BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] BY AND THROUGH [redacted] AND [redacted] AND [redacted] **Petitioners,** **v.** **FULTON COUNTY SCHOOL DISTRICT,** **Respondent.**	**Docket No.: 1923997** **1923997-OSAH-DOE-SE-60-Teate** **Agency Reference No.: 7965587025** **[redacted]**

FILED
03-26-2020
OFFICE OF STATE ADMINISTRATIVE HEARINGS

FINAL DECISION

I. Introduction

1. [redacted] is a 20-year-old college student who formerly resided within the Fulton County School District ("FCSD" or "the District"). He was eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") during the 2016-2017 school year, which gave rise to the instant action.

2. On January 10, 2019, [redacted], by and through his parents, [redacted] and [redacted] ("Petitioners"), filed a Due Process Hearing Request ("DPHR") alleging violations of the IDEA related to [redacted] individualized education program ("IEP"), placement in the least restrictive environment ("LRE"), parent participation, and a free appropriate public education ("FAPE"). In their DPHR, Petitioners seek reimbursement for costs associated with the private placement of [redacted]. at John Dewey Academy.

3. As part of their DPHR, Petitioners relied on and cited to a telephone conference between a former school psychologist for FCSD, an attorney for FCSD, and two other FCSD employees in the special education department.[1]

[1] The former school psychologist, Maura Hammond, recorded the conversation without permission and provided it to the Petitioners' counsel.

4. This Court held a hearing on March 1, 2019, to determine whether the recording was admissible or covered by the attorney-client privilege. Upon request by the District, another Administrative Law Judge, Judge Ronit Walker, conducted an *in-camera* review of the recording. Judge Walker determined that the recording was covered by the attorney-client privilege. This Court thus concluded that the attorney-client privilege had not been waived and deemed the recording was inadmissible. The Court then struck those portions of the DPHR which referenced or arose out of the privileged recording.

5. A hearing on the DPHR was thereafter set for the week of August 5-9, 2019. As part of their case-in-chief, Petitioners called and extensively cross-examined Dr. Smith, a Board-Certified Behavior Analyst ("BCBA").

6. At 8:40 p.m. on August 6, 2019, the evening before the District's presentation was to begin, Petitioners' counsel sent the District's counsel an email indicating that Petitioners intended to invoke client-BCBA confidentiality to block Dr. Smith's anticipated testimony.

7. In response to that email, the District filed an Emergency Motion for Continuance, which this Court granted on August 7, 2019. Following briefing on the legal issues raised by the parties, this Court found that Petitioners and their counsel had waived BCBA-client confidentiality with respect to Dr. Smith's testimony about her work with [redacted] The Court further found that [redacted] and Petitioners' counsel, as practicing attorneys, should have been aware of a common evidentiary privilege such as the at-issue waiver. Accordingly, this Court sanctioned Petitioners' counsel for submitting pleadings or papers for an improper purpose or containing frivolous arguments that have no evidentiary support.

8. The hearing on the DPHR then resumed and was completed on December 18, 2019. This Court ordered the parties to submit post-hearing briefs by February 3, 2020. On February 25,

2020, this Court extended the deadline for issuance of a Final Decision to March 31, 2020.

II. Findings of Fact

[redacted]s Disabilities and Educational History

1. [redacted] is an intelligent young man who has autism and severe anxiety including social anxiety. (Transcript ("Tr."), Volume I (hereinafter referenced simply by Volume number), at 37). [redacted] has had "significant deficits in the areas of social interaction and communication, difficulty understanding facial expressions, limited socialization skills an[d] poor daily living skills. (Petitioners' Exhibit ("Pet. Ex."), Tab 1, at 3).

2. [redacted] initially enrolled in Eaton Academy ("Eaton"), a private school in the city of Atlanta, during the 2015-2016 school year. (Tr., I., at 33-34, 37; Tr., IV, at 16). Eaton accommodates students with a variety of needs, behavioral disorders, and students with autism and anxiety. (Tr., I., at 68). [redacted] received all A's during the 2015-2016 school year while attending several schools, including Eaton, earning a 4.0 grade point average. He also had near perfect attendance at Eaton during this time. (Tr., I., at 66-67; Tr., IV, at 16, 147; Respondent's Exhibit ("Resp. Ex.") 61 at 438).

3. [redacted] has a history of school refusal and changing schools. (Tr., I, 85-86, 323, 337-338, 370-[redacted] attended multiple educational institutions from 2013 to 2017, including Eaton, another private school (the Ben Franklin Academy), and a residential facility (Solstice East). He stayed at Eaton the longest. (Tr., IV, at 14-16). FCSD was aware of [redacted] previous struggles with school refusal and his previous placement at a residential therapeutic school. (Tr. I, at 323, 338).

4. During the 2015-2016 school year, [redacted] made great progress overcoming his anxiety and school refusal issues. (Tr., IV, at 16-17). At that time, [redacted] parents believed that Eaton was an

appropriate placement for [redacted] (Tr., IV, at 17).

May 2016 Due Process Hearing Request and August 2016 Settlement and IEP

5. [redacted] parents have filed numerous due process hearing complaints against FCSD alleging violations of the IDEA. (Tr., IV, at 17-18.) In May of 2016, [redacted] parents filed a DPHR to compel the District to pay for [redacted] tuition for the 2015-2016 school year. (Tr., IV, at 17, 146). The parties settled in August of 2016. (Tr., IV, at 21).

6. The August 2016 Settlement Agreement and Release ("Settlement Agreement") provided that FCSD would develop an IEP that placed [redacted] at Eaton for the 2016-2017 school year and that the District would pay for [redacted] tuition at Eaton for that school year. (Resp. Ex., Tab 2, at 22; Tr., IV, at 21). Accordingly, the August 2016 IEP identified Eaton Academy as the proper placement for [redacted] (Tr., IV, at 28, 147-148).

7. FCSD and [redacted] parents agreed that the IEP would provide for [redacted] to take a full course load of six classes at Eaton in order to meet graduation requirements. (Resp. Ex., Tab 2, at 22; Tr., I, at 49-50.) FCSD developed that IEP on August 10, 2016 and sent it to the family on September 6, 2016. (Tr., IV, at 146, 150-151; Resp. Ex., Tab 4, at 30-60). The Settlement Agreement also provided that the District would pay $120,000 in retroactive compensation for [redacted] prior education at Eaton. (Resp. Ex., Tab 3, at 28; Resp. Ex., Tab 2, at 21; Tr., IV, at 146-147).

8. FCSD sent the settlement check to the family on or about August 23, 2016. (Tr., IV, at 153). The Settlement Agreement contained a provision that allowed for a change in placement for [redacted] upon a "Triggering Event." (Resp. Ex., Tab 2, at 23). If [redacted] experienced a Triggering Event, defined as a significant change of functioning that would warrant a change of placement or services under the IEP, [redacted] family would send notice to FCSD, and an IEP meeting would

be held. (Resp. Ex., Tab 2, at 23-24; Tr., I, at 333-334.) [redacted] father, felt it necessary to include the Triggering Event provision in the Settlement Agreement because of [redacted] previous struggles and the possibility of regression. (Tr., I, at 333-334).

September 2016 Notice of "Triggering Event" and FCSD's Response

9. The 2016-2017 school year at Eaton began on August 15, 2016. (Tr., I., at 38:7-11). [redacted] attended Eaton from August 15-19, 2016, and for part of the school day on August 31, 2016. He refused to attend Eaton after August 31, 2016. (Tr., I., at 40, 43, 58; Pet. Ex., Tab 3A, at 377-378).

10. During the 2015-2016 school year at Eaton, [redacted] attended 5 traditional classes and one class in the mentor program, which was similar to a study hall. (Tr., I, at 71-72). Early on during the 2016-2017 school year at Eaton, [redacted] schedule was revised to four classes in the mentor program and two online classes due to [redacted] anxiety and school refusal. (Tr., I., at 347-350).

11. On September 16, 2016, [redacted] sent the District an email stating that a "Triggering Event," as defined in the Settlement Agreement, had occurred. [redacted] informed the District that [redacted] was suffering from severe depression and anxiety, which prevented him from attending Eaton. (Pet. Ex., Tab 3F, at 490-493; Tr., IV, at 152-153; Resp. Ex., Tab 4, at 29).

12. The District responded to [redacted] email on September 19, 2016 and asked for the family's availability to hold an IEP meeting before September 30, 2016. (Tr., IV, at 155; Resp. Ex., Tab 8, at 67-71). In the meantime, the District sought to obtain records regarding [redacted] from Eaton and a private therapist. (Tr., IV, at 156). In addition, the District offered to have Dr. Katie Smith, a BCBA, visit and observe [redacted] (Tr., IV, at 157-162; Resp. Ex., Tab 8, at 67-71; Resp. Ex., Tab 9 at 72-77).

IEP Meeting on September 26, 2016, and Preliminary Plan

13. An IEP meeting for [redacted] was held on September 26, 2016 to discuss [redacted] school refusal and the plan for reintegrating him back to Eaton. (Tr., IV, at 163; Resp. Ex., Tab 8, at 67-68; Resp. Ex., Tab 11, at 135-155). The IEP document was dated as September 23, 2016, three days prior to the meeting. Ms. Gilland testified that she believed this discrepancy occurred because the IEP draft was completed before the meeting. *Id.*

14. At the meeting, [redacted] stated that the family hoped to get [redacted] back to Eaton within a couple of weeks. (Tr., IV, at 35-36). He noted that Eaton had been extremely accommodating in terms of modifying [redacted] schedule to suit his needs. [redacted] mother, called Eaton "amazing." (Pet. Ex. 6, IEP meeting on 9/26/2016, at 3:30-4:00, 53:30-54:23).

15. At the meeting, [redacted] stated that the IEP team needed to get [redacted] back to school as soon as possible. Although residential placement had worked in the past, he considered it a last resort. (Tr., I, at 354-355). [redacted] stated that he was not looking for a change but simply wanted the District to gather data and monitor and evaluate [redacted] He said that "we're in a holding pattern." (Tr., IV, at 47; Pet. Ex. 6, IEP meeting on 9/26/2019, at 15:35-16:00, 58:30-59:10).

16. At this meeting, Dr. Smith developed a preliminary plan to begin observing [redacted] at home and at Eaton and provide support to try to reintegrate [redacted] back into Eaton as soon as possible. (Tr., IV, at 164; Resp. Ex., Tab 11, at 135-155). The Director of Post-Secondary Studies at Eaton, Dawn Fix, did not express concern with or oppose the plan. (Tr., IV, at 164-165).

17. Ms. Tris Gilland, a special education director for the District, assumed that [redacted] would return to Eaton soon. (Tr., IV, at 166). Dr. Smith also believed that [redacted] would return to Eaton in the next day or two. (Tr., IV, at 286).

18. In addition, at that meeting, the District offered to have a teacher come to [redacted] s residence

to provide instruction to him. [redacted] and [redacted] did not accept the District's offer because, in [redacted] view, academics were not the issue. Her main concern was [redacted] refusal to go to school. (Tr., I., at 211-212; Tr., IV, 47-50; Pet. Ex. 6, IEP meeting on 9/26/2019, at 40:20-44:00).

19. The District proposed having [redacted] undergo a psychological evaluation to assist in making informed decisions because [redacted] had not had one since September 2012. (Tr., IV, at 167, 185-186). At the meeting, FCSD also reported that it would conduct a functional behavioral assessment ("FBA") and [redacted] with a behavioral intervention plan ("BIP") regarding his target behavior of school refusal. (Tr., I, at 47-48, 321, 355; Pet. Ex., Tab 3F, at 488). [redacted] parents agreed to the school's recommendations. [redacted] IEP objectives were not changed at the meeting.

