



09/28/2022

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

██████████ BY AND THROUGH ██████████  
Petitioners,

v.

MUSCOGEE COUNTY SCHOOL  
DISTRICT,  
Respondent.

  
Devin Hamilton, Legal Assistant

Docket No.: ██████████  
██████████-OSAH-DOE-SE-106-Beaudrot

**FINAL DECISION**

**I. Introduction**

Petitioner filed the due process hearing request which is the basis for this case on August 11, 2021. In the due process hearing request, Petitioner raised claims under the Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act.

The relevant period for this matter is August 11, 2019, through August 11, 2021. This period coincides with the start of ██████████’s seventh-grade year at ██████████ Middle School, encompasses his eighth-grade year, and extends into the first few weeks of his ninth-grade year at ██████████ High School in Muscogee County.

To accommodate limitations on witness availability and other issues, at the request and by agreement of the parties, the hearing in this matter was conducted by video conference over seven days on May 16, 20, June 8, 9, 27, 28 and July 11, 2022. ██████████ appeared and represented Petitioner pro se. Respondent was represented at the hearing by Andrea Jolliffe, Esq.

Following the conclusion of testimony on July 11, 2022, each party was directed to submit and file proposed Findings of Fact and Conclusions of Law no later than 4:00 p.m. on Friday, August 19, 2022. Each party was also given leave to file a response to the opposing party’s

Proposed Findings of Fact and Conclusions of Law due on or before 4:00 p.m. on August 26, 2022. Both parties filed such responses on August 26, 2022, and the record closed at that time.

In this matter, Petitioner has identified a number of issues regarding the educational services provided by Respondent Muscogee County School District (the “District”) to Petitioner [REDACTED] which she believes resulted in the District failing to provide Petitioner [REDACTED] with a free appropriate public education (“FAPE”). As will be seen, the District did not do a perfect job, and there are indeed some lapses by the District in its actions in this matter. On balance, however, after reviewing all of the evidence, the Court finds that the Petitioner has failed to show by a preponderance of the evidence that the District has failed to provide Petitioner [REDACTED] with FAPE during the period in issue.

The Court must also note that even if the Court were to conclude that the District had failed to provide Petitioner with FAPE, Petitioner has failed to identify and submit evidence as to the appropriate remedy. In particular, the Court notes that Petitioner abandoned all claims for compensatory services and is solely seeking remedies for damages that are not available under the IDEA.

Accordingly, for reasons discussed below, the actions of Respondent in this matter are **AFFIRMED** and this matter is **DISMISSED WITH PREJUDICE**.

## **II. Findings of Fact**

1. The relevant period of time for this matter is August 11, 2019, through August 11, 2021. (OSAH Form 1).
2. Petitioner [REDACTED] is self-represented in this matter through his mother [REDACTED]’s presentation of Petitioner’s case and her articulation of the grounds for Petitioner’s case are difficult to follow and identify. Reviewing the record in its entirety, it appears that the following

are the grounds asserted by Petitioner as the basis for claims that the District has failed to provide [REDACTED] a free and appropriate public education:

- Failure of the District to reevaluate [REDACTED] with proper testing in a timely manner by delaying such reevaluation until November 19, 2021. ([REDACTED] Test., Tr. 11, 14, 26, 43–44, 63, 65);
- Various errors in [REDACTED]’s IEP and testing results (e.g., incorrect addresses carried forward from prior documents, the use of cut and pasting techniques to create documents resulting in questionable inclusions of material from prior documentation, appearance of incorrect birthdate for [REDACTED] in certain evaluation data) causing Petitioner to doubt the credibility and accuracy of those documents and the conclusions they contained. ([REDACTED] Test., Tr. 11, 14, 31, 32, 40, 73–74, 76);
- Failure of the District to implement either a Functional Behavior Assessment (“FBA”) or a Behavior Intervention Plan (“BIP”) for [REDACTED] even though [REDACTED] had a BIP while attending school in the Richmond County School System. ([REDACTED] Test., Tr. 15, 24, 56–57, Ex. P-24);
- Failure of the District to identify [REDACTED]’s speech issues, including receptive language inadequacies, requiring attention. ([REDACTED] Test., Tr.15, 21);
- Failure of the District to modify [REDACTED]’s IEP to address the impact of the COVID-19 pandemic and the resultant shift to virtual in-home education. ([REDACTED] Test., Tr. 26);
- Failure of the District to provide Extended School Year (“ESY”) services in a timely fashion and not doing so until required to do so by reason of direction a determination made by the Georgia Department of Education ([REDACTED] Test., Tr. 46, 48; Ex. P-11);
- Refusal of the District to agree for [REDACTED] to move from full day academic instruction to half days of instruction. ([REDACTED] Test., Tr. 33–34)

3. [REDACTED] is currently a tenth-grade student at [REDACTED] School in the Muscogee County School District. He has medical diagnoses of attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD),<sup>1</sup> and depression. (Tr. 172–73; *see also* Ex. P-14). [REDACTED] also has a diagnosis of an expressive language disorder. (McFarland Test., Tr. 200; Ex. P-24).

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<sup>1</sup> [REDACTED] was unsure when [REDACTED] obtained his ODD diagnosis, believing it to be sometime in 2019 or 2020. ([REDACTED] Test., Tr. 96).

4. Dr. Teshawnia Thompson serves as a Lead School Psychologist for the Muscogee County School District. (Thompson Test., Tr. 681–82). She has 23 years of experience as a school psychologist and estimates she has conducted anywhere from 75-100 psychological evaluations each year and written more than 2100-2300 psychoeducational evaluation reports over the course of her career. (*Id.* at 683–85). Since becoming a school psychologist, she has interpreted and explained the results of private psychological evaluations to other members of IEP teams. (*Id.* at 685-86). Without objection, Dr. Thompson was qualified as an expert in the field of school psychology and psychoeducational evaluation. (*Id.* at 689).

