

STATE OF RHODE ISLAND
PROVIDENCE, SC

DEPARTMENT OF EDUCATION

IN RE: MM vs. BRISTOL/WARREN
REGIONAL SCHOOL DISTRICT

LL 20-09

ADMINISTRATIVE DECISION

/s/ Maureen A. Hobson
Impartial Due Process Hearing Officer

Dated: September 8, 2021-09-05

HELD: The district shall pay for services provided by Christine Almeida from June 16, 2020 to the present date. The parents are entitled to monetary reimbursement for the amount that they have advanced Almeida for services rendered. In addition, the district is indebted to the student for compensatory education in the amount of 1215 hours representing 2.25 hours per day per day for the periods from Sept 2018-June 2019, Sept 2019-June 2020 and Sept 2020-June 2021. Compensatory education shall be reduced by the number of hours that the student received Direct Instruction with Almeida from Sept 2020 through the present. ESY services by Almeida in 2020 are deemed adequate and require no compensatory education adjustment. The district shall convene an IEP team meeting immediately following entry of this Order to develop the 2021-2022 IEP, said IEP to include BA and transition services.

LEXICON

Bristol/Warren School District

Student:

Parents:

Attorney for the Student:

Attorney for the District:

Hearing Officer:

Witnesses:

Mother:

Direct Instruction facilitator

Bristol/Warren Special Edc Coordinator:

Behavior Analyst:

Educator and Behavior Analyst:

Bristol/Warren Dir of Student Support Services:

M [REDACTED] M [REDACTED]
R [REDACTED] and D [REDACTED] M [REDACTED]
John R. Mahoney
Gregory P. Piccirilli
Maureen A. Hobson

D [REDACTED] M [REDACTED]
Christine Almeida
Lisa Martin
Karen Nault
Robert Ross
Edward Clarke

TRAVEL

M is a 17 year old student who has been enrolled in the Bristol/Warren Regional School District (hereinafter, B/W) since entering kindergarten. M has been a special education student from the inception of her school years. Her disabilities are autism and severe hearing loss in her right ear.

The due process complaint in this matter was filed on August 27, 2020. Since that time, the parties have engaged in extensive discussions and/or meetings, both with, and without, the presence of this Hearing Officer in attempts to resolve their differences. Having failed that, hearings commenced on June 17, 2021.

Prior to starting the hearing, plaintiff's attorney filed an Amended Complaint without objection by the district's counsel. Both parties have specifically waived the 45 day period within which this Administrative Decision was due.

The parents' complaint alleges that M has been denied a free appropriate public education (hereinafter, FAPE) since entering the 9th grade in September 2018. The complaint alleges that upon entering high school, M was not provided with Direct Instruction (hereinafter, DI)* as she had been for the previous 8 grades, that M's special educator was not trained in DI and the required books for DI had not been purchased. The complaint further states that during the majority of the 2019-2020 school year, the district did not provide M with a special educator and did not inform the parents of that fact. The parents also complain that the goals and objectives set for M in her 2020-2021 Individualized Education Plan (hereinafter, IEP) are below those set forth in her 2019-2020 IEP, and, as such, are evidence of regression. Finally, the parents maintain that

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- “Direct Instruction” is a method of teaching that employs a trained teacher, specific instruction materials and subject content that is individualized for students who receive their core education in 1-1 settings or in small group settings with similarly situated students.

M's Extended School Year services (hereinafter, ESY) were not implemented in the manner "outlined" by the RI Commissioner of Education.

The Amended Complaint specifically requests the following: Compensatory education totaling 1215 (down from 4725 hours set forth in the original complaint), payment in full for the services delivered to M by Christine Almeida from June 2020 to the present, a revised IEP that containing DI in reading, writing and math, that the district provide a special educator who is trained to deliver DI, and that the district be ordered to contract for 2 hours weekly of behavioral consulting services with "Perspectives".

The district filed an Answer denying all claims and requesting a finding that the district did provide M with FAPE.

Hearings commenced on June 17, 2021 and concluded on June 24, 2021. The parties submitted 55 documents into evidence. Following the conclusion of the hearings, the parties engaged in further settlement talks without success. The parties thereafter submitted memoranda and stipulated a due date of September 16, 2021 for Decision.

FACTS AND EVIDENCE

The mother testified to her child's relevant history. M is presently 17 years old and has been enrolled in the B/W public school district since kindergarten. M was adopted by her parents from China when she was approximately 9 ½ months old. She has been diagnosed with autism and severe hearing loss in her right ear. M has had an IEP since commencing kindergarten. Prior to that, she received early intervention services (hereinafter, EI) from the age of 3 through Perspectives. Perspectives provided behavioral analysis services 5 days per week in the child's home. The services were paid by Medicaid in part and with the parents' health care insurance in part.

At some point during her kindergarten year, the people at Perspectives suggested that the parents contact Dr. Robert Ross at Beacon Services.* Dr. Ross specializes in autism and other disabling behaviors. Dr. Ross suggested that M embark upon a method of instruction labeled DI. Dr. Ross met with the special education staff at B/W, and B/W subsequently contracted with Beacon Services to provide consultative services commencing with M's 1st grade education. From 1st through 8th grade, M was receiving DI in the areas of reading, writing and math. The DI was delivered by B/W special educators who were trained in DI methods by Beacon Services staff. Up until the end of 8th grade, the parents had no complaint with M's education.

