IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

FULTON COUNTY SCHOOL DISTRICT, Plaintiff, v. J.F., *a minor by and through his parent and next friend J.A.*, and J.A., Defendants.	*	1:20-CV-01675-ELR

O R D E R

There are several matters pending before the Court. The Court sets out its rulings and conclusions below.

I. Factual Background

This case concerns the educational placement of an elementary school student with disabilities. See generally Am. Compl. [Doc. 18]. In the instant action, Plaintiff Fulton County School District ("FCSD") requests that this Court review the decision of an Administrative Law Judge ("ALJ") from the Georgia Office of State Administrative Hearings ("OSAH"). See id.

The student in this matter, J.F., is eight (8) years old, and his mother, Defendant J.A. (together, "the Family"), works as an educator at a school in Fulton

County. [Docs. 30-2 ¶ 1; 36-13 at 798]. Plaintiff FCSD is a public school district responsible for the control and operation of public elementary and secondary schools in Fulton County, Georgia.

As a student with disabilities, J.F. is entitled to a free and appropriate public education ("FAPE")[1] pursuant to the Individuals with Disabilities Education Act ("IDEA"), as implemented through an individualized education program ("IEP").[2] See 20 U.S.C. § 1400(d)(1)(A). Key to FAPE is the requirement that schools provide education for students with disabilities in the least restrictive environment ("LRE"), meaning "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who [do not have disabilities]." See 34 C.F.R. § 300.114(a)(2)(i). Thus, FCSD was required to provide FAPE to J.F. by "provid[ing] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." See Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). Determining the necessity of individualized services is a

[1] Pursuant to the relevant Georgia Rules and Regulations, FAPE includes special education and related services that:

(a) are provided at public expense, under public supervision and direction, and without charge;
(b) meet the standards of the State, including the requirements of this part;
(c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) are provided in conformity with an individualized education program (IEP) that meets the requirements of the IDEA 2004.

See Ga. Comp. R. & Reg. §160-4-7-.21(19).

[2] An IEP is "a written statement for a child with a disability that is developed, reviewed, and revised" in accordance with the IDEA. See 20 U.S.C. § 1401(14).

decision made by an IEP Team, which consists of (at minimum) the child's parent(s) or guardian, a general education teacher, a special education teacher, and a representative of the Local Education Association. See Ga. Comp. R. & Regs. §§ 160-4-7-.06(5)(a)–(g); 160-4-7-.15(3)(a), 4(a), 5(b).

In August of 2017, Defendant J.F. started kindergarten at River Eves Elementary School in FCSD. [See Doc. 36-13 at 801]. While River Eves was not the school J.F. would have attended based on standard school district zoning, it was the nearest elementary school to where his mother, J.A., worked as an educator. [See id.] Thus, J.A. sought and received a hardship waiver for J.F. to attend River Eves. [See id.]

Once he started kindergarten, J.F. began exhibiting disruptive behaviors, including hitting others, eloping, and experiencing difficulty calming down. [See id. at 802–803]. As a result, J.F. was suspended several times within the first month of school. [See id. at 803, 805]. On August 16, 2017, J.A., seeking behavioral support services for her son, completed a Student Support Team ("SST")[3] Questionnaire. [See id. at 803–805, 811].

After a number of disciplinary incidents involving J.F. during the first few weeks of school, FCSD revoked the child's hardship waiver to attend River Eves on

[3] A SST is "an interdisciplinary group that uses a systematic process to address learning and/or behavior problems of students, K–12, in a school." Ga. Bd. of Ed. R. 160-4-2-.32. Public school districts in Georgia employ a multi-tiered approach to intervention, with SST being in Tier 3.

August 20, 2017. [See id. at 950–52]. At the time, the Family resided in DeKalb County, Georgia, and thus, J.A. was told to enroll J.F. in the DeKalb County school system. [See id. at 810]. However, because the Family was already in the process of moving to Fulton County during this time, J.A. decided to homeschool J.F. for a month to avoid transitioning him to a new school twice within such a short time. [See id.]

Subsequently, on October 2, 2017, J.F. was enrolled in kindergarten at Dolvin Elementary School in Fulton County. [See id. at 815]. That same day, J.A. participated in a SST meeting with J.F.'s teacher (Jessica Hemman) and the school principal (Laura Zoll) to discuss J.F.'s behavioral support needs. [See id.] During the meeting, J.A. shared information about J.F.'s prior behaviors and offered suggestions on interventional strategies, which the school incorporated into the SST plan. [See id. at 965]. J.A. also signed forms consenting to comprehensive testing of J.F. [See id. at 964].

Accordingly, on October 10 and 12, 2017, Dr. Maureen Inness (an FCSD school psychologist) conducted a psychological evaluation of J.F. [See id.] Additionally, on October 24–25, 2017, Laurie Kaplan (an FCSD speech language pathologist) conduced a speech evaluation of J.F. [See id. at 965–66; Doc. 42-1 at 16].

From his first days at Dolvin Elementary, J.F. exhibited behaviors such as hitting, throwing, turning things over, and eloping. [See Doc. 36-13 at 1705]. He hit other students and teachers, causing Administrators to be "on call" daily to address J.F.'s behaviors. [See Doc. 53-1 at 6]. According to school staff, J.F. had to "constantly" be "physically restrained" and, as a result, the school eventually created a crisis plan. [See Doc. 36-13 at 1407–09].