5. Dr. Thompson testified that the major characteristics of ADHD are inattention, hyperactivity, and impulsivity. She further testified some students with ADHD also have a hard time with executive functioning and emotional regulation. (Thompson Test., Tr. 721–22). According to Dr. Thompson, executive functioning is the “ability to initiate, start, follow-up, carry through an assignment, and complete it.” (*Id.* at 723). Dr. Thompson further explained, students with ADHD have difficulty with retrieving information readily, which can cause the student to become frustrated and “shut down.” (*Id.* at 722–23). She characterized ADHD as a “disorder of performance, being able to consistently and independently retrieve the information and show mastery of information.” (*Id.* at 723).

6. Dr. Thomspson also testified that oppositional defiant disorder (ODD) is a “disorder of conduct and behavior.” (Thompson Test., Tr. 724). In the school setting, students with ODD are sometimes argumentative, non-compliant, annoy or upset others, have problems taking responsibility, and may blame others. (*Id.*). For a student who can take instruction, listen to authority, and redirect in the classroom, “we wouldn’t necessarily say that we’re seeing the oppositional defiant disorder or that it’s playing a major role in their overall performance.” (*Id.* at

725–26).

█ *s Initial Evaluation for Special Education Services*

7. █ was initially found eligible for special education and related services by the Richmond County School District on October 7, 2014. (█ Test., Tr. 13; 692–93; Ex. R-17; *see also* Ex. R-58).

8. In connection with his initial eligibility determination, the Richmond County School District conducted a psychological evaluation of █ (Ex. R-17). Dr. Thompson testified that psychoeducational assessments are not diagnostic but used for educational purposes. (Thompson Test., Tr. 682, 701). They help determine a student’s academic strengths and weaknesses. (*Id.* at 740)

9. At the time of his initial evaluation, █ s identified learning problems included distractibility/hyperactivity, impulsivity, lack of persistence, and following directions. (█ Test., Tr. 20; Ex. R-17, p. 2).

10. Dr. Thompson testified that a cognitive assessment looks at “how a student’s brain processes information in comparison with their same-aged peers.” (Thompson Test., Tr. 695). On two different measures of cognitive ability administered in connection with the initial evaluation, █ s standard scores were within the average range (i.e., between 85-115). (*Id.* at 627, 694–97; Ex. R-17, pp. 4–5). Based on █ s scores, Dr. Thompson testified there were no concerns with psychological processing deficits. (*Id.* at 697).

11. According to Dr. Thompson, the psychoeducational evaluation also assessed █ s academic skills relevant to what █ is learning in school. (Thompson Test., Tr. 699; Ex. R-17, p. 5). Based on his academic achievement scores, there were no concerns with █ s academic functioning. (Thompson Test., Tr. 700). Both areas assessed in Reading fell within the average

range, and ██████'s Math Calculation score fell in the high-average range. (*Id.*; Ex. R-17, p. 5).

12. However, assessments of ██████'s social, emotional, and behavioral functioning showed concerns at school in areas such as hyperactivity, aggression, conduct problems, depression, and withdrawal. (Thompson Test., Tr. 703; Ex. R-17, p. 6).

13. According to Dr. Thompson, a student who has an average IQ and is performing in the average range academically can nonetheless be eligible for special education services based on behavior concerns such as those identified in ██████'s initial evaluation. (Thompson Test., Tr. 703). The assessments administered during his initial evaluation revealed “characteristics that are directly associated with ADHD.” (*Id.* at 703–04).

14. Dr. Thompson further testified, “[w]e can think of eligibility as a vehicle. So eligibility is going to be that vehicle – Right? -- so that gets you services. If you’re eligible, you’re going to receive special education services. However, when we look at the eligibility once the student is determined to be eligible for services, then the committee will generate the IEP, which is the individual education plan. Regardless of what the eligibility area is, that IEP is kind of used as the routing instructions. So you’re in the car—Right?—but the car only goes where the driver takes it.” (Thompson Test., Tr. 704).

15. ██████'s area of eligibility was identified as “other health impaired” based on his ADHD diagnosis. (Thompson Test., Tr. 705). He did not meet the criteria for a specific learning disability because he did not display a pattern of strengths and weaknesses in any academic area. All of his scores were within the average to high average range. (Thompson Test., Tr. 699-700, 705).

16. After ██████ transferred from the Richmond County School District to the Muscogee County School District, he continued to be served under the “other health impairment” category of

eligibility. (Thompson Test.; Ex. P-7, p. 1).

█ *s Individualized Education Program Prior to August 11, 2019*

17. During his fourth-grade year at █ Elementary School, █ received special education services from a special education teacher in a separate class for Language Arts and Reading under an IEP dated September 12, 2016. (Ex. P-4, p. 14). He also received educational support from a special education teacher in the co-taught setting in Math, and educational support from a paraprofessional in Science and Social Studies. (*Id.*).

18. Dorothy Brown is a Lead Special Education teacher in the Muscogee County School District with a bachelor's degree and a master's degree in special education. She has teaching certifications in K-12 inclusion, K-12 adaptive curriculum, and small group, pull-out certification in Reading, Language Arts, Math, Science, and Social Studies for pre-K-8. (Brown Test., Tr. 809.)

19. Ms. Brown testified that in a separate, small group pull-out class, special education teachers have flexibility to work on the course content and IEP goals simultaneously. The pacing can be slower, and the special education teacher has autonomy to “pick and choose” topics in order to help students be successful. (Brown Test., Tr., 813–14).

20. Ms. Brown testified that in a co-taught or “inclusion” classroom, the majority of students do not have a disability and the classroom is staffed with two teachers—a certified special education teacher and a teacher certified in the content area of the course. (Brown Test., Tr. 812). Under the co-taught model, the role of the special education teacher is to “supplement and provide accommodations, modif[y] things, and make sure the students with disabilities are getting everything they need, updating things for them, making changes where – as needed to help the child access the general education curriculum as best they can.” (*Id.*).

