

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 EDC 00779

<p>█ by parent or guardian █ Petitioner,</p> <p>v.</p> <p>Charlotte-Mecklenburg Schools Board of Education Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER was heard before the undersigned Honorable Selina Malherbe, Administrative Law Judge Presiding, on the following dates: April 24, 25, and 26, and May 3 and 15, 2023 remotely via Webex.

After considering a hearing on the merits held on the above-mentioned dates, arguments from counsel and Petitioner, all documents in support of or in opposition to the parties' motions, all documents in the record including the Proposed Decision as well as all stipulations, admissions, and exhibits, the Undersigned concludes that the Charlotte-Mecklenburg County Board of Education ("CMS") did not violate the Individuals with Disabilities Education Act or its implementing regulations regarding the provision of a free appropriate public education to █ and judgment is Ordered for Respondent.

APPEARANCES

For the Petitioner: █ █
For the Respondent: Anna M. Hehenberger and Breanna E. Miller
Charlotte-Mecklenburg Board of Education
600 East Fourth Street, 5th Floor
Charlotte, NC 28202

WITNESSES

The Individuals with Disabilities Education Act affords the Administrative Law Judge flexibility to organize hearings in a way that ensures each party can fairly present its evidence. *Schaffer v. Weast*, 546 U.S. 49, 61 (2005). Whereas Petitioner appeared *pro se* and intended to call the same witnesses as Respondent, the Undersigned allowed Respondent to present its case-in-chief first. Petitioner was allowed to directly examine each of Respondent's witnesses before presenting her case-in-chief.

For Petitioner and Respondent:

1. Lelania Carpenter, Pre-School Itinerant Coordinating Teacher (LEA Representative)
2. Kaitlyn Adams, Process Coordinating Teacher, Exceptional Children (EC Case Manager)
3. Rachelle Fink, Principal ([REDACTED])
4. Tiffany Howard, School Psychologist (IEP team member)
5. Morgan Yerry, Occupational Therapist (Related service provider)
6. Julie Wicher, Speech-Language Pathologist (Related service provider)
7. Victoria High, General Education Teacher (IEP team member)
8. Amber Newhouse, Special Education Teacher (IEP team member)
9. Amorette Mayr, Teacher's Assistant, and 1:1 Support
10. Sara Brinson, Itinerant Coordinating Teacher (LEA Representative)
11. Corrine Turner, Accountability Manager, Exceptional Children
12. Amira Abdelhafiz, Assistant Principal, ([REDACTED])
13. Robin Portlock, Instructional Program Manager, Exceptional Children

ADMITTED EXHIBITS

The following exhibits were received into evidence during the course of the hearing.

Petitioners' Exhibits ("Pet. Ex."): numbered 1, 2, 4-18, 22, 24-28, 31-55

Respondent's Exhibits ("Resp. Ex."): numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58.

The aforementioned exhibits have been retained as part of the official record of this due process contested case.

TRANSCRIPTS

A transcript of the hearing testimony was available to the Undersigned for writing this decision and has been retained in the official record of this case. Portions of the transcript are referenced herein as Tr. DATE [PAGE]:[LINE].

ISSUES

The Undersigned identified the issues for hearing as follows:

Evaluation Issue:

1. Whether Respondent CMS complied with the procedural and substantive requirements of the Individuals with Disabilities Education Act ("IDEA") for conducting evaluations.

Placement Issue:

2. Whether Respondent CMS failed to offer special education and related services to [REDACTED] in the least restrictive environment appropriate to meet his individual needs.

Free Appropriate Public Education Issue:

3. Whether Respondent CMS failed to provide [REDACTED] with a free appropriate public education as required by the IDEA.

BURDEN OF PROOF

In all actions brought in any court against a local board of education, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show the contrary. N.C. Gen. Stat. § 115C-44(b). The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. N.C. Gen. Stat. §150B-34(a). Courts give educators deference based on the application of expertise and the exercise of judgment by school authorities. *See Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017).

PROCEDURAL BACKGROUND

1. Petitioners [REDACTED] by and through his parent, [REDACTED], filed a Petition for Contested Case Hearing (Special Education) (hereafter “Petition”) on February 20, 2023. The Petition alleges violations of the Individuals with Disabilities Education Act (“IDEA”), over which the Office of Administrative Hearings has jurisdiction including evaluation, placement, and FAPE.

2. On February 21, 2023, a Notice of Contested Case, Assignment, and Order was issued by the Undersigned.

3. On February 23, 2023, Petitioner filed a second petition.

4. On February 27, 2023, the Undersigned issued an Order Setting Hearing and General Pre-Hearing Order scheduling the Due Process Hearing to start on April 10, 2023.