The mother was asked to peruse Exhibit 1, M's 8th grade IEP. She agreed with the conclusions contained in the IEP, ie, that M could "read a short story accurately based on program benchmarks with minimal assistance", "is able to write legibly", and that she needed "a visual reminder for punctuation and capitalization. The mother also agreed with the IEP finding that M reads at a higher level than she comprehends (tr 19-20). M could read aloud with fluency, but could not comprehend what she read. The mother confirmed that the 8th grade IEP also accurately described M's math skills. The mother stated that M was tested using DI materials. She would have to master one chapter or modular in order to move onto the next one. She said the DI books "traveled" with M from grade to grade, and previously mastered chapters were frequently used repetitively to reinforce what had already been taught in advance of acquiring new skills. It appears that DI works like a set of building blocks with the student often referring back to completed material while moving slowly ahead with new material.

At the conclusion of the 8th grade, the IEP team met and drafted the IEP for 9th grade for the period from May 2018-2019. (Exh 2) At that time, the parents met M's 9th grade special education teacher, Mrs. Carlson. The mother testified that she and her husband

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- Dr. Ross has a Phd in Education and a Master's degree in Applied Behavioral Analysis (hereinafter, ABA). He is board certified internationally and licensed in the Commonwealth of Massachusetts.

were advised that Carlson was not trained in DI, but that Beacon Services had been retained to train her so she would be proficient by the beginning of the 2018-2019 school year in September. The parents next met Carlson at an open house at the high school in mid September. It was then that they learned that Carlson had not been trained in DI, and that she had no DI books at her disposal for educating M. Subsequently, the parents requested a meeting with the IEP team, and they met on October 23, 2018. (See meeting notes at the end of Exh 2). The parents were seeking information relative to their daughter's DI and whether it was back in place. At that meeting, the parents learned that Carlson had received some training, that Beacon Services had done some assessment testing and that DI books were "on order". (tr 35-36). The parents were concerned that it was deep into October and the services identified in M's IEP had not been implemented. Lisa Martin, the B/W representative and parents' liaison with the district was present at the meeting. Martin was aware that pursuant to the IEP, M was to be getting a combined total of 2.25 hours per day, 5 days per week of DI in reading, writing and math. Following the meeting, but on the same day, the parents were notified that the DI reading and writing booklets had been delivered, and that the math book was to arrive shortly. For the balance of M's 9th grade year, the parents' were under the impression that M's DI was continuing in accordance with the IEP dated 5/18/18. (Exh 2)

In May 2019, the parents again met with the IEP team to formulate M's IEP for 10th grade, the 2019-2020 school year. (Exh 3) Carlson was present with the other team members. No IEP was presented at that meeting, but the specifics of it were discussed, including continuation of DI. The parents were presented with the IEP approximately 1 week later. The language in the IEP for the 2019-2020 school year had changed. The IEP indicated on page 4 that M would be provided with "specialized instruction", a change in terminology from the DI that had been in her IEPs for grades 1-9. However, on page 16 of the same IEP, it is noted that M requires direct instruction style teaching.

At the time the IEP was presented, the parents did not appreciate that the IEP language might signal a different modality than the DI that M had been receiving. The parents believed that DI was continuing for the 2019-2020 school year.

In October of 2019, the parents met with Carlson about M's program. They were assured that DI was continuing, although Carlson stated that she was unhappy with the Math component. She thought M should be concentrating more on the money aspects of math and not on the logic of it. Following that meeting, the parents became aware that Carlson was frequently absent from the classroom. In January or February of 2020, they were told that Carlson went out on family leave, and that she was being replaced with a substitute teacher until a permanent hire could be found. The teacher who replaced Carlson for the remainder of the 2019-2020 school year was not a special educator, a fact that was not discovered by the parents until close to the end of the school year.

In mid March of 2020, the schools closed down due to the COVID pandemic and B/W students began remote learning. M's remote education consisted of a couple of hours a days, 5 days per week in small group remote sessions. The mother sat in on some of M's remote lessons. In approximately April, she contacted the liaison, Martin about the lack of DI. The mother felt that M's curriculum seemed entirely wrong, some things were too difficult for her, while others things were not challenging at all. Discussions continued into May, at which point Martin admitted that M had not been getting DI since when at least Carlson left, and that there were no books available to teach it. Martin said that she would go to the school, which was in lock down, and find the DI books for M. Some time later, Martin did find some DI books from the previous year school when M was in 9th grade. She dropped the books off at M's home. The parents noted that the books were not filled in and appeared to have been scarcely used by M in Carlson's 9th grade class.

In the late Spring 2020, the parents learned that Dr. Ross and Beacon Services were no longer under contract as consultants to the district. Therefore, the parents hired Ross as their paid advocate and he attended IEP meetings with them. Martin was at the meetings as the chairperson or facilitator. Neither Carlson, nor any other person identified as a

special educator was present. According to the mother, both Ross and Martin were eager to reinstitute M's DI. However, it was unclear exactly where M was situated educationally due to her lack of DI for such a lengthy period of time. Martin asked Ross for a referral to someone who could assist B/W to get the DI back on track. Ross recommended Christine Almeida and B/W contacted her to provide testing and tutoring services. However, the parents learned that in mid June, only a month after being hired, Almeida was told to cease and desist working with M. Following the termination of services by the district, the parents independently hired Almeida to provide M with ESY services 5 days per week in the summer of 2020. In the Fall of 2020, Almeida reduced her hours, but she has continued to provide DI services in reading comprehension and writing 2 ½ hours per week through the present time.

