

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

C.D., R.D., and C.D., Plaintiffs,	:	
	:	
	:	Docket No.
v.	:	OSAH-DOE-SE- [REDACTED]-Howells
	:	
_____ COUNTY SCHOOL DISTRICT,	:	
Defendant.	:	

FINAL DECISION

For Plaintiff:

Chris E. Vance, Esq.

For Defendant:

Aric M. Kline, Esq.
Patrick H. Ouzts, Esq.
Gregory, Doyle, Calhoun & Rogers, LLC.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On May 20, 2013, Plaintiffs C.D. (i.e., the student), the student’s father R.D. (“Mr. D.”), and the student’s mother C.D. (“Mrs. D”) (collectively “Plaintiffs”) filed a Due Process Hearing Request (“Complaint”) contending that _____ County School District (“District”) violated their rights under the Individuals with Disabilities Education Improvement Act (“IDEA”)¹ and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.* (“Section 504”). Specifically, the Plaintiffs allege that the District failed to identify C.D. as a “child with a disability” in violation of the IDEA, failed to evaluate C.D. in violation of the IDEA and Section 504, failed to provide C.D. with a Free and Appropriate Public Education (“FAPE”) in violation of the IDEA, failed to provide Plaintiffs’ with their procedural rights in violation of the IDEA

¹ In 2004, the act was reauthorized and renamed as the Individuals with Disabilities Education Improvement Act of 2004. 108 P.L. 446. For the sake of simplicity, the undersigned will continue to refer to the act at the Individuals with Disabilities Education Act (i.e., IDEA).

and Section 504, and discriminated against C.D. in violation of Section 504. *See* Complaint, pp. 20-25.²

Based on their claims, Plaintiffs demanded a comprehensive evaluation in all areas of suspected disability and assistive technology, compensatory education to address C.D.'s disability, grade recovery, recovery of C.D.'s magnet seal and ability to graduate from the magnet program, tutors and support to recover C.D.'s grades, intensive remediation in executive function abilities, and an organization support program and instructor/coach during his time at college. *See* Complaint at p. 22.

Prior to the hearing the District raised the defense of statute of limitations. Because a ruling limiting on the statute of limitations would significantly change the presentation of evidence and, most likely, the length of the hearing, the hearing was bifurcated. A hearing on the statute of limitations issue was conducted on July 26, 2013. The undersigned issued a Memorandum Opinion and Order on Statute of Limitations on September 9, 2013, limiting Plaintiffs claims to those alleging violations that occurred within the two years preceding their complaint. The substantive hearing was conducted on September 18, 19, 20, 23, 24, 25, 26, and October 9, 2013.³

² The undersigned notes, generally, Plaintiffs' claims under Section 504, but will not make a determination as to whether Section 504 has been violated. For purposes of exhausting administrative remedies, plaintiffs are required to pursue IDEA claims through the administrative process, before filing claims under Section 504, the ADA, or Section 1983 if IDEA may provide relief for the same allegations that form the basis of the non-IDEA claims. *Atlanta Indep. Sch. Sys. v. S.F.*, No. 1:09-CV-2166-RWS, 2010 U.S. Dist. LEXIS 141552, at *17-21 (N.D. Ga. Feb. 22, 2010) (finding that for purposes of exhaustion, plaintiffs need not invoke the non-IDEA statutes in their administrative complaint, nor must the administrative law judge conducting the IDEA hearing determine whether the allegations amount to a violation of the non-IDEA statutes). While it appears that the District may *request* that the ALJ conducting the hearing pursuant to IDEA consolidate a hearing request under Section 504 claims, there is nothing mandating such consolidation. Ga. Comp. R. & Regs. 160-1-3-.07. In this matter, the undersigned ALJ declined such an invitation from the District.

³ The record was held open until November 4, 2013, to allow the parties to submit their Proposed Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

A. C.D.'s Education Prior to High School⁴.

1.

C.D. attended _____ Elementary School from kindergarten to fifth grade. (T., Vol. IV at 816). C.D. was in the gifted program at _____ Elementary School. (T., Vol. II at 391).

2.

During his third grade year, C.D. was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). (P-1 Bates 0021). During that year, C.D. earned satisfactory, good, or excellent progress in all subjects. (P-9 Bates 1088). In fourth grade, C.D. earned *As* in every subject. (P-9 Bates 1089). In fifth grade, C.D. earned *As* in every subject. (P-9 Bates 1090).

3.

Ms. Debbie Sherwin ("Ms. Sherwin") testified as C.D.'s fifth grade science teacher. (T., Vol. II at 385). Ms. Sherwin described C.D. as "a bright young man." (T., Vol. II at 386). Though Ms. Sherwin stated that C.D. had trouble staying focused, turning in assignments, and getting started on work, she, ultimately, described him as "an average kid." (T., Vol. II at 388 and 391).

4.

Ms. Sherwin did not think that C.D. needed special education services because he was performing well in class. (T., Vol. II at 391). Ms. Sherwin was shocked to learn that C.D. did not graduate from high school. (T., Vol. II at 389).

5.

⁴ As the statute of limitations in this case limits the claims to two years, the information regarding kindergarten through tenth grade is provided as background information.

C.D. attended _____ Middle School from sixth to eighth grade⁵. C.D. was in “accelerated curriculum” classes in middle school. (T., Vol. IV at 820).

6.

In sixth grade, C.D. exceeded expectations on the CRCT in all subjects: science, social studies, reading, English/language arts, and math. (D-7 Bates 00130-00133). Furthermore, he earned all *As* and *Bs* in sixth grade. (D-7 Bates 00145). Additionally, his teachers commented that C.D. was “[a] nice young man [who was a] pleasure in class” and that he “worke[d] well in groups.” (D-12 Bates 000384).

7.

In seventh grade, C.D. exceeded expectations on the CRCT in all subjects: science, social studies, reading, English/language arts, and math. (D-7 Bates 00134-00136). Furthermore, he earned all *As* and *Bs* with the exception of one *C* in seventh grade. (D-7 Bates 00144).

8.

Mr. Michael Irving (“Mr. Irving”) was C.D.’s seventh grade social science teacher. (T., Vol. II at 418). Mr. Irving described C.D. as “very cognitively capable” and “very bright.” (T. Vol. II at 418). Though Mr. Irving observed C.D. have organizational challenges, Mr. Irving opined that it was no more of a challenge than many of the other students that he teaches. (T., Vol. II at 418). Mr. Irving testified that organization is a struggle for most teenage boys. (T., Vol. II at 427).

9.

In eighth grade, C.D. exceeded expectations on the CRCT in all subjects: science, social studies, reading, English/language arts, and math. (D-7 Bates 00139-00141). Furthermore, he earned all *As* and *Bs* with the exception of one *C* in eighth grade. (D-7 Bates 000143).

⁵ Plaintiffs never requested an IEP or special education services while at Palmer Middle School. (T., Vol. 1 at 53)

10.

Ms. Dora Brown ("Ms. Brown") was C.D.'s eighth grade math teacher. (T., Vol. II at 401-02). Though Ms. Brown observed C.D. have difficulty initiating tasks and completing work, it was an observation she makes of lots of eighth grade students. (T., Vol. II at 412). Notably, C.D. earned high school credit for a math class based on his success in the class during middle school. (T., Vol. II at 410). Ms. Brown testified that C.D. has the "cognitive endowment" to graduate high school. (T., Vol. II at 409).

11.

C.D. won numerous awards for academic achievement in middle school. (D-24 through D-33⁶). In sixth grade, C.D. won an award for Principal's Honor Roll. (T., Vol. I at 178). In seventh grade, C.D. won an award for Principal's Honor Roll. (T., Vol. I at 177). In eighth grade, C.D. won three awards: the President's Education Award for making good grades, Honor Roll, and an award for math team. (T., Vol. I at 169-171).⁷

12.

In fifth grade, the District organized a Student Support Team ("SST") meeting regarding C.D. on April 11, 2006. (T., Vol. IV at 824; D-12 Bates 000376-000389). Plaintiffs did not attend that meeting. (T., Vol. IV at 824). In that meeting, C.D.'s strengths were described as "extremely intelligent, advanced vocabulary, language skills, polite." (T., Vol. IV at 829; D-12 Bates 000376-000389). C.D.'s weaknesses were described as "organizational skills, focusing, attention, remaining on task." (*Id.*).

⁶ Documents produced by Plaintiffs in the trash bag, pursuant to subpoena, were not bates labeled. (T., Vol. I at 168)

⁷ C.D.'s Parents claim that the successful grades in elementary school and middle school were the result of parental support at home. (T., Vol. IV at 854)

13.

In sixth grade, the District advised closing the SST file on November 20, 2006; however, the Plaintiffs disagreed. (T., Vol. IV at 835).

14.

Ms. Lori Kotarba was a school counselor at _____ Elementary at the time C.D. attended. (T. Vol. IX at 2194-96). During her testimony, she clarified what she meant by a note that she wrote in C.D.'s SST folder. Specifically, Ms. Kotarba had written that "team-taught classes would be good." (T., Vol. IX at 2196-2199; D-12 Bates 000385). Ms. Kotarba explained that "team-taught" simply meant placing C.D. in a general education setting in which there might be additional adult supervision. The note did not indicate a need for special education. (T. Vol. IX at 2196-2199). Nor did Ms. Kotarba consider that C.D. needed special education. (*Id.* at 2198).

B. C.D. Applied to and Was Accepted to _____ High School's Magnet Program.

15.

C.D. applied to the _____ High School Magnet Program during his eighth grade year. (D-9 Bates 000157-61). In his application, C.D. states that he was worried about the Magnet Program being "all work and no play." (*Id.*). C.D. then stated that based on visiting _____ High School, he was assured that the large quantities of work would at least be interesting. (*Id.*).

16.

C.D. further stated that he enjoyed reading calculus and physics texts while in middle school. (*Id.*). C.D. was excited about the challenging curriculum of _____ Magnet Program, which would be much more rigorous than his accelerated middle school classes. (*Id.*).

17.

The _____ High School Magnet Program is a school within a school at _____ High School, where students are selectively admitted based on math and science academic requirements. (T., Vol. II at 480). Students must maintain a “B” average to remain in the Magnet Program. (T., Vol. II at 481). Students admitted to the program must exhibit and maintain “superior academic abilities.” (T., Vol. II at 481). Notably, students in the Magnet Program must display more independent learning than on-level (i.e., general curriculum) students because the curriculum is designed for high achieving students. (T., Vol. II at 486).

18.

On the other hand, the End of Course Test (EOCT) measures a student’s mastery of content at an on-level rigor;⁸ therefore, a student’s final grade on the EOCT may not correlate with the student’s final grade in a more rigorous honors, magnet, or AP class. (T., Vol. II at 506; 509). As far as difficulty of classes, on-level is the least challenging, honors is more challenging than on-level, magnet is more challenging than honors, and advanced placement (“AP”) is the most challenging level of class. (T., Vol. IV at 873). Though the Magnet Program is more rigorous, students with disabilities and IEPs are admitted into the program. (T., Vol. II at 520-21).

1. C.D.’s Freshman Year in the Magnet Program.

19.

C.D. began his freshman year in the Magnet Program at _____ High School, in the 2009-2010 school year. (D-103 Bates 002874). The transition from middle school to high school is often challenging for many students because they are expected to take more

⁸ In other words, EOCTs assess students’ mastery of the general education curriculum, which is based on the Georgia Performance Standards. (T. Vol. VI at 1574-1575).

responsibility for their own learning, the classes become more rigorous, the block schedule accelerates the pace of learning, students have more independent work to complete, and students are responsible for monitoring their own progress through the District's on-line resources. (T., Vol. II at 498-99).

20.

C.D.'s grades as a freshman were as follows:

Earned High School Credit in Middle School Classes

- Acc. Math MS: P
- Spanish I MS: P

Fall Semester

- H 9th Lit/Comp: 81 (EOCT score 94)
- Magnet Biology: 83 (EOCT score 93)
- Spanish II 80
- Fundamentals
Engineering and
Technology: 82

Spring Semester

- Magnet Acc. Math 2: 83 (EOCT score 94)
- Magnet Chemistry: 80
- H Spanish III: 72
- Foundations of
Electronics: 93

(D-103 Bates 002784). C.D. was only absent three days his freshman year. (*Id.*).

21.

C.D.'s freshman math teacher, Ms. Rachel Buhler ("Ms. Buhler"), taught C.D. in the Magnet Accelerated Math 2 class. (T., Vol. I at 90, 94; D-103 Bates 002784). Ms. Buhler described C.D. as "a bright young man." (T. Vol. I at 104). Though C.D. was failing freshman

math at some point during the semester, Ms. Buhler had other students with similar grades. (T., Vol. I at 104). Ultimately, C.D.'s final grade in the class and his EOCT score indicate that C.D. learned the math curriculum taught in this class. (T., Vol. I at 104).

22.

Mr. Al George ("Mr. George") taught C.D. Foundations of Electronics during the second semester of his freshman year. (T., Vol. IV at 1467). Mr. George also taught C.D. AC/DC during his first semester sophomore year, Digital Electronics during his second semester sophomore year, Networking Concepts and Networking Systems during his first semester junior year, and Fundamentals of Telecommunication during his second semester junior year⁹. (T., Vol. IV at 1467).

23.

In addition to teaching C.D. in engineering classes, C.D. did some work for Mr. George's company, Pedals by George, which makes custom guitar pedals. (T., Vol. IV at 1467). Mr. George also knew C.D. through the _____ Robotics Club. (T., Vol. IV at 1468).¹⁰

24.

In Foundations of Electronics, C.D. learned the concepts of direct current, alternating current, analog, semiconductors, transistors, integrated circuits, digital, numbering systems, binary, and hexadecimal. (T., Vol. IV at 1474). In learning this material, Mr. George described C.D. as "better than most, but he wasn't as good as some." (T., Vol. IV at 1474).

⁹ Mr. George's electronics students have gone on to work for the NSA and NASA regarding satellites and engineering. (T., Vol. VI at 1492-93)

¹⁰ Assuming Mr. George spent 90 minutes a day for 90 days in each one of the classes that C.D. was in, Mr. George would have spent approximately 810 hours instructing C.D. (T., Vol. IV at 1468). In addition to the 810 hours of instruction, Mr. George spent time with C.D. in the robotics club and working on projects for Pedals by George. (T., Vol. IV at 1467-68). Thus, Mr. George, individually, has likely spent over 1,000 hours with C.D. (T., Vol. IV at 1481).

25.

Mr. George described an at-home project C.D. completed on the scientist Nikola Tesla, which consisted of a 650 word-essay, pictures of Tesla, pictures of Tesla's inventions, and documents which depicted Tesla's biography. (T., Vol. IV at 1469-70). C.D. liked learning about Tesla and had no problem turning in that assignment. (T., Vol. IV at 1470).

26.

In the Foundations of Electronics class, Mr. George also graded C.D. based on his notebook and daily participation, which is based on keeping daily notes and following class rules. (T., Vol. IV at 1471). C.D. was expected to bring a notebook, one-inch three ring binder, pencil, and pens, and a calculator to each class, and Mr. George never had to take points off for C.D. forgetting his materials. (T., Vol. IV at 1473). Finally, C.D. earned grades for completing quizzes and tests through the NIDA¹¹ program. (T., Vol. IV at 1471). Based on these assignments, C.D. earned an overall grade of 93. (T., Vol. IV at 1472; D-103 Bates 002784).

27.

As a freshman, Mr. George taught C.D. to solder, which is a process of melting a metal alloy to combine two circuits. (T., Vol. IV at 1478-79). Soldering would be very dangerous for a student that did not have the ability to focus. (T., Vol. IV at 1479). C.D. was so good at soldering Mr. George hired C.D. to work for him with Pedals by George. (T., Vol. IV at 1479). C.D. soldered almost a hundred guitar pedals for Pedals by George with each one working perfectly. (*Id.*).

¹¹ NIDA is a state-wide engineering curriculum, created by Mr. George, and based on his military experience, through which students use a hands-on computer program to learn engineering through a self-paced, sequenced curriculum. (T., Vol. IV at 1464-66)

28.

Mr. George opined that C.D. was able to learn in this class because he maintained his notebook, successfully completed assignments, and was skilled at soldering. (T., Vol. IV at 1470, 1471, and 1479).

29.

C.D.'s counselor during his freshman and sophomore year was Ms. Gale Suttles ("Ms. Suttles"). (T., Vol. I at 46). On November 16, 2009, Ms. Suttles organized a parent-teacher conference to determine how C.D. was transitioning into high school. (T., Vol. I at 52-54). In that meeting, C.D.'s parents requested a 504 Plan. (T. Vol. I at 47). During the meeting, Ms. Suttles offered C.D. morning organizational sessions. (T., Vol. I at 57; D-1 Bates 000006¹²). In these organizational sessions, Ms. Suttles would meet weekly with students on an individual basis to help organize notebooks, track assignments, and generally assist students with being organized. (T., Vol. I at 59-60). Plaintiffs declined these organizational sessions because they thought C.D. would be "singled out" and "uncomfortable." (T., Vol. I at 60)¹³ According to Mrs. D, C.D. was embarrassed to ask for help. This embarrassment stopped C.D. from attending these organizational sessions, even though Plaintiffs assert that C.D. needed organizational support as a freshman. (T., Vol. IV at 1026-1027).

30.

As of February 8, 2010, C.D. qualified for a 504 Plan, which included the following accommodations:

¹² The reference to D-1, Bates 000006 is a reference to Defendant's Exhibit 1 tendered during the hearing on the issue of statute of limitations.

