

**BEFORE THE STATE DEPARTMENT OF EDUCATION  
OF THE STATE OF ALABAMA**

**A.M.,**

**PETITIONER,**

**VS.**

**SPECIAL EDUCATION CASE NO.: 21-93**

**M.C.B.O.E.,**

**RESPONDENT.**

**HEARING DECISION**

**I. PROCEDURAL HISTORY**

This Due Process Hearing was conducted under the authorization of the Individuals with Disabilities Education Act (IDEA) at 20 U.S.C. Section 1400 et seq. and implementing Federal regulations, at 34 C.F.R Part 300, and implementing State regulations, The Rules of the Alabama State Board of Education, Chapter 290-080-090, Special Programs I, Supp. No. 92-1.

The Petitioner filed a Request for Impartial Due Process Hearing on October 4, 2021 with the Alabama State Superintendent of Education. The complaint stated “biggest concern would be ■■■ receiving ■■■ services per ■■■ IEP as outlined in ■■■ IEP, not receiving appropriate accommodations as outlined in IEP, including behavior/social skills.” The proposed resolution in the Request for Impartial Due Process Hearing states: “compensatory services, consider the need for a paraprofessional.”

This Hearing Officer was duly appointed by Dr. Eric Mackey, Superintendent of the

State of Alabama Department of Education. This Hearing Officer set this Due Process Hearing for November 3, 2021. At that time, this Due Process Hearing convened. Present at the time were the following:

(1) Petitioner

(2) Representatives of the District with the District's attorney, the Honorable Erika Perrone Tatum.

Prior to the hearing, a determination was made by the Hearing Officer that The District had complied with all aspects of procedural safeguards necessary to have a fair Due Process Hearing. The Petitioner was advised of her right to have the hearing opened or closed. The Petitioner advised the Hearing Officer that it was the Petitioner's desire that the hearing be closed.

Testimony was taken on November 3, 2021.

No party has brought any procedural defect in any pre-hearing proceedings to my attention and I have determined that both parties timely complied with my order to exchange witness and exhibit lists within the time required by applicable law.

## **II. EXHIBITS ADMITTED INTO EVIDENCE**

There were numerous exhibits submitted by the parties and accepted into evidence by the Hearing Officer. These exhibits have been examined by the Hearing Officer subsequent to the Due Process Hearing in light of the testimony presented at said hearing. These documents and materials have been in the constant possession of the Hearing Officer

until the rendering of this Decision. Hereafter, they will be delivered to The State of Alabama Department of Education.

The Hearing Officer placed no weight on the fact that any particular matter was offered by any party since the purpose was to get all of the appropriate documents produced for consideration by the Hearing Officer so long as they were not prejudicial to any other party participating in the Due Process Hearing based upon objection. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. The Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

A list of the Exhibits is attached hereto as **Exhibit “A”** to this Decision.

**III. WITNESSES**

During said hearing, the District called the following witnesses:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
5. [REDACTED]

This Student's Mother, [REDACTED] testified as a witness.

**IV. BURDEN OF PROOF**

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v Weast*, 546 U.S. 49 (2005); *Ala. Admin. Code* 290-8-9.08(9)(c)(1). The applicable standard of proof is proof by a preponderance of the evidence.

**V. SUMMARY OF TESTIMONY AND EVIDENCE**

This Section is a brief summary of some of the pertinent facts presented to the Hearing Officer during this hearing. These facts are not the only facts considered by the Hearing Officer in making this decision. The Hearing Officer has heard all testimony presented at this hearing and has reviewed the transcript of said testimony. This Decision is based on all testimony presented at this hearing as well as the exhibits admitted into evidence during the hearing.

**A. [REDACTED]**

[REDACTED] is the history teacher for this Student and has been since August of the 21-22 school year. She described this Student as being a strong-willed young [REDACTED]. [REDACTED] can be stubborn. [REDACTED] can exhibit disrespectful behaviors, but when [REDACTED] is having a very good day, [REDACTED] is having a very good day. When there are problems, [REDACTED] tries to approach the issue by talking with the Student one on one. Sometimes it works and sometimes it doesn't. Sometimes [REDACTED] does not want to transition to the next class. The school has a young [REDACTED] who works with this Student. [REDACTED] is about the same age as this Student. [REDACTED] walks this

Student to ■■■ next classroom and helps this Student in ■■■ classes.

