

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

█, BY AND THROUGH █; AND

█,

Petitioners,

v.

**FULTON COUNTY SCHOOL
DISTRICT,**

Respondent.

Docket No.: 2218126

2218126-OSAH-DOE-SE-60-Boggs

Agency Reference No.: 2218126



For Petitioners:

Petitioner █, mother of student █

For Respondent:

MaryGrace Kittrell, Esq.¹

Parker Poe Adams & Bernstein, LLP

FINAL DECISION

I. INTRODUCTION & PROCEDURAL HISTORY

Petitioner █ is a student with a disability who is eligible for special education services under the Individuals with Disabilities Education Act of 2004 (“IDEA”). On January 31, 2022, █—by and through his mother, Petitioner █—filed a due process hearing request against the Respondent, the Fulton County School District (“Respondent” or “District”). The Petitioners amended their due process hearing request (“Amended Complaint”) on March 4, 2022.

In their Amended Complaint, the Petitioners allege that the District violated the IDEA with respect to █’s evaluation and educational placement, as well as by denying him a free appropriate public education (“FAPE”).

The evidentiary hearing took place over two days, May 27 and June 8, 2022, in Atlanta, Georgia. On June 16, 2022, the Petitioners filed a motion seeking to amend their requested

¹ Attorney Kittrell alternately appears throughout the record as “MaryGrace Bell.”

remedies. The Court denied this motion on July 5, 2022. The record officially closed on July 21, 2022, when the Court received the final volume of the hearing’s transcript.²

After consideration of the evidence and for the reasons explained herein, the Court hereby **GRANTS in part and DENIES in part** the Petitioners’ request for relief under the IDEA. The Petitioners are entitled to relief as described in part IV of this Decision.

II. FINDINGS OF FACT

A. Background

1.

At the time of the hearing, ■■■ was ■ years old. He lives with his family, including his mother, ■■■, and his ■■■■ sister. (Transcript [Tr.] 106-107.)

2.

Since 2018, ■■■ has been receiving private speech and occupational-therapy services, as well as private Applied Behavioral Analysis (“ABA”) services. He initially was referred for a special education evaluation due to his transition out of the Babies Can’t Wait early-intervention program. He has been diagnosed with Autism Spectrum Disorder. (Tr. 26, 640; Ex. P-2, unnumbered p. 1³; Ex. R-6, pp. 53, 58.⁴)

² See Ga. Comp. R. & Regs. 616-1-2-.26. As the Court noted in a previous order, the record was held open solely to receive the transcripts. (See Case File, Order Denying Petitioners’ Request to Amend Requested Remedy, filed Jul. 5, 2022.) Additionally, the Court extended the deadline for the issuance of this decision, due to the length of the record and the complexity of the issues. See Ga. Comp. R. & Regs. 616-1-2-.27(2).

³ For exhibits labeled “P-#,” reference to an “unnumbered” page refers to the sequential order of the pages in the exhibit. Reference to a “numbered” page refers to a document’s existing page numbering.

⁴ For exhibits labeled “R-#,” the referenced page numbers refer to the Bates-stamped page numbers appearing on the bottom right of the documents.

3.

When █████ was 3 years old, he began attending a █████ program at the District's █████ Elementary School ("█████") for the 2019-2020 school year. He became eligible for the special education program with a primary exceptionality of "Significantly Developmentally Delayed" ("SDD") and a secondary exceptionality of "Speech Language Impairment."⁵ He also received occupational-therapy services on a consultative basis. "Consultative services" involve the therapist consulting with the student's teachers and providing strategies to help the child meet his educational goals, as opposed to working with the student directly. For the first half of the school year, █████ attended the half-day program in the morning. (Tr. 108, 111, 275, 295, 306-307; Ex. P-2, unnumbered p. 1; Ex. R-6, p. 52.)

4.

Sometime in October 2019, █████ convened with █████'s educators and other members of the District to develop █████'s Individual Education Plan ("IEP"). The team decided that, beginning in January 2020, █████ would move from a half-day of classes to a full day. For the 2020-2021 school year, █████ would participate in a full day of pre-K instruction, including time in the general education setting with support from █████'s behavioral therapist for lunch, recess, or center time. The IEP team also addressed concerns about █████'s speech, and the team also noted █████ would require transportation services for pick-up in the mornings and drop-off at the end of the school day. (Tr. 24-25, 159; Ex. P-2, unnumbered pp. 1-2.⁶)

⁵ According to █████, autism services had been offered to █████ at the time he entered the special-education program. (Ex. P-50, at 00:55:00 to 00:56:30.)

⁶ Only the first two unnumbered pages of Exhibit P-2 were admitted into evidence.

5.

According to [REDACTED], at some point the District rescinded its approval for the behavioral therapist to accompany [REDACTED] in his general education classes during the 2020-2021 school year. At that point, she asked for an IEP amendment meeting in January 2020. (Tr. 23, 25.)

B. January to May 2020: Preschool at [REDACTED] Elementary School

i. IEP meeting – January 16, 2020

6.

An IEP amendment meeting took place on January 16, 2020, to address [REDACTED]'s concerns about [REDACTED]'s services and his transition to the general education setting. According to the meeting minutes, [REDACTED] stated that “the team did not consider supportive instruction during a previous meeting due to lack of personnel.” The minutes stated the other team members explained “it was because she [REDACTED] requested a behavioral therapist to go into the general education classroom and provide support.” [REDACTED] did indicate that [REDACTED] had a behavior-intervention specialist in the home environment. (Ex. R-6, pp. 51, 60, 71-72.)

7.

[REDACTED] also relayed concerns about [REDACTED]'s refusal to work on non-preferred activities, and she requested data be collected on these non-compliance issues to help correct [REDACTED]'s behavior. She also requested a Behavior Intervention Plan (“BIP”), and she signed a consent form for a Functional Behavioral Analysis (“FBA”) to be completed. [REDACTED] further inquired about increasing [REDACTED]'s occupational-therapy services to once a week. However, the school members of the IEP team did not recommend an increase, based on [REDACTED]'s average standard scores on an assessment, as well as feedback from the teachers that they had not observed any fine motor deficits with [REDACTED]

████ stated she was going to get a private speech and occupational therapy evaluation completed. (Tr. 25, 149, 479; Ex. R-6, pp. 71-73.)

8.

Based on this meeting, the following IEP was put into place for January 17 through October 21, 2020 (“January 2020 IEP”):

- For the remainder of the 2019-2020 school year (████) and beginning in the 2020-2021 school year through October 2020 (████), █████ would attend a full day in the special education preschool program, which equated to 32.5 hours a week of instruction delivered by a special education teacher. He also would receive 60 minutes a week of speech therapy delivered by a speech/language pathologist and 30 minutes a month of occupational therapy on a consultative basis.
- █████ would participate for 60 minutes each day in a setting with non-disabled peers, in both a one-on-one and a group setting. █████ also would receive 60 minutes per day of supportive instruction during centers time.
- █████ would continue to receive transportation services.
- █████ did not require assistive technology devices or services.

The IEP made no mention of providing █████ with ABA or support from a behavior technician, such as a registered behavior technician (“RBT”). (Tr. 112-113, 117, 159; Ex. R-6, pp. 51, 54, 56, 64-67, 71-73.)

9.

The January 2020 IEP provided the following as █████’s goals and objectives:

- For academic objectives, █████ would use one-to-one correspondence to count objects with 80% accuracy; independently read 20 words with 80% accuracy; and complete non-preferred teacher-directed tasks without refusal behaviors given one prompt, with 80% accuracy. The latter objective was added to address █████’s concerns about █████’s resistance to non-preferred tasks.
- For communication and speech-language objectives, █████ was to follow three-step directions given no more than two verbal cues in 70% of given trials; combine core vocabulary words to answer “who, where, and what”

questions with one verbal/visual cue, in 70% of given trials; and correctly label vocabulary items when asked “What is this?” in 70% of given trials.

- For daily living skills objectives, █████ was to indicate the need to use the restroom by using a word, gesture, and/or picture, with 100% accuracy.

(Ex. R-6, pp. 59-60, 71, 72.)

ii. *Transition to full-time preschool program – January to March 2020*

10.

From mid-January to mid-March 2020, █████ continued to attend the special education █████ class at █████ taught by █████ █████. A total of eight students participated in the class, ranging in age from █ to █ years old. (Tr. 305, 307.)

11.

Ms. █████, who has worked as a special education █████ teacher for five years and also served as █████’s case manager, described █████ as a “really sweet” student who was able to grasp new skills quickly. Ms. █████ considered █████ to be easily redirected; in the one instance she could recall when █████ walked away from an activity, he was easily returned to the task. She did not recall █████ exhibiting such maladaptive behaviors as meltdowns, outbursts, or showings of aggression toward other students. But according to a behavior sheet for █████, dated March 4, 2020, █████ reportedly had punched a teacher sometime in late February 2020 when he got off the bus. The same behavior sheet also recorded █████ showing resistance to or failing to follow directions. (Tr. 303, 305, 306-309, 313; Ex. P-3, unnumbered p. 4.)

12.

Unlike █████, Ms. █████ did not believe that █████ exhibited behaviors that would require a BIP. Nonetheless, as requested by █████ during the January 2020 IEP meeting, Ms. █████ initiated an FBA, which would involve her observing █████ for 10 days and noting any negative behaviors,

including the times they occurred throughout the day. The FBA was still ongoing as of March 2020. (Tr. 25, 309-310, 651-652.)

iii. Transition to virtual learning due to COVID-19 – Mid-March through April 2020

13.

Around the middle of March 2020, the District’s schools closed to in-person learning in response to the COVID-19 pandemic.⁷ Ms. ■ transitioned to teaching her students virtually. Initially this consisted of Ms. ■ sending videos, worksheets, and activities to parents for the students to complete. The activities covered the topics of literacy, counting, motor skills, and self-care. The assignments themselves included reading a book with a family friend, a counting activity, playing outside for one hour, singing songs, or using paper, crayons, and markers. In an email to parents on March 16, 2020, that included additional activities, Ms. ■ stated that she wanted “to keep the students on their regular academic schedule as much as possible,” and that she would check on the students’ progress throughout the day. (Tr. 25, 111, 311; Ex. P-3, unnumbered p. 1.)

14.

As of April 20, 2020, Ms. ■ began presenting virtual live lessons through the Microsoft Teams platform. An email sent by Ms. ■ to the parents stated the lessons that week were scheduled for Tuesday and Thursday, at 10 a.m. and 1 p.m. Ms. ■ testified that she recalled seeing ■ during these virtual lessons. (Tr. 47, 311; Ex. P-3, unnumbered p. 2.)

⁷ The exact date when in-person learning ceased is not clear based on the record. ■ testified that ■’s teacher began providing activities to be completed at home after March 14, 2020. Ms. ■ also sent an email to ■ and other parents on March 17, 2020, thanking them for completing the previous set of activities and including new assignments. (Tr. 109; Ex. P-3, unnumbered p. 1.) Thus, the Court reasonably can presume that in-person learning stopped around the middle of March 2020.

15.

During this period of virtual learning, the occupational therapist assigned to █████'s case emailed a Choice Board⁸ with occupational-therapy activities for him to complete at least on a weekly basis. She also attempted to contact █████ without success on March 20 and 25, 2020, and on April 1, 13, 15, 17, 22, and 29, 2020. According to the therapist's notes, █████ did not report any questions or comments during this period. If the parent did not respond to the therapist's queries, the latter would continue sending Choice Board activities. (Ex. R-39, pp. 375-377.)

16.

Also during this period of virtual learning, █████'s District-assigned speech therapist initially uploaded online lessons and teletherapy Choice Boards using a platform called ClassDojo on March 18, 23, and 30, 2020. On April 13, 14, 21, and 30, 2020, the therapist sent more Choice Boards and handouts. By April 17, the therapist offered teletherapy sessions via the Teams platform, which █████ agreed to do. The therapist checked in with █████ on March 30, to which █████ responded she was OK. The therapist attempted to contact █████ again unsuccessfully on April 24, 2022. (Tr. 238; Ex. R-38, pp. 368-369.)

iv. IEP meeting – April 29, 2020

17.

At some point, █████ requested an IEP meeting to check on the status of █████'s FBA, among other items. The meeting took place on April 29, 2020 ("April 2020 IEP meeting"). (Tr. 25-27; Ex. R-7, pp. 74, 94.)

⁸ █████ described a Choice Board as a piece of paper showing different assignments. The student would pick from the Choice Board which assignment he wished to complete. (Tr. 250-251.)

18.

Regarding the delayed FBA, the minutes from the IEP meeting stated the assessment that originally began in January 2020 would be restarted during the 2020-2021 school year. According to Dr. Yolanda Brownlee, the compliance coordinator for the District's special education department, the District had decided to cease all special-education evaluations while learning was being conducted 100% remotely. The District made this decision because it was taking "extreme caution" to avoid placing school staff and students in close physical proximity during the COVID-19 pandemic. The District also rejected completing the evaluations via a remote video platform like Zoom or Teams, given the need for evaluators to be in close proximity with the student to "establish rapport," ensure the student stays on task, properly give prompts, set out certain tasks that require pencil and paper, and otherwise control the environment for the evaluation. Based on these factors, the District concluded any evaluation conducted remotely would have "problems with the scoring results." At the hearing, █████ conceded that the IEP team decided during this meeting to hold off on the FBA until the start of the next school year, for 2020-2021. (Tr. 26, 608, 613, 616-619; Ex. R-7, p. 94.)

19.

According to the IEP meeting minutes, █████ also expressed her concerns about █████'s "work refusal of non-preferred activities." She requested a daily sheet completed by the teacher to indicate █████'s behaviors for the day, including naptime, circle time, what he ate, what he played with, and how he played with his peers. The team agreed to this request. (Ex. R-7, pp. 94-96.)

v. *End of school year and overview of █████'s private services*

20.

Following the April 2020 IEP meeting, █████ continued with virtual learning—as did all the District’s special education students—through the remainder of the 2019-2020 school year. For occupational therapy, he received another Choice Board on May 6, 2020, as well as a packet of end-of-year activities on May 20, 2022. █████ also participated in an occupational teletherapy session on May 7, 2020. For speech therapy, █████ participated in the agreed-upon teletherapy session via Teams on May 7, 2020,⁹ and he received another Choice Board on May 11, 2020. The speech therapist also attempted to contact █████’s parent unsuccessfully on May 13, 2020. (Tr. 109, 113, 330; Ex. R-39, pp. 377-378; Ex. R-38, p. 368.)

21.

At the hearing, █████ conceded the District provided █████ with services for speech and occupational therapy from March through May 2020, and that she took advantage of those services. She also conceded she received emails from the speech and occupational therapists during this period, and she agreed that █████’s IEP at the time only called for consultative services. However, █████ asserted that she was called upon to do the provided therapy activities with █████ herself, and that “it was difficult to even . . . get him to sit and attend” to the Choice Boards. She also stated that, while some of the activities were fine, others were “a little more challenging” and “we just didn’t have any support.” (Tr. 47, 121-123, 238-239, 241-242.)

22.

█████ further testified that, during this period of virtual learning during the 2019-2020 school year, she relied heavily on █████’s private services for speech therapy, occupational therapy,

⁹ It is unclear from the therapist’s log how long this session lasted. (Ex. R-38, p. 368.)

and ABA. This private speech therapy was provided online via one-on-one sessions for 30 minutes twice a week. The occupational therapy sessions also took place online, for a one-hour session each week; however, █████ conceded that one-hour occupational therapy sessions went beyond what the existing IEP required. As for the private ABA, █████ had one-on-one sessions in his home with an RBT in his home, working on non-compliance, inappropriate verbalizations, attention issues, communication issues, toileting, brushing teeth, and talking with others. According to █████, during this period of virtual learning, the private ABA services shifted to helping █████ with the classroom activities provided by his teacher. (Tr. 26, 124-125, 132, 136-138, 152-153, 157-158, 160, 166-167; Ex. P-4, unnumbered p. 4.)

vi. █████'s request for reimbursement – June 8, 2020

23.

In a letter sent to the District on June 8, 2020, █████ requested reimbursement for what she termed “IEP services” that she personally provided to █████ from March 23 through May 22, 2020 (“June 2020 letter”). The letter stated the school’s speech and occupational therapy services via Choice Boards were inadequate and the telehealth sessions were “not a good fit,” though no further explanation was provided. (Tr. 48-49, 120; Ex. P-4, unnumbered pp. 1, 3, 6-7.)

24.

The June 2020 letter also addressed the incomplete FBA. In the letter, █████ told the District she was willing to let the observation piece be completed “via computer,” and she also offered her private BCBA¹⁰ to review the data and complete the assessment. Citing the FBA’s delay, █████ asked the District to reimburse her for private ABA services starting from the week of April 13, 2020, through the end of the 2019-2020 school year. █████ went on to explain that she believed the

¹⁰ “BCBA” presumably refers to a Board Certified Behavior Analyst.

FBA would support her belief that [REDACTED] needed an RBT in the classroom setting. (Tr. 148; Ex. P-4, unnumbered pp. 3-4, 13.)

25.

Lastly, [REDACTED] asked in the June 2020 letter to be reimbursed for half the supplies she reported purchasing for [REDACTED] to “support digital learning.” This included an “additional laptop” and the purchase of a small desk and chair. (Ex. P-4, unnumbered pp. 4, 8-12.)

26.

Dr. Patricia Gilland, the District’s special education compliance director, contacted [REDACTED] on June 11, 2020, about the requests in the June 2020 letter. They eventually agreed to discuss the matter during a phone call on June 23, 2020. At the hearing, [REDACTED] testified that Dr. Gilland told her to give her a “creative offer.” [REDACTED] conceded the District has never flat-out denied her request for reimbursement. (Tr. 168-169, 252; Ex. P-4, unnumbered pp. 14-16.)

C. 2020-2021 School Year: [REDACTED] at [REDACTED] Elementary School

i. Virtual [REDACTED] class and therapy services

27.

For the beginning of the 2020-2021 school year, [REDACTED]’s enrollment was moved to the District’s [REDACTED] Elementary School (“[REDACTED]”). According to [REDACTED], the move from [REDACTED] to [REDACTED] was “because of some districting relocation stuff.” [REDACTED] was placed in the self-contained, special education [REDACTED] class run by [REDACTED], who also served as [REDACTED]’s case manager. The class had approximately eight students. When the school year started, the special education students continued to receive lessons virtually rather than in person. Consequently, [REDACTED] was notified that [REDACTED]’s evaluation would be postponed until in-person

learning became available. (Tr. 26, 203, 322-323, 325, 338, 510, 518, 524; Ex. P-5; Ex. P-11, unnumbered p. 3; Ex. R-11, p. 123.)

28.

After reviewing ██████'s most current IEP, Ms. ██████ created a Remote Learning Contingency Plan ("RLCP") for him, to start August 17, 2020 ("August 2020 RLCP"). An RLCP was individualized for each student and addressed which of the services that a student normally received in a school setting would be possible in a virtual setting.¹¹ ██████'s August 2020 RLCP called for the following:

- Small-group specialized instruction for 60 minutes a day from the special education teacher.
- 60 minutes small-group speech therapy a week.
- Weekly monitoring on ██████'s progress toward the following goals and objectives:
 - Counting 10 objects with 1:1 correspondence; and
 - Reading words fluently from flash cards.
- Monitoring twice a month on ██████'s progress toward the following speech goals and objectives:
 - Labeling curriculum-related vocabulary items when asked "What is this?" verbally or via another mode of communication; and
 - Choosing the correct item from a set of two offered items that are curriculum-related.

¹¹ The RLCP document itself includes the following explanation:

The programming and services contained in the student's full IEP reflect what the District intends its offer of FAPE to be if it were to have full access to the student in a traditional school environment. However, this [RLCP] is written to reflect how the District plans to implement the student's special education and related services in the event that health and safety concerns involving the COVID-19 pandemic prevent the District from having access to the student in a traditional face-to-face environment.

(Ex. R-8, p. 103.)

Also in the August 2020 RLCP, ██████ noted that ██████ “will require frequent repeating of directions and extra time to complete tasks,” and that he also would require individualized instruction. The plan noted no issues with ██████ using “the materials typically found in a ██████ classroom.” ██████ indicated during a subsequent IEP meeting that she signed this RLCP. (Tr. 332-333, 612, 614; Ex. P-50, at 02:55:00-02:57:15; Ex. R-8, pp. 97, 99-100.)

29.

For her virtual lessons, Ms. ██████ would create monthly learning packets that typically broke down into weekly concepts covering a number, a letter, a shape, a color, etc. She would distribute paper copies of these packets to the students. A typical school day would go as follows: Ms. ██████ opened her virtual channel at 8 a.m. and promptly began at 8:10 a.m. She would start with a review of the rules of class, then read stories. She next proceeded to the letter concept for the day, going over how to write the letter and its sound. The class then completed a sequencing activity. Next came review of the number concept, during which Ms. ██████ would demonstrate how to hold the paper down and hold the pencil properly. The class then moved to the shape concept for the day and practiced such items as tracing the shape, coloring within boundaries, and holding the crayon properly. To engage the students, Ms. ██████ would ask students questions throughout class and had them show their work to her. The students would then sing the “goodbye song” before class ended at 10 a.m. After 10 a.m., students could work on activities in their packets; however, Ms. ██████ left the schedules to the students’ parents, given each student’s own toileting or napping needs. This period of work was referred to as “asynchronous learning.” In Ms. ██████ opinion, ██████ students could not sustain a full day of virtual instruction. (Tr. 325-328, 356, 372; Ex. P-14, unnumbered p. 14; Ex. R-11, p. 133.)

30.

Regarding ██████'s IEP, Ms. ██████ would incorporate the goals and objectives from the IEP during regular instruction, such as by asking comprehension questions while reading a story. She also worked one-on-one with ██████ on his goals and objectives every Friday at 8:15 a.m. All activities for these sessions were included in the learning packets, such as extra reading comprehension sheets or math activities. (Tr. 328-329, 348-349, 353.)

31.

During the 2020-2021 school year, ██████ received occupational therapy services from April Girard. In addition to the 30 minutes of consultative services required by the IEP, Ms. ██████ also met with ██████ and other special-needs ██████ students for a group session focusing on sensory motor and fine motor skills. According to Ms. ██████ this separate session was a District requirement, not an IEP requirement. During these sessions, ██████ worked on writing his name, holding scissors, and drawing lines and circles. As additional components of ██████'s occupational therapy, he was taught strategies for calming down, including the "blowing out a fake candle" concept and yoga, which would help with transitions. ██████ also had a sensory corner with a trampoline set up at his home, in the event he needed a break. At one point Ms. ██████ sent to ██████ an adaptive seating device—known as a "moving seat cushion"—as well as fidget spinners to help him stay focused and engaged. (Tr. 278-280, 284-285, 288-291; Ex. R-30.)