Almeida bills her services at \$175/hour. However, she entered into an agreement with the parents to accept \$50/hour pending the outcome of this hearing. Whether the parents win or lose their quest for re-imbursement from the district, they nevertheless owe Almeida the balance of her fee.

The mother also testified that beginning late in the 2019-2020 school year and continuing through today, her daughter has been exhibiting bad behaviors that had not been observed since elementary school. These behaviors include, swearing, picking at her skin, swallowing pencils or erasers in an effort to choke herself, other self-injurious behaviors and instigating other children in her class to engage in disrupting behaviors. As a result of M's conduct, and at the parents' urging, the district hired a BA to provide a FBA in the winter of 2020. The parents received a copy of the FBA report only days before the current hearing (Exh 21).

On cross examination, the mother admitted that she was not pleased with M's remote learning protocols. Because the mother was home from work due to the pandemic, she was able to audit M's class work. She noted that there was not enough emphasis on reading comprehension, M's biggest shortcoming. Additionally, the teacher was trying to introduce fractions and time telling, neither of which M understood. According to the mom, M was getting generalized instruction in a group of 3-4 students rather than

individualized instruction attendant to M's specific needs. It was only upon making these observations and making inquiry with the district that the parents learned that the teacher, Mrs. Schaerf was not a special educator.

On cross-examination, the mother acknowledged that the district was trying to initiate career development plans for M. (Exh 17,18). These plans attempted to address areas of interest to M that could result in finding some work area in which she could be gainfully employed after she finished high school. The first career development plan (Exh 17) drafted in May 2018, provided an introductory discussion. The second plan was drafted in May 2020. Despite the existence of those plans, the mother denied that she had any conversations with school personnel regarding a "transition academy" where students report to school for a portion of their day and to a work environment for the remainder of the day. The mother stated that the parents feel that M should receive 4 years of academics in high school before transitioning into the workforce.

District counsel questioned the mother about the school's contract with Almeida. The mother responded that, as a result of the May 2020 IEP meetings, she believed that Almeida was being hired by the district to make an assessment of M's present levels of performance, provide ESY services and to train school personnel in DI for M's junior year in high school. After the district reneged on the arrangement, the parents hired Almeida themselves. Counsel for the district also pointed out that from Almeida's records, it appears that M's performance levels are the same as they were the prior year. The mother responded that Almeida attributed that fact to regression caused by the lengthy interruption in M's DI.

The mother reiterated that neither she nor her husband noticed when M's IEP language was changed from DI to specialized instruction. Further, Carlson had assured them that M was doing well, getting her DI as previously, and that Carlson had been trained to deliver it. The parents only became aware that DI was not being utilized when remote learning began in March 2020 and mom sat in on the virtual classes.

The next witness was Christine Almeida. She is a certified special education teacher and a board certified behavioral analyst (hereinafter, BCBA). She has been working with M to make academic and/or behavior assessments from which to develop and put in place adaptations that better enable a student to access learning. Almeida also described DI. It is a scripted curriculum whereby the teacher uses a script and the student answers with a script that is provided to him/her within the DI teaching materials. She explained that 90% of the lesson should be something that the student already knows and 10% should be new material.

Almeida performed an assessment of M's skills in May 2020. DI reading programs begin with "language for learning", progress to "language for thinking" and finally "reading mastery". Almeida noted that M was reading words at the "mastery" level, which is a grade 1 curriculum, but she could not understand what she read. Almeida wanted to bring M back to the "learning" and "thinking" stages, so Almeida could address comprehension issues.

According to Almeida, in May 2020, Martin asked her to assess M, provide as much tutoring as possible over the summer and to assist in training appropriate school personnel to take over her role in the Fall. She said she believes that Martin was "shocked" at where M assessed in May of 2020. Almeida asked Martin to obtain M's DI workbooks from the school. Martin did provide the "mastery" level books, but not the "learning" and "thinking" books. The witness said she was left with the impression from Martin that those books remained in the middle school and did not transfer to the high school with M.

From May 18, 2020 through June 16, 2020, Almeida and her associate, Sara Levine provided M with 24 hours of DI in the language arts and math areas. Levine provided DI in math, and Almeida provided language arts. She said that in mid June she received a cease and desist order to terminate services to M. She does not know why. At that time, she stopped being paid by the district and became a direct contractor to the parents.

Almeida further testified. According to the B/W IEP that was drafted in May 2020, M could comprehend reading at a 4th or 5th grade level and could orally read at a much higher level (tr 196). However, based upon Almeida's assessment, M was comprehending reading at a kindergarten level and orally reading at an entry 1st grade level (tr 197). Further, the B/W IEP indicates that M was writing in paragraph form, whereas the assessment showed her to be working on simple sentences only, and she required picture or prompts to assist with her writing. She said that the DI curriculum is designed to go over lessons one or two times until the learner get it. In M's case, it is 10, 11 or 12 times before she gets it. M also has tremendous difficulty with concepts such as "maybe" (she only answers yes or no), and "some" (she always answers with a number, e.g., "Do I have some or all of my fingers raised?" She will answer with the exact number of fingers raised).

During the summer of 2020, the parents paid Almeida to tutor M 5 days per week for a total of 7 ½ hours per week. During the 2021 school year, she continued instructing M 2 sessions per week for a total of 2 ½ hours per week. During that time, she has focused primarily on comprehension because reading without comprehension is meaningless.