21. On September 7, 2017, █'s IEP team convened an IEP meeting for the purpose of

“redetermination-consider the need for re-evaluation,” “annual review of current IEP,” and “develop a new IEP, if appropriate.” (Ex. P-7, p. 1).

22. Dr. Thompson testified how for a student who is already eligible for special education, the evaluation process is different than for an initial evaluation. The IEP team holds a re-evaluation data review or “RDR” and reviews all pre-existing data, parent concerns, teacher observations, teacher concerns, and previous evaluations. “During the RDR meeting, the team determines what areas are areas of concern and whether or not there needs to be a new evaluation. So the team could very well say in reviewing the previous evaluation this student continues to present with the same difficulties or the same characteristics. So we do not need a new evaluation. Or the team could say, yes, we want updated information.” (Thompson Test., Tr. 691).

23. During the September 7, 2017 RDR meeting, the IEP team found “no updated testing is needed at this time.” (Ex. P-7, p. 17). Under his September 7, 2017 IEP, █████ continued to receive specialized instruction in co-taught classes for Math, Language Arts, and Reading with paraprofessional support in Science and Social Studies. (*Id.* at p. 16).

24. The IEP team amended █████'s IEP on May 12, 2017, making changes that would take effect at the start of his upcoming fifth-grade year. Rather than receiving Reading and Language Arts in a separate class, █████ would be served in a co-taught, inclusion classroom. As in fourth grade, he would continue to receive co-taught support in Math and paraprofessional support in Science and Social Studies. (Ex. P-4, p. 14).

25. The IEP team met again on October 7, 2017. (Ex. R-50, p. 1).

26. The IEP team also met on May 9, 2018. At that time, the IEP team amended █████'s IEP so he would be in a co-taught setting for Science and Social Studies when he started sixth grade at █████ Middle School. The co-taught special education services replaced the paraprofessional



support he received in those classes during middle school. (Ex. R-50, p. 16).

27. The IEP team met again on September 5, 2018. (Ex. R-47). At that time, the IEP team indicated “[redacted] is passing all of his classes, four of them with a 90 or higher.” Two of his teachers described him as “polite and respectful,” another described him as “well-mannered when he is focused,” and his PE coach indicated [redacted] says, “yes sir” and “no sir” when addressed. (*Id.* at p. 4). [redacted]’s IEP goals related to improving his reading level, remaining focused on an assignment, and improving his writing mechanics. (*Id.* at p. 7). He continued to be served in co-taught classes for Language Arts, Math, Social Studies, and Science. (*Id.* at p. 14).

28. The IEP team convened again on October 9, 2018. (Ex. P-5). At that time, the IEP team indicated [redacted] “has some behaviors that affect his learning and the learning of others, being in a small group setting will allow him to focus more on his work than entertaining the other students in the class.” (*Id.* at p. 15). The special education services in [redacted]’s IEP were changed from co-taught to a separate class for Language Arts, Math, Social Studies, and Science. In addition, he was given an additional segment of special education teacher support in a Social Skills/Study Skills class. (*Id.*).

29. [redacted] testified the home address listed on the IEP was incorrect. ([redacted] Test., Tr. 31; Ex. P-5, p. 1). However, the meeting notes indicate [redacted] participated in the IEP meeting, which was held at her request. (Ex. P-5, p. 16).

30. In sixth grade, [redacted] earned mostly A’s, except for an 89 in Social Studies. (Thompson Test., Tr. 708; Ex. R-16). Dr. Thompson testified [redacted]’s grades are consistent with those of a student who is accessing grade level standards. (Thompson Test., Tr. 708).

[redacted]’s *Individualized Education Program from August 11, 2019 – August 11, 2021*

31. During the 2019-2020 school year, [redacted] was in seventh grade. ([redacted] Test, Tr. 251). The

school year began on August 8, 2019. (Ex. R-27).

32. The IEP team convened for an annual review of [REDACTED]'s IEP on August 28, 2019. ([REDACTED] Test, Tr. 253; Ex. P-10; Brown Test., Tr. 810; Ex. R-1). Under the IEP, [REDACTED] received special education services in a co-taught classroom for Social Studies and Science and in separate classes for Language Arts and Math. ([REDACTED] Test. Tr. 241–43; Ex. P-10).

33. On September 4, 2019, [REDACTED] was assigned to two days of in-school suspension (ISS) for “slapboxing” with another student in the boys’ bathroom. ([REDACTED] Test., Tr. 268–69; Ex. R-2, p.5). On September 6, 2019, [REDACTED] was assigned to one day of ISS for throwing crackers at a student while in the “car loop.” ([REDACTED] Test., Tr. 270; Ex. R-2, p. 5). On September 30, 2019, school staff held a parent teacher conference with [REDACTED]'s mother in connection with verbal threats he made toward another student. ([REDACTED] Test., Tr. 270–71; Ex. R-2, pp. 4-5).

34. On October 2, 2019, [REDACTED]'s IEP team held a redetermination data review. ([REDACTED] Test., Tr. 233, 235, 236, Ex. R-3; *see also* Ex. R-32).

35. According to the meeting notes, the committee agreed “[REDACTED] needs updated testing completed to determine the correct eligibility. His last testing was completed in 2014, for his initial eligibility, when he was enrolled at a school in Richmond, Ga.” (Ex. R-3, p. 7). The meeting notes indicate [REDACTED] participated by telephone. (*Id.*).

36. [REDACTED] testified she did not recall participating in the meeting but acknowledged receiving a call from Ms. Childs, who was identified as one of the attendees, and admitted she received a copy of the Reevaluation Data Review report. ([REDACTED] Test., Tr. 234–37, Ex. R-3; *see also* Ex. R-32).