This Student gets very excited about success. Positive reinforcement works very well with this Student. ■■■ made a 100 on an assignment with the help of one of ■■■ peer students and ■■■ was very excited.

This witness testified that she has a good rapport with the Mother after a certain incident occurred. During that incident, the Mother used very strong vulgar language toward the teachers of this Student. Later, the Mother apologized to the teachers for the use of vulgar language.

This witness communicates with the Mother by cell phone. This witness has emphasized to the Mother that she needs this Student to be more consistent, not just in her class but in all of ■■■ classes. When this Student makes up ■■■ mind that ■■■ doesn't want to do anything ■■■ is not going to do anything whether ■■■ has a one-to-one helper with ■■■ or not. Earlier in the year, multiple peer tutors were used but it didn't work quite as well. The Student refused to do work for them but with this student peer ■■■ actually does very well.

In describing the accommodations she uses in her classroom to implement this Student's IEP, ■■■ stated that she uses graphic organizers, read-a-longs, picture analysis, KWL charts, Flowcabulary, and picture cards. When we do read a louds, this Student answers the questions and points to the answer. Another accommodation for this Student is shortened assignments. Verbal and visual prompts are used in teaching this Student along with positive reinforcements. This Student really listens in class during the lessons. This

Student benefits from clear one-step directions. She gives instructions to this Student one instruction at a time. Verbal praise is used as an incentive along with shout-outs on the Zoom recording of the classroom activity. She also gives to this Student small breaks.

This witness uses Google Classroom with this Student. It works really well. ■■■ makes 100's or 90's on those assignments in the Google Classroom. She also records the Google Classroom lessons through Zoom. So, if a Student is out of school or if the parent wants to see how the lessons are actually presented they can go watch the lessons on Zoom. The lessons are approximately 10 – 12 minutes at most.

She also uses graduated note taking study guides in working with this Student. In addition, she uses instructional cues and props that help this Student to get through the lesson.

Another strategy used with this Student is modeling. The teacher does it first and then the student does it after watching the teacher.

Prior to the end of the nine weeks, this Student had a number of assignments that had not been done. Working with the one-on-one peer tutor this Student was able to complete all of ■■■ missing assignments.

This Student had a C in history, math, science and English for the first nine weeks.

This Student sits close to the teacher in ■■■ science class, math class and history class. ■■■ is no more than six to eight feet away from the teacher. This helps this Student be successful. She provides intensive instruction in teaching this Student.



Student. She will sit down with this Student and help ■■■ access software that will make it easier for this Student to access a curriculum and gear it towards what ■■■ weaknesses are. So far, she has met with the Student approximately six times this year. This Student qualifies to receive assistive technology services. She works with ■■■ one-on-one. The Student does well during the one-on-one sessions. She had difficulty getting this Student to work with her on ■■■ first visit, however, this is no longer a problem.

She uses Google Read and Write and also makes use of stress balls when working with this Student. The Students access their text books in the classroom through Chromebooks. Google Docs is also used where the Student can talk into the computer and it records everything ■■■ says. This Student has a good time playing with Google Docs. ■■■ has also been instructed on how to use Clever which is a system that the teachers use for the students to be able to access all of their textbooks and Ingenuity. She understands that positive reinforcements work with this Student and she uses positive reinforcements. Once, she brought a cheeseburger to this Student. She also brings a little bag of goodies as positive reinforcements.

This witness participated in an IEP meeting on October 25, 2021. Additional services were added to the service page to include the peer helper because they had seen where this had been beneficial. She felt like the IEP meeting went very well. She has indicated to the District personnel that communication is something that is real important and to communicate not just when issues are negative but to also communicate when things are going right.



C. ■■■

The Mother testified that her first issue is with the services that ■■■ is receiving. She is requesting compensatory services for this Student because ■■■ was not getting ■■■ services per ■■■ IEP. ■■■ is to receive 120 minutes a day for services. ■■■ would come home and tell ■■■ Mother that ■■■ was not getting pulled out. One of ■■■ case workers died which resulted in a lapse in ■■■ receiving services while they were trying to replace the case worker. The Mother says she completely and wholeheartedly understands that problem but felt that the District should have had a temporary teacher or a substitute teacher or someone come in and pull this Student out for services.

