Judson W. Tolman
[redacted]
Hearing Officer

BEFORE THE STATE IDAHO DEPARTMENT OF EDUCATION
(ADMINISTRATIVE HEARING)

[redacted] and [redacted]. as legal guardians and parents of [redacted], a minor, Petitioner, vs. MONTICELLO MONTESSORI CHARTER SCHOOL, District No. 474, Respondent.	SDE Nos. H-21-02-08b **MEMORANDUM DECISION**

INTRODUCTION

[redacted] and [redacted] (collectively "Petitioner"), parents of the [redacted] ("Student"), submitted a Due Process Complaint ("Complaint") to the Idaho State Department of Education on February 8, 2021. Petitioner's Complaint alleges that Monticello Montessori Charter School ("Respondent" or "MMCS") failed to provide Student with educational benefits afforded to students with disabilities under the Individuals with Disabilities Education Act ("IDEA"). Respondent submitted an Answer to the Complaint on February 22, 2021, denying Petitioner's claims.

A due process hearing was held on May 18 – 19, 2021. Witnesses testifying at the due process hearing included:

- [redacted] Petitioner;

- [redacted], Psychologist;
- [redacted], Special Education Teacher at Monticello Montessori Charter School;
- [redacted], Advocate, Mountain West Supportive Services;
- [redacted], Principal/Superintendent at Monticello Montessori Charter School;
- [redacted], Teacher at Monticello Montessori Charter School; and
- [redacted], Teacher at Monticello Montessori Charter School;

By way of stipulation between Petitioner and Respondent, testimony from SDE hearing number H-21-02-08a, [redacted] and [redacted] as legal guardians and parents of [redacted], a minor, v. Monticello Montessori Charter School, was admitted as evidence in this hearing. The testimony from SDE H-21-02-08a admitted into evidence in this hearing includes:

- [redacted] Licensed Master Social Worker, entire testimony from SDE H-21-02-08a. Added as Exhibit 315 to this hearing;
- [redacted], from the transcript of record in SDE H-21-02-08a page 194 line 24 through page 199 line 11. Added as Exhibit 317 to this hearing;
- [redacted] from the transcript of record in SDE H-21-02-08a page 247 line 25 through page 253 line 12. Added as Exhibit 316 to this hearing.

Both Petitioner and Respondent presented documents at the due process hearing that were admitted into evidence. The following exhibits were admitted into evidence:

Plaintiff's Exhibits: 300, 301, 302, 303, 304, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316 and 317;

Respondent's Exhibits: 404, 414, 421, 422, 423, 427, 443, 444, 454, 457, 459, 460, 461 and 470.

By way of stipulation between Petitioner and Respondent, exhibits from SDE H-21-02-08a, [redacted] and [redacted] as legal guardians and parents of [redacted] a minor, v. Monticello Montessori Charter School, were admitted into evidence in this hearing. The exhibits from SDE H-21-02-08a admitted into evidence in this hearing include:

Exhibits: 100, 101, 102, 103, 104, 105, 111, 112, 113, 114, 115, 118 and 119.

Following the due process hearing both Parties submitted written closing arguments.

ISSUES

In the Complaint Petitioner asserts two claims against Respondent:

1. Respondent denied Student a Free and Appropriate Public Education ("FAPE") by failing to evaluate Student for, and provide Student with, an Individualized Education Program ("IEP") as required by the IDEA.

2. Respondent violated the IDEA by causing an involuntary change in placement for Student.

RELIEF SOUGHT BY PETITIONER

The relief sought by Petitioner, as stated in the Complaint, is as follows:

- "Compensatory education by way of paying [Student's] new school for the evaluations, services, and placements [Student] receives at [the] new school.
- Ordering MMCS to create, modify, and implement special education policies; conduct broad-scale staff trainings; or to restructure or bring into compliance its special education programs.

- Ordering that the Hearing Officer's findings be appropriate redacted and delivered to the Idaho Public Charter School Commission for consideration of whether continuation of MMCS's charter is advisable, or should be subject to other sanctions.
- [Petitioner's] attorney's fees and costs." Complaint, p.2.

