BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], BY AND THROUGH [redacted], [redacted],
Petitioner,

v.

ROCKDALE COUNTY SCHOOL DISTRICT,
Respondent.

Docket No.: [redacted]-OSAH-DOE-SE-73-Beaudrot

FINAL DECISION

I. INTRODUCTION

In this matter, [redacted], by and through her parents, [redacted] and [redacted], seek to establish that Rockdale County School District ("the District") failed to provide [redacted] with a Free and Appropriate Public Education ("FAPE") on both substantive and procedural grounds. Specifically, Petitioners assert that the District (1) failed to appropriately develop an Individualized Education Program ("IEP") for [redacted] based on [redacted]'s individual needs; (2) failed to appropriately implement the IEP in place; (3) impeded [redacted]'s right to a FAPE and the Parents' right to participate in the decision making process regarding [redacted]'s FAPE; and (4) developed and implemented [redacted]'s IEP in a manner that deprived her of educational benefit.

The hearing in this matter was held on May 31, June 1, and June 2, 2022, at the Office of State Administrative Hearings in Atlanta, Georgia. At the hearing, Rashad Ponder, Esq. appeared for Petitioners and MaryGrace Kittrell, Esq., Sherry Culves, Esq., and Santana Flanigan, Esq. appeared for the District.

The final volume of the hearing transcript in this matter was filed on July 19, 2022, and, at the direction of the Court, the parties submitted post trial briefing and proposed findings of fact and conclusions of law on July 22, 2022, at which time the record in this matter closed.

The preponderance of the evidence in this matter can be summarized in broad overview as follows. [redacted] has been enrolled in the District since September 2020. She performed well in her classes and had positive relationships with her teachers and service providers until October 21, 2021, when a school nurse implemented the District's COVID-19 quarantine protocol because [redacted] was exhibiting possible COVID-19 symptoms (the "COVID-19 Protocol Incident"). Since that time, the relationship between Petitioners and the District has been irreparably damaged. This is so even despite the numerous, repeated efforts of the District to address Petitioners' demands and numerous concessions by the District to Petitioners regarding [redacted]'s education.

Petitioners assert, and apparently genuinely believe, that the RCPS's actions in connection with the COVID-19 Protocol Incident amounted to racially motivated discrimination. They further assert, and again apparently genuinely believe, that since the COVID-19 Protocol Incident, the District's employees have bullied, harassed, and threatened them and have willfully failed and refused to address [redacted]'s educational needs.

As will be seen, the preponderance of the evidence in this matter does not support Petitioners' beliefs or assertions. The preponderance of the evidence is to the contrary. What the preponderance of the evidence shows is that Petitioners withheld [redacted] from any instruction or services for over a month after the COVID-19 Protocol Incident. In an effort to persuade Petitioners to return [redacted] to school, the District then offered for [redacted] to attend any of four different elementary schools in the District and a virtual learning school. The District also offered to provide four weeks of compensatory services to help [redacted] access instruction and services that the District was unable to provide when Petitioners kept [redacted] at home.

Despite the District's efforts to provide educational services to [redacted], Petitioners ultimately rejected the compensatory services that were provided. Petitioners have not allowed any of the District's personnel to see or speak to [redacted] since mid-January 2022.

In summary, the Court concludes that Petitioners are not entitled to any relief in this matter, first on the merits, and second because any inability by the District to implement [redacted]'s IEP is attributable to conduct of Petitioners. The preponderance of the evidence shows that the District has made more than reasonable efforts to provide [redacted] the assistive technology, vision services, and instruction that she needs under her IEP. But the preponderance of the evidence also shows the District has been unable to do so because Petitioners refuse to make [redacted] available for the appropriate instruction.

Accordingly, Respondent's actions in this matter are **AFFIRMED**. Further, as explained below, Petitioners' claims arising under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 are **DISMISSED**.

II. FINDINGS OF FACT

A. [redacted]'s Disability and Educational History

1. [redacted] is an eleven-year-old female, who is eligible for special education services under the eligibility categories of (1) visual impairment and (2) specific learning disability. (Exhibit R-16).

2. Students with a specific learning disability acquire skills at a slower pace than their general education peers. (Hearing Transcript, p. 270).

3. [redacted] has been privately diagnosed with macular scarring, nystagmus, and hypertropic astigmatism. (Exhibit R-10). She has limited vision and is legally blind. (Tr. 44; Exhibits R-9, R-11).

4. Due to [redacted]'s diagnoses, she requires an alternative formats and additional education related services. (See Exhibit R-4).

5. [redacted] was initially determined eligible for special education services in 2015 through Newton County Public Schools. (Tr. 148).

6. [redacted] began the 2016-2017 school year as a pre-kindergarten student in Newton County School District. During that school year, she transferred to Georgia Cyber Academy. (Tr. 149).

7. Georgia Cyber Academy is a public charter school available to all Georgia students. (See Tr. 148–49). Students primarily receive virtual instruction, but some related services may be provided in person. (Tr. 148–49, 633–34).

8. [redacted] was enrolled in Georgia Cyber Academy during the 2017-2018 school year as a kindergartner. (Tr. 687).

9. [redacted] was then enrolled in Newton County Public Schools during the 2018-2019 school year as a first-grade student. (Tr. 149).

10. [redacted] began the 2019-2020 school year as a second-grade student in Newton County Public Schools. (Tr. 146). In January 2020, she transferred to Miami-Dade County Public Schools. (Tr. 149–50.)

11. Due to the COVID-19 pandemic, students were remote from March 2020 through the end of the school year. (Tr. 152).

12. On June 3, 2020, Miami-Dade County Public Schools convened an IEP meeting for [redacted] (Exhibit P-4). The IEP created for [redacted] relied heavily on information from Newton County Public Schools' most recent IEP. (Exhibit P-4).

B. [redacted]'s Enrollment in Rockdale County Public Schools

13. [redacted] enrolled in the Rockdale County Public Schools ("RCPS") system operated by the District on September 2, 2020, as a third-grade student. (Exhibit R-88).

14. The District was [redacted]'s fourth school district since starting kindergarten three years earlier.

15. [redacted]'s assigned home school was [redacted] Elementary School, and [redacted] began attending [redacted] when she enrolled. (Tr. 42).

16. Due to the COVID-19 pandemic, the District provided instruction and services virtually at the start of the 2020-2021 school year for all students. (Tr. 573). The District transitioned to a hybrid model whereby families were given the option for students to return to their school buildings for some instruction and services in the spring of 2021. (Tr. 153, 573).

17. The District convened its first IEP meeting for [redacted] on September 18, 2020. (Exhibit R-11). It relied heavily on the previous June 3, 2020, Miami-Dade County Public Schools IEP.

18. Although the box for "auditory" format was not selected in the September 18, 2020 IEP, the IEP team agreed on multiple accommodations, supplemental aids, and supports that constitute "auditory" presentation, including, "oral reading of directions, questions and answer choices, and paragraphs." (Exhibit R-11). Nikova Summers, [redacted]'s paraprofessional during the 2021-2022 school year, testified that "if [redacted] needed me to read something to her, I would read." (Tr. 374). In addition to reading anything she needed read, [redacted]'s RCPS-issued laptop contained apps that had a "read-aloud" function for all of her texts and assignments. (Tr. 377, 653–54).

19. The Court concludes that RCPS provided instructional materials to [redacted] in an auditory format even though the auditory format box was not selected on her IEP.

20. Although the box for "electronic text" format was not selected in the September 18, 2020 IEP, RCPS provided [redacted] with a laptop and software that presented [redacted]'s texts in a digital format that [redacted] could enlarge or have read aloud. Ms. Summers testified that [redacted] could access her instructional materials in electronic form via apps on her laptop. (Tr. 379). She also described [redacted] as an "extremely" tech-savvy student who had no difficulty navigating her laptop or enlarging the text on her laptop screen to whatever size she needed. (Tr. 377, 398). [redacted]'s interrelated resources teacher, Jacquelyn Duhart, testified that [redacted] had access to every assignment in a digital medium. (Tr.

157, 513).

21. The Court concludes that RCPS provided instructional materials to [redacted] in an electronic format even though the electronic format box was not selected on her IEP.

22. The September 18, 2020 IEP included the following accommodations, aids, and supports: oral reading of directions, questions and answer choices, and paragraphs, braille reading and writing materials, vision impairment equipment, low vision devices, magnifiers and monocular. (Exhibit R-11).

23. RCPS convened IEP meetings for [redacted] on January 28, 2021, September 8, 2021, and December 3, 2021, but Petitioners did not alert RCPS of its disagreement that the "auditory" and "electronic text" boxes were not selected until March 2022. (Exhibit R-63).

24. [redacted] began the 2021-2022 school year participating in instruction and services in-person at [redacted]. (Tr. 151). Ms. Duhart described her as "highly engaged," "inquisitive" and "a joy" to have in class. (Tr. 494). And according to the observations of Dr. Smith-Dixon, RCPS Chief Student Support Officer, [redacted] was familiar with and operated well within her classroom routine. (Tr. 727.) This is also supported by the A's and B's that she earned for the first quarter of the 2021-2022 school year at [redacted]. (Exhibit R-90). Beyond her performance in the classroom, [redacted] navigated the physical school environment well. (Tr. 474–75).

25. RCPS convened the next IEP meeting on September 8, 2021. The IEP team added the following supplemental aids and services: braille typewriter, VisioBook, VisioBoard, Braille narrator, enlarged keyboard, cane, bold lined paper, and 20/20 black marker. (Exhibit R-15).

26. From the beginning of the 2021-2022 school year until October 21, 2021, [redacted] communicated regularly with Ms. Summers via text messages. (Tr. 89, 109, 371). [redacted] never conveyed to Ms. Duhart or Ms. Summers that she was unhappy with the implementation of [redacted]'s IEP. (Tr. 494).

27. A preponderance of the evidence does not show that RCPS failed to properly implement [redacted]'s IEP or that [redacted] failed to make adequate progress from the beginning of the 2021-2022 school year through October 21, 2021.