According to Almeida, M's skills have regressed over the 2020-2021 school year because she is not getting enough DI hours. When she was receiving 7 ½ DI per week in ESY, she was maintaining. Over the past year, with only 2 ½ hours of 1-1 DI per week, she has regressed.

Almeida noted that M currently has a behavioral therapist, Karen Nault who should be collaborating with the classroom teacher to curb M's disrupting behaviors in order to maximize her learning opportunities. Almeida stated that in 1-1 situations, M's behavior is manageable, but in a class with other children, her behaviors are difficult to contain. If she is unable curb them, her chances of finding employment opportunities will be adversely affected.

Prior to testifying, Almeida read the psychiatric report obtained by the district in May 2018. It reflects "extremely low" intellect (63-70 IQ). She said she generally agrees with the report. Although she did not have access to the report when she performed her assessment in May 2020, she had assumed retardation. That assumption caused her to

question why the district had M's goals set at 4th and 5th grade levels.

On cross-examination, Almeida said that all of her interaction with M has been 1-1 via zoom. She has not had an in-person meeting, nor has she observed M in the classroom with other students, despite the fact that M has been in a class with other students since the Fall of 2020.

The next witness was Lisa Martin. She is a certified special educator for elementary and secondary education. She has been employed by the B/W school district for 26 years, the last 8-10 of which as the coordinator of services for secondary school special education, grades 6-12. Martin chaired the May 2018 IEP meeting that addressed M's 9th grade program. The IEP services page called for DI with respect to reading, writing and math. The parents were in agreement with the IEP. However, M did not get DI when the school year started in the Fall of 2018. On October 23, 2018 Martin attended a meeting that had been requested by the parents who felt that M's transition to 9th grade was not going well. At that meeting, it became clear that M's DI books did not follow her to high school, and she was not getting DI. The teacher, Carlson claimed that she was providing DI, but there were no DI books in evidence at the school. Martin was aware that M had been receiving DI in grades K-8, and that it was to continue in high school. Because there were no DI books from 8th grade, there was no baseline from which to begin DI in M's 9th grade. The special education director (Leslie Anderson, at that time) commissioned Beacon Services to perform an assessment as to where M was with her level of instruction. Martin said that once the level was obtained, DI was to begin again.

In September 2019, M's assigned special education teacher was again Ms. Carlson. However, she was out of work periodically in the Fall of 2019, and she went out on total leave in mid-February 2020 and did not return. A substitute, who was not a special educator, replaced Carlson. The substitute was also not trained in DI methodology.

Reportedly, the substitute was providing DI without the training or the DI instructional materials. In truth, no DI was provided from at least mid February 2020 through May.

At the IEP meeting conducted on May 14, 2020, Martin's testimony indicates that she was under the impression that DI was to continue in the 2020-2021 school year.

According to her, removing DI from M's IEP was never discussed.

On May 12, 2020, the parents asked for M's periodic mastery test results in English, math and reading (Exh 39). Martin did not know if any reports existed. She asked the substitute teacher and the aide for their reports, but there was nothing in writing.

Therefore, the parents were not given anything. Martin learned then that M had not been provided with any DI from at least mid February 2020 (when Carlson left) through May. She also was told that Carlson had been providing consultative services to the substitute teacher concerning M and other class members. Reportedly, they met virtually, but she could ascertain no written reports of what they discussed. Further, Carlson did not attend the May 14, 2020 IEP team meeting, despite the fact that the attendance sheet indicates she was present.

Martin drafted the 2020-2021 IEP with information that she received orally from Carlson, the substitute teacher and the aide. Martin testified that at the May 14, 2020 IEP meeting, there was a discussion about obtaining an outside assessment of M's present levels and holding off revision of the IEP until the Fall. Martin said she left the IEP meeting that day with the impression that Almeida would be hired to conduct an assessment of present functioning, provide M with DI tutoring over the summer, and perhaps train school personnel in DI methods in the Fall. Since Carlson was retiring, the thought was that the new teacher(s) might need training. However, on or about July 1, 2020, Martin learned that Almeida's services had been terminated. She did not make that decision and does not know why the services were terminated.

At the start of the 2020-2021 school year, M was still accessing her education remotely. Martin said she believes that M returned to in person learning in late October

or early November 2020. M's new teacher was a special educator, Mrs. Sanchez. According to Martin, DI methodology was implemented for reading, writing and math, though Sanchez was not necessarily using the DI books. Sanchez was apparently instructing M via DI methods of repetition with visual aids and cuing, but without using the DI books.

At the conclusion of Martin's direct examination by plaintiff's counsel, Martin's examination by the B/W counsel was delayed a few days in order to accommodate the schedules of plaintiff's expert witnesses. She returned to resume her testimony 3 days later. When she returned, Martin tried to explain M's DI in greater detail. She said that it encompassed reading, writing and math and that it was sometimes 1-1 with the teacher, sometimes in small educationally compatible groups, and sometimes 1-1 with a teacher's aide. Martin testified that for the 2020-2021 school year, M's IEP called for DI, that there was a teacher qualified to provide it, and that the DI books were available. Pursuant to M's IEP, she was to get .75 hours/day each in reading, writing and math. Sometime in the Fall, the parents complained that the amount of DI indicated in the IEP was insufficient for M to make progress. They wanted more DI for M. In response to their request, the district discontinued all of M's DI (tr 607).