32.

At some point in September 2020, parents were given the option for the District's special education students to again appear in person for in-person learning. Ms. ██████ testified that she suggested to several families, including ██████'s family, that students should return to face-to-face learning because it offered built-in routines, hands-on activities, opportunity for extra assistance,

and most importantly, interaction with peers. ██████'s family, however, elected for him to continue with virtual learning, due to concerns about ██████ being at high risk for COVID-19. He remained in the virtual setting for the entirety of the 2020-2021 school year. (Tr. 169-170, 330, 336-337, 518-519; Ex. P-50 at 02:30:00 to 02:31:15.¹²)

33.

██████'s private speech therapy, occupational therapy, and ABA services continued for the remainder of the school year as well. (Tr. 170.)

ii. Email correspondence between Ms. ██████ and ██████ – September 2020

34.

In an email sent to Ms. ██████ on September 11, 2020, ██████ brought up ██████'s as-yet-completed FBA, which had been authorized in January 2020. ██████ contended that “the ball was dropped” regarding the completion of the FBA. (Ex. P-11, unnumbered p. 4.)

35.

On September 29, 2020, ██████ again emailed Ms. ██████ and relayed five areas of concerns with ██████: communication, comprehension, socialization, fine motor skills, and behavior. She specifically stated her concerns with his behavior “during transitions, self-regulation, the inability to sit and attend non-preferred tasks, [and] being able to tolerate new and unfamiliar people and places.” ██████ reported that ██████ had been attending “numerous hours” of private speech therapy, but he still had gaps in his expressive and receptive language. She also noted that ██████ still showed regression in his fine motor skills, including a “regression in hand strengthening and hand use,” despite hours of private ABA services and occupational therapy. She also requested a tablet to

¹² Exhibit P-50 is an audio recording. Citations to this exhibit consist of time stamps marking the relevant portion of the recording, in hours, minutes, and seconds.

meet ██████'s educational needs, due to his "limited access to technology due to being in a virtual classroom setting." (Ex. P-12, numbered p. 3; Ex. R-11, p. 123.)

iii. IEP meeting – October 16, 2020

36.

A meeting to review ██████'s IEP took place October 16, 2020 ("October 2020 IEP"). This IEP was intended to remain in effect through October 2021. (Tr. 26; Ex. P-12,¹³ unnumbered p. 1, numbered p. 12; Ex. R-9, pp. 102, 114.)

37.

According to this IEP, ██████ exhibited "significant delays" in the following areas: communication; intellectual-cognitive; adaptive/daily living; fine/gross motor; and social/emotional/behavioral. He continued needing help on the IEP goals and objectives of reading passages and answering simple comprehensive questions; and completing a non-preferred teacher/adult directed task without refusal. The IEP further noted that ██████ had difficulty transitioning from preferred to non-preferred activities; had "meltdowns"; required a visual schedule, verbal cues, and visual cues to engage; demonstrated difficulty with self-regulation; had difficulty calming himself down; struggled with keeping on task; and showed decreased hand strength with regard to a fine motor skill. (Ex. P-12, numbered pp. 2, 4; Ex. R-9, pp. 102-103, 105.)

38.

As to his strengths, the IEP noted ██████ "is a willing participant in most classroom and therapy activities." He had mastered his IEP goals of using 1:1 correspondence when counting

¹³ At the hearing, ██████ stated that Exhibit P-12 is the IEP given to her during the October 2020 meeting, and that it differs from the October 2020 IEP document tendered by the Respondent and admitted as Exhibit R-9. The handwritten notes on Exhibit P-12 are ██████'s personal notes. (See Tr. 56-60.) For the sake of thoroughness, the Court has reviewed and cites to both documents.

numbers; reading independently when given sight words; and indicating when he needs to use the restroom. ■■■ also made “significant progress” on his speech goal of identifying curriculum vocabulary when asked, achieving 80% accuracy. His occupational therapist, Ms. ■■■ also reported during the meeting that ■■■ was doing fine with the support he was receiving virtually. He could draw pictures and knew all the letters of the alphabet. (Tr. 299; Ex. P-12, numbered pp. 2, 4; Ex. R-9, pp. 103, 105.)

39.

The IEP team determined that ■■■ continued to meet the eligibility requirements in the areas of SDD and Speech Language Impairment. The team did discuss moving ■■■ to the general education setting with supportive instruction, and how that would look in a virtual setting. The IEP document noted that school staff would continue to model appropriate behavior and redirect ■■■ to correct his behavior issues. There was no direct mention of re-initiating the FBA.¹⁴ (Tr. 27; Ex. P-12, numbered pp. 4, 11; Ex. R-9, pp. 105, 114.)

40.

Accordingly, the IEP team determined ■■■ would receive the following types of services:

- For the remainder of the 2020-2021 school year, ■■■ would spend 325 minutes, five days a week (or 1,625 minutes/27 hours a week), in a separate special education class led by a special education teacher. He would spend 60 minutes a day in a general education setting. He would continue to receive 60 minutes of speech therapy each week and 30 minutes of consultative services for occupational therapy each month.
- ■■■ needed “special transportation for maximum supervision when traveling to and from school. The listed accommodation was a “seat belt” and maximum supervision.
- ■■■ would receive the following accommodations: one- or two-step instruction; being checked for understanding; having instructions/directions

¹⁴ The IEP document stated that ■■■ was “not requesting an FBA/BIP.” (Ex. P-12, numbered p. 4; Ex. R-9, p. 105.) However, the overwhelming evidence of ■■■’s communication with the District both before and after the October 2020 IEP meeting indicates this was not an accurate statement.

clarified; visual aids like pictures or flash cards; frequent breaks; and extended time.

The IEP did not mention [REDACTED] needing ABA or RBT services. Also, while the IEP noted [REDACTED]'s prior request for a tablet, the IEP stated [REDACTED] could complete classroom activities with standard classroom tools and technologies, and he did not require assistive technology devices or services. However, nothing in the IEP minutes indicates the tablet request was explicitly discussed. (Ex. P-12, numbered pp. 3, 5, 7, 9-11; Ex. R-9, pp. 104, 106, 111-113.)

41.

The October 2020 IEP also provided the following as [REDACTED]'s updated goals and objectives:

- For academic goals, [REDACTED] would answer 10 simple comprehension questions regarding a passage, and use 1:1 correspondence when presented with a number from 1 to 75, both with no more than 2 visual or verbal reminders, and both with 80% accuracy.
- For communication goals, [REDACTED] would improve his narrative language skills, from sequencing three picture cards to answering “what” and “where” questions about a three-picture sequence, with 80% accuracy; and improve his language processing skills by answering “what,” “why,” and “where” questions about a picture scene and short story, with 80% accuracy.
- For emotional/social/behavior goals, [REDACTED] would remain on task for 30 minutes when given a non-preferred teacher/adult activity, with no more than two visual or verbal reminders.

(Ex. P-12, numbered p. 5; Ex. R-9, p. 106.)

iv. [REDACTED]'s *RLCP – October 2020*

42.

On or around October 16, 2020, Ms. [REDACTED] drafted a new RLCP for [REDACTED], to begin that month (“October 2020 RLCP”). This RLCP called for the following:

- Small-group specialized instruction for 60 minutes a day from the special education teacher.
- 60 minutes of small-group speech therapy a week.

- Twice-weekly monitoring on ██████'s progress toward the following goals and objectives:
 - Answering 10 simple comprehension questions when presented with a passage, with no more than two visual or verbal cues; and
 - Using 1:1 correspondence with a number from 1 to 75 to determine how many objects altogether, with no more than two visual or verbal cues.

- Monitoring twice a month on ██████'s progress toward the following speech goals and objectives:
 - Orally identifying what happened first, second, and last when given three picture cards, with 80% accuracy over three trials;
 - Orally answering “what” and “where” questions when shown a four-picture sequence, with 80% accuracy over three trials;
 - Answering factual “why,” “what,” and “where” questions when given a picture scene, with 80% accuracy over three trials; and
 - Answering factual “why,” “where,” and “what” questions after listening to a short-sentence story, with 80% accuracy over three trials.

The October 2020 RLCP also provided for the following accommodations and supports: one- or two-step instructions; checking for understanding; clarifying instructions/directions; visual aids such as pictures or flash cards; frequent breaks; and extended time. As with the August 2020 RLCP, this version stated ██████ was able to complete classroom activities “with standard classroom tools and technologies.” (Tr. 335-336; Ex. P-39; Ex. R-10. p. 116.)

43.

█████ has contended she never agreed to the October 2020 version of the RLCP. (Ex. P-42.)

v. ■■■■■'s transition to general education setting – October 2020

44.

As determined during the October 2020 IEP meeting, ■■■■■ began attending general education classes virtually starting in October 2020. He participated in general education on Tuesdays, Wednesdays, and Thursdays each week. On those days, Ms. ■■■■■ and her paraprofessional would access the virtual general education classroom and provide support to ■■■■■ if needed. ■■■■■'s IEP goals and objectives also would be worked on during these sessions. For Mondays and Fridays, Ms. ■■■■■ taught ■■■■■ in her special education class, with Fridays again devoted to work on IEP goals and objectives. (Tr. 350-352, 360.)

45.

Ms. ■■■■■ testified that she and the paraprofessional rarely had to tell ■■■■■ to stay on task during these general education sessions. However, ■■■■■ testified that once ■■■■■ was introduced to general education, his behavior began to change for the worse.¹⁵ (Tr. 27, 29, 350.)

v. *October through December 2020 – H.B.'s correspondence with the District*

46.

On October 19, 2020, ■■■■■. emailed Ms. ■■■■■ an attachment that she identified as ■■■■■'s medical file. ■■■■■ wrote in the email that the documents were “what the diagnostician referred to in his initial IEP written in December 2018.” However, the full context and reason for sending these documents is unclear from the email itself, and nothing in the evidentiary record establishes what these medical documents entailed or what information they included.¹⁶ (Ex. P-40, unnumbered p. 4.)

¹⁵ ■■■■■ did not provide further details as to exactly how ■■■■■'s behavior worsened during his introduction to general education.

¹⁶ Only the email message was tendered into evidence; the attached documents were not.

47.

On October 21, 2020, [REDACTED] emailed [REDACTED], an instructional support teacher at [REDACTED], to request unspecified accommodations for [REDACTED]. “while he is in the virtual setting.” [REDACTED] testified that [REDACTED] was “having a hard time” with virtual learning, particularly in the general education class. According to the email chain, [REDACTED] and Ms. [REDACTED] had a brief phone call on October 21, during which [REDACTED] discussed the district providing a tablet for [REDACTED]. [REDACTED] was left with the impression that Ms. [REDACTED] needed to follow up with her supervisor regarding this request. (Tr. 27-28, 62, 516-517; Ex. P-14, unnumbered pp. 1-2.)

48.

[REDACTED] contacted Ms. [REDACTED] by email on October 28 and November 9, 2020, checking on the status of her accommodation request. Again, these emails do not specify the types of accommodations being requested. But in an email sent November 10, 2020, Ms. [REDACTED] told [REDACTED] the District does not provide such devices as iPads, tablets, or laptops to students in [REDACTED] through second grade, for either general education or special education. The email to [REDACTED] also stated as follows:

[D]uring the IEP meeting held on 10/16/2020, you expressed your concerns noting a request for a tablet to meet [REDACTED]’s] educational needs and his limited access to technology along with the goal of testing out of special education. The outcome of the meeting yielded daily supportive instruction for an hour in the general education pre-kindergarten classroom. Additionally, he has services in the special education classroom with speech and occupational therapy to address his needs. This placement gives your son additional access to the general education curriculum along with additional peers for socialization and growth from positive role models.

(Tr. 28; Ex. P-14, unnumbered pp. 1-2, 4.)

49.

In an email sent to Ms. [REDACTED] on November 11, 2020, [REDACTED] clarified that she was asking for a tablet “because my concern is that [REDACTED] doesn’t have ‘equal’ access to the curriculum while

in the virtual setting.” She wrote, “[M]aybe a tablet is not what we need, but this is why I’m reaching out for your input regarding ideas for accommodations/modifications.” She noted that the suggestions for ██████ to “utilize the packet only method or return to face to face learning” were not possible for him, though her email did not elaborate on this point. (Ex. P-14, unnumbered p. 3.)

50.

In an email sent December 3, 2020, to Ms. ██████ and other District employees, ██████ noted she again had not received a response to her questions in the previous email about accommodations for ██████ in the virtual setting. (Ex. P-14, unnumbered p. 3.)

51.

In her testimony at the hearing, ██████ asserted the District did ask to set up a meeting about her accommodation requests during this period. However, it is unclear from the record whether such a meeting took place. (Tr. 28-29.)

vi. ██████’s neurological assessment – March/April 2021

52.

██████ underwent a private neurodevelopmental evaluation by the Georgia Autism Center on March 22, 2021.¹⁷ According to a report prepared by Dr. Jaymie L. Fox, Psy.D., and Amanda Tarlow, M.S.,¹⁸ on March 31, 2022, the evaluation results showed the following:

- ██████’s intellectual functioning, as measured by the RIAS-2,¹⁹ fell within the “Borderline range.” In particular, “his ability to utilize his verbal cognitive abilities in a functional manner is impaired given his significant concerns

¹⁷ The report also listed an assessment date of April 21, 2021. (Ex. R-1, p. 1.) It is unclear from the record what this evaluation entailed, and whether it could be reflected in the March 31, 2022, report cited herein.

¹⁸ Neither Dr. Fox nor Ms. Tarlow testified at the hearing.

¹⁹ RIAS-2 stands for “Reynolds Intellectual Assessment Scales – Second Edition.” (Ex. R-1, p. 1.)

with formulating complete sentences and delays in pragmatic language skills.”

- ■■■■■’s development level, as measured by the DP-4,²⁰ fell in the “Below Average” range, including in the areas of physical, communication, adaptive behavior, and social-emotional skills.
- ■■■■■’s results on the GARS-3²¹ indicated “marked difficulties and deficits in the areas of restricted/repetitive behaviors, social interaction, social communication, emotional responses, cognitive style, and maladaptive speech.”
- The results of the evaluation were “consistent with [■■■■■’s] previous diagnosis” of autism spectrum disorder (“ASD”).
- ■■■■■ rated as a “Level 1” severity for social communication, indicating he required support for “mild” deficits in verbal and nonverbal communication.
- ■■■■■ also exhibited symptoms indicating that he may suffer from attention-deficit disorder, and the report noted the importance of monitoring symptoms over time.

(Ex. R-1, pp. 1, 8-9; see also Ex. R-12, p. 141.)

53.

The evaluation’s report included multiple recommendations for ■■■■■, several of which touch on his educational needs and are listed below:

- Continued support of a “small classroom, intensive teacher attention, and a modified curriculum”;
- Having the District’s behavior analyst included in ■■■■■’s IEP team;
- Continued consultation with an occupational therapist, particularly one trained in ASD disorder and sensory integration therapy;
- Continued speech therapy;
- Creating a behavior plan based on observations of ■■■■■ in the classroom, to help him work independently and manage frustrations;

²⁰ DP-4 stands for “Developmental Profile – 4. (Ex. R-1, p. 1.)

²¹ GARS-3 stands for the “Gilliam Autism Rating Scale-Third Edition.” (Ex. R-1, p. 1.)

- Providing █████ with warnings of any impending change of routine—such as through a visual routine, written checklists, or warning prompts—to prevent possible tantrums related to difficulty with transition;
- Providing █████ with materials that, if possible, have visual cues.
- Giving █████ concrete instructions that avoid abstract ideas or descriptions.
- Making plans for █████ to engage in “quiet time,” to avoid hyperactive or noncompliant behavior;
- Allowing for repetition of skills, including components of demonstration, due to █████’s attentional deficits;
- Using visual aids, gestures, and physical prompts to instruct █████;
- Keeping █████’s routine consistent;
- Providing █████ assistance as soon as possible, to avoid feelings of being overwhelmed;
- Offering █████ added explanations or simplified instructions;
- Providing █████ “great motivation” not to follow his own impulses;
- Maintaining ongoing communication between school and home to promote consistency and ensure up-to-date information is being shared; and
- Monitoring █████’s presentation and functioning.

The evaluation report’s list of recommendations also strongly encouraged █████’s family to continue enrolling him in an ABA program. The report stated ABA “is considered the ‘gold standard’ for treating individuals with ASD,” and it mentioned the services “are available in either a clinic or home setting.” (Ex. R-1, pp. 9-12.)

54.

In a separate letter to █████, Dr. Fox stated that █████ met the criteria for ASD. The letter also stated that “it is medically necessary for [█████] to receive intensive behavioral health treatment that uses Applied Behavior Analysis in order to make substantial improvements in communication,

behavior reduction, and independence.” Nowhere in either Dr. Fox’s report or letter does it state that ABA was an educational need versus a medical need, and █████ conceded in her testimony that what is medically necessary is not always educationally necessary. (Tr. 164; Ex. P-7; Ex.R-1.)

vii. *Request for change to █████’s exceptionality – March and April 2021*

55.

█████ notified the District via email on March 24, 2021, that she wanted █████’s “exceptionality updated/changed.” This email stated in part:

I emailed █████ medical records in October and was told that it was passed on. I have not heard anything and have no idea where his medical records are and/or to whom they were shared. Why has there been such a delay? Is █████ eligible to have his exceptionality changed or not?

Responding by email on March 25, 2021, Ms. █████ wrote █████ the following:

After speaking with Ms. █████ she informed me of the following regarding testing: changing a student’s exceptionality cannot occur unless the student has been tested and the information reveals a different outcome. His exceptionality will be due in December 2021, at which time the school’s IEP Team for your son will decide if testing needs to occur. [█████.’s] current eligibility is Significant Developmental Delay and Speech Language Impaired. The report that I received from Kaiser Permanente was dated 3/9/2018. Any reports that you may have regarding [█████] and his educational and/or medical needs should be current or within a year.

(Ex. P-14, unnumbered pp. 5, 7; Ex. R-11, p. 123.)

56.

On March 29, 2021, █████ emailed Ms. █████ and Ms. █████ to request an IEP meeting. One was eventually scheduled for May 4, 2021. (Tr. 191-192; Ex. P-14, unnumbered pp. 8, 13; Ex. R-11,²² pp. 134-135.)

²² Exhibit P-15 is a draft version of the IEP from May 4, 2021. The completed IEP, following the May 14, 2021, meeting, appears in Ex. R-11. Unless otherwise specified, no relevant difference exists between these two versions.

viii. IEP meeting – May 4, 2021

57.

During the IEP meeting on May 4, 2021 (“May 4, 2020, IEP meeting”), the IEP team discussed multiple concerns raised by [REDACTED] and her advocate, [REDACTED]. The concerns addressed were as follows: (a) [REDACTED].’s still-incomplete and pending FBA; (b) [REDACTED]’s behavioral issues, including needed help with transitions; (c) issues with data collection on [REDACTED] and delays in receiving said data; (d) evaluations for and changes to [REDACTED]’s exceptionality; (e) the District’s inadequate efforts to communicate with [REDACTED]’s family; (f) providing [REDACTED] with a visual schedule; (g) having [REDACTED] tested by a familiar adult; and (h) the provision of compensatory services for non-provided instructional service. (Ex. P-50;²³ Ex. R-11.)

58.

During the meeting, the IEP team reviewed [REDACTED]’s present levels on the then-current IEP. According to a general education teacher attending the meeting,²⁴ [REDACTED] was “academically . . . middle of kindergarten or above.” The IEP team noted that [REDACTED] “virtually interactive in class listening.” However, since he already knew the material, “he just sits there.” The speech therapist also reviewed [REDACTED]’s progress on his speech goals. [REDACTED] raised concerns with [REDACTED]’s pragmatic language, though the meeting minutes indicate she “had previously discussed those concerns with the speech therapist.” (Tr. 29; Ex. P-50, at 01:06:30 to 01:27:30; Ex. R-11, p. 135.)

²³ Exhibit P-50 consists of an audio recording that [REDACTED] made of a virtual IEP meeting on May 4, 2022. Throughout multiple portions of the recording, [REDACTED] and her advocate, Mr. [REDACTED] appear to have muted themselves on the virtual platform to engage in their own private discussions. When this occurred, the audio recording picked up their conversations, which often obscured what District team members were saying over the virtual platform. As a result, at times it is difficult to discern what the District team members were saying during the actual IEP meeting.

²⁴ The minutes clarify that this teacher, identified as Mrs. [REDACTED] did not teach [REDACTED] that school year. (Ex. R-11, p. 135.)

59.

Regarding the pending FBA, [REDACTED] and her advocate stressed the need for that evaluation's results in order to address [REDACTED]'s attention and behavioral issues. District team members told them the FBA could not move forward while [REDACTED] stayed a remote student, though staff could provide strategies to address the behavior issues and also do remote observations in the interim.²⁵ [REDACTED] and her advocate agreed for the FBA to recommence at the start of the 2021-2022 school year, when [REDACTED] would return to in-person learning. The District staff also agreed to "push out" another consent form for [REDACTED] to sign, as the one signed in January 2020 had expired. The District team members told H.B. they would reach out to the school behavioral therapist and make arrangements for [REDACTED] to be observed in both the special-education and general education setting. (Ex. P-50, at 00:19:45 to 00:22:00 and 00:26:00 to 00:38:00.)

60.

The IEP team also addressed [REDACTED]'s behavioral struggles. [REDACTED] reported that [REDACTED] would hit her, ball up his fists at her, ball up paper to throw at her, and throw other objects. [REDACTED] stated these behaviors were recorded by the camera during virtual classes, though [REDACTED] did not display such behaviors with all teachers. [REDACTED] told the IEP team she would place [REDACTED] on mute during the virtual classes because he was a "talker" and had tantrums. She stated she had to employ what she termed ABA "strategies" to get [REDACTED] to complete tasks, including using "hand over hand." District team members told [REDACTED] they would seek the involvement of a behavioral specialist for additional assistance with [REDACTED] (Tr. 29; Ex. P-50, at 01:36:00 to 01:43:30; Ex. R-11, p. 135; see also Ex. P-15, p. 14.)

²⁵ It is unclear from the record whether these remote observations actually occurred.

61.

The IEP team discussed concerns with ██████'s ability to transition, particularly to “non-preferred” activities. Examples of such activities were provided, including writing (specifically, “from cutting to writing”) and sitting down. The team concluded these activities would be more detailed in the IEP, and that the behavior objectives would be re-worded to focus on transitions. The District’s team members noted, however, that data could not be assessed until an FBA had been conducted in the fall, when ██████ returned to in-person learning. The IEP team then agreed to reconvene to discuss ██████'s goals and objectives. (Tr. 442-443; Ex. P-50, at 00:21:30 to 00:28:00 and 01:27:00 to 01:31:00; Ex. R-11, p. 135.)