20. In late September 2016, FCSD tasked Maura Hammond, a school psychologist, with evaluating [redacted] However, that evaluation did not occur until January 10 or 11, 2017, because of both parties' scheduling issues. (Tr., I., at 132-133, 162-163, 167; Resp. Ex., Tab 34, at 222). Further, the parties debated the necessity and usefulness of conducting the evaluation. [redacted] was concerned about the possibility of [redacted] undergoing a psychological evaluation because she felt that he was in a bad place emotionally. (Tr., I, at 133). Ms. Hammond also questioned the necessity of the psychological evaluation for placement, but she believed it was helpful in providing updated and current eligibility report information. (Tr., I, at 136). Ms. Fix also believed it was unnecessary for [redacted] to undergo a psychoeducational test because it could potentially increase his anxiety. (Tr., I, at 47). When Ms. Hammond finally conducted the evaluation at [redacted] office in January, she did not have any issues. (Tr., I, at 134).

Late September and October 2016

21. At the September 26, 2016 IEP meeting, Dr. Smith recommended observing [redacted] in the

home and at school to identify the issues affecting him before making more specific recommendations. She assumed she would have regular access to [redacted] (Tr., IV, at 287). At that time, [redacted] spent ninety percent of his time residing with [redacted] As a result, Dr. Smith coordinated meeting times with [redacted] (Tr., IV, at 51).

22. [redacted] and Dr. Smith had work schedules that made scheduling meetings with [redacted] difficult. [redacted] worked as a dog walker and attended to another autistic child, and Dr. Smith worked with many students spanning multiple school districts. (Tr., IV, at 51-56).

23. Dr. Smith offered to meet with [redacted] on five different dates from September 24, 2016 through the end of the month but was only able to meet with [redacted] once.[2] (Tr., IV, at 284-286, 291-292). At their September 29, 2016 meeting, Dr. Smith hoped to build rapport with [redacted] and learn more about his thoughts on not attending school. Although he was not completely comfortable with her, [redacted] spoke with Dr. Smith, and the process of building rapport had begun. (Tr., IV, at 292-294).

24. During the month of October 2016, Dr. Smith offered to meet with [redacted] on eight different dates but was only successful in getting access to him on two dates. (Tr., IV, at 294-296, 298-301).

25. At a meeting on October 6, 2016, [redacted] revealed to Dr. Smith that he did not want to return to Eaton because he did not aim to graduate from high school. (Tr., IV, at 296-297).

26. Despite offering five earlier dates, Dr. Smith was not able to meet with [redacted] for her third meeting until October 26, 2016. At this meeting, [redacted] further confided in Dr. Smith, telling her that he wanted to get a General Educational Development, also known as Graduate Equivalent

[2] While five dates were offered, there is no indication that Dr. Smith could or would have met with [redacted] on all such dates even if [redacted] and [redacted] had been available. As a result, the undersigned finds that the District's offers for meetings are evidence of its effort to meet with [redacted] and the difficulty in scheduling meetings, but it is not indicative of the number of potential meetings that the District intended to schedule.

Degree or "GED," rather than graduate high school. He explained that he had researched colleges and universities and had an interest in cosmetology. He also stated that he did not think there were social benefits to attending school because he was not friends with the other students at Eaton and maintained other friendships outside of school. (Tr., IV, at 301-302, 310, 317).

27. By the end of October 2016, [redacted] was rarely logging on to the Eaton virtual education platform and was not motivated to complete assignments. (Tr., IV, at 62-63). Following Dr. Smith's meeting with [redacted] on October 26, 2016, she reached out to Ms. Gilland to recommend that the District schedule another IEP meeting due to the discussions she had with [redacted] and his prolonged school refusal. (Tr., IV, at 302).

28. Thus, the District reached out to schedule an IEP meeting on October 27, 2016 because Dr. Smith was concerned that [redacted] was still not attending Eaton and had experienced issues getting access to him. The family did not respond with their availability to attend a meeting until November 8, 2016. (Tr., IV, at 70-77, 168-169; Resp. Ex., Tab 21, at 194-197). During that time period, Dr. Smith offered to meet with [redacted] on two separate dates, but [redacted] accepted neither. (Tr., IV, at 302-304).

IEP Meeting on November 11, 2016, and Modification of the Plan

29. An IEP meeting was held on November 11, 2016 to continue discussing how to get [redacted] back to Eaton. (Tr., IV, at 77-78; 169-170). Dr. Smith testified that [redacted] level of motivation to perform work was very low at that time. (Tr., IV, at 310).

30. Ms. Fix informed the District that [redacted] had not made any progress since the last time they had spoken at the September IEP Meeting. (Tr., I, at 55). She informed FCSD that [redacted] had not been back to Eaton at all. (Tr., I, at 42-43, 47, 55, 58-59, 60-62).[3]

[3] At some point, Ms. Fix recommended that [redacted] be placed in a highly structured, residential, therapeutic school setting, but Ms. Fix could not recall during which IEP meeting she made the recommendation.

31. Both [redacted] stated at the meeting that they both intended for [redacted] to return to Eaton. In fact, [redacted] specifically stated, "we're trying to go to Eaton," and [redacted] stated that Eaton "is a warm loving comfortable environment." (Tr., IV, at 63, 65, 79-80; Pet. Ex. 6, IEP meeting on 11/11/2019, at 23:00-23:25, 26:30-27:20). [redacted] even called the plan to reintegrate [redacted] back into Eaton "the best plan [she] had heard so far." (Tr., IV, at 84-85; Pet. Ex. 6, IEP meeting on 11/11/2019, at 32:00-33:35). [redacted] supported the plan to have [redacted] meet with Dr. Smith a few times and then transition to meeting at Eaton. During the meeting, [redacted] opined that a residential placement "would not be helpful" and "could be a negative." (Pet. Ex. 6, IEP meeting on 11/11/2019, at 38:00-39:00).

32. The IEP team decided at this meeting that Dr. Smith would begin coming to [redacted] home more regularly to observe and work with [redacted] (Tr., IV, at 83). The team discussed the importance of getting Dr. Smith consistent access to [redacted] and agreed that she would make three one-hour visits per week. (Tr., IV, at 170-171, 175-176, Pet. Ex. 6, IEP meeting on 11/11/2019, at 1:00:30-1:01:05).

33. Dr. Smith's proposed systematic reentry plan had changed from what it had been at the September 26, 2016 IEP meeting. To begin with, the IEP team realized by November 2016 that [redacted] did not intend to return to Eaton in the near future. Dr. Smith wanted to work with [redacted] on compromising between his desire not to return to Eaton and the IEP team's desire that he return for both academic and social benefits. She also wanted to work on getting him out into the community. (Tr., IV, at 305-309).

34. Dr. Smith devised a reentry plan that involved meeting with [redacted] at home, then at Barnes & Noble, then at a coffee shop, then at a library, and finally at Eaton Academy. (Tr., IV, at 266, 308-309, 322, 349.) The participants at this meeting, including [redacted] voiced agreement

with this plan. (Tr., IV, at 173). The IEP team discussed how it would be a process to reintegrate [redacted] back to Eaton and that it would take some time. (Tr., IV, at 174-175).

35. By this point, Dr. Smith testified that after getting to know [redacted] she believed that an FBA was not necessary to address [redacted] issues. (Tr., IV, at 288-289). Dr. Smith did not express this belief to the Petitioners prior to the hearing. Dr. Smith stated that an FBA regarding [redacted] antecedent behavior could not be completed because she could not observe the antecedent behavior at school that might have caused [redacted] school refusal. She believed his school refusal was due to his desire to escape from something at school, rather than being caused by an event at home during the mornings before school. (Tr., IV, at 367-368, 377).

November and December 2016

36. During the November 11, 2016 IEP meeting, [redacted] expressed concern that she would not be able to accommodate visits between [redacted] and Dr. Smith because of her jobs. (Tr., IV, at 85-86; Pet. Ex. 6, IEP meeting on 11/11/2019, at 1:01:30-1:04:00). Dr. Smith also expressed concern about being able to meet. *Id.* In addition, both the Thanksgiving and Winter Holiday breaks were coming up, during which Dr. Smith would not be able to meet with [redacted] (Tr., IV, at 88-90).

37. At the meeting with [redacted] on November 15, 2016, Dr. Smith told [redacted] about the IEP team's desire that he return to Eaton, which upset him. Dr. Smith believed it was appropriate to tell him this information so that [redacted] would not later believe he was tricked into returning to Eaton. (Tr., IV, at 304-305, 312-314).

38. Dr. Smith next met with [redacted] on November 18, 2016. At this meeting, Dr. Smith began asking questions on the *School Refusal Assessment Scale* and discussing items that interested [redacted] (Tr., IV, at 314-317).

39. During the month of December 2016, Dr. Smith offered eight different dates for potential meetings but was only able to access [redacted] on five of them. (Tr., IV, at 317-318, 323, 325-326).

40. Following a meeting on December 9, 2016 at [redacted] home, Dr. Smith met with [redacted] at a Barnes & Noble on December 12, 2016. [redacted] logged onto Eaton's virtual classes for the first time since the beginning of October but refused to complete any schoolwork. (Tr., IV, at 318, 322-323). Dr. Smith next met with [redacted] on December 15 back at [redacted] home because Dr. Smith wanted to see if he would complete work in Eaton's virtual classes in a more comfortable setting. [redacted] logged in and worked on virtual instruction for the duration of the meeting, which was approximately one hour. Dr. Smith believed this showed progress because, for the first time all semester, [redacted] was willing to perform academic work. (Tr., IV, at 323-325).

41. Dr. Smith next met with [redacted] on December 19 and 20, 2016. At both meetings, [redacted] completed academic work for the duration of the meetings. Additionally, for the first time, [redacted] set a goal for work completion for himself at the December 19 meeting. (Tr., IV, at 325-327).

42. On December 20, 2016, Dr. Smith completed a systematic reentry report for [redacted] In the report, Dr. Smith proposed a treatment plan. She outlined goals for [redacted] to attend a preferred location for an hour, then a neutral site for an hour, and finally to return to Eaton for an hour. The plan also called for [redacted] to complete virtual classwork. Had [redacted] failed to make progress with these goals, Dr. Smith noted that the treatment plan for systematic reentry could have been revisited and altered as appropriate. (Tr., IV, at 335-338, 341-343; Pet. Ex., Tab 2, at 249-255).

43. Dr. Smith testified that the systematic reentry report did not require a step-by-step description of how to get [redacted] back to Eaton because she expected her approach to evolve and change over time. Rather, she wrote report in order to lay out expectations and goals which would be monitored for progress and adjusted as necessary. (Tr., IV, at 343-346; Pet. Ex., Tab

2, at 249-255).

Scheduling Issues

44. [redacted] work schedule often changed abruptly, making it difficult to schedule home visits. (Tr., I, at 202, 389; Tr., II, at 416). However, [redacted] was his top priority and he would do whatever was necessary to make [redacted] available at his law office. (Tr., I, at 210; Tr., II, at 416-418; Tr., IV, at 130). Nonetheless, FCSD did not correspond with [redacted] father regarding scheduling.

45. Dr. Smith did not contact [redacted] regarding scheduling a meeting with [redacted] for about 3 weeks from December 20, 2016 to January 9, 2016, at which time [redacted] initiated contact. (Resp. Ex., Tab 10, at 83-84). However, the District was on winter break for two of the three weeks. While Dr. Smith made no attempt to schedule contact with [redacted] from November 14, 2016 to December 2, 2016, the District was closed the week of Thanksgiving. (Resp. Ex., Tab 10, at 86-87).

46. Dr. Smith testified that in implementing her systematic reentry plan, one of the main goals was to create situations where [redacted] felt comfortable. Because [redacted] had a comparatively strong relationship with [redacted] she did not believe that it would have been helpful for her to meet with [redacted] presence. (Tr., IV, at 275-276, 395-396, 411). [redacted] agreed that [redacted] presence in near proximity to [redacted] during any of Dr. Smith's meetings [redacted] would have been problematic. [redacted] also thought it would be better [redacted] if his sessions with Dr. Smith were held at [redacted] home rather than at [redacted] office in order to make [redacted] as comfortable as possible. (Tr., IV, at 87-88; Pet. Ex. 6, IEP meeting on 11/11/2019, at 1:02:35-1:03:30).