Due to J.F.'s behaviors, a meeting occurred between school officials and J.A. on October 27, 2017, to determine J.F.'s eligibility for special education ("SPED") services. [See Doc. 36-9 at 194]. During that meeting, it was determined that J.F. met the eligibility criteria for SPED services. [See id. at 205–06]. Immediately after the eligibility determination meeting, the participants (now the IEP Team) conducted a meeting to create an IEP for J.F. [See Doc. 36-13 at 834–42]. During the initial IEP meeting, the IEP Team determined that J.F. would receive co-teaching support for reading, writing, and math. [See id. at 1709–10]. This meant that J.F. would remain in Hennman's general education classroom with a paraprofessional, Allison Polaski, co-teaching J.F. along with other SPED students. [See id. at 1710]. Notably, J.F.'s initial IEP did not contain behavioral supports or a behavioral intervention plan ("BIP"),[4] nor did it include any other supplemental aids or

[4] A BIP is a "plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings." Ga. Comp. R. & Reg. §160-4-7-.21(7).

instructional services inside or outside of the general education classroom. [See Doc. 36-9 at 214–18]. However, the IEP team agreed that a Functional Behavior Assessment ("FBA")[5] would be completed for J.F. and that a BIP would be developed based on the FBA. [See id. at 223; Doc. 36-13 at 837].

Over the next month, J.F. continued to display disruptive behaviors, making it necessary for Polaski to "focus on J.F. and his behaviors[,]" reducing the assistance she could provide to the other students with disabilities in the co-taught classroom. [See Docs. 36-13 at 1411; 18-1]. During this time period, J.F. was suspended multiple times. [See Doc. 36-13 at 1722].

On November 17, 2017, the IEP Team conducted a second meeting to develop new behavioral goals for J.F. [See Doc. 36-9 at 241]. During that meeting, the IEP Team evaluated the results of the FBA conducted by Shanee Halbert, a Board-Certified Behavior Analysist ("BCBA") who works for FCSD. [See Doc. 36-13 at 857–59]. Upon reviewing the results of the FBA, J.A. expressed her concern regarding the absence of details regarding triggering antecedents related to J.F.'s known behavioral challenges and the lack of specificity regarding when physical restraints might be used. [See Docs. 36-9 at 257; 36-13 at 859–60]. Ultimately,

[5] A FBA is "[a] systematic process for defining a child's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a [BIP] should be developed." Ga. Comp. R. & Reg. § 160-4-7-.21(20).

some members of the IEP Team concluded that "the intensity, duration, and frequency of behaviors" interfered with J.F.'s educational performance in his current co-taught classroom.[6] [See Doc. 36-9 at 258]. Thus, the IEP Team determined that J.F. would remain in the co-taught setting for math, but would be placed in a separate class for reading and writing (English Language Arts, or "ELA"). [See id.] The updated IEP (the "November 2017 IEP") also provided professional support for J.F. during lunch and recess. [See id.] J.A. disagreed with the decision to move J.F. to a more restrictive setting for his ELA courses. [See id. at 258; Doc. 36-13 at 854]. Once again, the November 2017 IEP again did not include any significant supplemental aids or services, which are "services and personnel needed by the child or on behalf of the child in order to participate in the general curriculum or educational programs."[7] [See Doc. 36-9 at 248, 252].

Additionally, in November 2017, FCSD developed a BIP for J.F. [See id. at 471]. Later that month, FCSD engaged Dr. Jennifer Alexander, an independent BCBA (not employed by FCSD) and owner of Comprehensive Behavioral Change ("CBC"), to train the Dolvin staff on implementing J.F.'s BIP. [See Doc. 36-13 at 1951–52, 1956–57]. Dr. Alexander also began observing and working with J.F. during December 2017. [See id. at 2350–51]. To quantify the effectiveness of J.F.'s

[6] A co-taught classroom includes general education students and students receiving special education services.

[7] The only supplemental aids and services listed were that J.F. would be "[p]rovid[ed] assistance to log-in on computer programs" and "[p]rovid[ed] color pencils with erasers." [Doc. 36-9 at 248].

current BIP, Dr. Alexander taught the staff to use a tally counter (or "clicker"), which they would click each time they observed J.F. exhibiting certain behaviors. [See id. at 2353].

Between November 2017 and January 2018, J.F. continued to exhibit behaviors of elopement, property damage, and hitting. [See id. at 1761–62]. The BIP in place for J.F. during this time provided that whenever he displayed aggressive behaviors, he would be placed in a separate "calm down room" for de-escalation purposes. [See id. at 1764]. Polaski testified that the time it took for J.F. to de-escalate varied. [See id.] Sometimes, it took one (1) minute, five (5) minutes, or twenty (20) minutes for J.F. to de-escalate; however, the longest it ever took was one and one half (1.5) hours. [See id.]

The IEP Team for J.F. met for a third time on January 12, 2018. [See Doc. 36-9 at 260]. At this meeting, the team determined that J.F. needed a 1:1 paraprofessional at all times to assist him "with accessing the curriculum, maintain[ing] behavior and/or participat[ing] safely." [See id. at 268]. The IEP Team also determined that J.F. should be placed in a special education classroom for homeroom, recess, ELA, and two-thirds (2/3) of an instructional segment of math. [See id. at 279]. Further, the IEP Team concluded that J.F. required occupational therapy ("OT") and speech language pathology ("SLP") testing. [Doc. 36-13 at 874–76].