62.

██████ and her advocate also raised concerns about issues with data being collected on ██████'s performance—including on math and behavior goals—and the sharing of that data. ██████'s advocate mentioned that ██████'s goals should be evaluated in 15-minute increments, without breaks. No further details were shared as to the exact nature of the data-collection concern. (Ex. P-50, at 00:20:00 to 00:22:00, 00:36:15 to 00:40:00, and :01:46:45 to 01:49:00.)

63.

As for concerns with changing ██████'s exceptionality and placement, ██████ mentioned having sent unspecified medical documents to the District in October 2020, under the mistaken belief she was consenting to a placement switch to Autism Support services. ██████ asserted she was not told until months later that nothing had been done to evaluate ██████. The District team members reiterated that ██████ was up for re-evaluation in December 2021; however, it was eventually decided ██████ would be assessed during the coming summer, and that the team would convene to determine placement after evaluations had been completed. The District team members

gave explanations on several placement possibilities, including Autism Support (“AU Support”) and Interrelated (“IRR”) services. As for whether [REDACTED] would attend [REDACTED] for the coming school year, [REDACTED] and her advocate expressed concerns about “communication issues” with staff and the “quality” of its special education services. However, they did not elaborate on the exact nature of these concerns. (Tr. 192-193, 409; Ex. P-50, at 00:53:00 to 01:03:30, 02:28:30 to 02:30:15, and 02:33:00 to 02:38:00; Ex. R-11, p. 135.)

64.

[REDACTED] and her advocate also told the IEP team members they were concerned about what they viewed as “inadequate communication” and follow-up from District employees, including providing responses in writing. [REDACTED] stated she wanted a “conversation” with the school but felt “brushed over and appeased” in prior conversations with the District. (Ex. P-50, at 00:11:00 to 00:13:45 and 00:48:00 to 00:50:00.)

65.

Regarding accommodations for [REDACTED], the IEP team agreed to add the following: 50% extended time for explaining or paraphrasing directions; using a visual schedule specific to [REDACTED]; and having [REDACTED] tested by a familiar adult. (Ex. P-50, at 00:37:00 to 00:40:00, 02:03:00 to 02:07:00; Ex. R-11, p. 135.)

66.

Lastly, the IEP team addressed [REDACTED]’s request for compensatory services. Upon a review of the RLCP then in place, [REDACTED] had been slated to receive 60 minutes of specialized instruction five days a week, or 300 minutes a week. However, the team confirmed with [REDACTED]’s special education teacher, Ms. [REDACTED] that he only received 120 minutes of instruction a week, stretched over Mondays and Fridays. That left a difference of 180 minutes weekly of instructional time that

████ did not receive since the RLCP went into effect at the beginning of the school year. The IEP team agreed to provide compensatory instruction to make up for this missing instructional time, with the final number of hours ultimately determined to be 41.²⁶ The compensatory services would focus on █████'s IEP goals and objectives. The District team members explained to █████ that the hours could be delivered to █████ through the school's Extended School Year ("ESY") services, beginning in the summer of 2021 and finishing during the 2021-2022 school year.²⁷ District team members told █████ that █████ could participate during the summer either through specially set "tutorial sessions," or through "site-based" services that take place during set hours every afternoon. A district team member explained that tutorial services could be "virtual," while site-based services were delivered "face to face." █████ stated that █████ attending ESY in the summer was fine; however, she wanted to discuss the options with her husband first before making a final decision. █████ did not mention any challenges with transportation during the IEP meeting itself. (Tr. 198-199, 348, 523; Ex. P-50, at 02:41:00 to 03:00:00; Ex. R-11, p. 136.)

67.

The IEP meeting minutes also stated the following: "Other changes to note include developing an appropriate [RLCP] collecting data on the IEP and not the contingency plan." The

²⁶ It is not entirely clear from the evidentiary record when or how the exact number of 41 hours was calculated. The audio recording of the IEP meeting does not include any conversation about setting the number of hours at 41. And at the hearing, Ms. █████ testified that it was up to █████, a compliance specialist with the District, to calculate the number of hours. The IEP meeting minutes do show that, sometime after the May 4, 2021, meeting adjourned, a separate meeting took place that included █████, her advocate, and Ms. █████ however, it is not clear to the undersigned exactly what was discussed. (Tr. 198-199; Ex. P-40, unnumbered pp. 2, 4; Ex. P-50; Ex. R-11, p. 136.) Regardless, a preponderance of the evidence before this Court shows that the discussions during the May 4 IEP meeting ultimately resulted in an offer of 41 compensatory-service hours.

²⁷ At the hearing, █████ testified the District was "trying to give [her] ESY in lieu of compensatory services." However, the recording of the meeting makes clear that the IEP team agreed ESY would be utilized solely to deliver the compensatory-service hours, and that █████ did not necessarily qualify for ESY. (Tr. 29; Ex. P-50, at 02:53:00 to 02:55:00.)

RLCP developed from this meeting (“May 2021 RLCP”) was to start on May 5, 2021, and appeared identical to the October 2020 RLCP, except for the following addition:

- Twice-weekly monitoring on ██████’s progress toward transitioning four times without refusal when presented with a picture schedule, with no more than two visual or verbal reminders.

(Tr. 84-85; Ex. P-39; Ex. R-11, p. 135.)

ix. Email correspondence between ██████ and District staff – May 4-11, 2021

68.

Following the IEP meeting on May 4, 2021, ██████ sent an email to ██████, a compliance program specialist with the District. In this email, ██████ forwarded Ms. ██████ her email sent to Ms. ██████ on October 19, 2020, “to show that I sent [█████’s] medical file” ██████ wrote as follows: “It was my understanding that this is what was needed to have him evaluated for his exceptionality to be updated.” (Ex. P-40, unnumbered pp. 2-4.)

69.

On May 11, 2021, ██████ signed a consent form for ██████ to undergo evaluations in the areas discussed during the IEP meeting on May 4, 2021. (Ex. P-35; see also Ex. R-11, pp. 120, 135.)

x. IEP Meeting – May 14, 2021

70.

Another IEP team meeting convened on May 14, 2021. At this meeting, it was determined that, “[u]ntil data has been collected,” the IRR setting was the most appropriate, least-restrictive setting for ██████. IRR serves students in several disability categories who learn in the same classroom. All team members agreed ██████ would be placed in IRR for the 2021-2022 school year. Consequently, because students normally attend IRR at their “home schools,” ██████ would move

from ██████████ to his home school of ██████████ Elementary School ██████████”) for his upcoming ██████████ year. (Tr. 31, 408-409, 413, 438-439, 619-620; Ex. R-11,²⁸ pp. 132, 133.)

71.

The IEP team further discussed the possibility that ██████████’s behaviors “may heighten” upon his return to in-person learning for the 2021-2022 school year, and the team noted that strategies would need to be implemented to curtail any behavior issues. The IEP team confirmed it had consent from ██████████ to proceed with the FBA, which occurred once ██████████ returned to face-to-face learning in the fall. ██████████ also shared that ██████████ had been diagnosed with ADHD, and the team noted that a behavior specialist would provide additional strategies to help ██████████ in the fall. (Tr. 30; Ex. R-11, pp. 125, 133.)

72.

The IEP team went on to discuss the compensatory-service hours to be provided to ██████████ via ESY, with a focus on reading comprehension, math, and transitions. The summer ESY would take place in person at ██████████ Elementary School, where ██████████ would receive face-to-face “tutorial” services. According to the meeting minutes, ██████████ “ha[d] not decided if [█████████] would attend” and “would let the committee know her decision.” The team noted that ██████████ would remain on the roster for summer ESY, unless ██████████ decided she did not want the services. ██████████ ultimately did not attend any ESY in the summer because, per ██████████., the District declined to provide transportation for the tutorial sessions. (Tr. 29, 527; Ex. P-36, unnumbered p. 3; Ex. R-11, pp. 132-133.)

73.

Based on this meeting, ██████████’s IEP provided for the following:

²⁸ Exhibit P-16 appears to be a draft version of the IEP found in Exhibit R-11. Upon review, the Court has not identified any relevant differences between these documents. Exhibit P-17 also is identical to Exhibit R-11.

- For the remainder of the 2020-2021 school year (through May 26, 2021), ■ would receive academic instruction in a special education, small-group setting for 65 minutes five times a week (or 325 minutes a week). He also would spend one hour a day, for four days a week, in a general education setting. ■ would spend from 8 to 10 a.m. with his various teachers; after 10 a.m., the remainder of his day would be “asynchronous instruction,” meaning he would work on his monthly packets.
- For the 2021-2022 school year, ■ would receive special education instruction in math and English/language arts. This instruction would be for one hour for each topic, five days a week. He would receive general education instruction in reading (one hour a day, five days a week) and social studies/science (30 minutes a day, five days a week).
- As for therapy, ■ would continue to receive 30 minutes of speech therapy twice a week and 30 minutes of occupational therapy each month on a consultative basis. This would be both for the remainder of the 2020-2021 school year as well as the upcoming 2021-2022 school year.
- For transportation needs, ■ continued to require a seat belt and maximum supervision when traveling to and from school.
- ■’s accommodations remained the same, with following additions or modifications: having directions repeated; having frequent monitored breaks; having a test administered by a familiar, certified teacher; having 50% extended time; and having directions explained or paraphrased;

(Ex. R-11, pp. 130-131, 133.)

74.

The May 2021 IEP noted the following for ■’s present level of performance:

- ■ was a willing participant in most classroom and therapy activities. He had made progress on his previous IEP goals and objectives in answering three simple comprehension questions after being presented with a passage at instructional level; and providing 1:1 correspondence for the numbers 1 through 30, 41, and 47. However, he continued to need assistance with his goals and objectives for reading passages and answering simple comprehension questions; 1:1 correspondence up to 75; and completing non-preferred teacher/adult-directed tasks without refusal.
- For speech and communication, ■’s voice and speech fluency were within normal limits, and he was able to answer questions about a picture sequence without verbal cues. He also was able to answer “why,” “what,” and “where” factual questions about a picture with no more than one visual

or verbal cue. However, he still had difficulty answering “where,” “what,” and “why” questions without visual cues or choices, and with following multi-step directions.

- For sensory motor skills, █████ could walk, run, and jump on a trampoline independently. He also responded well to the use of timers and counting down when it was time to transition. He had learned to ask for a sensory break when needed. He also exhibited progress with his social skills. He was “demonstrating significant progress with his attending skills and self-regulation skills in virtual class and motor group,” with fewer to no meltdowns. If meltdowns occurred, they were of shorter duration due to the use of sensory breaks. █████ could independently cut out shapes on the line and could use a right-hand tripod grasp to independently write his first and last name with good formation and letter size. As for weaknesses, █████ still required a visual schedule and verbal cues to engage, and he demonstrated difficulties with self-regulation and calming down.
- For fine/gross motor skills, █████ could imitate vertical lines, horizontal lines, and circles; cut a piece of paper in half; and write his first name. However, he required verbal cues to consistently use a tripod grasp, “due to decreased hand strength.”
- █████ had mastered his IEP goal involving restroom use.
- Regarding emotional/social/behavior issues, █████ “was starting to show independence” and had mastered remaining on a teacher-directed task for 15 minutes. However, he still had difficulty transitioning between activities.

(Ex. R-11, pp. 117, 122, 124-125.)

75.

The May 2021 IEP provided the following annual goals:

- For academics, █████ would answer 10 simple comprehension questions regarding a passage and use 1:1 correspondence when presented with a number from 1 to 75, both with no more than two visual or verbal reminders, and both with 80% accuracy.
- For communication, █████ would improve his narrative language skills, from sequencing three picture cards to answering “what” and “where” questions about a three-picture sequence, with 80% accuracy; and also improve his language processing skills by answering “what,” “why,” and “where” questions about a picture scene and short story, with 80% accuracy.

- For emotional/social/behavior goals, ■ would transition four times without refusal when presented with a picture schedule, with no more than two visual or verbal reminders.

For the remainder of the 2020-2021 school year through October 15, 2021, ■ would focus on the following objectives/benchmarks to achieve these goals:

- ■ would orally answer “what” and “where” questions when shown a four-picture sequence, with 80% accuracy over three trials;
- ■ would answer factual “why,” “where,” and “what” questions after listening to a short-sentence story, with 80% accuracy.
- ■ would transition two times upon teacher direction without refusal when presented with a picture schedule, with no more than two visual or verbal reminders and with 80% accuracy in four out of five consecutive trials. These transitions would increase to four beginning August 2021.
- ■ would answer three simple comprehension questions when presented with a passage, at 80% accuracy in four out of five consecutive trials. The number of correct answers needed to increase to seven beginning August 2021.
- ■ would use 1:1 correspondence to determine the total number of objects, with 80% accuracy in four out of five consecutive trials. ■ would start with numbers 1 to 50; after August 2021, he would switch to numbers 51 to 75.

(Ex. R-11, pp. 126-127.)

76.

The IEP team did not create an RLCP for the 2021-2022 school year, given that ■ was returning to face-to-face learning that year. (Tr. 470-471.)

D. Summer 2021: Evaluation and Eligibility Redetermination

77.

During the summer of 2021, ■ underwent several District evaluations, as discussed during the May 2021 IEP meetings. An eligibility meeting convened on June 29, 2021, to discuss the results of these evaluations, as well as a private speech and evaluation report from March 2021

provided by [REDACTED]. Present were [REDACTED]'s parents as well as the District's psychologist, an occupational therapist, a developmental diagnostician, and a speech diagnostician. (Tr. 30; Ex. P-19, unnumbered p. 1; Ex. P-20, numbered pp. 1, 17.)

78.

During the meeting, it was decided to serve [REDACTED] under the category of Autism as his primary eligibility and Speech-Language Impairment as his secondary eligibility. According to the meeting minutes, the meeting's attendees also addressed the following:

- [REDACTED] was very self-directed and displayed a level of non-compliance to structured tasks and impulsivity during the evaluation. Because of this, the developmental diagnostician and speech diagnostician noted the scores "should be viewed with caution," as they "may not be indicative of his current levels of performance."
- [REDACTED] demonstrated delays with social-emotional skills and sensory motor skills.
- [REDACTED]'s private speech evaluation from March 2021 indicated needs within the areas of receptive language, expressive language, and social language skills.
- [REDACTED] was found to react negatively to certain "trigger words." The developmental diagnostician recommended that anyone working with [REDACTED] should help de-sensitize him to those words.

(Ex. P-20, numbered pp. 17-18.)

79.

These summer evaluations included an examination by an occupational therapist on or around June 10, 2021.²⁹ This examination resulted in a "Sensory Processing Measure" report indicating [REDACTED]'s sensory vulnerability was rated "overresponsive" to the following items: seemed disturbed or intensely interested by sounds not noticed by other people; seemed easily distracted by background noise; pulled away from being lightly touched; preferred to touch rather than be

²⁹ The occupational therapist did not testify at the hearing.

touched; seemed bothered when someone touched his face; and disliked teeth brushing more than someone his age. The report offered some “quick tips” that appear relevant to ■■■■■’s school work, such as providing ■■■■■ with movement activities and heavy muscle work, and using paper with solid lines for writing. However, the majority of the tips are aimed at ■■■■■’s home life, such as the wearing of certain clothes, strategies for brushing teeth, and providing massages. (Tr. 69-70; Ex. P-21.)

E. 2020-2021 School Year: ■■■■■ at ■■■■■ and ■■■■■

i. IRR placement at ■■■■■ Elementary – August 2021

80.

For the 2021-2022 school year, ■■■■■ began attending the IRR ■■■■■ class at ■■■■■. This was the first time he had appeared for learning in person since March 2020. During an open house prior to the start of the school year, ■■■■■ requested another IEP meeting to go over ■■■■■’s April 2021 evaluation report from the Georgia Autism Center. She also mentioned at the open house that she believed an autism placement would be more appropriate than IRR for ■■■■■ (Tr. 30, 199-200, 413-414, 420-421, 465-466; Ex. R-12, p. 153.)

81.

At the very start of this school year, both ■■■■■ and District personnel noted concerns with ■■■■■’s behavior, including instances of physical and verbal aggression in the classroom setting. During a 34-minute classroom observation period, ■■■■■. left his seat seven times and “consistently inappropriately verbalize[d] during instruction, often humming or vocalizing for several minutes at a time.” ■■■■■ would say that he was “in danger” when no danger was present or accuse someone of hitting him when he was not within arm’s reach of any other individual. His teachers also reported ■■■■■ physically hitting and/or kicking adults within his classroom. ■■■■■ testified at the

hearing that these behaviors “were some of the same ones that he had been exhibiting over the last couple of years.” (Tr. 30, 414-415, 444; Ex. R-12, p. 145.)

ii. IEP meeting – August 26, 2021

82.

Per ██████’s request, an IEP meeting took place on August 26, 2021 (“August 2021 IEP”). Prior to this meeting, ██████ asked that a behavioral specialist be in attendance. She also indicated the following concerns:

. . . [█████] expressed some confusion in the eligibility report surrounding how [█████]’s motor skills were reported and his occupational therapy was addressed. She stated that since the pandemic, she observes that [█████] has demonstrated regression in his ability to use his hand. Furthermore, she shared concerns around why the speech portion of the eligibility report primarily contains information from the private speech/language report that she provided. She inquired as to what the school has found regarding how [█████]’s speech deficits are affecting his academic ability, and how the school is addressing these concerns. Finally, [█████] inquired as to whether some of the delays that [█████] is experiencing are due primarily to his Autism, his speech impairment, or the presence of an intellectual disability.

(Ex. R-12, pp. 144, 153.)

83.

██████████, an instructional support teacher at ██████████,³⁰ conducted the IEP meeting. Also present, per ██████’s request, was a behavioral therapist. According to Mr. ██████ the District team members communicated with ██████ about the behaviors they were seeing with ██████, and they talked through ways to de-escalate the behavior. Regarding ██████’s struggles with transitions, as noted in the Georgia Autism Center’s report, the IEP team “drilled down” on ██████’s insistence on sameness and rituals, including his dislike of change/transitions, after which it “settled upon an

³⁰ ██████████ has served as an instructional support teacher at ██████████ for the past five years. Prior to that, he served as a special education teacher at two other schools. He received a master’s degree in ██████ and is qualified to teach ██████████ through ██████ grade in the state of Georgia. As an instructional support teacher, he ensures that all services are provided per a student’s IEP and that all instruction and documentation are in full compliance. (Tr. 405-408.)

understanding that throughout his instructional day, [REDACTED] should have a visual schedule that follows him from his arrival to his dismissal, and that he has a focus on visually appealing words rather than pictures.” The IEP team agreed to reconvene on September 7, 2021, to address additional parent concerns, newly proposed goals and objectives, newly proposed services, and an overview of compensatory services. The team also would discuss considerations for changes to [REDACTED]’s placement. (Tr. 405-406, 416-417, 469; Ex. R-12, p. 153.)

84.

Though no new goals or objectives were added during this meeting, the August 2021 IEP included updated information on [REDACTED]’s level of progress:

- As of August 26, 2021, [REDACTED] continued to exhibit deficits with answering “what, where, why, when” questions from short stories, achieving a 69% accuracy for this IEP objective.
- Speech and language testing from June 2021 showed [REDACTED] exhibiting deficits with stating similarities and differences between attributes, and consistently responding while engaged in communicative interactions with peers and adults.
- [REDACTED] had demonstrated some ability to maintain attention to an academic task, particularly those for which he was successful. He showed a “mixed response” to adult redirection, in that he responded appropriately when a staff member came in close proximity to him and instructed him to sit down and complete his work.

(Ex. R-12, pp. 139, 144-145.)

85.

At the hearing, Mr. [REDACTED] testified that following the August 2021 IEP meeting, the District reached out to a behavioral interventionist to collect data and to provide strategies to [REDACTED]’s educators on both de-escalating and avoiding maladaptive behaviors. (Tr. 415-416.)

iii. Data collection at ██████ – August and September 2021

86.

Throughout August and September 2021, while ██████ was attending ██████, District staff collected data on ██████'s behavior and progress on his IEP goals. According to the data, ██████'s instances of inappropriate verbalizations and leaving of his assigned seat appeared to increase in frequency and duration through the first half of August, though both metrics showed a decline in the second half of the month. Instances of physical aggression in August ranged from one to three times a day. As for his IEP goals and objectives, the data report showed consistent progress in August and September. However, he continued to struggle and show regression with his transition-related objectives, and in achieving 1:1 correspondence for the numbers 1 through 75. (Tr. 77, 446-453, 529-530; Ex. P-33.)

iv. IEP meeting – September 7, 2021

87.

During the reconvened IEP meeting on September 7, 2021 (“September 7, 2021 IEP”), the team discussed appropriate placement for ██████ ██████ and the other IEP team members agreed that AU Support was the most appropriate placement. However, ██████'s current school, ██████, did not offer such a program.³¹ In instances where a student's home school does not offer the needed program, the District identifies a school with that program in close proximity to the home school. In this case, autism-placement students at ██████ are “fed into” the program at ██████ ██████, which ██████ has conceded is the closest school to her with an AU Support program. However, ██████ expressed she did not want ██████ to attend ██████, based on her

³¹ As testified to by several District witnesses, not every special education placement or program is available at every school. (See, e.g., Tr. 620.)

dissatisfaction with that school.³² She instead wanted ██████ to attend the autism program at ██████ ██████ was informed such a decision was outside of the IEP team’s control, though she could appeal to the District to challenge the selection of ██████. Thus, the IEP team tabled the placement determination until ██████ explored her options with this appeal. (Tr. 202, 420-423, 432, 620-621; Ex. R-13, p. 179.)

88.

During the meeting, ██████ expressed her concern about waiting for an FBA to be completed for more than a year, and that she wanted ██████’s behavioral needs addressed sooner rather than later. A district representative told ██████ that it would be more prudent to complete the FBA’s data collection once ██████ was in his new AU Support setting. ██████ ultimately agreed to this. Mr. ██████ also informed ██████ that the signed consent for the FBA from January 2020 was no longer valid, and that a consent form signed in May 2021 did not cover an FBA. However, ██████ corrected the District by providing a copy of the May 2021 consent form, which addressed the FBA. Mr. ██████ then moved the FBA process forward. (Tr. 31, 415, 530, 590-591; Ex. R-13, pp. 178-179.)

89.