5. On February 28, 2023, Respondent filed a Motion for Extension of Time to File a Response to the Petition.

6. On March 1, 2023, the Undersigned issued an Order Extending Time to Respond to Petition until March 15, 2023.

7. On March 15, 2023, Respondent filed a Response to the Petition.

8. On March 20, 2023, Respondent filed a Motion for Continuance of Case Hearing.

9. On March 20, 2023, the Undersigned issued an Order Continuing Hearing until April 24, 2023.

10. On March 24, 2023, the Parties engaged in mediation, which was unsuccessful.

11. On April 4, 2023, Respondent filed a Status Report.
12. On April 6, 2023, the Undersigned issued a Notice of Virtual Hearing scheduled for April 24 through April 26, 2023 via Webex.
13. Pre-hearing conferences were held on April 12, 2023 and April 13, 2023.
14. On April 13, 2023, Respondent filed a Motion to Strike Petitioner's First Due Process Petition.
15. On April 13, 2023, the Undersigned issued an Order Striking Petitioner's Second Due Process Petition.
16. On April 20, 2023, Petitioner filed a Notice of Request for Public Hearing.
17. The Parties presented evidence at the Due Process Hearing from April 24 through April 26, 2023.
18. On April 27, 2023, the Undersigned issued an Amended Notice of Continuing Hearing until May 3 through May 4, 2023.
19. On May 3, 2023, the Parties presented evidence at the Due Process Hearing, and then agreed to engage in a settlement conference prior to the conclusion of the hearing.
20. On May 3, 2023, the Undersigned issued an Order Appointing Settlement Administrative Law Judge, and a Notice of Settlement Conference scheduled for May 4, 2023.
21. On May 5, 2023, the Parties engaged in a settlement conference, which was unsuccessful.
22. On May 5, 2023, the Undersigned issued a Notice of Rescheduled Hearing for May 15, 2023.
23. The Parties presented evidence at the Due Process Hearing on May 15, 2023.
24. On May 16, 2023, the Undersigned issued an Order for Proposed Final Decision. Undersigned directed Respondent to draft a Proposed Final Decision and determined that Petitioner did not meet her burden for proving that Respondent erred on the issues of evaluation, placement, or the provision of a FAPE pursuant to N.C.G.S. §115C-116.
25. On June 6, 2023, this Tribunal received Notice of Transcripts Received.
26. Respondent submitted its Proposed Final Decision on June 29, 2023.

FINDINGS OF FACT

Prior Orders

Unless specifically contradicted herein, this Order incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned ALJ makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case including, but not limited to, verbal statements at IEP meetings, IEP meeting minutes, IEP documents, and all other competent and admissible evidence.

WITNESSES

27. The Undersigned determined the credibility of the witnesses in this case based on any inconsistencies in the record and the witnesses' testimony as well as the Undersigned's observations of each witness' demeanor, voice inflection, tone, hesitation in responding to questions, facial features, body language, as well as any leading nature in the question and the witnesses' interactions with legal counsel. The transcript of the hearing cannot record these mannerisms of witnesses.

28. Even though this Final Decision may incorporate language from Respondent's Proposed Final Decision, credibility determinations are made independently from any proposals by Respondent. The Undersigned notes that legal counsel for Respondent also heard and/or observed each witness testify.

29. No expert witnesses were called to testify in this matter. Respondent called thirteen (13) witnesses, each of whom Petitioner was given an opportunity to question. Petitioner testified on behalf of her son, [REDACTED]

(I) Lelania Carpenter

30. Respondent CMS called Lelania Carpenter, Pre-Kindergarten Itinerant Coordinating Teacher and Resource Teacher, to testify.

31. Ms. Carpenter earned a dual-major bachelor's degree in Psychology and Child and Family Development from the University of North Carolina at Charlotte. Ms. Carpenter also holds a Birth-through-Kindergarten teaching license certification. (Tr. Apr. 24, 2023, 14:2-10)

32. Ms. Carpenter is dual-certified as a special education and regular education teacher. She has been a special education teacher in CMS since 1997 and has always worked in the pre-school department. (Tr. Apr. 24, 2023, 14:17-23)

33. Ms. Carpenter has experience delivering special education instruction in behavior contained classrooms and delivering special education instruction to students with autism. (Tr. Apr. 24, 2023, 15:2-7)

34. Ms. Carpenter became involved in ██████'s education in 2022 and served as the LEA at several of ██████'s IEP meetings. (Tr. Apr. 24, 2023, 24:3)

35. The Undersigned found Ms. Carpenter to be credible and knowledgeable about ██████'s unique circumstances and disability based on her review of ██████'s educational record, conversations with ██████'s parent, and attendance at IEP meetings. Ms. Carpenter was a credible fact witness and her testimony will be given due weight throughout this opinion.

(II) Kaitlyn Adams

36. Respondent called Kaitlyn Adams, Exceptional Children's Process Coordinating Teacher, to testify.

37. Ms. Adams earned a bachelor's degree in Special Education from the University of North Carolina at Charlotte in 2016. (Tr. Apr. 24, 2023, 141:21)

38. Ms. Adams has been a special education teacher with CMS since 2016. She has experience delivering special education instruction in behavior-contained classrooms and in the resource setting. (Tr. Apr. 24, 2023, 142:9)

39. In her current role, Ms. Adams supports schools with completing the evaluation process for students with suspected disabilities. (Tr. Apr. 24, 2023, 142:17)

40. Ms. Adams became involved in ██████'s education at the beginning of the special education evaluation process. She served as his EC Case Manager until the eligibility determination IEP meeting. (Tr. Apr. 24, 2023, 144:13)

41. The Undersigned found Ms. Adams to be credible and knowledgeable about ██████'s unique circumstances and disability based on her review of ██████'s educational record, conversations with ██████'s parent, and attendance at ██████'s eligibility determination meeting. Ms. Adams was a credible fact witness and her testimony will be given due weight throughout this opinion.

(III) Rachelle Fink

42. Respondent called Rachelle Fink, Principal of ██████, to testify.

43. Ms. Fink earned a bachelor's degree in Psychology from the University of Mary Washington. She earned a master's degree in Educational Leadership from Winthrop University. (Tr. Apr. 24, 2023, 158:24)

44. Ms. Fink has worked as a special education teacher in a CMS PreK-8 setting for thirteen (13) years. She has been the principal of ██████████ for three (3) years. (Tr. Apr. 24, 2023, 159:14, 23)

45. Ms. Fink became involved in ██████'s education in August 2022. She served as ██████'s Principal and interacted with ██████ regularly. (Tr. Apr. 24, 2023, 162:7, 164:13)

46. Ms. Fink testified that she is trained in Crisis Prevention and Intervention. (Tr. Apr. 24, 2023, 169:71)

47. The Undersigned found Ms. Fink to be credible and knowledgeable about ██████'s unique circumstances and disability based on her interactions with ██████ her review of ██████'s educational record, conversations with ██████'s parent, and attendance at IEP meetings. Ms. Fink was a credible fact witness and her testimony will be given due weight throughout this opinion.

