other things, the school’s use of computers for instruction, the school was deemed able to implement the IEP and the placement claims were denied).

“specials,” lunch, or recess. Instead, there is testimony from Witness F and Witness I that the Student needs access to typically developing peers because s/he is social and mature. This claim must be dismissed.

RELIEF

As relief, Petitioner is seeking: an order directing Respondent to provide the Student with funding and placement at School B, a special education day school, with transportation. Petitioner also seeks compensatory education.⁴

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs a hearing officer to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985); B.D. v. District of Columbia, 817 F.3d 792, 797–98 (D.C. Cir. 2016).

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the circuit court laid forth rules for determining when it is appropriate for hearing officers to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing to Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The court then explained that such relief “must be tailored” to meet a

⁴Petitioner also seeks independent assessments for the Student, together with an IEP meeting within 10 days of receiving the final independent assessment to review all the assessments, redetermine the Student's eligibility, develop an appropriate IEP, and schedule all meetings through counsel. However, all of Petitioner's reevaluation claims have been dismissed. Since relief in an HOD should correspond to the findings of FAPE deprivation, all requests for such relief must be denied.

student's "unique needs." Id. at 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). To inform this individualized assessment, courts must consider "all relevant factors" including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

As previously discussed, the record does not adequately support Petitioner's proposal to place the Student at School B. The record establishes that the Student needs specialized instruction in all academic classes, but this is a service that DCPS can provide. The record does not establish that the Student needs specialized instruction in "specials," lunch, and recess or otherwise needs to be in a building apart from his/her typically developing peers. Indeed, the Student is social and should benefit from access to typically developing peers, consistent with the requirement to place students in their least restrictive environment.

Moreover, Petitioner did not show that School B would offer the Student anything more than a DCPS school would. Both would educate the Student in small, self-contained, special education classes. There is no showing that School B employs a special reading methodology or offers a certain curriculum that would be of special benefit to the Student. Finally, Petitioner did not even testify to explain why she was seeking an order placing the Student at School B. Accordingly, the request to place the Student at School B must be denied.

Petitioner also seeks compensatory education through one of three different approaches: an award of six hours of tutoring per week, through Witness B, for each

week the Student was denied a FAPE; a compensatory education “meeting” to determine an appropriate award; or a compensatory education assessment to determine the award.

Under the theory of compensatory education, courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). An award of compensatory education aims to put a student in the position s/he would have been in absent the FAPE denial and “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” B.D., 817 F.3d at 797-798 (quoting Reid, 401 F.3d at 524). Moreover, the B.D. court emphasized that, in determining the “complicated work” of fashioning such a remedy, the hearing officer should play close attention to the assessments of the student. Id.

Since claims relating to the 2017-2018 school year were dismissed, Petitioner is proposing that the Student be awarded six hours of tutoring per week for two full school years, plus a summer of services. Witness B testified that this was necessary for the Student to master foundational skills in reading. However, no written plan was presented by Witness B, who did not clearly explain how such an award would correspond to the FAPE denial (which involved a failure to provide appropriate instruction in classes such as science and social studies). Nor did Witness B explain how the delivery of an additional ten hours of specialized instruction per week during the 2018-2019 and 2019-2020 school years would have allowed the Student to master foundational skills in reading. Moreover, Witness B did not rely on any assessments when calculating her compensatory education proposal. Under the circumstances, this Hearing Officer will

order an evaluation so that an independent evaluator can determine the appropriate compensatory education award. This approach was explicitly adopted by the District of Columbia Circuit Court of Appeals in B.D., where the court stated that if further assessments are needed, “the district court or hearing officer should not hesitate to order them.” Id.

VII. Order

As a result of the foregoing, the following is hereby ordered:

1. Respondent shall fund a compensatory education evaluation for the Student. The evaluation shall be completed within ninety days of this HOD. The evaluator selected for this evaluation shall have at least ten years of professional experience in assessing students with disabilities. The parties shall work together to select such expert, who must not have an actual or perceived bias that might favor one party or the other. Such expert shall then recommend an appropriate compensatory education award for the FAPE deprivation found herein;
2. All other requests for relief are denied.

Dated: September 28, 2020
Corrected: September 29, 2020

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Petitioner’s Representative: Attorney A, Esq.
Respondent’s Representative: Attorney B, Esq.
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS

VIII. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect 1415(i).

Dated: September 28, 2020

Michael Lazan
Impartial Hearing Officer