¹³ Mrs. D later testified that C.D. would not remember to go to these sessions and that similar organizational help was not successful in the past. (T., Vol. I at 146). However, Plaintiffs presented no testimony that C.D. actually went to or attempted to go to Ms. Suttles' organizational sessions. In fact, Mrs. D testified that C.D. did not have problems attending his regular classes. (T., Vol. IV at 1049). In other words, when a class was not optional and C.D. knew he would get in trouble for missing the class, he would not skip classes. (*Id.*)

- Extended Time (100%) for tests, quizzes, and standardized tests;
- Scheduled Math as early in the day as possible; and
- Scheduled for the smallest classes available.

(D-11 Bates 000299). C.D.'s Parents participated in the development of this plan. (T, Vol. I at 55; D-11 Bates 000300). No testimony or documentation presented in this hearing showed that this 504 Plan was in any way inadequate. To the contrary, as a freshman, C.D. passed every class and earned an "A" on every EOCT. (D-103 Bates 002784).

2. C.D.'s Sophomore Year in the Magnet Program.

31.

C.D.'s grades as a sophomore were as follows:

Fall Semester

- H British Lit: 82
- Magnet Physics: 80
- Intr. Engineering Drawing: 83
- Adv. AC/DC Circuits: 94

Spring Semester

- Magnet Acc. Math 3: 75
- AP Physics B: 83
- H World History: 90
- Digital Electronics: 95

(D-103 Bates 002784). C.D. was only absent 1 day his sophomore year.

32.

Mr. George taught C.D. for Advanced AC/DC Circuits in the fall semester of C.D.'s sophomore year. (T., Vol. IV at 1475; D-103 Bates 002784). This class was more challenging than the freshman class because it required more math skills. (T., Vol. IV at 1475).

33.

In Advanced AC/DC Circuits, C.D. completed a homework project in which he was responsible for researching careers in engineering, and C.D. earned a 100 on the assignment. (T., Vol. IV at 1476). Mr. George believes that C.D. enjoyed answering engineering questions in front of the class because he would get a “big grin on his face.” (T., Vol. IV at 1477). Like freshman year, C.D. maintained and organized a class notebook with 75-100 pages of notes from the NIDA lessons which were organized chronologically by lesson. (T., Vol. VI at 1483-84). Again, C.D. was able to complete a daily notebook, participate in class, work on the NIDA curriculum, and ultimately earn a 94 in the class. (T., Vol. IV at 1475-76; D-103 Bates 002784).

34.

In Advanced AC/DC Circuits, C.D. also completed an independent project where he reengineered an LED light kit into a carnival game. (T., Vol. VI at 1485-86). This particular project required C.D. to have initiative, intelligence, skill, and focus. (T., Vol. VI at 1487). C.D. assisted other students by explaining the concepts to them. (*Id.*)

35.

In tenth grade electronics classes, C.D. did not need redirection because he was on task in Mr. George’s classes. (T., Vol. VI at 1493-94). Mr. George estimated that C.D. was on task 85-90% of the time. (T., Vol. VI at 1494).

36.

C.D.’s 504 Plan was continued throughout his sophomore year, with C.D. receiving the following accommodations:

- Extended time (100%) on tests, quizzes, and standardized tests;
- Schedule math as early in the day as possible; and
- Scheduled into the smallest classes possible.

(D-11 Bates 000306). C.D.'s parents attended parent conferences to discuss C.D.'s 504 Plan on September 13, 2010 and May 5, 2011. (D-11 Bates 000333-36). The 504 Plan appears to have been successful as indicated by C.D.'s performance in his sophomore year.

37.

During his sophomore year, C.D. took the PSAT, scoring in the 87th percentile in critical reading, in the 98th percentile in mathematics, and in the 90th percentile of writing skills. (D-8 Bates 000147). Those PSAT score results show that C.D. was in the top 87% when compared to college bound juniors. (*Id.*). During his sophomore year, C.D. served in a leadership role on the robotics team. (D-77 Bates 001382). Finally, it should be noted that C.D. earned 3 *As*, 4 *Bs*, and a *C*. (D-103 Bates 002786).

3. C.D.'s Junior Year in the Magnet Program.

38.

C.D.'s grades as a junior were as follows:

Fall Semester

- Health: 93
- Personal Fitness: 83
- New Concepts: 90
- New Systems: 94
- AP US History: 77 (EOCT score 93); (AP Exam 3 of 5)

Spring Semester

- Honors American Literature: 82 (EOCT 94)
- AP Calculus AB: 76 (AP Exam 4 of 5)
- Advanced Physics Robotics: 95
- Fundamentals of Telecommunications: 81

(D-103 Bates 002784; D-94 Bates 2660). C.D. was not absent a single day his junior year. Ultimately, at the end of C.D.'s junior year, his weighted GPA was 3.458. (D-103 Bates 002784).

a. **C.D.'s Performance in Electronics Classes.**

39.

In the fall semester of his junior year, C.D. took two independent studies with Mr. George to continue working on the electronics curriculum through NIDA. (T., Vol. VI at 1495). These two classes were structured similarly to the freshman and sophomore classes, where C.D. worked through a computer system to learn electronics concepts. (T., Vol. VI at 1496). There were 20-30 students in the classroom; however, not all students would be taking the same class, as some would be in the advanced AC/DC or digital class. (T., Vol. VI at 1497).

40.

In his junior year, C.D. converted a red gas can into a speaker system in his electronics classes with Mr. George. (T., Vol. VI at 1498). C.D. did not finish his speaker because he was helping other students with their projects. (T., Vol. VI at 1498). Because C.D. demonstrated engineering knowledge for the project by helping other students, he received a 100 on the project. (T., Vol. VI at 1498).

41.

In the Fundamentals of Telecommunications, C.D. built a wiring harness and taught other students to solder. (T., Vol. VI at 1500-01).

42.

Mr. George, C.D.'s electronics teacher in ninth, tenth, and eleventh grades, stated that C.D. never said he was doing six hours of homework a night; C.D.'s parents never contacted Mr.

George about how long homework was taking; and C.D. never said he was having difficulties in other classes. (T., Vol. VI at 1491). In fact, when Mr. George asked C.D. how he was doing in other classes, C.D. stated "pretty good." (T., Vol. VI at 1491). Mr. George did not know that C.D. had failing grades in his other classes at some point during the semester. (T., Vol. VI at 1491).

43.

Mr. George never observed C.D. getting lost on his way to class, and C.D. never expressed to Mr. George that he did not know where to be in school or when to be there. (T., Vol. VI at 1553-54).

44.

Mr. George explained that the final grade is what a student earns once all grades are entered for the semester. A final grade is a more accurate portrayal of a student's work over the entire semester. None of C.D.'s final grades in ninth through eleventh concerned Mr. George. (T., Vol. VI at 1555).

45.

Ultimately, Mr. George wrote a recommendation for C.D. to get into MIT, which stated that C.D. was "self-motivated" and "would make a good student at MIT." (T., Vol. VI at 1555).

46.

As noted above, Mr. George hired C.D. to work for him with his company Pedals by George, designing and building custom guitar pedals. (T., Vol. IV at 1479-80). In this capacity, C.D. soldered almost 100 guitar pedals with each one being perfect, and C.D. never injured himself. (T., Vol. IV at 1480-81). Based on Mr. George's personal experience hiring C.D., Mr. George believed that C.D. could currently keep a job. (T., Vol. IV at 1481). Mr. George also

believed that C.D. was capable of going to college because he is intelligent, even if it took him a little time to figure out how to do laundry. (T., Vol. IV at 1481-82). Ultimately, Mr. George described C.D. as a “natural-born engineer.” (T., Vol. IV at 1482-83). Though Plaintiffs claimed C.D. needs an assistive living facility, Mr. George whole-heartedly disagreed. (T., Vol. IV at 1482-83). Mr. George thought that C.D. could become an electrical engineer. (T., Vol. VI at 1499).

47.

In the three years that Mr. George taught C.D. and the over 1,000 hours he spent with C.D., Mr. George summarized C.D. as saying he is “better than most.” (T., Vol. VI at 1504). Indeed, Mr. George held high regard for C.D. and his abilities. (*Id.*). In Mr. George’s opinion, C.D. learned the material in his class. (T., Vol. VI at 1499).

48.

C.D. also testified as to his success in these classes. (T., Vol. IX at 2164-68). C.D. stated that he served as a “class manager” in electronics classes, responsible for keeping other students on task. (*Id.*). C.D., ultimately stated, “I was really into not only just learning, but also helping other students to learn because I was able to grasp the material very quickly.” (T., Vol. IX at 2160). C.D. went on to describe a situation in which he observed a student struggling with a soldering iron, and C.D. taught the student how to solder, even though the student did not express any need for help. (T., Vol. IX at 2183).

49.

C.D. very rarely required redirection in Mr. George’s classes. (T., Vol. VI at 1504). Further, Mr. George did not have to sit with C.D. to keep him focused. (*Id.*)

b. C.D.'s Performance in Advanced Placement ("AP") U.S. History.

50.

Mr. Chris Shields ("Mr. Shields") taught C.D. AP U.S. History during the fall semester of C.D.'s junior year. The AP U.S. History curriculum covered Native Americans, colonization, and all of U.S. History, including detailed analysis of culture, music, art, and literature. (T., Vol. VI at 1558; 1561-62; D- 83 Bates 001511-002154). Typically the class is taught over two semesters, but C.D. took the class in a more accelerated pace, covering the entire set of standards in a single semester. (T., Vol. VI at 1559). Mr. Shields described this as a "very difficult" class. (T., Vol. VI at 1563). Mr. Shields observed C.D. for approximately 135 hours of in-class instructional time. (T., Vol. VI at 1575-76). He described C.D. as a "good student." (T., Vol. VI at 1564).

51.

Mr. Shields taught class by having students answer essay questions, which if not completed in class would become homework. (T., Vol. VI at 1564). He had very open deadlines for turning in homework. (T., Vol. VI at 1564). C.D.'s essays were excellent when C.D. knew the specifics of a reading, and the essays were generally mediocre when C.D. did not know the material as well. (T., Vol. VI at 1567). Thus, at worst, C.D.'s essays were mediocre. (*Id.*).

52.

C.D. brought his materials to class, and Mr. Shields did not know of any instance where C.D. lost his laptop¹⁴. (T., Vol. VI at 1568-89). When given an in-class assignment, C.D. typically would start on the assignment immediately. (T., Vol. VI at 1585). Mr. Shields could only recall one incident in which C.D. was delayed starting on an essay by inattention. (T., Vol.

¹⁴ C.D. used the laptop daily. (T., Vol. IX at 2138). Despite Plaintiffs' assertions about the level of C.D.'s disorganization, there is no evidence that he ever lost the laptop.

VI at 1585). When C.D. would lose focus, one or two attempts at redirection would get C.D. back on task.¹⁵ (T., Vol. VI at 1594).

53.

In class, C.D. did individual work as assigned with his written answers being “very to the point.” (T., Vol. VI at 1569). One of the main types of assessment in AP U.S. History is the document-based question (“DBQ”), in which students had to answer essay questions using historical documents and information that they learned in the class. (T., Vol. VI at 1570). DBQs are one of the most difficult assignments in AP U.S. History. (T., Vol. VI at 1570-71). C.D. knew how to follow the complicated instructions to complete the DBQs, and he did well on them. (T., Vol. VI at 1571). There were students in this AP class, who Mr. Shields had to walk through the instructions, step by step, but C.D. was not one of those students. (T., Vol. VI at 1571).

54.

C.D. earned a 93 on the U.S. History EOCT. (T., Vol. VI at 1574). The EOCT assesses a student’s understanding of the state standards. (T., Vol. VI at 1574-75; D-50 Bates 001173-001185). C.D.’s grade on the EOCT is indicative of him having learned the standards for U.S. History. (T., Vol. VI at 1575). The A.P. U.S. History curriculum is more difficult than the EOCT. (T., Vol. VI at 1574; 1615). C.D. scored a 77 in the class.¹⁶ (D-103 Bates 002784). C.D. studied, independently for four months, and earned a 3 on the AP U.S. History exam, which could earn college credit at some colleges. (T., Vol. VI at 1577-79).

¹⁵ C.D., himself, testified that he would not lose focus for more than five to ten minutes in a class. (T., Vol. IX at 2127).

¹⁶ A grade of 77 in the AP U.S. History class is the equivalent of an A in the on-level (i.e., general education) curriculum. (T., Vol. VII at 1600).

55.

Thus, in AP U.S. History, C.D. scored a 93 on the EOCT, a 3 on the AP exam, and a 77 in the class. (D-103 Bates 002784; D-94 Bates 2660). To earn these scores, C.D. would have had to manage his own preparation for the course and manage his own workload because the students are responsible for their own learning in this class. (T., Vol. VII at 1598-99).

56.

In Mr. Shields' opinion, C.D.'s ability to learn was not impacted by any disorganization or momentary lapses in focus. (T., Vol. VII at 1597-98). In general, C.D. was able to find his assignments when Mr. Shields asked for them. (T., Vol. VI at 1580). In Mr. Shields's class, there were students who could not manage the workload, could not plan, could not turn in assignments, could not participate in class discussions, and could not keep up, but C.D. was not one of those students. (T., Vol. VII at 1599-1600).

57.

When asked if C.D. was prepared to go to college, Mr. Shields stated that he thought so:

I think so. Given the information I had from my class, and just seeing him, you know, day-to-day in the halls, C.D.'s [a] really smart guy. He was a guy with – that had social skills, he was intelligent, he was a capable guy.

(T., Vol. VI at 1580-81). In fact, Mr. Shields wrote a recommendation for C.D. to go to MIT, stating that C.D. is “the type of guy that makes sense for MIT.” (T., Vol. VI at 1585). When asked if C.D. had the skillset to graduate high school, Mr. Shields stated that C.D. could read, write and analyze better than most students, so he should have been capable of graduating. (T., Vol. VI at 1587).

During one 504 meeting, Mr. Shields expressed some concerns that he had about C.D. His concerns were that C.D.'s grades could have been higher and that C.D. was not meeting his full capabilities. (T., Vol. VII at 1604; 1654-55). In other words, he was concerned that C.D. was not living up to his potential. He was not concerned that C.D. was not learning. (T., Vol. VII at 1655). Further, he did not believe that C.D.'s ADHD prevented him from learning. (T., Vol. VII at 1598).

c. **C.D.'s Performance in Advanced Placement ("AP") Calculus AB.**

Ms. Julie Walls ("Ms. Walls") taught AP Calculus AB in the spring of eleventh grade. (T., Vol. II at 343). Ms. Walls described her calculus class as "incredibly difficult" and requiring both "intelligence" and "hard work." (T., Vol. II at 345-46). Ms. Walls described C.D. as a "smart student." (T., Vol. II at 363).

Ms. Walls' AP Calculus AB class covered the mathematical concepts of rate of change, derivative rules, projectile motion, related rates, anti-derivatives, integrals, curves, volume by integration, and surface by integration. (T., Vol. II at 368). C.D. earned a 76, which is a "B" because of the extra quality point awarded for taking an AP class. (T., Vol. II at 368). C.D. took the AP Calculus exam and earned a "4" on a five-point scale, which would earn college credit. (T., Vol. II at 369; D-13 Bates 000402). According to Ms. Walls, the AP Exam is "very difficult." (T., Vol. II at 369). To prepare for this exam, students in Ms. Walls' class are required to complete a semester long notebook project, which includes notes and examples of every topic covered during the semester. (T., Vol. II at 370; T., Vol. IX at 2099, 2211, 2215).

Throughout the semester, Ms. Walls reminds her student to work on their notebook. (T., Vol. IX at 2214-15). C.D. completed the AP Calculus AB notebook and the quality was "good." (T., Vol. II at 370; T., Vol. IX at 2215-17). To complete the notebook, C.D. stated that he worked for three to four days straight, even not sleeping the night before it was due, so that he could complete the project. (T., Vol. IX at 2098).

61.

In AP Calculus AB, C.D. was able to complete most of his work when given extended time. (T., Vol. II at 345). Ms. Walls believed that C.D.'s performance in her class was the result of a lack of effort because she saw other students who would seek extra help because of the difficulty of AP Calculus but C.D. "never took advantage of those [opportunities]." (T., Vol. II at 347). Ms. Walls also did not think that C.D. was exhibiting the effort to study because he did not avail himself of the class notes or flashcards on her website. (T., Vol. II at 357).

62.

In the AP Calculus AB class, C.D. paid attention most of the time, and needed only minimal redirection.¹⁷ (T., Vol. IX at 2218-19). Though Ms. Walls was told that C.D. needed a tutor for her class, many of her students used a tutor, as the class was a difficult class. (T., Vol. II at 359).

63.

On March 14, 2012, during C.D.'s junior year, Ms. Walls received an email from Mrs. D., which was originally intended for C.D. (T., Vol. II at 384; D-26 Bates 000847). In that email, Mrs. D. told C.D. that he needed to take school more seriously and "*stop blowing off your responsibilities!*" (T., Vol. II at 384; D-26 Bates 000847) (emphasis added). Mrs. D., then,

¹⁷ Ms. Walls needed to redirect C.D. during class two-three times per week to keep him on task. (T., Vol. II at 372). Notably, this testimony regarding minimal redirection is consistent among C.D.'s teachers.

stated, "We are very disappointed in the choices we are seeing you make." (T., Vol. II at 384; D-26 Bates 000847). Specifically, she stated as follows:

Again, here is the email from Ms. Walls. She wouldn't have emailed it if it wasn't important. You need to take this little bit more seriously and stop blowing off your responsibilities! By the way your grade in AP Calc only went up one point to 61. You really don't think that's an issue??? We are very disappointed in the choices we are seeing you make. They are your choices and you own them.

(D-26 Bates 000847). Based on Ms. Wall's own observations and this email, it was reasonable for Ms. Walls to believe that C.D.'s struggles were the result of his lack of effort.

