

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 EDC 02523

<p>█ by and through her parents █ and █ Petitioner,</p> <p>v.</p> <p>Cabarrus County Board of Education Respondent.</p>	<p>FINAL DECISION BY ENTRY OF OFFER OF JUDGMENT</p>
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THIS MATTER is before this Tribunal for an entry of an Order based on Petitioners' Notice of Acceptance of Respondent's Offer of Judgment. In consideration of the Notice of Acceptance and Respondent's Offer of Judgment attached to Petitioners' filing, the Undersigned enters Judgment against the Respondent in conformity with Respondent's Offer of Judgment as follows:

PROCEDURAL HISTORY

1. On July 1, 2024, Petitioner, by and through her parents, filed and served a Petition for a Contested Case Hearing (Petition) in the above-captioned matter alleging violations against Cabarrus County Board of Education of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§ 1400 et seq. ("IDEA") and N.C. Gen. Stat. §§ 115C-109.6 *et seq.*

2. Respondent was served with the Petition on July 3, 2024 and received the Petition on July 11, 2024.

3. On July 8, 2024, the Undersigned issued an Order Setting Hearing and General Pre-Hearing Order calendaring the hearing to begin on August 19, 2024.

4. On July 16, 2024, Respondent filed a motion to continue the hearing, and Petitioners did not object to the Motion.

5. On July 18, 2024, the Undersigned issued an Order granting Respondent's motion to continue and calendaring the hearing for September 16-20, 2024.

6. On July 26, 2024, after being granted an extension, Respondent timely filed their Response to the Petition.

7. On August 5, 2024, Respondent filed a second motion to continue the hearing, and Petitioners again did not object to the motion. The Undersigned granted Respondent's motion on August 7, 2024, and re-calendared the hearing for September 23-27, 2024.

8. The Parties engaged in Mediation on August 23, 2024 and September 4, 2024, but were unable to reach agreement on all disputed issues.

9. Respondent served Petitioners' counsel an Offer of Judgment via email on September 6, 2024. Petitioners' counsel acknowledged receipt on September 6, 2024.

10. Respondent filed a third motion to continue the hearing on September 10, 2024.

11. On September 13, 2024, Petitioners' counsel accepted Respondent's Offer of Judgment and filed a notice of such on the same day.

12. On September 16, 2024, the Undersigned issued an order continuing the hearing to the week of October 21, 2024.

13. Pursuant to Rule 68(a), the Offer of Judgment is now entered in the record.

FINAL DECISION BY ENTRY OF OFFER OF JUDGMENT

IT IS ORDERED that the September 6, 2024, Offer of Judgment accepted by Petitioners on September 13, 2024, is hereby incorporated into this Final Decision as if attached verbatim.

Based upon the accepted Offer of Judgment, it is hereby ORDERED that the following relief is granted:

1. **Independent Special Education Consultant.**

- a. Respondent agrees to contract with Jennifer Holmes, or another similar mutually agreeable provider as an Independent Special Education Consultant ("Consultant"). If for any reason Ms. Holmes is unable to contract to provide the services described below, Petitioners agree to provide Respondent with two (2) names of Consultants for Respondent's review. Within five (5) school days of receiving the names, Respondent shall either agree to one of Petitioners' proposed consultants or provide Petitioners a list of a maximum of three (3) names of different consultants. If Respondent and Petitioners are unable to agree on another Consultant, the parties agree to participate in a DPI mediation to resolve the issue. If the selected Consultant is unwilling or unable to contract with Respondent for the duties described below, the parties will repeat the selection process described above.
- b. Respondent agrees to contract with the designated Consultant to assist with the following:
 - i. Review of educational records and other relevant private records [REDACTED]'s parents provide the Consultant.

