

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 EDC 01108

■ by parent of guardian ■ Petitioner, v. Durham Public Schools Board of Education Respondent.	FINAL DECISION BY ENTRY OF OFFER OF JUDGMENT
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THIS MATTER is before the Tribunal for Final Decision By Entry of Offer of Judgment based upon Motion for Entry of Proposed Order filed on April 30, 2024 based on Petitioners' Notice of Acceptance of Offer of Judgment filed on April 26, 2024. This contested case was brought by Petitioner ■ by and through his parent ■ ("Petitioners"), against Respondent Durham Public Schools Board of Education ("Respondent" or "Board") for an expedited hearing on the manifestation determination review and an evidentiary hearing on alleged violations of ■'s right to a free and appropriate public education per the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§1400 *et seq.* Upon review of the Parties' separate submissions of proposed orders, Joint Notice of Stipulations, Respondent's Offer of Judgment, Petitioners' Notice of Acceptance of Offer of Judgment, and consideration of further information as described below, the Undersigned **GRANTS** entry of judgment as follows:

APPEARANCES

For Petitioners:	Stacey M. Gahagan K. Alice Morrison Gahagan Paradis, PLLC Emails: sgahagan@ncgplaw.com amorrison@ncgplaw.com
For Respondent:	Maura K. O' Keefe, Tharrington Smith, LLP Email: mokeefe@tharringtonsmith.com

FINAL DECISION BY ENTRY OF OFFER OF JUDGMENT

1. On March 25, 2024, Petitioners, [REDACTED] by and through his parent, [REDACTED] filed a Petition for an Expedited Contested Case Hearing in the above-captioned matter alleging violations against Durham Public Schools 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 March 27, 2024.

3. On April 2, 2024, the Undersigned issued an Order Setting Hearing calendaring the hearing to begin on April 29, 2024.

4. On April 19, 2024, Respondent served upon Petitioners’ counsel an Offer of Judgment.

5. On April 26, 2024, Petitioners notified Respondent’s counsel of their acceptance of the Offer of Judgment. Respondent acknowledged receipt of Petitioners’ Notice of Acceptance.

6. On April 26, 2024, Petitioners filed the accepted Offer of Judgment.

7. The Individual With Disabilities Education Improvement Act (“IDEA”) anticipates the use of an Offer of Judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure which has a 14-day time period. 20 U.S.C. § 1415(i)(3)(D)(i)(I).

8. In the case of an administrative proceeding, an Offer of Judgment can be made at any time more than 10 days before the proceeding begins. *Id.* This is consistent with Rule 68 of the North Carolina Rules of Civil Procedure. N.C. Gen. Stat. § 1A-1, Rule 68.¹ The Rules of Civil Procedure apply to contested cases in the Office of Administrative Hearings unless another specific statute or rules provides otherwise. 26 NCAC 03 .0101(a).

9. After Petitioners’ acceptance of the Offer, the Parties filed on May 2, 2024 a Joint Notice of Stipulations Pursuant to the Offer of Judgment (“Stipulation”).

¹ Rule 68 of the North Carolina Rules of Civil Procedure. Rule 68 provides in relevant part:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. N.C. R. Civ. P. 68(a).

10. The Parties have stipulated to modification of the following conditional terms in Paragraph 8 requiring Petitioners to:

file a motion to join any individuals who have parental rights pursuant to IDEA with respect to [REDACTED] including but not limited to [REDACTED]'s father, [REDACTED], pursuant to Rule 19 of the North Carolina Rules of Civil Procedure. Within five days of the granting of that motion and issuance of an amended case caption reflecting that the term "Petitioners," as used in this Offer of Judgment, includes [REDACTED] and [REDACTED] ([REDACTED]), and any other individual whom either parent, or themselves, believes to have parental rights pursuant to IDEA (including but not limited to [REDACTED]), Petitioners shall file a Notice of Dismissal of the Petition filed at OAH Docket No. 24 EDC 01108 thereby dismissing with prejudice any and all claims raised or that could have been raised in the Petition.

11. With respect to Provision 8, the Parties stipulated that:

- a. Pursuant to a Separation Agreement entered by Petitioner [REDACTED], biological parents, [REDACTED] and [REDACTED] on or about March 29, 2022, Petitioner [REDACTED] has "sole legal care, custody, and control" of [REDACTED] and "final decision-making authority to make decisions about... [REDACTED] education."
- b. The Parties are unaware of any other individual possessing parental rights pursuant to IDEA with respect to [REDACTED]
- c. The Board acknowledges that such stipulations satisfy Paragraph 8 of the Offer of Judgment accepted by Petitioners on April 26, 2024.

12. In consideration of this modifying Stipulation, Respondent's Rule 68 Offer of Judgment, Petitioners' Notice of Acceptance, the Tribunal enters judgment against the Respondent in conformity with Respondent's Offer of Judgment.