64.

Though C.D. did not complete all of his assignments in his junior year, Ms. Walls had many students who had trouble completing the work for her class because the workload for juniors and senior is very difficult. (T., Vol. II at 349). Notably, C.D.'s most common excuse for not having work was that he was still working on it and would have it tomorrow. (T., Vol. IX at 2248).

65.

Regarding implementing the 504 Plan, C.D. would come back to Ms. Walls' class to complete tests during his junior year. (T., Vol. IX at 2220-2223). Though he may not have finished the test as promptly as Ms. Walls would have liked, he was able to earn passing grades on those tests through utilizing the extended time.¹⁸ (*Id.*).

66.

Ultimately, Ms. Walls testified that it was clear that C.D. learned the AP Calculus AB curriculum because his overall grade and AP exam score could only be achieved by understanding a majority of the concepts. (T., Vol. IX at 2223). Further, Ms. Walls testified that

¹⁸ As discussed below, this is very different from C.D.'s performance in Ms. Walls' AP Calculus BC class senior year.

C.D. appeared to pay attention in class and participated in class discussions. (T., Vol. IX at 2225-26). Ms. Walls did not think that C.D.'s ADHD impacted his ability to learn because the exams, which C.D. scored well on, required multi-step problems, strong vocabulary, and good explanations; thus, C.D. was learning the material to complete those tests in AP Calculus AB. (T., Vol. IX at 2228). Most importantly, Ms. Walls believed that C.D. learned these calculus standards in her class through her instruction because she did not see evidence of C.D. referencing outside learning sources, like websites with calculus videos. (T., Vol. IX at 2231). Most importantly, Ms. Walls did not believe that C.D. needed special education. (T., Vol. IX at 2251). Ms. Walls' experience includes teaching in a team-taught environment and implementing over 50 IEPs. (T., Vol. IX at 2207). She believed that C.D. did not need special education because the students who she had taught, who needed special IEP, were not capable of doing the work or learning the material. (T., Vol. IX at 2251-52). C.D. on the other hand was capable of learning as demonstrated by the quality work he turned in when chose to do the work. (T., Vol. IX at 2251-52).

d. C.D.'s 504 Plan.

67.

In eleventh grade, C.D. was supported through a 504 Plan, which included the following accommodations:

- Extended time (100%) for tests, quizzes, and standardized tests;
- Scheduled math as early in the day as possible; and
- Scheduled into the smallest classes available.

(D-11 Bates 000340). Ms. Walls opined that the 504 Plan worked during C.D.'s junior year because extended time was all that he really needed. (T., Vol. IX at 2317).

e. **C.D.'s Other Accomplishments and Activities.**

68.

During his Junior year, C.D. applied to MIT. (D-77 Bates 001376). In C.D.'s college application documents on the Naviance system, C.D. noted the following accomplishments:

- Leadership responsibilities in robotics club;
- Development of a specialized battery pack for unmanned flight;
- Volunteering at summer science camps for elementary school students¹⁹;
- Philosophy Club;
- Competing in Ultimate Frisbee; and
- Work with Pedals by George.

(D-77 Bates 001382-83). More specifically, he described himself as able to “learn new skills very quickly” and as “very skilled with robotics, electronics, mechanics, engineering, physics, ballistics, aerodynamics, computers, and designing.” (*Id.*) C.D. was also involved in the group of electronics students who were responsible for setting up sound equipment for large school functions with Mr. George. (T., Vol. VI at 1581).

69.

Mrs. D. completed a “Parent Perspective” to assist in the college application process. (T., Vol. IV at 984-85; D-77 Bates 001381). In that Parent Perspective, Mrs. D stated, “[C.D.] has gone from a basic knowledge of engineering to designing a pulse-detonation jet engine and is now working on a 65KJ electromagnetic linear accelerator.” (*Id.*) Mrs. D. then stated that college admissions officers should know that C.D. “has a passion for learning and that he is innovative, curious, full of imagination, and he has a strong desire to create and design.” (*Id.*)

¹⁹ C.D. described teaching fifth through eighth graders science curriculum with Mr. George in a summer camp at the school. (T., Vol. IX at 2189).

70.

As an eleventh grader, C.D. met expectations on the Georgia High School Graduation Test for Writing. (D-8 Bates 000149). In December of his Junior year, C.D. took the ACT and scored "at or above" level in every subject: English, Mathematics, Reading, and Science. (D-8 Bates 0000151). In the summer after his Junior year, C.D. took the SAT, scoring in the 95 percentile for Reading, 98th percentile for Math, and 94th percentile for writing. (D-8 Bates 000150). The ACT and SAT measure a student's acquisition of academic skills and knowledge. (T., Vol. VII at 1808-10). In other words, they measure what a student has learned. (T., Vol. III at 745).

71.

As noted above, C.D. took the EOCT in Honors American Lit, scoring a 94, and in AP U.S. History, scoring a 93. (D-103 Bates 002784). C.D. earned a 3 on the AP U.S. History exam and a 4 on the AP Calculus AB exam. (D-13 Bates 000402). C.D.'s GPA at the end of his Junior year was a 3.458. (D-103 Bates 002784).

4. C.D.'s Senior Year in the Magnet Program.

72.

Plaintiffs claim that C.D.'s senior year was no different than his other years. However, C.D.'s senior year is the first time that he ever failed a class. From ninth through eleventh grade, C.D. would have failing grades in his classes at some point during the semester; however, he would always get the work completed and pass the classes. (Cf. T., Vol. IV at 864-65 and D-103 Bates 002784). For the first time in his academic career, C.D. did not complete the work to pass the classes in his senior year.

73.

Plaintiffs' expert, Dr. Sara Deckelbaum ("Dr. Deckelbaum"), a psychologist who independently evaluated C.D., noted that there were unusual stressors in C.D.'s twelfth grade that created the "perfect storm" in that year:

... twelfth grade was probably – my guess – **the perfect storm**. I understand mom went back to work ... and he had a project that there was much less structure and he was on his own, and I understand that there were some issues with the internship and once he falls behind on something, he's going to have even more difficulty catching up.

(T., Vol. V at 1217-18) (emphasis added)

74.

High school was harder for C.D. because as Mrs. D. described, "it got progressively harder every year" and "the workload and responsibilities were more...." (T., Vol. I at 149). Mrs. D. stated that his struggles with organization and initiation got "worse every year." (T., Vol. IV at 884). Ms. Moudgal, in her experience, opined that the curriculum gets more rigorous as a student matriculates through each grade. (T., Vol. II at 497). In addition, the fall semester of senior year can be very difficult if a student is simultaneously taking the Internship and Research class while applying to colleges. (T., Vol. II at 484). Some students find the process of leaving the building to attend an internship as the most difficult part of high school. (T., Vol. II at 489-90).

75.

Consistent with Mrs. D.'s and Ms. Moudgal's description of the difficulty of senior year, Ms. Kamath, Plaintiffs' expert witness regarding executive functioning, also opined that the transition from eleventh to twelfth grade is one of the most difficult academic transitions because of the preparation for college readiness. (T., Vol. III at 753-54). When asked about the global

nature of executive functioning disorder, Ms. Kamath stated that the manifestation typically happens later in life as the necessity of executive functioning skills becomes more necessary.

Specifically, she stated as follows:

Executive dysfunction is just like any disorder, particularly developmental disorder, Your Honor, is a spectrum disorder. That means it ranges in its severity. It's not static disorder, it's a dynamic disorder. That means you don't either have it or you don't have it. You have degrees of it. And one important thing to remember is it is a disorder in your adaptive ability. **So if your adaptive demands change, your manifestation of disability will get exaggerated.** And that's why repeatedly I will tell you more of the referrals come to me in middle school and high school years than elementary. ... So I'm saying it is also defined by the context in which the child is asked to perform. So a student's executive functioning proficiency needs to be more demonstrated in twelfth grade than in seventh grade. **So there's a progression of it.**

(T., Vol. III at 777)(emphasis added).

76.

Dr. Deckelbaum, Plaintiffs' psychologist who evaluated C.D., also opined that executive functioning skills become more important as a person gains more independence progressing through high school and life. (T., Vol. V at 1166). Thus, the effects of executive function disorder become more profound in higher grades:

And then, as is common, I would say throughout high school that problems become more severe in executive functioning as you advance in grades because you're given more independence and more tasks that require executive functioning skills.

(T., Vol. V at 1212).

77.

Ultimately, the nature of the work in twelfth grade, like a semester long project, might be the first time the true extent of C.D.'s executive functioning disorder became truly apparent. (T., Vol. V at 1212).

78.

During C.D.'s senior year, both Mr. D. and Mrs. D. went back to work full-time. (T., Vol. II at 909; 959) Because Mrs. D. was working full-time she was not as involved in C.D.'s academics as in previous years. (T., Vol. IV at 909; T., Vol. V at 1140-41). Mrs. D. stated that her return to working full-time was a "huge factor" during C.D.'s senior year. (T., Vol. IV at 1008). She further stated, "Twelfth grade, I was working so I wasn't able to do as much as I used to do." (T., Vol. IV at 1011). During C.D.'s ninth grade year, his Father was laid off. (T., Vol. II at 958). The loss of income required the family to "cut back." (T., Vol. II at 959). During C.D.'s senior year, his Father went back to work full-time. (T., Vol. II at 959).

79.

Ms. Santelli, C.D.'s Economics/Government teacher, opined that that C.D. seemed consumed with "more exciting things than high school," such as his girlfriend and his planned summer trip to Europe. (T., Vol. VI at 1404).

80.

C.D. admitted that he chose not to do the work in AP Calculus BC and his two engineering classes during the spring semester of his senior year so that he could focus on trying to pass his Honors English class. (T., Vol. IX at 2100). Also, as noted below, C.D. admitted to one of his teachers that he did not take her class seriously. (T., Vol. VII. At 1678-79).

81.

As described above, students in the Magnet Program at _____ High School typically utilized tutors. In ninth through eleventh grade, C.D. utilized a tutor; however, he could not remember having a tutor during his senior year. (T., Vol. IX at 2122-2124).

82.

Dr. Kinard, the District's expert witness, opined that environmental factors could exacerbate executive function disorder. (T., Vol. VII at 1798). She specifically explained that someone with executive functioning disorder has difficulty rallying resources to stay focused, so if outside stressors exhaust those resources necessary to stay focused, the symptoms of executive functioning disorder could become more profound. (T., Vol. VII at 1798-90). Ms. Kamath, Plaintiffs' expert witness in executive functioning, agreed that symptoms of executive functioning could be exacerbated by outside sources. (T., Vol. III, at 756).

83.

Ms. Kamath also opined that "situational interferences," which are events that make a person sad, could exacerbate executive functioning. (T., Vol. III at 757-58). Specifically, being rejected from a college could be such a situational interference. (T., Vol. III at 759). Dr. Deckelbaum also opined that C.D. being rejected from MIT could have had an impact. (T., Vol. V at 1218). C.D. losing his magnet seal could have exacerbated his ADHD. (T., Vol. VII at 1860).

84.

During C.D.'s senior year, his grandmother was suffering from dementia, which required Mrs. D to focus on helping her instead of C.D. (T., Vol. V at 1136). Sadly, C.D. had to experience the death of his grandmother in March, 2013. (T., Vol. IV at 959). According to Dr. Deckelbaum, a death in the family could have an impact on a student's ADHD. (T., Vol. V at 1218).

85.

Additionally, Mrs. D described C.D.'s ADHD medication as changing in both strength and prescription over the years. (T., Vol. IV at 814-15). Furthermore, she testified that C.D. builds up a tolerance to the medication. (T., Vol. V at 1141).

86.

C.D.'s senior grades are as follows:

Fall

- AP Physics C: 83
- Honors Economics: 91 (EOCT score: 95)
- Honors Government: 74
- Advanced Research: 50
- Advanced Internship: 50

Spring

- H World Lit: 55
- AP Calculus BC: 41
- Research and Design: 72
- Engineering Ap.: 59

(D-103 Bates 002784). C.D. was absent 2 days his senior year.

87.

Ms. Nicole Santelli ("Ms. Santelli") taught C.D. Economics and Government in the fall semester of his senior year. (T., Vol. VI at 1325-26). Ms. Santelli observed C.D. for approximately 135 hours during the semester²⁰. (T., Vol. VI at 1341; 1348). Ms. Santelli described C.D. as a "good kid" "really sweet" and "very bright." (T., Vol. VI at 1325).

²⁰ Each day of class is approximately an hour and a half with approximately 90 days of instruction per semester, which totals approximately 135 hours of teacher observation per class per semester. (T., Vol. VI at 1348)

88.

In Ms. Santelli's Honors Economics class, students learned about supply and demand, graphing, business ownership, markets, fiscal and monetary policy, international trade, absolute and comparative advantage, personal finance and investing, and the corresponding vocabulary. (T., Vol. VI at 1326; D-44 Bates 001131-001140).

89.

As evidence of C.D.'s excellent understanding of the material, C.D. earned a 95 on the EOCT, without using extended time, and he earned a 91 overall grade in the course. (T., Vol. VI at 1328).

90.

One of the major projects in the Honors Economics class was a "life simulation." (T., Vol. VI at 1329). Students spent nine-weeks creating a fantasy life through selecting a job, establishing a salary, finding and renting an apartment, financing a car, saving and investing, and budgeting for life after high school. (T., Vol. VI at 1329-31). Each week the students would complete one part of the project on their own, based on approximately ten minutes of instruction per week. (T., Vol. VI at 1331). Ms. Santelli did not check the progress of the project on a weekly basis, but the project was due in its entirety at the end of the nine weeks. (T., Vol. VI at 1331). C.D. created a fantasy life where he was an engineer in California, and the calculations for his budget were "perfect." (T., Vol. VI at 1332). C.D. turned the project in a few days late, and Ms. Santelli may have taken off points for it being late. (T., Vol. VI at 1332). Ms. Santelli believed C.D. completed this project himself without help because it was his handwriting, the concepts of buying a fancy sports car and being an engineer were consistent with C.D.'s

personality, and the projected annual salary of \$160,000 was consistent with a student's expectations, not a parent's. (T., Vol. VI at 1333).

91.

In completing that project, C.D. never stated that he did not understand the instructions or that C.D. was confused about how to complete the project. (T., Vol. VI at 1333). C.D.'s Parents never communicated to Ms. Santelli about any problems with the project. (T., Vol. VI at 1334). C.D. did say that he had waited until the last minute and was up late working on it, which is not unusual for students who procrastinate. (T., Vol. VI at 1334). C.D.'s final grade on the life simulation project was a 95. (T., Vol. VI at 1335; D-18 Bates 000468).

92.

In addition to the life simulation project, Ms. Santelli observed C.D. successfully complete quizzes on personal finances and the stock market, create a storybook for children which describes investing, design a picture book illustrating the GDP, and complete various in class quizzes on economic concepts. (T., Vol. VI at 1336-37; 1357).

93.

The only assignment that C.D. did not complete in Economics was a "tedious" vocabulary exercise, defining fifty words relating to microeconomics. (T., Vol. VI at 1338). Approximately, ten students a semester would not complete this assignment. (T., Vol. VI at 1338).

94.

Ms. Santelli also taught C.D. for Government, in which C.D. earned a 74. (T., Vol. VI at 1341; D-103 Bates 002784). Ms. Santelli often observes students who like economics more than

government or vice versa, which results in a “grade disparity between the two.” (T., Vol. VI at 1341).

95.

In Ms. Santelli’s Honors Government class, students learned about the legislative, executive, and judicial branches of government, the Constitution, political parties, the election process, voting, and important court opinions. (T., Vol. VI at 1343). Ms. Santelli believed that C.D. learned these concepts based on C.D.’s work analyzing a political cartoon, creating a poster for the 27 amendments, and participating in political discussions. (T., Vol. VI at 1343-45).

96.

There was a semester-long, independent project analyzing multiple political cartoons and corresponding newspaper articles that C.D. did not complete. (T., Vol. VI at 1346). Ms. Santelli described this as a “daunting project [that] the kids don’t like” and noted that five to seven students per semester do not do the project. (T., Vol. VI at 1346). When asked if he was doing the project, C.D. told Ms. Santelli that he would have it. (T., Vol. VI at 1347). This was similar to the response C.D. gave when she asked him about the life simulation project in the Honors Economics class, which C.D. did complete. (T., Vol. VI at 1332, 1347). Ultimately, C.D. did not complete the political cartoon project, which, in part, resulted in his grade being a 74. (T., Vol. VI at 1341-42, 1345-46). C.D. did not say why he did not complete the project. (T., Vol. VI at 1346).

97.

Ultimately, by the end of the first semester of senior year, Ms. Santelli felt as though “C.D. was more engaged in college and getting ready for college, and was kind of over high school.” (T., Vol. VI at 1347).

98.

Ms. Santelli stated that C.D. initiated classwork at the same pace as his classmates. (T., Vol. VI at 1336). He was on-task in class at least 75% of the time. (T., Vol. VI at 1350). He was only “marginally” more distractible than his peers. (T., Vol. VI at 1357). Ms. Santelli did note that C.D. was distracted by an engineering project to build a rocket, and that launching a missile was likely more interesting than supply and demand charts. (T., Vol. VI at 1356-57). Almost 75% of the work for economics and government is done in class, and Ms. Santelli observed C.D. do the work in class without needing to be prompted or redirected. (T., Vol. VI at 1358).

99.