(IV) Tiffany Howard

48. Respondent CMS called Tiffany Howard, School Psychologist, to testify.

49. Ms. Howard has been a licensed school psychologist since 2007. She has worked as a licensed school psychologist for sixteen (16) years. (Tr. Apr. 25, 2023, 284:19)

50. Ms. Howard has worked in CMS as a School Psychologist since 2017. Her primary role involves completing psychological assessments as a part of the IEP process and providing mental health support to students. (Tr. Apr. 25, 2023, 285:7)

51. Ms. Howard became involved in ██████'s education during the evaluation process, when she completed a psychological evaluation as part of ██████'s IDEA eligibility determination. (Tr. Apr. 25, 2023, 289:20)

52. The Undersigned found Ms. Howard to be credible and knowledgeable about ██████'s unique circumstances and disability based on her direct observations of ██████ her review of ██████'s educational record, conversations with ██████'s parent, and attendance at IEP meetings. Ms. Howard was a credible fact witness and her testimony will be given due weight throughout this opinion.

(V) Morgan Yerry

53. Respondent called Morgan Yerry, CMS Occupational Therapist, to testify.

54. Ms. Yerry earned a bachelor's degree in Pre-Occupational Therapy and Psychology

██████████ to testify.

65. Ms. High earned a bachelor's degree in Elementary Education from the University of North Carolina at Greensboro in 2002. She earned a certificate in Montessori Education in 2003. (Tr. Apr. 25, 2023, 503:13)

66. Ms. High currently holds a Birth-Kindergarten and Elementary (K-6) teacher license in North Carolina. (Tr. Apr. 25, 2023, 503:18)

67. Ms. High has been a Montessori teacher for twenty (20) years and has worked as a Montessori teacher with CMS for fifteen (15) years. (Tr. Apr. 25, 2023, 503:24)

68. Ms. High became involved in ██████'s education in August 2022. She served as ██████'s Regular Education Teacher and interacted with ██████ daily. (Tr. Apr. 25, 2023, 505:12)

69. The Undersigned found Ms. High to be credible and knowledgeable about ██████'s unique circumstances and disability based on her interactions with ██████ her review of ██████'s educational record, conversations with ██████'s parent, and attendance at IEP meetings. Ms. High was a credible fact witness and her testimony will be given due weight throughout this opinion.

(VIII) Amber Newhouse

70. Respondent called Amber Newhouse, Itinerant Resource Teacher, to testify.

71. Ms. Newhouse earned a bachelor's degree in Early Childhood Education and a master's degree in Special Education. She is a national board-certified teacher in Early Childhood Education. (Tr. Apr. 26, 2023, 577:23)

72. Ms. Newhouse has worked in preschool education for twenty-two (22) years and has worked at CMS for ten (10) years. (Tr. Apr. 26, 2023, 578:8)

73. Ms. Newhouse's current role includes, *inter alia*, delivering EC services to students in a pre-school setting and offering drive-in EC services to students in the district. (Tr. Apr. 26, 2023, 578:23)

74. Ms. Newhouse became involved in ██████'s education in November 2022. She served as ██████'s Special Education Teacher after he was found eligible for special education services. (Tr. Apr. 26, 2023, 579:22)

75. The Undersigned found Ms. Newhouse to be credible and knowledgeable about ██████'s unique circumstances and disability based on her direct observations of ██████ her review of ██████'s educational record, conversations with ██████'s parent, and attendance at IEP meetings. Ms. Newhouse was a credible fact witness and her testimony will be given due weight throughout this opinion.

(IX) Amorette Mayr

76. Respondent called Amorette Mayr, Teaching Assistant at [REDACTED] to testify.

77. Ms. Mayr earned a bachelor's degree in English Literature and a thesis in Intercultural Communications. She also holds an educator's certificate in English as a Second Language. (Tr. Apr. 26, 2023, 625:13)

78. Ms. Mayr has worked in CMS since 2008, primarily as an English as a Second Language Teacher. She became a Teaching Assistant at [REDACTED] School in September 2022. (Tr. Apr. 26, 2023, 625:2)

79. Ms. Mayr became involved in [REDACTED]'s education in January 2023 when she became a teaching assistant in [REDACTED]'s classroom. Ms. Mayr officially became [REDACTED]'s Assistant on or about January [REDACTED] (Tr. Apr. 26, 2023, 627:18)

80. The Undersigned found Ms. Mayr to be credible and knowledgeable about [REDACTED]'s unique circumstances and disability based on her interactions with [REDACTED]. Ms. Mayr was a credible fact witness and her testimony will be given due weight throughout this opinion.

(X) Sara Brinson

81. Respondent called Sara Brinson, Itinerant Coordinating Teacher, to testify.

82. Ms. Brinson earned a bachelor's degree in Psychology and has a license to teach special education under the EC General Curriculum. She is a national board-certified teacher and has twenty (20) years of experience as a special education teacher. (Tr. Apr. 26, 2023, 693:4)

83. Ms. Brinson has worked with CMS since 2003 and has experience in specialized behavior support classrooms. (Tr. Apr. 26, 2023, 693:13)

84. Ms. Brinson's current role includes serving as a liaison between Respondent's Exceptional Children's department and its individual schools. (Tr. Apr. 26, 2023, 693:22)

85. Ms. Brinson became involved in [REDACTED]'s education in October 2022. She has served as an IEP team member at several of [REDACTED]'s IEP meetings. (Tr. Apr. 26, 2023, 694:22)

86. The Undersigned found Ms. Brinson to be credible and knowledgeable about [REDACTED]'s unique circumstances and disability based on her direct observations of [REDACTED], her review of [REDACTED]'s educational record, input from [REDACTED]'s parent, and attendance at IEP meetings. Ms. Brinson was a credible fact witness and her testimony will be given due weight throughout this opinion.

(XI) Corrine Turner

87. Respondent CMS called Corrine Turner, Accountability Manager for the Exceptional Children's Department to testify.

88. Ms. Turner earned a bachelor's degree in theology from Marquette University in 1998. She earned a master's degree in Special Education from the University of North Carolina - Greensboro and has a second master's degree in Educational Leadership from Winthrop University. (Tr. May. 3, 2023, 821:9)

89. Ms. Turner became the Accountability Manager in March of 2022. (Tr. May. 3, 2023, 822:6)

90. Ms. Turner has not observed or interacted with [REDACTED] and was not a member of [REDACTED]'s IEP team. Ms. Turner became involved after Petitioner [REDACTED] made a request to the district for an independent educational evaluation (IEE) in November 2022. (Tr. May. 3, 2023, 826:9)

91. The Undersigned finds that Ms. Turner appeared forthcoming in her testimony regarding Respondent CMS's internal procedures for the provision of IEEs. Ms. Turner was a credible fact witness and her testimony will be given due weight for this limited purpose.