According to the meeting minutes, ██████, an occupational therapist, shared that ██████ was demonstrating motor development in line with his age- and grade-level peers. This was corroborated by the occupational therapist at ██████, ██████, who told the IEP team that she observed the Petitioner writing his name in an age- and grade-appropriate fashion and writing on other worksheets appropriately, and that “no other motor needs jumped out” to her that needed to be addressed with occupational therapy. Also during the meeting, ██████, a speech/language pathologist, noted that ██████ was progressing in his speech/language goals and

³² The IEP meeting minutes did not give further details as to the nature of this dissatisfaction. (See Ex. R-13, pp. 178-179.)

objectives to focus on conversational elements. ██████'s latest iReady reading diagnostic assessment results from August 19, 2021, placed his reading development at Early ██████ level. The iReady adaptive math diagnostic assessment results from September 1, 2021, placed him at Emerging ██████ level.³³ (Tr. 497; Ex. R-12, p. 141; Ex. R-13, pp. 164, 178, 180.)

90.

The IEP team next addressed three new proposed behavior objectives. According to the minutes, until ██████'s FBA and BIP were completed, his behavior concerns would be addressed by using sensory materials provided by the occupational therapist, as well as classroom strategies like deep breathing, frequent breaks, and a visual instructional schedule. To address these objectives, Mr. ██████ sent ██████ some graphical data behavior during the meeting. (Ex. R-13, p. 178.)

91.

During the meeting, the matter of ██████'s 41 compensatory hours was raised.³⁴ According to the minutes, the District representatives offered for ██████ to complete those hours before or after school, and that the hours would be used exclusively to work on IEP goals and objectives. However, ██████ "shared that she wants to hold of [*sic*] on discussing compensatory services in detail until the next IEP meeting in October or sooner." (Tr. 200; Ex. R-13, p. 179.)

92.

The resulting IEP from the meeting on September 7, 2021, included extensions and modifications on ██████'s goals and objectives, including updates to address transitions and behavioral issues. The annual goals were as follows:

³³ Assessments via iReady are administered on a computer and allow students to complete different assignments to track how they progress with their skills. (Tr. 497.)

³⁴ The meeting minutes refer to 40 hours instead of 41. (Ex. R-13, p. 179.) However, the rest of the evidentiary record makes clear the number of hours at issue totaled 41.

- Academic goals would remain the same, in that [REDACTED] would answer 10 simple comprehension questions regarding a passage and use 1:1 correspondence when presented with a number from 1 to 75, both with no more than two visual or verbal reminders.
- For communication goals, [REDACTED] would improve his receptive language skills by progressing from answering simple questions about picture-sequence cards to answering comprehension questions from age-appropriate short stories; improve his expressive language skills by progressing from stating descriptors about simple objects to stating at least two similarities and two differences between pictures and objects; and improve his social language skills by progressing from initiating a communication interaction with a peer or adult to acknowledging an interaction by others by giving an appropriate response.
- For emotional/social/behavior goals, [REDACTED] would continue to work on transitioning four times without refusal when presented with a picture schedule, with no more than two visual or verbal reminders. He also would work to decrease his inappropriate verbalizations, instances of leaving his assigned seat/area, and instances of physical aggressive behavior, from five or more instances per day to two or fewer per day.

Through October 15, 2021, [REDACTED] would focus on the following objectives/benchmarks to achieve these goals:

- [REDACTED] would correctly answer at least five comprehension questions based on a short story or reading paragraph, with 80% accuracy and with no more than two verbal prompts.
- [REDACTED] would state similarities and differences when presented with 10 pairs of words and/or pictures, with 80% accuracy and with no more than two visual or verbal prompts.
- [REDACTED] would ask appropriate questions during a shared activity with a peer or adult and respond to questions, with 80% accuracy and with no more than two visual or verbal prompts.
- [REDACTED] would independently reduce the number of instances he inappropriately verbalized during instruction, from three instances a day to zero instances across at least five consecutive school days.
- [REDACTED] would independently reduce the number of times he left his seat without permission, from more than three instances per day to one or fewer per day, across at least five consecutive school days.

- ■■■ would independently reduce the number of instances of demonstrating physically aggressive behaviors, from two or more instances per week to one or fewer instances per week, across at least two consecutive weeks.
- ■■■ would transition four times upon teacher direction without refusal when presented with a picture schedule, with no more than two visual or verbal reminders and with 75% accuracy across at least five data collection opportunities.
- ■■■ would answer four simple questions after reading a passage, with 75% accuracy across at least five data collection opportunities. The number of correct answers needed to increase to seven beginning August 2021.
- ■■■ would use 1:1 correspondence to determine the total number of objects for numbers 51 to 75, with 80% accuracy in four out of five consecutive trials.

(Ex. R-13, pp. 170-172, 177.)

93.

The IEP left ■■■'s accommodations the same, with the exception that it now mentioned a “recommendation” for “a piece of adaptive seating equipment” to meet ■■■'s sensory needs, which had already been provided by Ms. ■■■. As for transportation needs, the IEP again mentioned only a seat belt and a requirement for “maximum supervision.” (Ex. R-13, pp. 173, 177.)

- v. *Behavior issues, administrative transfer request, and filing of formal complaint – September 2022*

94.

At some point after the IEP meeting on September 7, 2021, ■■■ requested an administrative transfer so that ■■■ could attend ■■■ rather than ■■■. This request went through a department of the District that operates separately from the special education department and from ■■■'s IEP team. That request was denied by the District on September 20, 2021. (Tr. 202-203, 622; Ex. P-36, unnumbered 3.)

95.

For the remainder of the month following the September 7, 2021, IEP meeting, █████ continued to exhibit maladaptive behaviors. At some point between September 7 and September 29, 2021, █████'s educators were able to collect 10 days' worth of behavior data. (Tr. 425-426.)

96.

Also at some point in September 2021, █████ filed a formal complaint against the District with the Georgia Department of Education ("GDOE").³⁵ The complaint alleged, among other matters, that the District had failed to implement █████'s IEP; had denied █████'s request to update █████'s exceptionality; had not provided the agreed-upon ESY (presumably referring to the 41 compensatory-service hours); and had not yet completed █████'s FBA. █████ also stated in her complaint that she had requested to transfer █████ out of █████ because of the school's "lack of care" and for █████'s "communication needs." (Tr. 81, 204-205; Ex. P-36, unnumbered pp. 2-3.)

vi. *IEP meeting – September 29, 2021*

97.

Another IEP meeting took place on September 29, 2022, this time to discuss the location and start time for AU Support services as well as revisit the issue of compensatory services for █████ By this time, it was understood █████ would in fact attend █████ . (Tr. 424-425, 433; Ex. R-14, p. 205.)

³⁵ The actual date when █████ filed this complaint is unclear. A copy of the purported complaint indicates █████ served the complaint on the District on or around October 14, 2021. However, the District submitted a written response to the complaint on September 13, 2021, which is a month prior to this service date. Based on response's date and the context of the complaint itself, it appears to have been submitted to the GDOE sometime in early September 2021. (See Ex. P-36, unnumbered p. 4; Ex. P-37, unnumbered p. 1.)

98.

According to the meeting minutes, [REDACTED] shared she was concerned with disrupting [REDACTED]'s current placement "because she believes that he is currently doing well." Additionally, per the minutes:

Mr. Hines solicited [REDACTED]'s] input [on a proposed AU Support start date of October 4, 2021] to which she expressed that she was very frustrated and that "the overall issue" is not being addressed. Mr. [REDACTED] asked [REDACTED] to reiterate her concern, to which she indicated she did not want to discuss further at this time, and expressed that the team should just move on. Mr. [REDACTED] re-stated her previously expressed concern regarding disrupting [REDACTED]'s] services in his current placement and offered to discuss this further. [REDACTED] expressed that she did not want to discuss this at this time and that she would like Mr. [REDACTED] to move on to the next agenda item.

(Ex. R-14, p. 205.)

99.

The IEP team next moved to a discussion about the 41 owed hours of compensatory services. According to the meeting minutes, [REDACTED] "expressed significant concerns coming to consensus" regarding these hours and declined an initial offer to table these services until the IEP annual review in October 2021. The minutes go on to state:

Mr. Fair [the District representative] shared that the team needs [REDACTED]'s] input regarding compensatory services, as these services take place outside of normal school hours and items including logistics like transportation require [REDACTED]'s] input. . . . [REDACTED] responded that [REDACTED] is owed significantly more than 41 hours. She expressed that [REDACTED] only received 2 hours of services daily from October to May of the 2020-2021 school year and that she provided occupational therapy, speech/language support, special education support, and other supports during that time. Mr. Fair explained that this had already been decided by the team in the Spring at his previous school, and that the current team is simply going off this information. However, he offered to discuss this further and indicated a willingness to listen to concerns, and asked the parent what she felt was a more appropriate offer. *She expressed that she did not have an answer at this time and that she will get this concern rectified and that the team should move on.*

(Ex. R-14, p. 205.) (Emphasis added.)

100.

The team then revisited the start date for [REDACTED]'s AU Support services. [REDACTED] called for the services to begin the next day, September 30, 2021. Other members of the team expressed “some disagreement” with this request, given the short time to enact this significant transition. Additionally, per the meeting minutes:

Mr. [REDACTED] shared that special education transportation may not be available so quickly, as it takes 7-10 business days for transportation to be routed. [REDACTED] shared that transportations should already be in process since the team had previously agreed that [REDACTED] would receive Autism Support placement services. Mr. [REDACTED] responded that the team had not determined where those services would take place or when they would begin, and therefore a new transportation process had not been initiated.

Ultimately, the team agreed to [REDACTED]'s requested date for starting AU Support services, after which the meeting adjourned. (Ex. R-14, pp. 205-206.)

101.

The resulting IEP maintained the same goals, objectives, and accommodations as the previous IEP. The listed transportation needs—a seat belt and maximum supervision—also remained unchanged. (Ex. R-14, p. 200, 203-204.)

vii. *Transfer to [REDACTED] AU Support program – October 2020*

102.

By the beginning of October 2021, [REDACTED] had transferred to [REDACTED]. Per his IEP, he received instruction in the general education setting for the following: reading for 60 minutes a day, five days a week; and science/social studies for 30 minutes a day, five days week. He received instruction in the AU Support setting from a special education teacher for the following: math for 60 minutes a day, five days a week; and English/language arts for 60 minutes a day, five days week. Additionally, he continued to receive 30-minute sessions of speech therapy twice a week.

and 30 minutes a month of occupational therapy on a consultative basis. (Tr. 77, 447, 472, 528; Ex. R-14, pp. 202-203; Ex. P-34.)

103.

█████'s special education teacher, identified in the evidentiary record as "Mrs. ██████",³⁶ left the classroom for an extended absence beginning sometime in October 2021.³⁷ Replacing Mrs. ██████ was a long-term substitute, identified in this record as "Ms. ██████". Mrs. ██████ was expected to return after Thanksgiving break; however, on November 29, 2021, the District told parents the teacher would remain on leave for the remainder of the calendar year, and that Ms. ██████ would remain the long-term substitute for that time. According to Ms. ██████ the District had attempted to place a permanent teacher in ██████'s class during this period but could not find anyone to fill that role. Ms. ██████ also testified at the hearing that Ms. ██████ had previous experience working with special education students, and she had no concerns with Ms. ██████ implementing ██████'s IEP.³⁸ (Tr. 528-529, 574; Ex. P-47; Ex. P-48.)

104.

Upon ██████'s return to ██████, Ms. ██████ resumed her work as his assigned occupational therapist for the remainder of the 2021-2022 school year.³⁹ Unlike ██████, ██████ in the District does not offer group sessions for special-education students to focus

³⁶ Mrs. ██████ is alternately referred to throughout the evidentiary record as "Ms. ██████" or Ms. ██████ (Tr. 596.)

³⁷ Parents received a letter on or around October 29, 2021, about Mrs. ██████'s expected long-term absence. However, there was no special education teacher in ██████'s class as early as October 21, 2021, when an IEP meeting notice invited another special education teacher to attend because, as Ms. ██████ put it, "there was not a teacher in the room" at that time. (See Tr. 580-582; Ex. P-22, unnumbered pp. 1-3; Ex. P-47.)

³⁸ Ms. ██████ did not specify the exact nature of Ms. ██████ experience with special education students. (See Tr. 529.) There is nothing in the evidentiary record directly addressing Ms. ██████ qualifications, or lack thereof, to teach a special education class.

³⁹ Ms. ██████ clarified that, although records of her session work do not go past March 2022, she did in fact serve ██████ for the full school year. (Tr. 285; see also Ex. R-20.)

on motor skills; thus, Ms. [REDACTED] services were limited solely to the 30-minute consultative sessions as required in the IEP. Per Ms. [REDACTED] notes for the school year, [REDACTED]. was cooperative and demonstrated progress with engaging and transitions. (Tr. 284-287; Ex. R-20.)

viii. Transportation issues – October and November 2021

105.

While the exact nature of the problem is unclear, a series of emails between [REDACTED] and the District in October and November 2021 suggests some sort of disruption in transportation occurred after [REDACTED]. moved to [REDACTED]. On October 26, 2021, Ms. [REDACTED] contacted [REDACTED] by email to notify her that [REDACTED] had been routed to a bus, and to confirm whether [REDACTED] would start riding the bus the next day. On November 17, 2021, [REDACTED]. emailed Ms. [REDACTED] to report that “[t]here seems to be some confusion around [REDACTED]’s] special transportation,” and to request an IEP amendment meeting to discuss transportation needs. Later that day, [REDACTED], a special-needs supervisor with the District, emailed [REDACTED] to explain that when a student does not ride for seven consecutive school days, the District’s best practice is to notify the parents and school that services would be suspended. Ms. [REDACTED] noted that, if a considerable amount of time had passed, parents were asked to go back through the school to reinstate bus services. By the next day, November 18, Ms. [REDACTED] had emailed [REDACTED] to ask if she could assist. [REDACTED] acknowledged Ms. [REDACTED] message; however, nothing else in the record confirms the ultimate resolution of this matter. (Ex. P-34 unnumbered pp. 1-8.)

106.

At the hearing, [REDACTED] testified that, since [REDACTED] “changed programs”—presumably referring to his move to the AU Support program at [REDACTED] in October 2021—“he doesn’t receive full bus service.” Ms. [REDACTED] in turn, told the Court that [REDACTED] was a “car rider” in the mornings

and rode a special-needs bus in the afternoons. According to Ms. [REDACTED] [REDACTED]. did not take the bus in the morning because [REDACTED]. did not agree to the pick-up time. It was Ms. [REDACTED] understanding that not taking the morning bus meant [REDACTED] could have more time at home. (Tr. 78-79, 557-558.)

ix. Data collection and scheduling of IEP meeting – October through December 2021

107.

[REDACTED]'s annual IEP review was due in October 2021. Throughout October and November 2021, [REDACTED] and District staff remained in frequent contact by email to confirm a date for this meeting:

- On October 14, 2021, Ms. [REDACTED] asked [REDACTED] whether she was available on October 22, 2021. [REDACTED] responded she was not, but that she was available the next week between 8 a.m. and 2 p.m. (Ex. R-56, p. 468.)
- On October 20, 2021, Ms. [REDACTED] asked whether [REDACTED] would be available on October 29, 2021, at 8 a.m. [REDACTED] confirmed her availability. (Tr. 209-210, 535; Ex. R-56, p. 467.)
- On October 21, 2021, [REDACTED] received a notice for the October 29, 2021, IEP meeting. Listed as an invitee was “Mrs. [REDACTED],” a special education teacher. Ms. [REDACTED] testified that Mrs. [REDACTED] was not [REDACTED]'s actual teacher; rather, “there was not a teacher in the room, so she was just representing as a special ed teacher.” That same day, [REDACTED]. told Ms. [REDACTED] she would like to review unspecified “information” before the meeting and asked when it would be available. Ms. [REDACTED] told [REDACTED] she would send her a draft IEP on October 26, 2021. (Tr. 211, 580-582; Ex. P-22, unnumbered pp. 1-3; Ex. P-43, unnumbered p. 1; Ex. R-55, p. 463.)
- The draft IEP ultimately was emailed to [REDACTED]. on October 28, 2021. That same day, [REDACTED]. emailed Ms. [REDACTED] stating that she “will need adequate time to review this draft.” She asked that the meeting be rescheduled to the following week. The October 28 meeting was therefore cancelled. (Tr. 212, 537, 583; Ex. P-22, unnumbered pp. 4-5; Ex. P-43, unnumbered p. 2; Ex. R-53, pp. 456-457; Ex. R-54, pp. 459-460.)
- On October 29, 2021, Ms. [REDACTED] asked [REDACTED] if she was available on November 8, 2021, at 2 p.m. [REDACTED] agreed to the proposed date. (Tr. 213,

215, 584-585; Ex. P-22, unnumbered pp. 6-7; Ex. R-53, pp. 454-455; Ex. R-54, p. 459.)

- On November 8, 2021—the day of the scheduled meeting—Ms. █████ notified █████ that █████’s general education teacher, Mrs. █████ would be unable to attend the meeting, and asked whether █████ approved having another teacher appear in Mrs. █████’s stead. █████ did not approve to the substitution, so the meeting was rescheduled to November 15, 2021. (Tr. 216-217, 539-540, 585-586; Ex. P-22, unnumbered p. 8; Ex. P-23, unnumbered p. 1; Ex. P-43, unnumbered p. 3; Ex. R-52, p. 452; Ex. R-51, p. 447.)

108.

According to █████, an IEP team meeting began on November 15, 2021, but was not completed. It is unclear from the record exactly what was discussed during this meeting. But in an email sent later that same day, Ms. █████ followed up with █████ about a discussion on the FBA, stating the District would move forward using the consent form signed in May 2021, “as well as reconvene to complete the Annual Review meeting.” █████ also requested FBA data by email on November 17, 2021. (Tr. 217; Ex. P-23, unnumbered p. 3; Ex. P-34, unnumbered pp. 4, 5.)

109.

From November 30 through December 13, 2021, the District collected behavioral data from █████ for a total of 10 school days. Based on that data, a behavioral interventionist for the District, █████, prepared an undated FBA “Data Analysis Summary” report (“█████ Data Summary”). Ms. █████ noted in this summary that, in addition to data collection, she had observed █████ on October 26, November 3, November 15, November 16, November 30, and December 1, 2021. The summary noted that █████ was found to have an increased likelihood of engaging in his target behaviors—including physical aggression, elopement, and noncompliance—during special education instruction or breaks, or when he was directed to engage in a specific activity. The summary noted that █████’s general education teacher

had not reported any behavior problems in her class, and that having [REDACTED] focus on problem-solving proved effective in stopping his target behaviors. The [REDACTED] Data Summary concluded by recommending the IEP team convene to review the FBA and determine the appropriateness of adding a BIP. (Tr. 530; Ex. P-32, unnumbered pp. 1-8; Ex. R-5, p. 44-46.)

110.

By late November 2021, another IEP meeting had been scheduled for December 15, 2021, to complete the IEP annual review. (Ex. P-24, unnumbered p. 1.) Once again, [REDACTED], and District staff members exchanged a series of emails regarding the upcoming meeting:

- On December 1, 2021, [REDACTED] told Ms. [REDACTED] she wanted to review the “current/existing data that will be used to develop the annual IEP.” She mentioned wishing to review the IEP draft document; all classroom observations; all observations by teachers and related providers; “objective information used to determine present levels and developmental functioning including classroom based local or state assessments”; and behavioral data. H.B. also stated she wanted “a reasonable time” to review this information. (Ex. P-24, unnumbered p. 2.)
- On December 4, 2021, Ms. [REDACTED] sent [REDACTED] the most current progress report, iReady reading and math diagnostics, and a draft IEP. Ms. [REDACTED] mentioned the most current iReady reading diagnostic was being taken the following week, and she also reported that “[c]urrently, data is being taken for behavioral assessments and can be shared once this information is analyzed.” (Ex. P-24, unnumbered p. 3.)
- On December 7, 2021, Ms. [REDACTED] sent [REDACTED] the iReady reading diagnostic that had just been completed on December 6. Ms. [REDACTED] also restated that behavioral specialists were analyzing data, which was “not available at this time,” but she would share the data with [REDACTED] as soon as it was ready. (Ex. P-24, unnumbered p. 4.)
- On December 14, 2021, the IEP meeting was rescheduled from December 15 to January 6, 2022. According to [REDACTED], the meeting did not happen because the “FBA was still incomplete” and she did not want to meet until it had been completed. By this point, the 10-day behavioral data collection had just concluded, on December 13, 2021. On cross-examination, [REDACTED] conceded the IEP team could have discussed other agenda items besides the FBA during an IEP meeting. (Tr. 217-219, 541; Ex. P-24, unnumbered p. 5; Ex. P-25, unnumbered p. 1; Ex. P-32, unnumbered p. 1; Ex. R-50, p. 446.)

- Also on December 14, 2021, Ms. ██████ told ██████ she would send the requested additional behavior information from the behavioral specialist by December 17, 2021. (Tr. 541-542; Ex. P-25, unnumbered p. 2, Ex. R-50, p. 447.)
- On December 21, 2021, Ms. ██████ sent ██████ a draft copy of the IEP, with the intention of allowing ██████ sufficient time to review it prior to the planned meeting on January 6, 2022. (Tr. 219, 543-544; Ex. P-25, unnumbered p. 3; Ex. R-49, p. 445.)
- At some point in December 2021, the FBA data collection was completed, and the District provided ██████ with a proposed FBA. (Tr. 594-595, 600, 653.)

x. *Decision in formal complaint – December 14, 2021*

111.

On December 14, 2021, the GDOE issued its decision regarding ██████'s complaint against the District, filed in the fall of 2021. Based on its findings, the GDOE directed the District to do the following: (i) schedule an IEP meeting to complete ██████'s annual review; (ii) develop a BIP based on a completed FBA; and (iii) complete a detailed compensatory education plan in writing. The District was directed to complete the IEP and the 41-hour compensatory-service plan no later than January 30, 2022.⁴⁰ (Tr. 205-206, 207, 223; Ex. R-57, pp. 509-513, 518.)

xi. *New special education teacher in AU Support class – January 2022*

112.

Beginning in January 2022, ██████ began serving as the instructor for ██████'s AU Support class. Ms. ██████ is a transition service teacher for one of the District's high schools; however, due to a teacher shortage, she was pulled to cover this special education class,

⁴⁰ The GDOE's 50-page decision includes detailed findings of fact as well as conclusions as to whether the District had complied with the IDEA. This Court has not relied on the GDOE's determinations in rendering its own Final Decision in this matter. See Ga. Comp. R. & Regs. 616-1-2-.21(3) (noting that hearings before this Court "shall be de novo in nature").

and she later became the class's full-time instructor for the remainder of the 2021-2022 school year. ■■■'s AU Support class had as many as 10 students, ranging from kindergarten to fourth grade. (Tr. 474, 477-480, 483, 494; Ex. P-49.)