C. RCPS's Initiation of COVID Protocol

28. On October 21, 2021, [redacted] was experiencing an increase in the number of positive COVID-19 cases. (Tr. 532).

29. On the morning of October 21, Ms. Summers greeted [redacted] when her parents dropped her off at the school. During their exchange, [redacted] reported to Ms. Summers that [redacted] was not feeling well. (Tr. 458). Ms. Summers then escorted [redacted] to breakfast in the fourth-grade pod. Id.

30. After breakfast, as was their custom, Ms. Summers escorted [redacted] to vision services in the media center. (Tr. 458). As they were walking to the media center, they encountered Ms. Duhart. (Tr. 459).

31. Ms. Duhart stopped and spoke to [redacted] (Tr. 459). [redacted] told Ms. Duhart that she was not feeling well and asked if she could call her mom. Id. Ms. Duhart allowed [redacted] to call [redacted] from her cell phone. Id. [redacted] spoke to [redacted] then Ms. Duhart spoke to [redacted] (Tr. 500). As a result of the conversation, [redacted] said she or her son would pick [redacted] up from school, but she would not be able to do so for several hours. Id. Ms. Duhart told [redacted] that [redacted] could rest in her classroom until they arrived. Id.

32. Ms. Summers, Ms. Duhart, and [redacted] returned to Ms. Duhart's classroom because [redacted] did not feel well enough to proceed to the media center for her vision services. (Tr. 500–01).

33. While in Ms. Duhart's classroom, [redacted] asked Ms. Summers to feel her forehead because she felt warm. (Tr. 430, 503).

34. Ms. Summers witnessed [redacted] exhibit the following symptoms: coughing, flushed face, discomfort. (Tr. 460–61).

35. These symptoms differed from when [redacted] exhibit allergy symptoms, which included watery eyes and difficulty breathing. (Tr. 461).

36. Ms. Duhart observed [redacted] displaying the following symptoms: lethargy, sneezing, coughing, runny nose, and irritated eyes. (Tr. 502).

37. Based on the symptoms that [redacted] was exhibiting, Ms. Duhart decided to take [redacted] to the nurse to be examined for possible COVID symptoms. (Tr. 503).

38. Nurse Rochelle Goodin had been assigned as the nurse at [redacted] for approximately one week as of October 21. (Tr. 533).

39. Nurse Goodin did not know Ms. Duhart, Ms. Summers, or Petitioners prior to October 14. (Tr. 533–34).

40. Prior to October 21, RCPS notified Nurse Goodin that if a student exhibited at least two COVID-19 symptoms, the student should be sent home for a minimum number of days pursuant to a COVID protocol. (Tr. 531). The symptoms she was trained to look for were fever or chills, new cough, congestion or runny nose, shortness of breath or difficulty breathing, diarrhea, new severe/bad headache, muscle or body aches, nausea or vomiting, loss of taste or smell, sore throat, and fatigue. (R-67). Students could return to school sooner if their parents presented a negative COVID-19 test. Id.

41. Ms. Duhart reported to Nurse Goodin that [redacted] was coughing and had a runny nose. (Tr. 535).

42. Nurse Goodin examined [redacted] in her clinic and observed that she had a runny nose. (Tr. 542).

43. Nurse Goodin was delegated the authority to determine when to initiate the COVID protocol for all [redacted] students by the lead nurse. (Tr. 532). The lead nurse was not present at [redacted] that day. (Tr. 541).

44. Nurse Goodin initiated RCPS's COVID-19 protocol, and [redacted] was sent home with a letter explaining the protocol, [redacted]'s symptoms, and when [redacted] was eligible to return to school. (Tr. 536).

45. Nurse Goodin made the decision to initiate the COVID-19 protocol independently and without influence from any other RCPS employee. (Tr. 536).

46. The decision to initiate the COVID-19 protocol is not appealable. (Tr. 538).

47. Petitioners attempted to return [redacted] to school the following morning despite RCPS's initiation of the COVID-19 protocol. (Tr. 177). In compliance with the district-wide protocol, school administration did not allow [redacted] to return. Id.

48. On October 22, [redacted] accused Ms. Summers and Ms. Duhart of initiating the COVID-19 protocol because [redacted] sent a text message to Ms. Summers on the morning of October 21 asking that she not force [redacted] to take eye breaks if [redacted] did not believe she needed them. (Exhibit R-27).

49. RCPS conducted a thorough investigation through its Human Resources Department and found no evidence that the initiation of the COVID-19 protocol was discriminatory or retaliatory in any form. (Exhibits R-71, R-72.)

50. This Court finds no evidence that the initiation of the COVID-19 protocol was discriminatory or retaliatory in any form. Rather, the Court finds that RCPS initiated the COVID-19 protocol in conformity with its policies and procedures because [redacted] exhibited a minimum number of symptoms for it to do so.

D. The Text Messages

51. [redacted]'s September 9, 2021 IEP listed "visual rest time" as a classroom testing accommodation. (Exhibit R-15).

52. Ms. Duhart—not Ms. Summers—recommended that [redacted] take an eye break on October 20. (Tr. 504). She did so because they were completing testing, and, based on Ms. Duhart's

experience, testing caused [redacted]'s eyes to fatigue. Id.

53. Ms. Summers responded to [redacted]'s text message stating:

> Thank you for your feedback – that's the only way we build a strong team. Of course, no offense taking [sic]. I hope [redacted] feels better.
>
> (Exhibit R-27).

54. Ms. Summers testified that she was not upset by [redacted]'s text message. (Tr. 457). Ms. Duhart also testified that Ms. Summers was not upset by [redacted]'s text message. (Tr. 505). This Court finds their testimony credible and persuasive.

55. RCPS investigated the incident and found "no evidence to substantiate [Petitioners'] allegations that Jacquelyn Duhart (Teacher) and Nikova Summers (Paraprofessional) used the district's COVID-19 safety protocol in a discriminatory manner." (Exhibit R-71). The investigation report stated, "The decision to issue the COVID letter came solely from the nurse, Ms. Goodin, without input from Ms. Duhart and Ms. Summers." (Exhibit R-72).

E. [redacted]'s Quarantine and Return to School.

56. [redacted] Principal Maggie Degenhardt scheduled a meeting with Petitioners to discuss their concerns on October 25, 2021. Ms. Degenhardt, Assistant Principal Shauntogris Johnson, Ms. Duhart, [redacted], [redacted], and [redacted]'s mother participated in the meeting. (Tr. 178; Exhibit R-30.)

57. The group discussed the initiation of the COVID protocol and Petitioners' concerns regarding vision, braille, and orientation and mobility services, assistive technology devices, and other personnel concerns. (Exhibit R-30).

58. RCPS attempted to deliver [redacted]'s assistive technology devices personally to Petitioners' home after the October 25 meeting, but Petitioners refused to allow RCPS to do so. (Tr. 179).

59. On October 26, Petitioners provided a letter from [redacted]'s pediatrician stating that [redacted]

could return to school because the symptoms she was exhibiting were the result of allergies. [redacted]'s pediatrician did not perform a COVID test. (Exhibit R-68).

60. RCPS reminded Petitioners that pursuant to its COVID protocol, [redacted] could not return to school prior to November 1 without a negative COVID test. (Tr. 120).

61. [redacted] escorted [redacted] into [redacted] on November 1, the first day that she was permitted to return to school. (Tr. 184). As [redacted] entered the building, she filmed staff members with her cell phone. Id. [redacted] alleges that Ms. Summers ran away from the family and "rallied" other employees "like a street gang." (Tr. 214). The Court finds there is no evidence that supports her testimony.

62. Principal Degenhardt spoke with [redacted] in the lobby. (Tr. 187). [redacted] demanded to accompany [redacted] to Dr. Gaur's vision services session with [redacted], but Principal Degenhardt notified [redacted] that parents were not permitted to conduct observations at that time because of COVID-19. (Tr. 187). [redacted] became upset at Ms. Degenhardt during the exchange, and when [redacted] began to cry, [redacted] blamed Ms. Degenhardt. (Tr. 187–88).

63. [redacted] left with [redacted] and went to RCPS's main offices to convey her concerns. (Tr. 188). Although her arrival was unexpected, [redacted] met with Dr. Zelphine Smith-Dixon, RCPS Chief Student Support Officer. (Tr. 188, 722–25). [redacted] expressed her concerns about [redacted] and spoke disparagingly about [redacted]'s administrators, teachers, and service providers in front of [redacted] (Tr. 724). [redacted] became emotional during the meeting. Id.

64. In response to Petitioners' concerns, Dr. Smith-Dixon offered to meet [redacted] and her parents at [redacted] the following day. (Tr. 725).

65. Petitioners returned [redacted] to [redacted] the following day on November 2. (Tr. 725). As promised, Dr. Smith-Dixon met [redacted] and her family outside of the school, escorted [redacted] to the fourth-grade pod for breakfast, to her homeroom for morning routine, and to braille services in the media center. (Tr. 727–34). After the braille services ended, [redacted] stated that she was comfortable

proceeding with the remainder of the school day without Dr. Smith-Dixon accompanying her. (Tr. 734).

66. Dr. Smith-Dixon observed that [redacted] was aware of the classroom routine and procedures. (Tr. 727). She also noticed that [redacted]'s classmates were excited to see her, that the classroom had a sense of "community and belonging," and that [redacted] "felt good about being back in the classroom." (Tr. 728).

67. As Dr. Smith-Dixon and [redacted] walked to the media center, [redacted] used her cane and walked "very briskly." (Tr. 730).

F. [redacted]'s Use of Her Cane and Her Alleged Injury on November 2

68. During dismissal on November 2, Ms. Summers escorted [redacted] and her sister to Petitioners' vehicle. (Tr. 466). Although Ms. Summers often reminded [redacted] not to run during dismissal, she would often run anyway. (Tr. 474).

69. [redacted] and her sister ran to Petitioners while holding her cane. (Exhibits R-97, R-98).

70. Ms. Summers did not see [redacted] injure herself, and the surveillance footage of the incident does not show any sign of [redacted] falling or otherwise becoming injured. (Tr. 474–75; Exhibits R-31, R-97, R-98). Instead, it reflected a typical afternoon environment of students eagerly running ahead to greet their parents. (Tr. 737).