BURDEN OF PROOF

"The burden of proof in an administration hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). Commenting on Schaffer, the Ninth Circuit stated: "[T]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims, … [a]bsent some reason to believe that Congress intended otherwise, … we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief." *Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811, 820 (9th Cir. 2007).

Applying *Schaffer*, and the Ninth Circuit opinion in *Van Duyn*, Petitioner bears the burden of proof on both issues for determination in this matter because Petitioner is the party challenging the IEP and the only party seeking relief.

FINDING OF FACTS

1. Student is currently [redacted] years old. Student started attending school in [redacted] within the Idaho Falls School District. Transcript (TR") 54:25-55:1; 100:7-22.
2. While attending [redacted] in the Idaho Falls School District, Petitioner requested an IEP for the Student. Petitioner's request was denied and Student was not placed on an IEP. TR 100:1-15; Ex 404.

3. Student started attending MMCS in February 2020 at which time Student was in the [redacted] grade. TR 100-101.

4. Student was not on an IEP when Student transferred to MMCS. Student was not on an IEP while attending MMCS. TR 100:1-6; Ex 404.

5. On or about March 16, 2020, the Idaho Governor issued a "soft closure" of all public schools in the state of Idaho. For the remainder of the 2019-2020 school year, Student did not attend MMCS in-person or remotely. TR 103:9-25; Ex 303.

6. MMCS resumed in-person attendance at the beginning of the 2020-2021 school year. The first day of the 2020-2021 school year was on August 26, 2020. TR 105:7-9.

7. On August 24, 2020, Petitioner sent an email to MMCS requesting that Student be placed on an IEP. Ex. 100.

8. Shortly after beginning the 2020-2021 school year, MMCS assessed Student using a universal assessment tool identified as the STAR Diagnostic Report. TR 300:3-301:18. Results from this standardized assessment indicated that Student "Needs Improvement" in academic areas of mathematics, reading, writing, speaking and listening, and language usage. This universal assessment indicated that Student "Needs Improvement" in several social and personal development areas. Ex 303.

9. Following the STAR Diagnostic Report assessment Student was assessed individually. TR 300:3-302:11. The individual assessment indicated that Student was performing below grade level in math. TR 301:25-302:11.

10. Student received Title I program assistance where Student attended small group sessions with other students and received instruction in math and language arts. TR 302:12-23; 320:16-321:21; Ex 304.

11. Under Title I program services, each school day Student attended a thirty-minute group session for math and another thirty-minute group session for language arts. TR 315:22-316:16.

12. At the beginning of the 2020-2021 school year, MMCS determined that it would not evaluate Student for an IEP until after the first six to eight weeks of school. During this six- to eight-week period, which MMCS calls a "normalization period", MMCS would observe Student in order to identify Student's academic/educational needs. TR 252:5-254:20; 295:4-296:6; Ex 427.

13. During the "normalization period" MMCS used interventions under a Response To Interventions program and Title I program services to assist Student in the general education classroom. 253:25-254:20.

14. At the beginning of the 2020-2021 school year, Special Education Teacher, [redacted], began collecting paperwork related to Student. TR 161:9-171:23. Information collected about Student included:

    a) Caregiver Input Form, dated and received by MMCS on October 18, 2020, Ex. 308;

    b) General Education Input form from [redacted], General Education Teacher, dated September 24, 2020, Ex. 420;

    c) General Education Input form from [redacted], Title I Teacher Math, dated October 29, 2020, Ex. 421;

    d) General Education Input form from [redacted], Title I Assistant, dated November 1, 2020, Ex.421, p.4-6;

    e) General Education Teacher Input form from [redacted], K Teacher, dated October 31, 2020, Ex. 422;

    f) Comprehensive Diagnostic Assessment from Children Supportive Services, Inc., dated May 19, 2020, and received by MMCS on October 28, 2020, Ex. 461,

g) Evergreen Counseling Psychotherapy Treatment Plan, dated August 16, 2019 and received by MMCS on August 26, 2020, Ex 459;

h) Occupational Therapy Initial Evaluation, dated October 29, 2020, and received by MMCS on November 9, 2020, Ex. 462;

i) Psychiatric Visit Notes, [redacted], dated January 23, 2020, Ex 460.