113.

During ■■■'s time in her classroom, Ms. ■■■ used iReady to track his progress, including work on ■■■'s IEP objectives. She also used another platform called Education.com, which developed activities, lesson plans, and worksheets for ■■■ Ms. ■■■ testified she provided instruction by utilizing work samples, group activities, and projects. She also used data sheets to collect information on ■■■'s progress on goals and objectives, particularly those related to behavior, and she sent home a daily report regarding any of ■■■'s academic or behavior matters. According to the reports for January 10-14, 2022, ■■■ refused to transition to classes, though in some of those instances—but not all—he complied following positive verbal praises. (Tr. 497-498, 504, 506-510; Ex. R-58, p. 520.)

xii. Email correspondence between ■■■ and District staff – January 2022

114.

Beginning January 3, 2022, ■■■ and District staff again engaged in email correspondence regarding the upcoming IEP meeting, then scheduled for January 6, 2022:

- On January 3, 2022—three days before the scheduled IEP meeting—■■■ asked Ms. ■■■ when she should expect “the data that supports the FBA recommendations.” This presumably is a reference to ■■■'s prior requests for FBA data, made by email on November 17, 2021. Ms. ■■■ responded the same day by providing data “that supports the recommendations in the DRAFT IEP.”⁴¹ (Tr. 221, 545-547; Ex. P-25, unnumbered p. 1; Ex. R-48, p. 442.)

⁴¹ For many of the emails exchanged in January 2022, it is not clear exactly what documentation the senders attached to their messages. Only the email messages themselves were admitted into evidence during the hearing; any attachments were not included. In certain instances, witness testimony has clarified the nature of the attached documents. Otherwise, the Court has relied upon the description of the documentation given by the sender of each email.

- On January 4, 2022, █████ notified District staff that she needed additional time to review the data before the scheduled IEP meeting on January 6, and she asked for the meeting to be rescheduled. The January 6 meeting ultimately was canceled. (Tr. 221-222, 546; Ex. P-25, unnumbered p. 5; Ex. R-46, p. 432; Ex. R-47, p. 438.)
- On January 5, 2022, Ms. █████ sent █████ data taken on █████ by a behavioral specialist during the student’s time at █████, stating in her email she had just received the data that morning. Ms. █████ also proposed a new meeting date of January 13, 2022. █████ next asked when she would receive data taken from █████. Ms. █████ stated she had previously sent that data on January 3. She attached to her email that data, as well as the proposed FBA draft (what was presumably the █████ Data Summary) and another data summary from █████.⁴² (Tr. 547-548; Ex. P-25, unnumbered pp. 4-6; Ex. R-46, pp. 432, 434-436.)
- On January 7, 2022, H.B. informed Ms. █████ she had not received the following information: goal and objective data, ABC data, and observations collected from October to December 2021. Ms. █████ responded on January 10, 2022, that the requested information would be shared before the IEP meeting, and to allow “for a couple of days.” At the hearing, Ms. █████ testified this information would have been available to █████ sooner, had she requested it earlier. (Tr. 549-550; Ex. R-44, pp. 418-419; Ex. R-45, p. 425.)
- On January 11, 2022, █████ informed Ms. █████ that holding an IEP meeting that week (which was January 10-14) would not give her sufficient time to review the requested documentation.⁴³ █████ also asked when she could expect the updated IEP draft, and she noted she had not heard anything about updating █████’s transportation needs. (Ex. P-26, unnumbered p. 3; Ex. R-44, pp. 417-418.)
- On January 12, 2022, Ms. █████ told █████ the District “will not be able to hold a meeting in the current week due to the items [she] had asked for.” Ms. █████ stated the District was attempting to adhere to █████’s requests, and she reminded that the meeting “must be held by January 31, 2022,” as specified in the GDOE’s decision. She also reported that an updated IEP draft would be sent to █████ on January 14, 2022, with a proposed meeting date of January 21, 2022. (Tr. 224, 550-551; Ex. P-26, unnumbered pp. 3-4; Ex. R-44, pp. 417.)

⁴² As noted supra, the attachments to these emails were not tendered into evidence.

⁴³ It is not entirely clear from the record whether a meeting had in fact been scheduled for January 13, 2021—as proposed by Ms. █████—or whether █████ only was informing the District that a meeting during the week of January 10-14 would not work for her. █████ testified at the hearing that she had not been available for a meeting on January 13. (Tr. 222.)

- On January 14, 2022, Ms. █████ sent █████ a draft IEP, in anticipation of an IEP meeting on January 21. █████ responded by stating she wanted “reasonable” time for her “representatives” to review the documents provided by the District. She also stated she was still waiting on “the objective data” and “any supporting documentation used to prepare, create and support” █████’s IEP, as well as a response to her November 2021 request for a transportation-related amendment. █████ asked for a representative not affiliated with the school to assist in resolving the IEP issues. (Tr. 552; Ex. P-26, unnumbered pp. 5-6; Ex. R-42, pp. 413-414.)
- On January 18, 2022, H.B. told Ms. █████ that she had been unaware of the deadline for getting the IEP completed. As she was unavailable January 21, █████ proposed meeting on January 28. █████ asked for a facilitated meeting.⁴⁴ She also told Ms. █████ she had not yet gotten what she called the “goals and objectives monitoring” for October through December 2021, as well as the entire IEP draft document. Ms. █████ again stated that the IEP meeting had to be held by January 31, 2022, per the GDOE’s determination on the formal complaint. Ms. █████ also clarified the requested data had been sent to █████ on January 14, 2022. Ms. █████ also attached to the email what she described as documentation for the draft IEP,⁴⁵ though she noted that “[a]ll other items in the IEP will be addressed in the meeting,” as they are team decisions and cannot be predetermined. (Tr. 226; Ex. P-26, unnumbered p. 7; Ex. R-42, p. 412.)
- On January 19, 2022, █████ completed her formal request for a facilitated IEP meeting. (Ex. P-26, unnumbered p. 9.) A facilitated meeting was subsequently scheduled for January 28, 2022. (Ex. P-26, unnumbered pp. 1, 9.)

xiii. Scheduling of IEP meeting – January 28 to February 4, 2022

115.

A facilitated IEP meeting took place on January 28, 2022. However, according to an email sent by Nicole Hull, Esq., to District staff and █████, “due to the need of one of the requested IEP Team members to leave early, the decision was made to reschedule the meeting.”⁴⁶ According to

⁴⁴ A facilitated IEP meeting occurs with a neutral party running the proceedings, to keep the discussions flowing. (Tr. 554.)

⁴⁵ As noted supra, it is not clear, based on the emails alone, what these documents entailed.

⁴⁶ Nothing in the record indicates which team member had to leave early, or why.

the same email, █████ requested that the meeting be rescheduled “as soon as possible.” (Tr. 227-228; Ex. P-26, unnumbered p. 10.)

116.

Beginning January 31, 2022, Ms. █████ reached out to █████ by email to arrange a date for resuming the facilitated IEP meeting. Ms. █████ initially proposed February 9, though █████ stated she was not available on that date and asked for a meeting the following week. On February 4, Ms. █████ proposed meeting dates on February 16 or 17 from 9 a.m. to 12 p.m., though █████ confirmed she was “no longer available” on those days andsis times. █████ next proposed February 24 and agreed to go forward with another facilitator, as the original facilitator was not available on that date. (Ex. P-44, unnumbered pp. 1-4; Ex. P-27.)

xiv. GKIDS assessment – February 7, 2022

117.

As a kindergartner, █████ was administered an assessment called the Georgia Kindergarten Inventory of Developing Skills, or GKIDS. This testing tool is used to assess kindergartners’ skills and is administered multiple times throughout the year. According to this assessment, performance levels are assessed as one of the following: Not Yet Demonstrating, Beginning, Emerging, Developing, Demonstrating, and Exceeding. (Ex. R-22, p. 240.) The goal is for kindergartners to be at the “Demonstrating” level by the end of the school year. (Tr. 559, 561-562; Ex. R-22, p. 240.)

118.

According to the GKIDS assessment administered to █████ on February 7, 2022:

- For English Language Arts, █████ was assessed as “Exceeding” performance level in phonemic awareness; as “Demonstrating” in phonics and high-frequency words; and as “Developing” in comprehension, conventions of writing, spelling, and communication of ideas.

- For Mathematics, ■ was assessed as “Demonstrating” in shapes, counting numbers, and counting objects; and as “Emerging” in “compare.”
- For “Approaches to Learning,” ■ was assessed as “Developing” for curiosity and initiative; for creativity and problem-solving; and for attention, engagement, and persistence.
- For Personal and Social Development, ■ was assessed as “Developing” for personal development and social regulation; and for development/classroom interactions.
- For Science, ■ was assessed as “Demonstrating” for physical attributes, motion, life science, space science, and earth materials.
- For Social Studies, ■ was assessed as “Developing” for historical understandings, geographic understandings, civic understandings, and economic developments.
- For Motor Skills, ■ was assessed as “Developing” for gross motor skills and fine motor skills.

(Ex. R-22, pp. 241-242.)

119.

Assessment sheets for ■ dated February 7, 2022, indicated he could identify all upper-case and lower-case letters; could identify sounds for all letters; could identify numbers from 0 to 20; could identify basic shapes; could count by ones and tens to 100; and could properly count 20 out of 20 objects. (Ex. R-21, pp. 236-239.)

xv. Remainder of 2021-2022 school year – February through May 2022

120.

Additional IEP meetings convened on February 24, March 15, March 22, and April 1, 2022. The March 22 meeting included a review of the completed FBA. As of the date of the instant hearing, ■’s IEP had not yet been completed. ■ did testify, however, that a BIP had been

proposed and accepted. (Tr. 105, 227, 644, 655; Ex. P-28, unnumbered p. 2; Ex. P-29, unnumbered pp. 1, 3; Ex. P-30, unnumbered p. 1; Ex. R-5, p. 43.)

121.

According to iReady reports, █████ had passed 63% of his math lessons and 73% of his reading lessons as of March 25, 2022. By the end of the 2021-2022 school year, █████ was expected to be promoted to the █████ grade for the next school year. He also was being considered for the Talented and Gifted (“TAG”) program, which caters to students who are performing above their current academic grade level. (Tr. 229-230, 486, 567-568; Ex. R-23, p. 243; Ex. R-24, p. 247.)

F. Relevant History of Instant IDEA Proceeding

122.

On or about January 31, 2022, █████ initiated the instant proceeding by filing a due process complaint. According to this Court’s filings, an Early Resolution Session (“ERS”) was scheduled for February 16, 2022. (Case File, OSAH Form 1 and attachment, filed Jan. 31, 2022; Respondent’s Early Resolution Session Status Update, filed Feb. 10, 2022.)

123.

On February 17, 2022, the District reported to this Court that an ERS took place on February 16 as scheduled, but the parties did not reach an agreement. The District stated it planned to convene an IEP meeting prior to the evidentiary hearing in the instant matter and hoped that some or all the Petitioner’s issues could be addressed at that time. (Case File, Respondent’s Early Resolution Session Status Update, filed Feb. 17, 2022.)

124.

At one point, a mediation was scheduled for March 2, 2022, at 10 a.m. between the District and the Petitioners and their advocate. On February 28, 2022, mediator Judy Harvey sought to

confirm the March 2 date with the parties via email. In her emailed responses, Dr. Gilland stated she thought [REDACTED] and her advocate were coming to an IEP meeting scheduled for that same time. [REDACTED] and her advocate, Mr. [REDACTED], communicated by email that [REDACTED] intended for the mediation to proceed and for the IEP meeting to be rescheduled. Dr. Gilland replied that they “could move forward with the mediation but it doesn’t make sense to have the mediation prior to the IEP meeting.” She asked whether [REDACTED] was amenable to continuing the IEP meeting to another date. [REDACTED] responded that, while the District proposed March 2 from 9 a.m. to 12 p.m. for an IEP meeting, she was not available at that time. She asked the District to proceed with scheduling the meeting to a “mutually convenient date.” (Tr. 234-235; Ex. P-45, unnumbered pp. 3-4.)

125.

On March 1, 2022, [REDACTED] emailed Ms. Harvey to check on the status of the mediation scheduled for March 2. Later that day, Dr. Gilland reported that she and Ms. [REDACTED] spoke with [REDACTED] by phone that morning “but were unsuccessful in working out a time” for either the mediation or the IEP. Dr. Gilland asked Ms. Harvey to look at additional dates for rescheduling the mediation. However, Ms. Harvey responded that it would be up to the parties to find a mutually agreeable date and time. (Ex. P-45, unnumbered pp. 5-6.)

126.

Nothing in either the evidentiary record or the case file indicates a second mediation date was ever selected.

G. Additional Testimony

i. Michele Green

127.

Michele Green, a speech-language pathologist with the District, testified at the hearing regarding her work with █████ during the 2020-2021 school year. Ms. Green has a bachelor's degree in communicative disorders and a master's degree in speech-language pathology. She possesses a certificate of clinical competence from the American Speech-Language-Hearing Association, and she is a licensed educator in the state of Georgia. (Tr. 255, 257-258.)

128.

Ms. Green testified that when her therapy sessions went virtual due to the COVID-19 pandemic, she conducted some sessions solely with █████ and others with one other student. She would use PowerPoints, "boom cart activities," and video stories, among other tools, to make the experience interactive, and she would work on █████'s IEP goals during these sessions. From what she could recall, █████ usually logged in to these sessions with his camera and microphone turned on. Ms. Green testified she did not recall █████ exhibiting maladaptive behaviors during their sessions, except for one instance when she talked with █████ about how he should tell her when he needs a break. She recalled █████ being "very verbal," capable of expressing his feelings, and able to express his wants and needs. (Tr. 258-259, 261, 265-268.)

ii. ██████████

129.

██████████ served as █████'s special education pre-K teacher at ██████████ during the 2020-2021 school year. She is a 20-year teaching veteran, having spent more than 10 of those

years with pre-K students. She holds a master's degree in special education with a concentration in emotionally handicapped children. (Tr. 322-324, 371-372.)

130.

At the hearing, Ms. ██████ said that for ██████, the beginning of the 2020-2021 school year was “a rough start, given the need to get used to virtual learning.” But in “a short time, he was compliant,” and his behavior changed “in a positive way” throughout the school year. While she did observe outbursts or meltdowns when he would say “no” to something, Ms. ██████ observed ██████ could self-correct after redirection. She also found that ██████ would engage with activities, interact with others, and complete his assignments. He also would keep his camera and microphone on, though she saw that ██████—who normally was sitting with ██████—would turn off his camera and microphone herself. Ms. ██████ stated she did not hear of any behavior issues with ██████ in his general education setting. (Tr. 337-340, 346, 358.)

iii. April Girard

131.

April Girard is a licensed occupational therapist who has worked with the District for 14 years. She has been an occupational therapist for 25 years and has experience in both the private-practice and outpatient settings. She specializes in pediatrics. (Tr. 271-272.)

132.

At the hearing, Ms. Girard testified she worked on ██████'s case during the 2020-2021 school year while he attended ██████. She resumed as his therapist when ██████ returned to ██████ in October 2021. Ms. Girard served on a consultative basis, working with both ██████'s special education and general educational teachers. However, she testified that she also would

bring ██████ to the therapy room for a sensory break with the trampoline or the “dizzy desk.” (Tr. 276, 284-285, 287, 288, 291, 295, 296; see also Ex. R-20.)

133.

Ms. Girard stated that, for the 2020-2021 school year, ██████ did more work on his fine-motor skills than the typical pre-K student. She reported he did well with all the items worked on that year. Ms. Girard further testified that she addressed several of ██████’s concerns, including suggesting the purchase of an anti-glare screen to help with ██████’s sensitivity to bright light. Ms. Girard also worked on ██████’s IEP goal of transitioning skills. Over the two-year period she has worked with ██████, she has not observed any regression in his behavior. (Tr. 281, 287-288, 294-295, 299.)

iv. ██████

134.

██████████ is an instructional support teacher at ██████████ who has been with the school for three years. She has worked in special education for the past 20 years. As an instructional support teacher, Ms. ██████ supports all the special education teachers in the school, from helping in the classroom to assisting with an IEP to testing students for services. (Tr. 516-517.)

135.

Ms. ██████ testified that, during ██████’s attendance at ██████████ during the 2020-2021 school year, she had the opportunity to observe ██████ in the virtual environment. Though she did not stay very long—for about “five minutes or so”—she saw that he stayed engaged in what the teachers were doing and understood the content being presented to him. Ms. ██████ further testified that, upon ██████’s return to ██████████ in October 2021, she had not been aware that

the time she started in ██████'s class, she did not believe he was behind academically; rather, he appeared on track as far as the kindergarten standards for content and skill. She described him as at grade level or, in some instances, above grade level. ██████ exhibited behaviors such as screaming and refusing to go to class when Ms. ██████ first started working with him in early January 2022. However, he would successfully de-escalate once she intervened. Ms. ██████ also testified that ██████'s maladaptive behaviors decreased in duration and became less frequent "over a period of no more than 10 days" after she started putting routines in his schedule and sharing with him what was next. By the end of the 2021-2022 school year, she described ██████'s behavior as having changed "tremendously," as he was able to self-monitor, transition with just a one-word reminder, eliminate his screaming fits, communicate appropriately with adults, and go to his general education class. (Tr. 480-483, 485, 487-488.)

vi. *Yolanda Brownlee*

139.

Yolanda Brownlee serves as compliance coordinator for the District's special education department, a position she has held since 2014. In her role, she works primarily with teachers to ensure IEPs are implemented with fidelity. Prior to this role, she served as a program specialist, an instructional support teacher, and an interrelated special education teacher with the District. Dr. Brownlee has a master's degree in special education specializing in autism and behavior disorders and a doctorate in leadership and supervision. (Tr. 608-610.)

140.

Dr. Brownlee testified that the District created RLCs for all students during the period when the schools offered remote learning due to COVID-19. Each plan was to be created by a student's case manager, who would first look at how a student received services in a typical, in-

classroom situation, and then “made decisions on what would be possible virtually.” Dr. Brownlee stated that the District treated RLCs “like IEP meetings,” and parents were invited to attend the meetings in person or by phone. Once an RLC was completed, it would be shared with the parents, who were required to sign it. Dr. Brownlee stated the District faced limitations in how it could implement its IEP services, and that the use of RLCs in the wake of COVID-19 was unprecedented. (Tr. 611-614.)

141.

Dr. Brownlee testified that District students in pre-K to second grade were not issued laptop computers or tablets. If a student in those grades requested such a device, the District reviewed the request individually, reviewed the IEP, and convened an IEP meeting to determine the student’s needs. (Tr. 614-615.)

142.

Regarding FBAs, Dr. Brownlee testified that once students resumed in-person learning, the District resumed its evaluations. But even if students elected to stay virtual rather than return in person, the District still offered for them to complete the FBA in person by making an appointment to come to the school for the evaluation. Dr. Brownlee also stated that, while it would send a draft form of an FBA to parents, the District typically did not provide the supporting data; however, it would do so upon request. (Tr. 619, 630-631.)

143.

As for ESY, Dr. Brownlee stated the District typically does not provide transportation to students who receive the services during the summer. This is because ESY sessions are treated more like appointments, with the student coming in at a specified time to meet with a provider,

versus having a standard daily schedule for all ESY students. Dr. Brownlee also noted that bus service is not provided when a student is not present for a full school day. (Tr. 629-630.)

vii. *Petitioner* [REDACTED].

144.

At the hearing, [REDACTED]. testified that [REDACTED]'s ability to function remains her main concern. While [REDACTED] was "doing okay" at the time of the instant hearing, [REDACTED]. asserted that was not the case when she initiated this proceeding in January 2022. She stated [REDACTED] did not have a "certified teacher" in his autism support class at the beginning of the 2021-2022 school year, and as a result "continued to have difficulty transitioning." When asked to describe how [REDACTED] has regressed in the past two years, [REDACTED]. mentioned his social skills and social language, as well as a presentation of maladaptive behaviors. She also noted she is still trying to assess his level of need for functional services such as ABA, and that "the reason that there's so much confusion as to where [REDACTED] stands is because there is no documented data or there's not enough data to come to a conclusion." While she agreed with the District's witnesses that [REDACTED]'s academic performance is strong and that he was expected to move to first grade in fall 2022, [REDACTED] credits that to the private support services he has been receiving, as well as the support she personally provided to him during his period of remote learning. She conceded, however, that [REDACTED]'s IEPs for January 2020 and April 2020 did not require [REDACTED] to have a one-on-one paraprofessional. (Tr. 31, 122-123, 229-230, 243, 640, 643-645, 660.)

145.

Regarding [REDACTED]'s therapy, [REDACTED] stated she did not have any issues with [REDACTED]'s speech services once he returned to in-person learning. At one point she stated, "I don't think we really have a speech dispute." She further conceded that [REDACTED]'s IEPs only required 30 minutes of

consultative services for occupational therapy; however, she understood “consultative” to mean the occupational therapist would work directly with [REDACTED] (Tr. 54-55, 113, 123, 131-132, 238.)

146.

[REDACTED] further testified the District failed to timely complete [REDACTED]’s FBA. She conceded that the District notified her about holding off on the evaluation while [REDACTED] remained in virtual learning. However, she contended that her family offered to provide the necessary evaluation itself, with the District refusing because it wanted to assess [REDACTED] itself. [REDACTED] also asserted that the District continued to unreasonably delay the FBA after [REDACTED] resumed in-person learning at [REDACTED] in October 2021. (Tr. 31, 116, 150, 643.)

147.

Additionally, [REDACTED] testified as to the District’s purported failures to address her requests for accommodations and services. Regarding transportation requests, [REDACTED] testified she wanted the bus to pick up [REDACTED] in the morning at a different, later time; however, this need had yet to be updated. As for requests for a laptop computer and tablet, [REDACTED] testified she had to buy a laptop for [REDACTED] to access virtual learning, because [REDACTED] had given her own laptop to her teenage daughter for virtual classes. She conceded she was aware the District was providing laptops to students in third through 12th grade. [REDACTED] further stated [REDACTED] needed to use a touch screen versus a keyboard. (Tr. 124-125, 145-146, 236, 237.)

148.

[REDACTED] conceded she has been able to participate during the IEP meetings. She asserted, though, that the District has not taken her seriously or explained what could or could not be done to assist [REDACTED]. She also stated the District is not willing to answer her questions; but when asked, she could not recall a particular question that the District declined to answer. At one point she told

the Court that “there’s just a miscommunication” between herself and the District. █████ further conceded that the District had complied with her every request to reschedule an IEP meeting, and that she was aware of the January 31, 2022, deadline enacted by the GDOE to complete the October 2021 IEP review. However, she denied being the source of the delay in completing the IEP. As for the agreed-upon 41 hours of compensatory-service hours, █████ testified the District “still hasn’t given [her] a detailed plan of what that looks like,” nor had the services started as of the date of the hearing. She also contended the District used the IDEA mediation process to cause “undue delay” to the proceedings before this Court. (Tr. 32, 90-91, 105, 223, 228, 642, 648-650, 661.)