37. On October 3, 2019, Dorothy Brown generated a Parental Consent for Reevaluation form, which [REDACTED] signed on October 8, 2019. ([REDACTED] Test., Tr. 240; Ex. R-30).

38. On October 17, 2019, ██████ received one day of out-of-school suspension (OSS) for skipping class and being disrespectful toward a coach. (Ex. 2, p. 4). That same day, ██████ requested that the District reschedule an IEP team meeting that was set to take place on October 25, 2019. (██████ Test., Tr. 259). ██████ also requested that a Board-certified behavior analyst attend the rescheduled IEP team meeting. (*Id.* at 260).

39. Due to his prior behavior incidents, ██████ was unable to try out for the middle school basketball team. However, the principal asked the coach to create a manager position for ██████ so he could still be involved with the team given his interest in basketball. This was done as an incentive to help address some of ██████'s behavioral problems. In this role, ██████ was allowed to work out with the team, attend practices, and wear team gear. Students on the basketball team were accountable to the coach who might have them run extra laps at practice or, in some circumstances, deny them the ability to participate. (Thompson Test, Tr. 847–49).

40. After being made the manager of the basketball team, ██████ did not engage in any behaviors that required disciplinary removal from the classroom for ISS or OSS. (Thompson Test, Tr. 850–52).

41. The IEP meeting was rescheduled for November 6, 2019. (██████ Test, Tr. 258; Exs. P-3, R-4).

42. In the interim, on October 21, 2019, Ms. Brown emailed ██████ a consent form so that a Board-certified behavior analyst could conduct observations of ██████ in advance of the November 6, 2019 IEP team meeting. (██████ Test, Tr. 260–61). ██████ signed the required consent on October 22, 2019. (*Id.* at 261; Ex. R-25).

43. Laura Ann Rogers is a master's level, Board-certified behavior analyst for the MCSD Program of Exceptional Students. (Rogers Test., Tr. 541). Ms. Rogers previously served as a

clinical supervisor at the May Institute, where she carried a caseload doing discrete trial training, facilitated a social skills group, performed assessments, and created treatment plans. (*Id.* at 543). In the school-based setting, Ms. Rogers supports behavior support program classrooms and, for students not in a specialized setting, provides classroom management training for teachers, develops data collection systems, and assists with functional behavior assessments and behavior intervention plans. (*Id.* at 547–48). Without objection, Ms. Rogers was qualified as an expert in the field of behavior analysis. (*Id.* at 557–58).

44. Ms. Rogers testified that a functional behavior assessment is a tool to identify the functions of a behavior and involves a record review, data collection, direct observations. (Rogers Test., Tr. 549). A functional behavior assessment is usually performed when classroom-based and school-wide positive behavior intervention supports are not working. Known as Tier 1 and Tier 2 interventions, these supports include things like seat changes, proximity monitoring, increased praise and encouragement, and reward systems. (*Id.* at 549–50).

45. Ms. Rogers testified that a functional behavior assessment does not necessarily need to be conducted by a Board-certified behavior analyst. (Rogers Test., Tr. 550). Behavior analysts can and do train teachers and school-based teams to perform functional behavior assessments. (*Id.*).

46. Ms. Rogers further testified that a behavior intervention plan is developed after completion of a functional behavior assessment. It is prescriptive of the conduct of the teacher in the classroom in response to student behavior. (Rogers Test., Tr. 553). Not all students with interfering behaviors require a behavior intervention plan. (*Id.* at 554).

47. In advance of the November 6, 2019 IEP meeting, Ms. Rogers conducted three classroom observations of [REDACTED] on October 22, 2019, October 24, 2019, and November 1, 2019. (Rogers Test., Tr. 559–61; Ex. R-19). During this time, she observed that [REDACTED] was easily redirected, had

generally positive relationships with peers and staff, was not aggressive, and only occasionally spoke without permission. (Rogers Test., Tr. 560–63; Ex. 19). Ms. Rogers testified, the one instance of verbal arguing she observed was nothing unusual for high school. (Rogers Test., Tr. 562–63).

48. On November 6, 2019, the IEP team met to review and amend ██████'s IEP. (Rogers Test., Tr. 560; Ex. R-4; *see also* R-94). Ms. Rogers attended the meeting and assisted with the development of two additional behavior goals based on her observations. (Rogers Test., Tr. 566; Ex. R-4, p. 8). Ms. Rogers testified that ██████ did not necessarily need a behavior intervention plan because he had three behavior goals. (Rogers Test., Tr. 583). Ms. Rogers expressed concern at the meeting about conducting a functional behavior assessment because ██████ indicated she was in the process of getting medical documentation indicating ██████ could only attend school for half days. (Rogers Test., Tr. 573–75; *see also* Ex. R-94). The IEP team agreed Ms. Rogers would continue to provide consultation to ██████'s teachers and review his behavior tracker data when she was at the school. (Rogers Test., Tr. 584–87). In Ms. Rogers' opinion, ██████ was able to access the general education curriculum without a behavior intervention plan. (*Id.* at 592).

49. On November 12, 2019, ██████'s teachers started using an electronic behavior tracker to monitor his progress toward each of his behavior goals across his different classes. (Brown Test. 860–61; Ex. R-28). This was a “live” document that ██████ knew ██████ could view and, consequently, he would alter his behavior, so it reflected well in the tracker. (Brown Test. Tr. 865).

50. On March 3 and March 9, 2020, the school psychologist pulled ██████ for individually-administered psychological testing. (Thompson Test., 719–20; Exh. R-10, p.1)

51. Also in March 2020, the school speech language pathologist (SLP) initiated an evaluation

of [REDACTED] (Ex. P-23).