- ii. Collaboration with [REDACTED]'s private providers, as deemed necessary by the Consultant.
 - iii. Attendance and participation in IEP development and IEP addendum or annual review meetings including the provision of a written report following the initial observation and review of records for updates and revisions to [REDACTED]'s IEP.
 - iv. Consultation with selected school staff at a minimum of every four (4) weeks to include training and on-site coaching to [REDACTED]'s general education and special education teachers, associated administrators, related services providers, and/or teacher assistants assigned to [REDACTED]'s class, observation, data review, fidelity checks, coaching and modeling, and any necessary retraining in order for school staff to implement [REDACTED]'s IEP with fidelity and correctly collect progress monitoring data.
 - v. Consultation in person, by phone, by email, or by video conference as needed between visits.
 - vi. Reviewing and revising [REDACTED]'s IEP, including determining the need for additional supplemental aids, services, modifications, and accommodations; progress monitoring; and consulting on the implementation of [REDACTED]'s IEP.
- c. Respondent will contract with the Consultant for one calendar year from when the Consultant executes the contract after the date of the Final Decision in this matter.
 - d. Respondent will provide opportunities for the Consultant to review [REDACTED]'s records, conduct interviews of [REDACTED]'s parents and service providers, conduct any informal assessments the Consultant deems necessary, and observe [REDACTED] in various classrooms.
 - e. Prior to the IEP Meeting described in Paragraph 3, Respondent will make reasonable efforts to ensure the Consultant has reviewed [REDACTED]'s records, conducted interviews of [REDACTED]'s parents and service providers, and conducted at least one (1) observation of [REDACTED] in various classrooms and environments throughout her school day.
 - f. Respondent will share any notes or other written reports provided by the Consultant regarding [REDACTED] with Petitioners and will ask the Consultant to contact Petitioners and [REDACTED]'s teachers at least once after each time the Consultant observes [REDACTED] in the school setting to provide feedback and answer Petitioners' questions and questions of [REDACTED]'s teachers.

2. **Educational Evaluations.**

- a. Respondent will fund the following educational evaluations, to be conducted by Therapy Talk, or alternatively by mutually agreeable provider(s) following participation in DPI mediation, without requiring an IEP meeting to be held for the purpose of requesting said evaluations:
 - i. Speech Language Evaluation
 - ii. Occupational Therapy
 - iii. Physical Therapy

- b. Respondent agrees to conduct an adaptive physical education evaluation. Respondent agrees not to contest the independent educational evaluation in this area if the Petitioners request this evaluation.
- c. Copies of the reports generated by each evaluation shall be provided to both Parties.
- d. Respondent agrees to request each provider include specific recommendations for IEP goals and supports and accommodations with the domain/area evaluated in their reports.

3. **IEP Meetings.**

- a. Respondent will remove the designation of being on the Extended Content Standards ("ECS") within five (5) days of the entry of this Order thereby returning [REDACTED]'s IEP placement to the Standard Course of Study, and further agrees not to return [REDACTED] to the ECS for the 2024-2025 and 2025-2026 school years. Other than this change, Respondent will only finalize an IEP if a parent is present at an IEP meeting.
- b. For [REDACTED]'s IEP meetings for the 2024-2025 school year, Respondent will request that each be a facilitated IEP meeting using DPI-assigned facilitator(s), unless otherwise agreed by the Parties, as more fully set out in the accepted Offer of Judgment.
- c. Within five (5) days of receipt of the written recommendations from the Independent Consultant described in Paragraph 1(b) above, Respondent will submit the request for a DPI facilitator who will then contact Petitioners and propose dates for an IEP meeting. The Parties will promptly schedule an IEP meeting at a mutually agreeable time. The purpose of this IEP meeting will be to review and revise [REDACTED]'s goals, services, including related services, and accommodations and consider other recommendations from the Independent Consultant as well as the recommendations contained in Dr. Milburn's evaluation.
- d. Subsequent IEP Meeting: Within ten (10) days of the receipt of the Educational Evaluations described in Paragraph 2, but no later than 30 days after the receipt of any one of the evaluations, Respondent will submit a request for a DPI facilitator who will then contact Petitioners and propose dates for an IEP meeting. The Parties will promptly schedule an IEP meeting at a mutually agreeable time.
 - i. The purpose of this IEP meeting will be for the evaluators to review [REDACTED]'s evaluations and for the IEP team, which includes [REDACTED]'s parents, to amend her IEP accordingly.
 - ii. The IEP team will also consider recommendations from the Independent Consultant at this IEP meeting.
 - iii. During this IEP meeting, the team will ensure [REDACTED]'s educational placement is in the least restrictive environment, taking into account the recommendations of the Independent Consultant and IEE providers.
 - 1. The final IEP developed as described in this Paragraph shall remain in place for (1) calendar year and shall not be changed during that time unless all Parties agree.