149.

In seeking compensatory services for █████, █████ asserted she was seeking the equivalent of the special education services and “supportive instruction” █████ failed to receive from October 2020 through May 4, 2021. This is because, during virtual learning, █████ did not receive any special education services Tuesdays through Thursdays, and he only received one hour of special education instruction on Mondays and on Fridays. (Tr. 197-198.)

III. CONCLUSIONS OF LAW

A. General Law

1.

This case is governed by the enabling act for the IDEA found at 20 U.S.C. § 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. Procedures for the conduct of the administrative hearing are found in the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-1, et seq., and the rules of the Office of State Administrative Hearings found at Ga. Comp. R. & Regs. 616-1-1, et seq.

2.

The IDEA enables a parent to bring challenges to the “identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to [the] child” by filing a due process complaint. 20 U.S.C. § 1415(b)(6)(A); see also Schaffer v. Weast, 546 U.S. 49, 53-54 (2005). In this case, the Petitioners bear the burden of proof and must produce sufficient evidence to support the allegations raised in the Amended Complaint. Schaffer, 546 U.S. at 62; see also Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) (“The party seeking relief shall bear the burden of persuasion with the evidence at the administrative hearing.”). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3.

Claims brought under the IDEA are subject to a two-year statute of limitations. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2). Here, because the Petitioners’ complaint was filed on January 31, 2022, and amended on March 4, 2022, only IDEA violations occurring between January 31, 2020, and March 4, 2022, are at issue in this proceeding. Id.

4.

This Court’s review is limited to the issues the Petitioners presented in their Amended Complaint. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(3)(j); see also B.P. v. New York City Dep’t of Educ., 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012). A petitioner who files a due process complaint may raise no other issues at the hearing unless the opposing party agrees. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

5.

The goals of the IDEA are “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related

services designed to meet their unique needs” and “to ensure that the rights of children with disabilities and parents of such children are protected.” 20 U.S.C. § 1400(d)(1)(A)-(B); see also J.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1362 (11th Cir. 2021). Related services include the following:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and . . . physical and occupational therapy . . .) as 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. § 1401(26)(A). In addition, the IDEA includes a directive that disabled children be placed in the “least restrictive environment” or “LRE.” Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991), withdrawn, 956 F.2d 1025 (11th Cir. 1992), reinstated in part, 967 F.2d 470 (11th Cir. 1992).

6.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Co., et al. v. Rowley, 458 U.S. 176, 189 (1982); see also W.C. v. Cobb Cnty. Sch. Dist., 407 F. Supp. 2d 1351, 1359 (N.D. Ga. 2005). In Rowley, the U.S. Supreme Court developed a two-part test for determining whether FAPE has been provided. Rowley, 458 U.S. at 206. The first inquiry is whether the school district complied with the procedures set forth in the IDEA. Id. The second inquiry is whether the IEP developed through these procedures is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-07.

7.

Under the first prong of the Rowley test, a procedural violation is not a *per se* denial of FAPE. Weiss by and Through Weiss v. School Bd., 141 F.3d 990, 996 (11th Cir. 1998). This Court is authorized to find that the Petitioners were deprived of FAPE only if the procedural inadequacies

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C. § 1415(f)(3)(E)(ii); see also 34 C.F.R. § 300.513(a)(2).

8.

Important procedural rights for the student and parents include the right to give informed consent and the right to participate in the decision-making process. See 20 U.S.C. § 1415(b), (f). Parents also have the right to be members of “any group that makes decisions on the educational placement of their child.” 20 U.S.C. § 1414(e); 34 C.F.R. § 300.322. In Weiss, the Court held that where a family has “full and effective participation in the IEP process,” the purpose of the procedural requirements is not thwarted. Weiss, 141 F.3d at 996.

9.

Regarding the second prong of the Rowley inquiry, the U.S. Supreme Court provided the following clarification in 2017: “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. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017). Endrew F. does not require that an IEP bring the child to grade-level achievement; if it is not

reasonable to expect a child to achieve grade-level advancement, then his IEP need not aim for such. Id. at 1000-01. Nevertheless, “his educational program must be appropriately ambitious in light of his circumstances.” Id. at 1000. Importantly, the Court in Endrew F. noted that its lack of clarity in defining what exactly “‘appropriate’ progress will look like” is not an excuse for reviewing courts “‘to substitute their own notions of sound educational policy for those of the school authorities which they review.’” Id. at 1001 (quoting Rowley, 458 U.S. at 206).

10.

Also under the second prong of the Rowley test, a school district is not required to provide an education that will “maximize” a disabled student’s potential. Instead, the IDEA mandates only “an education that is specifically designed to meet the child’s unique needs, supported by services that will permit him to benefit from the instruction.” Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 n.1 (11th Cir. 2003) (quotation and citations omitted); see also JSK v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1573 (11th Cir. 1991); Doe v. Ala. State Dep’t of Educ., 915 F.2d 651, 655 (11th Cir. 1990). However, as Endrew F. made clear, this standard is “more demanding than the ‘merely more than *de minimis*’ test.” Endrew F., 137 S. Ct. at 1000.

11.

Furthermore, the IDEA does not require a school district to “guarantee a particular outcome.” W.C., 407 F. Supp. 2d at 1359 (citing Rowley, 458 U.S. at 192). In determining whether a student has received adequate educational benefit, the Eleventh Circuit has noted the courts should pay “great deference” to the educators who developed the IEP. Id. (citing JSK, 941 F.2d at 1573). Furthermore, less weight may be given to experts’ opinions if the experts “based their determination on limited observations of [the child] and on the word of [the child’s] parents”

and “neither witness consulted [the child’s] teachers nor requested documentation underlying the IEP.” Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292-93 (11th Cir. 2001).

B. Due Process Claims

12.

From the Petitioners’ Amended Complaint, the Court has identified the following claims:

- i. The District failed to provide prior notice to the Petitioners of the IEP team’s withdrawal of consent for an RBT to support ██████ in class.
- ii. The District failed to timely complete ██████’s FBA.
- iii. The District improperly denied the Petitioners’ request to have ██████ evaluated so that his exceptionalities/areas of eligibility could include autism.
- iv. The District improperly denied the Petitioners’ request for ██████ to be placed in an Autism Support setting outside of ██████████.
- v. The District has failed to provide all of ██████’s IEP services, beginning with the transition to virtual learning in 2020, through the time of the filing of the Amended Complaint.
- vi. The District improperly denied ██████’s requests for accommodations and modifications for learning in the virtual environment, and it failed to provide proper notice of the denial.
- vii. The District has not adequately addressed ██████’s functional challenges.
- viii. The District has yet to resolve the issues raised by the Petitioners during the May 4, 2021, IEP meeting.
- ix. The District failed to provide ██████ a compensatory service plan.
- x. The District has failed to meet with ██████ to discuss if or how the results from evaluations conducted during the summer of 2021 affect ██████’s placement and education.
- xi. The District has yet to address the Petitioners’ request for a transportation amendment to the IEP, regarding “AM transportation.”
- xii. ██████ did not receive IEP services from a special education teacher for the first half of the 2021-2022 school year.

- xiii. The District failed to provide █████ with a schedule, an RLCP, or IEP-required services when school resumed the week of January 3, 2022, following a holiday.
- xiv. The District has yet to hold █████’s annual review meeting or develop the annual IEP due October 2021. Instead, the District has repeatedly canceled and rescheduled IEP meetings, including the cancellation of five meetings because the FBA was incomplete.
- xv. The District has used the IDEA dispute resolution process as a tool to interfere with the Petitioners’ rights to pursue FAPE.

The Court will address each claim in turn below.

- i. The Petitioners’ claim that the District failed to provide prior notice of the IEP team’s withdrawal of consent for an RBT falls outside the two-year statute of limitations.**

13.

The Petitioners asserted in their Amended Complaint that they did not receive proper written notice when the District denied their request for RBT support in the classroom. The relevant evidence in the record, though scant, establishes that as of the October 2019 IEP meeting, the team had decided that a “behavior therapist” would support █████ for portions of the general education class starting January 2020. █████ also testified that, at some point, she was told by the District that there would be no RBT. That news prompted the request for the January 2020 IEP meeting, which the record shows took place January 16, 2020. Based on the timeline of the events above, the alleged failure to provide notice occurred prior to January 30, 2020, and therefore fell outside of the IDEA’s two-year statute of limitations. See 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2).

- ii. **The Petitioners proved that the District committed a procedural IDEA violation by failing to timely complete ██████’s FBA. However, this procedural violation did not result in denial of FAPE.**

14.

An “evaluation” under the IDEA means “procedures . . . to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.” 34 C.F.R. § 300.15. When conducting an evaluation, a school district must use a variety of assessment tools to gather relevant functional, developmental, and academic information that will assist in developing the contents of the student’s IEP. *Id.* § 300.304(b). A school district also has the obligation to ensure any assessments “[a]re used for the purposes for which the assessment measures are valid and reliable.” *Id.* § 300.304(c)(1)(iii). The role of an evaluation “is to contribute to the development of a sound IEP.” *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008). “[C]ontinual evaluations [a]re necessary, and parents must have the ability to seek redress for a school’s failure to sufficiently monitor a child’s progress under the IEP” *Id.* at 68 (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)).

15.

A Functional Behavioral Analysis, or FBA, is considered an evaluation under the IDEA because it is intended to assess a child’s needs for special education and related services, including behavioral interventions. *Cobb Cnty. Sch. Dist. v. D.B.*, No. 1:14-CV-02794-RWS, 2015 U.S. Dist. LEXIS 129855, at *18 (N.D. Ga. Sept. 28, 2015); *Harris*, 561 F. Supp. 2d at 67. An FBA “includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior” and customarily precedes the development of a behavior plan. Ga. Comp. R. & Regs. 160-4-7-.21(20). *See also* 20 U.S.C. §§ 1414(d)(3)(B)(i) (requiring IEP team to “consider the use of positive behavioral interventions and supports, and other strategies” to address behavior issues).

16.

“[D]elays in evaluations and reevaluations are typically deemed procedural, and not substantive, violations of the IDEA.” Jackson-Johnson v. Dist. of Columbia, No. 13-CV-528, 2015 U.S. Dist. LEXIS 53163, at *1 (D.D.C. Apr. 23, 2015). However, a lengthy delay could constitute a *per se* substantive violation, as an incomplete evaluation means an IEP may not be “sufficiently tailored to a student’s needs.” James v. Dist. of Columbia, 194 F. Supp. 3d 131, 143-144 (D.D.C. 2016) (finding that failure to conduct psychological evaluation compromised IEP’s effectiveness). Though there is no specific deadline for completing FBAs, the Court may look for guidance to current IDEA and state regulations regarding a student’s initial evaluation for special education services, which call for the evaluation to be completed within 60 days of receiving parental consent. 34 C.F.R. § 300.301(c)(1)(i); Ga. Comp. R. & Regs. 160-4-7-.04; see also M.W. v. Clarke Cnty. Sch. Dist., No. 3:06-CV-49(CDL), 2008 U.S. Dist. LEXIS 75278, at *72-73 (N.D. Ga. Sept. 29, 2008).

17.

Here, it remains undisputed that █████ requested an FBA for █████ in January 2020, and the District eventually completed its data collection for the FBA nearly two years later, in December 2021. Viewed in isolation, a two-year delay would appear highly unreasonable. See, e.g., James, 194 F. Supp. 3d at 142 (seven-month delay in psychological evaluation led to IDEA violation). The District has pointed to the COVID-19 pandemic as the source for this delay, based on its contention that an FBA could not be completed during virtual sessions because the District could not guarantee reliable results. There is no doubt that the District, as with all schools across the country, faced an unprecedented challenge with the pandemic. That said, the District still was required to make efforts to assess █████’s behavioral needs while he remained in the virtual

environment. See Fremont United Sch. Dist., 121 LRP 32579 (Calif. Aug. 20, 2021) (finding that, despite the limitation in evaluation tools during the COVID-19 pandemic, “the assessment team should have demonstrated robust, affirmative efforts to seek and obtain available information regarding Parent’s expressed concerns about Student, from all sources and all usable assessments”). The District made no efforts from the spring of 2020 through May 2021 to either re-start the FBA or explore alternatives to gathering reliable FBA data while █████ remained in the virtual setting. While the District did offer for █████ to come to school solely for an in-person FBA evaluation starting in the fall of 2020, this offer does not negate the overall failure here. The fact remains that students were not *required* to attend in person during this period, and █████’s parents presented a legitimate reason (i.e., █████ being at high risk for COVID) to keep their child out of the school building.

18.

Granted, the evidence does show that █████ consented to delaying the FBA in at least three instances: (a) during the April 2020 meeting, when she agreed to push back the data collection to the start of the next school year; (b) in May 2021, when █████ again agreed to hold off on the FBA until the start of the new school year, at which time █████ would be attending class in person; and (c) in September 2021, when █████ agreed to wait until █████ started his new AU Support placement. But even accounting for these consented-to postponements, the total delay still constitutes nearly 12 months. Particularly curious to this Court is the District’s decision to wait nearly two months to start the FBA data collection after █████ finally transferred to his AU Support setting on October 1, 2021. While two months is not an egregious delay in and of itself, it illustrates a certain lack of urgency on the District’s part to complete the long-overdue evaluation.⁴⁸ Accordingly, the

⁴⁸ It is not entirely clear from the record why this delay occurred, though some facts appear relevant to this point. Ms. █████’s testimony indicated she was unaware █████ had any pending evaluations when he returned to █████

Petitioners have proved, by a preponderance, that the District's delay in conducting the FBA constituted a procedural violation of the IDEA. See Jackson-Johnson, 2015 U.S. Dist. LEXIS 53163, at *1.

19.

The Court next examines whether this delay extends beyond a procedural violation and resulted in a substantive denial of FAPE. See Weiss, 141 F.3d at 996; James, 194 F. Supp. 3d at 143-44. This examination first looks to whether the delay impeded ██████'s right to a FAPE or otherwise caused a deprivation of educational benefits. See 20 U.S.C. § 1415(f)(3)(E)(ii)(I), (III). There is no question that ██████'s behavior has been an issue of concern, as the evidence shows he has faced challenges with transitioning to other activities; engaged in maladaptive behaviors that increased in frequency, particularly during the latter half of the 2020-2021 school year; and continued engaging in acts of aggression, inappropriate verbalizations, and a failure to stay in his seat during the first half of the 2021-2022 school year. Yet while these behaviors no doubt illustrate problem areas that need attention, the Petitioners have not provided sufficient probative evidence that the behaviors interfered with ██████'s ability to learn and progress on his IEP objectives. Testimony from ██████'s teachers instead indicates he was able to complete his assignments and participate in activities during the periods in question. There also is no indication that his academic performance has suffered, and a review of his IEPs shows steady, if imperfect, progress on his goals and objectives. See Loren F., 349 F.3d 1309, 1312 n.1 (student's education must "permit him to benefit from that instruction"). In short, pointing to behavioral incidents or an untimely FBA is not enough to prove denial of FAPE: The Petitioners must show how the

██████ in October 2021. And there appeared to be confusion with the consent form, as ██████ had to correct the District during the September 7, 2021, IEP meeting when it asked for a new FBA consent form. In fact, a form already had been signed four months ago, in May 2021.

behavior and the untimely FBA “result[] in loss of educational opportunity for the student.” See J.N., 12 F.4th at 1366-67 (citation and quotation omitted).⁴⁹ The Petitioners have failed to make such a showing.

20.

Moreover, to prove a substantive denial of FAPE, the Petitioners would have to establish that the FBA’s delay—and consequentially the absence of a potential BIP—resulted in an IEP that was not “sufficiently tailored” to █████’s needs. See James, 194 F. Supp. at 143-44. Indeed, an IEP which does not appropriately address behavior that impedes the student’s learning denies that student FAPE. See Park v. Anaheim Union High School Dist., 464 F.3d 1025, 1033 (9th Cir. 2006). Here, the evidence does show that the FBA’s deferral simultaneously held up a full revamp of █████’s behavioral objectives in May 2021. But as noted above, there is insufficient evidence before this Court that █████’s learning has been impeded by this holdup.⁵⁰ Furthermore, in the absence of a completed FBA and BIP, the District engaged in multiple efforts to address █████’s behavioral issues in other ways, including by modeling appropriate behavior and redirecting █████ (October 2020 IEP meeting); revising █████’s goals and objectives with a stronger focus on transitions (May 4, 2021, IEP meeting); having a behavioral therapist attend an IEP meeting and

⁴⁹ In J.N., the Eleventh Circuit Court of Appeals addressed a mother’s claim that the school district’s child-find violation required the award of compensatory services. J.N., 12 F.4th at 1365-68. In ruling against the mother, the Eleventh Circuit emphasized that the violation, by itself, does not equate with a loss of FAPE: “Low grades and behavioral incidents may show that Molly suffered from ADHD and that she struggled in the classroom—probably even more than most. But that is not enough to show that the educational opportunity Molly received was substantively different than what she would have gotten with a more timely IEP, or that her education was otherwise deficient.” Id. at 1367.

⁵⁰ The March 2021 report by the Georgia Autism Center did recommend that a “behavior plan” be created based on observations of █████ in the classroom. However, neither of the report’s authors, Dr. Fox and Ms. Tarlow, were called to testify at the hearing. Thus, the Court is left to balance the report’s hearsay statements with the testimony of █████’s educators as to his progress under his existing IEPs. In this instance, the Court gives greater weight to the educators’ testimony. See W.C., 407 F. Supp. 2d at 1359 (giving deference to educators who created IEP); Devine, 249 F.3d at 1292-93; see also Grindle v. State, 299 Ga. App. 412, 417 and n.4 (noting hearsay statements’ lack of probative value).

provide strategies for ■■■ (May 14, 2021, IEP meeting and August 2021 IEP meeting); and introducing sensory materials from occupational therapy as well as strategies like deep breathing, frequent breaks, and a visual schedule (September 7, 2021, IEP meeting). Additionally, while the District delayed ■■■'s FBA at the start of the 2021-2022 school year, it did start collecting data beforehand, and the behavioral interventionist began observations of ■■■ in late October 2021, a month prior to the start of the FBA data collection. Thus, there is no indication the District outright ignored ■■■'s behavioral issues.

21.

Lastly, the Petitioners failed to show that any delay in the FBA impeded their participation in the decision-making process for ■■■'s education. See 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Rather, the evidence details ■■■'s frequent communications with school staff and robust participation in multiple IEP meetings throughout 2020, 2021, and 2022. And as noted supra, several decisions to delay the FBA's commencement were made with H.B.'s consent.

22.

Accordingly, the Petitioners sufficiently proved that the District committed a procedural violation by delaying the implementation of ■■■'s FBA. This violation, however, does not rise to the level of a substantive denial of FAPE.⁵¹

⁵¹ In declining to find a substantive denial of FAPE, the undersigned in no way means to downplay the significance of the months-long delay in completing the FBA. That said, the evidence presented to this Court did not support a finding of this particular IDEA violation.

- iii. **The Petitioners proved that the District committed procedural IDEA violations by improperly denying their request to have [REDACTED] evaluated so that his exceptionalities could be updated to include autism. However, these violations did not result in a denial of FAPE.**

23.

IDEA and Georgia regulations require re-evaluations of students receiving special education services. At least once every three years, the District shall conduct a comprehensive evaluation of a student with a disability in “all areas of suspected disability.” 20 U.S.C. §§ 1414(a)(2)(B)(ii), (b)(3)(B); 34 C.F.R. § 300.303(b)(2); Ga. Comp. R. & Regs. 160-4-7-.04(3)(a), (b). Additionally, a re-evaluation must be ensured if “the child’s parent or teacher requests a re-evaluation,” with the caveat that such an evaluation may not occur more than once a year unless the parent and the District agree otherwise. 20 U.S.C. § 1414(a)(2)(A)(ii); 34 C.F.R. § 300.303(a)(2).

24.

Here, the evidence shows that [REDACTED] sent an email to District staff on March 24, 2021, expressing a desire to have [REDACTED]’s exceptionality (i.e., his special education eligibility) changed from SDD to Autism.⁵² The evidence also shows the District told her—incorrectly—that [REDACTED]’s exceptionality could not be altered until December 2021. See 20 U.S.C. § 1414(a)(2)(A)(ii); 34 C.F.R. § 300.303(a)(2). Hence, the District did violate the IDEA in this instance. That said, any harm caused by this procedural violation appears to be *de minimus*, as the District reversed course a little more than a month later, on May 4, 2021, when the IEP team discussed plans to evaluate [REDACTED] in the coming summer. Accordingly, the Petitioners failed to show that this procedural

⁵² In her March 24, 2021, email, [REDACTED] mentioned having sent the District unspecified medical records on October 20, 2020. However, the Petitioners failed to present any evidence about the type or content of these records. The October 20 email also does not contain an explicit request for an evaluation and change of exceptionality. Thus, the Court cannot conclude that the District’s purported receipt of these medical records in October 2020 qualified as a parental request for re-evaluation.

violation resulted in a denial of FAPE, as the evidence does not show that the improper denial on March 24, 2021, “significantly impeded” the parents’ opportunity to participate in decisions about ██████’s evaluation and placement. See 20 U.S.C. § 1415(f)(3)(E)(ii)(V). Similarly, given that a little more than 60 days passed between ██████’s request in March 2021 and the evaluations in June 2021, this delay could be considered a procedural violation, albeit of a minor degree. See 34 C.F.R. § 300.301(c)(1)(i); M.W. 2008 U.S. Dist. LEXIS 75278, at *72-73. But again, there is no evidence that ██████’s ability to participate was otherwise harmed. See 20 U.S.C. § 1415(f)(3)(E)(ii)(V).

- iv. The Petitioners failed to prove that the District violated the IDEA by denying their request for ██████ to be placed in an Autism Support setting outside of ██████.**

25.

In the IDEA context, educational placement “refers to the educational program and not the particular institution or building where the program is implemented.” L.M. v. Pinellas Cnty. Sch. Bd., No. 8:10-cv-539-T-33TGW, 2010 U.S. Dist. LEXIS 46796, at *3 (M.D. Fla. Apr. 11, 2010); see also White v. Ascension Parish Sch. Bd., 343 F.3d 373, 379 (5th Cir. 2003). The Office of Special Education Programs (“OSEP”), which provides federal policy guidance regarding the provision of special education services under the IDEA, has advised that if a school district “has two or more equally appropriate locations that meet the child’s needs for special education needs and related services, the assignment of a particular school may be an administrative determination, provided that determination is consistent with the placement team’s decision.” Letter to Veazey, 37 IDELR 10 (OSEP Nov. 26, 2001).