52. Jane Beach served as a lead Speech Language Pathologist (SLP) for the School District and, in that capacity, she served as a supervisor to other SLPs. (Beach Test., Tr. 457). She has been certified by the Professional Standards Council as an SLP for more than 25 years. (*Id.* at 458). During her career she evaluated “a hundred or more” students and was responsible for writing IEPs for writing evaluation reports, eligibility reports, and IEPs for qualifying students, in addition to implementing their therapy. (*Id.* at 458–59). Without objection, Ms. Beach was qualified as an expert in the area of speech language pathology. (*Id.* at 467).

53. Ms. Beach testified [REDACTED] had been referred for an SLP evaluation due to concerns in the area of pragmatic language based on [REDACTED]'s concern that [REDACTED] might have Autism. (Beach Test., Tr. 516–17; *see also* [REDACTED] Test., Tr. 74–75). Ms. Beach testified that difficulty communicating is a defining characteristic of Autism and students with high-functioning Autism often struggle with pragmatics and social language. (Beach Test., Tr. 518).

54. On March 16, 2020, the District ended in-person learning due to the global COVID-19 pandemic and established an online learning platform. (Stipulation, Tr. 84).

55. On April 10, 2022, the Georgia Department of Education (DOE) notified the District by letter (the “DOE Letter”) of certain determinations DOE had made after review of a complaint filed by [REDACTED] on behalf of [REDACTED] (Ex. P-11).

56. The DOE’s conclusions and the determinations in the DOE Letter were made based review of documentary evidence and responses by the District. The information considered by DOE in the DOE letter related to the period from 2014 through April 2020. The period considered in the DOE letter therefore includes periods of time subject to the Due Process Complaint in this matter as well as periods prior to the period in issue. (Ex. P-11).

57. In the DOE Letter, the DOE concluded that the District was not in compliance with the requirements to provide extended school year (ESY) services to [REDACTED] (Ex. P-11, p.10). The DOE also determined that the District was not in compliance with regard to FAPE at the end of the 2018-2019 school year and the first semester of the 2019-2020 school year because it had failed to consistently collect and consider data relevant to the determination of [REDACTED]'s eligibility for ESY services. (Ex. P-11, p. 14).

58. By April 13, 2020, [REDACTED] had mastered his annual IEP goals in Math. (Tr. 874–75; Ex. R-7).

59. On May 15, 2020, the IEP team met to discuss ESY and compensatory education services. Although [REDACTED] also met his Reading goal of improving his Lexile level by more than 100 points, no doubt in large part in response to the DOE Letter, the IEP team determined [REDACTED] needed 16 hours of direct, one-on-one services in ESY. (Tr. 872–74; Exh. R-8).

60. In seventh grade, [REDACTED] passed all his classes and earned the following grades: Business Management (79), Health (74), Language Arts (82), Science (70), Math (92), Social Studies (78), and Visual Arts (72). (Tr. 868–69; Ex. R-16, p. 3).

61. [REDACTED] had unexcused absences in each of his classes as follows: Business Management (5), Health (17), Language Arts (16), Science (19), Math (16), Social Studies (25), and Visual Arts (4). (Thompson Test., Tr. 711–14; Ex. R-46, p. 3).

62. With respect to the effects of [REDACTED]'s absences on his academic performance, Dr. Thompson testified, “to benefit from instruction, you have to be present to receive instruction. . . . So attendance is definitely very important for academic performance.” (Thompson Test., Tr. 713–14).

63. Michelle Atcheson served as a hospital-homebound teacher who is highly qualified in special education reading, grades pre-K through eighth grade. (Atcheson Test., Tr. 924–25). She

also served as a lead LEA facilitator responsible for supporting special education service delivery to students at 16-17 different sites throughout MCSD. (*Id.* at 930). In this role, Ms. Atcheson provided ■■■■■'s one-on-one specialized reading instruction during the Summers of 2019 and 2020. (*Id.* at 931, 938). During her work with ■■■■■ she used an interactive reading program that enabled her to select text based on ■■■■■'s Lexile level. (*Id.* at 931).

64. A Lexile level is a measure of reading ability that equates with a College Career Readiness Performance Index (CCRPI) and helps determine whether a student is below, on, or above grade level. (Atcheson Test., Tr. 933–34; Ex. R-15).

65. Based on ■■■■■'s scores on a Georgia Milestone Assessment System (GMAS) administration at the end of sixth grade, ■■■■■ appeared to be reading on a third-grade level at the end of the 2018-2019 school year. (Atcheson Test., Tr. 936–37; *see also* Ex. R-15). To be on grade level, ■■■■■ should have been reading at or above a 925 Lexile level. (Atcheson Test., Tr. 938).

66. When she began working with ■■■■■ in the summer of 2019, Ms. Atcheson initially selected texts for ■■■■■ at the 700-level. (Atcheson Test., Tr. 934, 937). Ms. Atcheson tracked data regarding ■■■■■'s comprehension of reading passages at various Lexile levels. (*Id.* at 940–41; Ex. R-139). ■■■■■'s performance was variable over time but much better when she selected reading passages on topics of interest to ■■■■■ introduced an interactive component, and used visuals. (Atcheson Test., Tr. 941–43). She testified that ■■■■■'s annual IEP goal to increase his Lexile level by 100 points was “very rigorous” for him. (*Id.* at 944).

67. Although ■■■■■'s performance was variable, he demonstrated the ability to read (and comprehend at least 80% of what he read) more than 100 points above the 700-level after working with Ms. Atcheson. (Atcheson Test., Tr. 944, 951).



68. At higher Lexile levels, the length of the passages increases along with the complexity of the vocabulary. (Atcheson Test., Tr. 946). When working with ██████ Ms. Atcheson observed that if two longer passages were paired together, ██████ could become fatigued and have difficulty remaining focused. (*Id.* at 946–48).

*2020-2021 School Year (Eighth Grade)*

69. On August 5, 2020, Ms. Brown contacted ██████ about scheduling an Eligibility Determination meeting and an IEP amendment meeting. (Ex. R-30).