M will be entering 12th grade in September 2021. Typically, with students such as M, the district advances a "transition plan" to help the student determine life and workplace goals after completion of high school. A student's senior year usually involves a number of pre-vocational experiences with adult agencies where the student's skills and interest can be showcased, as well as keeping up with their functional academics. Martin stated that she never got to transition discussions with M's parents because the IEP meetings, especially the one in the Fall of 2020, were too combative. That particular meeting ended abruptly with the parents and their outside experts demanding that Almeida be compensated by the district to provide DI to M for a total of 6 or 6 ½ hours per day. One email from the parent to the special education director requests 4725 hours of compensatory education and, in addition, 5 hours per day of DI with Almeida, or some

other qualified person, as an alternative to M's present mixed curriculum (Exh 26). Martin did not think that would be appropriate for M given that it would deprive her of the interaction with peers that she gains through attendance in her elective classes, such as art, music and Spanish. Additionally, 1-1 instruction all day would negate any transition opportunities and would not be the least restrictive placement.* Further, the parents expressed that they wanted their own behavior analyst, Karen Nault, to work directly with M in the school setting at the district's expense, whereas the district was recommending that Nault train the public school staff to work with M.

Under further examination, Martin back pedaled from her original testimony 3 days earlier that it was her understanding that Almeida would be providing ESY services at district expense in the summer of 2020. On her second day of testimony, Martin said she was not sure about the provision of ESY services by Almeida, despite being shown an email dated May 19, 2020 from the director of special education to Dr. Ross (Almeida's contact) accepting the contract for DI services to be provided by Almeida.

The next witness was Karen Nault. She has a master's degree in Applied Behavior Analysis (ABA) and is board certified and licensed as a behavior analyst (BCBA). She does not have a degree in special education, but she has worked with autistic children for 35 years or more. ABA is a scientifically based examination of learning methodologies that are effective for teaching children and adults with autism (tr 363). The hallmark of ABA is working on negative behaviors that interfere with learning and teaching the appropriate skills to replace those behaviors (tr 364). With autistics, the BCBA concentrates on skills that are lacking e.g. social and communication skills, as well as skills necessary to becoming successful independent adults. She has been working with M since 2019, approximately 2 years. Nault observed that M's repetitive behaviors and the behaviors that she exhibits when being introduced to something new were interfering

*IDEA is a federally mandated program that requires placement of students in the least restrictive environment from which they can gain appropriate education. There is a continuum of settings beginning with the least restrictive mainstream classrooms, and progressing to resource classes with mainstreaming, self-contained classes with several children, 1-1 instruction in the public school, out of district placement, and, lastly, residential out of district placement.

with her learning. So, Nault developed a “toolbox” of skills that assist M to access learning. At this point, with ABA, M is able to access her learning independently with consistent expectations. She is much more “available” to attend to difficult lessons. Nault has been providing ABA services to M in a home-based program. However, she opined that it is essential that ABA be utilized across all environs in order to achieve the proper results. Nault is employed by Perspectives, and provides services to M through that company. Prior to Nault’s involvement with M, ABA services were being delivered to M by other clinicians from Perspectives. M has had continual ABA services from an early age, perhaps 3 years old. Those services have been paid in part by Medicaid and in part by the parents’ health insurance carrier.

Nault said that she feels strongly that M should have a behavioral component in her IEP. However, to this point, the district has not provided ABA or a BCBA support person for M in school. M’s home-based ABA plan encompassed 19 hours of direct care per week. The 19 hours was inclusive of 2 staff people working directly with M, Nault’s hours supervising the staff and hours spent cultivating the parents’ use of ABA in their interactions with M. Previous to March 2020, contact with M was in person. Since then, it has been remotely via zoom. The witness testified that M has done “phenomenally” accessing ABA via zoom (tr 374). Recently, M’s ABA hours may have been reduced to 17 per week in order to accommodate Almeida’s 2 ½ hours per week of DI. Nault deems M’s DI to be “critical” for her (tr 377). When Perspectives staff provides ABA services to M, they incorporate her DI core of reading, writing and math, concentrating especially on her comprehension skills. They engage her in journal writing that improves her sentencings, paragraphing and comprehension. They also work on emailing, as that is important for functional communication. In delivering their services over the past 2 years, Perspectives staff has worked closely with Almeida.

Nault also stated that she had requested of the district that she be permitted to make in person observations of M in class many times. Those requests went unanswered until Martin became involved, at which point an observation date was set for mid March 2020. Unfortunately, COVID closed the schools to in person learning, and the observation of M in class never came to fruition. Observations across environments help staff to

understand whether interfering behaviors are occurring in other settings.

Nault said M is learning to work with money through the intervention of the Perspectives staff.

Nault has attended 4 IEP or IEP related meetings concerning M. In particular, she was at the meeting of May 14, 2020 wherein it was disclosed that although M had reportedly been receiving DI throughout the school year, there were no DI books available from which the team could ascertain M's present levels of performance. Nault very definitely remembered that the director of special education was present at the meeting, that he understood that ball had been dropped, and that an assessment would need to be performed before embarking on future DI for M. She recalled that the district agreed to hire Almeida to conduct an assessment and to train school staff in DI (tr 391).

The witness also reviewed M's IEPs. The IEP for May 2020-2021 indicated that as of May 2020, M could comprehend at a 4th or 5th grade level and could orally read at a much higher level. Nault vehemently disagreed (tr 392). Those in attendance at the meeting asked Martin where that conclusion had derived, and Martin responded that it was her "guesstimate" from her observations of M at school. Martin and/or other school personnel had prepared an IEP in advance of the meeting. Nault found this frustrating since she and Ross had been included in the meeting in order to provide input into the IEP. At that meeting, Nault specifically recalled that all parties present were in agreement that DI should continue. She also felt that a behavioral component needed to be added to the IEP. The IEP did not contain any ABA component, despite the fact that the parents and the team members noted interfering behaviors that stemmed in part from virtual learning.