During the January 12, 2018 meeting, the IEP Team discussed for the first time the possibility of changing J.F.'s educational placement to a school within the Georgia Network for Educational Therapeutic Support ("GNETS") system. [See Doc. 36-9 at 278]. GNETS is a statewide program designed to provide specialized educational environments for students diagnosed with certain emotional and behavioral disabilities. [See Doc. 36-13 at 1416–18, 1427–34]. GNETS is the most restrictive setting for special education. [See Doc. 18-1 at 17 ¶ 41]. GNETS placement decisions are based on data collected by the school making the referral using a process known as "triangulation." [See Doc. 36-13 at 2402]. During the triangulation process, three (3) data points are evaluated: a student's BASC-3 score,[8] an SDQ,[9] and the student's social history. [See id.] GNETS then "triangulates" that data to generate a "rating" to determine if a student should be placed into the program and to determine the top behavioral or emotional challenges for which a student needs support. [See id.]

J.A. expressed her concern about usage of the "calm down" room, physical restraints, and the suggestion of GNETS. [See id. at 870–73]. That same day, the independent BCBA, Dr. Alexander of CBC, developed a new BIP for J.F., which provided functional communication training ("FCT") (a method of training students

[8] A BASC-3 score is a "standardized and nationally normed instrument used by psychologist to identify areas where the child might have behavioral needs." [Doc. 18-1 at 8 ¶ 18].
[9] A SDQ is a "strengths and difficulties questionnaire[.]" [Doc. 36-13 at 2402]. A SDQ is "a screener and not a psychometric-normed instrument." [Doc. 18-1 at 8 ¶ 18].

to replace "problem" behaviors with functional ways of communicating). [See id. at 2352]. Dr. Alexander's BIP created a red-green card system, whereby J.F. was required to work while the red card was displayed and granted play time when the green card was displayed. [See id. at 2353].

A fourth IEP meeting was held on February 20, 2018. [See Doc. 36-9 at 280]. During this meeting, the IEP Team discussed the behaviors J.F. continued to display, and GNETS was again brought up as a possible alternative placement for him. [See id. at 297–98].

It was agreed that a representative from GNETS would come to observe J.F. on February 27, 2018. [See id. at 298]. It was also noted that J.F. should be evaluated "in speech-language [and] rating scales," and tested for autism. [See id.] Between February and March 2018, J.F.'s behavior began to improve.[10] [See Docs. 36-13 at 2051–52, 2053–55; 36-10 at 288–91].

Sometime during the school year, FCSD engaged Jeron Trotman, a behavioral analyst for Southern Behavioral Group, to conduct an independent FBA to determine what was causing J.F.'s behaviors. [See Doc. 36-13 at 181, 195]. Trotman observed J.F. in his classrooms and conducted a review of the FBA and BIP. [See id. at 195–96]. Based on his evaluations, Trotman opined that the current FBA and BIP were

[10] In fact, Dr. Alexander testified that in email communications between herself and J.A., she informed J.A. that J.F. was experiencing behavioral progress. [See Doc. 36-13 at 2053–2055].

incomplete and overly generalized. [See id. at 217, 221]. Trotman also disagreed with the usage of the red-green card system, noting that it actually increased J.F.'s aggressive behavior. [See id. at 202–05]. Trotman recommended that the staff implement differential reinforcement, environmental modifications, and use "do" rather than "don't" statements. [See id. at 205–08]. Further, Trotman recommended additional training for school staff, stating that J.F. was capable of remaining in a general education classroom with proper supports. [See id. at 208–210, 264–65]. Finally, Trotman opined that none of his suggestions would require J.F. to receive a placement outside a general education setting. [See id. at 264–65]. Additionally, on March 12, 2018, Allison Bartelson, an Occupational Therapist for FCSD, completed an OT evaluation of J.F. [See Doc. 42-1 at 329]. She concluded that OT services were not necessary for J.F. [See id.]

On March 16, 2018, an annual review IEP meeting was held. Trotman presented his results at this meeting, although he left before discussions occurred. [See Doc. 36-13 at 211–13]. Dr. Alexander provided that J.F. was completing more work and no longer eloping from the classroom. [See id. at 2373–75]. Further, she explained that following changes made in the FCT system, there would be expected spikes in J.F.'s behavior as he adjusted to these new goals. [See id. at 2375]. Despite J.F.'s behavioral improvements in some areas, certain members of the IEP Team strongly believed that the GNETS program was the only appropriate educational

placement for J.F. [See Doc. 36-9 at 325–26]. J.A. did not agree. [See Doc. 36-13 at 902–04, 907].

Consequently, in April 2018, J.A. removed J.F. from Dolvin and homeschooled him for the remainder of the school year. [See id. at 912–13]. During the summer of 2018, J.F. was diagnosed with attention deficit hyperactivity disorder ("ADHD") and began taking medication. [See id.] According to J.A., J.F.'s demeanor and behavior improved. [See id. at 914].