26.

That said, this Court “does not dismiss as implausible the prospect of circumstances under which attributes of an institution, a location, a teacher-student relationship, or the like, might become so pronounced and valuable to the student and his or her IEP, that a change in the school is tantamount to a change in the IEP.” Hill by & through Hill v. Sch. Bd., 954 F. Supp. 251, 253 (M.D. Fla. 1997) (applying predecessor to the current version of IDEA.) Similarly, OSEP has advised that a change in educational “placement” occurs when a proposed location switch would “substantially or materially alter the child’s education program”:

In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child’s IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.

Letter to Tymeson, 81 IDELR 23 (OSEP 2022).

27.

Here, the physical location where █████ receives AU Support services—whether █████ or another District school—does not equate with the meaning of “educational placement” under the IDEA. See L.M., 2010 U.S. Dist. LEXIS 46796, at *3. In this respect, the District is correct—selecting █████ was an administrative decision. Moreover, the Petitioners have failed to present sufficient, probative evidence that █████’s attendance at █████ would materially affect the services he would receive under his IEP. See Hill, 954 F. Supp. at 253. Instead, the relevant evidence consists solely of █████’s prior statements—made in 2021 during IEP team meetings and in her GDOE complaint—regarding her “dissatisfaction” with █████, her opinion about its “lack of care,” and her concern about █████’s “communication needs.” These

conclusory statements are not supported by any other evidence in the record, nor did ██████'s testimony provide further illustrations about ██████ alleged deficiencies. Furthermore, the Petitioners did not present any evidence showing how ██████ was a more restricted environment for ██████, versus other District schools. See 20 U.S.C. § 1412(a)(5)(A). Accordingly, the Petitioners failed to meet their burden in proving this alleged IDEA violation.

- v. **The Petitioners proved that the District failed to provide all of ██████'s IEP services since the start of the COVID-19-related transition to virtual learning in 2020 through the end of the 2020-2021 school year. However, the Petitioners did not prove that the District failed to provide all IEP services for the portion of the 2021-2022 school year, through March 4, 2022.**

28.

As the Court of Appeals for the Eleventh Circuit recognized in 2019, there is a “second species of IDEA claim” that arises when schools “fail to meet their obligation to provide a free appropriate public education by failing to implement the IEP *in practice*.” L.J. v. Sch. Bd., 927 F.3d 1203, 1211 (11th Cir. 2019). An implementation claim, as it is termed by the Court of Appeals, requires a different inquiry, i.e., whether the school has materially failed to implement a child’s IEP—i.e., failed to implement “substantial or significant provisions” of the IEP. Id. Among other considerations, a court should look to “the proportion of services mandated [by the IEP] to those actually provided, viewed in context of the goal and import of the specific service that was withheld.” Id. at 1214 (citations omitted). This requires an examination of both quantitative and qualitative failures, “to determine *how much* was withheld and *how important* the withheld services were in view of the IEP as a whole.” Id. “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail,” though “the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” Id. (citations and quotations omitted).

Here, the Petitioners' focus in their Amended Complaint and during the hearing rested primarily on the amount of instructional time and therapy time that █████ received when he was a virtual student, from March/April 2020 through May 2021. The record makes clear that, from a quantitative perspective, the District did fail to provide all required instructional time from a special education teacher. From mid-March until May 2020 (preschool with Ms. █████), █████'s IEP called for a full day of special education instruction, totaling 32.5 hours a week. However, █████ did not begin receiving live instruction from Ms. █████ until on or around April 20, 2020. Even then, the live lessons were only at specific times, 10 a.m. and 1 p.m.⁵³ As for the beginning of the 2020-2021 school year (pre-K with Ms. █████), the District did appear to fully implement the August 2020 RLCP, to which █████ agreed, as Ms. █████ provided more than the required 60 minutes daily of special education instructive time. Yet by October 2020, █████'s IEP called for special education instruction at roughly 27 hours a week and general education instruction at five hours a week. The October 2020 RLCP—which it appears █████ did *not* agree to⁵⁴—further limited that time to 60 minutes a day (300 minutes a week) of special education instructional time. Yet based on Ms. █████'s testimony and the IEP team's recorded discussion on May 4, 2021, █████'s actual instructional time came nowhere near the amount required in the October 2020 RLCP (300 minutes a week), much less the October 2020 IEP (1,625 minutes a week). By October 2020, Ms. █████ was only instructing █████ two days a week, for a total of 240 minutes. Thus, given the difference between the instructional time required and the instructional time received, coupled

⁵³ It is also not clear from the record whether █████ spent any time in a general education virtual setting from March to May 2020, as required in his IEP.

⁵⁴ As noted *supra*, Dr. Brownlee testified the RLCP required a parent's signature. But the version of the October 2020 RLCP proffered by the District did not include a signature. Thus, the District failed to successfully rebut █████'s claim that she never agreed to the October 2020 RLCP.

with the obvious importance of providing special education services to someone with █████'s exceptionalities, the Court concludes the District's failure to implement the instructional time required by the IEPs from mid-March to May 2020 and from October 2020 to May 2021 constituted a denial of FAPE. See L.J., 927 F.3d at 1214.

30.

As for the IEP's supportive services during his time as a virtual student, nothing in the record indicates █████ failed to receive the 30 minutes of consultative services for occupational therapy. But for speech therapy, while █████ was provided multiple Choice Boards and other activities from March to May 2020, he only took part in one teletherapy session. This appears to be far below what was called for by the January 2020 IEP, which was 60 minutes of therapy a week delivered by a speech therapist. Thus, the failure to provide full speech services from March to May 2020 constituted a violation of FAPE.⁵⁵

31.

Lastly, the Petitioners did not present any evidence to prove █████. did not receive all instructional time and therapy services, as required by his IEPs, for the 2021-2022 school year, from August 2021 through March 4, 2022.⁵⁶

- vi. The Petitioners proved the District violated the IDEA by improperly denying their requests for accommodations and modifications for learning in █████'s virtual environment, and by failing to provide proper notice of said denial.**

32.

Based on the evidentiary record, the requested "accommodations and modifications" the Petitioners did not receive for virtual learning were a laptop computer and a tablet. Each item

⁵⁵ The Petitioners did not present any probative evidence challenging the amount of virtual speech therapy provided during the 2020-2021 school year.

⁵⁶ The specific implementation question regarding use of a long-term substitute teacher in the special education class during this period is discussed infra, at Subpart xii.

could be considered an assistive technology device (“AT device”), defined in the IDEA as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.” 20 U.S.C. § 1401(1)(A); see also 34 C.F.R. § 300.5. “On a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP Team determines that the child needs access to those devices in order to receive FAPE.” 34 C.F.R. § 300.105(b); see also 34 C.F.R. § 300.324(2)(v).

33.

As an initial matter, it is not clear from the record whether or when █████ requested a laptop for █████ as an accommodation. The emails █████ sent to Ms. █████ between October 21 and November 9, 2021, never explicitly stated she was requesting a laptop.⁵⁷ Also, while █████ did request in the June 2020 letter to be reimbursed for a laptop purchase “to support digital learning,” she conceded in her hearing testimony that the District did not outright deny this request. Furthermore, there is no indication before this Court that the laptop was requested as a *special-education* accommodation to assist █████’s functional capabilities. Rather, as █████ herself testified, she needed a laptop for █████ simply because her own laptop was being used by her teenage daughter for virtual learning. Thus, absent any evidence to the contrary, the Court concludes the District did not run afoul of the IDEA, in this particular instance, by adhering to its general policy of issuing laptops starting in third grade only.

⁵⁷ The emails mention that █████ and Ms. █████ discussed the accommodations request during a phone call on October 21, 2021. However, the only reference to what was discussed during that call is an email in which █████ thanked Ms. █████ for listening to her ideas about providing a tablet.

34.

In contrast, the evidence shows █████ made clear requests for a tablet to assist █████ in accessing his education, which the District denied in an email sent November 10, 2020. The email cited to the overall policy of not issuing laptops or tablets to students in pre-K through second grade. The District’s reliance on this policy as its sole reason for the denial violated the IDEA’s mandate for a “case-by-case” analysis on whether a special education student requires an AT device to receive FAPE. See 34 C.F.R. § 300.105(b); In re: Complaint Decision File 21-010C and 21-031C on behalf of CLC from ISD, 80 IDELR, at p. 5 (Ct. App. Minn. Jan. 3, 2022) (decision not to issue FM system to hearing-impaired student, as matter of district-wide policy, violated requirement for individual determination on AT devices). Although the November 10 email mentions that the tablet request was raised during the October 2020 IEP meeting, nothing in that email or the IEP meeting minutes suggests the request was discussed and rejected by the IEP team.⁵⁸

35.

Additionally, the email on November 10, 2020, does not strictly meet notice requirements under the IDEA. A school district must provide written prior notice to parents whenever the district “refuses to initiate or change” a provision related to a child’s FAPE. 20 U.S.C. § 1415(b)(3)(B); 34 C.F.R. § 300.503(a)(2). That notice must include, among other items, “a statement that the parents of a child with a disability have protection under the procedural safeguards of this part [i.e., 20 U.S.C. § 1411 et seq.]”; and a “description of other options

⁵⁸ The District’s November 10, 2020, email does mention that “the outcome” of the October 2020 IEP meeting “yielded” supportive instruction as well as additional speech and occupational therapy services. However, it does not explicitly state the IEP team decided against a tablet as an AT device.

considered by the IEP team and why those options were rejected.” 20 U.S.C. § 1415(c)(1)(C), (E); see also 34 C.F.R. § 300.503(b). The November 10 email does not contain such information.

36.

The Petitioners therefore proved, by a preponderance, that the District violated the IDEA by rejecting their request for a tablet without an individualized assessment by the IEP team and absent proper notice of the denial. These procedural violations constitute a substantive denial of FAPE, as they impeded ██████’s opportunity to participate in the decision-making process regarding AT devices. See 20 U.S.C. § 1415(f)(3)(E)(ii)(V).

vii. The Petitioners failed to prove that the District has not adequately addressed ██████’s functional challenges.

37.

Though not explicitly stated in the Amended Complaint, the Court presumes the Petitioners allege here that ██████’s IEPs have inadequately addressed his deficits in speech and language; his deficits in skills that are addressed in occupational therapy, such as fine motor skills and sensory processing; and his perceived need for support from an ABA or RBT. Each area of functionality shall be addressed separately.⁵⁹

38.

With regard to ██████’s speech deficits, the Petitioners have failed to prove the District-offered services fell short of what ██████ needed. Starting in January 2020, ██████’s IEPs have called for one hour of speech therapy weekly and include goals and objectives related to speech and language. In multiple IEP meetings, the team addressed ██████’s performance in speech, at times noting his improvement on objectives (October 2020 and September 2021 meetings), and at other

⁵⁹ The sufficiency of the District’s response to ██████’s behavioral needs is addressed in Subpart ii, supra.

times addressing areas that needed work (May 14, 2021, and August 2021 meetings). His goals and objectives appear to have been reasonably adjusted to reflect these levels of improvement and need.⁶⁰ See Mandy S. v. Fulton Cnty. Sch. Dist., 205 F. Supp. 2d 1358, 1367 (N.D. Ga. 2000) (“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.”) (citation and quotation omitted). At most, the Petitioners have presented evidence that █████ raised various speech concerns with the IEP team and that █████ received private speech services. But these facts—by themselves—do not demonstrate that the District’s provision of speech services was somehow deficient. And while the Georgia Autism Center evaluation in March 2021 and the District evaluations in June 2021 both identified speech deficits for █████, neither report claimed directly—or even indirectly—that █████’s District-provided speech therapy needed to be adjusted in duration or delivery. The Petitioners, moreover, offered no testimony from speech-language professionals about the meaning of these evaluation results or the need for different speech services. Accordingly, the Petitioners have failed to prove, by a preponderance, that the IEP’s speech services were not reasonably calculated to ensure █████ made progress. See Andrew F., 137 S. Ct. at 1001.

39.

With regard to █████’s fine-motor skills, sensory processing, and related issues, the Petitioner has failed to establish how the occupational therapy provided by the District resulted in a denial of FAPE. The evidence does show that █████ went from having no reported fine-motor deficits in January 2020 to showing a regression in hand strength, as reported by █████ in September

⁶⁰ For example, in the October 2020 IEP, █████’s communication goals were updated from sequencing picture cards to answering “what, why, and where” questions about a picture sequence and picture scene and story. By May 2021, the communication goals were further refined to focus specifically on expressive, receptive, and social language skills—three areas of need identified in the results of a private evaluation from March 2021.

2020 and by the IEP team in May 2021. The June 2021 IEP further noted ██████'s "delays" with sensory motor skills. That said, these regressions and delays, by themselves, do not prove that ██████'s occupational-therapy services as a whole were deficient. See A.R. v. Katonah Lewisboro Union Free Sch. Dist., No. 18-CV-9938, 2019 U.S. Dist. LEXIS 203446, at *47 (S.D.N.Y. Nov. 21, 2019) (holding that IDEA requires states to provide "meaningful access to an education, but it cannot guarantee totally successful results") (quoting Waczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 133 (2d Cir. 1998)). Rather, the evidence shows that through consultative services, ██████. continued throughout the 2020-2021 school year to work on skills related to hand strength/use, such as writing his name, holding scissors, and drawing lines and circles. Additionally, although IEPs must be evaluated in light of the information available at the time they were created and not exclusively in hindsight, see Mandy S., 205 F. Supp. at 1367, the Court finds it relevant that (a) by the September 2021 IEP meeting, District occupational therapists reported that ██████ could write his name in a grade-appropriate fashion and that no other motor-skill deficiencies were identified; (b) Ms. Girard did not report observing any regression during her two school years working with ██████; and (c) ██████ was assessed as "Developing" for gross- and fine-motor skills by February 2022, just one level away from the "Demonstrating" level he needed to reach by the end of the school year. Hence, a limited showing of regression in one skill does not outweigh the educators' professional opinions about ██████'s level of need for occupational services. See W.C., 407 F. Supp. 2d at 1359. Lastly, apart from ██████'s own testimony, the only other evidence the Petitioners rely upon is a purported report from ██████'s June 2021 evaluation that described him as being "overresponsive" to sounds or touches. This report does not tell this Court anything about the type or level of occupational services ██████ requires to access education, nor is there anything in

the record suggesting that the “quick tips” offered by the report could not otherwise be delivered via consultative services.⁶¹

40.

Lastly, the Petitioners provided insufficient probative evidence that █████ required ABA or RBT services during classroom time. To start with, nothing in the evidentiary record describes precisely what ABA entails, much less how it would purportedly assist █████. Also, the fact that █████ received private ABA and RBT services in the home does not equate with a *per se* need for such services during school.⁶² And while a doctor from the Georgia Autism Center stated in a letter that it was “medically necessary” for █████ to receive ABA for behavioral issues, nothing in the record before this Court shows that █████ required ABA to access his education.⁶³ See 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

viii. The Petitioners failed to prove that the District has yet to resolve the issues they raised during the May 4, 2021, IEP meeting, with the exception of the delivery of the compensatory-service hours.

41.

The Petitioners’ Amended Complaint did not identify the actual issues from the IEP meeting on May 4, 2021, that the District purportedly failed to address. For the sake of thoroughness, the Court has reviewed the IEP minutes and the recording of the three-hour meeting to identify eight distinct concerns that █████ and her advocate raised with the District. Four of those

⁶¹ Notably, █████’s private evaluation by the Georgia Autism Center also concluded that █████’s occupational therapy required only “consultative” services.

⁶² █████ testified that the home ABA services were used to assist █████ during his period of virtual learning. But that fact, by itself, does not demonstrate to this Court exactly why ABA would be required. Testimony from qualified ABA providers, including █████’s own RBT or BCBA, could have provided relevant information on this issue; however, no such testimony was provided.

⁶³ As noted supra, the author of the letter did not testify at the hearing. Notably, the actual report from the Georgia Autism Center’s evaluation strongly recommended that █████’s family “continue enrollment” in his private ABA services. But it did not go so far as to recommend ABA services or an RBT in the school setting.

issues—the completion of the FBA, the change to ■■■■■'s exceptionality following evaluations, the provision of a visual schedule, and the accommodation of being tested by a familiar adult—had been satisfied or added to ■■■■■'s educational services by the time of the instant hearing. As for ■■■■■'s concerns about the District's collection and sharing of data, the Petitioners have failed to meet their burden in showing the existence of such deficiencies; at most, the evidentiary record consists of conclusory statements made by ■■■■■ (and also by her advocate during the May 4 meeting) about these purported failings. Moreover, the evidentiary record shows multiple instances after May 4, 2021, in which school officials shared data reports and summaries with ■■■■■ upon her request.

42.

Regarding the cited concern during the meeting about ■■■■■'s struggles with behaviors, the IEP team went on to add more goals and objectives aimed at transition behaviors, and Mr. ■■■■■ contacted a behavioral interventionist to collect data and provide strategies. While these efforts may not have eliminated all of ■■■■■'s maladaptive behaviors, they prove the District did not ignore ■■■■■'s concerns on this matter. A similar conclusion can be reached regarding ■■■■■'s allegation of inadequate communication by the District, as the record shows that, following the May 4, 2021, IEP meeting, ■■■■■ engaged in frequent email communication with District staff and attempted multiple IEP meetings. While ■■■■■'s concern may have focused more on the content of the communication—or her understanding of the District's messages—the Court did not identify any misleading or improper communications from the District following the May 4, 2021, meeting.

43.

Accordingly, for the seven concerns cited above, the Petitioners failed to prove that the District did not address them in some measure. ■■■■■'s eighth and final concern mentioned during

the May 4, 2021, IEP meeting—about the delivery of compensatory services—is addressed in the immediately following claim, *infra*.

- ix. The Petitioners proved the District violated the IDEA by failing to provide █████ the previously determined 41 hours of compensatory service.**

44.

It remains undisputed that, as of the date of the instant hearing, █████ had not yet received any of the 41 hours of compensatory services decided upon in May 2021. Although the District first offered the hours as part of its in-person ESY during the summer of 2021, it did not offer transportation to and from these ESY sessions. The District’s explanation for declining transportation appears reasonable on its face, in that tutorial services for ESY are more akin to appointments rather than a routine school schedule conducive to bus service. Yet the IDEA’s goal is to provide students FAPE, which includes providing related services—including transportation—that are needed “to assist a child with a disability to *benefit from special education*.” 20 U.S.C. § 1400(d)(1)(A); 20 U.S.C. § 1401(26)(A) (emphasis added). Here, █████ could not benefit from the offered compensatory-service hours because the school declined to even consider providing transportation.⁶⁴ The District’s refusal in this instance therefore constituted a procedural violation that also rises to the level of a substantive violation, in that barred completion of the compensatory services during the summer months. See 20 U.S.C. § 1415(f)(3)(E)(ii)(III).

45.

As for the start of the 2021-2022 school year, █████ bears partial responsibility for the delay in the delivery of compensatory services, as she expressly told the IEP team to move on from that topic during two separate September 2021 meetings. See Cleveland Heights Univ. Heights City Sch. Dist. v. Boss, 144 F.3d 391, 398 (6th Cir. 1998) (observing that a parent “naturally” may not

⁶⁴ And as discussed supra, apparently the District did not offer summer ESY in a virtual setting.

“use the fact that the District complied with their wishes as a sword in their IDEA action”). Thus, at least for the first month or two of this school year, District staff were without any direction on how those service hours could be delivered. The District also faced significant challenges in scheduling IEP meetings with █████ from October 2021 onward, thereby thwarting further discussions about how the service hours would be addressed. That said, the record shows the District met with █████ at least twice prior to March 4, 2022, though the record is silent as to whether the IEP team did—or did *not*—discuss compensatory services during those meetings. The evidence largely suggests these meetings were consumed by discussions related to the as-yet-completed IEP review.

46.

Ultimately, the Court cannot say definitively that the District has deliberately stalled the delivery of the 41 service hours. Nonetheless, as of the hearing date, the delay in delivery stretched over a year. As the purpose of the hours was to compensate for missed instruction, time would be of the essence in providing █████ with its benefit. Thus, having weighed these considerations, the Court concludes the District has materially failed to implement the previously established 41 compensatory-service hours. See L.J., 927 F. 3d at 1211, 1214.

- x. **The Petitioners failed to prove the District did not meet with █████ to discuss if or how the results from evaluations conducted during the summer of 2021 affect █████’s placement and education.**

47.

Regarding this claim, the evidence before this Court plainly shows that █████ met with several District professionals on June 29, 2021, to discuss the results of the evaluations administered earlier that month. As a result of that meeting, █████’s exceptionality was updated from SDD to Autism. Sometime later, in September 2021, the IEP team reconvened to discuss placement and ultimately agreed to move █████ to an Autism Support classroom.

To the extent the Petitioners are contending the District did not adequately explain *how* the evaluation results supported the education decisions from June 2021 onward, they have failed to meet their burden. The IDEA does require school districts to take “whatever action is necessary” to ensure that the parent who attends the IEP meeting understands the proceedings. 34 C.F.R. § 300.322(e). And as recorded in the August 2021 IEP, █████ shared with the District her “confusion” about how the eligibility report addressed █████’s motor skills and occupational therapy. But apart from this single reference in an IEP, the Petitioners have not presented any probative evidence to show that the District in fact *declined* to address █████’s concerns on this particular matter. At most, █████ testified in general terms that the District failed to answer her questions and has not produced enough documented data. But when asked during cross-examination, she could not identify any specific questions the District left unanswered. Thus, absent more concrete proof of the District’s failings in this matter, the Court cannot conclude that any violation of the IDEA occurred.

xi. The Petitioners failed to prove that the District did not address their request for a transportation amendment to the IEP.

Though not explicitly stated in the Amended Complaint, this claim presumably refers to █████’s request on November 17, 2021, for an amendment meeting regarding an unspecified transportation issue. The Amended Complaint mentions that the amendment addresses an “AM transportation” matter, and testimony at the hearing established that (a) █████ wanted █████’s pick-up time for the morning bus changed; and (b) as of the date of the instant hearing, █████ had been without full bus service since October 2021, and he was a morning car rider. Taking a very liberal construction of this allegation and these facts, the Court concludes the Petitioners have proved, by

a slim preponderance, that the District had not yet addressed the November 2021 transportation amendment, given that the status of morning-bus service had not changed.

50.