15. The Comprehensive Diagnostic Assessment from Children Supportive Services, Inc, the Evergreen Counseling Psychotherapy Treatment Plan, Occupational Therapy Initial Evaluation and the Psychiatric Visit Notes mentioned in paragraph 14 above, mention possibly diagnosis for Student which include conduct disorder, Attention Deficit/ Hyperactivity Disorder (ADHD), and Oppositional Defiant Disorder (ODD).

16. At the end of the "normalization period" (i.e., six to eight weeks after the beginning of school), MMCS would begin looking at information collected about Student and whether Student needed special education. TR 257:20-258:2; 348:17-349:24.

17. On November 2, 2020, MMCS received a copy of Petitioner's consent for the release of information from Student's primary care physician [redacted] however, the consent was rejected by Petitioner on December, 15, 2020, before MMCS received any information from [redacted] TR 181:15-183:9.

18. Special Education Teacher, [redacted], and General Education Teacher, [redacted] had a discussion on or about November 9, 2020, wherein [redacted] asked [redacted] if she believed Student had a learning disability. [redacted] responded "Well, I haven't determined yet. I need to get more information." [redacted] wanted to continue interventions until January 2021 for the purpose of determining whether Student could have a learning disability. TR 187:11-189:1.

19. Student's general education teacher, [redacted] provided the following observations of Student as of September 24, 2020 (Ex 307):

a) Student struggles in "language, communicating & comprehending, reading and math (counting & numeral recognition)."

b) Student exhibits concerning behaviors, namely, "[Student] gives up easily and says [redacted] doesn't like school . . . [Student] also "zones out" and stares off or falls asleep."

c) "[Student] struggles to follow along with an assignment or a discussion. [Student] requires multiple promptings. Simple things such as a thought about lunch or a pet or a memory of an event can distract [Student]. These thoughts seem to come out of nowhere."

20. On October 20, 2020, MMCS sent Petitioners a Written Notice concerning the Petitioners' request for an IEP. That Written Notice provides, in relevant part:

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"After consideration of the parent's request, to refer [Student] for a special education evaluation, the team determined that the intervention strategies will be utilized in the areas of concern as part of the Intervention Team process".

***

"Intervention data will be collected in areas of concern as part of the Intervention Team process. Additional evaluation measures are not warranted at the present time."

***

"The Intervention Team's goal is to provide support and strategies to be utilized as part of the RTI process. The team will continue to monitor [Student's] progress with interventions so the evaluation process can be revisited in the event [the Student] starts to struggle."

***

"The option of conducting an evaluation was considered and rejected due to the need for additional information to determine present levels of performance and specific needs. In order to comply with the LRE requirements, state rule requires response to intervention data prior to eligibility determination."

***

"The team reviewed all records available, including parent and teacher input, transfer record from Idaho Falls School District 91, medical records, progress report cards, state

and standardized assessment data, and observations. Based upon a review of this data, the team will initiate interventions to determine progress in areas of concern."

***

"The team has reviewed and declined your request to initiate a special education evaluation at this time. Interventions in areas of concern will be implemented and documentation of [Student's] response to those interventions will be reviewed at a later date." Ex. 302.

21. MMCS sent a second Written Notice to Petitioner on December 10, 2020. This second written notice is identical to the October 20th Written Notice except for the date and addition of the statement, "The school district appreciates your interest in your child's progress and we share in your interest." Ex. 311.

22. While at MMCS Student made small improvements academically and Student made improvement in choosing to participate in and work on things that were harder for him. TR 328:17-329:9; 344:15-346:2.

23. Student's Progress Report, dated November 16, 2020, indicates that Student needs improvement in math, reading, writing, speaking and listening, language usage, and in some social and personal development skills. Ex 303.

24. On or about October 20, 2020, [redacted] contacted Child Protective Services about a concern relating to Student. [redacted] contacted Child Protective Services again on December 15, 2020, regarding Student. Ex 317 at 194:24 – 195:23; 197:18-20.