Ms. Santelli did not see anything in C.D.’s academic performance that concerned her. (T., Vol. VI at 1340). In her opinion, he was able to learn the material in her class. (T., Vol. VI at 1343-44). She based her opinion on the work C.D. completed for her class and his test scores. (Id. at 1344). Ms. Santelli was “absolutely” sure that C.D. was prepared for college because she saw him every day, for five days a week, for eighteen weeks, and never observed him struggle “socially, physically, or mentally.” (T., Vol. VI at 1348). She stated that she does have students who she worries about going to college, but C.D. “was never one of them.” (T., Vol. VI at 1348). Though Ms. Santelli observed that C.D.’s book bag was disorganized and that he sometimes had trouble finding his class materials, she also observed other students who were much more disorganized and who went on “to be successful in college.” (T., Vol. VI at 1350).

100.

Ms. Santelli observed that C.D. seemed consumed with “things more exciting than high school:

He was talking about his girlfriend that he was talking to online. He was talking about going to Eastern Europe in the summer. He was maybe not tired of

working, but he was consumed with other things, bigger – not bigger but probably like more exciting things than high school for him.

(T., Vol. VI at 1404). Ms. Santelli completed a pragmatic language checklist regarding C.D., in which she noted that C.D. was a procrastinator. (D-42 Bates 001120).

101.

Ultimately, Ms. Santelli did not think C.D. needed special education because C.D. did not struggle with the material, was able to understand the material, could produce quality work and had friends. (T., Vol. VI at 1364-66). When asked if she believed that C.D. needed to live in an assistive living facility, Ms. Santelli stated, “absolutely not.” (T., Vol. VI at 1350). In explaining why C.D. did not need an assistive living facility, Ms. Santelli stated that the idea was “really silly” because she had observed C.D. socialize with friends, facilitate transportation for his internship, show up to class, get his own lunch, and attend meetings for robotics club. (T., Vol. VI at 1353). Ultimately, an assistive living facility for C.D. would be a hindrance as it would suffocate and stifle “all that he’s eligible to accomplish.” (T., Vol. VI at 1353).

102.

The Internship and Research classes, which C.D. took in the fall of his senior year, consisted of working as an intern at a work site for at least 70 hours and submitting college level research in conjunction with the work done in the internship. (T., Vol. II at 488; T., Vol. VII at 1663). Dr. Cheryl Crooks (“Dr. Crooks”) and Dr. Dawn Adams (“Dr. Adams”) were the teachers for these courses. (T., Vol. IV at 909).

103.

Dr. Adams has been responsible for the Internship class for thirteen years. (T., Vol. VII. At 1662). In the Internship class, students are responsible for learning about resumes, cover letters, networking, interview skills, and preparation for the workforce or college environment.

(T., Vol. VII. At 1662). In Dr. Crooks' Research class, which is taught in conjunction with Internship, students write a research paper on a subject relevant to their internship. (T., Vol. VII. At 1663). For all thirteen years, Dr. Adams has worked in tandem with Dr. Crooks on the Internship and Research classes. Thus, Dr. Adams is very familiar with the assignments in Dr. Crooks' class. (T., Vol. VII. at 1666).

104.

These classes consist of two of the student's four blocks of instruction for a semester. (T., Vol. VII. At 1664). They are a requirement for the Magnet seal. (T., Vol. VII. At 1664). Over the course of the semester, Dr. Adams observed C.D. in class for approximately 180 hours. (T., Vol. VII at 1719).

105.

C.D. failed both the Internship and Research classes, which resulted in him losing his Magnet Seal. (T., Vol. IV at 913 1715-16). Internship and Research was the first class C.D. failed in his entire academic experience. (T., Vol. VII at 1716). C.D. admitted to failing the class because he did not put forth the effort. (D-37 Bates 001041). As described below, C.D. failed this class because he did not take the assignments seriously and did not do the work.

106.

One of Dr. Adams' assignments was to write thank you notes to the speakers who presented to the class. (T., Vol. VII. At 1668). C.D. demonstrated learning in the Internship class because he was able to write thank you notes which were articulate and well written. (T., Vol. VII at 1671-72). However, C.D. turned in his thank you notes many weeks late. (T., Vol. VII at 1670). The notes were so late that Dr. Adams could not send them with the rest of the class' notes. (T., Vol. VII at 1670-71). C.D. earned half credit for the thank you note assignment

because it was so untimely. (T., Vol. VII at 1670). C.D. also demonstrated learning by submitting a completed resume; however, like the thank you notes, the resume was four weeks late, so he earned half credit. (T., Vol. VII at 1688).

107.

Dr. Adams observed C.D. writing professional emails, which followed the specific instructions for writing a cover letter. (T., Vol. VII at 1706). Thus, C.D. was able to follow Dr. Adams instructions for the specific content of each paragraph in a cover letter and actually send that cover letter to potential internship sites. (T., Vol. VII at 1706-07). C.D. did not need one-on-one instruction or prompting to write his professional cover letter. (T., Vol. VII at 1708). Because the email was written at 9:24am on a Monday, it is clear that C.D. wrote the email while in class. (T., Vol. VII at 1708).

108.

Ultimately, C.D. failed the Internship and Research classes. His failure was the result of not doing any of the work for the final exam, and incomplete or untimely assignments.

109.

Regarding the internship, students spend the first four weeks of the Internship class preparing and searching for an internship. (T., Vol. VII. at 1663). In general, the students are responsible for securing their internship. (T., Vol. IV at 904). However, on the first day of the class, Dr. Adams had an internship available for C.D. with the Georgia Tech aerospace engineering group. (T., Vol. VII. at 1679). Four students accepted that internship, and there was space for a total of thirty students. (T., Vol. VII. At 1680). C.D. rejected that internship because he wanted to work with a group at Dobbins Air Force Base through Georgia Tech Research Institute. (T., Vol. VII. at 1680). Thus, the delay in beginning his internship was primarily

because C.D.'s chose to reject an available internship, in order for him to get the internship he preferred. (T., Vol. VII at 1705). Ultimately, C.D. was able to obtain an internship, complete all of his hours for the internship, and earn full credit for the work he performed during time he was actually at internship. (T., Vol. IV at 966; T., Vol. VII at 1683). C.D. received an "A" for the work he did at the internship. (T., Vol. VII at 1683).

110.

As a final project in the Research class, students were responsible for completing a comprehensive research project with multiple steps. (T., Vol. at 1693-94). C.D.'s final project was both late and incomplete. (T., Vol. at 1693-93; D-25 Bates 000576-000842). Students work tirelessly on this project. (T., Vol. at 1696). C.D.'s project was "minimal" compared to other students. (T., Vol. at 1696). In addition to the project being untimely, it was missing pieces and the concept seemed unfeasible. (T., Vol. VII at 1694). Additionally, there was a final exam in the Internship and Research class, which consisted of making a summary notebook from components of the final project. (T., Vol. at 1695). The final exam was, in essence, a summary of the final project. (T., Vol. at 1695-96). C.D. did not turn in or complete the final exam. (T., Vol. at 1698; T., Vol. IX at 2094; D-29 Bates 000945). Students received a detailed rubric for the separate final exam and discussed it in class. (T., Vol. at 1698-99). However, C.D. did not turn it in, resulting in a zero for the grade. (T., Vol. at 1698-99).

111.

Throughout the semester, C.D. was missing a number of assignments for both classes. After the October 16, 2012 504 meeting, Dr. Crooks sent emails to C.D.'s parents on October 19, 2012 and November 15, 2012 outlining a revised timeline for C.D. to turn in the missing assignments. (T., Vol. II at 441; 1052-53; D-29 Bates 000938-41). Plaintiffs did not respond to

Dr. Crooks' emails about C.D.'s missing assignments. (T., Vol. IV at 1054-55; D-29 Bates 000945). Mrs. D testified that she did not respond because she was working full-time. (T., Vol. IV at 1054-55).

112.

C.D. did not meet the revised deadlines outlined in Dr. Crooks' emails. Rather he turned in a number of assignments on the last day of the semester, approximately 20 to 30 minutes before the grades for all students were required to be entered. (T., Vol. VII. at 1677). Many of these assignments were six, seven, and eight weeks late, so Dr. Adams did not give C.D. credit for them.²¹ (T., Vol. VII. at 1678). Dr. Adams believes that deadlines are "very important" for her class because it teaches students about actually succeeding in the workforce. (T., Vol. VII. at 1678). The expectation for work to be completed in a timely manner was communicated to students. (T., Vol. VII at 1943). In fact, C.D. signed the syllabus, acknowledging that Dr. Adams and Dr. Crooks would not give credit for work late. (T., Vol. VII at 1943; D-25 Bates 000760). C.D. never expressed a problem being able to meet the expectation of turning in assignments timely. (T., Vol. VII at 1944). In explaining why the assignments were late, C.D. never mentioned struggles with understanding a calendar or problems with organization; instead, he admitted that he did not take the class very seriously. (T., Vol. VII. At 1678-79).

113.

Specifically, when C.D. turned in a large number of assignments on the last day of the semester, Dr. Adams had a conversation with C.D. about the importance of professionalism. (T., Vol. VII at 1709-10). C.D., then, sent Dr. Adams an email about his work in the Internship class. (T., Vol. VII at 1708-10; D-37 Bates 001041). C.D.'s email to Dr. Adams stated:

²¹ In fall of senior year, C.D.'s 504 Plan only gave extended time on tests. (D-11 Bates 000356). Nonetheless, Dr. Crooks and Dr. Adams did give C.D. extended time to turn in the assignments. (D-29 Bates 000938-41; T., Vol. VII at 1678). Unfortunately, C.D. did not turn in the assignments by the revised deadlines.

I would like to thank you for talking with me today. At this point, I'd normally start apologizing with a long list of elaborate, BS excuses about ADD and "senioritis", but I realized that you were right. I'm tired of making excuses; tired of constantly trying to justify my own lack of effort. It's not fair of me to not do any of the work for the entire semester,²² and then just give it all to you on the last day and expect that to magically fix everything. I'm not in eighth grade anymore, and it's about time that I grow up and start taking responsibility for my own mistakes.

I'm sorry for all the crap I've put you through this semester, and I realize now just how badly I've screwed up. If there's any consolation for me in this, it's that my chances of getting into MIT were already <1%, so it's not like I was ever actually getting in, anyway (which is, of course, my own fault for spending the past 3 years slacking off and making excuses).

Anyways, I'm really sorry for feeding you excuse after excuse all semester long to justify my own laziness.

(T., Vol. VII at 1708-10; D-37 Bates 001041).

114.

In Dr. Adams' experience, students miss deadlines because they "chose not to do [the work]." (T., Vol. VII at 1689). Specifically, as it relates to C.D., Dr. Adams observed C.D. working on an extraneous engineering project, designing a device to launch a satellite, instead of working on missing assignments. (T., Vol. VII. at 1683; D-24 Bates 000570).

115.

Mrs. D. did not know all of the assignments that C.D. was missing or why he was being penalized for late assignments. (T., Vol. IV at 909). She attributed her lack of knowledge about C.D.'s classes to the fact that she was working full-time and "wasn't as involved." (T., Vol. IV at 909). Notably, Mrs. D did not think it was C.D.'s fault that he failed the Internship and Research class, but she did not know the grading process for the class or C.D.'s grades on specific

²² Notably, C.D. does not state that he tried to do the work and had problems. Nor does C.D. state that he had difficulties with timelines, calendars or initiation. Instead, he honestly admits to not doing the work.

assignments.²³ (T., Vol. IV at 966-67). Even while testifying, C.D.'s Mother did not know what happened to result in C.D.'s failing grade. (T., Vol. IV at 1052).

116.

Even though C.D. failed the class, Dr. Adams did not think that C.D. was prevented from learning because of any issues with an inability to focus. (T., Vol. VII at 1949). Having taught students with ADHD for 26 years, Dr. Adams believed C.D. was capable of doing the work. (*Id.*) Dr. Adams further believed that C.D. learned in the Internship class. (T., Vol. VII at 1717). For example, he was able to write a beautifully written cover letter. (T., Vol. VII at 1717). Dr. Adams believed that C.D. was capable of passing the class. (T., Vol. VII at 1718). Dr. Adams believed that C.D. had the organizational and social skills to pass the class. (T., Vol. VII at 1718). Dr. Adams believed that C.D. chose not to do the work because he was not interested in it. She based her opinion on the fact that sometimes he would do excellent work, which indicated he was capable of good work, when he would do it. (T., Vol. VII at 1722). Further, the assignments that C.D. did not complete were not complicated and did not involve significant organizational skills. (T., Vol. VII at 1722-23). Dr. Adams thought C.D. was capable of turning in assignments on time because he did turn in a number of assignments on time, such as some thank you notes and his business cards. (T., Vol. VII at 1690-91; D-18 Bates 000462).

117.

Dr. Adams also attend a 504 Meeting in which the Plaintiffs expressed concern over the amount of homework C.D. was doing; however, Dr. Adams did not assign much homework, so she was not certain what C.D. may have been doing for her class. (T., Vol. VII at 1712). In Dr.

²³ It appears that some of Mrs. D's confusion was caused by information that she received from C.D. On December 21, 2012, Mrs. D sent an email to Dr. Higgins, C.D.'s counselor. In the email, Mrs. D stated that C.D. told her that he "absolutely did the [final] exams and turned them in." (D-29 Bates 000946). This is clearly not accurate, as C.D. did not turn in the final exam. (T., Vol. at 1698; T., Vol. IX at 2094; D-29 Bates 000945).

Adams' opinion, based on thirteen years teaching Internship in the _____ High School Magnet Program, parents' concern over the amount of homework would not indicate a need for special education because these students are very hard working with numerous academic commitments that may necessitate that work load. (T., Vol. VII at 1713-14).

118

C.D. admitted that he stopped working on Engineering and Calculus classes during his senior year, in order to focus on passing English. (T., Vol. IX at 2099-2100).

119.

Ms. Walls, who also taught C.D. in his junior year, testified about C.D.'s performance in AP Calculus BC in the spring of his senior year. (T., Vol. II at 343). Ms. Walls' opinions regarding C.D.'s capabilities and learning were based on over 270 hours of observation over the course of two years. (T., Vol. IX at 2259).

120.

The structure of AP Calculus BC was very similar to C.D.'s previous math class, AP Calculus AB; however, it included a new set of concepts. (T., Vol. IX at 2232). The notebook project, which C.D. did his junior year, was repeated in the senior year class. (T., Vol. IX at 2232). C.D. did not turn in the semester-long, calculus-notebook project for AP Calculus BC, which resulted in C.D. earning a grade of "41." (T., Vol. II at 371). C.D. admitted that he did not do the calculus notebook in this class. (T., Vol. IX at 2096). Ms. Walls thought that C.D. would complete the project based on his demonstrated abilities during his junior year. (T., Vol. II at 372). C.D. told Ms. Walls that the project was coming, so she believed, like in C.D.'s junior year, she would get the assignment. (T., Vol. IX at 2233). However, C.D. chose not to complete this project because he was focusing on other classes. C.D.'s decision did not surprise Ms.

Walls, because some of her previous students made similar decisions to stop working on a difficult class that was not required for graduation. (T., Vol. IX at 2239).

121.

C.D. did not return to complete tests during his senior year, like he did during his junior year. (T., Vol. IX at 2235-37). However, he did have moments during the AP Calculus BC class where he demonstrated learning the material and doing well on tests. (*Id.*). Ms. Walls thought that C.D.'s overall performance would improve based on these glimpses of C.D.'s success, which were similar to his junior year. (*Id.*).

122.

Ultimately, Ms. Walls described C.D. as very different in his senior year because he was not doing the work as he did in his junior year. (T., Vol. IX at 2240).

123.

Despite the lack of work that C.D. completed senior year, Ms. Walls still believed that C.D. was capable of going to college. (T., Vol. IX at 2260). She explained that the work he did in AP Calculus AB was college level material, so the fact that he successfully complete those assignments and learned in that class shows that C.D. is capable of college level work. (*Id.*).

124.

In the second semester of C.D.'s senior year, he also failed Mr. Orren Williams' Engineering Applications class. (P-3 Bates 901). Mr. Williams informed C.D.'s counselor, Ms. Moudgal, that C.D. would work on other projects on his laptop while he was in Mr. Williams' class and that the projects were unrelated to Mr. Williams' class. (T., Vol. II at 449). In Ms. Moudgal's opinion, the 504 plan was appropriately implemented, but C.D. made a choice not to

work on projects for Mr. Williams' class. (T., Vol. II at 449-50). According to Ms. Moudgal, it was C.D. who did not "meet [his] end of the bargain." (T., Vol. II at 450).

125.

In the spring semester of his senior year, C.D. took Honors World Literature, which was the last class C.D. needed to graduate high school. (D-103 Bates 002784). Ms. Tara Thompson ("Ms. Thompson") was C.D.'s teacher for Honors World Literature. (T., Vol. VIII at 1968). An Honors World Literature class involves more work and more rigor than an on-level English class. (T., Vol. VIII at 1966). Specifically, there is a lot of work in the class and the pace moves fast. (T., Vol. VIII at 1969). Assignments in the class include a daily journal, writing workshops, class discussions, and a large senior project. (T., Vol. VIII at 1970).

126.

The senior project is 25% of the class, and for this project, students work with a mentor to write a research paper through a detailed multi-step process. (T., Vol. VIII at 1971). The students must spend a minimum of 12 face-to-face hours with their mentor. (*Id.*) The first assignment for the senior project is a signed acknowledgement of the failure to meet deadlines, which informs students that must meet all deadlines of the project. (T., Vol. VIII at 1978). C.D. completed the assignment acknowledging that he knew the importance of deadlines without expressing any concern regarding any inability to meet deadlines. (T., Vol. VIII at 1978; D-18 Bates 000472). For the English senior project, students are supposed to choose a different mentor than the mentor they selected for the Internship and Research classes. (T., Vol. VIII at 2008). C.D., however, used the exact same picture of him and his mentor from the Internship and Research classes, for his English senior project. He did this because he did not actually get a mentor for the English senior project. (T., Vol. VIII at 2008, 2040-41; D-25 Bates 000580). C.D.

did not submit the mentor verification for senior project, which, in part, resulted in him failing English. (T., Vol. VIII at 2009). A big reason that C.D. did not pass English and did not graduate was the fact that he did not have a mentor for the senior project. (T., Vol. VIII at 2020). C.D. did not tell Ms. Thompson that he did not have a mentor for the senior project until after the class was over. (T., Vol. VIII at 2041).