IEP Meeting on December 21, 2016

47. The District contacted [redacted] to schedule another IEP meeting on December 7, 2016, and the meeting was scheduled for December 21, 2016. (Tr., IV, at 91-92, 176-177, 179; Resp. Ex.,

Tab 29, at 209-210). The District scheduled the meeting to touch base with the family about [redacted] progress, Dr. Smith's need for more regular meetings with [redacted] and how the reintegration plan would proceed after the holiday break. (Tr., IV, at 179).

48. The IEP team discussed providing [redacted] more access to Eaton's virtual classes. The District again offered to send a certified teacher home to help support [redacted] academics while he was being reintegrated into Eaton. While Ms. Gilland indicated that she would follow up with some tutoring options by email as proposed by Ms. Cohen at the meeting, she did not do so. (Tr., I, at 373-375; Tr., II, at 413-414; Tr., IV, at 136, 180, 236-238; Pet Ex. 6, IEP meeting on 12/21/2016, at 1:05:00-1:06:30). The family neither voiced an objection to this plan nor insisted that [redacted] be placed at a residential school at the December 21 meeting. (Tr., IV, at 179-180, 182-184).

49. Dr. Smith's recommendation for a systematic reentry plan remained the same as it had been at the November 11, 2016 meeting. She noted that since the November [redacted] had started to meet with her in the community and was completing virtual classwork. As a result, Dr. Smith was excited about the potential for further progress entering 2017. (Tr., IV, at 328-329).

50. At the meeting, [redacted] stated that it "has always been my goal" for [redacted] to finish Eaton. (Pet. Ex. 6, IEP meeting on 12/21/2019, at 9:40-9:47).

[redacted] Progress Following the December 21, 2016 IEP Meeting

51. Dr. Smith offered five dates to meet with [redacted] in January 2017 but was only able to meet with him on three of those dates. (Tr., IV, at 330-333). Dr. Smith next met with [redacted] on January 19, 2017. The meeting took place in the community at a Starbucks. At this meeting, [redacted] completed virtual classwork at a community site for the first time. (Tr., IV, at 331-332). Two

more meetings were held between Dr. Smith and [redacted] at Starbucks on January 25 and 26, 2017. During both meetings, [redacted] completed virtual classwork. (Tr., IV, at 332-333).

52. [redacted] admitted that [redacted] was making progress during this time period. She agreed that he had started doing virtual work, completing homework, and wrote essays that he sent to Dr. Smith. (Tr., IV, at 94-97). In fact, [redacted] believed that [redacted] completed work for Dr. Smith because he did not want to disappoint her. (Tr., IV, at 120-121). [redacted] stated that [redacted] had begun to make visits with Dr. Smith or one of her colleagues outside the house, including at Starbucks and Barnes & Noble. (Tr., IV, at 97).

Notice of Private Placement at Public Expense on January 16, 2017

53. On January 11, 2017, Dr. Smith sent a Confidential Report to [redacted] parents, in which she developed a treatment plan. (Pet. Ex., Tab 2, at 248-255; Tr., II, at 534). Under her treatment plan, one of [redacted] goals was to attend Eaton for one hour over three consecutive opportunities. *Id.* The treatment plan called for [redacted] to complete 12 lessons in 2 subjects at home over 9 weeks. (Pet. Ex., Tab 2, at 254). Given that a full credit requires 36 [redacted] would receive one-third of a credit for the completion of each of the 2 subjects under this goal.

54. If [redacted] failed to meet these goals, the plan was to again ask [redacted] to go to school, to consider reducing the work requirement, and consider breaking down the goals into smaller components. (Pet. Ex., Tab 2, at 255). [redacted] testified that he found the plan to be "wholly inappropriate" because it did not include a provision to notify [redacted] of the plan, and he found the contingency plan to be inadequate. (Tr., II, at 421-423). Dr. Smith made a minor revision to the treatment plan after it was sent to [redacted] and [redacted] regarding the number of visits she had with [redacted] which she chose not to resend. (Pet. Ex., Tab 2, at 256-264).

55. On January 16, 2017, [redacted] sent a letter to the District to give notice of private placement

at public expense pursuant to IDEA because he believed that [redacted] was not receiving a free appropriate public education ("FAPE"). (Pet. Ex. Tab F, at 494-495; Tr., I, at 161-162; Tr., IV, at 95; Resp. Ex., Tab 39, at 236-237). In the notice, [redacted] requested an emergency IEP meeting to further discuss the matter. *Id.* At that point, Dr. Smith had only had thirty-one school days to fully implement her reintegration strategy, although the actual time frame spanned several months. (Tr., IV, 96:1-18). Ms. Gilland was surprised when she received the notice of private placement because she believed [redacted] had been making progress, and the family had previously expressed support for reintegrating [redacted] back into Eaton. (Tr., IV, at 187-188).

IEP Meeting on January 26, 2017

56. Upon receiving [redacted] January 16, 2017 request for private placement, the District scheduled an IEP meeting, which was held on January 26, 2017. (Tr., IV, at 189, 207; Resp. Ex., Tab 48, at 319-363).

57. On January 23, 2017, Melanie Barrow, a special education coordinator at the District, emailed Maura Hammond and told her that "[t]he case has now gone legal." The email did not specifically reference [redacted], but Ms. Hammond testified that it was about him. Ms. Hammond interpreted the email to mean that there would be a hearing regarding [redacted] (Pet. Ex., Tab 3D, at 465; Tr., I, at 155-156).

58. On January 25, 2017, Ms. Barrow, Ms. Hammond, and Ms. Gilland held a conference call entitled "Preparatory activity." The email did not provide any further details regarding the call. (Pet. Ex., Tab 3D, at 469). Further, on the same day, Ms. Barrow emailed to Ms. Hammond an edited version of Ms. Hammond's psychological evaluation report of [redacted] Some of the changes were made by Candace Ford, Ms. Hammond's direct supervisor, although other proposed changes were made by an unknown third party. Regardless, the changes were non-

substantive and did not affect Ms. Hammond's recommendations or conclusions. (Pet. Ex., Tab 2, at 353-375, Tab 3D, at 468; Tr., I, at 275-276, 282).

59. As of January 26, 2017, [redacted] had made minimal educational progress during the 2016-2017 school year. (Tr., I, at 95-96, 98). By February 2017, [redacted] had completed only 5 of 36 geometry lessons (failing 1) and only 5 of 36 literature lessons, completing only a few math lessons in early October 2016 and a few literature lessons in late January 2017. (Tr., I, at 46-47, 50-52). Students are supposed to complete 1 lesson per week in each class, in addition to doing the work in their other 4 academic classes.

60. At the IEP meeting, [redacted] parents voiced their concerns regarding [redacted] social and emotional functioning and needs. Ms. Gilland told the family that they could look for someone with whom [redacted] could work, and if the family found someone, then the school district would discuss providing counseling as additional support. Ultimately, counseling was not added to [redacted] January 26, 2017 IEP. (Pet. Ex., Tab 1, at 71; Tr., I, at 101; Tr., II, at 414-415).

61. At the meeting, the IEP team determined that [redacted] would continue with 2 online courses at home, 2 hours per week of behavioral strategies with a BCBA, and 4 hours per week with a special education teacher. (Tr., I, at 101-102; Pet Ex., Tab 1, at 71). [redacted] had been receiving between two and three hours per week of BCBA services in November and December 2016, but it was not included in his IEP until the January 2017 IEP.[4] (Pet. Ex, Tab 1, at 15, 33, 71; Pet. Ex., Tab 3, at 398).

62. FCSD also provided that [redacted] would receive hospital homebound instruction for 4 hours per week in the IEP. (Tr., I, at 129-130; Tr., II, at 448; Pet Ex., Tab 1, at 71). Although the IEP document provides that this instruction was for "Hospital/Homebound," Ms. Gilland testified

[4] Prior to November 2016, there was no set number of hours that Dr. Smith would provide for BCBA services. (Pet. Ex., Tab 3, at 398).

that [redacted] was never on Hospital/Homebound status and that the EasyIEP software program does not provide for a simple "Homebound" service. As such, the District was limited by the available choices in the drop-down menu. (Tr., IV, at 241-242).

63. The IEP also provided that a "school will be chosen at a later date." (Pet. Ex., Tab 1, at 71; Tr., I, at 128-129). The District contends that it was clear that the IEP team's goal was and always had been to get [redacted] back to Eaton. (Tr., II, at 446).

64. At the time of the meeting, [redacted] had completed 8 lessons out of the 72 he was supposed to accomplish pursuant to his IEP. (Pet. Ex., Tab 1, at 42; Tr., II, at 609). Further, [redacted]s IEP did not include a school attendance goal. (Pet. Ex., Tab 1, at 41-42, 63-65). The written IEP from the meeting was not provided to the family until February 3, 2017. (Resp. Ex., Tab 52, at 371).

65. At the IEP meeting, the family reiterated their desire to place [redacted] at John Dewey Academy, a therapeutic boarding school in Massachusetts. (Tr., IV, at 190). Ms. Gilland listened to the family's demand but disagreed that residential placement was appropriate because of the progress that [redacted] was making, the fact that a residential setting would be a more restrictive environment than Eaton, and her belief that [redacted] would benefit from remaining in Atlanta with his family. (Tr., IV, at 191). By this time, [redacted] had started doing more assignments, going into the community with Dr. Smith, and talking about goal setting. (Tr., IV, at 191-193).

66. Dr. Smith also testified that she believed it would be in [redacted] best interests to continue working towards reentry at Eaton. She thought [redacted] needed to learn how to work through difficult life events. (Tr., IV, at 346-348). She also discussed the progress that [redacted] had made toward returning to Eaton and his record of success at Eaton. (Tr., IV, at 348-349). The IEP team also noted that Dr. Smith had not had a chance to implement her reintegration plan by January 26,

2017. (Tr., IV, at 248). For these reasons, the IEP team did not agree with the family's request to change [redacted] placement to John Dewey Academy. (Resp. Ex., Tab 48, at 319-363). Notably, [redacted] had told Dr. Smith at a meeting on December 20, 2016, that he did not want to start out at a new school in the middle of a school year. (Tr., IV, at 326).

67. [redacted] had offered to go with and pay for a representative of the District to visit John Dewey Academy, Ms. Gilland testified that she felt it would have been inappropriate to travel out of town with [redacted] Ms. Gilland did, however, research John Dewey Academy through its website. (Tr., IV, at 248-249).

68. The family never specifically asked for [redacted]'s IEP to be changed prior to the IEP meeting in January 2017. (Tr., IV, at 137-138).

69. Maura Hammond testified that, after the January 26 meeting, Ms. Gilland told her to watch what she said to parents in IEP meetings "because it could cost the county money." (Tr., I, at 113-114). Like [redacted] and [redacted] Ms. Hammond did not feel [redacted] needs were being met by the IEP. (Tr., I, at 102-103, 113).

70. On January 30, 2017, [redacted] sent a second letter reiterating his desire to seek private placement at public expense. (Pet. Ex., Tab 3F, at 497-498).

71. FCSD never included [redacted] attending school as an IEP objective. However, Ms. Gilland testified that even though the IEPs did not contain an attendance-related goal, the IEP minutes and recordings of the meetings show that the IEP team aimed to return [redacted] to Eaton as quickly as possible. (Tr., I, at 46, 112; Tr., II, at 450, 561, 562; Tr., IV, at 224, 229-231, 249-251, 416). The January 26, 2017 IEP stated that [redacted] did not have behavior impeding his or other's learning. (Pet. Ex., Tab 1, at 65; Tr., I, at 56-57, 117-118, 124).

February 2017

72. Dr. Smith was able to schedule meetings with [redacted] on February 2 and 3, 2017, which took place at the Sandy Springs Library. This was the next step in the District's plan for getting [redacted] to return to Eaton, as he moved from a preferred environment with coffee at Starbucks to a more neutral environment. (Tr., IV, at 333-334, 349-350). Dr. Smith did not meet with [redacted] after February 3, 2017.

73. Dr. Smith testified that if there had been two more meetings with [redacted], the first one would have been one more visit to the library, followed by a return to Eaton at the second meeting. (Tr., IV, at 350).

74. On February 7, Ms. Gilland emailed [redacted] stating that the District had a teacher available to work with [redacted]. and indicating the District's desire to provide [redacted] with counseling services. (Pet. Ex., Tab 4F, at 499).

