



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS
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In the matter of:)	
)	
[NAME REDACTED], by her parents ¹)	DODEA Case No. E-20-002
)	
[NAMES REDACTED],)	
)	
Petitioners)	

Appearances

For Petitioners: Pro se.²
For Respondent: Kelly Folks, Esq., Defense Office of Hearings and Appeals
For Respondent: Nicole Smith, Esq., Defense Office of Hearings and Appeals

Summary

J is a student attending a Department of Defense Education Activity (DODEA) school at [REDACTED]. She is eligible to receive special education and related services required by the Individuals with Disabilities Act (IDEA)³ as implemented within the Department of Defense (DOD) by DOD Instruction (DODI) 1342.12, DOD Manual (DODM) 1342.12, and 32 CFR Part 57, which interprets IDEA within DOD and DOD schools.

Between March 2020 and February 2021, as ordered by the Secretary of Defense, [REDACTED] implemented Health Protection Condition Charlie (HPCON-C) and all schools were closed to in-person instruction as part of DoD COVID-19 mitigation efforts. As a result, J could only receive the services required by her Individualized Education

¹ The child's name has been redacted and the initial J substituted throughout this redacted version of the decision.

² Petitioners were assisted before and during the hearing by a parent advocate.

³ 20 U.S.C. §1400 et seq.

Plan (IEP) through remote learning using on-line platforms, such as the Google School application used by DODEA.

Petitioners filed a petition for due process claiming that DODEA (Respondent) failed to provide J a free appropriate public education (FAPE). In support of this allegation, Petitioners claimed that remote learning was insufficient to deliver all of the services called for in J's IEP; that DODEA should have pursued alternative placements for J; that DODEA committed unspecified procedural violations that prevented J from accessing a FAPE and interfered with her parents' ability to participate in the development and delivery of services through her IEP; and that J did not make reasonable progress through remote learning. Petitioners ask for relief in the form of compensatory education and related services for their child.

On April 19, 2021, I convened a hearing using a web-based video conferencing platform. The hearing continued through April 22, 2021. Petitioners, their parent advocate, and counsel for Respondents appeared as scheduled. Petitioners and their parent advocate testified. Additionally, they called nine witnesses, seven of whom also were listed as witnesses for DODEA. Respondents called one additional witness.

In addition to witness testimony, Petitioners presented 33 exhibits included in the record over objections as Petitioners' Exhibits (PX) A – EE, HH and II. (Tr. 1-19 – 1-51) I *sua sponte* excluded Petitioners' proffer of PX FF and GG. (Tr. 1-45 – 1-51) Respondent DODEA presented 48 exhibits, all of which I admitted over Petitioners' objections (Tr. 1-52 – 1-63) as Respondent's Exhibits (RX) 1 – 11.⁴ Additional documents, including but not limited to pleadings, notice of hearing, pre-hearing orders, and summaries of pre-hearing conferences conducted with the parties, are included as Hearing Officer Exhibits (HX) 1 – 13. I received a transcript of the hearing (Tr.)⁵ on May 14, 2021.

After reviewing all of the exhibits and testimony presented in this case, I conclude that Petitioners did not establish that DODEA committed any substantial procedural violations; or that DODEA failed to provide FAPE; or that J did not make reasonable progress as a result of remote learning. Petitioners' request for compensatory services is denied.

Background

This case began when J's parents filed a request for a due process hearing (Petition) on behalf of their child, J, with the Director of the Defense Office of Hearings

⁴ RX 1 – 11 each are subdivided into multiple exhibits. For example, RX 1 includes RX 1.a – 1.e, and so forth.

⁵ The hearing was conducted over four days. The transcript is comprised of four volumes, one for each day of hearing, totaling 899 pages. Citation to the transcript consists of the volume number and page. For example, Tr. 3-190 refers to page 190 of the transcript of the third day of the hearing.

and Appeals (DOHA).⁶ (HX 1) Petitioners initially submitted the petition to DODEA; however, it was not properly filed until it was received by the Defense Office and Appeals (DOHA) until November 9, 2020.⁷ The case was assigned to me on November 10, 2020. (HX 2) Respondents timely replied to the Petition (Answer) on November 19, 2020, and submitted documents supporting their responses. (HX 3)

The filing of the petition commenced a mandatory 30-day⁸ resolution period required by DODM 1342.12, Enclosure 6 at ¶ 7. That period ran until completion on December 22, 2020. The parties were not able to resolve this dispute during that period. (HX 5)

