

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 EDC 06677

<p>█ by parent or guardian █ Petitioner,</p> <p>v.</p> <p>Charlotte-Mecklenburg Board of Education Respondent.</p>	<p>FINAL DECISION</p>
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THIS CAUSE coming on to be heard on June 25, 2020, before the undersigned Administrative Law Judge on the Respondent's Motion for Summary Judgment. Petitioner has filed a Response and Respondent has filed a reply. Oral argument was held on the record via telephone on June 25, 2020. **In oral argument, Petitioner generally posited that Respondent had caused a "disenfranchisement of the parents" by their procedures and/or processes without reference to any particular fact or facts. The Undersigned found Petitioner's argument to be unpersuasive** and for the reasons stated below, the Respondent is entitled to Summary Judgment as a matter of law.

AFTER CAREFUL CONSIDERATION of the Parties' moving papers, legal authorities cited therein, and arguments made by Counsel, it appears to the Undersigned that there is no genuine issue as to any material fact.

For Count I, Respondent met its Child Find obligations under IDEA by conducting special education testing and convening IEP eligibility meeting. Therefore, summary judgment is granted for Respondent on Count I.

For Count II, Respondent is entitled to summary judgment because Petitioner was not eligible for FAPE and cannot show a denial of FAPE because of a procedural violation. Therefore, summary judgment is granted for Respondent on Count II.

For Count III, Petitioner cannot forecast evidence that Respondent used only a single measure of data to deny eligibility when Respondent produced multiple documents to show a wide variety of measures of data that were used by the IEP team. Therefore, summary judgment is granted for Respondent on Count III.

For Count IV, Petitioner knew or should have known at the IEP team meeting held on October 16, 2018, that an Autism Spectrum Disorder evaluation would be conducted and Petitioner was not being evaluated for a Specific Learning Disability and Petitioner signed the Prior Written Notice for this decision at the meeting and any allegations concerning this eligibility decision are

time-barred. At the January 16, 2019 eligibility meeting, the IEP team reviewed the data using the discrepancy method and determined that Petitioner was not eligible under the category of Specific Learning Disability and there is no procedural error that denied a FAPE to Petitioner. Therefore, summary judgment is granted for Respondent on Count IV.

For Count V, the Petitioner was not eligible for FAPE and was not entitled to receive an IEP. Therefore, summary judgment is granted to Respondent on Count V.

For Count VI, Petitioner was not eligible for FAPE and was not entitled to receive an IEP. Therefore, summary judgment is granted to Respondent on Count VI.

For Count VII, psychological, assistive technology and functional behavior assessment evaluations are not required for determining eligibility for special education under the IDEA and, therefore, summary judgment is granted for Respondent on Count VII.

For Count VIII, Petitioner is not entitled to FAPE under the IDEA and cannot allege a violation of the statute of limitations and, therefore, summary judgment is granted to Respondent on Count VIII.

BASED UPON ALL OF THE ABOVE, IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment is granted in favor of Respondent; judgment hereby is entered for Respondent, and the contested case petition is **DISMISSED WITH PREJUDICE**.

This decision is made under the authority of N.C. Gen. Stat. §150B-34(e).

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this dismissal.

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 *et seq.*) and particularly N.C.G.S. § 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

Inquiries regarding the State Board's designee, further notices and/or additional time-lines should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED.

This the 30th day of June, 2020.

Selina Malherbe

Selina Malherbe
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 30th day of June, 2020.



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