75. The family withdrew [redacted] from Eaton and enrolled him at John Dewey Academy on February 6, 2017. (Tr., IV, at 98; Resp. Ex., Tab 63, at 448).

Withdrawal from Eaton and Enrollment in Dewey

76. John Dewey Academy ("Dewey") is a therapeutic boarding school, generally educating "twice exceptional" students who are college bound and intelligent but with some other sort of deficit. (Tr., II., at 455). [redacted] immediately began attending a full load classes upon enrollment. (Tr., II., at 468). [redacted] attended Dewey from February 2017 to August 2017. (Tr., II., at 469).

77. [redacted] stayed at Dewey until August 10, 2017, and from there, he attended E.F. Academy, a traditional boarding school. (Tr., II, at 430-434, 469). At the time of the hearing, [redacted] had graduated from E.F. Academy with honors and was accepted to between 8 to 10 colleges. (Tr., II, at 435, 616).

78. At Dewey, [redacted] received 4 high school credits the second semester of the 2016-2017 school year even though he did not start attending school there until February 6, 2017. (Pet. Ex., Tab 4D, at 611). [redacted] earned an A in Western Civilization, Honors U.S. History, Honors Physics, Geometry, Beginning French, and Art; a B+ in 20th Century American Literature; and a "Pass" in Physical Education. *Id.* [redacted] also took some courses over the summer and received an additional 1.625 high school credits. [redacted] had not earned any credits between August 2016 through February 3, 2017 while enrolled at Eaton. *Id.*

79. At Dewey, [redacted] not only participated in academics and counseling, he also undertook daily living responsibilities such as cooking, taking care of the facility, ordering food, and cleaning. (Tr., II, at 431). He also developed his social skills, executive functioning skills, time management, organization, how to talk when it was difficult, how to manage his anxiety, and how to connect with others. (Tr., II, at 475-476).

80. The cost for [redacted] to attend Dewey was $65,134.04. However, additional costs involved with his placement at Dewey including transportation, parent training, and counseling brought the total cost to $73,097.71. (Tr., II, at 617-118; Pet. Ex., Tab 4A, at 573-604).

81. [redacted] had a willingness to attend Dewey and a motivation to go to college. (Tr., II, at 468). However, at the end of his stay at Dewey, [redacted] stopped attending classes. Despite doing well academically, by August 2, 2017, [redacted] experienced an inner conflict with being at Dewey after receiving some difficult feedback regarding his college readiness. (Tr., II., at 488-491; Resp. Ex., Tab 63, at 445). The staff at Dewey told [redacted] that they did not think he was ready for college. Dewey does not allow students to go on a college visit until they are mentally, physically, and emotionally ready to do so. Upon receiving this feedback, [redacted] told the staff that he no longer wished to attend Dewey. He then refused to engage in Dewey's program, do classwork, or go

to therapy. (Tr., II., at 491-492; Resp. Ex., Tab 63, at 445).

82. Angela Lee Mayes, the Dean of Students at Dewey and a licensed clinical social worker, testified that [redacted] anxiety, rigidity of thinking, and mood were ongoing issues for him at the time that the school told him that he was not ready for college. When asked to describe what she meant by rigidity of thinking, Ms. Mayes stated that [redacted] was sometimes unable to move away from a particular idea. She elaborated that, in the case of the school's input regarding his readiness for college, it was very difficult for him to see that as an opportunity for continued growth. She found that he struggled with seeing other perspectives and had a hard time reframing his thoughts. (Tr. II, at 489-491). [redacted] has also acknowledged [redacted] tendency for rigidity of thinking in the past. At his December IEP meeting, [redacted] also stated that when things get difficult, [redacted] often shuts down or quits. (Pet. Ex. 6, IEP meeting on 9/26/2019, at 46:30-47:15; IEP meeting on 12/21/2016 at 10:25-11:15).

83. After Dewey heard that [redacted] wanted to leave, the school had him engage in a therapeutic writing process called "scrubbing" or "sitting in a chair" in order to process his emotions and avoid acting impulsively. (Tr., II, at 494-495). Students are not allowed to attend classes at Dewey while they are engaging in "scrubbing." *Id.* However, [redacted] had already refused to participate in Dewey before he began scrubbing. Prior to this time, [redacted] attendance was not an issue at John Dewey.

<u>Dr. Smith's Treatment of [redacted]</u>

84. Dr. Katie Smith testified that she had reviewed the current research regarding school refusal prior to devising a treatment plan for [redacted] Specifically, she discussed research performed by Dr. Christopher Kearney regarding the best methods to treat school refusal issues. (Tr., IV, 264). Dr. Kearney recommends an incremental approach for treating students engaging in full-

on school refusal. He recommends starting with school outside of the classroom, such as instruction in the home, and then systematically transitioning into school. (Tr., IV, at 264-266). In Dr. Smith's expert opinion, the systematic reentry method was the most appropriate methodology to get [redacted]. back to Eaton. (Tr., IV, at 266-267).

85. A systematic reentry plan entails gathering information from the student through conversations and observations, setting goals, getting the student to complete work, and then getting the student to leave the home. (Tr., IV, at 267-268).

86. Dr. Smith testified that there was no industry standard or research that discussed the minimum amount of time a BCBA must spend with a student who has school refusal issues. (Tr., IV, at 270).

87. Dr. Smith also testified that a functional behavior assessment was not necessary to create a systematic reentry plan and was not needed to treat [redacted]. (Tr., IV, 268-274). Dr. Smith discussed the differences between "behavioral excesses" and "skill deficits" or "deficit areas." She explained that FBAs are appropriate for behavioral excesses such as property destruction, aggression, screaming, or breaking things. In contrast, she opined that FBAs were not necessary when seeking to treat "deficit areas" such as school refusal. Dr. Smith stated that a functional behavioral analysis is not necessary when you're simply trying to build up a skill set. While refusing to go to school is not a deficit in the traditional sense, in the case of [redacted], she believed that it was the result of a deficit in his coping strategies. (Tr., IV, 288-289). Further, she testified that allowing [redacted] to leave Eaten for a residential school without addressing his underlying issues and learning to overcome adversity created a greater risk that he would revert back to school refusal in the new setting. (Tr., IV, at 346-348).

88. Dr. Smith did not observe [redacted]. in the morning refusing to go to school and never asked

for permission to do so. (Tr., I, at 230, 232-234). As a result, Dr. Smith did not complete an FBA or a BIP because she did not have any observable data from which to draw conclusions. (Tr., I, at 232-236). Dr. Smith admitted that as a BCBA, when environmental conditions prevent implementation of a behavior change program, the BCBA must recommend that another professionals' assistance be sought. Further, when environmental conditions hinder implementation of a behavior change program, the BCBA must identify those obstacles and come up with another plan if the BCBA's plan cannot be implemented. (Tr., I, at 243-244).

89. Dr. Michael Mueller, a doctoral BCBA ("BCBA-D"), qualified as an expert witness, testified at the hearing in rebuttal. (Tr., II, at 499-512). Dr. Mueller opined that it would be impossible to conduct a proper FBA of I.S.'s school refusal if limited to 3 hours a week. (Tr., II, at 517-518). Further, Dr. Mueller explained that observing [redacted] at school was absurd given that his target behavior was school refusal, which was occurring outside of the school setting. (Tr., II, at 518). He believed that BCBA observations needed to be done before school during the time [redacted] parents were attempting to get him to go to school. *Id.* He also questioned the validity of the four-factor model used by Dr. Smith. (Tr., II, at 525).

90. He opined that Dr. Smith's FBA lacked a behavioral definition, observation, data on antecedents, data on consequences, narrative observational data, and pattern analysis, falling short of what he believed to be the industry standard for BCBAs. (Tr., II, at 543-544).

III. Conclusions of Law

1. The IDEA, 20 U.S.C.S. §§ 1400, *et seq.*; its implementing federal regulations, 34 C.F.R. §§ 300.01, *et seq.*; and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01, *et seq.*, govern this case. The IDEA creates a comprehensive statutory scheme under which school districts must provide children with disabilities a Free and Appropriate

Public Education ("FAPE"). 20 U.S.C.S. § 1401(9); *L.M.P. v. Sch. Bd. of Broward Cnty.*, 879 F.3d 1274, 1277 (11th Cir. 2018); *Systema ex rel. Systema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008).

2. To provide a FAPE, the IDEA requires school districts to offer each student special education and related services under an IEP. *L.M.P.*, 879 F.3d at 1277 (citing 20 U.S.C.S. § 1412). The IEP "should comply with the procedural and substantive requirements set forth in the IDEA…to enable the child to receive educational benefits." *Id.* at 1278 (internal quotation marks omitted). "[T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

3. When parents oppose a school's proposed IEP, they may resort to the remedies provided by the IDEA. 20 U.S.C.S. § 1415. In particular, the IDEA permits parents to withdraw their child unilaterally from the school system and seek other placement options, such as enrollment in a private school, without the school system's consent. 34 C.F.R. § 300.148(c); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 232 (2009). If an administrative law judge finds that the school district violated the IDEA by not offering a FAPE before the parents resorted to placement in private school, it can order the school district to reimburse the costs of the enrollment in private school. 34 C.F.R. § 300.148(c); *Forest Grove*, 557 U.S. at 238.

4. However, when parents unilaterally place their child in private school, they do so at their own financial risk. *Sch. Comm. of Town of Burlington v. Dep't of Edu. Of Mass.*, 471 U.S. 359, 374 (1985). "A student is entitled to reimbursement or a private placement only if his public school failed to provide a FAPE and he demonstrates that the private placement is appropriate to fit his needs." W.*C. ex rel. Sue C. v. Cobb Cnty. Sch. Dist.*, 407 F. Supp. 2d 1351, 1362 (N.D.

Ga. 2005). But "the IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its obligations." *Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 339-40 (5th Cir. 2016). In considering the equities of a given case, "courts should generally presume that public-school officials are properly performing their obligations under IDEA." *Forest Grove*, 557 U.S. at 247.

5. Hearings before OSAH are de novo proceedings, and the standard of proof is the preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21. Petitioners bear the burden of proof in this matter. Ga. Comp. R. & Regs. 160-4-7-.12(3)(n).

6. This Court's review is limited to the issues Petitioners raised in their due process complaint.[5] 20 U.S.C.S. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(3)(j); *see also Co. of San Diego v. Ca. Special Educ. Hearing Office*, 93 F.3d 1458, 1465 (9th Cir. 1996); *B.P. v. New York City Dept. of Educ.*, 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012). As such, this Court is required to disregard all evidence in the record and any argument in Petitioners' post-hearing brief related to any issue not raised in Petitioners' pleading. 20 U.S.C.S. § 1415(f)(3)(B) ("The party requesting the due process hearing *shall not be allowed* to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.") (emphasis added). FCSD has not agreed otherwise.

[5] Additionally, claims brought under IDEA are typically subject to a two-year statute of limitations. 20 U.S.C.S. § 1415(b)(6)(B); *Mandy S. v. Fulton County Sch. Dist.*, 205 F. Supp. 2d 1358, 1366 (N.D. Ga. 2000), *aff'd without opinion*, 273 F.3d 1114 (11th Cir. 2001). The IDEA's implementing regulations create two exceptions to the two-year limitations period. A court may allow an otherwise time-barred claim to proceed only if (1) the school district made a "specific" misrepresentation "that it had resolved the problem forming the basis of the due process complaint"; or (2) the school district withheld information that the IDEA required it to provide to the parent. 34 C.F.R. § 300.511(f). In their DPHR, Petitioners never specified when exactly they believe FCSD violated the IDEA. Regardless, claims related to events occurring before January 10, 2017 are not at issue and no relief is available.

Procedural FAPE

7. School systems must draft IEPs in compliance with a detailed set of procedures set forth under 20 U.S.C.S. § 1414(d)(1)(B) of the IDEA. These procedures envision collaboration among parents and pertinent school system staff and administrators and require the IEP team members to consider each child's individual circumstances carefully. 20 U.S.C.S. § 1414; *Endrew F.*, 137 S. Ct. at 994. The IDEA also requires all IEPs to comply with various content requirements. *See* 20 U.S.C.S. §§ 1414(d)(1)(A)(i)(I)-(IV); *see Endrew F.*, 137 S. Ct. at 994 (summarizing the statutory content requirements for IEPs).