As noted supra, the provision of FAPE includes the use of related services such as transportation. 20 U.S.C. §§ 1400(d)(1)(A), 1401(26)(A). ■■■■■'s IEPs consistently have included bus transport as an accommodation, though they have never included specific pick-up and drop-off times. Nonetheless, as ■■■■■ has raised a potential issue regarding a related service, at a minimum the District should address it in the context of an IEP meeting. See 34 C.F.R. § 300.324(b)(1)(ii) (calling for IEP teams to revise IEPs based on child's anticipated needs or for "[o]ther matters").

- xii. The Petitioners proved that the District committed a procedural violation of the IDEA when ■■■■■ did not receive IEP services from a special education teacher for the first half of the 2021-2022 school year. However, the violation does not constitute a material failure to implement the IEP, nor did it result in a denial of FAPE.**

51.

Every school district must establish and maintain qualifications to ensure that the personnel needed to carry out the IDEA are "appropriately and adequately prepared and trained" and "have the content knowledge and skills to serve children with disabilities." 34 C.F.R. § 300.156(b). Specifically, an individual employed as a public school special education teacher must hold "full State certification as a special education teacher . . . or [have] passed the State special education teacher licensing examination, and hold[] a license to teach in the State as a special education teacher." 34 C.F.R. § 300.156(c)(i). Alternatively, teachers can be qualified to teach special education if they are "participating in an alternate route" to certification through professional

development and intensive supervision. Id. A special education teacher also must hold a bachelor's degree. Id.; see also Ga. Comp. R. & Regs. 160-4-7-.14(1)(b).

52.

A preponderance the evidence shows that, for October through December 2021, █████ had his special education class taught by a long-term substitute who did not qualify as a special education teacher.⁶⁵ This is in contravention to the terms of █████'s IEP at the time—which called for instruction from a special education teacher in math and English/language arts—as well as IDEA law. See 34 C.F.R. § 300.156(c)(i).

53.

The question then turns to whether the absence of a special educator for three months constituted a material failure to implement the IEP. See L.J., 927 F.3d at 1211. This determination rests on an examination of “the child’s circumstances, the child’s educational achievement, the proportion of services provided, and the educational context.” Id. at 1216. Here, a three-month absence of a special education teacher to provide Autism Support instruction certainly is not insignificant. Additionally, there is no question that █████ continued to struggle with some behavioral issues during this period. But as Ms. █████ testified, █████ was performing at or above grade level immediately following the conclusion of this three-month period, in early January 2022. While academics are not the sole criteria for assessing the materiality of a failed IEP implementation, the child's educational progress “may be probative.” L.J., 927 F.3d at 1214 (noting that shortfall in reading achievement following a lapse in reading instruction “would certainly lend” to finding of material implementation failure, and vice versa). With █████., any

⁶⁵ There is no direct evidence addressing the substitute teacher’s actual qualifications, such as educational degrees or certifications. However, Ms. █████ acknowledged in her testimony that the substitute was not a special education teacher, when she stated another special education teacher sat in during an IEP meeting the relevant period because “there was not a teacher in the room.”

behavioral challenges he experienced at the time did not interfere with his ability to access an education. Compare S.B v. Murfreesboro City Sch., No. 3-15-01-06, 2016 U.S. Dist. LEXIS 31675, at *6-7, 18-21 (M.D. Tenn. Mar. 11, 2016) (finding that use of noncertified substitute teacher violated FAPE after student’s behavioral issues worsened and “affected how [he] was doing in school”). Furthermore, nothing in the record suggests the long-term substitute teacher misapplied or ignored █████’s IEP goals and objectives. See Abington Sch. Dist., 117 LRP 9209 (SEA PA Feb. 14, 2017) (ruling that substitute teacher appropriately addressed student’s needs after receiving information and direction from the school principal), aff’d on other grounds, No. 17-2118, 2018 U.S. Dist. LEXIS 211736, 73 IDELR 179 (E.D. Pa. Dec. 17, 2018). Having weighed all the above factors, the Court concludes the absence of a special education teacher for three months did not rise to the level of materiality that would result in an implementation violation.⁶⁶

54.

For similar reasons, the Court does not find that any procedural violation of IDEA and state regulations committed in this instance rose to the level of a substantive denial of FAPE. The Petitioners have failed to establish any nexus between Ms. █████’s presence in the classroom and █████’s capacity to access his lessons or make progress on his IEP goals and objectives. See 20 U.S.C. § 1415(f)(3)(E)(ii).

⁶⁶ The Court in no way intends to downplay the importance of schools having trained special education teachers in the classrooms. Rather, the undersigned reaches this conclusion based on the particular circumstances in this case. Had there been probative evidence of the substitute teacher failing to follow the IEP or aggravating █████’s academic or functional deficits, the outcome would be far different. Such proof, however, is simply lacking here.

- xiii. The Petitioners failed to prove that the District did not provide [REDACTED] with a schedule, an RLCP, or IEP services when school resumed the week of January 3, 2022, following a holiday.**

55.

The Petitioners have not presented any probative evidence directly addressing this claim. Accordingly, they have not met their burden in proving a violation of the IDEA.

- xiv. The Petitioners proved that the delay in the October 2021 IEP review constituted a procedural IDEA violation. However, this violation did not result in a denial of FAPE.**

56.

The IDEA calls for the IEP team to review a student’s IEP “periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.” 34 C.F.R. § 300.324(b)(1)(i). Here, there is no question the October 2021 deadline for [REDACTED]’s annual review was missed and that the review had yet to be completed as of the date of the instant hearing.

57.

Yet a violation of IDEA procedure only constitutes a denial of FAPE if it has impeded [REDACTED]’s right to FAPE or caused a deprivation of his educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii)(I), (III). The Petitioners failed to present any evidence showing either has occurred. Rather, [REDACTED] continued to improve and flourish in Ms. [REDACTED] class from January 2022 through the end of the school year. See Doug C. v. Haw. Dep’t of Educ., 720 F.3d 1038, 1046 (9th Cir. 2013) (“[D]elays in meeting IEP deadlines do not deny a student FAPE where they do not deprive a student of any educational benefit.”)

58.

A procedural violation also can lead to an actionable denial of FAPE if it “significantly impedes” parents’ opportunities to participate in the decision-making process regarding the

provision of FAPE for their child. 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Here, the Petitioners seemingly have alleged such an impediment, as they blame the District for the IEP review's delay. The Court disagrees. There is no evidence the District outright canceled any of the IEP meetings between October 2021 through February 2022. Rather, the District sought to meet the January 31st deadline imposed by the GDOE to complete the review. Also, while █████ declined to proceed with a meeting on November 8, 2021, due to the absence of █████'s general education teacher, the District initially offered to proceed with a stand-in general education teacher and then promptly proposed a new meeting date three days later.⁶⁷ Also although an IEP meeting set for March 2, 2022, conflicted with a mediation session, nothing suggests this was done intentionally by the District; rather, an email message to the mediator indicates District staff attempted to correct the scheduling issue with █████ by phone. The record also shows the IEP team succeeded in meeting at least four times between November 2021 through March 2, 2022, including for one facilitated meeting. In between these meetings, email correspondence shows District staff diligently working with █████ to confirm the next meeting date.

59.

In certain instances, █████ initiated the meeting delays. She decided against proceeding with the meeting scheduled for January 28, 2022, because an unspecified individual would not be appearing.⁶⁸ █████ also made at least two requests to move the IEP meeting (from October 29, 2021, and from January 6, 2022), because she wanted more time to review provided data. Yet while █████ is free to make such requests, she cannot simultaneously blame the District for any

⁶⁷ A student's general education teacher is a required member of the IEP team. 20 U.S.C. § 1414(d)(1)(B)(iii).

⁶⁸ As noted *supra*, the record is unclear as to which individual failed to appear, and whether they were a required member of the IEP team, pursuant to 20 U.S.C. § 1414(d)(1)(B)(iii).

delay these requests caused. See Doe v. Defendant I, 898 F.2d 1186, 1189 n.1 (6th Cir. 1990) (determining that parent could not complain school district failed to complete timely IEP when non-completion was attributable to parent’s request that school allow student to perform on his own for a while).⁶⁹

60.

The progress of ██████’s annual IEP review has been tortuous since its initiation in October 2021. Such delay is certainly regrettable. While it had yet to do so as of the date of the hearing, even more delay eventually could do ██████ a great disservice. That said, the Court cannot identify a denial of FAPE, nor can it place the blame for this delay squarely on the shoulders of the District.

xv. The Petitioners failed to prove the District used the dispute-resolution process as a tool to interfere with the Petitioners’ rights to pursue FAPE.

61.

This claim, first raised in the Amended Complaint filed March 4, 2022, alleges that the District engaged in the ERS without having any real plan to resolve the matter. The purpose of an ERS is “for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the [school district] has the opportunity to resolve the dispute that is the basis for the due process complaint.” 34 C.F.R. § 300.510(a)(2); see also Ga. Comp. R. & Regs. 160-4-7-.12(3)(e)(4). Here, the filings for this case show the parties participated in an ERS on February 16, 2022. Apart from the District’s report to this Court that the parties did not reach an agreement, the record is bereft of any reference to what actually occurred during the ERS. Hence, absent any evidence pertaining to what took place during or around the ERS itself, this Court cannot tell whether the Petitioners were in fact barred from discussing their Complaint

⁶⁹ Granted, parents do have rights under the IDEA to inspect their child’s education records, and a school district must comply with these requests “without unnecessary delay and before any meeting regarding an IEP.” 34 C.F.R. §§ 300.501(a), 300.613(a). These same regulations give schools up to 45 days to respond to these requests, which the District appears to have complied with since October 2021. See id. § 300.613(a).

with the District. Furthermore, the fact that the ERS did not end with a settlement agreement is not, in and of itself, an IDEA violation on the part of the District. Nothing in the controlling law requires the District to reach a settlement during resolution sessions; rather, an absence of resolution simply allows a due process hearing to proceed. See 34 C.F.R. § 300.510(a)(4); Ga. Comp. R. & Regs. 160-4-7-.12(3)(f).

62.

The Petitioners further allege that the District refused to participate in a scheduled mediation for the instant matter. The IDEA requires procedures giving parents and school districts an opportunity for mediation when due process complaints are filed. 20 U.S.C. § 1415(b)(5); 34 C.F.R. § 300.506(a); Ga. Comp. R. & Regs. 160-4-7-.12(2). These procedures must ensure that the mediation process “is voluntary on the part of the parties” and “is not used to deny or delay a parent’s right to a due process hearing . . . , or to deny any other rights” afforded under the IDEA. 20 U.S.C. § 1415(b)(5); 34 C.F.R. § 300.506(a). Here, the evidence shows that a mediation in the instant case had been scheduled for March 2, 2022. The evidence also shows that an IEP meeting had been scheduled the same day, though it is unclear how or why this scheduling conflict occurred. In a series of emails between the parties and the mediator, Dr. Gilland asserted that she believed an IEP meeting should happen before the mediation; however, she also conceded the parties “could move forward with the mediation.” In another set of emails, Dr. Gillard reported to the mediator that she and Ms. [REDACTED] had a phone call with [REDACTED] to attempt to work out times for both the IEP meeting and the mediation, without success. The mediator then left it to the parties to find a workable date, which did not occur. Left with these facts, the Court cannot conclude that the District used the mediation process to cause undue delay in this proceeding. Nothing in the evidence suggests the mediation and IEP meeting were scheduled on the same day intentionally.

And, while Dr. Gilland clearly preferred proceeding with the IEP meeting first, she also volunteered to move forward with mediation on March 2, 2022, and she and Ms. [REDACTED] later reached out to [REDACTED] about the scheduling. Lastly, mediation remains a voluntary process, meaning the District was under no obligation to reschedule or continue with the mediation.⁷⁰ Accordingly, the Petitioners have failed to meet their burden with this claim.

C. Relief

63.

As discussed above, the Petitioners have proven, by a preponderance, that the following IDEA violations occurred:

- The District failed to timely complete an FBA (procedural violation only).
- The District improperly denied the Petitioners' request to have [REDACTED] evaluated for a possible change to his exceptionality, and it failed to properly notify them of the denial (procedural violation only).
- The District failed to implement [REDACTED]'s IEPs during his period of virtual learning, from March 2020 through May 2020; and from October 2020 through May 2021.
- The District improperly denied [REDACTED]'s requests for a tablet as an accommodation for [REDACTED]'s virtual learning, and it failed to provide proper notice of that denial.
- The District committed a substantive FAPE violation by denying transportation for [REDACTED] to complete his compensatory-service hours during summer ESY, and it also failed to implement his IEP by not delivering the 41 hours.
- The District failed to address [REDACTED]'s November 2021 request for a transportation amendment.
- The District had someone other than a certified special education teacher instruct [REDACTED] in his special education class, from October to December 2021 (procedural violation only).

⁷⁰ Whatever occurred with the mediation also did not impede the proceedings before this Court. Neither of the parties filed a notification with the Court that a mediation had been scheduled for March 2, 2022; thus, this matter was never stayed. As of February 18, 2022, the Petitioners had until March 5, 2022, to file an amended complaint or face dismissal. By March 9, the undersigned had scheduled a prehearing conference to discuss scheduling the due process hearing.

- The District failed to timely complete the October 2021 annual review of ██████'s IEP (procedural violation only).

The Petitioner has asked this Court for the following relief:⁷¹

- Compensatory service equaling 101 school days (757.5 hours), from October 2020 through May 2021.
- The provision of the 41 compensatory hours the District already agreed to.
- An award of \$2,000.00, meant to reimburse the time and resources ██████ provided while giving supportive, paraprofessional-like instruction to ██████ from March to May 2020.

64.

In determining the appropriate remedy for IDEA violations, this Court has “broad discretion” to “fashion discretionary equitable relief.” Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 15-16 (1993) (internal quotations and citations omitted); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1285 (11th Cir. 2008) (quoting Sch. Comm. of the Town of Burlington, Mass. v. Dep’t of Educ. of Mass., 471 U.S. 359, 374 (1985)).

65.

As an initial matter, the actions or inactions underlying two of the purely procedural violations have since been resolved. This includes the denial of the evaluation request (corrected in May 2021); and the absence of a certified special educator in ██████'s class (replaced in January 2022). Hence, the Court need not offer any other affirmative relief. See J.N., 12 F.4th at 1366 (concluding that “the remedy for a procedural failing is generally to require that the procedure be followed”).

⁷¹ These requests for relief differ from what appeared in the Petitioners’ Amended Complaint. During the hearing, the Petitioners were provided an opportunity to review and amend their requested remedies, after ██████ gave testimony that seemed to conflict with the originally requested relief. (Tr. 171-191.) See Ga. Comp. R. & Regs. 616-1-2-.08.

66.

The Court next addresses the purely procedural violations that require action on the part of the District. Again, the proper remedy in these instances is to follow the procedure, versus granting compensatory education. See Garcia v. Board of Ed. of Albuquerque Pub. Schools, 520 F.3d 1116, 1125 (10th Cir. 2008) (noting that compensatory services “compensate[] for a past deprivation of educational opportunity rather than a deprivation of purely procedural rights”). While the data collection for the FBA itself has been completed, the resulting BIP had not yet been finalized or implemented at the time of the hearing. Therefore, the District shall be ordered to take steps to do so within a reasonable time. The District also shall be ordered to complete the October 2021 IEP review, again within a reasonable time.

67.

Regarding the pending requests for an AT accommodation (i.e., the tablet request), there is insufficient evidence in the record to convince this Court that █████ in fact needs a tablet to access education in a virtual environment. But because the District has not yet done so, it shall be required to hold an IEP team meeting to discuss this accommodation request. If the request is rejected following the meeting, the District shall provide █████ with an appropriate written notice. Similarly, the District shall be required to address the proposed transportation amendment with █████ during an upcoming IEP meeting, and to provide proper notice should the request be denied.

68.

The analysis now turns to the implementation violation involving the instructional and speech-related services in the IEPs. At first blush, this violation appears to be a strong candidate for compensatory education. The Eleventh Circuit has held that compensatory education is considered ““appropriate relief where responsible authorities have failed to provide a handicapped

student with an appropriate education as required by [the Act].” Draper, 518 F.3d at 1280 (quoting Todd D. ex rel. Robert D. v. Andrews, 933 F.2d 1576, 1584 (11th Cir. 1991)). Although “ordinary [educational programs] need only provide ‘some benefit,’ compensatory awards must do more—they must *compensate*.” Reid v. Dist. of Columbia, 401 F.3d 516, 525 (D.C. Cir. 2005). Compensatory education “is a backward-looking remedy” crafted in response to a *substantive* violation of the IDEA. J.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1365 (2021). “[A] parent must show that the child’s educational program was substantively deficient, and that compensatory educational services are necessary to place the child in the same place she would have been absent a violation of the [IDEA].” Id.; see also Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 583 F. Supp. 2d 169, 172 (D.D.C. 2008) (holding that compensatory relief must be “a well-articulated plan the reflects [the student’s] current educational abilities and needs and is supported by the record”). Compensatory education “should place children in the position they would have been in but for the violation of the [IDEA].” J.N., 12 F.4th at 1366-67 (quoting Draper, 518 F.3d at 1289).

69.

Here, the District undoubtedly failed to implement ██████’s IEP during the virtual-learning period by not providing the amount of instructional time and speech-therapy time required by the IEPs and/or the October RLCP. Given the amount of instructional time missed, the Court found this implementation violation to be a denial of FAPE. That said, prevailing on an implementation claim does not necessarily mean the child suffered “demonstrable educational harm.” L.J., 927 F.3d at 1214. And although ██████ certainly has struggled with behavioral issues and transitions in 2020 and 2021, the evidence shows he still was able to access education, make progress on his IEP goals and objectives, and succeed academically. He also has made sufficient progress toward his

speech goals. In other words, nothing suggests ██████'s education would have been different but for these violations, or that he needs compensatory services to achieve the educational position he should have been in. See J.N., 12 F.4th at 1366-67 (quoting Leggett, 793 F.3d at 68). If anything, the evidence shows ██████ has made appropriate progress in light of his circumstances. See Endrew F., 137 S. Ct. at 999. Furthermore, to the extent any such need exists, the Court does not believe that any more than the 41 hours already agreed upon would be appropriate.

70.

That said, the District still remains obligated to provide ██████ with the 41 hours of compensatory-service hours, as confirmed in May 2021. The Court leaves it to the discretion of the IEP team on the exact format for these hours, though the following will be required: (a) the District shall ensure that ██████ is provided transportation so he can attend any of the compensatory services, even if they are offered via ESY; (b) the services shall focus on work addressing ██████'s current IEP goals and objectives; and (c) at least 4 of the 41 hours shall be delivered by a speech language pathologist and focus on ██████'s speech goals and objectives.

71.

Lastly, the Court turns to the Petitioners' request for \$2,000.00, which is intended to cover the purported costs of ██████'s paraprofessional-like services to ██████ during the period of virtual learning. As an initial matter, the evidence makes clear that the IEPs during the period in question did *not* call for a paraprofessional to assist ██████.; hence, the District should not have to pay here because it did not fail to implement the IEP. But under the IDEA, a parent also is entitled to reimbursement for the provision of related services in the event the school district does not offer FAPE. R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1184 (11th Cir. 2014). "Related services" presumably could include paraprofessional support. See 20 U.S.C. § 1401(26)(A). Here,

the evidence does show that █████ took a highly active, hands-on role during █████'s period of virtual learning, which could be traced to the denial of FAPE resulting from the District's failure to provide the full instructional time. However, the requested \$2,000.00 award would not be appropriate, as █████ has not presented any probative evidence supporting the calculation of \$2,000.00 in expenses.⁷² At most, the awarding of \$2,000.00 would here act as a punitive measure against the District, rather than a way to "make whole" █████ and his family, which is the overall goal of the IDEA. See Florence Cnty, 510 U.S. at 15-16; see also Burlington, 471 U.S. at 369 (noting that under 20 U.S.C. § 1415(i), district courts have "broad discretion" to grant whatever relief is "appropriate in light of the *purposes* of the [IDEA]") (emphasis added).

IV. ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioners' request for relief under the IDEA is hereby **GRANTED in part and DENIED in part**. The Petitioners are entitled to the following relief:

- To the extent it has not already done so, the District is hereby **ORDERED** to have █████'s proposed BIP finalized by the IEP team no later than 30 days from the date of this Decision. Both the Petitioners and the District are to work vigorously and in good faith toward completing this BIP.
- To the extent it has not already done so, the District is hereby **ORDERED** to have █████'s October 2021 annual IEP review completed no later than 45 days from the date of this Decision. Both the Petitioners and the District are to work vigorously and in good faith toward completing this annual review by the specified deadline, and to take guidance from this Court's findings.
- To the extent it has not already done so, the District is hereby **ORDERED** to provide █████ with the 41 hours of compensatory services that were determined on or around May 2021. The format of these service hours shall be up to the discretion of the IEP team, though at a minimum 4 hours shall be devoted to speech work, with the remaining time focused on █████'s IEP goals and objectives. The District is also **ORDERED** to provide █████ with any needed transportation so he can complete these hours. The IEP team shall finalize a plan for the delivery of these

⁷² For example, there is no evidence about how much a paraprofessional charges per hour, or whether █████ lost time at her employment because she needed to assist █████ during class.

hours no later than 75 days from the date of this Decision. Both parties are to work vigorously and in good faith toward completing this service plan.

- The District is hereby **ORDERED** to commence an IEP team meeting⁷³ to address the Petitioners' request for a tablet to accommodate █████'s periods of virtual learning. This meeting shall be commenced within 60 calendar days of the date of this Decision. Should the accommodation request be rejected, the District shall issue a written notice to the Petitioners in compliance with 20 U.S.C. § 1415 and 34 C.F.R. § 300.503.
- The District is hereby **ORDERED** to commence an IEP team meeting to address the Petitioners' request for a transportation amendment, as specified in the November 17, 2021, email. This meeting shall be commenced within 60 calendar days of the date of this Decision. Should a requested service be denied, the District shall issue a written notice to the Petitioners in compliance with 20 U.S.C. § 1415 and 34 C.F.R. § 300.503.

SO ORDERED, this 22nd day of September, 2022.



Lisa Boggs
Administrative Law Judge



⁷³ At the parties' discretion, any ordered meetings can be combined with other meetings held by the IEP team.



NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. 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 Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Bringing a Civil Action

A party aggrieved by the Final Decision has the right to bring a civil action in the appropriate court within 90 days from the date of the Final Decision. 34 C.F.R. § 300.516; Ga. Comp. R. & Regs. 160-4-7-.12(3)(u). A copy of the civil action must also be filed with the Georgia Department of Education, Special Education Services and Supports, at 1870 Twin Towers East, 205 Jesse Hill Jr. Drive, Atlanta, Georgia 30334, and the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.93.