The other issue that the Mother has is that she feels that there is a need for a one-on-one paraprofessional. When this Student was exhibiting the same behavior while living in Tennessee, the District finally broke down and hired a one-on-one paraprofessional to work with this Student. The Mother says that the one-on-one paraprofessional worked beautifully for ■■■. The Mother does not mind the peer helper but at the same time, the peer helper is also a student and that student has to get their work done first before they can even assist this Student.

This Student had a neuropsych evaluation done where ■■■ was diagnosed with ■■■. The doctor explained that one day ■■■ can have a very good day and the next day have an off day. The doctor also explained to the Mother that this behavior is not intentional but is simply the way ■■■ brain processes.

The Mother admits that she once used vulgar language towards the teachers but

explains that the teachers were saying everything negative about [REDACTED] and she became very frustrated. She also was frustrated because she brought a friend to the meeting and was told by the District that the friend could not attend the meeting. She felt attacked. It was the constant negativity about [REDACTED] behavior that made her react the way she did with the teachers.

A checklist was done during the meeting to determine whether or not this Student was eligible for a one-on-one paraprofessional. The team determined based upon the checklist that this Student was not entitled.

The Mother had concerns because one day during a fire drill [REDACTED] would not leave the classroom and was left in the classroom while the other students went outside.

She understands that the [REDACTED] sometimes refuses the services but at some point she believes they still have to figure a way to provide the services to [REDACTED]. She says there is very little communication when the Student refuses to work with the teacher. At one meeting she was told that she would receive a weekly log of the Student's behavior and services. She has not received the weekly log.

The whole purpose of her requesting this Due Process Hearing is for the District to at least try a one-on-one paraprofessional temporarily to see if it works.

This Student can't handle being around all of the students. In the Mothers opinion, if the Student had a one-on-one paraprofessional [REDACTED] would be fine.

The Mother testified she does not have access to Google Classroom and didn't even

know Google Classroom was being used until [REDACTED] mentioned it in a meeting with her.

The Mother was shown Respondent's Exhibit "4". Respondent Exhibit "4" contains the weekly behavior logs for this Student. The Mother says that she never received the weekly logs.

The Mother admitted she had not scheduled any Parent/Teacher conferences to try to address her concerns. The Mother states that every single day the school calls her and asks her to pick up this Student. These calls are starting to conflict with her job. She feels her job is on the line because the school calls her so much. She wants the school to contact her and let her know what's going on but she doesn't want the school to keep asking her to come pick up the Student.

The Mother denies that she has encouraged this Student to hit students and teachers.

Recently, the Student has begun exhibiting a new behavior. The Mother told the school that the new behavior was because she had a new baby and the former caseworker passed away. These two facts have impacted this Student a lot. The caseworker passing occurred during the first of September. She has not seen any impact at home in regard to the new baby. However, the Student has told the school that the new baby is affecting [REDACTED].

She has difficulty switching classes. This year is [REDACTED] first year to switch classes.

The Mother admits that the only information that she has that this Student is not receiving [REDACTED] services is from her discussions with [REDACTED].

**D. █████**

This witness is the Assistant Principal at █████ This is his third year in that role. As Assistant Principal his primary roles are to supervise and manage the everyday operations of the █████-grade wing as well as half of the █████-grade wing, and oversees teaching and learning as far as the discipline of students. He is the immediate supervisor over this Student's teachers on the █████-grade quad. He is the overseer of the hallways and redirects any student who might be going the wrong direction through transitions and restroom breaks. When students have disciplinary issues he attempts to redirect them so that they can get back in the classroom and continue to do their work.

This witness has spoken to the Mother on three or four occasions. During these occasions the Mother had some initial concerns about the large size of the school, how her █████ would be supervised when █████ had issues, █████ ability to get from point A to point B and just overall socialization transition from a smaller elementary school to a larger middle school. They have also spoken several times in regard to behaviors of this Student. This Student has exhibited defiance, disrespecting authority and disobedience.

In regards to the fire drill, if there had been a one-on-one person with █████, the only way to have removed █████ from where █████ was on that particular occasion was to actually physically pick █████ up and remove █████. █████ was not going to participate in the fire drill.