8. Important procedural rights include the right to access educational records, the right to give informed consent, the right to unilateral placement at public expense, the right to a hearing, and the right to participate in the decision-making process. 20 U.S.C.S. § 1415(b), (d)(2), and (f)(3)(E). *See also* 34 C.F.R. § 300.9(a) ("Consent means that – [t]he parent has been fully informed of all information relevant to the activity for which consent is sought ….").

9. Not every procedural violation of the IDEA constitutes a FAPE denial. *See Sch. Bd. of Collier Cty., Fla. v. K.C.*, 285 F.3d 977, 982 (11th Cir. 2002) ("A procedurally defective IEP does not automatically entitle a party to relief."). Only procedural violations that cause a party substantive harm will entitle a plaintiff to relief. *L.M.P.*, 879 F.3d at 1278. "In evaluating whether a procedural defect has deprived a student of a FAPE, the Court must consider the impact of the procedural defect, and not merely the defect per se." *Weiss by Weiss v. Sch. Bd. of Hillsborough Cty.*, 141 F.3d 990, 994 (11th Cir. 1998). The defect warrants relief only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process about the provision of a FAPE, or causes a deprivation of educational benefits. *T.P. ex rel. T.P. v. Bryan Cty. Sch. Dist.*, 792 F.3d 1284, 1293 (11th Cir.

2015) (citing 20 U.S.C.S. § 1415(f)(3)(E)(ii)).

Petitioners' Procedural Arguments

10. In this matter, Petitioners argue that Respondent denied [redacted] a FAPE procedurally through all the following actions:

a) Respondent impermissibly excluded [redacted] parents from the decision-making process for the creation of [redacted]s IEPs and his placement;

b) Respondent predetermined [redacted] placement and the goals and objectives in his IEP;

c) Respondent withheld critical educational records;

d) Respondent failed to list attending Eaton as a goal or objective;

e) Respondent failed to suggest the related service of parent training and/or counseling;

f) Respondent failed to list [redacted] placement in the IEP; and

g) Respondent failed to provide an appropriate scheduling plan for [redacted]

Meaningful Participation in Creating [redacted] IEPs and Determining Placement

11. School Districts must ensure that "[t]he placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options." 34 C.F.R. 300.116(a)(1). School systems must both allow parents to participate in IEP meetings and consider the parents' suggestions. *K.A. ex rel. F.A. v. Fulton Cnty. Sch. Dist.*, No. 1:11-CV-727-TWT, 2012 WL 4403778, *3 (N.D. Ga., Sept. 21, 2012). At IEP meetings, parents may "fully air their respective opinions

[6] While Petitioners listed failing to implement [redacted] IEP and the goals and objectives therein, take data on them, and review them as procedural violations of FAPE, the undersigned finds that such allegations are more properly analyzed as substantive violations.

on the degree of progress a child's IEP should pursue." *Endrew F.*, 137 S. Ct. at 1001. Although they have the right to participate and provide input, parents do not hold veto power over an IEP team's placement determination. *K.A.*, 2012 WL 4403778, *3. Thus, an IEP team may change a child's placement without the parent's consent. *Id.* ("This Court finds that K.A.'s parents were not required to consent to the amendment to K.A.'s placement at the IEP team meetings…."); *see also B.F. v. Fulton Cty. Sch. Dist.*, No. CIV A 1:04CV3379-JOF, 2008 WL 4224802, at *34 (N.D. Ga. Sept. 9, 2008) ("the IDEA is not a guarantee to the parents of the satisfaction of their preferences.").

12. In the instant case, [redacted] testified that the District told [redacted] parents what their plan was and would not consider any other placement options at the January 26, 2017 IEP meeting.[7] Petitioners also argue that FCSD misinformed [redacted] parents by telling them that an FBA and a BIP were going to be prepared when FCSD ultimately failed to do so. On these bases, Petitioners contend that FCSD did not permit [redacted] parents to meaningfully participate in creating his IEPs or determining his placement.

13. The record does not support Petitioners' contentions. FCSD promptly scheduled an IEP meeting every time [redacted] parents asked for one and always asked them for potential meeting dates that best suited their schedules. On Friday, September 16, 2016, [redacted] notified FCSD for the first time that [redacted] had begun to refuse to attend Eaton Academy and requested an emergency IEP meeting. FCSD responded to that request on the morning of the next business day, September 19, 2016, stating that it was happy to hold an IEP meeting and asking for Petitioners'

[7] Petitioners also argue that the District's failure to consider a residential placement despite knowing that [redacted] required such a placement in the past constitutes a substantive violation of IDEA and a failure to provide FAPE. Whether argued as a substantive or procedural violation, this argument fails. As indicated in the sections regarding meaningful participation by [redacted] parents and predetermination, FCSD listened to the concerns of [redacted] parents regarding residential placement at John Dewey Academy, but ultimately decided to maintain [redacted] placement at Eaton for many valid reasons including his prior success there and the fact that Eaton was the least restrictive environment.

availability. That meeting took place on September 26, 2016, one of the dates Petitioners proposed. FCSD proactively scheduled two more IEP meetings on November 11, 2016, and December 21, 2016. Petitioners did not request these meetings, but FCSD believed they were necessary to review [redacted] current level of functioning, discuss his academic progress, and assess the team's plan for reintegrating him back into Eaton Academy. Finally, Petitioners requested a fourth IEP meeting on January 16, 2017, when they gave FCSD notice of private placement at public expense. That meeting took place on January 26, 2017.

14. Petitioners attended every IEP meeting.[8] They recorded meetings without objection. Further, they both actively participated in every meeting, voicing their opinions and concerns about [redacted] school refusal, his ability to access instruction, his progress toward graduation, and the appropriate plan to address his needs. Petitioners freely asked questions and engaged in dialogue with Ms. Gilland, Dr. Smith, Ms. Dawn Fix, and Ms. Margie Cohen. [redacted] parents may have felt that they were not truly listened to, but there is no evidence that FCSD ignored their input, prevented them from expressing their viewpoints, or failed to approach the meetings with an open mind. In fact, the audio recordings of the meetings in September, November, and December 2016 show that Petitioners and FCSD agreed for months about the best course of action for [redacted] The parties did not disagree about placement until the meeting on January 26, 2017, when [redacted] parents provided a notice of private placement for John Dewey Academy.

15. While Dr. Smith did not ultimately perform an FBA or a BIP, the District did not "misinform" [redacted] by telling them that an FBA and a BIP were going to be prepared. By all accounts, the District's intent was to perform these tests when it indicated their intent to do so at the November 11, 2016 IEP meeting. It was only later that it became evident that such

[8] Although [redacted] both came to the meeting location on December 21, 2016, illness prevented [redacted] from attending most of the actual meeting. (Tr. Vol. IV at 92:13-18, 93:1-17.)

tests would not be performed. Dr. Smith testified that after getting to know [redacted] she believed that an FBA was not necessary to address [redacted] issues. It is unclear whether FCSD came to a definitive decision that they would not be conducting an FBA or a BIP, or, alternatively, if they felt they lacked the time to conduct the FBA and BIP as planned. Regardless, Dr. Smith testified that she believed no harm came from it. Additionally, Dr. Smith testified that an FBA regarding [redacted] antecedent behavior could not be completed because she could not observe the antecedent behavior at school that might have caused [redacted] school refusal. As such, the District's failure to complete an FBA and BIP did not constitute a procedural denial of his right to FAPE. The record does not support Petitioners' claims that FCSD failed to give them a meaningful opportunity to participate in IEP meetings or consider their suggestions in determining [redacted] placement.

Predetermination

16. As a corollary to the prior argument, Petitioners also argue that FCSD predetermined [redacted] placement and the goals and objectives in his IEP.

17. Predetermination occurs when district members of the IEP team unilaterally decide a student's placement before an IEP meeting. *See R.L. v. Miami-Dade Cty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) ("Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team."); *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 857-859 (6th Cir. 2004) (finding predetermination where the school district rejected the parents' request for an applied behavior analysis program because its policy prevented it from considering a program other than the one in which it had invested). But mere disagreement with a school district's recommendation for placement or services does not amount

to evidence of predetermination. *See J.E. & C.E. v. Chappaqua Cent. Sch. Dist.,* No. 14-CV-3295 (NSR), 2016 WL 3636677, at *11 (S.D.N.Y. June 28, 2016), *aff'd, sub nom. C.E. v. Chappaqua Cent. Sch. Dist.,* 695 F. App'x 621 (2d Cir. 2017).

18. In support of their assertion that FCSD predetermined placement for [redacted] Petitioners point to the email that Ms. Hammond received from Melanie Barrow on January 23, 2017, which said "[t]he case has now gone legal." Ms. Hammond interpreted this email to mean that a hearing was inevitable. Petitioners argue that, because this email pre-dated [redacted] January 26, 2017 IEP meeting, this proves FCSD had predetermined [redacted] placement. Petitioners reason that the District had predetermined that it would not consider or offer a residential placement prior to its January 26 IEP meeting. Additionally, Petitioners point to the conference call held by Ms. Barrow, Ms. Hammond, and Ms. Gilland on January 25, one day before the IEP meeting, entitled "Preparatory activity" as evidence of predetermination. Petitioners also argue that because Ms. Fix recommended a therapeutic school placement, and FCSD did not agree to it, they engaged in predetermination of [redacted] placement.

19. The undersigned disagrees. [redacted] had recently sent FCSD a Notice of Private Placement on January 16, making it perfectly reasonable for FCSD to discuss and prepare for the possibility of a hearing, without having predetermined [redacted] placement. Additionally, as previously addressed, the simple fact that there was disagreement between FCSD, [redacted] parents, and Ms. Fix regarding placement is not evidence of predetermination.

20. On the contrary, at every IEP meeting from September 2016 to January 2017, the IEP team members conducted active and open-minded discussions about the best plan for [redacted] In fact, at the meetings in September, November, and December, Petitioners continuously expressed their support for [redacted] to continue to attend Eaton. FCSD agreed with Petitioners'

opinions and tried to implement a plan to reintegrate [redacted]. back into Eaton. At no point during those meetings did Petitioners ask for a placement or service that FCSD rejected without discussion.

21. Petitioners first expressed disagreement with FCSD about [redacted] placement at the IEP meeting on January 26, 2017. At that meeting, Petitioners themselves rejected all placement options other than enrollment at a private residential school. Petitioners point to [redacted] past success at residential schools as justification for their hardline stance regarding placement. While [redacted] did experience previous success at residential schools, he had experienced success outside of those environments, as well. Further, while [redacted] was not unreasonable to believe that a residential boarding school was the most appropriate placement option for his son, FCSD and the IEP team were similarly not unreasonable to believe that Eaton was the most appropriate placement. FCSD heard and considered Petitioners' preference for residential placement and engaged them in a long discussion about it. FCSD also solicited the opinions of a representative from Eaton to discuss different instructional options that would allow [redacted] to make up credits and graduate on time. The team also heard from Dr. Smith, who provided a detailed account of the progress [redacted] had made toward returning to Eaton. Ultimately, FCSD did not agree that a residential placement was an appropriate option for [redacted] because of the progress that [redacted] had made toward returning to Eaton and his record of success at Eaton. Moreover, prior residential placement had not cured [redacted] school refusal. The IEP team also felt that Dr. Smith had not had a chance to implement her reintegration plan by January 26, 2017.

22. Although FCSD ultimately disagreed with Petitioners' demand for residential placement, that disagreement does not show that FCSD decided on placement before the meeting. The IDEA does not require a school system simply to accede to the demands of parents. *See*

Rockwall Indep. Sch. Dist. v. M.C., 816 F.3d 329, 339 (5th Cir. 2016) ("this right to provide meaningful input is simply not the right to dictate an outcome."); *K.A.*, 2012 WL 4403778, *3. The record establishes full and meaningful participation in the process by Petitioners with no indication of predetermination. *See J.P. on Behalf of J.P v. City of New York Dep't of Educ.*, 717 F. App'x 30, 32 (2d Cir. 2017) (finding insufficient evidence of predetermination where the IEP team thoroughly discussed the parents' concerns about a proposed public-school placement).