(XII) Amira Abdelhafiz

92. Respondent CMS called Amira Abdelhafiz, Assistant Principal of [REDACTED] School, to testify.

93. Ms. Abdelhafiz has worked in CMS since 2016 and has been an Assistant Principal at [REDACTED] School for two (2) years. (Tr. May. 3, 2023, 837:18)

94. Ms. Abdelhafiz is certified in Crisis Prevention and Intervention. (Tr. May. 3, 2023, 840:7)

95. Ms. Abdelhafiz became involved in [REDACTED]'s education in August 2022. She served as [REDACTED]'s Assistant Principal and interacted with [REDACTED] regularly. Ms. Abdelhafiz attended one IEP meeting for [REDACTED] in Ms. Fink's absence. (Tr. May. 3, 2023, 841:23)

96. Ms. Abdelhafiz attended an IEP meeting for [REDACTED] when Principal Fink was unable to attend. (Tr. May 3, 2023, 841:21-24; see also Resp. Ex. 15)

97. The Undersigned found Ms. Abdelhafiz to be credible and knowledgeable about [REDACTED]'s unique circumstances and disability based on her observations of [REDACTED] her interactions with [REDACTED] and her review of [REDACTED]'s educational record. Ms. Abdelhafiz was a credible fact witness and her testimony will be given due weight throughout this opinion.

(XIII) Robin Portlock

98. Respondent CMS called Robin Portlock, Exceptional Children's Extensions Program Manager, to testify.

99. Ms. Portlock earned a bachelor's degree in Psychology with a concentration in Special Education from Le Moyne College. She earned a master's degree in Special Education from Winthrop University and a second master's degree in Educational Administration from Winthrop University. (Tr. May. 15, 2023, 908:10)

100. Ms. Portlock supports teachers at schools with Extensions programs in Respondent's district. (Tr. May. 3, 2023, 908:20)

101. Ms. Portlock has not observed or interacted with [REDACTED] and was not a member of [REDACTED]'s IEP team. (Tr. May. 3, 2023, 908:24)

102. The Undersigned finds that Ms. Portlock appeared forthcoming in her testimony regarding Respondent CMS' extensions programs, separate public schools, and CMS' internal process for referrals to Melmark Carolinas. Ms. Portlock was a credible fact witness and her testimony will be given due weight for this limited purpose.

RELEVANT BACKGROUND INFORMATION

103. [REDACTED] was a [REDACTED] at [REDACTED] School, located in [REDACTED], and operated by Respondent.

104. [REDACTED] started [REDACTED] at [REDACTED] during the [REDACTED] year and was [REDACTED] at the time that Petitioners filed a Petition for Due Process Hearing.

105. On September 15, 2022, CMS received a written referral for special education services from Petitioner. (Resp. Ex. 1)

106. On September 22, 2022, an IEP team met to discuss the special education referral and determined that additional evaluations were needed to determine [REDACTED]'s eligibility for special education and related services. (Resp. Exs. 1, 3)

107. Petitioner provided consent for CMS to conduct the required evaluations on September 22, 2022. (Resp. Ex. 2) At that time, Petitioner also confirmed receipt of the Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards. (Id., 2)

108. On September 27, 2022, CMS began collecting behavioral data under CMS' Multi-Tiered Systems of Support (MTSS) framework. (Tr. Apr. 26, 2023, 699:2-5, 709:15; see also Resp. Ex. 42)

109. The MTSS process is available for all students identified as having academic or behavioral needs. MTSS interventions are not required to determine IDEA eligibility under the disability categories of Autism (AU) or Developmental Delay (DD). (Tr. Apr. 26, 2023, 698:11-18, 750:10-18)

110. Students are not required to be eligible for special education services to benefit from MTSS interventions. (Tr. Apr. 26, 2023, 698:20-24)

111. A vision screening was conducted on October 3, 2022. (Resp. Ex. 5)

112. A hearing screening was conducted on October 7, 2022. (Resp. Ex. 5)

113. An educational evaluation was completed on October 17, 2022. (Resp. Ex. 51)

114. Observations of ██████ across settings were conducted by Sara Brinson on October 24, 2022. (Resp. Ex. 4)

115. A sensory processing/occupational therapy evaluation was conducted by Morgan Yerry on October 18 and 26, 2022. (Resp. Ex. 8)

116. A psychological evaluation was conducted throughout October and November 2022 by Tiffany Howard. (Resp. Ex. 5)

117. A speech/language evaluation was conducted on November 10 and 17, 2022 by Julie Wicher. (Resp. Ex. 9)

118. The school-based staff began completing a Functional Behavior Assessment for ██████ in November 2022 through the MTSS process. (Test. Of Brinson at Tr. Apr. 26, 2023, 697:6-13, 22-24)

119. Areas of concern noted during the MTSS process were eloping from staff during out-of-class transitions, screaming, and throwing himself on the floor. (Tr. Apr. 26, 2023, 702:14-22)

120. Staff members who interacted with ██████ frequently in the school building noted that ██████ would elope nearly nine (9) times per day for approximately three (3) to five (5) minutes each time. (Tr. Apr. 26, 2023, 703:12-15)

121. Based on the FBA data collected, the purpose of ██████'s elopement behaviors were to gain attention from an adult. (Tr. Apr. 26, 2023, 705:19-24)

122. On November 21, 2022, an IEP team met to review the required evaluations. Petitioner [REDACTED] was present at this meeting. After reviewing the evaluations and other information, the IEP team determined that [REDACTED] was eligible for special education services under the eligibility category of Autism (AU). (Resp. Ex. 15) Indeed, [REDACTED] “require[d] specially designed instruction for adaptive behavior, social-emotional, pragmatic language, fine motor, and sensory needs.” (Id.)