**E. █████**

This witness is the Zone Coordinator for the District. Her role is to provide support and supervision. She currently has sixteen schools and █████ is one of those schools. She

has been involved with the Mother and this Student since this Student was at [REDACTED].

States have different guidelines as far as how students are determined to be eligible. After transferring from the State of Tennessee, this Student was initially evaluated under the Alabama State guidelines. The evaluation found that this Student was no longer qualified as a Student who would be in a self-contained classroom based upon several components of the assessments that were conducted. She agrees with the IEP's decision that this Student did not require a one-to-one paraprofessional.

This witness met with the new case worker who took over after the previous case worker died. She reviewed the documentation regarding the services that were being provided to this Student after the passing of the previous case worker.

**F. [REDACTED]**

This witness is the Director of Special Education for the District. This is her tenth year as the Director. She is responsible for ensuring the provision of free and appropriate public education for all students who have been identified as having a disability and have an IEP. She is also responsible for ensuring that the budgets are approved and that resources, whether they are financial or human resources, are allocated appropriately, so that all students can receive services.

Previously, this witness participated in a meeting with the Mother towards the end of last school year or sometime early during this summer about her concerns about this Student's grade level. The Mother wanted or had requested that the Student be taught lessons three or four grade levels below [REDACTED] actual grade. There was a Zoom meeting to

discuss. The District explained during the IEP meeting that because this Student was receiving services in the general education classroom that ■ standards would have to be based on ■ current grade level but that ■ would be provided interventions to address the deficits determined for ■ IEP goals. The District could not instruct ■ below grade level, but the District could provide interventions to close the achievement gap between where ■ was functioning and where ■ was grade wise.

In previous years when this Student attended ■, the Mother requested an evaluation almost yearly. The Mother had some concerns about this Student's IQ score being too high or that ■ did not meet the cut-off for ■ to be in a self-contained classroom for students with severe cognitive disabilities.

The Mother has expressed to this witness that she believes that a one-on-one paraprofessional was needed. She wanted that paraprofessional to help ■ and give ■ support in the classroom. The Respondent's Exhibit "6" is the paraprofessional checklist used by the District. The purpose of this checklist is so that the IEP team can give consideration to any request or need for one-on-one paraprofessional. The District wants to make sure the team has considered every area and looked at every type of supervision that might be needed for a student. The checklist is divided into six sections, safety issues, physical needs, communication needs, behavioral needs, social needs, and academic needs.

The entire IEP team was present during a resolution meeting and discussed the checklist. The Mother was able to give input regarding her concerns. There was a lot of discussion about the checklist and about the needs of this Student. The team determined

that the needs that were identified did not rise to the level to have [REDACTED] in that most restrictive environment of having a one-on-one paraprofessional. The team felt that other supports had been put in place and could be put in place to address the concerns that the Mother had raised.

During the meeting [REDACTED] was asked if she pulled this Student for [REDACTED] services. She stated that she had attempted to pull [REDACTED], and on many occasions, the Student would refuse to go to the resource room for [REDACTED] pull-out services and that she did have it documented.

## **VI. STATEMENT OF ISSUES**

**ISSUE ONE:** Is the District implementing this Student's IEP appropriately?

**ISSUE TWO:** Does this Student meet the requirements for a one-on-one paraprofessional to be assigned to [REDACTED]?

**ISSUE THREE:** Is this Student entitled to compensatory education?

## **VII. FINDINGS OF FACT**

1. This Student resides with [REDACTED] Mother within the jurisdiction of the District.
2. This Student is in the [REDACTED] grade at [REDACTED]
3. This Student is a strong-willed and sometimes stubborn individual.
4. This Student has exhibited defiance, disrespecting authority and disobedience during this school year.
5. This Student from time to time refuses to physically transition from one

classroom to another classroom for services. The District is working with this Student as to said issue and is making progress as to same.

6. This Student has a valid IEP which is being appropriately implemented by the personnel that work with this Student.

7. The District uses a student peer tutor to assist this Student and it is working well for this Student.

8. This Student failed to complete certain assignments and worked diligently with ■ teachers and the student peer tutor to complete all assignments before the end of the first nine weeks.