However, in August 2018, J.F. was enrolled at New Prospect Elementary School ("New Prospect") in their GNETS program. [See id. at 913]. J.F. was placed in Rafael Jordon's classroom, which included one (1) paraprofessional and one (1) assistant. [See id. at 2417]. Jordon's classroom had five (5) total students, including J.F., of varying ages. [See id.]

From his time at New Prospect in August 2018 to October 2018, J.F. mastered all four (4) behavioral objectives from his IEP. [See id. at 2434; Doc. 36-9 at 374]. Additionally, Jordon completed a BASC-3 assessment based upon J.F.'s performance from August 2018 to October 2018. [See Doc. 36-13 at 2435]. In his assessment, Jordon did not identify any behaviors by J.F. which required intervention. [See id. at 2434–35].

In October 2018, the IEP team met to review J.F.'s progress and amend the IEP. [See Doc. 36-9 at 355]. During that meeting, the IEP Team modified J.F.'s

behavioral goals from one hundred and two (102) incidents of aggression a day to two (2) incidents per day. [See id. at 364; Doc. 36-13 at 246–47]. J.A. once again expressed concern with the GNETS placement and "subjective" nature of the test results. [See Doc. 39-9 at 374]. However, the IEP Team did not discuss placing J.F. "in a less restrictive setting, even though the previous goal[s] had been mastered." [See Doc. 18-1 at 13 ¶ 34].

By the end of the 2018–2019 school year, J.F. was averaging twenty-seven (27) incidents of aggression per day, and his teacher noted vast social improvements. [See Doc. 36-13 at 2421]. J.F.'s behavior continued to improve during the 2019–2020 school year. [See id. at 2422].

In the spring of 2019, educational consultant Dr. Holly Ward met with the Family, observed J.F. in his current educational placement, and reviewed J.F.'s educational record. [See id. at 1011–12]. Upon review, Dr. Ward determined that J.F.'s continued placement in GNETS was unnecessary. [See id. at 1022, 1029]. Instead, she recommended that J.F. be placed in a co-taught general education setting with appropriate supports in order to provide J.F. access to more rigorous academic work. [See id. at 1031]. She also opined that a co-taught general education classroom would offer J.F. the opportunity to "learn appropriate communication" from other students. [See id. at 1032]. In her observation of him in GNETS, Dr.

Ward stated J.F. did "not exhibit the behavioral issues that were listed in his IEP." [See id.]

In June 2019, Mindy Cohen (an expert in speech language pathology) conducted an independent evaluation of J.F. [See id. at 364, 378–79]. She identified a speech sound disorder, a significant receptive-expressive language disorder, a social communication disorder, and a reading disorder. [See id. at 370–75, 380–83]. Based upon her evaluation of J.F., Cohen recommended that J.F. receive SLP services and specialized academic instruction. [See id. at 421–22].

On April 16, 2019, occupational therapist Kimberlee Wing conducted an independent evaluation of J.F., observing him in both the GNETS classroom and a clinical setting. [See id. at 671–72]. Based upon her observations and evaluation, she concluded that J.F. qualifies for OT services and requires both individual and group therapy. [See id. at 713–14].

After a student is enrolled into GNETS, a reintegration plan is typically developed within six (6) to eight (8) weeks. [See id. at 930]. At the New Prospect GNETS program, a reintegration plan includes five (5) steps that lead to an eventual transition out of GNETS. [See id.] J.A. was not informed of the details of the five (5)-step reintegration process, or how to ensure that J.F. exited GNETS. [See id. at 930–931]. Thus, J.A. initiated the underlying OSAH proceeding because she felt it was "the only way . . . to get [J.F.] out of GNETS[.]" [See id. at 935].

II. Procedural Background

On December 14, 2018, Defendants initiated the underlying OSAH proceeding (J.F., by and through J.A., and J.A. v. Fulton County School District, Docket No. 1920354, Agency Ref. No. 2327821061) by filing a Due Process Hearing Request ("DPHR"). [See Doc. 36-1]. In the DPHR, J.F. and J.A. brought four (4) counts against FCSD, alleging various violations of J.F.'s federally guaranteed educational rights, including improperly placing J.F. in GNETS.[11] [See id. at 21–33]. As a result of these alleged violations, the Family sought relief from FCSD, including: (i) SLP services; (ii) OT instruction; (iii) one hundred (100) hours of compensatory education services; and (iv) removal of J.F. from his GNETS placement. [See id. at 33–36].

Over the course of several days in September 2019, the ALJ conducted an administrative hearing on J.F.'s due process claims. [See Docs. 36-13, 42-1]. On January 21, 2020, the ALJ issued the Final Decision, which held that J.F. was "unnecessarily and prematurely placed into GNETS, and inappropriately continued in this restrictive placement since the October 2018 IEP meeting." [Doc. 18-1 at 20 ¶ 6]. Accordingly, the ALJ ruled that FCSD "violated J.F.'s right to FAPE because

[11] The four (4) counts the Family brought against FCSD were: (I) Violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Vocational Rehabilitation Act of 1973, as amended; (II) procedural violations of the IDEA; (III) denial of free appropriate public education ("FAPE") pursuant to the IDEA; and (IV) failure to provide the least restrictive environment ("LRE") and placement pursuant to the IDEA. [See Doc. 36-1 at 21–33].