25. On December 10, 2020, MMCS Superintendent, [redacted] contacted Child Protective Services about concerns [redacted] had for Student. Ex 316 at 248:15-24. On or about December 14, 2020, [redacted] contacted Child Protective Services to supplement [redacted] previous report made on December 10, 2020. Ibid.

26. A representative from Child Protective Services met with Petitioners on December 16, 2020. Child Protective Services determined that the reports were erroneous. Ex 315 at 335:2-16.

27. Petitioner sent an email to MMCS on December 16, 2020, withdrawing Student from MMCS. Ex 454.

28. For the 2020 – 2021 school year, Student attended school at MMCS from August 26, 2020 until December 16, 2020. TR 104:21-105:9.

29. Student began attending [redacted] Elementary School in January 2021.

30. On April 16, 2021, Student was placed on an IEP. Ex 312. Under this IEP Student is provided IEP Services of Language Therapy from a Speech Language Pathologist for 25 minutes per week. Ex. 312, p.4.

31. At [redacted] Student is receiving Title I program services for math and reading with a 30-minute math session and a 30-minute reading session each school day. TR 84:6-85:11.

CONCLUSIONS OF LAW

I. MMCS Violated Initial Evaluation Requirements of the IDEA.

Under the IDEA state and local agencies provide special education to children with disabilities. 20 U.S.C. § 1412(a); *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993). To this end, schools are charged with the responsibility of identifying and assessing all children who are suspected of having disabilities and are in need of special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111.

The purpose of the IDEA is, among other things, to provide children with disabilities a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further employment and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities,

educational service agencies. and Federal agencies to provide for the education of all children with disabilities. 20 U.S.C. § 1400(d)(1)(A)-(C).

"School districts may deny a child a free appropriate public education by violating either the substantive or procedural requirements of the IDEA. *M.M. v. Lafayette Sch. Dist.*, 767 F3d 842, 852 (9th Cir. 2014). A school district denies a child a free and appropriate public education by violating the IDEA's substantive requirements when it offers a child an IEP that is not reasonably calculated to enable the child to receive educational benefits. *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 432-33 (9th Cir. 2010). The school district may also, however, deny the child a free appropriate public education by failing to comply with the IDEA's extensive and carefully drafted procedures. See *Doug C. Hawaii Dep't of Educ.*, 720 F3d 1038, 1043 (9th Cir. 2013)." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118 (9th Cir. 2016).

One of the procedural requirements of the IDEA requires that "if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act." Id. At 1119.

The IDEA and Ninth Circuit precedent establish that "if a school district is on notice that a child may have a particular disorder, it must assess that child for that disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment. That notice may come in the form of expressed parental concerns about a child's symptoms, as in *Pasatiempo* [infra], of expressed opinions by informed professionals, as in *Hellgate* [infra], or even by other less formal indicators, such as the child's behavior in or out of the classroom. A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel the suspicion through informal

observation. Rather, such notice automatically triggers mandatory statutory procedures: the school district must conduct an assessment for all areas of the suspected disability using the comprehensive and reliable methods that the IDEA requires." *Paso Robles* at 1121-22. See also, *Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996)(holding that "Once either the school district or the parents suspect disability . . . a test must be performed so that parents can receive notification of, and have the opportunity to contest, conclusions regarding their children."); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008)(holding that the requirement to assess may be triggered by the informed suspicions of outside experts).

Although any parent having reason to suspect that their child may have a disability may request an initial evaluation, the school district may deny the request. If the school denies the request, it must provide written notice to the parents explaining that it refuses to conduct an initial evaluation and provide an explanation as to why it does not suspect the child has a disability and what records or evaluations it used as the basis for its decision. 34 C.F.R. § 300.503(a) & (b). A parent may then challenge the decision by requesting a due process hearing under 34 C.F.R. § 300.507.

Petitioner's request for an IEP for Student made on August, 24, 2020, inferred a request for an initial evaluation. The written notices provided by MMCS to Petitioner on October 20th and December 10th, wherein MMCS denied Petitioner's request for an initial evaluation, were appropriate written notices under 34 C.F.R. § 300.503(a) & (b). Petitioner's Complaint challenges MMCS's denial of Petitioner's request for an initial evaluation of Student.