9. This Student had a C in history, math, science, and english for the first nine weeks.

10. The IEP team has determined that this Student does not meet the requirements to have a one-on-one paraprofessional.

## **VIII. DISCUSSION OF THE ISSUES**

### **A. IDEA OVERVIEW**

The Individuals with Disabilities Education Act (IDEA) was enacted to provide a free appropriate public education (FAPE) by public school systems to students with disabilities. 20 U.S.C 1400 *et. seq.* 20 U.S.C. § 1412(a)(1)(A). “The IDEA is a comprehensive educational scheme, conferring on disabled students a substantive right to public education and providing financial assistance to enable states to meet their



educational needs.” *Hoelt ex rel. Hoelt v. Tuscon Unified Sch. Dist.*, 967 F.2d 1298, 1300 (9th Cir.1992) (citing *Honig v. Doe*, 484 U.S. 305, 310, 108 S.Ct. 592, 597, 98 L.Ed.2d 686 (1988)). The IDEA ensures that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). The IDEA defines FAPE as: special education and related services that:

- have been provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the State educational agency;
- include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9). To provide a FAPE in compliance with the IDEA, a state educational agency receiving federal funds must evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP. *See generally* 20 U.S.C. § 1414. The IEP is to be developed by an IEP team composed of, *inter alia*, school officials, parents, teachers and other persons knowledgeable about the Student. 20 U.S.C. § 1414(d)(1)(B).

“Procedural flaws in the IEP process do not always amount to the denial of a FAPE.”

*L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 909 (9th Cir. 2009). Once a procedural violation of the IDEA is identified, the court “must determine whether that violation affected the substantive rights of the parent or Student.” *Id.* “[P]rocedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents’ opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.” *Id.* An IEP need not conform to a parent’s wishes in order to be sufficient or appropriate. *Shaw v. District of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002) (stating that the IDEA does not provide for an education...designed according to the parent's desires).

Moreover, Administrative Hearing Officers and reviewing courts are to provide great deference to the educators who developed the IEP. *Todd D. v. Andrews*, 933 F.2d 1576 (11th Cir. 1991). As the Supreme Court stated in *Rowley*, “we think that congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrated the legislative conviction that adequate compliance with procedures prescribed would in most cases assure much if not all of what Congress wished in a way of substantive contents in an IEP.” *Rowley*, 458 U.S. at 206.

Pursuant to the IDEA, a public-school district is required to provide a FAPE to a qualifying student by developing an IEP for the student that is tailored to his or her individual needs. 20 U.S.C. § 1414(d) (defining IEP as a “written statement for each Student with a disability that is developed, reviewed, and revised” in accordance with Section 1414). The IEP includes, *inter alia*, a statement of the Student’s present levels of

academic achievement and functional performance; a statement of measurable, annual goals, including academic and functional goals; and a statement of how the Student's progress toward the annual goals will be measured. 20 U.S.C. § 1414(d)(1)(A)(i). The purpose of the IEP is to establish a plan for the academic and functional advancement of the Student in light of that Student's particular circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

In determining the educational placement of a Student with a disability, each public agency must ensure that:

- The placement decision -- 1) Is made by a group of people, including the parents and other people knowledgeable about the Student, the meaning of the evaluation data, and the placement options; and 2) Is made in conformity with the LRE provisions of this subpart, including 34 CFR 300.114 through 34 CFR 300.118;
- The Student's placement -- 1) Is determined at least annually; 2) Is based on the Student's IEP; and 3) Is as close as possible to the Student's home;
- Unless the IEP of a Student with a disability requires some other arrangement, the Student is educated in the school that he or she would attend if nondisabled;
- In selecting the LRE, consideration is given to any potential harmful effect on the Student or on the quality of services that he or she needs; and

- A Student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

34 C.F.R. § 300.116.

Compliance with the IDEA does not require school districts to provide the “absolutely best” or “potential-maximizing” education. *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010). Rather, school districts are required to provide only a “basic floor of opportunity”. *Id.* quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982). The program provided to a student with a disability needs only be appropriately designed and implemented so as to convey the student with a meaningful benefit in light of the student’s individual circumstances. *Andrew F.*, 137 S. Ct. at 999. The Supreme Court, in the recent decision in *Andrew F.*, noted as follows regarding a tribunal’s subsequent review of the appropriateness of a student’s IEP:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a Student to make progress appropriate in light of the Student’s circumstances. The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the Student’s parents

or guardians. Any review of an IEP must appreciate that the question is ***whether the IEP is reasonable, not whether the court regards it as ideal.***

*Id.* (emphasis added, internal citations and quotations omitted). While the IDEA guarantees an education program that is reasonably calculated to enable the Student to receive educational benefits it does not “guarantee any particular level of education .... No law could do that -- for any Student.” *Id.* at 998.