Nault did address the functional behavioral assessment (hereinafter, FBA) that was commissioned by the district and finally completed on April 30, 2020. Nault was critical of the FBA in that it only referred to observations of M and interviews with school staff in the school environment, whereas it was important to consult with M's primary caregivers at home. Nault noted that according to the report, there were numerous observations detailing the fact that M's interfering behaviors occur when the teacher walks away from her, and they cease when the teacher returns her full attention to M.

That action on the part of the teacher merely serves to support M's interfering behaviors. She gains attention when she acts out. M needs other strategies to help her cope. Nault endorsed the findings contained in the Gershon report (Exh 16). Both advocate continuing Perspectives ABA services at home and adding them to the IEP for services at school. Nault said she felt that school personnel could be trained in ABA strategies and that she, or another BCBA could observe and tweak the program approximately 2 hours per week.

Plaintiff's counsel called Nault's attention to the term "specialized instruction" as a replacement for DI in M's IEP. The witness said she was unfamiliar with that term and did not know its definition.

On cross-examination, the witness reiterated that, in her opinion, ABA services are critical for M. She could not say why they were not included in M's previous IEPs that were drawn, at least in part, by Ross when he was a service contractor with the B/W school district. She stated that both DI and an ABA are crucial to learners who are on the autism spectrum.

Counsel for the district also questioned the witness about progress reports for M that indicate degrees of proficiency in certain skills, counting coins, e.g. Nault said she could not speak to the efficacy of those reports without knowing what "modifications" were being employed by staff and if there was true "independent" success.

The next witness was Robert Ross, Phd. Dr. Ross possesses a doctorate in education and a master's degree in ABA. He is the chief clinician at Beacon ABA Services where he has worked for 27 years. He has extensive experience in educating students who are on the autism spectrum. He testified that Beacon first became involved with M when she was in kindergarten and Beacon was part of the B/W team. In that context, Ross' associate at Beacon, Wendy Kaza provided services to M via a contract with the school department. At some point, Beacon's contract with the school department was discontinued, and Ross no longer serves in any capacity as an agent of the B/W school district. In conjunction with Kaza, Ross initiated DI for M. DI was employed by the school district throughout the years in which Ross was a consultant. (It seems to this

hearing officer, though not in evidence, that Beacon's contract may have ended sometime around M's commencing high school). When the parents became aware that Ross was no longer working for the school district, they hired him as their paid consultant in May 2020.

Ross explained DI in a fashion similar to the characterization of previous witnesses. It is a methodology that uses scripted lessons that are repetitive. DI was first developed for use with typical learners. That was before it was applied to autistics. Ross said that DI has been proven to be instrumental in educating students with autism. DI is modified for students on the autism spectrum by providing more frequent practice, increasing the size and/or number of visual aids, and utilizing reinforcements.

From M's kindergarten through her 8th grade year, Beacon provided DI and DI consultation (training B/W staff) for M. He stated that DI was M's primary means of accessing education in her elementary and middle school years. He commented that M's middle school special educator, Jen Harrigan, was a very competent DI implementer (tr 492).

Ross was asked to examine M's 8th and 9th grade IEPs (Exh 1, 2). He generally agreed with the content of the IEPs regarding M's baseline performance. Her reading aloud and decoding skills were quite good. The IEPs indicate that M could not comprehend what she was reading. Ross did not necessarily agree. He said she is lacking the ability to extemporaneously articulate what the story is about. However, if given 3 answers about the content of a story, one of which is clearly right and the other two clearly wrong, she is able to choose the right answer. He noted that there is a difference between the inability to demonstrate comprehension and a lack of comprehension (tr 491). He said that M was able to write legibly and construct several complete sentences about a known topic. With prompting, she is also able to self correct punctuation and capitalization mistakes. Further, she was proficient in adding numbers up to 20. Ross was then shown the educational evaluation report dated March 7, 2018 (Exh 11). He offered that the results contained in the report are generally consistent with the aforementioned IEPs.

Ross attended the October 23, 2018 meeting at the invitation of the school district. At that meeting, he and others learned that M was not getting DI because her DI materials

did not accompany her from her 8th grade class to high school, and there was no trained staff at the high school to deliver DI. Apparently, Harrigan, M's middle school teacher was to have trained the high school staff, but she left the employ of the district prior to doing so. It was his understanding at the October meeting that Martin was going to attempt to get the DI instruction books, and that DI would commence thereafter. Ross testified that from kindergarten through October of grade 9, M was taught in 1-1 and small group settings. The more challenging work required more intense 1-1 instruction.

After the aforementioned October meeting, Ross had no further involvement with M until he was contacted by the parents in the Spring of 2020. He attended the May 2020 IEP meeting. He noticed then that the term DI had been deleted from M's IEP and supplanted with "small group guided practice and specialized instruction in specific reading skills, concepts and strategies" (tr 515, Exh 4).^{*} He was alarmed by this and called it to the parents' attention, that the change in terminology would enable the removal of DI. However, Martin assured them that DI would be continuing, that she would clarify competent staff and would get the DI books. Since no one had confidence in the knowledge of what had transpired with M's instruction in the 2018-2019 and 2019-2020 school years, nor her baseline performance, the IEP team determined that an assessment of M's skills was necessary. Ross recommended Almeida, and, to his recollection, Martin and the director of special education agreed to hire her to perform an assessment, provide ESY during the summer of 2020, and possibly to train multiple district staff in order to avoid loss of DI in the future (such as had happened when Harrigan left the district).