The Evergreen Counseling Psychotherapy Treatment Plan provided by Petitioner to MMCS identified possible diagnosis for Student of ODD and ADHD, and put MMCS on notice as of August 26, 2020, that Student may have a diagnosis for receiving special education. The

other documents identified in Finding of Fact 14(f) – (i) above, provided additional notice to MMCS of Student's possible diagnosis. The universal and individual assessments of Student showed that Student needed improvement in several academic and social development areas. These same areas needing improvement were again identified two months later in Student's November Progress Report. In September, 2020, Student's general education teacher, [redacted] identified several areas of concern for Student affecting Student's performance in the general education classroom. The information from Petitioner together with Student's assessments, Student's progress report and [redacted] input gave MMCS sufficient notice that Student displayed symptoms of a covered disability and may have a diagnosis for receiving special education. This informed suspicion of Student's diagnosis gave rise to MMCS' obligation to provide an initial evaluation of Student pursuant to the IDEA and the above-cited Ninth Circuit precedent.

MMCS argues that an initial evaluation of Student was not necessary at the time of the written notice because MMCS was providing interventions under a Response To Intervention ("RTI") program. According to the October and December written notices, MMCS rejected Petitioner's request for an initial evaluation and decided instead to "intervention strategies". However, the use of interventions in the general education classroom do not excuse or negate MMCS' obligations to provide an initial evaluation when there is a reasonable basis for suspecting a disability. The U.S. Department of Education, Office of Special Education, is authorized to implement the IDEA and has provided guidance applicable to the current case: "The regulations at 34 CFR §300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child

suspected of having a disability under 34 CFR §300.8. . . . It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework." Memorandum to State Directors of Sp. Ed., 56 IDELR 50 (OSEP 1/21/11).

Consistent with the guidance from Office of Special Education and the Ninth Circuit case law cited above. MMCS' obligation to provide an initial evaluation was triggered when it had notice of Student's suspected disability and such obligation cannot be avoided or delayed by the provision of interventions as part of an RTI program.

II. MMCS' Procedural Violation Denied Student of FAPE.

The Ninth Circuit Court of Appeals has held that a procedural violation of the IDEA that does not result in the loss of an educational opportunity does not constitute a denial of FAPE. See *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir. 2007). Further, in *Burnett v. San Mateo Foster City Sch. Dist.*, 739 Fed.Appx. 870 (9th Cir. 2018). the Ninth Circuit Court affirmed the district court conclusion that procedural violations did not result in a denial of FAPE where it was never established that the student was eligible for special education.

A student is eligible for special education if the student is a "child with a disability" and as a result needs special education that cannot be provided with modification of the regular school program. 20 U.S.C. § 1414(b); 34 C.F.R. § 300.8(a)(1).

In this case, evidence presented at the due process hearing indicating that Student needs special education. The evidence presented shows that while attending MMCS 1) Student's assessments and progress report showed that Student needed improvement in several academic and social development areas; 2) Student's general education teacher identified many areas where

Student struggles that could benefit from special education, including, "language, communicating & comprehending, reading and math"; and 3) Student made small progress with the assistance of interventions and Title I program services. These findings support the conclusion that Student would benefit from special education; therefore, Student may be eligible for special education and MMCS' procedural violation resulted in a denial of FAPE.

III. Petitioner's Claim Regarding Placement Is Without Merit.

Petitioner argues that MMCS' reporting to Child Protective Services caused an involuntary change in Student's placement under the IDEA. Petitioner correctly states that "a change in placement under the IDEA is preceded by appropriate consideration by the IEP team, often in consultation with the help of other professionals, and is always preceded by appropriate notices that would have allowed [Petitioner] to contest a decision made." Complaint, p. 2. Petitioner's claim presumes that Student is eligible for special education under the IDEA. Placement under the IDEA is for the provision of special education in the least restrictive environment. See 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.315-316. In the present case Student is not eligible for special education therefore the placement rules of the IDEA do not apply to Student.

