

VIRGINIA

SPECIAL EDUCATION DUE PROCESS HEARING

██████████ and ██████████,

██████████ Parents

vs

In Re: ██████████, Student

██████████ PUBLIC SCHOOLS,

LEA

FINAL DECISION AND ORDER

Issues

1. Does the statute of limitations bar the Parents' claims concerning the IEPs or special education provided in the 4th and 5th grades and prior to that time?
2. Are the Parents precluded from asserting claims as to school years under agreed IEPs?
3. Are the Parents' claims for reimbursement of ██████████ School tuition barred for failure to timely grant consent for updated evaluations to be performed by ██████████ PS?
4. Did the LEA offer an appropriate program for the 2018-2019, and 2019-2020 school years?
5. If not, is the ██████████ School program the appropriate program for the Student for the 2019-2020 school year?
6. Should ██████████ PS be directed to provide compensatory services to the Student in the manner of reimbursement to the Parents for the tuition and related expenses of the ██████████ School and tutoring cost?

Procedural History

Hearings were held on December 3, 2019; December 5, 2019; December 9, 2019; December 11, 2019; December 12, 2019; and December 13, 2019. Following the hearing, the parties submitted briefs on January 22, 2020. Due to the length of this hearing, the anticipated time to prepare briefs, and the required time to digest this information, the parties agreed to extend the decision date to February 10, 2020.

The following people attended the hearing:

[REDACTED], parents.
Ashley VanCleaf, attorney for the parents/student.
Elizabeth Keyser, paralegal for Ashley VanCleaf.
John F. Cafferky and Emily K Haslebacher, attorneys for the LEA.
[REDACTED], Due Process and Eligibility coordinator for the LEA

The following witnesses testified on behalf of the Parents:

[REDACTED], parents of the student.
[REDACTED], offered as an expert in dyslexia, structured literacy and elementary education.

[REDACTED], offered as an expert in school psychology, neuropsychology, clinical psychology, and brain-based learning disorders.

[REDACTED], offered as an expert in special education and school administration.

[REDACTED], as an expert in special education, dyslexia, IEP development and informal reading assessments.

[REDACTED], as an expert in school psychology, school administration, elementary education, and clinical psychology.

The following witnesses testified on behalf of the LEA:

[REDACTED], as an expert in special education.
[REDACTED], as an expert as a special education teacher.
[REDACTED], as an expert in special education and learning disabilities.

██████████, as an expert in special education, learning disabilities, and reading.

██████████, as an expert in general elementary education.

██████████, as an expert in special education for students with learning disabilities, including dyslexia.

██████████, as an expert in special education.

██████████, as an expert in school psychology.

██████████, as the program manager for Multi Agency Services for ████PS.

██████████, testified as a rebuttal witness on behalf of the parents.

Parent exhibits P-2 through P-55 and LEA exhibits S-1 through S-82 were admitted without objection at the commencement of the hearing.

Findings of fact

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following:

1. The Student is a ████ year old ████ grade student currently attending ████ School in ████ ████, ████. ████ started there in late August 2018 at the beginning of the 2018-2019 school year (████ grade year) via a unilateral parental placement. Previously, Student attended ████ LEA neighborhood school, ████, from ████ through ████ grade.
2. The parents placed the Student in first grade at ████ after moving to ████ from ████. Though the Student spoke English only, the LEA insisted upon enrolling ████ in English as a second language (ESL) program. (P. Ex. 4) The parents requested in May, 2015 that the Student be evaluated for special education. At that time, the LEA determined there was “insufficient evidence to warrant an evaluation.” (LEA Ex. 3)
3. On September 24, 2015 an LEA educational evaluation recommended the Student receive a research based spelling program, research based phonological awareness intervention, and development of decoding and fluency was a separate research based reading program. (P Ex 6) An LEA psychological evaluation was performed on September 29, 2015. (P Ex 5)
4. The Student was found eligible for special education in October, 2015 under the category of Specific Learning Disability (SLD). (LEA Ex. 15) The specific learning disability is dyslexia. Dyslexia is a SLD that is neurobiological in origin and distinguished from other learning

disabilities due to the weakness occurring at the phonological level. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. (LEA Ex15) The Student's initial Individualized Education Program (IEP) failed to implement the research based interventions recommended in [REDACTED] evaluations. Parents participated in the preparation of this IEP and signed their consent to its implementation. (P Ex 10)