On December 2, 2020, as provided for by DODM 1342.12, Enclosure 6 at ¶ 4, Petitioners requested mediation to resolve their complaint. That mediation was completed on January 8, 2021 without any agreement reached. (HX 7; HX 9)

On December 16, 2020, as provided for in DODM 1342.12, Enclosure 6 at ¶ 10, Petitioners requested discovery. On December 23, 2020, I ordered discovery requests to be served on Respondent by January 8, 2021, with all responses and production of information to be completed no later than January 22, 2021. (HX 4) On January 15, 2021, Respondent also requested discovery. I subsequently extended the deadlines for requests and production to January 29, 2021. As discussed below, Petitioners did not complete their discovery efforts until late March 2021. (HX 5; HX 6)

On January 12, 2021, Petitioners requested that DODEA conduct a “full evaluation” of J according to the requirements set forth in DODM 1342.12, Enclosure 4 at ¶ 6. (PX T) The CSC met on January 27, 2021, to organize a schedule for the evaluation, which took place between February 3 and February 22, 2021, with a report of the results of that evaluation produced for CSC review on February 25, 2021. (PX U; PX W; RX 4.a; RX 4.b; HX 8; HX 9)⁹

As of February 9, 2021, due to complications involving completion of Petitioners’ depositions of CSC members, discovery had not yet been completed. At that time,

⁶ As required by DOD Manual (hereinafter DODM) 1342.12, Enclosure 6 at ¶ 5.i(3).

⁷ November 9, 2020 is the effective date of this petition for purposes of meeting deadlines for completion of the hearing and this decision as outlined in DODM 1342.12, Enclosure 6 at ¶ 5.f. See also HX 4.

⁸ Throughout DODM 1342.12, deadlines and other timeline parameters in these proceedings generally are calculated using business days instead of calendar days elapsed.

⁹ In pre-hearing discussions with the parties, it was apparent that Petitioners thought they could obtain an independent educational evaluation (IEE) at DODEA’s expense as contemplated by DODM 1342.12, Enclosure 4 at ¶¶ 19.a(5) and 19.c. However, Petitioners did not establish an adequate justification for a non-DODEA evaluation. Nonetheless, DODEA agreed to conduct a comprehensive evaluation equivalent to that which is performed for determining a child’s eligibility for special education services as contemplated by DODM 1342.12, Enclosure 4 at ¶ 6. (HX 9)

Petitioners suspended their deposition efforts as they attempted to secure legal counsel. During a pre-hearing conference on March 15, 2021, Petitioners indicated they still had not completed discovery while they continued to obtain legal counsel. They further indicated that if they did not obtain counsel by the end of March, they would move forward *pro se*. I advised the parties that I intended to convene the hearing using a web-based video conference platform on Monday, April 19. On March 23, 2021, I issued a pre-hearing order regarding exchange of exhibits to be proffered at hearing, as well as a list of each party's witnesses and a brief summary of the expected testimony of each witness. (HX 10; HX 11)

A Notice of Hearing was issued on March 30, 2021, setting this matter for hearing on April 19, 2021. (HX 12) As provided for by DODM 1342.12, Enclosure 6 at ¶ 11, Petitioners asked that the hearing be open to the public. Prior to the hearing, they waived their privacy rights and those of J. (HX 13)

Procedural Issues

The timeline specified for conducting this hearing by DODM 1342.12, Enclosure 6 at ¶¶ 5.j(2) and 5.j(3), was interrupted by the parties' requests for discovery and by Petitioners' request for a full evaluation of J. Between February 9 and March 23, 2021, Petitioners indicated they were trying to obtain legal counsel, thus further delaying completion of discovery and a possible start of the hearing. Additionally, because of COVID-19 restrictions on travel by DOD personnel to places under HPCON-C, DOHA personnel were not able to travel to [REDACTED] to conduct this hearing in person. COVID-19-related travel restrictions for DOHA personnel remained in place even after [REDACTED] changed its readiness status to HPCON-B in February 2021.

This hearing eventually was conducted remotely using the Defense Collaboration Service (DCS), a web-based video conferencing platform. However, DCS was not readily available in DOHA until March 2021. (HX 10) I conclude that all of the forgoing constitutes good cause for delay in convening the hearing requested by Petitioners, and, subsequently, in issuing this decision.