The Supreme Court in *Andrew F.* further made clear that the IDEA does not provide tribunals with an invitation to substitute their own notions of sound educational policy for those of the school authorities which they review. *Id.* at 1001. Moreover, the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date. Accordingly, a court should avoid any “Monday Morning Quarterbacking” in evaluating the appropriateness of a Student’s educational program. *Fuhrmann ex rel. Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3rd Cir. 1993). Under this “snapshot rule,” an IEP must be reviewed in terms of what was objectively reasonable at the time the IEP was developed. *Fuhrmann v. East Hanover Bd. of Ed.*, 993 F.2d 1031, 1040 (3d Cir. 1993); *D.J.D. by & through Driver v. Madison City Bd. of Educ.*, No. 5:17-CV-00096, 2018 WL 4283058, at \*5 (N.D. Ala. Sept. 7, 2018).

It is well settled that a failure to make progress under an IEP does not indicate a denial of FAPE. *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995); *G.L. v. Saucon Valley School District*, 267 F. Supp. 3d 586, 612 (E.D. Pa. 2017) (citing *J.L. v. Mercer Island Sch. Dist.*, No. Co6-494MJP, 2010 U.S. Dist. LEXIS 110782, 2010

WL 3947373 (W.D. Wash. Oct. 6, 2010) (“To suggest that failure to attain IEP goals or objectives equals an IDEA violation is to set the bar on special education far too high.”); *L.R. v. Manheim Township School District*, 540 F. Supp. 2d 603, 619-20 (E.D. Pa. 2008). Even though an IEP must be reasonably calculated to enable a Student to make appropriate progress, it can be found to do so even if the Student did not meet all of his IEP goals. *Brandywine Heights Area School District v. B.M.*, 248 F. Supp. 3d 618, 636 (E.D. Pa. 2017).

## **B. CONCLUSION**

It is clear to this Hearing Officer that this Mother clearly loves this Student and is seeking the very best for this Student. It is also clear to this Hearing Officer that the Mother and the school personnel that testified in this matter have a good working relationship.

The evidence is clear that this Student has a valid IEP which is being appropriately implemented by the personnel that work with this student. Although there have been occasions where this Student refuses to go to another classroom for services, it is clear to this Hearing Officer that the District is working on this issue and making progress. This Hearing Officer also finds that the use of a student peer tutor has been and is beneficial for this Student.

The IEP team for this Student has looked at the issue of a one-to-one paraprofessional and have determined that this Student is not eligible for same.

The evidence presented by the Petitioner did not meet her burden of proof as to her concerns about the IEP not being implemented, the need for a one-on-one paraprofessional,

and the need for compensatory education.

**IX. SPECIFIC RULINGS**

1. The District is providing this Student with a free appropriate public education for the 2021-2022 school year.

2. This Student has a valid IEP which is being appropriately implemented by the District's personnel.

3. Petitioner has failed to meet her burden of proof in this matter as to the issues presented in her due process complaint.

4. Petitioner's requests for relief in this matter are hereby DENIED.

**X. NOTICE OF APPEAL RIGHTS**

Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. 1415(i)(c). The party dissatisfied with the decision must file a notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) calendar days of the filing of the notice of intent to file a civil action. *Ala. Admin. Code 290-8-9-.8(9)(c)16.*

**DONE** and **ORDERED** this the 17th Day of December, 2021.

**/s/P. Michael Cole**

P. Michael Cole  
Hearing Officer

**XI. CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Decision has been forwarded to the following individuals by First Class U.S. Mail with postage prepaid as well as by electronic mail on this the 17th day of December, 2021.

██████████  
████████████████████  
████████████████

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**/s/P. Michael Cole**  
P. Michael Cole  
Due Process Hearing Officer