70. For the 2020-2021 school year, the District offered parents the option of self-selecting virtual learning for their child in light of the global pandemic. At ██████'s election, ██████ did not participate in in-person learning during his eighth-grade year. (Brown Test. Tr. 984).

71. During the period of parent-selected virtual learning, the District continued to provide ██████ with the support of a Board-certified behavior analyst. Ms. Anna Jackson, a Board-certified behavior analyst, conducted observations and consulted with ██████'s teachers about his off-task behavior and lack of engagement. (Jackson Test., Tr. 628–30).

72. The IEP team could not override the parent-selected virtual learning for students with disabilities. The IEP team suggested that more strategies could be implemented in the school setting to support ██████ (Brown Test. Tr. 984).

73. On August 12, 2020, the District completed a comprehensive psychoeducational and speech language evaluations of ██████ (Hodge Test., Tr. 718–20; Exs. R-10, P-23). Dr. Thompson testified that the District's evaluation results were consistent with ██████'s initial evaluation and the private evaluation obtained by ██████ (Thompson Test., Tr. 785).

74. ██████ notified Ms. Brown that she was having ██████ privately tested but never provided Ms. Brown with a copy of the private psychological evaluation or private speech language

evaluation. (Brown Test. Tr. 879–80; Ex. R-130).

75. On November 19, 2020, the IEP team held a Reevaluation Eligibility and IEP team meeting to review the school psychological and speech language evaluation and amend ██████'s IEP. The IEP team found that ██████ continued to qualify for services under the “other health impairment” category of eligibility based on his ADHD. (Brown Test., Tr. 883; Ex. R-85).

76. Dr. Thompson offered her expert opinion that all three evaluations were consistent and the District did not fail to identify ██████ in any area of disability or need. (Thompson Test., Tr. 789). She highlighted portions of the private evaluation that aligned with the District’s position regarding the impact of ██████'s ADHD on his deficits in reading—deficits that are performance based secondary to inattention and impulse control—not a specific leading disability or language impairment. (*Id.* at 777–78).

77. Petitioner obtained a diagnosis of a mixed expressive-receptive language disorder from Ms. April McFarland. (McFarland Test., Tr. 200). In her testimony, Ms. McFarland acknowledged that she worked for a for-profit organization and administered an older version of the Test of Language Development in making her medical diagnosis for insurance reimbursable services. (*Id.* at 204–05). She further testified she was aware the current version of the test included updates to address biases related to age, gender, and ethnicity but used the older test anyway. (*Id.* at 205). Although she identified ██████ as having a receptive language disorder, her own colleague and Ms. Beach noted ██████'s standard scores were within the average range. (*Id.* at 210). She also agreed that she had no knowledge of the eligibility criteria for a child to qualify for special education on the basis of a speech language impairment and had no knowledge or opinion about speech as a related service in the school setting. (*Id.* at 219).

78. Despite poor engagement in the virtual setting, ██████ passed his Language Arts and Math

classes. His failing grades in his other classes were due to his failure to turn in assignments, despite multiple attempts to engage [REDACTED] and Board-certified behavior analyst involvement. (Brown Test., Tr. 869–70). Teachers sent alternative assignments to enable him to make up his grade and would modify the assignments in an effort to support increased engagement.

79. Ms. Atcheson also provided one-on-one specialized reading instruction to [REDACTED] during the Summer of 2021. During that time, he "grew a lot" and met his IEP goal of increasing his Lexile level by 100 points, even though he remained below grade level. [REDACTED] improved from being on a third-grade reading level prior to the start of seventh grade to being on a seventh-grade reading level prior to the start of ninth grade. (Atcheson Test. Tr. 958–60, 970).

### **III. Conclusions of Law**

#### *Petitioner's IDEA Claims*

1. The laws governing this case include IDEA, 20 U.S.C. §§ 1400 *et seq.*; federal regulations promulgated pursuant to IDEA, 34 C.F.R. §§ 300 *et seq.*; and the Georgia Department of Education Rules, Ga. Comp. R. & Regs., Ch. 160-4-7.
2. Petitioners bear the burden of proof in this matter. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 51 (2005); Ga. Comp. R. & Regs. 160-4-7-.12(3)(1); Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).
3. Under IDEA, students with disabilities have the right to a free appropriate public education. 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.01(1)(a).
4. The parties agree [REDACTED] is entitled to the benefits of IDEA, including a FAPE.
5. FAPE is provided by means of a uniquely tailored "individualized education program," or IEP and includes both "special education" and "related services." 20 U.S.C. §§ 1401(9)(D),

1412(a)(1). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability” and “related services” are the support services “required to assist a child . . . to benefit from” that instruction. 20 U.S.C. § 1401(26), (29).

6. The IDEA requires that every IEP include “a statement of the child's present levels of academic achievement and functional performance,” describe “how the child's disability affects the child's involvement and progress in the general education curriculum,” and set out “measurable annual goals, including academic and functional goals,” along with a “description of how the child's progress toward meeting” those goals will be gauged. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(III).

7. The IEP must also describe the “special education and related services . . . that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

8. Throughout his enrollment in the Muscogee County School District, ■■■ has been consistently served under an IEP.

9. There are two basic categories of IDEA claims that arise with respect to the IEP. “Parents can challenge a [IEP]’s content, either on procedural or substantive grounds, or they can challenge the plan’s implementation.” *Enterprise City Bd. of Educ. v. S.S.*, 2020 WL 3129575, at \*4 (M.D. Ala. 2020). “Content” claims focus on how the IEP, as written, fails to clear IDEA’s substantive threshold to provide FAPE. “Implementation” claims, on the other hand, arise where the IEP satisfies IDEA as written but, in practice, is not implemented with fidelity and, therefore, denies FAPE. *See L.J. by N.N.J. v. Sch. Bd. of Broward Cty.*, 927 F.3d 1203, 1211 (11th Cir. 2019).