GNETS was not the LRE" and "J.F.'s educational performance did not require GNETS restrictive placement after October 2018." [Id. ¶ 5]. Consequently, the ALJ determined that the Family was entitled to the following relief:

> - The IEP team shall create an IEP to transition J.F. back to the LRE, a FCSD co-taught setting.
> - J.F. shall receive speech language therapy in accordance with the recommendations of [Mindy] Cohen's report.
> - J.F. shall receive individual occupational therapy for two thirty-minute sessions per week, group occupational therapy for two thirty-minute sessions per week, one thirty-minute OT consult each week, and a sensory regulation program and social skills group, in accordance with [the recommendations of Kimberlee] Wing's report.
> - J.F. shall receive eighteen months of individualized compensatory education services, designed by the IEP team and including Extended School Year [("ESY")], to close the achievement gap.
> - FCSD shall hold an IEP meeting to conform J.F[.]'s IEP to the terms of this Order.

[Id. at 22–23 ¶ 9].

In the instant action, Plaintiff appeals the ALJ's Final Decision, claiming it is erroneous. See generally Am. Compl.

On September 23, 2020, Defendants filed their "Motion for Enforcement of IDEA Maintenance of Placement." [Doc. 30]. Additionally, the Parties have each filed their respective motions for judgment on the administrative record. [See Docs. 48, 53]. Having been fully briefed, these motions are now ripe for the Court's review.

III. Legal Standard

The Court begins by setting forth the relevant legal standard. If the parents or guardians of a child with disabilities are dissatisfied with the adequacy of the education provided, the IDEA provides a mechanism for them to seek relief through a DPHR. See 20 U.S.C. § 1415(f). Any aggrieved party has the right to appeal the decision made at the Due Process Hearing. See id. § 1415(i)(1)(A). "In such an action, the court (1) receives the records of the administrative proceedings, (2) hears additional evidence at the request of a party, and (3) grants such relief as the court determines is appropriate, basing its decision on the preponderance of the evidence." Cobb Cnty. Sch. Dist. v. A.V., 961 F. Supp. 2d 1252, 1263 (N.D. Ga. 2013).

When reviewing an administrative record in an IDEA action,

> the District Court gives due weight to the ALJ decision, and must be careful not to substitute its judgment for that of the state educational authorities. But the ALJ is not entitled to blind deference. The District Court is free to accept the ALJ's conclusions that are supported by the record and reject those that are not.

R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1178 (11th Cir. 2014) (internal quotation and citation omitted). If the Court rejects the ALJ's conclusions, it must explain its reasons for doing so. See id.; see also Loren F. ex rel. Fisher v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1313 n.5 (11th Cir. 2003) ("[A]dministrative factfindings are considered to be prima facie correct, and if a reviewing court fails to adhere to them, it is obliged to explain why.") (internal marks and citation omitted).

The Court reviews specific findings of fact for clear error and the interpretation of a federal statute de novo. See Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1284 (11th Cir. 2008) (internal quotation omitted). In addition, a judgment on the record is based on the preponderance of the evidence, even when the facts are in dispute. See R.L., 757 F.3d at 1178; see also 20 U.S.C. § 1415(i)(2)(C)(iii).

Ultimately, "[a] court reviewing an administrative decision under the IDEA asks only two questions: (1) whether the school complied with the IDEA's procedural requirements, and (2) whether the IEP developed for the student is 'reasonably calculated to enable the student to receive educational benefits.'" See K.I. ex rel. Jennie I. v. Montgomery Pub. Sch., 805 F. Supp. 2d 1283, 1291 (M.D. Ala. 2011) (quoting Loren F., 349 F.3d at 1312).

IV. Motions for Judgment on the Record [Docs. 48, 53]

Having set forth the relevant legal standard, the Court now turns to the Parties' motions for judgment on the administrative record. Both Parties in this case move for a determination on the merits based on the administrative record. [Docs. 48, 53]. Plaintiff seeks to overturn the ALJ's decision, while Defendants seek a judgment upholding the ALJ's decision.

A. Legal Framework for IDEA

The Court finds it instructive to begin with the IDEA's underlying purpose: "to ensure that all children with disabilities have available to them a free appropriate

education that emphasizes special education and related services designed to meet their unique needs[.]" See 20 U.S.C. § 1400(d)(1)(A). As mentioned above, a key requirement of FAPE is the educational placement of a child with disabilities in the LRE—ensuring to the "maximum extent appropriate" that children with disabilities are "educated with children who" do not have disabilities. See 34 C.F.R. § 300.114(a)(2)(i). To determine the LRE, courts in the Eleventh Circuit apply a two (2)-part test, as enumerated in Greer v. Rome City Sch. Dist., 950 F.2d 688, 696 (11th Cir. 1991).

> To determine whether a student's IEP provides for education in the LRE, the court asks "whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily." Greer, 950 F.2d at 696. If the answer is yes and the IEP nonetheless provides for the student to be removed from the mainstream, then the school district has violated the IDEA's requirement that a placement be provided in the LRE and the court's inquiry is complete. However, if the answer is no "and the school intends to provide special education or to remove the child from regular education," the court asks "whether the school has mainstreamed the child to the maximum extent appropriate." Id.