5. Despite these weaknesses, the Student has numerous strengths. The Student is a hard working student with a positive attitude. (12/13 Tr. 44) [REDACTED] also demonstrates specific strengths in listening and reading comprehension, mathematics, phonological awareness, memory, and processing, and oral communication. Id. Moreover, Student is a highly sociable child. [REDACTED] parents described [REDACTED] as having “tons of friends”, the kind of child that gets along with other kids and knows how to interact with adults and a kid that you would like to be around. (12/13 Tr.22) [REDACTED], the Student's [REDACTED] grade general education teacher, testified that not only did the Student interact “really well” with others, but that [REDACTED] was friendly, approachable, helpful to [REDACTED] classmates and overall very well liked by [REDACTED] classmates and teachers. (12/13 Tr 27, 68-69)
6. Between October 5, 2017 and June 15, 2018, the Parents paid a private tutor, [REDACTED], the sum of \$4,810.00. Prior to October 4, 2017, the Parents paid that private tutor the sum of \$10,487.50.
7. In February, 2018 the Parents paid [REDACTED] the sum of \$700.00 for outside tutoring. Prior to October 4, 2017, the parents paid [REDACTED] the sum of \$3,625.00 for similar services.
8. In June, 2018 the Parents paid [REDACTED] Associates the sum of \$3,150.00 for a neuropsychological evaluation.
9. For the school year 2018, the Parents paid \$48,850.00 as tuition at the [REDACTED] School and for the school year they paid \$54,365.00 as tuition at the [REDACTED] School.
10. On May 31, 2018, an IEP meeting was held for the purpose of planning the transition from elementary school to middle school.
11. The LEA recommended placement at the local middle school and continuation of instruction in the Wilson program JUST WORDS.
12. The Parents did not accept the IEP and enrolled the Student in the [REDACTED] School.
13. The [REDACTED] School is specifically geared toward students with learning disabilities, including dyslexia.
14. The Student appears to be happy at the [REDACTED] School and [REDACTED] has made more progress in one year than [REDACTED] did in six years with the LEA.

CONCLUSIONS OF LAW AND DISCUSSION

Statute of Limitations

The Parents are asking among other things, that I find the LEA failed to offer FAPE for the 2016-2017 school year. The LEA argues that the Parents' claims concerning the IEPs or the special education provided at ██████████ in the fourth and fifth grades and/or prior to that time are barred by the IDEA two year limitation period.

The LEA argues that since the request for a due process hearing was filed on October 4, 2019, any purported claims based on events occurring before October 4, 2017 are beyond IDEA statute of limitation. The LEA cites numerous cases in support of their position. Among them are *Torda v. Fairfax County Sch. Bd.*, 2012 WL 2370631 (E.D. Va. 2012); *In Re Student with disability*, 109 LRP 77053 (SEA VA 209); and *In Re Student with disability*, 110 LRP 7931 (SEA VA 2008).

The Parents argue that the 1st, 3rd and 9th circuits have all issued persuasive decisions using the “knew or should have known” date to allow claims that predate the due process filing by two years. In *G.L. v. Ligonier Valley School District Authority* 66 IDELR 91 (3rd Cir. 2015), the Court affirmed that the parents of a teenager with specific learning disabilities could seek relief for alleged IDEA violations that predated their complaint by more than two years. The Parents point out that the 4th Circuit case of *T.B v. Prince George's Cnty. Bd. Of Educ.*, 897 F.3d 566 (4th Cir. 2018) adopted in full the decision of *G.L v. Ligonier Valley School District Authority* and thus I should rely on that decision on the statute of limitation.

I find the Parent's argument to be unpersuasive for several reasons. Firstly, the 4th Circuit does not appear to wholeheartedly adopt the statute of limitation reasoning in the *G.L. v. Ligonier Valley School District Authority* decision. In two sentences, the 4th Circuit held: “The ALJ and district court also both addressed the statute of limitation in this case. Because no party has appealed the district court's decision on that issue, we do not consider the statute of limitations arguments made by amici.”

Secondly, even if I were to consider “the knew or should have known” date to decide when the statute of limitations began to run, which date is it? The parents want it to be April, 2018, when they had the Student tested at ██████████ and learned how significantly behind ██████ was academically. But, how about when they first enrolled the Student and ██████ was misplaced in ESOL, though ██████ spoke no other language than English? What about May, 2015, when the request to have the Student evaluated for special education was first denied? I don't recall that during the hearing, any specific date was identified as the “knew or should have known” date.