123. The IEP team began to develop an IEP for [REDACTED] at the November 21, 2022 meeting, which was not finalized at that time. (Resp. Ex. 15)

124. Petitioner disagreed with the results of the CMS evaluations. She orally requested IEEs at the November 21, 2022 IEP meeting. (Resp. Ex. 15)

125. Petitioner sent an email later that afternoon requesting the IEEs. (Resp. Exs. 15, 54)

126. Testimony and exhibits admitted at hearing corroborate that on November 21, 2022, the IEP team sent draft IEP goals for Petitioner’s review in advance of the next IEP meeting. (See Resp. Ex. 17 (documenting “Draft IEP goals were sent home on 11/21/2022”); Tr. Apr. 24, 2023, 30:13-14 (testimony of L. Carpenter describing the December 1, 2022 IEP meeting, “At the prior meeting, we had sent home draft goals of the IEP.”))

127. On December 1, 2022, an IEP team reconvened to develop an initial IEP for [REDACTED] (Resp. Ex. 17)

128. Petitioner invited an Autism Resource Specialist to the meeting. (Id.)

129. The IEP team finalized [REDACTED]’s initial IEP at the December 1, 2022 IEP meeting. (Resp. Ex. 16)

130. Each goal on the IEP included an observable skill or behavior, a criterion for mastery, a method of measuring progress, and a supporting service. (Resp. Ex. 16) Goals were developed for [REDACTED] in the areas of Motor Skills-Fine, Sensory Efficiency, Language-Pragmatics, Social-Emotional, Pre-Academic, Adaptive Behavior, Language-Expressive, and Language-Receptive. (Id.)

131. In addition to Specially Designed Instruction, the December 1, 2022 IEP also called for related service time in Occupational Therapy and Speech/Language Therapy, as well as the accommodation for [REDACTED] to have access to sensory and calm down strategies/activities as needed. (Id.)

132. Petitioner provided consent for [REDACTED] to receive special education and related services on December 1, 2022. (Resp. Ex. 18)

133. On December 9, 2022, an IEP team met to discuss developing a Behavior Intervention Plan (BIP) for [REDACTED]. That meeting was rescheduled to allow [REDACTED] and staff to gain clarity on behavioral incidents at school prior to developing the BIP. (Resp. Ex. 19)

134. A Crisis/Safety Plan was developed for [REDACTED] by staff at [REDACTED] prior to December 14, 2022. (Resp. Ex. 49)

135. On December 14, 2022, an IEP team reconvened to develop the BIP. (Resp. Exs. 21, 22) The BIP targeted elopement and problematic behaviors during transitions. (Resp. Ex. 21)

136. At the December 14, 2022, meeting, an IEP team added an accommodation to [REDACTED]'s IEP. Beginning on December 19, 2022, an adult staff member would provide [REDACTED] with individualized support to maintain safety. (Resp. Ex. 22)

137. On January 3, 2023, the school administration at [REDACTED] developed a revised Crisis Plan for [REDACTED] with the input of district-level staff. The crisis plan targeted, *inter alia*, elopement and hitting other students with materials. (Resp. Ex. 26)

138. When [REDACTED] exhibited the behaviors warranting the crisis plan, Ms. High would radio for CPI-trained personnel for assistance. The trained staff member would assist [REDACTED] with de-escalation in the classroom or remove [REDACTED] from the classroom as a last resort to maintain safety. (Id.)

139. On or about January 18, 2023, Ms. Mayr officially became [REDACTED]'s individualized support adult. (Tr. Apr. 26, 2023, 628:8-16)

140. On January 23, 2023, an IEP team met to update [REDACTED]'s BIP. (Resp. Ex. 26)

141. Among other changes, the updated BIP included using social stories related to [REDACTED]'s interest in trains. (Resp. Ex. 27)

142. On January 26, 2023, an IEP team met to add transportation as a related service to [REDACTED]'s IEP. (Resp. Ex. 30)

143. On February 1, 2023, Ms. Turner reached out to confirm which IEEs Petitioner was requesting. (Resp. Ex. 55)

144. Once the IEEs requested by Petitioner were confirmed, Ms. Turner communicated with Petitioner that CMS had agreed to pay for Functional Behavior, Psychological, Educational, and Speech/Language evaluations on February 6, 2023. (Resp. Ex. 56)

145. On February 13, 2023, an IEP team met to review [REDACTED]'s BIP and to discuss placement options. (Resp. Ex. 45)

146. The IEP team discussed placement options within CMS, including “embedded instruction in the regular education setting, special education pull-out sessions, special education preschool classroom, and special education school.” (Id.)

147. Despite an increase in supports, the “average incidents per day of physical aggression, verbal aggression (yelling/screaming/disruptive), destroying materials ha[d] increased.” (Id.)

148. Indeed, the data reviewed at the February 13, 2023 IEP meeting showed that [REDACTED] “spent from 17.5 - 95 minutes out of class per day due [sic] unsafe behaviors or the need for a break to prevent or cope with dysregulation. [REDACTED] spends 31 - 61 minutes per day on average, engaged in academic tasks, which is only 7-15% of the school day. [REDACTED] behaviors are interfering with his progress and his access to the curriculum as well as the education of other students.” (Id.)

149. The IEP team found that:

[REDACTED] requires a high level of consistency and structure to promote positive school behaviors and minimize triggering unsafe behaviors. [REDACTED] requires constant supervision to maintain safety and minimize disruptions to the educational environment. [REDACTED] requires constant prompting and support with language, attending to tasks, participating, relating with peers, following directions/routines, and transitioning in and out of the classroom. [REDACTED] needs individualized support to facilitate peer interactions. [REDACTED] needs intensive instruction in adaptive behavior and social/emotional skills. [REDACTED] requires sustained support to transition for class activities and within the school environment.

(Id.)