71. Shortly after dismissal, [redacted] emailed Ms. Degenhardt expressing disappointment that [redacted] was permitted to run at dismissal. (Exhibit R-31). She stated that [redacted] "can" injure herself if permitted to move about without her cane. Id.

72. The following morning on November 3, [redacted] claimed for the first time that [redacted] had in fact injured herself while running to Petitioners during dismissal. (Exhibit R-31).

73. Petitioners brought [redacted] to school on November 3 but checked her out early so that a doctor could examine her alleged foot injury. (Tr. 741).

74. [redacted]'s September 9, 2021 IEP (the IEP still in effect on November 2) contained the following objective:

> Given a long cane [redacted] will travel safely on campus using appropriate orientation and mobility skills and techniques (i.e. proper cane grasp, constant contact, two-point touch, trailing, route shapes, etc.) with 80% accuracy in 4 of 5 attempts.
>
> The IEP also listed a cane as a supplemental aid and service. (Exhibit R-15).

75. The September 9, 2021 IEP contained no requirement that [redacted] use her cane at all times in or around the school building. (Tr. 736; Exhibit R-15). It contained no requirement that [redacted] could not run in or around the school building. (Exhibit R-15).

76. During her time as [redacted]'s one-on-one paraprofessional, Ms. Summers and Ms. Duhart often reminded [redacted] to use her cane in and around the school building, except when they were in a crowded hallway, when Ms. Summers would escort [redacted] with "guided" assistance. (Tr. 464, 485, 497–98, 515).

77. At recess, [redacted]. enjoyed running with her classmates and was able to jump over logs on the playground without her cane. (Tr. 514–15). P.E. was her favorite non-general education course. (Tr. 497).

78. Although Ms. Summers and Ms. Duhart always encouraged her to use her cane, in Ms. Summers' opinion, she did not need to use it. (Tr. 465).

79. Ms. Summers and Ms. Duhart are not aware of any instance in which [redacted] ever fell or injured herself during the school day. (Tr. 475, 497).

80. This Court finds that there was no credible evidence that the RCPS violated [redacted]'s IEP with respect to her running to greet her parents at dismissal and no credible evidence that she was injured as a result of some misconduct by the RCPS or its employees.

G. <u>Petitioners' Hardship Transfer Request and Requests for Virtual Learning</u>

81. November 2 was the last full school day that [redacted] attended RCPS in person. (Tr. 190).

82. On November 4, Petitioners notified RCPS that they did not trust the employees at [redacted]

[redacted], and under no circumstance could they trust to send [redacted] back there. (Tr. 741). It was Dr. Smith-Dixon's understanding from her communications with Petitioners that they were refusing to return [redacted] to [redacted]. (Tr. 741).

83. This Court finds that RCPS did not force [redacted] out of [redacted] and that [redacted] could have remained at [redacted] if Petitioners so desired.

84. On November 4, RCPS offered for [redacted] to participate temporarily in virtual learning opportunities and attempted to schedule a meeting with Petitioners for November 5 to develop a more permanent solution. (Exhibits R-35, R-38).

85. Petitioners refused to meet with RCPS on November 5, stating that they needed more time to determine what they wanted for [redacted] (Tr. 744).

86. [redacted] stated that Petitioners felt bullied by RCPS and that RCPS was "forc[ing]" [redacted] out of her home school. (Tr. 744; Exhibit R-36). She also stated that [redacted] "made it impossible to have any kind of normal, safe, and productive education for our girls." (Exhibit R-36). They claimed that [redacted] was "scared to face teachers and staff at [redacted]." Id.

87. This Court finds no evidence that RCPS or its employees bullied or harassed Petitioners.

88. This Court finds no evidence to support Petitioners' contention that RCPS could not serve [redacted] at [redacted] or that [redacted] employees took any action from which they could reasonably expect [redacted] to react in the way that Petitioners have alleged.

89. Although RCPS remained willing to serve [redacted] at [redacted], RCPS responded that same day offering Petitioners the opportunity to submit a hardship transfer request to attend a different RCPS school. (Exhibit R-38).

90. Despite RCPS's efforts to meet sooner, Petitioners agreed to meet with Dr. Smith-Dixon and Dr. Nadine Campbell, an assistant superintendent for RCPS, on November 7, 2021. (Tr.

745). Dr. Smith-Dixon and Dr. Campbell presented a plan and schedule for [redacted] to participate in virtual school the following day. (Tr. 746). Petitioners strongly rejected that plan and stated that [redacted] would return to a physical school building. Id.

91. During the November 7 meeting, Dr. Smith-Dixon and Dr. Campbell also suggested that [redacted] could attend Pine Street Elementary, an RCPS school, but Petitioners rejected that potential solution as well. (Tr. 746). Petitioners expressed that they believed it was their right to choose which school [redacted] would attend. (Tr. 747).

92. On November 9, Petitioners stated that they would like to meet with the IEP team, principals, and potential paraprofessionals at two RCPS elementary schools—Sims Elementary School and Lorraine Elementary School—to decide which school would be better for [redacted] (Exhibit R-37).

93. While Petitioners decided the school for which they were requesting a hardship transfer, RCPS allowed [redacted] to participate in RCPS's virtual learning option as a temporary measure. (Exhibit R-38). But Petitioners reiterated that they did not want [redacted] to attend school virtually.

94. On November 10, RCPS notified Petitioners that families do not choose the school to which their students are assigned in the hardship transfer process. (Tr. 748–49). Rather, RCPS has sole discretion to decide the school to which it will assign a student after the family submits a hardship transfer request. Id. RCPS offered to convene a meeting on November 12 to discuss the family's concerns and scheduled an IEP meeting for November 19. (Exhibit R-37). RCPS also notified Petitioners that if they submitted a hardship transfer request to enroll [redacted] at Sims Elementary, it would grant the request. (Exhibit R-38).

95. Despite previously expressing interest in Sims Elementary, Petitioners refused the offer for [redacted] to transfer there. (Tr. 194–96). RCPS notified Petitioners they needed either to submit a hardship transfer request by November 12, 2021 or return [redacted] to [redacted] because of the length

of time [redacted] had been out of school and not participating in learning. (Exhibit R-38). Petitioners ultimately submitted a hardship transfer request to transfer to Lorraine Elementary School. (Exhibit R-39).

96. On November 12, RCPS granted Petitioners' hardship transfer request to transfer to Lorraine Elementary effective November 15. (Exhibit R-39).

97. [redacted]'s parents did not take [redacted] to school on November 15 or 16. (Tr. 752–53). They stated they were not aware that RCPS granted their request, but RCPS mailed and emailed the approval letter to Petitioners. (Tr. 269–70).

98. [redacted]'s parents attempted to take [redacted] to Lorraine Elementary on November 17 but testified that she was too scared to go into the building. (Exhibit R-40). Based on this one ten-minute attempt to take [redacted] to Lorraine, they asked RCPS to approve [redacted] to participate in virtual school for the remainder of the school year, a placement they previously said was not appropriate. Id.

99. RCPS responded by offering to help [redacted] transition to Lorraine. (Exhibit R-40). This offer included scheduling an afterschool visit and tour of the school to help [redacted] acclimate to the school and her surroundings when students would not be present. Id. Petitioners did not take advantage of this offer. (Tr. 247–48).

100. Petitioners also emailed the Rockdale County School Board and Rockdale County Superintendent of Schools, Terry Oatts, at 9:05 p.m. on November 17 to request that they allow [redacted] to participate in virtual school. (Exhibit R-40).

101. Dr. Oatts responded to Petitioners' email the following morning at 6:52 a.m. (Tr. 756; Exhibit R-41). He explained that RCPS only offered virtual learning as a temporary option to allow the family time to consider their options. (Exhibit R-41). He explained that he personally approved alternative placements at Sims and Lorraine and that RCPS remained willing to serve her at one of the previously approved options. Id.

102. Instead of allowing RCPS to assist with [redacted]'s transition to Lorraine, [redacted]'s parents filmed their next unassisted attempt to bring [redacted] into the school building the following morning on November 18. (Exhibit R-41).

103. After only two attempts to bring [redacted] to Lorraine, Petitioners demanded that RCPS enroll [redacted] in RCPS's virtual school. (Exhibit R-41).

104. Petitioners insisted that [redacted] would not participate in instruction and services unless RCPS allowed her to enroll in virtual learning. (Exhibit R-41).

105. The parties had already agreed to convene an IEP meeting at Lorraine on November 19. (Tr. 758). Despite [redacted] having been out of school for an extended period, Petitioners canceled the IEP meeting because they did not want to leave [redacted] (Tr. 758–59.) RCPS even offered to hold the meeting virtually, but Petitioners refused this option. (Tr. 759).

106. RCPS offered multiple dates to reschedule the IEP meeting, but Petitioners ultimately stated they were not available until December 3. (Tr. 761; Exhibit R-42).

107. On December 2, RCPS granted Petitioners' request for [redacted] to participate full-time in virtual school through the end of the 2021-2022 school year, despite RCPS previously offering to educate [redacted] at four RCPS elementary schools – [redacted], Pine Street, Sims, and Lorraine. (Tr. 764). RCPS made this decision out of concern that [redacted] had not attended a full day of school since November 2 and in an effort to put [redacted] first. Id.

108. The Court finds that Petitioners unreasonably delayed and obstructed RCPS in holding an IEP meeting sooner for [redacted] This delay negatively affected [redacted]'s education.

H. December 3, 2021 IEP Meeting

109. On December 3, the IEP team met to determine how to implement [redacted]'s IEP in the virtual environment. (Exhibit R-16).

110. At the meeting, Petitioners began requesting the provision of various and specific

assistive technology devices. (Exhibit R-16). In response, RCPS sought Petitioners' consent to conduct a low vision assessment and assistive technology evaluation to determine the assistive technology supports that would be most appropriate for [redacted] Id. Petitioners provided their consent for both evaluations. Id.