Thirdly, as the LEA has argued, the limitations period has regularly been enforced both by federal courts and administrative hearing officers in Virginia to dismiss claims arising from facts occurring more than two years before the filing of the due process complaint.

Fourthly, when the statute of limitation issue is juxtaposed with the next issue, it is clear that the Parents can only move forward on claims arising after October 4, 2017.

Preclusion from asserting claims under agreed IEPs.

The LEA point out that all claims occurring prior to October 4, 2017 and some claims arising after that date were covered by IEPs in which the parents participated in developing and expressly consented to. It is the LEA position that the parents cannot now be heard to complain about the provisions of those IEPs to which they agreed and which concluded before the IEPs now contested were created. The LEA cites numerous cases in support of their position. See: *Schaffer v. Weast*, 554 F3d 470 (4th Cir. 2009), where the Court said there on page 475-76, the district court properly “declined to use that evidence to Monday morning quarterback the school system”; *Ian H. v. Fairfax County Sch. Bd.*, No. 97-168-A, slip. op. At *1-2 (E.D. Va. 1997); and *Vipperman v. Hanover County Sch. Bd.*, 22 IDELR 796 (E.D. Va. 1995).

The Parents argue the IDEA does not require parents to be subject matter experts in special education. Parents participate in the IEP process and agree to what they think is appropriate as the Parents in this case did. Parents trusted the school system and the staff. (12/3 Tr. 45) The Parents say ultimately, the responsibility for the provisions of FAPE rests upon the school district even when a parent agrees or disagrees with the IEP. In support of their position the Parents cite the case of *Riverview School District*, 102 LRP 2676, (1999).

In that case the school district argued that the parents' challenges to the student's educational programming should be denied based on the theory of estoppel and that the parents should not be allowed to assert a claim inconsistent with their signature on an IEP. The court found that the district's estoppel argument was not well taken because the parents were unaware of essential facts when they signed the IEP, i.e., the effect the IEP would have on graduation. In the present case, the Parents argue they too were unaware of certain facts such as the Student not progressing appropriately and the LEA's insistence on using the wrong methodology to address the Student's deficiencies attributed to dyslexia when they signed the various IEPs.

I find the Parents' position on this issue unpersuasive since the 4th Circuit clearly mandates that parents who fail promptly to utilize administrative remedies are estopped to argue the incorrectness of decisions which they could have prevented by asserting them earlier.

Failure timely to grant consent to request for updated evaluations.

The Parents first notified the LEA of their intention to unilaterally enroll their Student at School at the end of an IEP meeting discussing the Student's transition from elementary to middle school. The Parents were frustrated at this meeting because the transition IEP team wanted to continue using the JUST WORDS methodology in addressing the Student's deficiencies associated with dyslexia. In this contested 2018 IEP meeting, occurring over several days, the IEP committee stated they did not require additional evaluations. (LEA Ex. 48) When the IEP committee insisted on continuing with JUST WORDS, the Parents requested additional evaluations. (LEA Ex. 51-008) When the Parents decided to get a private evaluation, they withdrew their request. (LEA Ex. 56-002) Only after the Parents refused to consent to the 2018 and enrolled the Student in the [REDACTED] school, did Mr. [REDACTED] then request additional evaluations. Mr. [REDACTED]'s request for additional evaluations was unusual in that the IEP committee usually makes that request. Mr. [REDACTED] and I had the following exchange:

HEARING OFFICER: Okay from the questionings that I've heard today, I get the impression that the assessments that you requested after the Parents requested – or after the Parents said they were considering private placement, that it brings to mind whether it's a sincere request, because it was made after they said they were going to go with private placement, and I think you indicated that you didn't really need any further assessment.

THE WITNESS: Correct. (12/11 Tr. 250-251)

It appears to me this request for further assessments was made by Mr. [REDACTED], as the Procedural Support Liaison for the LEA, as an attempt to create a defense against any future request by the Parents for the recovery of tuition cost at the [REDACTED] School. The failure to consent to further evaluations under these circumstances should not preclude the Parents' claim.

Did the LEA offer an appropriate education for the 2018-2019 school year and was the Student making appropriate educational progress while attended the LEA elementary school?

Upon being found eligible for special education services due to dyslexia, the LEA attempted to address the Student's deficiencies by using the JUST WORDS methodology provided to educators by Wilson Professional Learning (Wilson). JUST WORDS is intended to reach a student population with mild to moderate gaps in decoding and spelling proficiency but without a significant learning disability. Wilson also offers a methodology called the Wilson Reading System (Intensive) for a student population with a language based learning disability, such as dyslexia. (P. Ex 40-003) The implication

in the Wilson literature is that intensive interventions are needed in cases of dyslexia and not JUST WORDS.