Cobb Cnty. Sch. Dist. v. A.V., 961 F. Supp. 2d 1252, 1265 (N.D. Ga. 2013).

B. Analysis

Having laid out the relevant framework, the Court turns to the Parties' arguments.[12] In its motion, Plaintiff claims that the ALJ erred in four (4) ways: (1)

[12] As an initial matter, the Court notes that it is deferential to the ALJ's findings of fact. The ALJ presided over a multi-day hearing and was in the best position to weigh the evidence and evaluate the credibility of the witnesses. Thus, the Court will not lightly set aside the ALJ's findings and judgment, except for good cause. See R.L., 757 F.3d at 1178.

the ALJ erred in determining that GNETS was not the LRE in which J.F. could receive FAPE; (2) the ALJ erred by relying exclusively on Defendants' expert witnesses without providing a rationale to discount Plaintiff's contrary testimony and evidence; (3) the ALJ erred in awarding OT and SLP services; (4) the ALJ erred in awarding compensatory damages. [See generally Docs. 53-1, 54].

Upon careful review, the Court finds that the ALJ's factual findings and legal conclusions were well-reasoned and supported by a preponderance of the evidence. See Cory D., by & through Diane D. v. Burke Cnty. Sch. Dist., 285 F.3d 1294, 1298 (11th Cir. 2002) ("[U]nder the IDEA, a district court is required to respect a state hearing officer's findings when they are thoroughly and carefully made."); see also DeKalb Cnty. Sch. Dist. v. M.T.V., 413 F. Supp. 2d 1322, 1328 (N.D. Ga. 2005) (upholding the ALJ's findings when evidence in the record supported the final decision). Nevertheless, the Court addresses each of Plaintiff's arguments in turn.

1. ALJ did not err in determining that GNETS was not the LRE

First, Plaintiff claims the ALJ erred in finding that GNETS was not the LRE for J.F. [See Doc. 54 at 9]. According to Plaintiff, the ALJ's decision was premised on five (5) "erroneous findings":

> (1) that J.F. had mastered his behavioral goals; (2) that the IEP team failed to consider J.F.'s best interests during the placement process; (3) that J.F. did not meet the eligibility requirements for GNETS under its triangularization process; and (4) that J.F. has suffered socially and academically in GNETS; and (5) that J.F.'s current behavioral goals are unreasonable.

[See id.; see also Doc. 53-1 at 28–32].

However, the Court disagrees. Upon consideration of the entire record, the Court finds that, based on a preponderance of the evidence, GNETS was not the LRE for J.F. Rather, J.F. was prematurely removed from the general education setting before his ADHD diagnosis and before FCSD became aware of the appropriate support services J.F. required as part of his FAPE. See Greer, 950 F.2d at 692–93. Accordingly, Plaintiff violated J.F.'s right to FAPE. The Court will address each of Plaintiff's alleged factual errors in turn.

According to Plaintiff, the ALJ erred when he stated that J.F. had "mastered" his behavioral goals by the end of the 2018 school year. [See Doc. 53-1 at 28]. Instead, Plaintiff contends that J.F.'s behaviors and acts of aggression were worsening and caused significant disruptions to the educational environment. [See id.]

As the ALJ observed, the Court is sympathetic to the challenges presented by J.F.'s behaviors to his fellow students, educators, and school administrators. [See Doc. 18-1 at 20 ¶ 6]. However, contrary to Plaintiff's assertion, it is clear that J.F. was making progress toward his behavioral goals by the spring of 2018. [See Doc. 36-2 at 275–76]. In fact, Dr. Alexander testified that she informed J.A. that J.F. was displaying behavioral progress. [See Doc. 36-13 at 2053–55]. In addition, with respect to incidents of aggression, the data demonstrates a general downward trend.

[See Doc. 36-10 at 290]. J.F.'s BIP called for increased intervals of reward/denial over time as his overall behavior improved. [See Doc. 36-13 at 2353–54]. Thus, as J.F.'s behaviors improved, new goals would be created. Once those new goals were created, the data shows that J.F.'s behavior incidents would spike, but then improve again. [See id. at 2375]. Thus, contrary to Plaintiff's contention, the Court finds that the record demonstrates J.F. was making significant behavioral progress before his placement change into GNETS. [See Doc. 18-1 at 11 ¶ 26]. Accordingly, the Court upholds the ALJ's findings in this respect.

Second, Plaintiff claims that that the ALJ erred in determining that the IEP Team failed to consider J.F.'s best interests during the placement process. [See Doc. 53-1 at 29]. FCSD contends it adequately considered J.F.'s educational needs over multiple IEP meetings. [See id.] In fact, Plaintiff claims that J.F.'s problem behaviors were "negatively impacting his ability to build and maintain positive relationships with peers and adults, engaging in age-appropriate academic and social activities, and impeding his learning and the learning of others in the generalized and special education setting at Dolvin." [See id.] (alterations adopted, and internal marks and citations omitted). According to Plaintiff, "J.F. was a child in crisis," and GNETS was the only setting which could provide the "intensive, therapeutic supports" that he required. [See id.]