127.

Despite not having a mentor, C.D. completed some parts of the senior project, but it was not the best quality. (T., Vol. VIII at 1985). C.D. acknowledged that one of the reasons he failed Honors World Literature was because he did not complete the senior project. (T., Vol. IX at 2097).

128.

Even though, at the time, C.D.'s 504 plan did not include extended time for homework or assignments, Ms. Thompson gave C.D. extended time. (T., Vol. VIII at 1981-82). She also had one-on-one conferences with him, notified C.D. of the assignments that he needed to complete and provided him with revised due dates, and sent emails to C.D.'s parents notifying them of the missing assignments and revised due dates. (T., Vol. VIII at 1982). Unfortunately, C.D. also missed the revised due dates as well. (*Id.*)

129.

As an example of the type of assignment that C.D. failed to complete, Ms. Thompson described a project where students had to define twenty words and identify the parts of speech. (T., Vol. VIII at 1983). C.D. did not do the assignment nor did he provide an excuse for not doing it. (T., Vol. VIII at 1983).

130.

Ms. Thompson thought that C.D. had the skill set to do the work in her class based on the work that C.D. completed in her class. (T., Vol. VIII at 1985). For example, C.D. successfully completed a research paper and had thoughtful, analytical responses in class discussions. (T., Vol. VIII at 1985-86). C.D. also did well on an assignment where he had to give an 8-10 minute speech. (T., Vol. VIII at 1989-90). In that speech, C.D. had to create a plan for the presentation and be informed about the content he would discuss. (T., Vol. VIII at 1991). He was able to complete this presentation without extended time. (T., Vol. VIII at 1992).

131.

More specifically, Ms. Thompson did not think that C.D. needed special education because he was successful on a number of the assignments, even assignments involving multiple parts, steps, and instructions, like a research paper or speech. (T., Vol. VIII at 1989-91, 2011-12). As further evidence of C.D.'s abilities, C.D. was able to complete his portion of a group project where the students had to create a website about literary concepts. (T., Vol. VIII at 2003; D-78 Bates 001389-001402). C.D. created a Venn diagram for the project which was better than any other student in the class. (T., Vol. VIII at 2004-05). As the group's vice-president, C.D. displayed leadership qualities in getting the group to complete their project. (T., Vol. VIII at 2006).

132.

Ms. Thompson described the manner in which C.D. turned in assignments as "VERY inconsistent." (D-31 at Bates 000988). However, the work that he did turn in was "well done." (T., Vol. VIII at 2019). Thus, Ms. Thompson believed C.D. was capable of doing the work. (T., Vol. VIII at 2019). Ms. Thompson attempted to motivate C.D. to complete the work by speaking

directly with him. (T., Vol. VIII at 2049). C.D., then, told Ms. Thompson that he was going to turn in assignments and do better. (T., Vol. VIII at 2050).

133.

The final exam in Ms. Thompson's class was a Socratic seminar, which had an oral and written component. (T., Vol. VIII at 1998-2000). Prior to the exam, the students had to read the Joy of Reading and Writing in order to answer Socratic questions in class with textual support and literary language. (T., Vol. VIII at 1999-2000).

134.

On the last day of school, C.D. initiated a conversation with Ms. Thompson as he turned in a large stack of late assignments.²⁴ (T., Vol. VIII at 2072-73). In that conversation, C.D. explained that he had a plan for doing better and staying organized. (T., Vol. VIII at 2073). He also stated that he was going to Europe over the summer to visit his girlfriend and would attend MIT at some point. (T., Vol. VIII at 2073).

135.

Ms. Thompson did not observe C.D. have issues with organization, planning or focus which prevented him from learning. (T., Vol. VIII at 2027). Instead, Ms. Thompson observed that C.D. seemed to decide which assignments he wanted to turn in and those that he chose not to complete. (T., Vol. VIII at 2027). Ultimately, Ms. Thompson believed C.D. was able to learn because he demonstrated a comprehension of much of the curriculum and he was able to follow instructions. (T., Vol. VIII at 2076-77).

²⁴ Ms. Thompson accepted the late assignments and gave C.D. partial credit, even though her class had officially ended. (T., Vol. VIII at 1981-82, 2026).

136.

When Ms. Thompson emailed Mr. D. about missing assignments and the possibility that C.D. would fail English, Mr. D. responded by thanking her for the information and noted that C.D.'s focus should improve because of a change in medication. (T., Vol. VIII at 2014; D-31 Bates 000982-000984). Mr. D. further stated that C.D. may be having difficulty in class because his grandmother had been sick and just passed. (T., Vol. VIII at 2014; D-31 Bates 000984). Mr. D's email said nothing about C.D. spending hours at the kitchen table struggling to complete the work; in fact, Mr. D claimed that C.D. had not turned in an assignment because of a broken printer. (T., Vol. VIII at 2015-16; D-31 Bates 000984). Thus, not even Mr. D provided Ms. Thompson with any information that C.D. could not do the assignments or learn the material, and instead, Mr. D's communication further supports Ms. Thompson's belief that C.D. could do the work when he wanted to.²⁵

137.

Finally, regarding C.D.'s capabilities, Ms. Thompson concurred with all the other teachers that C.D. would not need an assisted living facility, even if his parents thought it necessary. (T., Vol. VIII at 2027).

138.

Ms. Sumana Moudgal ("Ms. Moudgal") was C.D.'s counselor in twelfth grade. (T., Vol. II at 433). Ms. Moudgal instructed C.D.'s teachers to "cc" C.D.'s father on all communications to C.D. regarding his lack of effort or what he needs to be doing. (T., Vol. II at 445). Ms. Moudgal noted that C.D.'s lack of work and failing grades in his senior year were being

²⁵ Though there was testimony that C.D. was working hard and not deliberately being defiant, Mrs. D testified that when it was time to do homework, C.D. sometimes engaged in behavior such as dropping his pencil, going to the bathroom, and getting water, instead of starting his homework. (T., Vol. IV at 1039). These behaviors appear to be more indicative of homework avoidance, as opposed to organization problems.

communicated to the Plaintiffs, the 504 Plan was being implemented, and the school was not hearing anything different from the parents. (T., Vol. II at 462). Nevertheless, the work was still not getting done; therefore, Ms. Moudgal assumed that the issue was the student's lack of effort. (Id.)

139.

Nonetheless, a 504 Meeting was held on October 16, 2012 for C.D. (D-11 Bates 000351-60). In this meeting C.D. admitted that he was procrastinating in regards to doing assignments.²⁶ (D-11 Bates 000357). C.D. also admitted that he did not study during his senior year. (D-11 Bates 000358). Mr. D admitted that C.D. would tell him and Mrs. D that he did not have any homework and then a week before the due date they would find out that a semester's worth of work was due. (D-11 Bates 000357). Furthermore, it was communicated that extended time on tests was working. (D-11 Bates 000357). Finally, Plaintiffs submitted a medical evaluation to the District which noted that the ADHD prognosis was good. (D-11 Bates 000360).

140.

As a result of that meeting, C.D.'s 504 Plan was modified to include the following accommodations:

- Extended time on all exams at 100%;
- Student will be provided with a copy of the classroom notes or lecture material via email, hard copy, or access to blog;
- Student is allowed to audio tape classes (must inform teacher prior to taping); and
- Math only – a reduction in the number or amount of homework problems. For example, only even or odd problems. This accommodation will be met without compromising the content of the curriculum. Homework content will be determined by the teacher prior to assignment.

²⁶ Notably, C.D. did not say that he was overwhelmed or that he could not do the work.

D-11 Bates 000356). Dr. Kinard, the District's expert, opined that the 504 Plan that was in place as of October, 2012 was appropriate. (T., Vol. VII at 1821).

141.

A second 504 meeting was held on May 2, 2013. (D-11 Bates 000362). As a result of that meeting, C.D.'s 504 Plan was modified to include the following accommodations:

- Extended time on all exams at 100%;
- Extended time on all homework and at home projects at 100%;
- Guided notes will be provided to the student and parents for all subjects;
- Projects or large assignments will be chunked into manageable groups with individual timelines and due dates;
- Audiotape course lectures;
- All communication regarding grades, assignments, due dates, and/or course progress will be sent to the parents via email; and
- Homework reduction for all assignments (math – students can complete even or odd problems as pre-determined by the instructor; reduction in daily homework assignments for other assignments as pre-determined by the instructor).

(D-11 Bates 000367). This 504 Plan was created with only a few weeks remaining in the semester and did not apply retroactively. (*Id.*).

142.

In that meeting, the team noted that C.D. was not returning to utilize extra time on tests. However, at the hearing, as Ms. Moudgal noted that it is not the school district's responsibility to manage a student's after-class schedule. (T., Vol. II at 452).

143.

In conjunction with the May 504 Meeting, the District conducted a Direct Parent Referral Meeting to begin the special education process at the Plaintiffs' request. (D-11 Bates 000368). Plaintiffs obtained legal representation before their request for special education services. (T.,

Vol. IV at 914). During the Direct Parent Referral, among other things, Mrs. D requested a reduction in the amount of homework. (D-11 Bates 000372).

C. C.D. Was Found Eligible for IDEA Services at the End of His Senior Year.

144.

Dr. Deckelbaum, Plaintiffs' independent psychologist, conducted her evaluation in April, 2013. (T., Vol. V at 1156). Plaintiffs had the results of their private psychological evaluation around the end of May or beginning of June (T., Vol. IV at 970). Dr. Deckelbaum recommended that Plaintiffs provide the District with a copy of the evaluation. (T., Vol. V at 1237). Plaintiffs did not provide this evaluation to the District until the eligibility meeting in September, 2013; thus, they had the information to help the District help C.D. but did not provide it for almost five months. (T., Vol. IV at 1071).

145.

Ms. Jamie Davies ("Ms. Davies"), a Special Education Supervisor for the District, participated in the eligibility meeting for C.D. on September 3, 2013. (T., Vol. II at 313-15). Ms. Davies had no involvement, whatsoever, in C.D.'s high school education. (T., Vol. II at 314). Notably, Ms. Davies stated that she found him eligible for special education because C.D. did not turn in class work as a result of his ADHD. (T., Vol. II at 318). Specifically, the assistance needed, according to Ms. Davies, was with completing assignments. (T., Vol. II at 323). However, Ms. Davies acknowledged that she would not necessarily include an objective in the IEP specific to homework, as it is difficult for teachers to ensure that students will complete their homework.²⁷ (T., Vol. II at 334). In making her decision, Ms. Davies only reviewed

²⁷ She further acknowledged that putting incentives on completing homework could be accomplished through an instructional practice. (T., Vol. II at 334). In other words, it is something that did not necessarily require an IEP. (*Id.*) Notably, the other measures that could be used to encourage homework completion, such as having an agenda signed so that the assignments are known and communication with parents regarding assignments, were instructional

current functioning, which was based on data collected at the end of C.D.'s senior year, the private evaluation, the _____ County evaluation, and C.D.'s transcript. (T., Vol. at 323-24).

146.

To be specific, Ms. Davies stated that the eligibility team found C.D. to be eligible based solely on his performance during senior year:

Q: And you said that the way you saw C.D. was that he was struggling, significantly struggling in high school; correct?

A: With what I was looking at from his senior year. (T., Vol. II at 336)

While the eligibility team did consider information from Ms. Walls on C.D.'s present level of performance, the information Ms. Walls provided was based solely on the last six months of her interactions with C.D. (T., Vol. II at 338; T., Vol. IX at 2330). Further, eligibility is based on current functioning and does not apply retroactively. (T., Vol. III at 550).

147.

Dr. Elizabeth Turnage ("Dr. Turnage") is the District's Director of Legal and Policy for Special Students Services. (T., Vol. III at 540). She attended C.D.'s eligibility meeting. (T., Vol. III at 543). During the eligibility meeting, Dr. Turnage was responsible for answering questions regarding 504 Plans and IEPs. (T., Vol. III at 543). Dr. Turnage noted that the eligibility team, ultimately, found C.D. eligible for special education services, but that Dr. Turnage disagreed with that decision. (T., Vol. III at 546).

148.

During the eligibility meeting, Mr. D stated, as follows:

Right now, if . . . God forbid something was to happen to us – he would need to be in [an] assisted living home because he would not be able to function on his

practices that had previously been implemented with little success. (See T., Vol. II at 334-35; T., Vol. IV at 898-99; T., Vol. IV at 1054-55; D-29 Bates 000945; T., Vol. VII at 1982). Alternatively, these measures can be implemented through a 504 plan. (See D-11 Bates 000367).

own without somebody to tell him to get up, somebody to tell him what he needs to do and monitor throughout that situation.

(J-1 at Part 3 18:10-18:28; *see also* T., Vol. III at 551). Mrs. D reiterated this sentiment during the hearing. (T., Vol. IV at 975).²⁸ Even C.D., incredibly, stated that he could not live independently. (T., Vol. IX at 2173). He went so far as to describe himself as “helpless.”²⁹ (T., Vol. IX at 2175). Amazingly, after testifying about his helplessness, C.D. explained to this tribunal the science behind satellite engineering. (T., Vol. IX at 2177-80).³⁰

149.

Dr. Laurel Kinard (“Dr. Kinard”) testified as the District’s expert witness and is the Director of Student Assistance Programs with the _____ County School District, having conducted 2,000-3,000 student evaluations and reviewed over 5,000 evaluations. (T., Vol. VII at 1784-86). Additionally, in instances when she has not conducted the evaluation, she has formed opinions regarding students’ disabilities by reviewing evaluations and educational records. (T., Vol. VII at 1800). She has done this between 700 and 1000 times. (*Id.*)

150.

In reviewing this information for C.D. she found the following:

- the Parents rated C.D.’s ADHD as being more severe in the home setting than the school setting;
- C.D. is a bright young man with above average intelligence and academic skills;
- Some of the psychological evaluation reflects that C.D. is in the average range regarding ADHD and executive functioning;
- Other indicators in the psychological evaluation showed a more significant disability; and
- C.D. was able to perform above-average on standardized tests.

²⁸ Despite their belief that C.D. needed an assistive living facility, they were willing to allow C.D. to attend MIT in Boston, Massachusetts if he had been accepted. (T., Vol. IV at 976)

²⁹ There is no evidence that C.D. ever expressed a similar sentiment to any of his teachers or his counselors.

³⁰ Additionally, during the hearing C.D. was able to assist his counsel with information pertaining to each witness. Specifically, he was able to provide her with five to ten bullet points per witness. (T., Vol. IX at 2159).

(T., Vol. VII at 1799-1800-1812). Based on C.D.'s standardized test scores, final grades, and educational records, Dr. Kinard opined that C.D. did not need specialized instruction at any point in ninth through eleventh grade. (T., Vol. VII at 1814). Even if C.D. was consistently turning in work late during this period, C.D. did not need specialized instruction because he was obviously learning. (T., Vol. VII at 1815).

151.

Dr. Kinard testified that C.D.'s failure to complete assignments in the Internship and Research class, which resulted in him failing the class and losing his magnet seal, would not independently merit eligibility for special education services. (T., Vol. VII at 1818). Specifically, Dr. Kinard, in her opinion, stated that the pattern of turning in work late in order to get enough credit to pass a class would not necessitate special education. Further, his strong performance on assessments was evidence that C.D. was learning. (T., Vol. VII at 1819).

152.

Assuming that there was a decline in C.D.'s performance during the first semester of his senior year, Dr. Kinard opined that appropriate course of action would be to have the teacher of the particular class talk to him and discuss the issue with the 504 team to see if any additional supports should be implemented. (T., Vol. VII at 1820). In Dr. Kinard's opinion, the accommodations in the October 2012 504 Plan were appropriate to accommodate C.D.'s pattern of turning in work late. (T., Vol. VII at 1821).

153.

Based on C.D.'s educational records, Dr. Kinard opined that C.D. had significantly more trouble the second semester of senior year than any other time in his educational history. (T., Vol. VII at 1821-22). Dr. Kinard further noted, based on her 19 years of experience in a high

schools, that seniors will have challenging transitions in preparing for college, planning for the future, and experiencing new social issues. (T., Vol. VII at 1823). Nevertheless, Dr. Kinard opined that the 504 team could have addressed the issues without special education. (T., Vol. VII at 1823). In reviewing the 504 Plan from May, 2013, Dr. Kinard believed that those accommodations could appropriately support C.D. because the extended time was expanded to include projects and homework. (T., Vol. VIII at 1824).

154.

Dr. Kinard disagrees with the decision to find C.D. eligible. (T., Vol. VII at 1873). Further, Dr. Kinard believed that the recommendations of the school district's psychologist were not necessary for C.D. to learn. (T., Vol. VII at 1889). Ultimately, Dr. Kinard opined that C.D. could access his education based on his grades and standardized test scores; thus, specialized education was never necessary, even in twelfth grade because the accommodations of the 504 Plans could address any issues C.D. had with timeliness and organization. (T., Vol. VII at 1824-25).

155.

Despite being found eligible for special education, Plaintiffs refused to agree to the proposed IEP because they demand more than even their own psychologist recommended. (T., Vol. V at 1084-1093).

D. C.D. Does Not Graduate High School through the _____ Virtual Academy.

156.