Dr. [REDACTED], Ph.D., testified for the Parents. He has practiced for over 30 years as a clinical neuropsychologist and school psychologist. He evaluated the Student in July 30, 2018 and included his findings and recommendations in a report which eventually made its way to the 2019 IEP meeting where his recommendations were accepted and incorporated into the most recent proposed IEP. Dr. [REDACTED] testified as follows:

“...in education we have tiers of intervention that educators can consider and provide more intensive levels of intervention. And that was my conclusion there that what had been tried so far for [Student] had not been effective. [REDACTED] had not responded at the level we would expect [REDACTED] to, to demonstrate appropriate progress and that more intensive interventions were needed. (12/9 Tr. 46.)

And I believe I mentioned this before when I was describing what we know about dyslexia. What the research shows very clearly is that for interventions to be effective, they should be provided early, they should be provided with intensity, they should be provided using evidence-based strategies or interventions that are done with fidelity to those interventions, and they should be provided by experienced, well trained educators. (12/9 Tr. 47)

And given [REDACTED] difficulties, I made these specific recommendations that were pursuant to those, you know, kind of themes from the research literature that [REDACTED] needed to have intensive interventions that would include small group or one-to-one instruction; that evidence based strategies would be implemented by special educators; that [REDACTED] would have opportunities for repetition of instruction because of [REDACTED] inability at this point to read independently at age level. (12/9 Tr. 47)

Q So, again having looked at all of these assessments, including ones completed after yours by [REDACTED], in your expert opinion, do you stand by these recommendations?

A Yes, I do.

Q And also in your expert opinion, was [Student] making progress when [REDACTED] was in [REDACTED] Public Schools?

A [REDACTED] was not making appropriate progress. (12/9 Tr. 50)

The LEA has argued that the Student has made progress during [REDACTED] elementary years and therefore, the LEA has met its responsibilities to the Student. That [REDACTED] made progress in elementary school is conceded by the Parents' expert witnesses. Whether that progress was appropriate is doubtful. For Statute of Limitations and agreed IEP reasons discussed above, I need not dwell on the elementary years question. However, it is clear that providing for appropriate progress was not considered and anticipated in the proposed 2018 IEP.

██████████, the LEA expert in Special education and learning disabilities testified that she recommended the student continue with JUST WORDS into middle school because she “thought that continuing in JUST WORDS would be absolutely appropriate, because ██████ would be finishing the program.” (12/12 T. 210)

I believe the LEA has essentially admitted their proposed 2018 IEP did not offer an appropriate education when the evidence shows they now offer one that incorporates all of Dr. ██████'s recommendations. Referring to the LEA's most recent IEP offer, Dr. ██████ said: “And I think we did consider all of the information, and I think Dr. ██████'s recommendations, most of them are in that proposal. Or all of them, I should say.” (12/11 Tr. 252)

Considering the casual reasoning for continuing with JUST WORDS, the fact that Dr. ██████'s recommendations were accepted in full, Dr. ██████'s expert opinion, and the fact that the Wilson literature describing their methodologies clearly recommend that JUST WORDS is not appropriate as an intervention for dyslexia which requires a more intensive methodology, I conclude the LEA did not offer FAPE, specifically an appropriate education, to the Student after October 4, 2017 and in their 2018 proposal.

The LEA has argued that a hearing officer should not dictate decisions of educational methodology. *Barnett v. Fairfax County Sch. Bd.*, 927 F 2d 146(4th Cir. 1991). I agree. I recognise that the LEA can use a blend of several interventions and even homemade strategies to address a student's difficulties. From the evidence presented at the hearing, I have learned there are several competing methodologies that address learning disabilities associated with dyslexia. But it is clear to this Hearing Officer that JUST WORDS is not one of them. Using JUST WORDS and complementing it with the assistance and strategies provided by the private tutor may have allowed the LEA to make the minimal progress in the early years. But, by the time the parties met for the transition IEP meeting, it should have been obvious that reliance upon the JUST WORDS methodology to address the Student's dyslexia related deficiencies was inappropriate. Every expert for both parties agreed the gap between the Student's abilities and ██████ peers was widening. The Student was entering middle school with a second grade reading level.

Did the LEA offer an appropriate education for the 2019-2020 school year?

As stated above, Dr. ██████'s recommendations were accepted in full and incorporated in the 2019-2020 proposed IEP.