150. Petitioner disagreed that a separate placement was in the student’s best interest and, therefore, since the IEP team could not come to a consensus, Ms. Carpenter as the LEA determined that a [REDACTED] Separate Classroom was appropriate for [REDACTED] to receive a FAPE. (Resp. Exs. 44, 45)

151. Ms. Turner continued to work with Petitioner in March and April of 2023 to facilitate the completion of IEEs for [REDACTED] (Resp. Exs. 57, 58)

152. The evidence presented at hearing corroborates that [REDACTED] requires a highly structured setting with a predictable routine and constant adult supervision. (Compare Resp. Ex. 45 documenting “ [REDACTED] requires a high level of consistency and structure to promote positive school behaviors and minimize triggering unsafe behaviors. [REDACTED] requires constant supervision to maintain safety and minimize disruptions to the educational environment. [REDACTED] requires sustained support to

transition for class activities and within the school environment.”, with Tr. Apr. 26, 2023, 631:13-637:18 testimony of Ms. Mayr regarding [REDACTED]’s problematic behaviors.)

CONCLUSIONS OF LAW

Based on the above Findings of Fact, relevant laws, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

153. This Final Decision incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this litigation.

154. To the extent that the foregoing Conclusions of Law contain Findings of Fact or that the Findings of Fact are Conclusions of Law, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dept’t of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012).

155. Respondent is a public school district located in Charlotte, NC, Mecklenburg County.

156. Respondent is a local education agency (LEA) receiving funds pursuant to the IDEA and is the LEA responsible for providing educational services in Mecklenburg County, North Carolina.

157. Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 300 *et seq.*; and N.C. Gen. Stat. 115C-106 *et seq.*

158. Petitioners [REDACTED] and his parent, [REDACTED] were residents of Mecklenburg County, North Carolina during the period relevant to this controversy. [REDACTED] is a child with a disability for the purposes of 20 U.S.C. §1400 *et seq.*

159. The Petitioners, [REDACTED] by and through his parent, [REDACTED] and Respondent CMS are properly before this Tribunal, and this Tribunal has personal jurisdiction and subject matter jurisdiction over this case.

160. The Petitioners and Respondent named in this action are correctly designated and were properly noticed of the hearing, and venue was proper.

GENERAL LEGAL FRAMEWORK

161. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* is the federal statute governing education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Parts 300 and 301.

162. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9 and the corresponding state regulations, including the *Policies Governing Services for Children with Disabilities*.

163. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.* and implementing regulations, 34 C.F.R. Parts 300 and 301. N.C. Gen. Stat. § 115C-109.6(a) controls the issues to be reviewed.

164. The plain language of the IDEA requires the IEP team to consider the following when developing an IEP: “(i) [t]he strengths of the child; (ii) [t]he concerns of the parents for enhancing the education of their child; (iii) [t]he results of the initial or most recent evaluation of the child; and (iv) [t]he academic, developmental, and functional needs of the child.” 34 C.F.R. § 320.324.

Issues

Evaluation Issue: Whether Respondent CMS complied with the IDEA’s procedural and substantive requirements for conducting evaluations?

165. The Supreme Court has held that “a court’s inquiry” first requires the determination of whether the “[LEA] complied with the procedures set forth in the [IDEA], [a]nd second,” whether the “[IEP] developed through the [IDEA’s] procedures [is] reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206-207.

166. “Congress enacted the IDEA’s Child Find provisions to guarantee access to special education.” *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918, 949 (W.D. Tex. 2008).

167. The IDEA imposes the Child Find duty on school districts, requiring school districts to identify, locate and evaluate all children with disabilities within their jurisdictions, including children with disabilities attending private schools, and make available a FAPE to those who qualify for services under the IDEA. 20 U.S.C. §§ 1412(a)(3), 1412(a)(1)(A); 34 C.F.R. § 300.111(a).

168. The “Child Find obligation extends to all children who are suspected of having a qualifying disability under IDEA.” *Horne v. Potomac Preparatory P.C.S.*, 209 F. Supp. 3d 146, 157–58 (D. [REDACTED] 2016) (citing 34 C.F.R. § 300.111(c)(1); *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 25-26 (D. [REDACTED] 2008)).

169. An evaluation must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the disability category in which the child has been identified. 20 U.S.C. §1414(b)(1)-(3), §1412(a)(6)(B); see also 34 CFR §300.304.

170. Evaluations help IEP teams both identify students who require specially designed instruction and related services as a result of their disability, as well as the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006).

171. “The evaluation requirement ‘serves a critical purpose: it allows the child’s IEP Team to have a complete picture of the child’s functional, developmental, and academic needs, which in turn allows the team to design an individualized and appropriate educational plan tailored to the needs of the individual child.’” *Z.B. v. ██████* 888 F.3d 515, 523 (█████ Cir. 2018) (quoting *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016)).

172. An evaluation, according to the IDEA, includes procedures that must comport with the requirements set forth at 34 CFR 300.304 through 34 CFR 300.311. 34 CFR 300.15.

173. In accordance with 20 U.S.C. § 1414(b), an evaluation must further:

- (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—
 - i. whether the child is a child with a disability; and
 - ii. the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;
- (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

174. The IDEA mandates the “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.” 20 U.S.C. § 1414(b)(3)(C).

175. As part of an evaluation, the IEP team must “review existing evaluation data on the child, including—evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.” 20 U.S.C. § 1414(c)(1)(A).

176. An LEA must conduct a full and individual initial evaluation, in accordance with §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability. 34 CFR 300.301.

177. Informed parental consent is required before a district can conduct an initial evaluation of a child suspected of having a disability. 34 CFR 300.300 (a)(1)(i).

178. Parents have the right to seek an IEE at public expense if they disagree with the results of an evaluation prepared by an LEA. 34 CFR § 300.502.

179. Respondent CMS conducted several observations and evaluations of [REDACTED] as part of the initial evaluation process to determine his eligibility for special education and related services. *See supra* paragraphs 109-115.