Finally, in Petitioners' request for due process, they asked for an expedited hearing to be held within 15 days of receipt of the petition. DODM 1342.12, Enclosure 4 at ¶ 12, and Enclosure 6 at ¶ 5.c, provide for expedited hearings only in cases involving manifestation determinations or a changes of placement for disciplinary reasons. On November 24, 2020, I advised Petitioners that this case does not meet any of the criteria for expedited hearing and decision. (HX 4)

ISSUES

Before the hearing, Petitioners did not offer or request any amendments to their complaint as provided for by DODM 1342.12, Enclosure 6 at ¶ 6(g). Respondents did not

file a Notice of Insufficiency in the time allotted by DODM 1342.12, Enclosure 6 at ¶ 6(e). Accordingly, having reviewed everything before me based on the original complaint and response, and as provided for by DODM Enclosure 6 at ¶ 8(b), I conclude that the pleadings in this case present the following issues for hearing:

- whether Respondents failed to provide a FAPE to J as required by DODM 1342.12 and by the Individuals with Disabilities Education Act (IDEA) between March 25 and November 4, 2020; and
- whether J should receive compensatory services for any hours of special education services outlined in her Individualized Education Program (IEP) that were not delivered as required by Respondents between March 25 and November 4, 2020.

FINDINGS OF FACT

After considering the record evidence as a whole, I make the following findings of fact:

J is a student at [REDACTED] School in the DODEA-Americas [REDACTED] school district. She is eligible for enrollment in DODEA schools by virtue of her father's status as an active-duty Army officer. She was born with Down syndrome. Before age 3, she received early intervention services (EIS) through a civilian school district near her father's previous assignment in [REDACTED]. J was evaluated as being developmentally delayed and her EIS plan provided services designed to address a broad range of social, intellectual, and physical development needs. At age 3, the civilian school began delivering special education and related services specified in an Individual Education Plan (IEP) developed with and agreed to by her parents on February 17, 2017. The last annual review and modification of J's civilian IEP occurred on January 25, 2019. J's parents agreed to the implementation of that IEP as well. (PX B)

J and her family moved to [REDACTED] in July 2019, and she was enrolled in kindergarten at [REDACTED] for the 2019 – 2020 school year (SY). After an [REDACTED] Case Study Committee (CSC) meeting on August 19, 2019, J's civilian school IEP was reviewed, modified, and adopted as J's initial DODEA IEP. Her parents agreed to the changes made in that IEP, and an annual review deadline was set for February 7, 2020.¹⁰ (PX C; RX 1.a; RX 3.a)

On January 23, 2020, the [REDACTED] CSC met to review J's IEP as required. All CSC members, including J's mother, approved the IEP and it was implemented the next day. (RX 1.b; RX 3.b)

¹⁰ That date also coincided with a required triennial review based on the implementation of J's first IEP.

On March 23, 2020, Health Protection Condition Bravo (HPCON-C) was imposed at [REDACTED] in response to the COVID-19 epidemic. As a result, all DODEA schools were closed to in-person classes. In place of in-person (also referred to as “brick-and-mortar”) classes, DODEA began delivering education and related services for both general education and special education students through on-line video conference and collaboration methods. For the balance of the 2019-2020 SY (March – June 2020) and through the first two quarters of the 2020-2021 school year (August 2020 – February 2021), [REDACTED] provided classes and services remotely. In-person classes resumed at the [REDACTED] schools on February 18, 2021.¹¹ The use of remote learning and video conferencing platforms also extended to required CSC meetings and other parent-teacher communications. Under HPCON-C, DODEA schools at [REDACTED] were not authorized to provide in-person education and related services for any student at any of the schools on base. They also were not allowed to provide services in any alternative setting, including at students’ homes. (RX 9.b; Tr. 2-132 – 2-135, 2-149, 2-198 – 2-204, 4-115 – 4-127)