The Parents object to the proposed 2019 IEP because though it offered significantly more time outside of the general education setting than the proposed 2018 IEP, it was clear from all the testimony of the LEA staff that none of those services were reasonably calculated based on the Student's needs, but were what the middle school had available to offer. Parents argued the LEA proffered IEP was using a “cookie cutter” program.

The proposed 2019 IEP fits Dr. [REDACTED]'s prescription, intensive interventions that would include small groups or one-to-one instruction; evidence based strategies that would be implemented by special educators; and that there would be opportunities for repetition of instruction. The evidence shows the LEA offered an evidence-based intervention described in the proffered literature as “intensive”, known as LANGUAGE LIVE. LANGUAGE LIVE is a hybrid of LANGUAGE! and was created by Louisa Moats, a renowned expert in dyslexia in the classroom. (12/12 Tr. 236-237) The difference between the two methodologies appear to be that LANGUAGE LIVE is more modern and makes more usage of the computer.

It may well be that the LEA's offer to use LANGUAGE LIVE as the methodology to address the Student's difficulties is simply what the school had available to offer, but LANGUAGE LIVE methodologies are research based and reasonably calculated to address the Student's needs. The LEA has offered FAPE in their proposed 2019 IEP.

Benefit received from the private school

The Parents want me to consider the progress the Student has made at the [REDACTED] School in determining whether the LEA has FAPE. The evidence is clear that the Student has made very good progress at the [REDACTED] School.

The LEA has argued that for the purposes of determining whether the LEA has offered FAPE, the benefit that the student may have received in the private school program is irrelevant. It is well established that if an LEA's proposed IEP is reasonably calculated to enable a child to make progress appropriate in light of their circumstances, then it has met its obligation under IDEA, even if parents believe that a private program could offer greater benefits. *M.M.*, 303 F.3d at 526-27; *Lewis v. Loudoun County Sch. Bd.*, 808 F.Supp. 523, 527-28 (E.D. Va. 1992)

In *A.B.*, 354 F.3d at 326-27, the parents maintained that the proposed IEP did not offer FAPE because [REDACTED] was not achieving consistent with [REDACTED] potential in the public school setting –and in contrast, allegedly was “thriving” at the private school. The Fourth Circuit rejected this claim, stating:

[T]he issue is not whether the [private] School is better, or eventually appropriate, but whether the [school district] has offered an appropriate program for the child... IDEA's FAPE standards are far more modest than to require that a child excel or thrive. The requirement is satisfied when the state provides the disabled child with “personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction”.

For the foregoing reason, that fact the Student had made greater strides at █████ School than at the LEA school is irrelevant in determining whether the proposed IEP at the middle school was appropriate.

Least restrictive environment

The LEA has argued that the Student's placement must be in the least restrictive environment and that the programs at █████ (the LEA middle school) are clearly much less restrictive than is the █████ School program. In the proposed and rejected IEPs, the Student would have been involved in classes in middle school with both special education peers as well as general education peers, giving opportunities to interact with nondisabled students. In addition to team taught classes, the Student's time in the general education setting would include participation in middle school free time, physical education, lunch, assemblies and field trips.

The Parents argue that private placement does not have to be in a lessor restrictive environment, apparently agreeing that the least restrictive environment is in the public school. The Parents' argument is when the LEA fails to offer FAPE the restrictiveness of the private placement cannot be measured against the restrictiveness of the public school option. *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 837 (2d Cir. 2014).

With respect to the 2019 proposed IEP, the LEA has offered FAPE and their proposal is in the least restrictive environment.

Failure to pursue administrative remedies

The LEA argues that parents who fail to timely utilize administrative avenues prior to placing their child in private school are barred from obtaining retroactive tuition reimbursement. *Ian H. v. Fairfax County Sch Bd.*, No. 97-168-A, slip. op. At*1-2 (E.D. Va 1997). In *Ian H*, for example, the parent of a learning disabled student sought reimbursement for tuition costs at a private residential school. (Slip. op. At *1). In May, 1994, an eligibility committee had determined that the student no longer met the criteria for eligibility as "Learning Disabled". *Id.* That September, the parent unilaterally placed the child in private school. Over a year later, she requested a due process hearing. (ID. At *2). Affirming the Hearing Officer's decision that the claim was barred by the parent's inaction, U.S. District Judge Albert V. Bryan, Jr. stated:

[T]he plaintiff's failure to pursue her administrative remedies promptly denied defendants any opportunity to address the objections which she now makes before private school tuition costs had been incurred. Plaintiff is therefore estopped from challenging the May 1994 eligibility decision and seeking reimbursement of such tuition costs.