I. Compensatory Services Offered by RCPS

111. During the December 3 IEP meeting, RCPS offered to provide two weeks of compensatory services to [redacted] for the ten days that [redacted] was required to quarantine because she exhibited COVID symptoms. (Exhibit R-16). RCPS offered these compensatory services even though it offered opportunities for [redacted] to participate in instruction and services during that time. (Tr. 267).

112. Petitioners believed that RCPS should provide four weeks of compensatory services to [redacted] to cover the entire amount of time she had been out of school, even though they did not avail themselves of any of the virtual learning options RCPS offered and they withheld her from school after she was eligible to return from her ten-day quarantine period. (Exhibit R-16).

113. In yet another effort to work with the family, RCPS accepted Petitioners' requests and sent prior written notice to Petitioners on December 13 offering to provide four weeks of compensatory services. (Exhibit R-95).

114. RCPS began providing compensatory services to [redacted] in January 2022. (Exhibit R-73).

115. RCPS determined that it would provide [redacted] the following in compensatory services and notified Petitioners of the same: 900 minutes of reading instruction, 900 minutes of math instruction, 600 minutes of braille services, 180 minutes of orientation and mobility services. (Exhibit R-73). RCPS arrived at these amounts because [redacted]'s September 9, 2021 IEP called for her to receive 45 minutes of reading instruction five days a week, 45 minutes of math instruction five days a week,

150 minutes of braille skills instruction once per week, and 30 minutes of orientation and mobility services once per week. (Exhibit R-15).

116. When RCPS initially began providing compensatory services to [redacted], she participated with her camera and microphone on. (Tr. 225–26). However, after only a few sessions, when [redacted] would log on virtually, her camera and microphone were off. (Tr. 226).

117. After several weeks of receiving compensatory services, Petitioners accused RCPS of using the compensatory services to "punish" [redacted] (Tr. 216, 826; Exhibit R-51).

118. Petitioners requested that RCPS alter [redacted]'s compensatory services schedule so that [redacted] would only receive compensatory services two days a week. (Exhibit R-51). RCPS agreed to this change. (Tr. 217).

119. RCPS assigned Dr. Marcie Williams to provide compensatory services for [redacted] in math and reading. (Tr. 212; Exhibit R-79). Dr. Williams was [redacted]'s special education teacher during the previous school year, and Petitioners had a positive relationship with her. (Tr. 151). By the end of January, [redacted] notified RCPS that [redacted] would no longer participate in compensatory services with Dr. Williams because of Petitioners' belief that Dr. Williams was "biased" toward [redacted] (Tr. 70–74, 214–16; Exhibits R-79, R-82).

120. After February 11, [redacted] stopped participating in compensatory services altogether. (Exhibits R-84, R-86, R-87).

121. RCPS instructed [redacted]'s compensatory services providers to continue logging on to their scheduled sessions with [redacted] to ensure the compensatory services were available to her, but Petitioners refused to make [redacted] available. (Tr. 276).

122. RCPS provided the following compensatory services to [redacted] before the end of the 2021-2022 school year: 237 minutes of reading instruction; 286 minutes of math instruction; 100 minutes of braille instruction; and 55 minutes of orientation and mobility services. (Exhibit R-87).

J. RCPS's Implementation of the December 3 IEP

123. RCPS began providing virtual instruction and services to [redacted] after the December 3 IEP meeting for all of [redacted]'s services and instruction. (Tr. 121–22).

124. When families elect to participate in virtual learning, RCPS notifies them of its expectation that all students participate with their cameras and microphones on. (Tr. 33).

125. RCPS asked Petitioners if it could provide orientation and mobility services in-person in the home or in the community (as opposed to virtually), but Petitioners rejected that offer. (Tr. 211–12).

126. [redacted] initially logged in virtually and had her camera and microphone on. (Tr. 122).

127. Just as she stopped having her camera and microphone on for compensatory services in January, [redacted] also rarely turned on her camera or microphone for regular school day services since January 2021. (Tr. 226).

128. Multiple RCPS witnesses provided credible testimony that Petitioners' refusal to allow [redacted] to actively engage with her teachers and service providers impeded RCPS's ability to ensure [redacted] made meaningful progress. It is difficult for [redacted]'s teachers and service providers to provide her instruction or services when her camera and microphone are off. (Tr. 38–40, 119, 120, 234). It is particularly difficult to provide braille instruction if a student's camera or microphone are not on because the teacher for the visually impaired ("TVI") has no way of knowing whether a student's fingers are positioned correctly to read or produce braille. (Tr. 119–20). Similarly, it is difficult to provide orientation and mobility services if a service provider is not able to see a student's environment and how she is navigating it. (Tr. 234).

129. [redacted] only appeared for her general education courses three out of five days every week. (Tr. 30). She has not appeared with her camera or microphone on since mid-January. (Tr. 31–32).

K. Attempts to Reconvene an IEP Meeting for [redacted] in December 2021

130. Shortly after the December 3 IEP meeting, Petitioners claimed that the IEP contained inaccuracies. (Tr. 229).

131. As a result, RCPS made numerous attempts to reconvene the IEP meeting to address those inaccuracies and other emerging issues involving [redacted]'s education. (Tr. 229–33).

132. Despite RCPS's efforts, Petitioners did not agree to meet until March 25, 2022. (Tr. 233).

L. Alleged Alteration of [redacted]'s December 3 IEP

133. Parents of special education students have 24/7 access to their student's current IEP and progress monitoring through RCPS's online platforms. (Tr. 250–51).

134. In March 2022, Petitioners alerted RCPS that progress monitoring data appeared on [redacted]'s December 3 IEP that was not on the official copy of the December 3 IEP that RCPS provided to Petitioners after the December 3 IEP meeting. (Exhibit R-63).

135. The progress monitoring data was the only portion of the December 3 IEP that was changed. (Tr. 810).

136. RCPS was not aware that the progress monitoring information had been updated on [redacted]'s IEP until Petitioners alerted it. (Tr. 809). RCPS discovered that when teachers inserted their progress monitoring data on a separate platform, the software was automatically populating the progress monitoring data onto the IEP. (Tr. 803–09). RCPS worked with the third-party software provider to correct this issue. (Tr. 810–11).

137. The auto-population of the progress monitoring data into the IEP did not affect [redacted]'s education in any way. (Tr. 810).

M. Petitioners Access to Records

138. All RCPS parents have access to their students' IEPs, attendance, and other

information through RCPS's online platforms. (Tr. 251, 255).

139. On January 25, Petitioners requested copies of [redacted]'s progress monitoring data. (Tr. 323; Exhibit P-27). RCPS responded to that request. (Tr. 315–17).

140. Petitioners requested additional records on March 9. (Exhibit R-62).

141. RCPS provided documents responsive to the March 9 request on March 18. (Tr. 317, 812).

142. The records that RCPS produced in response to Petitioners' March 9 request are not reflective of all of the work [redacted] performed, assignments that [redacted] completed, or support that Ms. Duhart, Ms. Summers, or Dr. Gaur provided to [redacted] (Tr. 814–16). The IDEA does not require RCPS to maintain copies of such information, but it produced the information that Ms. Duhart and Dr. Gaur still had in their possession at the time of the request. (Tr. 814).

N. [redacted]'s Emerging Mental Health Issues

143. In response to Petitioners' statements that [redacted] was "struggling," in February 2022, Dr. Smith-Dixon sent Petitioners an authorization and release for them to complete and return. (Tr. 776). This would have allowed RCPS to speak to and/or access [redacted] medical records to learn more about her current mental health. (Tr. 778). Dr. Smith-Dixon also discussed potentially conducting an updated psychological evaluation on [redacted] (Tr. 778–79). Petitioners did not agree to either.

144. When the IEP team met on March 25, RCPS again requested that Petitioners authorize RCPS to obtain [redacted] medical records and provide their consent to conduct an updated psychological evaluation for [redacted] (Exhibit R-19). Petitioners refused to provide their consent for either. (Tr. 780–82).

145. The only information that Petitioners have provided to the RCPS regarding [redacted] mental health is a list of diagnoses and a list of the medications she is on. (Tr. 782).

146. Petitioners' refusal to provide RCPS additional medical records or to allow RCPS to conduct an updated psychological evaluation prevented RCPS from being able to respond adequately

to any mental health issues that [redacted] was experiencing, especially in light of the fact that no District employee has been able to engage with [redacted] for months.

O. Assistive Technology Provided to [redacted].

147. RCPS made the following assistive technology ("AT") devices available to [redacted] from January 2022 through the end of the school year: braille keyboard (made available January 21); bold lined paper and 2020 markers (available in the classroom setting but made available on January 21); touch screen monitor (January 28); Braille Trail Reader (April 21); Cranmer abacus (April 21); Perkins Smart Brailler (May 24). (Tr. 836–40).

148. During the March 25 IEP meeting, the IEP team reviewed the results of the February 10, 2022 Low Vision School Assessment conducted by the Center for the Visually Impaired and the March 23, 2022 Comprehensive Assistive Technology Report and Evaluation conducted by the Ellis Center. (Exhibit R-19).

149. A low vision assessment is a specific evaluation to determine what devices may assist a visually impaired person to make the best use of what vision they do have. (Tr. 643). The Low Vision School Assessment stated, "Student requires nonvisual devices for all learning needs including auditory and tactile learning methods." (Tr. 698–99; Exhibit R-9).

150. An assistive technology evaluation assesses a student's skills and needs to determine what types of assistive technology devices would be appropriate for assisting a student with accessing the curriculum. (Tr. 647).

151. The Ellis Center's Comprehensive Assistive Technology Report and Evaluation stated that [redacted] "is not yet proficient enough in braille to access the computer through an electronic refreshable braille device." (Exhibit R-10). It also stated, "[redacted] requires continued direct instruction in braille to become proficient, however, in the meantime she requires all her print materials provided in an accessible electronic format so that she has access to the content required by her curriculum." Id.

The only "hardware" that the Ellis Center recommended was an iPad. Id.