The only class that C.D. needs to pass in order to graduate is a world literature class. (T., Vol. IV at 918; T., Vol. IX at 2100). Plaintiffs paid \$550 to enroll C.D. in the English class

through _____ Virtual Academy (CVA)³¹ over the summer. (T., Vol. IV at 918). C.D. had on-line assignments to complete, but C.D. had difficulty in knowing how to submit his assignments. (T., Vol. IV at 920). Ironically, C.D.'s mother described C.D. as being successful in a similarly structured environment, where in AP Physics C.D. was given specific assignments to complete on-line. (T., Vol. IV at 876). More specifically, she stated, "you put him in a room with a computer and he can learn a lot of things." (T., Vol. IV at 961).

157.

C.D. independently did the work that was turned in for the summer CVA English class. (T., Vol. IV at 1059-60). C.D. completed 11 assignments of 49 assignments in the summer CVA class. (D-17 Bates 000455-56). Of those 11, he earned 10 A's and 1 B. (*Id.*). Thus, when C.D. did the work, he was capable of demonstrating learning. Interestingly, all 11 assignments were submitted over 6 days. (D-17; Bates 000458). Thus, C.D.'s work over the summer consisted of six days of participation.

158.

C.D. withdrew from the CVA class, not because of his executive functioning disorder, but because of a summer cold. (T., Vol. IV at 1060; T., Vol. IX at 2133). This cold affected C.D.'s asthma, which resulted in him not being able to complete the work necessitating withdrawing from the class. (T., Vol. IV at 1060).

159.

In addition, C.D. took a "graduation" mission trip to Romania, where he stayed with his girlfriend's family. (T., Vol. IV at 921-22). C.D. thought he would be able to complete the course despite going to Europe for three weeks. (T., Vol. IX at 2146-48).

³¹ CVA is the virtual academy where students can take on-line classes. (T., Vol. II at 459).

160.

C.D. also stated that he failed to complete the CVA assignments because when left at home alone, while his parents were at work, C.D. would get distracted, play with the dog, draw, or watch TV instead of working on the class. (T., Vol. IX at 2153).

161.

Having failed to complete the CVA class in the summer, C.D. reenrolled for the fall CVA course and is currently enrolled in that course. (T., Vol. IV at 923). C.D.'s Mother claims that C.D. lacks the ability to "make himself do the work" in order to pass the CVA class. (T., Vol. IV at 924). Notably, this curriculum is chunked into weekly assignments. (D-14 Bates 000436-39). Despite the fact that C.D. had previously completed some of these assignments as a senior at _____ High School and the fact that he had completed 11 of the assignments during the summer course, as of September 6, 2013, C.D. had not submitted a single assignment for the fall CVA English class. (D-14 000442-44). To explain why, C.D. claims to be unable to do the CVA work because he is too focused on this litigation. (T., Vol. IX at 2132). In fact, C.D. admitted, "I've kind of put CVA on the back burner." (T., Vol. IX at 2145).

E. Plaintiffs' Requested Relief.

162.

The relief requested by Plaintiffs is indicative of their expectation that C.D. should have lived up to his potential. (T., Vol. III at 714). Furthermore, some of the relief requested would not have addressed one of C.D.'s main problems (i.e., homework completion). Finally, the executive functioning training that Plaintiffs seek from Ms. Kamath is not research based and is not used by other specialists in her field.

163.

Ms. Kamath's plan is to provide for optimal functioning, as follows:

Q: What are the educational goals you are talking about?

A: To optimally function by compensating for the disability.

(T., Vol. III at 734).

164.

Similarly, Dr. Deckelbaum testified that the problem with executive functioning disorder is that students fail to perform to their potential. (T., Vol. V at 1157). Specifically referring to C.D., Dr. Deckelbaum testified that different accommodations would have allowed him to fulfill his potential:

Q: So you're saying live up to his full potential had he been able to turn in his grades – his homework – late; is that correct?

A: One aspect of what would have enabled him to perform up to his potential.

(T., Vol. V at 1205-06). She further stated, "My goal when I evaluate children is to help them live up to their potential." (T., Vol. V at 1233). As such, Dr. Deckelbaum's recommendations were based on the assumption that C.D. was going to college. (T., Vol. V at 1162). In any event, she based her testimony and recommendations on her hope that C.D. could meet his true potential.

165.

Plaintiffs alleged that an IEP would have been necessary for C.D.'s entire academic career. However, Ms. Davies testified that she did not think an IEP would have "even been needed" before the time that C.D. was actually found eligible. (T., Vol. II. At 332). Furthermore, Ms. Davies testified that an IEP, focusing on homework completion, may not be feasible because homework is outside of the control of a classroom teacher. (T., Vol. II at 334).

166.

Plaintiffs assert that Ms. Kamath or someone like her is necessary to teach C.D. executive functioning skills. Notably, Ms. Kamath has not tested C.D. (T., Vol. III at 572). Ms. Kamath's recommendation is to address "C.D.'s needs beyond academics..." (T., Vol. III at 586). Ultimately, Ms. Kamath based her opinion on the steps necessary for C.D. to achieve in college. (T., Vol. III at 662).

167.

Ms. Kamath's plan for teaching executive functioning skills begins day 1 with having C.D. connect dots to count to 12 and spell "PARROT." (T., Vol. III at 658). Ms. Kamath stated that this plan is necessary because C.D. lacks the "mental muscle" to perform "ten minutes" of "complex tasks requiring attentional regulation and working memory"³². (T., Vol. III at 658). Ms. Kamath believes that C.D. will be successful in her program, despite only a 75% success rate, because of the "vibes" she got from C.D. during her only interaction with him. (T., Vol. III at 693). In actuality, Ms. Kamath does not know if C.D. would be successful in her program. (T., Vol. III at 693-94). At present, Ms. Kamath does not actually have a formal plan or program for C.D. (T., Vol. III at 737-38).

168.

Ms. Kamath acknowledges that executive function training is a "novel field, and not very well understood." (T., Vol. III at 695). No other executive functioning specialists use Ms.

³² Cf. with C.D.'s ability to participate in the cross-examination of witnesses during this litigation. (T. Vol. IX at 2157-60).

Kamath's programs, and her programs are not scientifically researched-based. (T., Vol. III at 703-08).³³

169.

C.D. admitted that he did not need Ms. Kamath to pass his sole remaining English class. (T., Vol. IX at 2144).

170.

Regarding Plaintiffs' demand for two years of compensatory education, Ms. Kamath testified that the time at which executive functioning training should begin can vary. (T., Vol. III at 751-52). Specifically, she stated that the connection between ADHD and executive functioning disorder can vary, but that the "number one" factor for determining intervention is when "the gap between potential and performance becomes so wide that it affects many areas." (T., Vol. III at 752). Based on C.D.'s transcripts and test scores, no such gap existed until the end of C.D.'s senior year, at which point the District found him eligible for services under IDEA.

171.

Dr. Kinard opined that C.D. did not need any specialized instruction with regard to executive functioning skills because he was able to demonstrate learning through standardized tests and final grades. (T., Vol. VII at 1824-26). Even when C.D. was failing in the spring semester of his senior year, Dr. Kinard did not think that C.D. needed specialized instruction because he should have been able to access his education with the 504 Plan which was in place. (T., Vol. VII at 1825).

³³ Even if this tribunal were to decide that C.D. was entitled to some relief, which it has not, Ms. Kamath's novel approach, which is not used by other professionals in the field and is not research-based, would not be the relief ordered.

Plaintiffs demand 720 hours of compensatory executive functioning training, which is two hours a day for two years. (T., Vol. III at 640-41, 665). Plaintiffs presented no substantive testimony establishing C.D.'s need for this amount of compensatory education. In fact, when asked about the 720 hours, Ms. Kamath testified that she was "not 100 percent sure about the number." (T., Vol. III at 641). Without providing any substantive basis, she later testified, "to me sounds that it probably can come close to it." (*Id.* at 641). However, Ms. Kamath testified that on average her work with clients only lasts for a year with only three meetings per week, which would equate to approximately 150 hours. (*See* T., Vol. III at 805).

Plaintiffs also seek grade recovery. Specifically, C.D.'s Mother stated that they want C.D. to qualify for the HOPE Scholarship. (T., Vol. IV at 998-1001; T., Vol. V at 1105-06). Though C.D.'s Mother stated that their desire for grade recovery was so that C.D.'s transcript would reflect his work completed, it is clear that the underlining motivation is the HOPE scholarship. (*Cf.* Vol. IV at 998-1001 and P-A at 00:21:40-00:22:00). Specifically, in the May, 2013 meeting, Mrs. D stated, "that's really our – right now our – big concern is that he graduate with a 3.0 so that he gets HOPE." (P-A at 01:54:15-01:54:23).

F. Plaintiffs' Experts, Plaintiffs' Characterization of C.D., and the Nature of C.D.'s Disability.

Ms. Sucheta Kamath ("Ms. Kamath") is a speech language pathologist, who testified as Plaintiffs' expert witness. (T., Vol. III at 553). Her degrees are not in executive functioning disorder. (T., Vol. III at 556-57). Dr. Sara Deckelbaum ("Dr. Deckelbaum") is a clinical psychologist, who testified as Plaintiffs' expert witness. (T., Vol. V at 1148).

175.

Ms. Kamath described executive functioning disorder as “addressing a person’s ability to maintain or initiate success in their own life by setting goals.” (T., Vol. III at 559). Ms. Kamath analogized executive functioning disorder to situation in a trash bag commercial, where the trash bag collapsed every time trash was thrown into it. (T., Vol. III at 583-85).

176.

Ms. Kamath further described executive functioning disorder as the inability to complete multi-step tasks, such as would be required in international travel³⁴. (T., Vol. III at 613). Ms. Kamath described C.D. as being unable to monitor the passage of time. (T., Vol. III at 573-77). Notwithstanding those descriptions, Ms. Kamath testified that C.D. is currently capable of producing projects for class because of his academic ability. (T., Vol. III at 670-71).

177.

Ms. Kamath has not tested or evaluated C.D. (T., Vol. III at 572). Furthermore, Ms. Kamath’s opinion was based on two telephone calls with C.D.’s parents, a three and a half hour interview with C.D. and his parents, which took place five days before she testified, and her review of selected records provided by Plaintiffs’ counsel.³⁵ (T., Vol. III at 574; 711, 717-19). Ms. Kamath did not speak with any of C.D.’s teachers. (T., Vol. III at 721). Nor has Ms. Kamath observed C.D. in an educational setting. (T., Vol. III at 722).

178.

It should be first noted that Plaintiffs spoke very highly of C.D.’s teachers and stated that the teachers taught what they were supposed to teach. (T., Vol. III at 716). Furthermore, Ms. Kamath, Plaintiffs’ executive functioning expert witness, stated “I think it is difficult to make the

³⁴ Ironically, C.D. traveled internationally to Romania after Plaintiffs filed the Complaint in this matter.

³⁵ Ms. Kamath testified that Plaintiffs’ counsel reviewed the records with her and pointed out specific records. (T., Vol. III at 719).

connection that what you see is executive functioning disorder.” (T., Vol. III at 731). Thus, according to Plaintiffs’ expert, recognizing executive functioning disorder is difficult. (*Id.*).

179.

When asked how C.D.’s teachers should know that C.D. required special education, especially in light of his transcripts and standardized test scores, Ms. Kamath could not provide any observable behavior that would have triggered a suspicion that C.D. needed special education. (T., Vol. III at 747-49; 755). After much prompting, Ms. Kamath finally provided two criteria that teachers should have observed. (T., Vol. III at 772-73). According to Ms. Kamath, teachers should recognize that inconsistent performance and failure to follow casual suggestions as indicators of executive functioning disorder. (T., Vol. III at 772-72). Further, Ms. Kamath opined that every student who does not turn in assignments may possibly have executive functioning disorder and that every student who has executive functioning disorder requires special education. (T., Vol. III at 773-75).

180.

Regarding the hidden nature of the disability, Mother testified C.D. would not ask for help as part of his disability. (T., Vol. IV at 895; 1027-28). In fact, Plaintiffs only communication to the District, describing C.D.’s problems with following instruction consisted of one comment per year at the 504 meeting and possibly a few phone conversations. (T., Vol. V at 1082). Plaintiffs had no record of any email communications in which they informed any of C.D.’s teachers or counselors of his problems following instructions or troubles with executive functioning disorder. (T., Vol. V at 1082).

Furthermore, Ms. Kamath offered contradictory testimony about C.D.'s behaviors. She testified that the way in which C.D.'s executive functioning disorder manifests is that he can do work when prompted but would not initiate independent behaviors of studying. (T., Vol. III at 763-64). Further, Ms. Kamath testified that students with executive functioning disorder cannot consistently demonstrate their knowledge; however, Ms. Kamath testified that C.D. could demonstrate his knowledge through standardized tests and his final grades. (T., Vol. III at 765). In explaining this answer, Ms. Kamath stated that a mere question on a test would be all the prompting C.D. would need to engage in the academics of learning. (T., Vol. III at 767). Though Ms. Kamath testified that C.D.'s executive functioning disorder prevents C.D. from initiating independent behaviors of studying, Ms. Kamath described C.D.'s engineering project, stating that C.D. "worked relentlessly on it" and that the project required "complex engineering" and "deep understanding of the technicalities." (T., Vol. III at 770-71; D-24 Bates 000570). Ms. Kamath described this project as a "volitional demonstration of knowledge." (T., Vol. III at 772).³⁶

Though Mrs. D. insisted that the only reason C.D. succeeded in school was parental support at home, she admitted that he independently took tests in class, earning high marks on those tests, as an indicator of his ability to learn information in the classroom. (T., Vol. IV at 1003-04).

³⁶ Ms. Kamath, then, tried to explain how this "volitional demonstration of knowledge" was actually an indicator of executive functioning disorder because the work done on this project was a detriment to his other classes; however, she could never explain how to rectify her statement that C.D.'s executive functioning prevented him from initiating tasks but he initiated this task. (T., Vol. III at 771-73)

183.

Dr. Deckelbaum testified that C.D.'s diagnosis was "straight-forward." (T., Vol. V at 1161). However, she is a trained psychologist who specializes in assessments. (T., Vol. V at 1150). She provided no testimony regarding what the educators should have seen to recognize C.D.'s disability. More specifically, Dr. Deckelbaum testified that the parents' rating may have been elevated over the teachers' ratings because of the difference between a home environment and a classroom setting. (T., Vol. V at 1185).

184.

Dr. Deckelbaum stated that C.D.'s deficit is not "learning." (T., Vol. V at 1187). She opined that C.D. could "sit in a vacuum and probably learn a good bit of the information he was taught." (T., Vol. V at 1187). Dr. Deckelbaum further testified that based on C.D.'s passing grades C.D. must have learned the curriculum in advanced classes at the _____ High School Magnet Program. (T., Vol. V at 1207-08).

185.

C.D. did not exhibit problems with social skills. Ms. Walls observed C.D. socializing with friends before school. (T., Vol. II at 356). C.D. conversed with friends about common interests, such as computers and robotics. (T., Vol. II at 374). Ms. Santelli observed C.D. socialize with friends when the class completed its work. (T., Vol. VI at 1325). Mr. George did not observe any social problems with C.D., even though his classes consisted of ninth through twelfth graders. (T., Vol. VI at 1500). C.D. spent some Friday nights with friends playing Frisbee and going to movies. (T., Vol. IV at 986). During these events, C.D. was unsupervised from the end of school until 11pm. (*Id.*).

186.

C.D. did not exhibit behavioral problems. (T., Vol. V at 1158; T., Vol. VII at 1721). Nor was there any evidence that C.D. had any problems with communication skills.

187.

Dr. Deckelbaum described executive functioning as a constellation of skills that generally develop during childhood and adolescence that people require for daily tasks; it consists of, primarily, behavioral regulation, such as impulse and emotional control, and meta-cognition which is planning and organization. (T., Vol. V at 1152-53). Dr. Deckelbaum described someone with executive function disorder as a headless chicken. (T., Vol. V at 1153).

188.

The DSM-5 does not contain executive functioning disorder as an independent diagnosis. (T., Vol. III at 801). Executive functioning disorder is merely a symptom of ADHD. (T., Vol. III at 751; 756; 775-76). ADHD is a disability in which the prominent symptoms are inattention, hyperactivity, and impulsivity that interfere with functioning across settings. (T., Vol. V at 1151).

189.

Ms. Kamath is not qualified to diagnosis ADHD. (T., Vol. III at 702). Even if a student is diagnosed with ADHD or executive functioning disorder, that student may still be capable of staying focused in a general education setting without an IEP, may following instructions in a general education setting without an IEP, may initiate tasks in a general education setting without an IEP, and may complete tasks in a general education setting without an IEP. (T., Vol. VII at 1894).

190.

C.D.'s Father asserts that C.D. lacks the skill set to be successful in college because he lacks the ability to focus, prioritize, and turn in assignments. (T., Vol. I at 216).

191.

During the eligibility meeting, Father stated that if C.D. were left alone, he would need an assisted living facility because C.D. would not be able to get out of bed, feed himself, or care for himself. (T., Vol. III at 551). C.D.'s Mother agreed that if C.D. was left alone, even with money provided, he would need an assisted living home because C.D. lacks the skills to live independently. (T., Vol. IV at 975).³⁷

192.

Plaintiffs described C.D.'s workspace at home as a messy desk or the kitchen table. (T., Vol. IV at 856). C.D.'s Mother described C.D. as deliberately avoiding studying at home by dropping his pencil, getting water, or going to the bathroom for a long time. (T., Vol. IV at 1039). Ms. Kamath stated C.D.'s explanation for not completing homework was that he would either stare off or surf the internet. (T., Vol. III at 725).

193.