23. There is also no evidence that Respondent predetermined [redacted] IEP goals and objectives. The District set goals for [redacted] in Dr. Smith's December 20, 2016 report and again in her January 10, 2017 Confidential Report. Further, [redacted] set his own goals for completion of work after a meeting with Dr. Smith in December 2016. Due to the irregular meetings between the parties and the fact that [redacted] was willfully disengaged from school, FCSD required more time than would otherwise be expected in order to implement [redacted] goals. The mere fact that FCSD was not successful in accomplishing its goals does not mean that its goals were improper or predetermined. On the contrary, Dr. Smith testified that the goals and objectives in the IEP were very much subject to revision. Thus, Petitioners' contention that FCSD committed a procedural violation of the IDEA by predetermining [redacted] IEP goals and objections and placement before the January 2017 IEP meeting lacks evidentiary support.

Educational Records

24. Petitioners have continuously alleged that Respondent has engaged in deceitful practices including the improper withholding of documents and records and wrongful deletion of relevant documents and records.[9] As previously ruled by this Court in its Order on Sufficiency of Due

[9] FCSD previously withheld Dr. Smith's timeline logs of attempts to schedule meetings with [redacted] Petitioners argue that Dr. Smith's logs were evidence of a bias and prejudice toward [redacted] and would have provided the family with

Process Complaint, dated February 1, 2019, accusations arising under the Georgia Open Records Act and the Family Education Right to Privacy Act are beyond the purview and jurisdiction of this Court.[10] Further, in the absence of evidence of such behaviors beyond the recording from the meeting held on January 25, 2017, which was previously ruled inadmissible, the undersigned finds that Respondent's handling of records did not procedurally violate [redacted] right to a FAPE.

IEP Goal for Attending Eaton Academy

25. During the hearing, Petitioners' counsel questioned witnesses about why [redacted] IEPs did not include a goal or objective for attending Eaton Academy. (Tr., IV, 2248-14, 231:1-6.) Petitioners' DPHR did not raise this issue. On the contrary, the DPHR implicitly recognized that one of Dr. Smith's goals was to attend Eaton. The DPHR provides that "Katie Smith's entire plan for [redacted] was composed of only 2 goals: 1) [redacted] would return to Eaton for 1 hour of physical attendance when asked which ultimately would evolve into full-time attendance…." DPHR at 20. See also DPHR at 19-20, "Despite [redacted] regressing at home with no education from FCSD, the District kept insisting that its 'reintegration plan' (trying to get [redacted] to physically go back to Eaton) was appropriate….[Petitioners] requested the District research other alternative placements including John Dewey in Massachusetts since FCSD's alleged transition plan back to Eaton was not successful.") Petitioners also never objected to this supposed omission during or after any of the multiple IEP meetings. Because this Court must limit its review to the issues raised in the DPHR, this Court disregards Petitioners' argument that the lack of such a goal constituted a procedural violation of the IDEA. 20 U.S.C.S. §

notice of the District's nefarious intent toward him. The undersigned categorically rejects this argument and finds that maintaining logs is a necessary and useful recordkeeping practice.

[10] "The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article." O.C.G.A. § 50-18-73(a).

1415(f)(3)(B); 34 C.F.R. § 300.511(d); *Laura A. v. Limestone Cty. Bd. of Educ*., 610 F. App'x 835, 838 (11th Cir. 2015); *A.K. v. Gwinnett Cty. Sch. Dist*., No. 1:11-CV-00426-LTW, 2012 WL 12871205, at *10 (N.D. Ga. Sept. 26, 2012). Furthermore, "disagreement over goals…does not equate to a failure of an IEP to give educational benefit or of the district to provide a [FAPE]." *B.F. v. Fulton Cty. Sch. Dist.,* No. CIV A 1:04CV3379-JOF, 2008 WL 4224802, at *32 (N.D. Ga. Sept. 9, 2008); *see also Buford City Sch. Dist.*, 71 IDELR 113 (SEA GA October 2, 2017) (finding no violation where the school district admittedly failed to take data on goals and objectives, destroyed data, failed to provide data to the family that would have helped them interpret the student's progress, and provided factually inaccurate progress reports to the family). Finally, Ms. Gilland addressed this issue, testifying that the even though the IEPs did not include an attendance-related goal, the IEP minutes and recordings of the meeting show that the IEP team aimed to return [redacted] to Eaton Academy as quickly as possible. (Tr., IV, 249:9-25, 250:1-3.)

Parent Training and Counseling

26. The IDEA "defines a 'free appropriate public education' pursuant to an IEP to be an educational instruction 'specially designed ... to meet the unique needs of a child with a disability,' [20 U.S.C.S.] § 1401(29), coupled with any additional 'related services' that are required to assist a child with a disability to benefit from [that instruction]…." *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 524 (2007). "The term 'related services' means… services [that] may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children." 20 U.S.C.S. § 1401(26)(A). Examples of related services include counseling provided by social workers, parent counseling and training, social work services, psychological

services, and transportation.

27. Petitioners argue that if Respondent believed [redacted] and [redacted] were to blame regarding its alleged failure to implement [redacted] IEPs and provide him a FAPE, FCSD should have suggested the related service of parent training and/or counseling. This argument was not in the Petitioners' DPHR.

28. Only procedural violations that cause a party substantive harm will entitle a plaintiff to relief. *L.M.P.*, 879 F.3d at 1278. While Respondent could have considered and suggest parental training or counseling, they were in no way obligated to do so, and failing to do so did not [redacted] right to FAPE, significantly impede his parents' opportunity to participate in the decision-making process, or cause a deprivation of education benefits. *See T.P. ex rel. T.P. v. Bryan Cty. Sch. Dist.*, 792 F.3d 1284, 1293 (11th Cir. 2015); 20 U.S.C.S. § 1415(f)(3)(E)(ii)).

Listing Placement in the IEP

29. Petitioners argue that failing to list [redacted] placement in his IEP resulted in the denial of a FAPE. Again, this argument was not in Petitioners' DPHR. The undersigned finds this argument unpersuasive. It is undisputed and self-evident that the IEP team, including [redacted] parents, wanted and intended for him to return to Eaton until [redacted] parents provided their Notice of Private Placement to the District. Petitioners explicitly acknowledged that [redacted] placement was at Eaton during the time in question numerous times in the Due Process Hearing Request. ("FCSD claimed there was not enough data to justify any sort of change in educational placement [from Eaton]" at 19; "FCSD, however, insisted…for [redacted] to continue with Eaton's placement" at 19; "The District…kept insisting that there was an IEP in place for services at Eaton so that no change in placement would be made at the time" at 21). Further, this defect did not impede [redacted] right to FAPE, significantly impede the parents' right to participate in the

decision-making process, or cause a deprivation of educational benefits. *See T.P. ex rel. T.P. v. Bryan Cty. Sch. Dist.*, 792 F.3d 1284, 1293 (11th Cir. 2015); 20 U.S.C.S. § 1415(f)(3)(E)(ii)).

Progress Reports and Scheduling

30. Petitioners also briefly mention in passing in their post-hearing brief, without further detail or support, that FCSD failed to provide procedural FAPE by failing to provide progress reports and failing to provide an appropriate scheduling plan. This argument was not included in Petitioners' DPHR. Regardless, such arguments are not supported by the record. As previously chronicled, FCSD regularly scheduled IEP meetings in which it discussed [redacted] progress. Further, as established in the Findings of Fact, FCSD explained that it coordinated its schedule with [redacted] exclusively because both of [redacted] parents were hesitant for [redacted] to be taught or treated at [redacted] office, given that [redacted] relationship with [redacted] was comparatively stronger than his relationship with [redacted]

Prior Written Notice

31. In his DPHR, the Petitioners argue that FCSD generally failed to provide Prior Written Notice ("PWN") to [redacted] parents but did not specifically articulate what FCSD failed to provide such notice for. [redacted] testified that FCSD failed to provide PWN regarding the District's decision not to provide an FBA or a BIP. (Tr. II, 658-659). This argument was not included in the Petitioners' post-hearing brief.

32. IDEA includes the parental rights of prior written notice whenever the District "(1) [p]roposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) [r]efuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34

C.F.R. 300.503(a); 20 U.S.C.S. 1415(b)(3). This notice must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. 34 C.F.R. 300.503(b); 20 U.S.C.S. 1415(c)(1). *See Schaffer v. Weast*, 546 U.S. 49, at 53 (parents have same rights as schools to information). IDEA requires districts "to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision." *Schaffer* at 61.

33. Here, to the extent that FCSD made a definitive decision that it no longer intended to complete an FBA or a BIP, FCSD did not provide PWN. However, it is unclear from the record whether Dr. Smith testified that she did not believe an FBA or a BIP were necessary and FCSD made an affirmative decision not to do so; or, alternatively, that she intended to do so but was unable to, despite her efforts, and felt that her failure to do so was moot. Regardless, for Petitioners to obtain relief for an IDEA procedural violation there must be evidence the "procedural deficiency resulted in a loss of educational opportunity or infringed the parents' opportunity to participate in the IEP process." *Adam J. ex rel. Robert J. v. Keller Independent School Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). Given I.S.'s parents' active participation in the crafting of [redacted] IEPs, and the absence of any demonstrable "lost educational opportunity," the undersigned concludes the procedural requirements of the IDEA were substantially satisfied, even if FCSD did not provide notice of its alleged decision to no longer conduct an FBA or a

BIP. *Id.*

Substantive FAPE

34. To meet its substantive obligation under the IDEA, a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. The Supreme Court has rejected a bright-line test for deciding whether an IEP satisfies this standard. Instead, it emphasized that "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001. The IEP team must specially design every IEP to meet each child's unique needs "after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* at 999 (citing 20 U.S.C.S. §§ 1401, 1414). Ultimately, any court reviewing the adequacy of an IEP must decide whether it is "*reasonable*," not whether it is perfect. *Id.* (emphasis in original).

35. School systems are not, however, required to provide a disabled child an ideal or optimal education, or even one that maximizes the student's potential. *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1008 (5th Cir. 2010) (citing *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 (5th Cir. 2009)); *C.G. ex rel. A.S. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 284-85 (1st Cir. 2008). Instead, the IDEA only guarantees a "'basic floor' of opportunity 'specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from the instruction.'" *R.H.*, 607 F.3d at 1008; *accord Cobb Cty. Sch. Dist.*, 117 LRP 5071, OSAH-DOE-SE-1650896-33-Teate; OSAH-DOE-SE-1705016-33-Teate (Jan. 20, 2017).

36. School systems must prepare IEPs based on what they know at the time, not what they learned later. For that reason, in considering the appropriateness of an IEP, courts must conduct

a prospective, rather than retrospective, analysis. *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) ("Neither the [IDEA] nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement."); *see also Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (noting that courts should not review an educational plan in hindsight); *Mandy S*, 205 F. Supp. 2d at 1367 ("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, the time that the IEP was promulgated.") (citations omitted).

Petitioners' Substantive Arguments

37. Petitioners allege numerous substantive violations of the IDEA. Specifically, the Petitioners argue that:

a) the District's September 2016 and January 2017 IEPs were not aimed at [redacted] making meaningful progress; improperly placed [redacted] in a hospital home bound or home-bound placement, and did not provide [redacted] an education in the least restrictive environment;
b) the District failed to add "related" behavioral services such as counseling for [redacted] or his parents;
c) the District failed to state that [redacted] behavior impeded his education in his IEP;
d) the District failed to provide for a goal in his IEP that [redacted] would attend school 90 to 100 percent of the time;
e) the District failed to provide that [redacted] would participate in a full high school course load;

f) the District failed to provide a goal that [redacted] would learn to socialize with his peers and did not otherwise address his problems with socialization or provide social support;

g) the District failed to take data on the IEP goals, revise those goals, or provide progress reports on those goals; and

h) the District materially failed to implement [redacted] IEPS as shown by his lack of academic progress.