152. As a result of these recommendations, the IEP team removed the following assistive technology from [redacted]'s IEP: VisioBoard, monocular, magnifier, bold lined paper, and 20/20 black marker. (Exhibit R-19). The IEP team included the following assistive technology in the IEP: electronic braille device with the capabilities of a Note Touch Plus (which may include lightweight, digital interface, email capabilities, personalizable, HDMI, Bluetooth or WiFi capable), Cranmer abacus, a brailler, a braille keyboard, a regular cane, and electronic braille device. Id.

153. Petitioners requested that RCPS acquire a Note Touch Plus for [redacted] (Tr. 683). The Note Touch Plus is an electronic braille device. (Tr. 680; Exhibit R-99).

154. After the IEP meeting, RCPS acquired a Braille Trail Reader for [redacted] and made it available for Petitioners to pick up on April 21. (Tr. 326). Petitioners did not pick it up until May 25. Id. The Braille Trail Reader is an electronic braille device. (Tr. 681; Exhibit R-103.)

155. Petitioners have not requested any training on any of the AT devices RCPS has made available to [redacted], but if they requested training, RCPS would provide it. (Tr. 791–93).

156. The Note Touch Plus has a longer display than the Braille Trail Reader, which allows it to display more braille cells at a time. The Braille Trail Reader is a more portable device, and it does not have a print screen. (Tr. 681–82; Exhibits R-99, R-103).

157. According to the Assistive Technology evaluation and Ms. Williams' testimony, [redacted] is not yet proficient enough in Braille to be able to use an electronic braille device like a Note Touch Plus or a Braille Trail Reader effectively. (Tr. 647–48, 684–85). Ms. Williams testified that RCPS does not need to provide a Note Touch Plus for RCPS to provide [redacted] a free appropriate public education. (Tr. 684–85).

P. RCPS Provided Vision and Orientation and Mobility Services to [redacted] in Accordance with Her IEP.

158. Dr. Panjak Gaur was the teacher for the visually impaired ("TVI") assigned by RCPS

to provide [redacted] vision services, braille services, and orientation and mobility services during the 2020-2021 and 2021-2022 school years. (Tr. 155–56).

159. Linda Williams provided vision services to [redacted] between the Thanksgiving and Christmas holidays in 2021 while Dr. Gaur was on extended leave. (Tr. 638).

160. Ms. Johnson observed Dr. Gaur's lessons in her capacity as an administrator, and she did not have any concerns about his implementation of [redacted]'s IEP or the quality of his instruction. (Tr. 598).

161. RCPS investigated Petitioners' concerns about the services that Dr. Gaur was providing to [redacted] and found them to be unsubstantiated. (Tr. 816–17). But to allay Petitioners' concerns, Dr. Gaur began providing a description of the skills he was working on with [redacted] (Tr. 818–19).

162. Dr. Gaur has been on extended leave since mid-April 2022. (Tr. 335).

163. By the time Dr. Gaur went out on leave, [redacted] had not participated in any services with Dr. Gaur with her camera or microphone on in months. (Tr. 588–89).

164. Other than their own assertions, Petitioners offered no testimony or evidence to support their contention that the services Dr. Gaur provided were not meaningful and appropriate. The preponderance of the evidence does not support Petitioner's assertions. The preponderance of the evidence shows, and the Court finds, that Petitioners limited Dr. Gaur's ability to provide services to [redacted] by not allowing [redacted] to turn on her camera or microphone.

Q. <u>Petitioners Have Acted Unreasonably and Prevented RCPS from Educating</u> [redacted]

165. Petitioners have made numerous accusations against RCPS employees over the course of the past year. They accused Dr. Gaur of being condescending, unsympathetic, racist, and of holding malice toward [redacted] (Tr. 169). They claimed that the results of the Human Resources investigation would have been different if [redacted] were "a little white girl." (Tr. 214). They accused

RCPS of bullying, discrimination, and retaliation. (Tr. 89, 188, 191). During the March 25 and May 13 IEP meetings, the IEP team had to take several breaks because Petitioners were speaking over other IEP members. (Tr. 219–20). Petitioners have accused numerous RCPS employees of discrimination and racial animus.

166. This Court finds no evidence to support any of those allegations and assertions made in their pleadings or in testimony by Petitioners. To the contrary, the Court finds the testimony of RCPS personnel, in particular that of Ms. Summers and Ms. Williams, to show sincere concern for the best interests of [redacted] and understandable concern for the decisions made by [redacted]'s parents regarding her education.

167. Viewing the evidence in this hearing in its entirety, the Court finds that Petitioners have acted unreasonably and unwisely throughout the events giving rise to this litigation.

III. CONCLUSIONS OF LAW

A. Legal Background of the Individuals with Disabilities Education Act

This case is governed by the IDEA, 20 U.S.C. §§ 1400 et seq., its implementing regulations, 34 C.F.R. §§ 300.1 et seq., and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01 et seq. Petitioners bear the burden of proving their claims by a preponderance of the evidence. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs. 160-4-7-.12(3)(n), 616-1-2-.07, and 616-1-2-.21(4).

"The [Individuals with Disabilities Education Act ("IDEA")] is a comprehensive statute aimed at helping states to provide education services that address the needs of disabled children." Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1311 (10th Cir. 2008). The stated purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education [("FAPE")] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and

independent living." 20 U.S.C. § 1400(d)(1)(A).

B. Free Appropriate Public Education

FAPE is "the central pillar" of the IDEA. Sytsema, 538 F.3d at 1312. "The IDEA defines FAPE as special education and related services that (1) are provided at public expense, under public supervision and direction and without charge; (2) meet the standards of the State educational agency; (3) include an appropriate education in the state involved; and (4) are provided in conformity with the IEP. Cobb Cty. Sch. Dist. v. A.V. ex rel. W.V., 961 F. Supp. 2d 1252, 1264–65 (N.D. Ga. 2013). To provide FAPE, the school system in which the child resides is responsible for identifying, evaluating, and developing an IEP for each disabled child. Id.

Once a student has been found eligible for special education services, an IEP team will meet to develop an IEP for the student. The category under which the student is found eligible for special education does not determine the special education services to which the student is entitled. The school system's obligation to the child is met if the IEP offered to the child is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017). School systems are not, however, required to provide a disabled child an "ideal" or "optimal" education." Five Town, 313 F.3d at 284–85. To be sure, "[t]he IDEA does not entitle a disabled child to an IEP that maximizes his potential, but instead only guarantees a 'basic floor' of opportunity 'specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from the instruction.'" R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003, 1008 (5th Cir. 2010) (citing Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 292 (5th Cir. 2009)).

C. Petitioners have failed to prove that RCPS violated Petitioners' procedural rights under the IDEA, or that any alleged procedural violations resulted in substantive harm.

"The IDEA contains numerous procedural safeguards that are designed to protect the rights

of disabled children and their parents." M.C., by and through M.N. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1195 (9th Cir. 2017) (citing 20 U.S.C. § 1415). Among those procedural requirements, school systems must conduct evaluations and draft IEPs in compliance with a detailed set of procedures set forth under §1414(a) and (d) of the IDEA. These procedures envision collaboration among parents and pertinent school system staff and administrators and require the IEP team members to consider each child's individual circumstances carefully. 20 U.S.C. § 1414; Endrew F., 137 S. Ct. at 994. The IDEA also requires all IEPs to comply with various content requirements. See 20 U.S.C. § 1414(d)(l)(A)(i)(I)-(IV); Endrew F., 137 S. Ct. at 994 (summarizing the statutory content requirements for IEPs).

However, a school system's failure to comply with one of the IDEA's procedural requirements does not automatically entitle the student to relief. Sytsema, 528 F.3d at 1313. Rather, this Court is tasked with determining "whether the procedural error resulted in 'substantive harm to the child or his parents;' 'deprive[d] an eligible student of an individualized education program'; or result[ed] in the loss of [an] educational opportunity.'" Id. (citing Knable ex rel. Knable v. Bexley City Sch. Dist., 238 F.3d 755, 765 (6th Cir. 2001)); see G.J. Muscogee Cty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012) ("Not every procedural defect results in a violation of the IDEA. Rather '[i]n evaluating whether a procedural defect has deprived a student of a [free and appropriate public education], the court must consider the impact of the procedural defect, and not merely the defect *per se.*") (quoting Weiss v. Sch. Bd. of Hillsborough Cty., 141 F.3d 990, 994 (11th Cir. 1998)). Or, in other words, courts determine whether the procedural violation resulted in a denial of FAPE. Id.

i. Petitioners have been involved in all decisions regarding [redacted]'s IEP.

Petitioners' allegation that RCPS did not allow them to participate in the IEP process is not supported by the evidence. School systems must both allow parents to participate in IEP meetings and consider the parents' suggestions. KA. ex rel. FA. v. Fulton Cty. Sch. Dist., No. 1: 11-CV-727-TWT, 2012 WL 4403778, at *3 (N.D. Ga., Sept. 21, 2012). At IEP meetings, parents may "fully

air their respective opinions on the degree of progress a child's IEP should pursue." Endrew F., 137 S. Ct. at 1001. Although they have the right to participate and provide input, refusal to incorporate a parent's suggestions does not violate the IDEA because "[t]he right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." White ex re. White v. Ascension Par. Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003); see also B.F. v. Fulton Cty. Sch. Dist., No. CIV A 1 :04CV3379-JOF, 2008 WL 4224802, at *34 (N.D. Ga. Sept. 9, 2008) ("the IDEA is not a guarantee to the parents of the satisfaction of their preferences.").

The preponderance of the evidence contradicts Petitioners' allegation that RCPS ever excluded them from the IEP-creation process. Since the start of the 2020-2021 school year, RCPS convened eight IEP meetings— on September 18, 2020, January 28, 2021, May 10, 2021, May 28, 2021, September 9, 2021, December 3, 2021, March 25, 2022, and May 13, 2022. Petitioners attended every IEP meeting and brought counsel to recent meetings. Testimony and evidence introduced at the hearing demonstrated that Petitioners actively participated in every meeting. There is no persuasive evidence that RCPS ignored Petitioners' input, prevented them from expressing their viewpoints, or did not approach the meetings with an open mind. To the contrary, the IEPs indicate that the IEP team usually granted Petitioners' requested IEP amendments.

ii. RCPS Arranged for Timely, Comprehensive Vision Evaluations for [redacted]

Petitioners have also failed to meet their burden of showing that RCPS failed to conduct timely and comprehensive vision evaluations for [redacted] The IDEA and Georgia State Board of Education Rules only require school districts to complete *initial* evaluations within sixty calendar days of receiving parental consent for the evaluation. Ga. Comp. R. & Regs. 160-4-7-.04(1)(b)1. This general timeframe does not apply, however, to reevaluations. See id. Nothing else with the IDEA or Georgia State Board of Education Rules require school districts to complete additional assessments or evaluations within a certain period.