IV. Compensatory Education is Awarded for MMCS' Procedural Violation.

As noted previously, Petitioner makes four requests for relief. Each of Petitioner's requests for relief are addressed below.

First Request for Relief: "Compensatory education by way of paying [Student's] new school for the evaluations, services, and placements [Student] receives at [the] new school."

"Compensatory education is not a contractual remedy, but an equitable remedy. . . " *Parents of Student W. v. Puyallup School District*, No. 3, 31 F.3d 1489 (9th Cir. 1994).

Compensatory education "aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of IDEA," by providing the educational services children should have received in the first instance. *G.L. v. Ligonier Valley Sch. Dist. Authority*, 802 F.3d 601 (3rd Cir. 2015). Student's IEP at [redacted] Elementary provides Student with 25 minutes of language therapy per week. The services provided under this IEP reflect services Student should have received at MMCS but for MMCS' procedural violation of the IDEA. Student attended MMCS for sixteen weeks. Student is entitled to compensatory education of 400 minutes of Language Therapy from a Speech Language Pathologist. The 400 minutes is the equivalent of 25 minutes per week for sixteen weeks.

Second Request for Relief: "Ordering MMCS to create, modify, and implement special education policies; conduct broad-scale staff trainings; or to restructure or bring into compliance its special education programs."

Petitioner failed to meet its burden as to this second request for relief. No evidence was presented about or relating to policies, training or restricting of educational programs. No relief is awarded under this request for relief.

Third Request for Relief: "Ordering that the Hearing Officer's findings be appropriate redacted and delivered to the Idaho Public Charter School Commission for consideration of whether continuation of MMCS's charter is advisable, or should be subject to other sanctions."

Petitioner's third request for relief does not relate to FAPE or the IDEA and is outside of the scope of a due process hearing. No relief is awarded under this request for relief.

Fourth Request for Relief: "[Petitioner's] attorney's fees and costs."

Neither the IDEA nor state law provides authority for a hearing officer to award attorney's fees. No relief is granted under this fourth request for relief.

CONCLUSION

For The reasons set forth above, MMCS committed a procedural violation of the IDEA by failing to provide an initial evaluation of Student. Said violation resulted in a denial of FAPE. As compensatory education for MMCS' procedural violation, Petitioner is awarded 400 minutes of Language Therapy. Said 400 minutes of Language Therapy shall be provided by a licensed Speech Language Pathologist hired by Respondent. Language Therapy sessions shall be at least weekly and at least 30 minutes per session. If Petitioner and the Speech Language Pathologist agree, the frequency and length of said sessions may be increased. At Petitioner's discretion, Language Therapy sessions shall be conducted at Student's home or school unless another location is otherwise agreed to be the Parties. No other relief is granted. Petitioner's claim relating to placement is without merit.

So ORDERED this 23rd day of June, 2021.

/s/ - Judson W. Tolman
Hearing Officer

NOTICE

Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under 20 U.S.C. §1415(i)(1). The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (See 20 U.S.C. §1415(1)(2)). 20 U.S.C. §1415(i)(2)(a) provides that: Time limitation: The party bringing the action shall have 90 days from the date of this decision to file a civil action, **or if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by State law. (Emphasis Added)**. IDAPA 08.02.03.109.05(g) provides that "An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision."

CERTIFICATE OF SERVICE

I DO HEREBY certify that on the 23rd day of June, 2021, I caused to be served on the following a true and correct copy of the foregoing document by the method indicated below:

Aaron K. Bergman Bearnson & Caldwell 399 North Main Street, Suite 270 Logan, UT 84321 abergman@bearnsonlaw.com	☒ ☐ ☐ ☒	U.S. Mail, postage prepaid Overnight Mail Facsimile Email
Chris H. Hansen Anderson, Julian & Hull, LLP P.O. Box 7426 Boise, ID 83707-7426 pangburn@q.com	☒ ☐ ☐ ☒	U.S. Mail, postage prepaid Overnight Mail Facsimile Email

By: /s/ - Judson W. Tolman
Hearing Officer