Meaningful Progress, Placement, and the Least Restrictive Environment

38. Petitioners argue that [redacted] January 2017 IEP was not aimed at making meaningful progress because it was limited to 2 online high school courses with a special education teacher for 4 hours per week with an additional 2 hours per week for behavioral strategies with a BCBA. Petitioners also argue that any progress under such plan would be de minimis because it would not accomplish [redacted] ultimate goals of attending school, completing all of his high school curriculum, and further developing his social skills. While FCSD's plan called for relatively small tangible, academic gains, they were constrained by [redacted] aversion to and unwillingness to do any work or attend school. It would have been inappropriate for FCSD to expect an overnight transition from refusing to go to school or do any work to attending a full course load and attending school daily. While the IEP team certainly had such goals in the long term, their plan understandably focused on taking short term, albeit meaningful, "baby steps" in order to accomplish the loftier goals of transitioning [redacted] back to Eaton on a full-time basis and permanently eliminating his issues with school refusal.

39. The information available to FCSD from August 2016 to January 2017 indicated that Eaton Academy was the appropriate placement. Dawn Fix, Petitioners' own witness, testified

that Eaton provides a highly flexible learning environment that can accommodate students with a variety of needs, including behavioral disorders, autism, and anxiety. [redacted] had a history of sustained success at Eaton Academy. [redacted] took a full course load and earned straight-As during the 2015-2016 school year, the year immediately preceding the 2016-2017 school year at issue in this case. During that time, he consistently attended school. In fact, of the multiple educational institutions [redacted] attended from 2013 to 2017, which included another private school (the Ben Franklin Academy) and a residential facility (Solstice East), he stayed at Eaton Academy the longest. During his time at Eaton, at least initially, [redacted] showed significant progress in overcoming his anxiety and the school refusal he had exhibited at other schools he had attended. Based on his consistent attendance and exemplary academic performance, Petitioners considered Eaton a good fit for [redacted]

40. Eaton Academy was such a good fit that Petitioners filed a Due Process Hearing Request in May 2016 to compel FCSD to pay for his tuition there. Petitioners and FCSD later settled that dispute. Their settlement agreement, which the parties signed in August 2016, called for placement at Eaton Academy for the 2016-2017 school year, established that placement there offered a FAPE, and required FCSD to create an IEP consistent with those terms.

41. Within days of creating the IEP pursuant to the settlement agreement, Petitioners notified FCSD that [redacted] was refusing to attend Eaton Academy and requested an IEP meeting. Before the meeting date, FCSD contacted Eaton Academy and [redacted] private mental health providers to gather records. They also tried to schedule a time for Dr. Smith to conduct an initial behavioral consultation with [redacted] FCSD convened the IEP meeting on September 26, 2016, with the family, Dr. Smith, and Dawn Fix, a representative from Eaton Academy, to discuss [redacted] newly surfaced aversion to Eaton. At that meeting, Petitioners made it clear they did not want to change

placement. They praised Eaton, its flexibility, and its accommodating learning environment. Petitioners told the IEP team they only wanted FCSD to observe [redacted] and gather information. And FCSD did just that: it arranged for Dr. Smith to begin conducting observations and providing behavioral supports, both at home and at school, to try to reintegrate [redacted] back to Eaton. Given [redacted] past success, the recently signed settlement agreement, and Petitioners' approval, placement at Eaton was reasonable.

42. By late October 2016, after various successful and unsuccessful attempts by Dr. Smith to schedule meetings with [redacted] he had not returned to Eaton Academy. But placement at Eaton was no less reasonable at this point. FCSD then convened another IEP meeting on November 11, 2016. At this meeting, the IEP team agreed on a new plan because of [redacted] continuing refusal to go to Eaton: Dr. Smith would begin conducting more regular meetings with [redacted] with the goal of systematically reintegrating him back to Eaton. Dr. Smith cautioned the team that the reintegration process could take time. Petitioners did not ask for different placement at this meeting or disagree with FCSD's proposed strategy. They agreed with the reintegration plan and continued to endorse Eaton as the proper placement of [redacted] even called it the "best idea [she] had heard so far." (Tr., IV, at 84; Pet. Ex. 6, IEP meeting on 11/11/2019, at 32:00-33:35).

43. On top of Petitioners' support for the plan, Dr. Smith, FCSD's expert in applied behavior analysis for students with autism or emotional or behavioral disorders, testified at length about the behavioral-science underpinnings of the reintegration strategy. She testified that she is familiar with the clinical research on the best practices for addressing students who refuse to go to school. That research instructs behavior analysts to use systematic reentry, which entails prompting the student to leave the home and perform schoolwork in different environments that increasingly approximate the school setting. She explained this method entails "fading them

into school." According to Dr. Smith, implementation of a systematic reentry plan does not require an FBA or the collection of antecedent-response data. And Dr. Smith concluded that [redacted] school refusal did not warrant an FBA. Instead, she devised a reentry plan that involved meeting with [redacted] at home, then Barnes & Noble, then at a coffee shop, then at a library, and finally at Eaton Academy. Dr. Smith testified that she described the reintegration plan process to [redacted] She also testified that if a school system too hastily sends a student to a residential placement, it risks having that student continue to exhibit school refusal in the new setting.

44. While Dr. Smith was trying to implement the reintegration plan, FCSD proposed several supports. For instance, FCSD tasked School Psychologist Maura Hammond with conducting a full psychoeducational evaluation of [redacted] to give FCSD an updated picture of his functioning. FCSD also proposed sending a teacher to Petitioners' home to provide live instruction. Petitioners did not accept that proposal because [redacted] believed that [redacted] issues were not educationally based. FCSD and Eaton also arranged for [redacted] to complete virtual assignments while he remained out of a brick-and-mortar school setting. FCSD also proactively called another meeting with the team on December 21, 2016, to evaluate [redacted] status.

45. Placement at Eaton Academy also allowed [redacted] to be educated in the least restrictive environment. Beyond requiring school systems to offer students a FAPE, the IDEA also requires that school systems educate students in the least restrictive environment. 20 U.S.C.S. § 1412(a)(5)(A). A child may only be removed into a more restrictive environment when the nature and severity of his disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. *Id.*; *T.F. v. Special Sch. Dist. of St. Louis Cnty.*, 449 F.3d 816, 821 (8th Cir. 2006) ("the school district should have had the opportunity, and to the extent the duty, to try these less restrictive alternatives before

recommending a residential placement."). This is true even if a child with disabilities might make greater academic progress in a more restrictive environment. *W.S. ex rel. C.S. v. Rye City Sch. Dist.*, 454 F. Supp. 2d 134, 148 (S.D.N.Y. 2006).

The Appropriateness of [redacted] Placement and the Least Restrictive Environment

46. Petitioners argues that the District unilaterally and improperly placed [redacted] in a hospital home bound placement in violation of IDEA. Although [redacted] January 2017 IEP document provides that his instruction was for "Hospital/Homebound," Ms. Gilland testified that [redacted] was never on Hospital/Homebound status and that the EasyIEP software program does not provide for a simple "Homebound" service. As such, the District was limited by the available choices in the drop-down menu. Accordingly, the undersigned finds that [redacted] was never in hospital home bound placement, and thus, no violation of IDEA occurred in that regard.

47. Similarly, Petitioners argue that even if [redacted] was not placed in a hospital home bound placement, the District improperly placed him in a home-based program, which is only able to "be used as a short term placement option…when the parent and [school district] agree at an IEP meeting." Ga. Comp. R. & Regs. 160-4-7-.07(3)(d)(4).

48. There has been considerable debate between the parties regarding what [redacted] placement was between September 2016 and January 2017. Petitioners contend that [redacted] placement was in a hospital home-bound or home-based instruction. The District contends that [redacted] placement was at Eaton, and he was only temporarily at [redacted] home until he could return to Eaton.

49. The record clearly shows that both [redacted] intended and expected [redacted] to return to Eaton. In this case, [redacted] was not "placed" at home. Rather, he refused to go to school and chose to remain at home on his own. Further, [redacted] time at home was assumed by his parents and District staff to be temporary until he could return to Eaton. As such, the undersigned finds that

[redacted] placement was at Eaton during all of the relevant times related to this proceeding and for purposes of determining the least restrictive environment. As a result, the District did not unilaterally place [redacted] in a hospital homebound placement or home-based program as alleged by Petitioners and did not violate IDEA or otherwise fail to provide a FAPE when [redacted] was instructed at home due to his refusal to attend Eaton during the 2016-2017 school year.

50. Ms. Gilland testified that FCSD considered that Eaton offered educational services in a less restrictive environment than a private residential facility such as John Dewey Academy when it recommended Eaton as the proper placement for [redacted]. That Eaton was less restrictive than any residential placement continues to illustrate that it was a proper placement.

51. Petitioners afforded FCSD just thirty-one school days to implement the reintegration plan before giving notice of private placement, in a more restrictive environment, at public expense. In early February 2017, Petitioners withdrew [redacted] from Eaton and enrolled him in Dewey Academy.

52. By that time, [redacted] had made considerable progress toward reintegration. He had met Dr. Smith many times at locations outside the home, and during those meetings, he worked the entire session, set goals for himself, and later completed those goals. If Petitioners had not moved [redacted] to another state, Dr. Smith planned to meet [redacted] one more time at a library before attempting to return to Eaton.

53. [redacted] record of success at Eaton, his previous failures at other private institutions, and Petitioners' months of vocal support for trying to get [redacted] to return to Eaton all prove that FCSD's selection of Eaton for placement was reasonably calculated to enable [redacted] to make progress. *Endrew F.*, 137 S. Ct. at 999. Eaton was clearly able to provide [redacted] with the instruction and related services he needed as it had done so for more than a full school year. Thus, Eaton offered

the "'basic floor' of opportunity" guaranteed by the IDEA. *R.H.*, 607 F.3d at 1008. Further, by withdrawing [redacted] before Dr. Smith saw her reintegration plan to its end, Petitioners denied FCSD a fair opportunity to provide FAPE. *See Doe v. Bd. of Educ. of Tullahoma City Sch.*, 9 F.3d 455, 459 (6th Cir. 1993) (noting that parents must give an IEP a chance to succeed), cert. denied 511 U.S. 1108 (1994). In addition, as of February 2017, FCSD had no reason to believe that [redacted] would not exhibit the same school refusal at a residential facility. The law required FCSD to try to reintegrate [redacted] into Eaton, a less restrictive environment, before resorting to a more restrictive private placement. *Evans v. Dist. No. 17 of Douglas Cty., Neb.*, 841 F.2d 824, 832 (8th Cir. 1988) ("children should be provided with an education close to their home, and residential placements should be resorted to only if these attempts fail or are plainly untenable."); W.*S. ex rel. C.S. v. Rye City Sch. Dist.*, 454 F. Supp. 2d 134, 148 (S.D.N.Y. 2006) (recognizing that the IDEA views private school as an option of last resort); *Ysleta Ind. Sch. Dist.*, 42 IDELR 281 at pp. 10-11 (SEA Tex. 2004) ("IDEA simply does not endorse moving from 'A to Z' across the continuum of placements absent compelling evidence that a student cannot succeed in a less restrictive environment"). Petitioners' decision to withdraw [redacted] from Eaton before the reintegration plan finished prevented FCSD from exhausting all less restrictive placement options.

54. While [redacted] received extremely high and praiseworthy marks at John Dewey Academy, his success does not indicate that his placement at Eaton Academy deprived him of a FAPE. Courts have consistently recognized that evidence of a child's performance or progress in a later placement or through the delivery of private services has no bearing on the appropriateness of an IEP proposed by a school district. *See Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 522 n.6 (6th Cir. 2003) ("reimbursement does not depend on the "mere happenstance of whether the

child ‘d[oes] well’ in a private placement.”); *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 133 (2d Cir. 1999) (“The inadequacy of an IEP is not established, however, simply because parents show that a child makes greater progress in a single area in a different program.”); *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 23*3, 144 F.3d 692, 708 (10th Cir. 1998) (emphasizing that simply because a student made more progress or was happier in private placement does not signify either that private placement was appropriate or that district's IEP was inappropriate).