Because [redacted] was already eligible for special education services prior to her enrollment in RCPS, any evaluations that RCPS conducted were not "initial" evaluations. The record demonstrates that RCPS conducted a comprehensive psychological evaluation in April 2021 and held a reevaluation/redetermination meeting in May 2021. As soon as Petitioners expressed a concern with [redacted]'s assistive technology and vision support, RCPS offered to conduct additional evaluations in these areas. Once those evaluations were completed, RCPS attempted to convene an IEP meeting to review the results in a timely fashion, but Petitioners refused to meet until March 25, 2022 IEP meeting to review the results. Based on the results of the evaluations, [redacted]'s IEP team updated the supports, aids, and accommodations within her IEP to reflect the evaluators' recommendations. Petitioners do not dispute the results of the evaluations.

In short, RCPS exceeded its obligation under the IDEA by conducting prompt, comprehensive vision evaluations by two reputable outside agencies, and it did so under a reasonably expeditious timeframe under the circumstances. At no point did Petitioners request any evaluation that RCPS did not conduct.

iii. RCPS did not violate IDEA by not selecting auditory and electronic text boxes on [redacted]'s IEP because it has provided auditory and electronic text formats to [redacted] throughout her enrollment.

Since [redacted] enrolled in RCPS, RCPS has provided [redacted] supports, aids, and accommodations that allowed her to access the curriculum. After [redacted] had been enrolled in RCPS for a year and a half and after Petitioners attended six IEP meetings for [redacted], Petitioners asserted for the first time that RCPS improperly developed [redacted]'s IEP when [redacted]. enrolled by failing to check the boxes of auditory and electronic text format. Although Petitioners participated in the initial September 18, 2020 IEP meeting, received a copy of the IEP, and participated in every IEP meeting since then, Petitioners still contend that the IEP team decided not to select the boxes for whether [redacted] required "auditory" and "electronic text" formats to access the curriculum "without Petitioners' knowledge." Petitioners' arguments fail on this score because RCPS has always provided Petitioners the

opportunity to participate in [redacted]'s IEP meetings and Petitioners have always had access to [redacted]'s IEPs.

But regardless of why the IEP team did not select either box, and even assuming this should have been done, the evidence does not show that failure to select the box has harmed [redacted] The evidence instead shows that RCPS has provided auditory and electronic text formats to [redacted]. RCPS has provided auditory formats to [redacted] through Ms. Summers and through software that RCPS made available to [redacted]. Ms. Summers testified that she read all reading passages with which [redacted] needed assistance. She also testified that RCPS provided software and/or applications that provided electronic versions of reading materials and assignments. [redacted] was able to enlarge the electronic version of these written materials or to have the materials read to her auditorily.

Even if the Petitioners were able to show that there were isolated occasions where [redacted]'s materials were not available in a particular format, they still have not shown that she was denied meaningful access to the curriculum or her education. I.Z.M. v. Rosemount-Apple Valley-Eagan Public Schools, 863 F.3d 966, 969 (8th Cir. 2017) ("[A]lthough the District did not provide [the student] Brailled materials one hundred percent of the time," there was "very little evidence of times when materials were not available in some accessible format" and "[m]ost failures involved not entire textbooks, but short assignments within [the student's] capacity to read with alternative aids and even large print.").

Petitioners have not shown that "any lack of accessible materials denied [redacted] 'access to involvement and the ability to make progress on [her] IEP goals," so Petitioners cannot prove that the school district substantively violated her IDEA rights. Id. The record indicates that [redacted] could access her learning materials in auditory or electronic text formats at any given time. So, whether RCPS selected certain boxes on her IEP or provided her each of the specific supports, aids, and accommodations that are identified within her IEP at any specific time is not the issue. The issue is

whether [redacted] had the required access. The preponderance of the evidence shows that [redacted] did.

iv. RCPS provided Petitioners access to [redacted]'s educational records in compliance with FERPA and the IDEA's requirements.

RCPS made requests for [redacted]'s educational records on January 25, 2022, and March 9, 2022. RCPS responded to both requests as required by the Family Educational Rights and Privacy Act (FERPA) and the IDEA. Petitioners may not be satisfied with the records that RCPS produced, but Petitioners are not entitled to additional records under the law. FERPA and the IDEA grant parents the right to review and inspect their student's educational records. 34 C.F.R. §§ 99.3, 99.10(a), 300.613(a). A school district must respond to a parent's request for a special education student's educational records within forty-five days or before any IEP meeting. 34 C.F.R. §§ 99.10(b), 300.613(a).

FERPA and its implementing regulations define education records as records that (1) contain information directly related to a student and (2) are maintained by an educational agency or institution or by a person acting for the agency or institution.[1] 20 U.S.C. § 1232(g)(4); 34 C.F.R. § 99.3. The law then specifically states that not all documents constitute education records by listing five types of documents that are not included in the term. In addition to the five categories listed in the regulation, courts have held that other types of documents are also excluded from the term. Put simply, RCPS is only required to provide records that constitute "educational records."

In Owasso Independent School District No. I-011 v. Falvo, the Supreme Court held that for information or a document to constitute an education record, that information or document must be maintained in a student's permanent file. 534 U.S. 426, 432–33 (2002). There, the Court specifically addressed whether graded student work constituted education records, and the Court held that a grade on a given assignment does not constitute an education record unless and until the grade is recorded in the teacher's gradebook. Id. The Court arrived at its decision by finding that

[1] The IDEA adopts the FERPA definition of "education records" by reference. 34 C.F.R. § 300.611(b).

individual grades on student work are not "maintained" by a school district within the meaning of 20 U.S.C.A. § 1232 (g). Id. at 433. The Court recited a dictionary definition of "maintain" as "to keep in existence or continuance; preserve; retain" and found that any given grade on student work is not "contained" within a teacher's grade book until the teacher physically records the score there. Id. The Court further held that "the word 'maintain' suggests FERPA records will be kept in filing cabinets in a records room at the school or on a permanent secure database." Id.

The Supreme Court in Owasso held that other sections of FERPA also supported its interpretation of what constitutes education records. Id. at 434. As one example, the Court noted that through FERPA, Congress mandated that educational institutions maintain a single record of who has accessed a student's education records. Id. (citing 20 U.S.C.A. § 1232(g)(b)(4)(A)). The Court stated that based on that requirement, Congress did not intend for education records to include all graded student work because it would be unworkable for all of a student's teachers to maintain individual records of access for all student work. Id. The Court concluded that "Congress contemplated that education records would be kept in *one place* with a *single* record of access." Id. (emphasis added). Unless student work or student grades are intentionally placed into a student's permanent file, they do not constitute an education record. Id. at 436.

Just as the courts above found that school districts were not required to maintain individual student work as an educational record and were therefore not required to produce such records to requesting families, RCPS was not required to maintain and produce all of [redacted]'s work assignments during the 2021-2022 school year. RCPS introduced evidence that it responded to Petitioners' January 25 request for progress monitoring data. Petitioners offered no evidence to the contrary. In fact, Petitioners admitted to having unlimited access to [redacted]'s progress monitoring on RCPS's online platform, Infinite Campus. RCPS also proved that they responded to Petitioners' March 9 request for additional educational records on March 18.

Petitioners may be dissatisfied that more of [redacted]'s work samples were not included in the production, but, again, RCPS was not required to maintain copies of those work samples, and thus was not required to produce them to Petitioners. Petitioners have not met their burden of showing that RCPS failed to meet the 45-day deadline for producing records or excluded any records from their productions. As such, Petitioners' claim is denied.

v. RCPS did not amend [redacted]'s December 3, 2021 IEP.

Petitioners' allegations that RCPS amended [redacted]'s December 3, 2021 IEP are not supported by the evidence. RCPS offered persuasive and unrefuted testimony that no employee altered the substance of [redacted]'s December 3, 2021 IEP. The evidence shows that RCPS discovered that when teachers and service providers were inserting [redacted]'s progress monitoring into a separate document (as they were required to do), the third- party IEP software that RCPS uses was auto-populating the progress monitoring data into the IEP. This inadvertent insertion of data did not affect the substance of [redacted]'s IEP and did not affect any of the services of instruction that RCPS provided to her. Although the Court can understand the parental concerns this apparent change provoked, the Court finds that RCPS did not procedurally violate Petitioners' rights to participate in the development, review, or revision of [redacted]'s IEP as a result of this error. The Court further finds that RCPS quickly investigated the issue and resolved it prior to [redacted]'s next IEP meeting on March 25.

D. [redacted].'s IEPs were appropriate and implemented properly.

Like their allegations of procedural defects, Petitioners' claims that RCPS substantively abridged the IDEA are not supported by a preponderance of the evidence. The preponderance of the evidence shows [redacted]'s IEPs were tailored to allow her to achieve educational benefit and that, beyond the period for which RCPS has offered to provide compensatory services to [redacted], RCPS did not fail to implement her IEP. Rather, any services or instruction that [redacted] missed was attributable solely to Petitioners withholding [redacted] from services.

i. Petitioners have not demonstrated that the content of [redacted]'s IEPs was substantively inappropriate.

Petitioners apparently allege that [redacted]'s IEPs were inappropriate for only one reason. They assert that [redacted].'s IEP team should not have included a VisioBoard, magnifier, or monocular as supplemental aids. [redacted].'s IEP team added magnifiers and monocular as supports to [redacted]'s September 19, 2020 IEP and added a VisioBoard as a support in the September 9, 2021 IEP meeting. Petitioners put forth no evidence that demonstrated any harm to [redacted] by those items being included in her IEP. Moreover, the IEP team removed all three supports during the March 25, 2022 IEP meeting based on the results of the Low Vision Assessment and the Assistive Technology Evaluation.