[REDACTED] provided all parents of its students with detailed instructions and schedules for helping their children participate in remote learning. The information about remote learning requirements was derived from guidance issued by DODEA headquarters in March 2020. In recognition of the practical reality that it is not possible to deliver the full range of educational and related services to any student through on-line video conferencing platforms, DODEA adjusted all general education curricula to adapt to the on-line methodology. Special education and related services were proportionately adjusted. For example, if general education students received in remote learning only 75 percent of the instruction they would have received through in-person instruction, the special education and related services outlined in a student’s IEP were adjusted proportionately. However, all procedures, such as assessments, testing, progress reports, CSC meetings, and so forth continued without interruption, usually through remote means. The only exception to remote contact with parents and students during HPCON-C occurred when it was necessary to conduct special evaluations of the child, which could be safely done with social distancing and other COVID-19 precautions in place. (PX Z - BB; RX 9.a – 9.d; Tr. 2-122 – 2-139)

In September 2020, Petitioners conferred with J’s CSC case manager and requested that J’s remote learning schedule be scaled back because of difficulties in getting J to cooperate with the remote learning process, particularly in transitions from one activity or class to the next. Specifically, J’s mother asked that the child’s physical therapy (PT) and occupational therapy (OT) services be discontinued or suspended, and that other adjustments be made to the remote execution of MS’s IEP. In response to this request, the Case Manager coordinated with the PT and OT service providers to incorporate delivery of those services in aspects of other instruction and services required

¹¹ Public schools in the counties adjacent to [REDACTED] also conducted remote learning surround starting in March 2020; however, those school districts did not resume in-person classes until April 2021.

by the IEP. Emails between the Case Manager and the other service providers on J's IEP reflect extensive efforts to accommodate J's mother's requests in ways that would continue to provide educational and developmental benefit to the child. Those emails also reflect concerns that J's mother was overwhelmed by the requirements imposed on her in facilitating remote learning for J. (PX J; PX K; RX 11.a; RX 11.b; Tr. 3-140 – 3-142)

At a CSC meeting on October 15, 2020, Petitioners continued to express their concerns about the difficulties they were encountering with J's ability to engage in remote learning. They broadened their concerns to include the overall effectiveness of remote learning as a means of providing special education services for any student. The original purpose of that meeting was to discuss possible IEP modifications in response to Petitioners' disclosure that J was diagnosed with a complete hearing loss in her left ear. Although this condition was first noticed in late 2019 and evaluation begun in February 2020, because of COVID-19 shutdowns, it was not until July 6, 2020 that J could be evaluated at the University of North Carolina's pediatric audiology department. (RX 1.c; RX 3.c)

Also at the October 15 meeting, J's mother and parent advocate objected to the CSC's assertions that J was showing progress in all of areas of assessment in her IEP. Instead, they insisted that J was either maintaining progress she had made before the commencement of remote learning, or she was regressing. (RX 3.c)

The October 15, 2020 meeting became contentious because the CSC had invited a social worker employed by DODEA to the meeting as a resource available to J's mother. Petitioners have presented this as a procedural violation of their privacy rights; however, they offered no support for this claim. (Tr. Xxx)The meeting was eventually suspended until November 12, 2020. At that time, the CSC proposed that the IEP be amended to include services from a Hearing Impaired (HI) specialist. Additionally, because J continued to have difficulty transitioning between necessary tasks, often demonstrating maladaptive behaviors (e.g., flopping, eloping, refusal), the CSC also proposed adding consultative services from a board certified behavioral analyst (BCBA). Petitioners agreed to these changes; however, they continued to disagree with the CSC's assessments that J was showing progress in meeting her IEP goals. The addition of HI and BCBA consultative services was agreed to and added to J's IEP. (RX 1.c; RX 3.c; Tr. 4-73 – 4-74, 4-117 – 4-125)

Before the November 12 and February 1 meetings, DODEA specifically asked that both parents attend to ensure they both were fully informed about the CSC's efforts to provide services to J. Petitioners have portrayed this effort by DODEA as an attempt to intimidate them in response to their due process petition. Petitioners further claimed at the hearing that the school district superintendent for [REDACTED] schools improperly contacted the father's military superiors as part of that intimidation effort. There is no support for this allegation. The superintendent's testimony made clear that the military sponsor was asked to attend CSC meetings after October 15 as a best practice to ensure

both parents could participate fully in and understand the IEP process for their child. This witness was credible when she denied having contacted the father's chain of command, and Petitioners presented nothing to corroborate any of their claims of intimidation. (Tr. 4-115 – 4-127)

The CSC next met on January 14, 2021 to discuss changes to S.M.'s IEP involving assistive technology. The changes proposed were verbally agreed to by Petitioners and the modified IEP was to be effective on January 21, 2021. On January 26, 2021, J's mother withdrew her approval for the modified IEP and another CSC meeting was convened. After discussion of the changes, which clarified the CSC's approach to assistive technology in the PT portion of the IEP, Petitioners agreed to the modified IEP for implementation on February 2, 2021. (RX 1.d; RX 3.d)