55. The good grades [redacted] earned at John Dewey Academy from February to August 2017, therefore, do not show that placement at Eaton was inappropriate, especially given that [redacted] also earned straight-A’s at Eaton Academy in 2015-2016.

56. In addition, [redacted] chose not to attend Eaton. Petitioners attribute [redacted] aversion to Eaton purely to his anxiety, but, according to Dr. Smith, [redacted] admitted to her multiple times that he stopped going to Eaton because he preferred to pursue a GED instead of a high school diploma. He further confided in her that he wished to become a hair stylist. He also told Dr. Smith that he saw no social or academic benefit to going to Eaton. FCSD cannot be held responsible for a student’s voluntary refusal to attend a placement that would otherwise offer a FAPE.

57. While Dr. Mueller disagreed with Dr. Smith’s professional decisions as a BCBA, courts have cautioned against relying on the testimony of experts who, like Dr. Mueller, never worked with or observed the student in the school setting. *See JH ex rel. JD v. Henrico Cty. Sch. Bd.*, 395 F.3d 185, 197–98 (4th Cir. 2005) (remanding case to administrative law judge with instructions to reweigh all conflicting expert testimony, and advising that if the IHO chose to credit the testimony of any witness who did not observe the child in the school setting, the IHO needed to acknowledge that fact and explain why he chose to credit that witness’s testimony

anyway); *Robert B. v. The West Chester Area Sch. Dist.*, 2005 U.S. Dist. LEXIS 21558 (E.D. Pa. 2005) (concluding that the plaintiff's expert's testimony deserved low weight because he lacked personal knowledge of the child in a classroom setting, did not observe the school program with the child present in it, did only minimal testing, and did not possess comprehensive and complete information about the student's academic progress during the previous school year); *Winkelman v. Parma City Sch. Dist.*, 411 F. Supp. 2d 722, 733 (N.D. Ohio 2005), *aff'd*, 294 F. App'x 997 (6th Cir. 2008) (finding hearing officer properly disregarded expert testimony because of his lack of expertise in education, his limited personal interaction with the student, and the fact that he never observed the student in an educational setting). Further, the undersigned finds Dr. Smith's theory that she needed to observe [redacted] at school to understand his antecedent behavior, rather than at home before school starts as posited by Dr. Mueller, to be more compelling. There was no evidence in the record that [redacted] was refusing to attend school based upon something that was occurring in the morning. Instead, it appears to the Court that it was [redacted] experiences at school and his tendency for rigid thinking, which convinced him that there was no longer any utility to him attending high school, at Eaton or at any other school.

Related services

58. The IDEA "defines a 'free appropriate public education' pursuant to an IEP to be an educational instruction 'specially designed ... to meet the unique needs of a child with a disability,' § 1401(29), coupled with any additional 'related services' that are required to assist a child with a disability to benefit from [that instruction]…." *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 524 (2007). Related services include counseling provided by social workers, parent counseling and training, social work services, psychological services, and transportation. 20 U.S.C.S. § 1401(26)(A).

59. Petitioners allege that the District failed to provide [redacted] with the required, related service of counseling and argue [redacted] parents should also have been provided with counseling services. The undersigned disagrees. While counseling may have benefited [redacted] the District offered such services to his parents. Those services were never accepted, and thus, not implemented by the IEP team. Further, while counseling for [redacted] parents may have been useful, it certainly was not the type of required service necessary to assist a child with a disability as contemplated under IDEA.

Numerous Other Allegations by Petitioners

60. Petitioners argue that the District denied a FAPE substantively to [redacted] by failing to include several goals, take data on the goals, revise the goals, and provide progress reports on those goals. Specifically, Petitioners allege that FCSD should have included within [redacted] IEP a goal that [redacted] would attend school 90 to 100 percent of the time; a goal that [redacted] would participate in a full high school course load; and a goal that [redacted] would learn to socialize with his peers. All of these allegedly omitted but necessary goals do not demonstrate a failure to provide a substantive FAPE.

61. First, Petitioners' DPHR did not raise these issues, and this Court is limited to those issues raised in the DPHR. 20 U.S.C.S. § 1415(b)(6)(B); *Mandy S. v. Fulton County Sch. Dist.*, 205 F. Supp. 2d 1358, 1366 (N.D. Ga. 2000), *aff'd without opinion*, 273 F.3d 1114 (11th Cir. 2001). Second, although the goals were not in writing in the IEP, the record and the audio recordings of the IEP meetings, as well as the testimony of all parties involved, clearly show that the IEP team's goals for [redacted] were to return to Eaton, attend a full course load, socialize at school, and progress emotionally and academically. While the IDEA requirement that the IEP be in writing "is not merely technical," and "should be enforced rigorously," such requirements

are in place in order to eliminate factual disputes over what placements were offered and what additional educational assistance was offered to supplement the placement. *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994). In this case, we have audio recordings of each IEP meeting, which eliminate any factual disputes about what placements and forms of educational assistance were offered. As such, any failure to write such goals into the IEP were in fact technical, de minimis violations and did not result in a failure to provide a FAPE.

62. Petitioners also allege that FCSD failed to state that [redacted] behavior impeded his education in his IEP. The undersigned finds that this allegation is unsupported by the record, de minimis, and irrelevant.

Implementation of the IEP and the L.J. case

63. The Eleventh Circuit, *in L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d 1203 (11th Cir. 2019), considered when a school system violates the IDEA by failing to implement an IEP that, as written, would offer a FAPE. The court held that "to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP." *L.J.*, 927 F.3d at 1211. "A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP." *Id.* But a plaintiff cannot show a material implementation failure "merely by pointing to a lack of educational progress." *Id.* at 1214.

64. The *L.J.* decision specifically analyzed the implementation question in the context of a student who, like [redacted] refuses to go to the school in which his IEP placed him. There, the court emphasized that the school system could not provide many of the IEP-mandated services, because the student, L.J., refused to attend school. *Id.* at 1217. No failure by the school system to implement any portion of the IEP caused L.J.'s aversion to school. *Id.* at 1217-18. The school

system even offered several supports to make L.J. more comfortable attending school. *Id.* at 1218. The school system also developed a written plan designed to address L.J.'s school refusal. *Id.* Despite those efforts, "over and over again L.J. never made it to the front door of the school." *Id.* (punctuation omitted).

65. Under those circumstances, the court concluded, the school system did not fail to implement L.J.'s IEP. *Id.* The court acknowledged that L.J.'s absenteeism caused him to miss many services called for by his IEP, including occupational therapy sessions, sensory breaks, and speech and language services. *Id.* But "[m]issing those sessions because he was not at school," the court explained, "is quite a different matter than missing those sessions because the school simply failed to provide them." *Id.* The court also highlighted the fact that L.J.'s school refusal pre-dated the IEP at issue, which precluded the court from drawing a "causal inference between any alleged implementation failures and L.J.'s absenteeism." *Id.* at 1219. Lastly, the court acknowledged that even though lack of progress can sometimes show a material implementation failure, "that inference is much harder to make when another educational impediment—here, repeatedly missing instruction and educational services—readily explains the lack of progress." *Id.* Because L.J. missed so many school days (over one hundred in sixth grade, alone), his lack of progress did not constitute probative evidence of an implementation failure. *Id.*

66. The *L.J.* decision guides the analysis of this case. Petitioners' primary complaint centers on the lack of in-school instruction that [redacted] received from August 2016 to February 2017. The three IEPs developed for [redacted] from during that period called for his placement at Eaton, where [redacted] was supposed to receive all instruction and educational services. But as a result of [redacted] refusal to attend Eaton, he did not receive in-school instruction and could not work toward

completion of the measurable goals and objectives prescribed by the IEPs. Like the school system in L.J., FCSD never failed to implement the special education or related services called for by [redacted] IEPs. Instead, [redacted] prolonged absenteeism caused the gaps in services or instruction.

67. [redacted] school refusal, moreover, cannot be traced back to any implementation failure by FCSD. On the contrary, like L.J., [redacted] had exhibited school refusal at multiple schools dating back years before the 2016-2017 school year. Petitioners had filed a due process hearing request in May 2016 seeking reimbursement for the cost of enrolling [redacted] at Eaton Academy because [redacted] did not exhibit the aversion to attending Eaton that he had exhibited toward other educational institutions. [redacted] long history of school refusal prevents this Court from linking his absences from Eaton and any alleged IEP implementation failure by FCSD.

68. In fact, FCSD endeavored for months to try to prompt [redacted] to return to Eaton. It consulted with a representative from Eaton to formulate an educational setting in which [redacted] would be more comfortable if he chose to return and had her attend IEP meetings. (*See* Pet. Ex. 6, IEP meeting on 9/26/2016). Maura Hammond, an FCSD-employed school psychologist, conducted a full psychoeducational assessment of [redacted] FCSD convened meetings with the parents every month from September 2016 through January 2017 to discuss [redacted] present level of functioning, propose supports, offer in-home instruction (which the parents repeatedly failed to accept), and seek to develop a plan to return him to school. FCSD hired Dr. Smith to work closely with [redacted] to identify the causes of [redacted] school refusal and devise strategies for reintegrating him into Eaton. From September 2016 to early February 2017, Dr. Smith met with [redacted] fifteen times (and offered dates for another eighteen visits). In December 2016, Dr. Smith developed a written treatment plan designed to address [redacted] school refusal so that he would return to Eaton. Due

to FCSD's reintegration strategy, by January 2017, [redacted] had made considerable progress toward returning to Eaton. And FCSD's reintegration strategy appeared to be working when Petitioners withdrew him from Eaton.

69. Throughout their DPHR and during the presentation of their case at the hearing, Petitioners emphasized their belief that [redacted] was not attaining the course credits he needed to graduate quickly enough. But the IDEA does not guarantee progress; it only requires that school districts provide the *opportunity* for progress. *Endrew F.*, 137 S.Ct. at 1001. FCSD offered that opportunity through placement at Eaton. And given [redacted] progress toward reintegration, coupled with his history of success at Eaton, the facts here pale in comparison to those in the cases in which courts have found a denial of a FAPE based on slow progress. *See Johnson v. Bos. Pub. Sch.*, 906 F.3d 182, 196 (1st Cir. 2018) (finding no denial of a FAPE where a child with profound hearing loss required years to gradually learned to sign, vocalize, and understand linguistic concepts); *contrast Columbia Pub. Schs.*, 49 IDELR 267 (SEA DC 2008) (noting that a student's present levels of performance remained stagnant for several years); *Unionville-Chadds Ford Sch. Dist.*, 47 IDELR 280 (SEA PA 2007) (finding that a district should have addressed a child's reading deficiencies when it became apparent that the student was not making any progress); *Department of Educ., State of Hawaii*, 47 IDELR 238 (SEA HI 2007) (criticizing the decision to continue an ineffective reading program despite the student's lack of progress over a three-year period).

70. And again, to the extent that [redacted] lagged in his progress toward graduation, that lack of progress is attributable to his absenteeism, not any omission by FCSD. Thus, the number of course credits [redacted] accumulated from August 2016 to February 2017 does not constitute evidence of FCSD's failure to implement the IEP. That is especially true given FCSD's efforts to remedy

[redacted] school refusal and his progress toward reintegration. Under these circumstances, FCSD cannot be blamed for [redacted] lack of academic progress. *See L.J.*, 927 F.3d at 1219 ("Based on this record, we cannot fault the school for L.J.'s extensive absences.").

IV. Decision

Based on the foregoing findings of fact and conclusions of law, the court concludes that Petitioners have failed to meet their burden. Accordingly, Petitioners' request for relief is **DENIED**.[11]

SO ORDERED, this 26th day of March, 2020.

Steven W. Teate
Administrative Law Judge

[11] Petitioners allege countless violations of FAPE and the IDEA, which are widely dispersed throughout their post-hearing brief. Substantive and procedural allegations are mixed together in a confusing and haphazard manner. This made it difficult for the undersigned to follow and address each argument alleged by Petitioners. As such, any allegation not specifically addressed is hereby **DENIED**.

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.