But the Court disagrees. Contrary to FCSD's assertion, the record does not demonstrate Plaintiff adequately considered how it could keep J.F. in the LRE by providing appropriate supportive aids and services. In fact, J.F.'s IEP during the 2017–2018 school year clearly demonstrates that he was receiving no additional "related services" (such as SLP services, psychological services, or OT) inside or outside the classroom. [See Doc. 36-9 at 272 (Jan. 2018), 292 (Feb. 2018), 316–17 (Mar. 2018), 344–45 (Apr. 2018), 412 (Nov. 2018)]. Additionally, Plaintiff's argument ignores the testimony proffered by Dr. Ward that the educational instruction provided to J.F. in GNETS was less rigorous and less complex than the instruction he would have received in a co-taught general education setting. [See Doc. 36-13 at 1031]. Moreover, nothing from the testimony of FCSD's witnesses indicates that J.F. received services at GNETS that he could not receive in a less restrictive, general education setting. [See id. at 155–63, 341].

Third, Plaintiff claims that the ALJ did not properly grasp the triangularization process and thus erred when he determined that J.F. did not meet the "eligibility requirements" for GNETS. [See Doc. 53-1 at 29–30]. As an initial matter, the Court finds it necessary to address a clear error in Plaintiff's argument. It appears to the Court that Plaintiff is ignoring the fact that the ALJ determined J.F. was "unnecessarily and prematurely placed in GNETS" in March 2018 and then "inappropriately continued in this restrictive placement since the October 2018 IEP

meeting." [See Doc. 18-1 at 20 ¶ 6]. Thus, the ALJ found FCSD violated J.F.'s right to FAPE in the LRE on at least two (2) occasions: (1) the March 2018 decision that placed him in GNETS, and (2) the October 2018 decision keeping him there. [See id.] Thus, even if the ALJ's analysis regarding the March 2018 decision was incorrect, Plaintiff has not challenged the ALJ's conclusion that the October 2018 decision was also a violation of J.F.'s right to FAPE in the LRE. [See generally Docs. 53-1, 54].

Even setting aside this fatal omission, the Court finds Plaintiff's argument to be meritless. It is clear to the Court that sufficient evidence in the record exists to support the ALJ's determination that "J.F. was unnecessarily and prematurely placed in GNETS" in March 2018. [See Doc. 18-1 at 20 ¶ 6].

Fourth, Plaintiff contends that the ALJ's conclusion that J.F. suffered socially and academically in GNETS is incorrect because J.F.'s behavior and performance have both improved. [See Doc. 54 at 12]. However, Plaintiff's argument ignores the testimony proffered by Dr. Ward that the educational instruction provided to J.F. in GNETS is less rigorous and less complex than the instruction he would have received in a co-taught general education setting. [See Doc. 36-13 at 632–33, 656–57]. Additionally, both Ward and Wing recommended that J.F. be placed in a co-taught general education setting to facilitate his learning of age-appropriate behaviors through socialization with peers. [See id. at 731, 1031]. The facts in the

record show that J.F. would have received greater educational benefits in a co-taught general education setting than in GNETS. [See id.] Accordingly, in light of the administrative record and the IDEA's mandates, the Court finds that the LRE for J.F. is a co-taught general education setting with appropriate aids and services provided by the school district. Thus, the Court affirms the ALJ's decision on this point.

Finally, the Court finds Plaintiff's fifth argument to be irrelevant. Plaintiff contends the ALJ erred in finding the current behavioral goals set for J.F. are unreasonable. [See Doc. 54 at 12]. However, the gravamen of this matter is that the ALJ determined that GNETS is no longer an appropriate educational placement; as a result, the ALJ ordered J.F.'s IEP Team to generate new behavioral goals in line with his decision. [See Doc. 18-1 at 22 ¶ 9]. Thus, arguing about whether the *current* behavioral goals set for J.F. are reasonable simply misses the mark—the key points here are that J.F.'s educational placement in GNETS violates his rights and his IEP must be modified to ensure he receives FAPE in the LRE.

In sum, the Court finds that the ALJ was correct in determining GNETS was not the LRE for J.F. See Draper, 518 F.3d at 1290 ("There is ample evidence to support the [ALJ's] description of Draper's educational experience as a 'tragic tale,' and there is nothing in this record that suggests to us that the findings adopted by the

district court are anything but supported in fact."). Accordingly, the Court upholds the ALJ's Final Decision on this issue.

2. ALJ did not err in awarding the Family's experts greater deference

Next, FCSD contends that the ALJ did not sufficiently explain his reliance on the Family's experts over its own experts' proffered testimony. [See Docs. 53-1 at 33–35; 54 at 14–16]. However, the Court finds that the ALJ's deference to Defendants' experts was not clearly erroneous. In fact, the preponderance of the evidence demonstrates that much of the behavioral supports J.F. received in the GNETS setting could have been implemented in a less restrictive setting. See Draper, 518 F.3d at 1290. None of FCSD's witnesses testified that J.F. was receiving services at GNETS that would be unavailable in a general education setting. [See Doc. 36-13 at 155–63, 341]. Accordingly, the Court finds this argument to be meritless.

3. ALJ did not err in awarding OT and SLP Services

Third, Plaintiff contends that the ALJ erred in awarding OT and SLP services "without evidence that J.F.'s alleged deficits in those areas were impacting him educationally[.]" [See Doc. 66 at 6]. Even if J.F. legitimately requires OT and SLP services, Plaintiff argues that the current requirements set forth by the ALJ are "unreasonably high" because the school district must provide "7.5 hours of SLP services and 2.5 hours of OT service each week." [See Doc. 53-1 at 38–39]

(emphasis omitted). Plaintiff contends that there is simply "not enough time in the day" or in the school year to provide the awarded amount of services. [See id.]