With regard to the VisioBoard, the combined testimony of Ms. Summers and Ms. L. Williams indicates that the inclusion of a "VisioBoard" in [redacted]'s IEP was simply a discrepancy in nomenclature, having no effect on her education. [redacted]'s IEP team mistook a portable whiteboard with a VisioBoard. That [redacted]'s IEP team used the wrong term for one of the many tools that they used when working with [redacted] did not substantively harm [redacted]'s ability to access her education.

Petitioners also failed to show the inclusion of magnifiers and a monocular as supports in [redacted]'s IEP caused [redacted] any substantive harm. Ms. Summers and Ms. Duhart testified that [redacted] successfully used magnifiers and a monocular to magnify printed materials and information presented around the classroom. Ms. Summers testified that these were helpful tools for her. Although the Center for the Visually Impaired reported in the Low Vision Evaluation that magnifiers and a monocular were no longer useful for [redacted], this does not mean that they were not useful tools when [redacted] was attending school the previous fall. Petitioners have failed to show that [redacted] was harmed because RCPS allowed her to use magnifiers or a monocular.

ii. RCPS has already offered to overcompensate [redacted] for any services she missed.

Petitioners withheld [redacted] from instruction and services from November 3 until after the

December 3 IEP meeting. RCPS attempted to minimize the harm Petitioners created in withholding [redacted] from school by offering four alternative elementary schools for [redacted] to attend and providing her access to virtual services. RCPS acknowledges that there were limited periods when RCPS was not able to provide services due to a provider's absence. But RCPS has adequately addressed those failures by offering four weeks of compensatory services to [redacted] RCPS was not responsible for all the instruction and services that [redacted] missed. When [redacted] was required to quarantine for ten days after she exhibited COVID symptoms, Principal Degenhardt told Petitioners how [redacted] could access instruction virtually. Petitioners refused to participate in that option, but RCPS also offered ten days of compensatory services for the ten days calendar days that [redacted] was required to quarantine.

[redacted] missed two more weeks of instruction and services after she was able to return to school from quarantine because Petitioners (1) refused to return [redacted] to [redacted], (2) refused to allow her to participate in virtual learning when RCPS offered it as a temporary measure; (3) refused to submit a hardship transfer request in a timely fashion; (4) refused to allow the administrators at Lorraine Elementary to help [redacted] transition to school there; and (5) refused to consider any option but virtual school even though the deadline for registering for virtual school had long since passed. Because Petitioners rejected RCPS's multiple reasonable attempts for [redacted] to participate in school, RCPS had no legal obligation to compensate [redacted] for time she missed. But RCPS still offered to provide one hour of compensatory services for every hour she missed.

iii. <u>RCPS is not responsible for time that Petitioners withheld [redacted] from learning this spring.</u>

[redacted] has missed many hours of instruction and services since the period for which RCPS offered compensatory services. But RCPS is not responsible for any time [redacted] has missed since the December 3, 2021 IEP meeting because RCPS has been ready and willing to provide services, and it is Petitioners who have not made [redacted] available.

The Eleventh Circuit analyzed a school district's liability in the context of a student who,

like [redacted], refused to participate in school in the setting in which his IEP team placed him in L.J. v. N.N.J. v. School Board of Broward County. 927 F.3d 1203 (11th Cir. 2019). There, the court emphasized that the school system could not provide many of the IEP-mandated services, because the student, L.J., refused to attend school. Id. at 1217. The Eleventh Circuit held that no failure by the school system to implement any portion of the IEP caused L.J.'s aversion to school. Id. at 1217-18. The school system even offered several supports to make L.J. more comfortable attending school, but they were unsuccessful. Id. at 1218. Under those circumstances, the court concluded, the school system did not fail to implement L.J.'s IEP. Id. The court acknowledged that L.J.'s absenteeism caused him to miss many services called for by his IEP. Id. But "[m]issing those sessions because he was not at school," the court explained, "is quite a different matter than missing those sessions because the school simply failed to provide them." Id.

In yet another case, Garcia v. Board of Education of Albuquerque Public Schools, the Tenth Circuit analyzed whether a student who stopped attending school and eventually dropped out was entitled to compensatory services. 520 F.3d 1116, 1122 (2008). The district court held that a student was not entitled to compensatory services when it was the student's own behavior, rather than action or inaction by the school district that caused any loss of educational opportunities. Id. The district court alternatively held that even if the school district had failed the student, "no award of compensatory educational services was warranted as a matter of equity in light of the fact that [the student] had demonstrated a pattern of failing to use the educational opportunities provided to her by the school district" despite the district's efforts to provide them to her. Id. The district court emphasized that "the compensatory educational services the [family] sought through court award would effectively be available to her if and when she should simply decide to return to the school." Id. The Tenth Circuit upheld the district's court's order.

Just as the Tenth and Eleventh Circuits did not find school districts liable for not implementing

student's IEP, this Court cannot find RCPS liable for any inability to implement [redacted]'s IEP since January 2022. [redacted]'s teachers and service providers have been available to provide [redacted] virtual instruction and services, but she has either not logged on to participate or she has logged on without her camera or microphone on since mid-January. RCPS asked Petitioners to consent to RCPS conducting an updated psychological evaluation and to provide RCPS access to [redacted]'s medical records to determine if [redacted]'s IEP team should consider amending her IEP, but Petitioners refused to grant permission. Without access or updated information about [redacted].'s current functioning, RCPS is unable to implement her IEP or make necessary adjustments. RCPS cannot be held responsible for any failure to implement [redacted]'s IEP during the spring of 2022 because Petitioners refused to provide RCPS access to [redacted]

iv. The assistive technology devices that RCPS offered to [redacted] allow her to access the curriculum.

When developing a student's IEP, the IEP team must "consider whether the child needs assistive technology [("AT")] devices and services." 34 C.F.R. § 300.324(a)(2)(v). A school district must provide AT devices to a student with a disability only if the IEP team determines the student needs such a device to receive FAPE. Letter to Anonymous, 24 IDELR 854 (OSEP 1996). If a school district determines that a student needs an AT device, the school district must provide the device to the parents of the student at no cost. Letter to Cohen, 19 IDELR 278 (OSERS 1992). The AT device that a school district provides to a student must be tailored to the student's individual needs. But a school district also does not need to provide an AT device that is superfluous or that a student is unable to operate. For example, in Barber v. Bogalusa City Sch. Bd., the court reversed the decisions of an independent hearing officer and a state level review panel that held that a student "need[ed]" a computer as an AT device. 98-1333, 2001 WL 667829, at *9, (E.D. La., June 12, 2001). The court found that the IEP team's decision to provide a reading machine, tape recorder, auditory aides, and large print or braille written materials were appropriate, so the school district did not need

to provide the student a computer as well. Id. And in McComish v. Underwood Public Schools, the court held that the school district was not required to provide or reimburse a family for the particular braille device (the Braille Note) they requested. 1:06cv65, 2008 WL 660113, at *7 (D. N.D. March 6, 2008). There the court relied on evidence that the student's IEP team had determined that the Braille Note would not help the student's auditory processing or Braille reading speed and that nothing else within the record suggested that if the school district had provided the Braille Note that it would have been able to provide FAPE. Id. In short, a school district is "not required to provide a student the AT devices or services specified by parents or accede to each AT request." See Southington Bd. of Educ., 116 LRP 28397 (Conn. April 21, 2016) (determining that a district did not have to provide a student the text-to-speech software requested by the parents because the student could receive FAPE with a district-issued laptop); Smith v. District of Columbia, 58 IDELR 155 (D. D.C. 2012) (finding that a student received FAPE with a word process and did not require a laptop requested by the parent).

Here, RCPS provided [redacted] numerous devices to allow her to access materials throughout the two-year period. Prior to the March 25, 2022 IEP meeting, RCPS provided her a Perkins Brailler, which is the basic writing tool for visually impaired persons, a VisioBook, which is a video magnifier that allows visually impaired persons to enlarge any document or item within the same room, a Braille keyboard, a touch screen monitor, and a school-issued laptop. After the IEP team amended the AT devices in [redacted]'s IEP, RCPS acquired a Braille Trail Reader for [redacted]'s use. As Ms. Williams testified, the electronic braille device that Petitioners demanded RCPS provide, the Note Touch Plus, was not necessary to provide [redacted] FAPE because she is not sufficiently proficient in Braille. Despite [redacted] not being ready to use an electronic braille device, RCPS still provided her a Braille Trail Reader. Because RCPS provided [redacted] numerous ways to access educational materials, the evidence does not show that RCPS denied [redacted] FAPE by failing to provide the exact

AT device Petitioners requested.

Petitioners' contention that RCPS has not provided [redacted] appropriate AT devices is also somewhat disingenuous given that Petitioners allowed over one month to go by before picking up the electronic braille device that RCPS acquired for [redacted] Petitioners belatedly claimed during the hearing that RCPS did not offer training on the device, but Petitioners never alerted RCPS that they desired training prior to the hearing. RCPS is ready and willing to provide training to Petitioners, but until the hearing, Petitioners had only ever rejected the device.

v. [redacted]'s IEP Did Not Require District Employees to Ensure She Used Her Cane at All Times.

RCPS did not violate [redacted]'s IEP when [redacted] ran to greet Petitioners at dismissal. Nothing within any of [redacted]'s IEPs required RCPS employees to ensure that [redacted] used her cane at all times or did not run while at school. The fact that [redacted] had an IEP objective to improve her cane use and that she had a cane listed as a support does not obligate RCPS to ensure [redacted] uses her cane every moment that she is at school. The evidence shows that Ms. Summers and Ms. Duhart encouraged [redacted] to use her cane whenever she navigated in and around school. But [redacted] was capable of participating in P.E. and recess without her cane, and Ms. Summers and Ms. Duhart do not recall [redacted] ever falling or injuring herself during the school day. Simply put, the IDEA did not require RCPS to ensure that [redacted] used her cane at all times.