Plaintiffs' testimony regarding the signs of C.D.'s executive functioning disorder, which his teachers presumably should have recognized; include the following:

- Losing his agenda several times throughout his high school career (T., Vol. IV at 899);
- Not attending a math tutorial session in tenth grade (T., Vol. IV at 898);

³⁷ The undersigned did not find Plaintiffs' characterization of C.D. to be credible. The balance of the evidence reveals that C.D. may be somewhat unorganized, but is otherwise a very capable individual who can get from class to class, get lunch, maintain a relationship over the internet with a girl in Romania, participate in extracurricular activities, turn in well-done assignments when he puts forth the effort, and solder custom guitar pedals for Mr. George's company without incident.

- Having failing grades at some point in the semester in several of his classes (T., Vol. IV at 875)³⁸;
- Maintaining a messy book bag (T., Vol. IV at 856);
- Needing someone to schedule appointments for him to get haircuts (T., Vol. V at 1125);
- Having a messy desk in his room (T., Vol. IV at 856); and
- Spending long hours on homework. (T., Vol. IV at 851).

194.

Dr. Deckelbaum testified that she thought C.D. lacked the executive functioning skills to graduate high school, even though C.D. had met all graduation requirements except for passing one English class. (T., Vol. V at 1229).

III. CONCLUSIONS OF LAW

1.

The purpose of the Individuals with Disabilities Act ("IDEA") is, in part, "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a); Ga. Comp. R. & Regs. 160-4-7-.01(1)(a).

2.

IDEA enables parents, or a student who has reached the age of majority, 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), (c)(2)(A). In this case, Plaintiffs' assert the following IDEA claims: A) Failure to Identify, B) Failure to Evaluate, C) Denial of FAPE, and D) Denial of Procedural Rights.

³⁸ However, C.D.'s Mother acknowledged that there is "definitely" a difference between "failing" and "failed," with "failed" referring to the final, end result. (T., Vol. IV at 991)

3.

Hearings before this Tribunal are *de novo* proceedings, and the standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(3), (4). As the parties bringing this hearing request and seeking relief, Plaintiffs bear the burden of proof as to all issues for resolution. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005).

Child Find

4.

Under IDEA, states must have in place “policies and procedures to ensure that . . . [a]ll children with disabilities residing in the [s]tate . . . and who are in need of special education and related services, are identified, located, and evaluated . . .” 20 U.S.C. § 1412(a)(3)(A). This is known as the state’s “child find” obligation. *M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1095 n.7 (11th Cir. 2006). Included within the state’s child find obligation are those “[c]hildren who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade.” 34 C.F.R. § 300.111(c)(1).

5.

The Act defines a “child with a disability” as a child with one of the listed disabilities “and *who, by reason thereof, needs special education and related services.*” 20 U.S.C. § 1401(3)(A)(i), (ii) (emphasis added); 34 C.F.R. § 300.8(a); Ga. Comp. R. & Regs. 160-4-7-.21(10(a)). Some have construed this eligibility provision as a three-prong test. Specifically, “[t]o qualify under IDEA, a child must satisfy three criteria: (i) [he] must suffer from one or more of the categories of impairments delineated in IDEA, (ii) [his] impairment must adversely affect [his] educational performance, and (iii) [his] qualified impairment must require special education and related services.” *D.R. ex rel. Courtney R. v. Antelope Valley Union High School*

Dist., 746 F.Supp.2d 1132, 1139 (C.D.C.A. 2010), quoting *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 899 (9th Cir. 1995); *see also* Robert A. Garda, Jr., *Untangling Eligibility Requirements Under the Individuals with Disabilities Act*, 69 Mo. L. Rev. 441, 458-459 (2004). Thus, a child with a medical diagnosis matching one of the listed disabilities is not automatically determined to be eligible for special education services. For example, if a child has one of the enumerated disabilities, but the child only needs a related service, and not special education, the child is not considered to be a child with a disability under IDEA. 34 C.F.R. § 300.8(a)(2)(ii).

6.

IDEA and its implementing regulations define “special education” as “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. . . .” 20 U.S.C. §1401 (29); *see also* 34 C.F.R. § 300.39(a)(1). The regulations further define “specially designed instruction” as “adapting, as appropriate . . . , the content, methodology, or delivery of instruction – (i) [t]o address the unique needs of the child that result from the child’s disability; *and* (ii) [t]o ensure *access* of the child to the *general curriculum*, so that the child can *meet the educational standards* within the jurisdiction of the public agency *that apply to all children.*” 34 C.F.R. § 300.39(b)(3)(i), (ii) (emphasis added). Thus, in order to be considered a child with a disability the child must require specially designed instruction in order to access or benefit from the general curriculum and meet the general education performance standards. *C.J. v. Indian River Cnty. Sch. Bd.*, 41 IDELR 120 (11th Cir. 2004); *Katherine S. v. Umbach*, No. 00-T-982-E, 2002 U.S. Dist. LEXIS 2523, at *28 (M.D. Ala. Feb. 1, 2002). Indeed, IDEA’s emphasis on the general education curriculum is evident by the numerous references in the Act and the implementing regulations. *See* 20 U.S.C. §§ 1414 (b)(2)(A)(ii), (c)(1)(B)(iv), (d)(1)(A)(i)(I)(aa),

(d)(1)(A)(i)(II)(aa), (d)(1)(A)(i)(IV)(bb), (d)(1)(B)(iv)(II), (d)(4)(A)(ii)(I),
(d)(5)(A)(iii)(II)(cc)(AA), 1415 (k)(1)(D)(i); 34 C.F.R. §§ 300.39(b)(3), 300.116(e), 300.226(a),
300.304(b)(1)(ii), 300.305(a)(2)(iv), 300.311(a)(7)(ii)(A), 300.320(a)(1)(i), 300.320(a)(2)(i)(A),
300.320(a)(4)(ii), 300.321(a)(4)(ii), 300.324(b)(1)(ii)(A), 300.530(d)(1), 300.530(d)(4),
300.704(b)(4), 300.711(a).

7.

IDEA “guarantees a ‘child with a disability’ as defined under the IDEA a ‘basic floor’ of educational opportunity.” *Alvin Ind. Sch. Dist. v. A.D.*, 503 F.3d 378, 382 (5th Cir. 2007), citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982)). The Supreme Court has noted that the “free appropriate public education” that states are required to provide must “be sufficient to confer some educational benefit upon the handicapped child.” *JSK v. Hendry Cnty. Sch. Bd.*, 941 F.2d 1563, 1572, quoting *Rowley*, 458 U.S. at 200 (emphasis added). IDEA does not, however, require states “to maximize the potential of each handicapped child.” *Rowley*, 458 U.S. at 200.

8.

It is true that the *Rowley* case addressed the level of services that must be provided to a student who had already been found to be eligible; however, at least one appellate court has decided that it is appropriate to use the benefit standard to determine whether a child is entitled to special education services. See *Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099, 1107 (9th Cir. 2007). Specifically, the court noted:

Just as courts look to the ability of a disabled child to benefit from the services provided to determine if that child is receiving an adequate special education, it is appropriate for courts to determine if a child classified as non-disabled is receiving adequate accommodations in the general classroom – and thus is not entitled to special education services – using the benefit standard.

Id. Therefore, students do not “need” and therefore are not eligible for special education

services, if they are receiving educational benefit with accommodations in the regular classroom. Additionally, if a child's needs can be adequately addressed with Section 504 services, then the child does not need special education services. Robert A. Garda, Jr., *Untangling Eligibility Requirements Under the Individuals with Disabilities Act*, 69 Mo. L. Rev. 441, 499-501 (2004).

9.

In *Alvin Ind. Sch. Dist. v. A.D.*, 503 F.3d 378 (5th Cir. 2007), the court considered whether a child (A.D.) with ADHD was entitled to special education services under IDEA. A.D. developed behavioral problems when he was in eighth grade, though he passed all of his classes and met standards on a statewide test. A.D.'s school recommended some informal interventions (much like an SST team) but failed to implement some of those interventions. Despite having significant behavioral issues, A.D. passed the eighth grade with one A, three B's, two C's, and one D. A.D.'s parents alleged that he should have been identified as a "child with a disability" under IDEA (specifically under the eligibility category of Other Health Impaired, or OHI, by virtue of his ADHD) and should have received special education services thereunder. At the administrative hearing, the ALJ took evidence (including evidence from A.D.'s teachers that he was doing well socially with teachers and peers) and found in favor of A.D. The school district appealed to district court, which reversed the decision of the ALJ and found in favor of the school district. A.D. then appealed to the Fifth Circuit Court of Appeals, which affirmed the district court decision.

10.

The Fifth Circuit specifically noted that IDEA "guarantees a 'child with a disability' as defined under the IDEA a 'basic floor' of educational opportunity." *Alvin Ind. Sch. Dist.*, 503 F.3d 378 at 382 (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982)). Further, a FAPE does

not require a school district “to maximize the potential of each handicapped child.” *Id.* at 200.

11.

The Fifth Circuit went on to note that “only certain students with disabilities...are eligible for IDEA’s benefits.” *Alvin Ind. Sch. Dist.*, 503 F.3d at 382. As stated earlier, in order to qualify for services under IDEA, a student must both “(1) have a qualifying disability [such as OHI] and (2) “by reason thereof, need[] special education and related services.” 20 U.S.C. § 1401(3)(A). Accordingly, the existence of a diagnosis does not necessarily entitle a student to IDEA services. Rather, a student must *require* special education and related services by reason of that disability. 20 U.S.C. § 1401(3)(A)(ii).

12.

The Fifth Circuit next determined that A.D. was not entitled to special education services under IDEA. Specifically, the court noted that, although A.D. did suffer an “adverse effect” on his educational performance through his ADHD, such an “adverse effect” only satisfied the first prong of IDEA’s eligibility standard and that “the fact that [his] ADHD adversely affected his educational performance “does not necessarily mean that he is eligible for special education services under IDEA.”³⁹ The Fifth Circuit went on to state that “A.D.’s passing grades and his success on the [statewide] test demonstrate academic progress” and further noted that “the achievement of passing marks and advancement from grade to grade [is] one important factor in determining educational benefit.” *Id.* at 384 (quoting *Rowley*, 458 U.S. at 207 n.28).

13.

Similarly, in *Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099 (9th Cir. 2007), the Ninth

³⁹ Importantly, the standard for eligibility under Other Health Impairment (“OHI”) as articulated in IDEA (and as explained in *Alvin Ind. Sch. Dist. v. A.D.*) is identical to the standard in Georgia. See 34 C.F.R. § 300.8(c)(9); DOE Rule 160-4-7-.05, Appendix G. Georgia also makes clear that its State rules regarding special education make clear that “it is not the intention of these Rules to change or expand the rights or responsibilities provided under any Federal law or regulation.” DOE Rule 160-4-7-.01(4). Accordingly, the Fifth Circuit’s reasoning in *Alvin Ind. Sch. Dist.* is persuasive.

Circuit Court of Appeals held that a child who received educational benefit in a regular classroom was not eligible for special education services under IDEA. In *Hood*, a student's parents enrolled her in a private school and demanded reimbursement from the school district, alleging a failure to identify her as a "child with a disability" under the eligibility category of OHI, within the meaning of IDEA. The student, Anna, showed high intellectual ability on cognitive measures. However, she had difficulty turning in homework on time and keeping her belongings organized. Accordingly, the school district implemented a Section 504 plan to accommodate her in the regular classroom. Anna's family provided a written request for an evaluation under IDEA, but the school district determined that she was not eligible because she was "performing at least in the average range academically." *Hood*, 486 F.3d at 1102. The school district asserted that Anna's Section 504 plan was the appropriate way to meet her needs.

14.

The Ninth Circuit affirmed a lower court decision and agreed with the school district. *Id.* at 1107. The court went on to affirm the ALJ's determination that the school district was under no obligation to provide special education, because the student's needs could be met with accommodations in the regular education environment. The court also noted that the school district's position – identical to the position in the instant matter – was "consistent with the concept of mainstreaming, an objective that the school district is legally bound to pursue." *Id.* at 1110; 20 U.S.C. § 1412(a)(5).

15.

District courts have reached similar conclusions. For instance, in *Katherine S. v. Umbach*, No. 00-T-982-E, 2002 U.S. Dist. LEXIS 2523, at *1 (M.D. Ala. Feb. 1, 2002), a student sued a school district for reimbursement for private school tuition under IDEA, alleging

that the school district had failed to identify the student, Katherine S., as a “child with a disability” within the meaning of IDEA and further failed to provide her required special education services. Although Katherine S. did well academically through the seventh grade, her grades dropped precipitously in eighth grade. *Id.* at *4. In the first semester of ninth grade, her grades fell even further, and she earned four *As*, three *Cs*, and one *D*. *Id.* at *4-5. Her achievement scores, which showed superior cognitive ability, showed that she was performing well below her ability. *Id.* at *4. Despite these poor grades, her teachers reported her to be a social young woman who actively participated in extracurricular activities and got along well with her teachers and her peers. *Id.* at *5-6. Near the end of her ninth grade year, Katherine S. was raped at school and did not return. *Id.* at *6-7. For tenth grade onward, her parents enrolled her in private school. *Id.* at *11.

16.

The district court agreed with the administrative hearing officer and determined that Katherine S. was not a “child with a disability” within the meaning of IDEA. The court noted that Katherine S. “was accessing, and achieving benefit in, the general education curriculum She attended school regularly, had friends, and participated in extracurricular activities.” *Katherine S.*, 2002 U.S. Dist. LEXIS, at *28-29. The court held that there was no evidence to suggest that she required specially designed instruction in order to access and benefit from the general curriculum.” *Id.* at *29. Given Katherine S.’s academic performance, the fact that she had friends, and her participation in extracurricular activities, the court determined that she was not entitled to special education services under IDEA and denied her parents’ claims for relief. *Id.* at *28-29.

17.

Similarly, in *Austin Ind. Sch. Dist. v. Robert M.*, 168 F. Supp. 2d 635 (W.D. Tex. 2001), a district court rejected a student's claim that he was entitled to special education services. In *Robert M.*, a student with attention deficit disorder (ADD) sought admission to a publicly-run and academically demanding *magnet school* within his school district. 168 F. Supp. 2d at 637. Robert M.'s mother informed the school of his diagnosis of ADD and that it had "adversely affected his grades." *Id.* The school granted him admission on the condition that he maintains a B average. *Id.* Unfortunately, Robert M. failed to regularly do his homework assignments, and his grades suffered as a result. *Id.* Although he failed to maintain a B average, the school allowed him to remain enrolled under renewable six-week contracts. *Id.* Robert continued to fail to do his homework and continued to get poor grades. Nevertheless, the school offered to put in place accommodations for him. It never had the opportunity to do so because Robert M.'s mother withdrew him and then filed suit under IDEA. *Id.* at 637-638.

18.

The court determined that Robert M. was not entitled to any special education services under IDEA, despite his diagnosis of ADD, and despite the adverse effect on his educational performance and grades. *Id.* at 639. The court stated that, even if Robert met the criteria for eligibility under OHI, he was still not a "child with a disability" under IDEA and accordingly not entitled to any special education services because he did not require special education services to benefit from his education. *Id.* The court noted that Robert needed "to commit to doing homework and regularly attending classes," rather than receive special education services. *Id.* The court further noted that, if the pressures of the magnet school were too much for him, his parent should have sent him to his home school. *Id.* at 639. Importantly, the court stated that

“[i]t would be a rare case indeed where a student who affirmatively chose to attend a magnet school for gifted students would be eligible for special education. The answer in most situations like this is to put the child in his home school before making special education available to the child.” *Id.* at 639-40.

19.

Indeed, the court noted that “[s]chools are not required to force or motivate students to take advantage of the education they offer Schools are also not required to spoon-feed students or to maximize their potential. They simply must offer a program that is reasonably calculated to confer an educational benefit upon the student.” *Id.* at 640.⁴⁰ In citing this decision, the United States District Court for the District of Oregon, used the following parenthetical to summarize a portion of the decision in *Robert M.*, which is as follows: “(schools are not required to force or motivate students to take advantage of the education they offer – this is the parents’ role).” *Ashland School District v. R.J.*, 585 F. Supp. 2d 1208, 1232 (D. OR. 2008).

20.

Similarly, in *Clay T. v. Walton County Sch. Dist.*, 952 F. Supp. 817 (M.D. Ga. 1997), a district court determined that a child diagnosed with attention deficit disorder (ADD) and a learning disability was not eligible under IDEA. Clay T. was (much like C.D.) a bright child whose grades suffered due to inconsistency and problems completing homework. 952 F. Supp. at 821. After failing every subject except P.E. and Art his parents met with the principal, the assistant principal, the counselor, and Clay T.’s fourth grade teacher. *Id.* at 820. The school

⁴⁰ The court noted further that “failing classes is not, by itself, sufficient evidence that an educational benefit is not being conferred upon the student. For example, if a student demonstrates an adequate grasp of the material on a test, but fails the class due to failure to perform any of the assignments, one would be hard-pressed to say that the failure to turn in assignments evidences a lack of educational benefit.” *Robert M.*, 168 F. Supp. 2d. at 640 n.6.

suggested that the parents take a “hands off” approach. *Id.* The parents agreed to try the approach and despite a subsequent improvement in Clay T.’s grades, they placed him in a private school. *Id.* Although he still displayed signs of inconsistency doing his homework at the private school, his grades improved and were generally satisfactory. *Id.* at 820-21. Clay T.’s parents then sought reimbursement for the costs associated with private school, as well as continued placement in the private school until he finished his twelfth grade year. *Id.* at 821.

21.