- iv. The Parties agree to include in the IEP, with specifics to be determined by [REDACTED]'s IEP Team, the following:
 - 1. Objectively measurable present levels and goals based on data collected by the IEP Team;
 - 2. Specially Designed Instruction time in [REDACTED]'s Least Restrictive Environment;
 - 3. Additional supplemental aids, services, modifications, and accommodations; and
 - 4. Appropriate related services as identified by [REDACTED]'s CCS related service providers, in consideration of the recommendations from the independent evaluators.
- v. Any recommendations from the evaluators that are requested by Petitioners and the IEP team refuses to adopt shall be documented as refusals in the Prior Written Notice with the rationale for the refusals.
- vi. The IEP team will develop a plan to communicate with [REDACTED]'s parents regarding [REDACTED]'s progress on a bi-weekly basis, which may be done by email if agreed to by both Petitioners and IEP team.
- vii. Progress Monitoring. Respondent agrees to implement an attendance service log for the delivery of all specially designed instruction to document the dates that specially designed instruction is provided.

4. **Compensatory Educational Services.**

- a. Respondent will provide compensatory educational and related services, provided by licensed professionals (special education teacher, occupational therapist, speech pathologist) beginning on October 1, 2024, to include twenty-nine (29) hours of educational services, one (1) hour speech therapy, and twenty (20) minutes occupational therapy, to support [REDACTED] in the areas of Math, Reading, Writing, Social/Emotional Skills, Occupational Therapy and speech. These compensatory education hours will be provided on a one-to-one basis, on Tuesday and Wednesday afternoons, for 30-minutes outside of instructional hours, and at a mutually agreeable location, and will be individualized based on [REDACTED]'s present level of performance and will be developed in consultation with [REDACTED]'s special education teacher(s) and regular education teacher(s).

5. **Training.**

- a. Respondent will contract with the Independent Special Education Consultant identified in Paragraph 1 to provide training of at least four (4) hours to the administrators, special education teachers, general education teachers, teacher assistants assigned to [REDACTED]'s class, enhancement teachers, and related service providers at [REDACTED] Elementary School on implementation of [REDACTED]'s IEP including the delegation of responsibilities for implementation and the meaningful inclusion of students with Down syndrome or Intellectual Disability as their eligibility category in the general education setting.
- b. These trainings will be conducted no later than November 15, 2024. Respondent will provide documentation of the relevant staff having completed the training(s) to Petitioners by December 1, 2024.

6. [REDACTED]
- a. Respondent will fund the cost of enrollment for the [REDACTED] after-school program for the remainder of the 2024-2025 school year, on Mondays, Thursdays, and Fridays, when school is in session.
 - b. Respondent will contract with the Independent Contractor to observe, consult with, and train [REDACTED] employees on the meaningful inclusion of students with Down syndrome and intellectual disability and [REDACTED]'s supplemental aids, services, modifications, and accommodations.
 - c. Respondent agrees to increase [REDACTED]'s time in the [REDACTED] program when Tuesday and Wednesday afternoons become available for [REDACTED] unless otherwise determined by mutual consent. If [REDACTED] attends the [REDACTED] program on Tuesdays and Wednesdays, Respondent's obligation to provide compensatory educational services ceases.

7. Respondent agrees to pay thirteen thousand dollars and zero cents (\$13,000.00) for attorneys' fees and all costs sought or that could have been sought in the Petition. Payment shall be made within thirty (30) days of the entry of this Order

The Notices of Prehearing Conference for October 15, 2024, and Hearing for October 21-25, 2024 are **VACATED** and this contested case is **DISMISSED WITH PREJUDICE**.

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 Final Decision. Unless appealed to State or federal court, the State Board shall enforce the final decision of the Administrative Law Judge.

Any party aggrieved by the findings and decision of an Administrative Law Judge under G.S. 115C-109.6 may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1415. Please notify the Office of Administrative Hearings in writing of any appeal so that the records for this case can be prepared for forwarding to the appropriate court.

IT IS SO ORDERED.

This the 23rd day of September, 2024.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

David F Sutton
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 N.C. Admin. Code 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 which will subsequently place the foregoing document into an official depository of the United States Postal Service.

K. Alice Morrison
Gahagan Paradis, PLLC
amorrison@ncgplaw.com
Attorney For Petitioner

Ian M Shoulders
Ian@csedlaw.com
Ashley Frances Leonard
ashley@csedlaw.com
Chris Z. Campbell
Chris@csedlaw.com
Cynthia S. Lopez
Cynthia@csedlaw.com
Campbell Shatley, PLLC
Attorney For Respondent

Teresa Silver King
NC Department of Public Instruction
due_process@dpi.nc.gov
Affiliated Agency

This the 23rd day of September, 2024.



Melissa Boyd
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850