10. Here, Petitioners raise “content” claims and focus on three main procedural violations,

alleging the District failed to properly identify the nature of [REDACTED]'s disabilities, failed to develop a behavior intervention plan to address his behaviors, and failed to provide [REDACTED] with extended school year services.

11. For a parent to succeed on a procedural content challenge, the parent must show that the school violated IDEA's procedures and that the violation caused substantive harm. *L.M.P. ex rel. E.P. v. Sch. Bd. of Broward Cty.*, 879 F.3d 1274, 1278 (11th Cir. 2018).

12. The United States Supreme Court developed the applicable two-prong inquiry in *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*. 458 U.S. 176, 206–07 (1982). The first prong of the *Rowley* test focuses on whether the state actor has complied with the procedures set forth in the Act. The second prong of *Rowley* asks whether the IEP developed utilizing the Act's procedures is reasonably calculated to enable the child to receive educational benefits.

13. Petitioners seek to establish [REDACTED] has been denied FAPE based on the fact [REDACTED] is reading below his grade level.

14. "To meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). "The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials." *Id.* (citing *Rowley*, 458 U.S. at 207). "Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id.* (citing *Rowley*, 458 U.S. at 206–07). "[F]or a child fully integrated in the regular classroom, the IEP typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" *Id.* (citing *Rowley*, 458 U.S. at 203–04).

15. Although all the parties agree it would be much better if [REDACTED] were reading on grade level, with the specialized instruction, modifications and accommodations set forth in his IEP, [REDACTED] was able to achieve passing marks and advance from grade to grade.<sup>2</sup> (See Ex. R-16). In addition, [REDACTED] mastered the academic goals and objectives in his IEP. And still, the District provided him with 16 hours one-on-one ESY reading instruction the summer after his seventh and eighth grade years, during which time his reading level continued to improve.

16. The expectation that [REDACTED] will consistently perform well on classroom-based reading assessments and other evaluation instruments is not reasonable or realistic given the nature of his performance-based disability, which makes it challenging for [REDACTED] to demonstrate acquired knowledge and perform tasks that require sustained attention. The appropriate focus needs to be upon the progress made in supporting his advance toward being on grade level.

#### *Child Find Procedures*

17. The IDEA requires local educational agencies to conduct a “full and individual initial evaluation” to determine whether a student is disabled and qualifies for special education services. 20 U.S.C. § 1414(a)(1)(A). This “child-find” duty requires an evaluation of any child who is “suspected of being a child with a disability.” When the state overlooks clear signs of disability or negligently fails to order testing, it violates its duty under the Act. 34 C.F.R. § 300.111(c)(1); see *Durbrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182, 1196 (11th Cir. 2018).

18. A child-find violation is a procedural matter. *J.N. v. Jefferson Cty. Bd. of Educ.*, 12 F.4th 1355, 1365 (11th Cir. 2021). Accordingly, to support an award of compensatory education based on a child-find violation, “a parent must show that the child’s educational program was

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<sup>2</sup> Petitioners failed to identify any evidence that would support a reasonable inference that [REDACTED]’s grades were not accurate and [REDACTED] acknowledged she never expressed any concerns about grade inflation to [REDACTED]’s teachers. (Tr. 253–54, Ex. R-16).

substantively deficient, and that compensatory education services are necessary to place the child in the same place [he] would have been absent a violation of the Act.” *Id.* “[C]ompensatory education is a backward-looking remedy crafted in response to a substantive violation of the IDEA—one that denied a child the free appropriate public education to which she was entitled.” *Id.*

19. Petitioners claim the District violated its child find duty by failing to identify ██████ as having a speech language impairment and a specific learning disability in Reading, and by failing to make note of his ODD.

20. ██████’s initial evaluation was conducted on October 7, 2014, by the Richmond County School District. (Ex. R-17). At that time, ██████ qualified for an IEP under an “other health impairment” category of eligibility based on his medical diagnosis of ADHD.

21. Subsequent evaluations must be conducted if the local educational agency determines that the educational or related services needs warrant reevaluation, or the child’s parent or teacher requests reevaluation. 20 U.S.C. § 1414(a)(2)(A). A reevaluation must occur not more frequently than once a year and at least once every three years unless the parent and the local educational agency agree otherwise. 20 U.S.C. § 1414(a)(2)(B).

22. On September 7, 2017, the District convened an IEP team (to include ██████ meeting to “consider the need for re-evaluation.” (Ex. P-7, pp. 1, 17). According to the meeting notes, “[t]he committee decided that no updated testing is needed at this time.”<sup>3</sup> (*Id.* at 17). Accordingly, ██████’s

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<sup>3</sup> Under IDEA, a due process complaint is timely filed within two years of the date the parent knew or should have known about the action forming the basis for the complaint. 20 U.S.C. § 1415(b)(6); 34 C.F.R. §§ 300.507(a)(2), 300.511(f). However, the two-year statute of limitations does not apply to a parent if the parent was prevented from filing a due process complaint due to (1) specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint; or (2) the local education agency’s withholding of information from the parent that was required under this part to be presented to the parent. 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f). Although ██████ takes issue with this decision, it falls outside the two-year period and Petitioners presented no evidence regarding misrepresentations or withholding of information sufficient to render the statute inapplicable.

next reevaluation was due on or before September 7, 2020.

23. However, in response to ██████'s request for a reevaluation, the District initiated the reevaluation process in October 2019. The final evaluation results were delayed due to COVID-related school closures. However, on August 5, 2020, Ms. Brown contacted ██████ about scheduling the eligibility meeting to review the psychological results.

24. Under IDEA's implementing regulations, "other health impairment" is defined as "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder" and "[a]dversely affects the child's educational performance." 34 C.F.R. § 300.8(c)(9). Throughout his enrollment in the Muscogee County School District, ██████ qualified for special education services based on his medical diagnosis of ADHD.