180. The eligibility determination document lists the sources of data that the IEP team considered, including several sources of parent input on rating scales and questionnaires. Petitioner [REDACTED] attended this meeting. (Resp. Exs. 14, 15)

181. The speech evaluation conducted by Julie Wicher included input from Petitioner [REDACTED] and [REDACTED]'s classroom teacher, as well as Ms. Wicher's observations of [REDACTED] (See Tr. Apr. 25, 2023, 449:10-14, 451:12-17)

182. Ms. Wicher attended the eligibility determination meeting and discussed the findings of the speech evaluation with the IEP team. (Resp. Ex. 15; see also Tr. Apr. 25, 2023, 453:17-19)

183. Ms. Wicher testified at the hearing that [REDACTED] exhibited deficits in social and pragmatic language skills. (See Tr. Apr. 25, 2023, 452:15-24)

184. The Sensory Processing and Occupational Therapy Evaluation conducted by Morgan Yerry included input from Petitioner [REDACTED] and [REDACTED]'s classroom teacher, as well as Ms. Yerry's observations of [REDACTED] (See Tr. Apr. 25, 2023, 389:2-6, 396:3-18)

185. Ms. Yerry attended the eligibility determination meeting and discussed the findings of the Sensory Processing and Occupational Therapy Evaluation with the IEP team. (Resp. Ex. 15; see also Tr. Apr. 25, 2023, 403:1-11)

186. Ms. Yerry testified at the hearing that [REDACTED] exhibited visual, auditory, tactile, vestibular, and proprioceptive differences that were impacting his education as well as delays in fine and visual motor skills. (See Tr. Apr. 25, 2023, 402:8-24)

187. The IEP team also reviewed an educational evaluation and information collected from observations of [REDACTED] across school settings. (Resp. Exs. 15, 51)

188. The psychological evaluation conducted by Tiffany Howard was based on her observations of [REDACTED] as well as parent and teacher rating scales related to adaptive behavior and Autism. (Resp. Ex. 5)

189. Ms. Howard attended the eligibility determination meeting and discussed the findings of the psychological evaluation with the IEP team. (Resp. Ex. 15; see also Tr. Apr. 25, 2023, 309:17-310:23)

190. According to the Autism rating scales, ██████'s most-needed areas were self-regulation, emotional response, and adaptation to change. (Resp. Ex. 15)

191. The Undersigned finds that by the November 21, 2022 IEP meeting, Respondent CMS had completed its evaluations of ██████ and these evaluations were sufficient to find him eligible for special education services.

192. Once Petitioner expressed her disagreement with the evaluations prepared by CMS staff at the November 21, 2022 IEP meeting and memorialized in an email also on November 21, 2022, Respondent commenced the IEE process. (Resp. Exs. 15, 54)

193. IEEs were approved in February of 2023, at which time the process for selecting providers and scheduling evaluations commenced. (Resp. Ex. 55)

194. The Undersigned finds that Respondent did not act with unreasonable delay in its response to Petitioner's request for IEEs in this case.

Placement Issue: *Whether Respondent CMS failed to place ██████ in the least restrictive environment?*

195. The IDEA clearly articulates a presumption that disabled children will not be segregated from their nondisabled peers and will be educated in the least restrictive environment ("LRE"): To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); see also 34 C.F.R. § 300.114(a).

196. The IDEA prefers full integration in the regular classroom, *Andrew F.*, 137 S.Ct. at 999, and emphasizes the integral role of supplemental aids and services to allow disabled students to access the regular classroom. 34 CFR § 300.114(a)(2)(ii).

197. When considering a child's placement, "the school 'must consider the whole range of supplemental aids and services, including resource rooms and itinerant instruction,' speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child's particular disabilities. The school must also make efforts to modify the regular education program to accommodate a disabled child." *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204, 1216

(3d Cir. 1993) (citations omitted) (quoting *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 696 (11th Cir. 1991)).

198. The IDEA defines supplementary aids and services as “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 1412(a)(5) of this title.” 20 U.S.C. § 1401(33).

199. A child may not be “removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” 34 C.F.R. § 300.116(e).

200. A school district may consider the impact of the student’s behavior on other students when determining if removal from general education is warranted. The mainstreaming provision of the IDEA is inappropriate where the student is a disruptive force in the general education setting. *See Hartmann by Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1004 (4th Cir. 1997) (holding non-verbal eleven-year-old child who regularly engaged in episodes of loud screeching, hitting, pinching, kicking, biting, removing his clothing, and throwing himself on the floor could be removed from general education after the district had engaged in multiple efforts to educate him in the general education setting.).

201. Respondent began to gather data on the behaviors exhibited by ██████ on September 27, 2022. (Resp. Ex. 42) Some of these behaviors included screaming, running, eloping, biting, and destroying classmates’ work. (*Id.*)

202. A Crisis/Safety Plan was put into place for ██████ in the fall of 2022, which memorialized preventative measures taken by the school since close to the start of the 2022-2023 school year to address ██████’s behaviors. (Resp Ex. 49)

203. The IEP team developed a BIP for ██████ on December 14, 2022, which included providing a physical object as a cue for ██████ to walk to the next setting, offering headphones, using visual cards, giving verbal praise, and modeling. (Resp. Ex. 21)

204. On January 3, 2023, the school administration created a revised Crisis Plan for responding to ██████’s escalated behaviors in the classroom and elopements from the classroom. (Resp. Ex. 26)

205. The Crisis Plan called for trained personnel to assist ██████ with de-escalation in the classroom or removal from the classroom for safety. (Resp. Ex. 26)

206. At the January 23, 2023 meeting to review ██████’s BIP, Petitioner ██████ gave input on changes to make to the BIP to be more effective for ██████ including the use of social stories to improve ██████’s reaction when unexpected things happened. (Resp. Ex. 28)

207. The updated BIP included teaching █████ transition steps with photographs, videos, and social stories related to his interest in trains. (Resp. Ex. 27)

208. Classroom data sheets collected between January 23, 2023 and February 7, 2023 show multiple instances of █████ exhibiting verbal aggression, destroying materials, and/or eloping from the classroom or staff.