Ross offered his opinion from documents in evidence. Based on reviewing exhibits 1-4 and 14, Ross deduced that from the end of 8th grade through the end of 10th grade, M's ability to demonstrate her skills in reading, writing and math diminished due to the fact that she was not being provided with DI. This is evidenced by her poor performance and interfering behaviors. (tr 532-533). In his opinion, M is entitled to compensatory education to make up for services that did not occur.

^{*}Ross was not involved with the formation of M's 10th grade IEP (exh 3), so he was unaware that DI had been removed the previous year.

Ross had an opportunity to review the Summit FBA (Exh 21). He said that the report indicates an alarming rate of interfering behaviors, including self-injury, approximately every 3 minutes across all teachers. In previous years, M had a function-based intervention plan in place to curb these behaviors. He believes that these threatening, dangerous and self-injurious behaviors have emerged because of the removal of a function-based treatment plan and the district's move to traditional educational practices (tr 537). Ross agrees that there needs to be a BCBA included in M's IEP. The job of the BCBA would be to provide training and support to those who are providing instruction to M.

On cross-examination, the district's counsel questioned Ross as to the efficacy of DI. After much discussion in which the witness supported DI and counsel diminished it, Ross did then point out that it was the B/W school district that originally brought Beacon Services into the district to specifically train staff to provide DI to M. No evidence was presented to address the efficacy of DI in high school, as opposed to grammar school.

Regarding Ross' testimony that M's reading, writing and math skills diminished in 9th and 10th grade, counsel for the district advanced the theory that the school department moved away from the DI model because it was not working. M was not progressing. The witness disagreed with that contention. In point of fact, Ross testified that DI has greatly enhanced M's socialization and communication skills. Before engaging in DI, M did not talk or interact with others. Now, she does that exceedingly well.

The witness did agree that M needs more emphasis on life functioning and career building skills at this stage of her education.

Finally, Ross said he had no explanation for why DI was dropped in November 2018. But, he did recall that at the October 2018 meeting, he and the parents were assured by the former special education director, Leslie Anderson, that DI services would continue in place*.

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- Anderson subsequently left the district and Clarke was hired to replace her.

The last witness was Edward Clarke, the director of student support services for the B/W school district (formerly titled director of special education). Clarke has a master's degree in special education and advanced study in school administration. He commenced employment with B/W in February 2020, just before in person learning was shut down by Covid.* Clarke's first encounter with M was in April 2020 when Martin advised him that M's special educator (Carlson) had left her employment, and that no one had been hired to replace her. He was present at the IEP meeting of May 21, 2020. The parents were concerned about the lack of a special educator and the loss of DI over the 2019-2020 school year. They were seeking compensatory education. He thought that the amount of compensatory education the parents were seeking was excessive. Clarke said that he agreed to provide M with tutoring through the end of the school year in June 2020, and he agreed to hire Almeida to conduct an assessment. He said that he did not discuss ESY with the parents, and that he told them he would discuss compensatory education at a later date.

Clarke testified that Mrs. Sanchez, a special educator, was brought up from the middle school to the high school during the summer of 2020 in order to provide ESY services per M's IEP. In addition, the district agreed to contract with Evergrow to perform an FBA for M. Contrary to the testimony of Nault and Ross, Clarke stated that he is familiar with FBAs that do not encompass contact with the student's BCBA or the parents.

Clarke stated that he agrees that M is owed compensatory education. However, he said discussions about compensatory education ceased when the parents refused to reduce their expectation of the number of hours to be provided.

Clarke testified that Sanchez, in addition to Almeida, provided ESY services to M in the summer of 2020. He further said that commencing with the 2020 ESY, and continuing throughout the 2020-2021 school year, Sanchez did not provide DI, nor did she use the DI materials.

*In the course of this hearing, the Hearing Officer learned that Clarke was scheduled to leave his employment with B/W. He did, in fact, leave in July 2021.

Regarding Almeida, Clarke testified that she was only hired to perform an assessment and provide DI tutoring services for M through the end of the 2019-2020 school year in June. He could not articulate what DI services were to be provided, ie. subject matter or number of hours. He said he just wanted to get DI back in place as quickly as possible.*

In June 2020, Clarke emailed Ross (Exh 54) asking him for an invoice to cover Almeida's services to date and advising him that no further services were authorized. When questioned why he discontinued DI services for M at that point, Clarke responded that he had been instructed to do so by the district's attorney, MaryAnn Carroll. He admitted that he had agreed to DI services before speaking with attorney Carroll, who then told him to deny authorization.

Clarke testified that from at least 2020, M has not received any DI services from the district. He is not aware of what transpired in 2019, but there is testimony on the record that there were no DI books in the school during that timeframe, and, subsequently, when a couple of DI books were found in 2020, they had not been filled out. He stated that although Sanchez was trained in DI prior to coming on staff at the high school, she did not engage in DI with M because it was not specified in her IEP.