The district court determined that the school district in question had committed no error. Specifically, the court noted that the school district relied on private information provided by the parents in determining its educational programming for the child. The court went on to note that Clay T.’s “poor marks resulted not from an inability to comprehend or understand classroom material, but rather from his failure or refusal to turn in his assignments.” *Id.* at 823. The court found that there was a rational justification for the teachers not to recommend an IDEA evaluation. Accordingly, the court held that there was no Child Find violation. *Id.*

22.

In fact, the overwhelming weight of authority from a variety of courts around the country (including the Eleventh Circuit Court of Appeals and courts within its jurisdiction) shows that students who receive educational benefit in a regular education setting, with or without accommodations (whether or not they have a diagnosed disability, whether or not they fulfill eligibility criteria for one or more categories of eligibility, and whether or not they maximize their academic and/or educational potential) are not eligible for services under IDEA. This is so even when these students sometimes fail classes. Rather, so long as they are able to receive educational benefit in the regular education environment and without IDEA services, they are not

eligible for those IDEA services. *See, e.g., C.J. v. Indian River County Sch. Bd.*, 41 IDELR 120 (11th Cir. 2004) (student with bipolar disorder and oppositional defiant disorder ineligible for IDEA services, given her strong academic record and successful progression from grade to grade); *Norton v. Orinda Union Sch. Dist.*, 168 F.3d 500 (9th Cir. 1999), *cert. denied*, 528 U.S. 825 (1999) (student who met eligibility criteria for “learning disabled” was ineligible for special education and related services because of her success in the regular classroom with accommodations); *St. Joseph-Ogden Community High School Dist. No. 305 v. Janet W.*, 2008 U.S. Dist. LEXIS 3574 (C.D. Ill. 2008) (child with history of depression and suicide attempts not eligible for services under IDEA, as he passed his classes, albeit with grades that were not reflective of his full potential, and thus had received “educational benefit” without the need for IDEA services); *M.P. v. North East. Ind. Sch. Dist.*, 2007 U.S. Dist. LEXIS 87239, * (W.D. Tex. 2007) (despite the fact that he had failed his sixth and seventh grade years and failed a statewide assessment, child with ADHD was not eligible for IDEA because he did not require special education services to receive educational benefit); *R.B. v. Napa Valley Unified Sch. Dist.*, 43 IDELR 188 (N.D. Cal. 2005), *aff'd* 496 F.3d 932 (9th Cir. 2007) (despite poor grades and problematic behavior, child with ADHD, post-traumatic stress disorder, intermittent explosive disorder, and depression was not an eligible student under IDEA, as student was able to receive educational benefit with a Section 504 plan); *Hoffman v. East Troy Community Sch. Dist.*, 38 F. Supp. 2d 750 (E.D. Wis. 1999) (child with high intelligence and behavior problems who passed all but one class was not entitled to IDEA eligibility or reimbursement for private school costs, as he received “educational benefit” from his classes as required by IDEA, even though his performance was “certainly not reflective of his full potential”); *Doe v. Bd. of Ed. of the State of Connecticut*, 753 F. Supp. 65 (D.C. Conn. 1990) (child with behavior disorder was not eligible

under IDEA, because his academic performance was satisfactory); *Riverside Unified Sch. Dist.*, 49 IDELR 83 (California SEA 2007) (student with autism not eligible under IDEA because he could receive educational benefit in the regular education environment); *McMullen County Ind. Sch. Dist.*, 49 IDELR 118 (Texas SEA 2007) (despite several low, and one failing, grade, child with ADD and emotional issues was not eligible under IDEA because he did not require special education to receive educational benefit and because of existence of Section 504 plan for child).

23.

Here, there is no real dispute that C.D. has a diagnosis of ADHD, a qualifying disability under the eligibility category of OHI. DOE Rule 160-4-7-.05, Appendix G. However, the existence of such a qualifying disability is insufficient to establish eligibility under IDEA. Rather, in order to be eligible for IDEA services, C.D. must “need[] special education and related services” in order to access or benefit from the general curriculum. 20 U.S.C. § 1401(3)(A); DOE Rule 160-4-7-.05(1) (a child is a child with a disability within the meaning of IDEA if he “meets the eligibility criteria” in one or more eligibility category “and needs special education and related services”) (emphasis added); 34 C.F.R. § 300.39(b)(3)(i), (ii); *C.J. v. Indian River Cnty. Sch. Bd.*, 41 IDELR 120 (11th Cir. 2004); *Katherine S. v. Umbach*, No. 00-T-982-E, 2002 U.S. Dist. LEXIS 2523, at *28 (M.D. Ala. Feb. 1, 2002). C.D. was not enrolled in the general curriculum. Rather, he was enrolled in a very rigorous magnet program, which by all accounts, requires a tremendous amount of effort. Nonetheless, the evidence shows that C.D. received educational benefit and learned the educational standards that apply to all children. Additionally, he had no problems with social skills, behavior, or communication.

24.

Specifically, during the course of his enrollment in the Magnet program, he passed each

and every one of his classes until his senior year. In this program, from 9th grade through 11th grade, C.D. was enrolled in multiple Honor's level classes, Magnet classes, and AP level courses. Impressively, C.D. demonstrated his knowledge by his mastery of the Georgia Performance Standards in achieving the following scores/grades on his EOCT's in the following subjects: 9th grade Literature, 94; American Literature, 94; Mathematics, 94; Biology, 93; U.S. History, 93; and Economics, 95.⁴¹ C.D. also earned scores on AP exams which would merit college credit. Furthermore, he earned top marks on the SAT and ACT. In addition to superior academics, C.D. demonstrated leadership in classes and in extracurricular activities, like robotics club. Indeed, C.D. had made so much progress that, by December 2013, he was wait-listed at MIT.

25.

All standardized and statewide testing, likewise, shows excellent academic achievement and performance. Indeed, while in the Magnet program, C.D.'s PSAT scores reflect that, nationwide, he ranked higher than 87% of other sophomores in Critical Reading, 98% of other sophomores in Mathematics, and 90% of other college-bound seniors in Writing Skills. When C.D. took his SAT in December of his senior year, his scores reflect that, nationwide, he ranked higher than 95% of other college-bound seniors in Reading, 98% of other college-bound seniors in Mathematics, and 94% of other sophomores in Writing Skills. These SAT scores during senior year are consistent with C.D.'s PSAT scores sophomore year. When C.D. took the ACT in December 2012, his scores reflect that, with respect to "college readiness" for students who "will likely be ready for first-year college courses," he was at or above the requirements in all courses, including English, Mathematics, Reading, and Science.

⁴¹ As noted above, EOCTs measure the student's mastery of the Georgia Performance Standards (i.e., the general education curriculum).

26.

In addition, each and every one of C.D.'s teachers who had any knowledge of him agreed that C.D. was learning in his classes and benefitting from his education.

27.

C.D. was also involved in extracurricular activities while at _____ High School. He was a member of the school's Robotics Club, Philosophy Club and Leadership Club. He even was involved in a summer science camp where he and Mr. George provided instruction to elementary school students.

28.

Indeed, he was doing well socially by virtually all accounts. His teachers noted that he was social, had friends, was well-liked by students and adults alike, and got along well with others. There was no evidence presented to the contrary. Nor was there any evidence that C.D. had any behavioral problems or problems with communication. In fact, his teachers testified to the contrary.

29.

IDEA does not guarantee that a student will excel or even pass his classes in a rigorous magnet program. *See Rowley*, 458 U.S. at 200 (IDEA does not require states "to maximize the potential of each handicapped child"); *see also Austin Ind. Sch. Dist. v. Robert M.*, 168 F. Supp. 2d 635, 639-40 (W.D. Tex. 2001) ("It would be a rare case indeed where a student who affirmatively chose to attend a magnet school for gifted students would be eligible for special education. The answer in most situations like this is to put the child in his home school before making special education available to the child").⁴² Rather, IDEA guarantees students with a

⁴² The undersigned recognizes that there are situations in which a child with high cognition could be entitled to special education services. For example, in the case of a child with Asperger's Syndrome or Autism Spectrum

disability access to and some benefit from the general curriculum. *See Alvin Ind. Sch. Dist. v. A.D.*, 503 F.3d 378, 382 (5th Cir. 2007), citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982) (IDEA “guarantees a ‘child with a disability’ as defined under the IDEA a ‘basic floor’ of educational opportunity”); *JSK v. Hendry Cnty. Sch. Bd.*, 941 F.2d 1563, 1572, quoting *Rowley*, 458 U.S. at 200 (emphasis added)(the “free appropriate public education” that states are required to provide must “be sufficient to confer *some* educational benefit upon the handicapped child”). Here, C.D. obtained such benefit, and therefore did not need special education to access the general curriculum.

30.

Furthermore, as is *Clay T.*, there is no indication that C.D.’s lower grades resulted from an “inability to comprehend or understand the material.” *Id.* at 823. Rather, the credible evidence indicates that C.D.’s lower grades, for the most part, resulted from apathy or a conscious decision not to do certain assignments. *See id.*

The School District did not Violate its Child Find Duties to Identify and Evaluate C.D. Before the End of His Senior Year

31.

As noted *supra*, school districts are under a duty to identify, locate, and evaluate children who are suspected of being a child with a disability and who are in need of special education services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(c)(1).

Disorder who has problems with social skills or classroom behavior, special education and related services may be required to address those deficits. *See Letter to Addressee*, 112 LRP 52261 (OSEP 2012). However, that is not the situation presented here. Further, the undersigned is aware of other references in advisory letters from the Office of Special Education Programs, implying that students with high cognition and ADHD could be found eligible for special education services to address a lack of organizational skills and homework completion. *See Office of Special Education Programs, Letter to Anonymous*, <http://www2.ed.gov/policy/speced/guid/idea/letters/2010-1/redacted011310eval1q2010.pdf> (last visited December 4, 2013). However, the letter to which OSEP was responding apparently indicated that such student or students had struggles to timely complete “grade-level work.” There is no indication that the students, to whom OSEP was generically referring, were in a rigorous magnet school program. Further, this tribunal knows of no case law supporting the proposition that a student who voluntarily enrolls in a rigorous magnet school is entitled to special education services so that he may achieve specific grades or maintain a magnet seal, which is what the Plaintiffs seek.

32.

To establish a violation of the school district's "child find" duties, "[P]laintiff[s] must show that the school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." *Clay T. v. Walton Cnty. Sch. Dist.*, 952 F. Supp. 817, 823 (M.D. Ga. 1997); *see also Bd. of Educ. of Fayette Cnty. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) (adopting the standard articulated in *Clay T.*)

33.

As several courts have recognized, however, Child Find does not demand that schools conduct a formal evaluation of every struggling student. *See, e.g., J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011) ("The IDEA's Child Find provisions do not require district courts to evaluate as potentially 'disabled' any child who is having academic difficulties."). Further, a school's failure to diagnose a disability at the earliest possible moment is not *per se* actionable, in part because some disabilities "are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all." *A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 226 (D. Conn. 2008).

34.

With respect to Child Find, IDEA does not penalize school districts for not timely evaluating students who do not *need* special education. *D.G. v. Flour Bluff Independent School Dist.*, 481 Fed. Appx. 887, 893 (5th Cir. 2012); citing 20 U.S.C. §§ 1401(3)(A), 1412(a)(3)(A) (Child Find); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009) (noting Child Find requires States to identify and evaluate children with disabilities "to ensure that they receive *needed* special-education services"). Thus, it is clear that if a court determines that a child does not *need* special education during the period of time the parents

contend their child should have been identified via Child Find, there can be no Child Find violation. *D.G. v. Flour Bluff Independent School Dist.*, 481 Fed. Appx. 887, 893 (5th Cir. 2012). In addition, steps that a school district takes toward offering a student substantial accommodations en route to later identifying a student make it difficult for courts to find that a school district violated Child Find. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 252 (3rd Cir. 2012).

35.

Here, Plaintiffs failed to establish that the District overlooked clear signs of a disability or that there was no rational justification for not deciding to evaluate. Admittedly, the District and C.D.'s teachers were aware that C.D. had a diagnosis of ADHD and that he was being serviced by a 504 plan. However, as noted above, a diagnosis does not automatically mean that the child is a "child with a disability" for purposes of IDEA eligibility.

36.

In this case, C.D. often told his teachers that he would get his homework or his assignments in "tomorrow," and because C.D. had done so in the past, his teachers believed that he would do so during his senior year. In fact, in corresponding with C.D.'s teachers, his parents often indicated that C.D. would be submitting the missing assignments within a few days.

37.

During his junior year, one of his teachers received an email from C.D.'s mother that was intended for C.D. In the email, C.D.'s mother told C.D. he needed to take his class "a bit more seriously and stop blowing off [his] responsibilities."

38.

After he failed to turn in many assignments for his Internship and Research classes, C.D.

told Dr. Adams that he did not take the class seriously. He further wrote her an email indicating that his failure to complete the assignments was due to his lack of effort. Similarly, in a 504 meeting, C.D. admitted that he was behind due to his own procrastination.⁴³ He did not say that he was overwhelmed or that he could not do the work. During that same meeting, Mr. D. stated that C.D. would tell him and his wife that he did not have any homework, when, in fact, he did.⁴⁴

39.

Furthermore, C.D.'s scores on the EOCTs indicated that he was learning the Georgia Performance Standards. C.D. was not merely advancing from grade to grade; in many respects he was excelling. There was no indication that C.D. had any behavioral problems, or any problems with social skills or communication.

40.

The curriculum in the _____ Magnet School is extremely rigorous. The evidence indicated that other students do fail to submit assignments and do fail some of the courses.

41.

Throughout C.D.'s time at _____, Mr. George, C.D.'s engineering teacher, saw C.D. as an intelligent student, who was "better than most," and capable of independently soldering without incident.

42.

With knowledge of these facts, and in light of the testimony of Plaintiffs' experts regarding the hidden nature of executive functioning disorder, C.D.'s teachers had reasonable grounds to believe that C.D.'s failure to turn in assignments was due to his lack of effort and not

⁴³ C.D.'s own admissions and the observations of his teachers support an inference that C.D. simply did not put forth the effort in his senior year that he had put forth in previous years.

⁴⁴ Notably, Mr. D did not say that C.D. could not recall whether he had homework. Rather, C.D. affirmatively told his parents that he did not have homework.

due to his disability. Thus, they did not ignore clear signs of a disability, or at a minimum, they had a very rational basis for not entertaining an evaluation for special education services.

The District Did Not Deny C.D. a FAPE

43.

As noted above, the evidence is insufficient to support a finding that the District should have found C.D. to be eligible for IDEA services prior to the end of his senior year.⁴⁵ Because C.D. was not a “child with a disability” for purposes of IDEA eligibility, the District was under no obligation to provide IDEA services to C.D. *See Alvin Indep. Sch. Dist. v. A.D.*, No. G-05-678, 2006 U.S. Dist. LEXIS 75016, at *17 (S.D. Tex. Oct. 6, 2006). Accordingly, it follows that the District was not required to provide C.D. with a FAPE pursuant to IDEA. Notwithstanding, the evidence shows that the District did, in fact, provide C.D. with a FAPE, as indicated by the educational benefit he received.

The District Did Not Deny Plaintiffs Their Procedural Rights

44.

Plaintiffs assert that the District failed to timely provide them with their procedural rights under IDEA. More specifically, Plaintiffs contend that they were entitled to receive a copy of their IDEA rights for years.⁴⁶ The duty to provide these rights to families whose students are not yet eligible for IDEA services, however, is only triggered when a family requests a copy of the

⁴⁵ The fact that the District ultimately found C.D. eligible in September 2013, after the end of his senior year does not change the analysis here. C.D.’s performance during his senior year, and, more specifically, during the last semester of his senior year was vastly different than his performance in grades 9 through 11. Furthermore, Plaintiffs did not request an IDEA evaluation until May 2, 2013. Plaintiffs obtained an independent evaluation from Dr. Deckelbaum in April 2013, but did not provide the District with a copy of the report until the September 3, 2013 eligibility meeting. As the District’s eligibility determination occurred in September of 2013, after Plaintiffs filed their Complaint, the propriety of that determination is outside the scope of this hearing. *See* 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

⁴⁶ Plaintiffs assert that they requested an IDEA evaluation prior to high school. However, the Memorandum Opinion and Order on Statute of Limitations issued on September 9, 2013, limited Plaintiffs’ claims to those alleging violations that occurred within the two years preceding their complaint. Thus, the only time Plaintiffs requested an evaluation within the statute of limitations was at the end of the 2012-2013 school. At that time, Plaintiffs were given a copy of their procedural rights.

rights, a family requests an evaluation, or a child is referred to special education via an initial referral. 34 C.F.R. 300.504(a)(1), (4). Here, and as described above, C.D. was not a child with a suspected disability at any point prior to the end of his senior year. When Plaintiffs requested an evaluation at the end of the 2012-2013 school year, they were given a copy of their procedural rights. Further, there is no evidence that Plaintiffs requested a copy of the procedural safeguards at any other time. Thus, there can be no violation of the duty to provide procedural safeguards under IDEA.

45.

Plaintiffs failed to establish that the District committed a procedural violation of IDEA by failing to provide them with their procedural safeguards. Moreover, any alleged procedural violations are not actionable as C.D. was not found to be an eligible student under IDEA until September 2013.⁴⁷ Accordingly, any procedural violation is harmless if a child is not otherwise eligible for IDEA's benefits. Because C.D. was not a "child with a disability" within the meaning of IDEA, Plaintiffs are not entitled to any relief.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiffs' requests for relief are **DENIED**.

SO ORDERED, this 5th day of December, 2013.

STEPHANIE M. HOWELLS
Administrative Law Judge

⁴⁷ Specifically, "a procedural violation cannot qualify an otherwise ineligible student for IDEA relief." *R.B. v. Napa Valley Sch. Dist.*, 496 F.3d 932, 942 (9th Cir. 2007).