The Parents argue that since they have two years in which to request a due process hearing, parents are not required to file for a due process hearing upon disagreeing with an IEP decision. The parents claim they were, therefore, faced with a choice: go along with the IEP to the detriment of the child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement. The parents cite the case of *School Committee of Burlington v. Department of Education*, 471 U.S. 359, 370 (1985).

I agree the Parents can wait two years to initiate a due process hearing, but it's simply not accurate to state that there are only two choices of action when they disagree with a school's proposed IEP, either accept it or unilaterally enroll a child in private school. The third choice is request a due process hearing. The law is clear that, if they want to obtain reimbursement for private school tuition after unilateral placement, they must have the issue addressed by a due process hearing officer first.

Private tutoring

Throughout the Student's 5th and 6th grades, the LEA was assisted in educating the Student by a well qualified private academic therapist, hired at the Parents' expense, who worked with the rookie special education teacher. The special education teacher was given two day training in the intervention known as JUST WORDS. (12/12 Tr. 79) This special education teacher was not diligently monitored with her use of the JUST WORDS methodology. (12/12 Tr. 81-83) The JUST WORDS program was supposed to be completed in 1 ½ years. This special education teacher spent 1 ½ years and only got halfway through the program. (12/12 Tr. 86) During ■■■ 5th and 6th years in elementary school, the Student met with ■■■ private academic therapist one-to-one three times a week before school. ■■■ special education teacher described the private therapist as complimentary, targeting the same skills. (12/12 Tr. 36-37) Without the help of this private academic therapist, I doubt the Student would have made the progress ■■■ did. For equitable reasons, since the LEA benefited by having this tutor perform work they should have been doing, the LEA should reimburse the Parents for this cost.

Final Decision and Order

1. The Parents are barred by the Statute of Limitations for claims occurring prior to October 4, 2017.
2. The Parents are precluded from asserting claims as to the 2017-2018 school year under agreed IEPs, or portions of IEPs with which they did not disagree.
3. The Parents are not barred from asserting claims due to their failure to timely consent to further evaluation.
4. The Student was denied FAPE, specifically an appropriate education, in the proposed 2018-2019 IEP and for the period October 4, 2017 to the time they unilaterally withdrew the Student from the LEA middle school.
5. The LEA offered the Student FAPE for the 2019-2020 school year.
6. The [REDACTED] School is not the least restrictive environment.
7. Though the Parents are not entitled to reimbursement for the tuition they paid to the [REDACTED] School because of the binding case law cited above, the Parents should be reimbursed the cost of private tutoring. That amount is \$15,297.50. The Parents are entitled to reimbursement for the neuropsychological evaluation in the amount of \$3,150.00.

This decision will be final and binding unless either party appeals in federal district court within 90 days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.

Richard M. Alvey, Hearing Officer

Dated: _____

SERVICE

By signature above, I certify a true copy was mailed, postage prepaid on _____ to:

Ashley VanCleaf
Counsel for the Parents/Child
Law Office of Brian K. Gruber, PC
6110 Executive Blvd., #220
Rockville, Md. 20850

John Cafferky and Emily K. Haslebacher
Counsel for the LEA
4020 University Dr. #300
Fairfax, VA 22030

Hearing Officer's Orders and Outcome of the Hearing:

1. The Parents are barred by the statute of limitations for claims occurring prior to October 4, 2017.
2. The Parents are precluded from asserting claims as to the 2017-2018 school year under agreed IEP, or portions of IEPs with which they did not disagree.
3. The Parents are not barred from asserting claims due to their failure to timely consent to further evaluation.
4. The Student was denied FAPE, specifically an appropriate education, in the proposed 2018-2019 IEP and for the period October 4, 2017 to the time they unilaterally withdrew the Student from the LEA middle school.
5. The LEA offered the Student FAPE for the 2019-2020 school year.
6. The [REDACTED] is not the least restrictive environment.
7. Though the Parents are not entitled to reimbursement for the tuition they paid to the [REDACTED] School because of binding case law, the Parents should be reimbursed the cost of private tutoring. That amount is \$15,297.50. The Parents are entitled to reimbursement for the neuropsychological evaluation in the amount of \$3,150.00.

This certifies I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer and the SEA within 45 calendar days.

Richard M. Alvey

Printed Name of Hearing Officer

Signature