13. Based upon the accepted Offer of Judgment, it is hereby **ORDERED** that the following relief is **GRANTED**:

1. Return to Prior Placement.

- a. [REDACTED] shall be permitted to return to Durham [REDACTED] no later than April 24, 2024.
- b. [REDACTED] shall have access to a school counselor with whom he will be encouraged to check in on a weekly basis, and to whom he can report any concerns regarding interactions with other students.

2. Referral Meeting to Re-Initiate Eligibility Determination.

- a. The Board will convene a referral IEP meeting by April 30, 2024, for the purpose of initiating evaluation of [REDACTED] for potential eligibility under IDEA. The team shall not elect to terminate the referral process on the basis of current information available, but instead shall agree to collect information and conduct evaluations/assessments on [REDACTED] in at least the eligibility areas of Other Health Impairment and Speech-Language Impairment.
- b. At least two assessments - the speech-language evaluation and psychoeducational evaluation - required to determine [REDACTED] eligibility in these areas shall be conducted by mutually agreeable private providers (and shall constitute independent educational evaluations).
- c. The IEP team will reconvene within 15 school days of receipt of the final evaluation/assessment requirement to discern eligibility under areas under review per the referral team's decision.
- d. If Petitioners disagree with the results of any school-conducted evaluations that stem from the referral process, Respondent will not contest a request for an Independent Educational Evaluation in those same areas, so long as the Petitioners' chosen experts meet the District's IEE criteria.

3. Remedies Contingent on Eligibility Determination. If [REDACTED] is deemed eligible for services and supports pursuant to IDEA as result of the referral process initiated under Paragraph 2, then the District shall:

- a. Owe [REDACTED] compensatory services at the then-current rate of specially designed instruction (including for direct related services) included by the IEP team in [REDACTED]'s IEP to account for full school weeks that transpired between January 9, 2024, and the creation of the IEP. For example, if [REDACTED] is deemed eligible and provided an IEP on July 1, 2024, that includes 2.5 hours per week of specially designed instruction (one hour of math instruction, one hour of executive-functioning instruction, and 30 minutes speech therapy per week), then the Board would owe [REDACTED] a total of 57.5 hours of compensatory services (2.5 hours of compensatory per week for 23 weeks of school (the weeks that transpired between January 9 and July 1, 2024)). Any compensatory services owed per this Agreement shall be provided pursuant to Paragraph 4, below.
- b. Convene an IEP team to conduct a Manifestation Determination Review of [REDACTED]'s conduct on March 14, 2024, within fifteen (15) business days of the eligibility meeting.

4. Compensatory Services. Compensatory services required pursuant to Paragraph 3 above shall be provided as follows:

- a. The compensatory education services will be individualized based on [REDACTED] present levels of performance and IEP goals, and shall be provided by providers of the Parent's choosing who hold licensure/certification in the areas for which they would provide instruction and/or services (e.g., math instruction provided by

licensed special ed. or licensed math teacher; speech-language services provided by licensed/certified speech pathologist) and who charge no more than \$50.00 per hour.

- b. Scheduled sessions missed due to staff absence or school closures will be made up.
 - c. Compensatory services shall be scheduled for completion with eighteen (18) months of acceptance of this offer.
5. Respondent agrees to pay a one-time lump sum of up to EIGHT THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$8,300.00) inclusive of all costs, fees, reimbursements, including but not limited to private evaluation expenses, private therapy and/or educational services expenses, equipment, transportation costs, and Petitioners' reasonable attorneys' fees, upon receipt of an attorneys' fees invoice reflecting fees accrued through April 19, 2024, in full settlement of all unresolved claims against the following: the Board, any of its affiliate or successor entities; its present or former employees and agents, current or former members, officials, representatives, independent contractors, successors, assigns, and insurers and liability coverage providers (hereinafter all collectively known as "Releasees" or the "Released Party(ies)"). Such payment shall be issued to the law firm Trust account identified by Plaintiffs' counsel.

IT IS FURTHER ORDERED that the April 19, 2024, Offer of Judgment accepted by Petitioners on April 26, 2024, which is the basis of this Final Decision, is hereby incorporated into this Final Decision as if attached verbatim.

BASED ON THE ABOVE, this Offer of Judgment was accepted by the Petitioners and subsequently modified by Stipulation of the Parties.

THEREFORE, judgment is thereby entered against the Respondent with respect and all claims arising pursuant to IDEA that were brought or could have been brought on behalf in the contested case petition. Respondent's Motion for Entry of Respondent's Judgment, pursuant to North Carolina General Statute Section 1A-1, Rule 68, is **GRANTED**.

The Notice of Hearing for April 29 – 30, 2024, is **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.

Any party aggrieved by the findings and decision of an Administrative Law Judge 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.

This Final Decision is immediately enforceable by the State Board of Education unless and until the party aggrieved timely applies to a reviewing court, State or federal, and the reviewing court grants an order staying the enforcement of this Final Decision pending the outcome of the review. N.C. Gen. Stat. § 150B-48.

IT IS SO ORDERED.

This the 3rd day of May, 2024.



Stacey Bice Bawtinhimer
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.

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This the 3rd day of May, 2024.



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