The Court disagrees. As explained by the Supreme Court,

> A FAPE, as the [IDEA] defines it, includes both "special education" and "related services." §1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. §§1401(26), (29). A State covered by the IDEA must provide a disabled child with such special education and related services "in conformity with the [child's] individualized education program," or IEP.

Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017). Thus, to comply with the IDEA, FCSD must properly identify whether a student requires *both* "special education" and "related services," and then provide those services so that a student may benefit from the specially designed instruction to which he is entitled by law. See id.

Despite Plaintiff's protestations to the contrary, record evidence demonstrates J.F. requires OT and SLP services. For example, with regards to SLP services, speech pathologist Mindy Cohen testified that J.F. has a significant social communication disorder which impacts his reading and processing instruction. [See Doc. 36-13 at 417–21]. She testified that due to this disorder, J.F. has "difficulty following instructions and using correct grammar." [See id. at 419]. As for OT services, Kimberlee Wing testified that J.F. has "a definite weakness in retained reflexes and with sensory processing[.]" [See id. at 1045]. Wing further testified

"that there was a definite discrepancy between where his cognitive potential appears to be and what his motor output is," which she believed impacts "his anxiety and frustration along with his difficulty with regulation and reflexes." [See id.] Both experts recommended SLP and OT services to facilitate J.F.'s education. [See id. at 421–23, 1055]. Thus, Defendants have provided sufficient evidence that SLP and OT services are necessary as part of J.F.'s FAPE. See Draper, 518 F.3d at 1290.

Further, the Court finds the amount of services awarded by the ALJ to be reasonable. As Defendants note, "services can be scheduled for J.F. using the entire calendar, not simply the typical school week." [See Doc. 63 at 18]. Moreover, by its own inappropriate placement decisions, FCSD delayed J.F.'s opportunities to receive appropriate instruction. [See Doc. 18-1 at 20 ¶ 5, 22 ¶ 9]. Thus, requiring Defendants to correct that delay by providing the additional services that J.F. requires—and should have been provided in the first instance—is the appropriate remedy. See Draper, 518 F.3d at 1285 (noting that courts enjoy broad discretion in fashioning the "appropriate relief where responsible authorities have failed to provide a [student with disabilities] with an appropriate education as required by [the IDEA]") (internal citation omitted). Accordingly, the Court affirms the ALJ's Final Decision in this respect.

4. ALJ did not err in awarding compensatory relief

Finally, the Court addresses Plaintiff's fourth contention—that the ALJ erred in awarding compensatory relief. Specifically, Plaintiff contends the award of compensatory services "was based on an undefined 'achievement gap,' failed to account for non-educational causes for that alleged achievement gap and was unreasonably high." [See Doc. 53-1 at 41].

Again, the Court disagrees. With regards to compensatory relief, courts and hearing officers may "award educational services . . . to be provided prospectively to compensate for a past deficient program." See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 522 (D.D.C. 2005) (internal marks and citations omitted). "[C]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." Id. at 523. In a sum, "[c]ompensatory awards should place children in the position they would have been in but for the violation of the [IDEA]." See Draper, 518 F.3d at 1289.

Here, record evidence demonstrates that the ALJ's award of compensatory services was provided to "make up for prior deficiencies." See Reid, 401 F.3d at 522. For example, J.F.'s IEPs from throughout 2018 provided no additional "supportive" or "related services" at all, even after it was abundantly clear that J.F.

required them. [See Doc. 36-9 at 272 (Jan. 2018), 292 (Feb. 2018), 316–17 (Mar. 2018), 344–45 (Apr. 2018), 412 (Nov. 2018)]. Additionally, FCSD failed to consider the appropriateness of J.F.'s educational placement in GNETS after J.F. demonstrated a mastery of his IEP goals in October 2018. [See id. at 374–75]. In short, FCSD failed to provide J.F. with "the basic floor of opportunity." See JSK v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1573 (11th Cir. 1991) (internal citation omitted).

Thus, the evidence in the record demonstrates that the AJL's award "is reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." See Draper, 518 F.3d at 1290. Accordingly, the Court upholds the ALJ's original award of compensatory educational services.

V. Motion for Enforcement of IDEA Maintenance of Placement [Doc. 30]

In light of the Court's ruling above, the Court denies as moot Defendants' "Motion for Enforcement of IDEA Maintenance of Placement." [Doc. 30].

VI. Conclusion

For the aforementioned reasons, the Court **AFFIRMS** the ALJ's decision in all respects. Thus, the Court **GRANTS** Defendants' "Motion for Judgment on the Record" [Doc. 48] and **DENIES** Plaintiff's "Motion for Judgment on the Administrative Record." [Doc. 53]. The Court **DENIES AS MOOT** Defendants'

"Motion for Enforcement of IDEA Maintenance of Placement." [Doc. 30]. Finally, the Court **DIRECTS** the Clerk to close this case.

SO ORDERED, this 1st day of June, 2021.

Eleanor L. Ross
United States District Judge
Northern District of Georgia