On March 5, 2021, about two weeks after J returned to in-person learning at [REDACTED], the CSC met to discuss IEP changes based on providers' assessments of J over that time. Also considered were the results of the evaluation requested by Petitioners and conducted in February 2020. While not changing the IEP itself, the CSC recommended that J receive an additional 120 minutes of OT and an additional 60 minutes of PT each week as compensatory services. These services were offered to make up for the time missed in August and September 2020 when Petitioners asked for a reduction in remote learning sessions for PT and OT; however, the CSC specified that these compensatory services were not being proposed because of any lack of progress exhibited by the child. J's mother did not agree to these proposed additional services. (RX 3.e; RX 4.b; Tr. 2-139 – 2-141)

Petitioners insist that J merely maintained whatever progress she made before the school began remote learning in March 2020. Specifically, they take issue with multiple progress reports prepared both in the third and fourth quarters of the 2019-2020 SY and during the first half of the 2020-2021 SY. In those reports, several J was assessed many times by her service providers as showing "ongoing" progress. In other instances, she was assessed as having "mastered" or "partially mastered" her goals. Petitioners did not identify or document any instances in which J was assessed as having regressed or even stagnated in her academic and developmental progress. (PX D; PX F; Tr. 1-75 – 1-96)

Petitioners attempted to characterize "ongoing" as equivalent to no progress; however, multiple service providers and administrators testified that this was not the case. In support of that testimony, Respondents presented extensive records and data compiled by J's service providers that supported the school's position that, even in areas where J had not yet mastered goals and objectives, she was progressing in those areas despite practical limitations resulting from mandatory remote learning. In the areas in which J had mastered or nearly mastered goals and objectives, available information shows that the CSC, in concert with Petitioners, made appropriate IEP modifications in the form of new goals and objectives for J to work on. (RX 2.a – 2.c; RX 5.a – 5.f; RX 6.a – 6.h, RX 7.a – 7.c)

A recurring concern among her service providers, as well for Petitioners, is with J's difficulties in transitioning between activities. This concern was noted as early as the 2018-2019 SY as part of her civilian IEP. Available information shows that once J's hearing loss was properly diagnosed and reported during the first quarter of the 2020-2021 SY, the CSC added HI and BCBA consultation services in November 2020 that have reduced her maladaptive behaviors and improved both her attention span and her communication abilities. (PX B; RX 2.a – 2.c; RX 5.e; RX 5.f; RX 6.h; RX 8.a – 8.c)

As part of their allegations of procedural errors by the school, Petitioners also averred that the Special Education Instructional Systems Specialist (ISS) for the [REDACTED] school district deliberately altered a report by the BCBA so as to indicate progress in correcting J's behaviors when supposed there was none. In detailed and credible testimony, that administrator denied trying to falsify any data or reports and described her actions as consistent with her oversight role as a DODEA contracting officer's representative (COR). In that capacity, she is required to monitor the processes and quality of the work of no-DODEA personnel contracted to perform certain jobs. In this case, all available information probative of Petitioners' allegations of malfeasance by the ISS, including testimony by both the ISS and the BCBA, shows neither the ISS nor the BCBA did anything to undermine the legitimacy of the data and results being reported by the BCBA or any other service provider. (PX V; Tr. 2-59 – 2-90, 4-70 – 4-102)

Each member of the team that provides education and related services to J testified about their qualifications and their efforts to provide services to J since March 2020. Each person presented as fully qualified and experienced in their field of expertise. The speech language therapist and hearing impaired specialist both testified that J progressed steadily during the latter part of the 2019-2020 SY and into the start of the 2020-2021 SY. As soon as J's hearing loss was properly addressed in October and November 2020, she made better progress in her IEP goals for those areas; however, there was no time when she was not progressing. They also testified in support of detailed records of J's participation in remote learning sessions. They also testified in support of detailed data records and reports that, in turn, supported each of the progress reports and evaluations presented by Respondents. The school's progress reports are thoroughly documented and were not effectively controverted by Petitioners' documents or arguments. (RX 2.a – 2.c; Tr. 2-10 – 2-54, 3-9 – 3-179, 3-182 – 3-253, 3-255 – 3-297, 4-136 – 4-181)

DISCUSSION

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court interpreted IDEA to require that every student with a disability have access to a FAPE, and that FAPE is delivered if an IEP is "reasonably calculated to enable a child to receive educational benefits." *Id.*, at 207. To determine if such benefits are being delivered, attention must be paid, and deference accorded, to the assessments of trained and

experienced educators and specialists regarding whether a student has made reasonable and appropriate progress in light of the child's circumstances.