E. This Court Lacks Jurisdiction to Decide Petitioners' ADA and Section 504 Claims.

Petitioners' hearing request also included claims arising under the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 ("Section 504").

Under the IDEA, the Georgia Department of Education is required to ensure that children with disabilities and their parents are guaranteed certain procedural safeguards, including the opportunity for an impartial due process hearing, relating to the provision of a free appropriate public education. 20 U.S.C. § 1415; 34 C.F.R. § 300.511; Ga. Comp. R. & Regs. 160-4-7-.02. Pursuant to

the Georgia Administrative Procedures Act, the Office of State Administrative Hearings has jurisdiction over "contested cases" involving state agencies, including DOE, "in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." O.C.G.A. §§ 50-13-2(2), 50-13-41. Accordingly, the Court has jurisdiction to conduct the impartial due process hearing required under the IDEA.

Under IDEA and DOE regulations, the matters that may be raised in a due process complaint relate to the "identification, evaluation, or educational placement of a child with a disability or the provision of [a free appropriate public education] to the child." 34 C.F.R. §§ 300.507, 300.503(a)(1)-(2); Ga. Comp. R. & Regs. 160-4-7-.12(3) ("The impartial due process hearing is designed to provide a parent or [local educational agency] an avenue for resolving differences with regard to the identification, evaluation, placement or provision of a [free appropriate public education] to a child with a disability."). Moreover, the IDEA provides that the decision following an IDEA due process hearing "shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. . . ."[2] 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513; Ga. Comp. R & Regs. 160-4-7-.12(3)(p).

Thus, the Court concludes that its jurisdiction does not extend to causes of action that arise under other federal laws, such as the ADA or Section 504. Atlanta Independent School System v. S.F., 2010 U.S. Dist. LEXIS 141552, *21–22 n.4 (N.D. Ga. Feb. 22, 2010) ("There is nothing in the Georgia Administrative Code section applicable to IDEA dispute resolution that suggests that the impartial due process hearing is an appropriate venue for raising non-IDEA claims") (citation omitted). Accordingly, those claims are **DISMISSED**.

[2] The due process hearing officer can also find a denial of a free appropriate public education based on procedural violations if the procedural inadequacies impede certain rights of the child or parent or deprive the child of educational benefits. 20 U.S.C. § 1415(f)(3)(E).

F. Petitioners are not entitled to relief.

This case is troubling. The evidence shows that [redacted] needs to be back in school, preferably in a classroom setting. If a classroom setting is not viable because of [redacted]'s alleged recent, but undocumented, psychological issues, then [redacted] needs to be in a one-on-one physical setting, either at school, at home or in some other setting. But the parents have steadfastly refused, and apparently continue to refuse, to take steps to permit [redacted] to return to in-person learning of any kind, even when this alternative is offered by RCPS.

Instead, the parents continue to insist on virtual schooling. But the testimony is compelling and unrefuted that virtual education is almost certain to fail unless [redacted] actively participates with monitor and speaker on so that the teachers can observe and interact with her. This is true in all areas of learning. It is of particular importance when applied to [redacted] developing proficiency in typing and reading braille. Learning to read and type braille is a tactile and motor-learning skill. It is exceedingly difficult to teach it virtually, even in the best of settings.

In their proposed findings of fact and conclusions of law, Petitioners have requested for relief requiring the District to provide compensatory services by reason of Dr. Gaur's two-month absence, that the District request a loaner Braille Note Touch Plus 32 for [redacted] to use for upcoming years in the District and that the District provide training for all educational devices and assistive technologies to [redacted] for [redacted]'s tenure in the District.

The District has offered and continues to offer to provide training on assistive devices that [redacted] has. As to the providing of a Braille Note Touch Plus 32 for [redacted], the reasonableness of such request is tied to [redacted] spending the requisite time not only to master that machine, but also to acquire the level of proficiency in braille which she is currently lacking. Without further in-person training and increased proficiency, [redacted] will not be able to use this assistive device. And the District has previously offered and provided compensatory services which Petitioners have failed to utilize. So

it is difficult to understand what benefit will result if the Court were to order the District to provide more services that will not be used.

Perhaps there are facts that have not been introduced into the record in this matter that justify Petitioners' position on the issue of continued virtual schooling. The Court is highly dubious of the path [redacted]'s parents are pursuing in this regard and is left with the overwhelming sense that continuing with online virtual learning for [redacted] as demanded by the parents will ultimately prove to be self-defeating.

Given the current state of matters, based upon the record in this matter, even if the Court were persuaded that the District's actions and inactions gave rise to a violation of the IDEA and a failure to provide FAPE to [redacted], this Court would not be able to provide what Petitioners believe to be the appropriate relief. [redacted]'s parents have consistently acted unreasonably since October 2021. They have repeatedly refused to make [redacted] available for services, delayed RCPS's attempts to convene IEP meetings for [redacted], demonstrated a deeply rooted unwillingness to collaborate with RCPS even when RCPS continued to grant Petitioners' requests, and persisted in that conduct in the face of compelling evidence to the contrary by insisting on continued virtual-only education for [redacted] Stated a bit differently, even if this Court found a violation of FAPE, the remedy would be to require the District to do *more of what the District has already offered to do and which has been refused by Petitioners.* What Petitioners seem to be requesting is more of what they have failed to utilize in the past.

Courts may consider the reasonableness of parent behavior in determining the appropriate relief. See Cobb Cty. Sch. Dist., 961 F. Supp. 2d at 1271 (citing 20 U.S.C. § 1412(a)(10)(C)(iii)(III) and 34 C.F.R. § 300.148); Pickens Cty. Sch. Dist. V. E.W. by and through R.W., 2:10- cv-0011-WCO, 2011 WL 13272826, at *27, (N.D. Ga. June 9, 2011); see also Loren F. ex rel. Fisher v. Atlanta Ind. Sch. Sys., 349 F.3d 1309, 1312–13 (11th Cir. 2003) (noting that a court may deny reimbursement for private placement if parents act unreasonably or frustrate school's efforts).

Before Petitioners even filed their original due process hearing request, RCPS offered to provide [redacted] four weeks of compensatory services for time that [redacted] did not receive services this past fall. This offer significantly exceeded the amount of time for which [redacted] was entitled to compensatory services. Despite RCPS's efforts to collaborate with Petitioners, the Parents then accused RCPS of using the compensatory services to "punish" [redacted] and stopped making [redacted] available for the compensatory services altogether. Petitioners now insist that they will only accept compensatory services from a non-RCPS employee. But Petitioners have offered no evidence to support why RCPS employees are not qualified to provide compensatory services.

Just as Petitioners have failed to show that they are entitled to any compensatory services for the fall of 2021, they have failed to show they are entitled to any compensatory services for the spring of 2022. When Petitioners elected to participate in virtual learning, RCPS notified them of its expectations that all students participate with their cameras and microphones on. Since the middle of January 2022, Petitioners have shown no regard for that expectation whatsoever. [redacted] has consistently logged into all of her lessons without her camera or microphone on, forcing her teachers and service providers to teach to a black screen. Even though Dr. Gaur went out on leave in mid-April, Petitioners are not entitled to any compensatory services during his absence because Petitioners offered *no* evidence that [redacted] was actively participating in the services that he was providing to [redacted] prior to his absence.

Petitioners have failed to show a basis for this Court to order RCPS to provide [redacted] any relief. This Court must therefore deny Petitioners' request for relief in its entirety.

G. <u>Other Considerations.</u>

IDEA cases are complex and highly emotional. By the time these matters reach the level of a Due Process Hearing, often tempers have flared, trust is gone, patience has eroded, and the parties have lost sight of the real purpose of IDEA, which is to provide the affected child a free appropriate

public education.

There are few situations that provoke greater anxiety for parents than the education their children receive. Every good parent is dedicated to getting their child the best possible education and the best start in life possible. The Court believes such is the case with [redacted]'s parents.

There is no question that [redacted].'s parents love [redacted] deeply and are profoundly concerned about her education. The Court is also persuaded that they genuinely believe their assertions and allegations in this case even though the Court does not see evidence in the record to substantiate those beliefs.

The District has solemn responsibilities under IDEA to provide a free and appropriate public education. The District is not obligated to provide the ideal or perfect education. It is, however required to provide [redacted] with the opportunity to make progress appropriate in light of her circumstances. See Alex W. v. Poudre Sch. Dist. R-1, Civil Action No. 19-CV-01270-CMA-SKC, 2022 U.S. Dist. LEXIS 126041, at *7–8 (D. Colo. July 15, 2022).

This case is not about proving one party right or wrong. This case is about whether the District has provided FAPE to [redacted] As discussed above, the Court has concluded that Petitioners have failed to show that RCPS did not satisfy its obligation to provide FAPE during the period in issue. If [redacted] has not in fact received FAPE, that has not been because of the actions of inactions of RCPS. Based upon the record in this case, the District has satisfied its legal obligation to provide FAPE.

The new academic year is now upon the parties. During the upcoming year, the District has a continuing obligation to provide [redacted] FAPE and the parents have a continuing obligation to cooperate with the District to enable that to happen. This Court sincerely hopes that all parties will refocus upon what is important, which is getting [redacted] the education to which she is entitled by law. That may require everyone to take a deep breath, let go of prior history, start fresh and move on. But the parties need to reflect upon their respective obligations and attempt to find common ground focused on [redacted]'s continuing needs.

The Court reiterates and closes that it has profound concerns regarding the course of conduct the parents seem intent on pursuing prospectively. The Court urges all parties to keep an open mind, reevaluate their positions and beliefs, and focus on moving forward in a fashion that will further [redacted]'s education.

IV. CONCLUSION

Petitioners failed to present credible or persuasive evidence to support their claims in this matter. Because they have not met their burden, their requests for relief must be denied in their entirety. Respondent's actions in this matter are therefore **AFFIRMED**. Petitioners' ADA and Section 504 claims are **DISMISSED**.

SO ORDERED, this 15th day of August, 2022.

Charles R. Beaudrot, Jr.
Administrative Law Judge