DISCUSSION

The parents filed their original complaint on August 27, 2020. The 2 year look back period imposed by 20 U.S.C. section 1415 (f) (3) (3) is from that date. The IEP that was drafted in May 2018 was for services to be provided in the summer ESY session for 2018 and for the 2018-2019 school year that commenced in September 2018. The parents' complaint does not seek redress or compensatory education for the summer of 2018. The heart of the complaint goes to the failure of B/W to provide services from when M commenced high school in September of 2018 to the present date. Therefore, the complaint is not beyond the 2 year statute of limitations. Further,

* One has to wonder why Clarke was so eager to provide DI in May-June 2020 when M's IEP allegedly did not specify DI, and Sanchez discontinued it approximately 1 month later in ESY.

this Hearing Officer is convinced that the parents did not know until October 2018 that DI had been dropped from their child's curriculum. Therefore, the logic set forth in the case of MS. S v Regional School Unit 72, 916 F3d 41 (1st Cir. 2019) applies, "A parent or agency shall request an impartial due process hearing within 2 years of the date the parent knew or should have known about the alleged action that forms the basis of the complaint". Clearly, the parents were expecting DI in the fall of 2018 as evidenced by the meeting in October wherein Ross was present advocating for it, the classroom teacher was being trained for it, and the books were on order. MS. S v. Regional School Unit 72, Id serves to reaffirm the longstanding logic set forth in Board of Education of Hendrick Hudson Central School District v. Rowley, 486 US 176 (1972), the seminal case with respect to the education of children with disabilities.

The district's counsel in this matter was given little to work with in support of his client's position(s) as elaborated below.

The district failed to provide a special educator for M from at least mid-March 2020 through the end of the school year. It is understandable that the district cannot control the retirement and "leave" status of its teachers. This Hearing Officer can appreciate that there was difficulty retaining a new special educator, especially during the COVID pandemic. However, that fact does not relieve the district of its responsibility to provide special education services. In fact, compensatory education was designed to remedy those types of issues brought on and exacerbated by unusual circumstances.

Regarding the denial of FAPE, the parents presented several experts in support of the efficacy of DI for students with autism, and M in particular. Meanwhile, the district presented no testimony or evidence to refute that testimony, save the introduction of one journal article that criticized the DI methodology (Exh. 51). The district did not provide any testimony from the teachers, Carlson and Sanchez, or from Anderson, the former director of special education who was at the October 2018 meeting. Even the witnesses put forth by the district failed to establish that, absent DI, FAPE was being provided. Martin, to her credit, tried mightily to re-institute DI

at several stages of the game. She enlisted the assistance of Clarke, made arrangements for service delivery with Almeida and tried to recover M's DI books that Carlson claimed to be using in the 9th grade. When some of the books were finally found, they were largely devoid of lessons that had been completed. Also, Clarke stated that he was "eager" to re-establish DI for M through Almeida's assessment, tutoring and training efforts until he was told by his attorneys to rescind authorization for Almeida's services.

The parents and their experts were adamant that M has suffered regression due to lack of DI services. The district offered no evidence to rebut that testimony. In fact, the assessment performed by Almeida placed M in the kindergarten to beginning first grade level, whereas earlier IEPs and progress reports, if they are to be believed, had M performing at 4th to 5th grade levels. That certainly indicates regression. Further, the witnesses testified that failure to provide DI services to M has also resulted in her exhibiting disruptive and dangerous behaviors that had not been seen since middle school. While these behaviors might be somewhat attributable to lack of peer socialization during COVID, the testimony is that the behaviors have continued since M returned to in-person school in the Fall of 2020.

District counsel argues that DI books were not specified in M's IEP, so failure to use the SRA series was not a violation of FAPE. However, the experts' testimony is uniform in its description of DI as requiring the use of prescribed scripted books for both the teacher and the student.

There is no evidence on the record that establishes when the school district became aware that Almeida was providing in-home DI services to M. However, in order to be compensable, the parents need only demonstrate that their actions were motivated by the district's failure to provide FAPE, that the services enlisted by the parent were appropriate to the education needs of their child and that the party(ies) providing the out of district services were qualified. This case is not akin to Rafferty v. Cranston Public School Committee, 315 F.3d 21(1st Cir. 2002) cited by district counsel since it does not involve removal of the child from in district placement and services.

The provision of DI services by Almeida, after they were dropped by the public school district, constitutes educational service that is reasonably calculated to enable M to make progress in light of her particular circumstances, and is thus authorized by Andrew F., supra. Andrew E. is a reaffirmation of the longstanding principles espoused in Rowley, supra.

Lastly, it is noted that the district attempted to insert transition goals into M's IEP. Those goals are fair, reasonable and necessary to M's IEP as dictated by law for students with handicapping conditions who have reached M's age and who are in public school placement.

ORDER

Based upon the foregoing, the Hearing Officer enters the following ORDER:

The district shall pay for services provided by Almeida to M from June 16, 2020 to the present date.

The parents shall be reimbursed for the monetary amount that they have advanced to Almeida.

The district shall provide compensatory education amounting to 1215 hours representing 2.25 hours per day for the periods from Sept 2018-June 2019, Sept 2019-June 2020 and Sept 2020-June 2021. The aforesaid compensatory education shall be reduced by the number of hours that the student received DI instruction with Almeida from Sept 2020-the present date.

ESY services provided by Almeida in 2020 are deemed adequate and require no compensatory education.

The district shall convene an IEP team immediately following entry of this Order to develop the 2021-2022 IEP, said IEP to include BA and transition services.

Entered this 8th day of September 2021

/s/ Maureen A. Hobson

Certification

A copy of the within was sent to counsel of record, the Bristol/Warren School District and to RIDE on the 8th day of September 2021

/s/ Maureen A. Hobson