209. Ms. High testified that some of █████'s typical behaviors included running out of the classroom, screaming at staff, hitting, kicking, pushing classmates, and destroying materials. (Tr. Apr. 25, 2023, 511:12-19)

210. Ms. Mayr testified that when █████ would exhibit escalated behaviors in the classroom, other students would protect their work or themselves. (Tr. Apr. 26, 2023, 635:13-636:5)

211. Principal Fink testified that every two or three weeks there was an incident where another student was hurt due to █████'s use of materials or objects in the classroom. (Tr. Apr. 24, 2023, 166:20-167:9)

212. The Undersigned finds that Respondent CMS offered and implemented multiple interventions and strategies to manage █████'s behaviors and educate █████ in the general education setting.

213. The Undersigned finds that despite these interventions, █████ failed to make appropriate progress in the Social-Emotional and Adaptive Behavior goals on his IEP.

214. Ms. Carpenter testified at hearing that a preschool special education classroom in CMS is suited for students who are at least three (3) years old and require a significant amount of instruction in developmental skills. (Tr. Apr. 24, 2023 19:10-20:13)

215. The Undersigned finds that Respondent CMS appropriately placed █████ in a █████ School Separate Classroom in accordance with his least restrictive environment. (Resp. Exs. 44, 45.)

Free Appropriate Public Education Issue: Whether Respondent denied █████ a free appropriate public education?

216. To determine if FAPE has been provided, the Court is to determine if the school has complied with the procedures set forth in the IDEA and if the IEP is reasonably calculated to allow the child to receive educational benefit. *Bd. of Educ. Of the Hendrick Hudson Central Sch. Dist.v. Rowley*, 458 U.S. 176, 206-07 (1982).

217. A procedural violation only rises to the level of a denial of FAPE if it results in an IEP that did not provide educational benefit. *M.M. v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 533 (4th Cir. 2002).

218. To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

219. A hearing officer may find a denial of FAPE where the public agency's procedural inadequacies: (1) impeded the child's right to a free appropriate public education; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); see also N.C. Gen. Stat. § 115C-109.8(a).

220. ██████ was provided with a procedurally appropriate IEP on December 1, 2022, after the September 15, 2022 Initial Referral, which met his unique needs. (Resp. Exs. 1, 16.) Indeed, ██████'s IEP was developed timely per NC 1503-2.2. In addition, ██████'s IEP was properly implemented, and ██████ received the specially designed instruction and related services, as required by the IEP. (Resp. Exs. 38, 40, 48; Tr. Apr. 25, 2023, 506:18-24)

221. Petitioner was able to meaningfully participate as part of each and every one of the IEP team meetings which took place between September 22, 2022, and February 13, 2023. (See Resp. Exs. 3, 15, 17, 22, 28, 30, 45) ██████'s IEP teams considered Petitioner's suggestions and, to the extent appropriate, incorporated these in his IEP. Respondent was receptive and responsive to the Petitioner's position at all stages of the IEP process. (See, e.g., Tr. Apr. 24, 2023, 54:13-55:2, 143:15-19, 144:2-9, 173:4, 185:1-5, 187:17, 191:25; Tr. Apr. 26, 2023, 581:21-23, 597:18-20, 722:18-21)

222. Respondent provided Petitioner every opportunity to meaningfully participate in ██████'s education. Petitioner had multiple avenues of communication with ██████'s teacher, and other school administrators, which included, for example, in-person meetings, phone calls, and emails. (See, e.g., Tr. Apr. 24, 2023, 163:9-20; 169:23-24, 174:1-2, 233:7; 259:3-14, Tr. Apr. 25, 2023 519:16-21, 551:15-552:14; 553:17-22)

223. Every component of ██████'s IEPs provides for objective measurement of his progress toward achieving the annual goals and includes a description of how progress will be measured. (See Resp. Exs. 16, 44.) ██████'s IEP goals are adequate, measurable, and observable, and Respondent provided ██████ with FAPE. (*Id.*; Tr. Apr. 24, 2023, 26:11, 38:8-40:2.)

224. The Undersigned finds that Respondent CMS made no procedural errors which impeded ██████'s right to a free appropriate education.

225. The Undersigned finds that Respondent CMS afforded Petitioner [REDACTED] the opportunity to meaningfully participate in the decision-making process regarding the provision of a free appropriate education to [REDACTED].

226. The Undersigned finds that [REDACTED] was not deprived of educational benefits due to procedural inadequacies by Respondent CMS.

BASED ON THE FOREGOING, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above, and the Undersigned hereby **ORDERS**:

1. Based on the Findings of Fact, sworn testimony, and other evidence in the record, the Undersigned finds [REDACTED] is not entitled to Compensatory Education.

2. The Undersigned finds Respondent CMS complied with the procedural and substantive requirements of the IDEA, which did not result in a denial of FAPE to [REDACTED] or a denial of meaningful participation in the IEP process to [REDACTED]'s parent.

3. The Undersigned finds Respondent CMS timely and properly evaluated [REDACTED] in conformity with the IDEA to understand [REDACTED]'s present levels of performance and gather information related to [REDACTED]'s disability-related behaviors that were impeding his learning.

4. The Undersigned finds Respondent CMS appropriately placed [REDACTED] in the [REDACTED] separate classroom setting in accordance with the IDEA's mandate to educate students in the least restrictive environment appropriate to meet the student's unique needs.

5. The Undersigned finds Petitioners have no right to reimbursement for any expenses related to Petitioner's decision to keep [REDACTED] out of school after February 13, 2023.

6. Respondent CMS is the prevailing party on all issues presented in this matter.

DECISION

BASED upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Petitioners have not met their burden of proof, by a preponderance of the evidence on the issues of evaluation, placement, and FAPE.

NOTICE

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 Final Decision.

Any party aggrieved by the findings and decision of a hearing officer may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court

within ninety (90) days after receipt of the notice of the decision.

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

Unless appealed to State or federal court, the State Board shall enforce the final decision of the administrative law judge.

IT IS SO ORDERED.

This the 12th day of July, 2023.



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.

[REDACTED]

Parent

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This the 12th day of July, 2023.



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