As interpreted through regulatory schemes, such as DODI 1342.12, DODM 1342.12, and 32 CFR Part 57, IDEA emphasizes the importance of collaboration among educators and parents to construct an IEP that uniquely addresses each child's needs. The IEP should also be modified as those needs change, incorporating parental input whenever feasible. Nonetheless, unless it is shown that the school has violated procedural requirements in IDEA and implementing regulations so as to hinder either the child's access to FAPE or the parents' ability to participate in their child's education, deference must be given to educators, service providers, and administrators in their assessments of a child's progress and in their IEP management. The record in this case, Petitioners' claims notwithstanding, reflects regular and in-depth attempts, mostly successful, to collaborate with J's parents and respond to their needs and concerns regarding delivery of a FAPE to J under the most unusual educational circumstances imaginable.

The burden of proof and persuasion in these due process cases is on the Petitioners. *See Schaffer v. Weast*, 546 U.S. 49 (2005). Petitioners' information does not support their allegations that the school and DODEA administrators committed any procedural missteps that hindered J's access to FAPE or impaired her parents' ability to participate in her education. Petitioners' case consisted of a series of unsupported attacks on the compilation and interpretation of the BCBA's data and regular assessments of J's academic and personal progress. Additionally, Petitioners alleged that DODEA administrators engaged in efforts to intimidate them or retaliate against them in response to filing a due process complaint. There is simply no support for those allegations.

As to the IEPs themselves, available information, starting with adoption of the non-DODEA IEP in 2019, shows their development, modification, and the delivery of services listed therein was consistent with the requirements of IDEA as interpreted by DOD regulations. Petitioners' claims of improper assessments of J's progress, especially during the period of remote learning between March and November 2020, are not supported by the information they have presented. Simple disagreement is not enough to demonstrate error by the school.

It is clear that Petitioners did not agree with the use of remote learning platforms to deliver services to J. And it is not surprising that they encountered difficulties in getting J to engage in that effort. It is equally clear that there was no other option available to either party, and that the school did everything reasonably within its power to respond to Petitioners' concerns and to come up with different ways to ensure they delivered FAPE to the maximum extent possible under such unique circumstances. Nowhere was this more apparent than when the school added hearing and behavioral services in response to J's hearing loss diagnosis, and when J's case manager worked to incorporate PT and OT into other activities after Petitioners asked that PT and OT be suspended. The records

and data presented by Respondents corroborated the testimony of its witnesses at virtually every turn, whereas Petitioners' disagreements with well-documented progress reports were simply that – disagreements. They failed to meet their burden of production and persuasion in attempting to show that Respondents erred in any aspect of the delivery of special education and related services to J.

Also instructive is the fact that once J returned to in-person learning in February 2021, the school assessed her progress in all areas and determined that no changes were necessary to the IEP. Nonetheless, compensatory services in PT and OT were offered to make up for services missed in September and October because Petitioners asked that those services be suspended. Petitioners refused those services, despite the fact that compensatory services are at the heart of their requested relief in this case.

CONCLUSION

Petitioners have failed to prove that DODEA did not to provide a FAPE for J during remote learning or at any other time during J's time as a DODEA student. DODEA shall implement the most recent IEP with proposed changes on March 5, 2021 without further consent or approval by Petitioners.

Petitioners' request for compensatory education or other relief stemming from the facts and circumstances in this matter is **DENIED**.

NOTICE of APPEAL RIGHTS

Either party may appeal this decision by filing written statements of issues and arguments with the DOHA Appeal Board. To preserve the right of appeal, a written notice of appeal must be submitted within 15 business days of receipt of this decision. Instructions for delivery of a notice of intent to appeal, as well as deadlines for filing statements of issues and arguments, can be found in DODM 1342.12, Enclosure 6, ¶ 17. Filing is complete upon mailing.

/original signed/

Matthew E. Malone
Administrative Judge

Copies to:

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