25. Dr. Thompson testified that ██████'s ODD diagnosis is not a health impairment but a disorder of behavior and conduct. More significantly, Petitioners failed to show how the failure to refer to this diagnosis denied ██████ FAPE, especially in the absence of evidence that ██████ demonstrated behavioral characteristics of ODD in the school setting.

26. A student may also qualify for special education and related services under the "specific learning disability" and "speech language impairment" categories of eligibility. Under IDEA's implementing regulations, "specific learning disability" means "a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. . . ." 34 C.F.R. § 300.8(c)(10). A "speech or language impairment" means "a communication disorder, such as stuttering, impaired articulation, a language



impairment, or a voice impairment, that adversely affects a child's educational performance." 34 C.F.R. § 300.8(c)(11).

27. Even though a student may not qualify for special education and related services based on the presence of a speech language impairment, the child may nonetheless be entitled to services from a speech-language pathologist if such services are required for the child to benefit from special education services. 34 C.F.R. § 300.34(a). Such services include, among other things, provision of speech and language services for the habilitation or prevention of communication impairments. 34 C.F.R. § 300.34(c)(15).

28. Both the school psychologist and the parent's private psychologist found that ■■■■■'s academic challenges were secondary to his ADHD. Neither psychologist found that ■■■■■ had a specific learning disability or believed ■■■■■ required further evaluation for a possible speech language impairment. Although ■■■■■ received private speech language pathology services that were billed to medical insurance, Petitioners failed to show that ■■■■■ required school-based speech language therapy in order to meet his IEP goals or access grade level standards.

29. "A school's evaluation decision is reasonable 'if the information that the school has concerning the student gives the school notice of an underlying disability.'" *T.T. v. Jefferson Cty. Bd. of Educ.*, 2020 WL 6870506, at \*3 (N.D. Ala. 2020).

30. Here, ■■■■■'s initial evaluation together with the school's August 2020 evaluation provided the District with adequate notice of ■■■■■'s underlying ADHD. The private evaluation obtained by ■■■■■ was consistent with both of these evaluations, as it emphasized the impact of ■■■■■'s ADHD on his performance in the school setting. The private evaluator did not diagnose ■■■■■ with Autism, a specific learning disorder, recommend a referral for a speech language pathology evaluation, or otherwise suggest he needed SLP therapy in the school setting.

31. Respondent fulfilled its child find obligation by relying on [REDACTED]'s initial psychological evaluation and conducting additional evaluations of [REDACTED] in August 2020.

*Behavior Intervention Plan Procedures*

32. IDEA states, an IEP team shall, in the case of a child whose behavior impedes the child's learning or that of others, "consider the use of positive behavior interventions and supports, and other strategies, to address behavior[.]" 20 U.S.C. § 1414(d)(3)(B)(i). Only where a student has been subject to a disciplinary change in placement (i.e., suspension or expulsion for 10 or more school days) for a behavior determined to be a manifestation of the student's disability is the IEP team required to implement a BIP. 20 U.S.C. § 1415(k)(1)(F). Even where required, the absence of a BIP does not, standing alone, violate IDEA or deprive a student of FAPE. It is at most a procedural error, not a substantive flaw. *See Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 767 (8th Cir. 2011).

33. "For a student with known behavioral issues, an IEP is not legally inadequate if the IEP 'adequately identifies a student's behavioral impediments and implements strategies to address that behavior.'" *Rosaria M. v. Madison City Bd. of Educ.*, 325 F.R.D. 429, 439 (N.D. Ala. 2018) (quoting *M.W. ex rel. S.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 140 (2d Cir. 2013)). The fact that an IEP does not include a functional behavior assessment or behavior intervention plan "does not render an IEP legally inadequate under the IDEA so long as the IEP adequately identifies a student's behavioral impediments and implements strategies to address that behavior.'" *Alex W. v. Poudre Sch. Dist. R-1*, 2022 U.S. Dist. LEXIS 126041, at \*25 (D. Col. 2022) (quoting *M.W.*, 725 F.3d at 140). Where an IEP includes goals and objectives, accommodations, and monitoring related to behaviors, an IEP may address behavior needs in a systematic and continuous manner sufficient to provide FAPE. *See id.* at \*25-28.

34. Petitioner failed to show by a preponderance of the evidence that the District failed to adequately identify the behavioral impediments secondary to ■■■■■'s ADHD or to implement strategies to address his behavior. After ■■■■■ was assigned to OSS, the District brought in a Board-certified behavioral analyst to conduct observations of ■■■■■ and consult with his teachers, update his behavior goals, implemented a behavior tracker across all of his classes, created a manager position for him on the basketball team, and incorporated rewards into his school day for on-task behavior and sustained attention. These strategies were highly effective during in-person learning.

35. To the extent ■■■■■ was not engaged during parent-selected virtual learning, it was not due to the lack of supportive services from a behavioral analyst or effort on the part of the District.

*Extended School Year Procedures*

36. “Each public agency must ensure that extended school year services are available as necessary to provide FAPE . . . .” 34 C.F.R. § 300.106(a)(1). The term extended school year services means special education and related services that are provided to a child with a disability (i) beyond the normal school year of the public agency; (ii) in accordance with child’s IEP; and (iii) at no cost to the parents of the child. 34 C.F.R. § 300.106(b). Such services “must be provided only if a child’s IEP Team determines, on an individual basis . . . that the services are necessary for the provision of FAPE to the child.” 34 C.F.R. § 300.106(a)(1).

37. ■■■■■ received 16 hours of one-on-one specialized instruction in Reading during both summers within the relevant time period. Ms. Atcheson testified that ■■■■■ was able to sustain attention on the assigned reading tasks and make reasonably appropriate progress in Reading due to the one-on-one nature of the extended school year services she was providing.

38. Petitioner failed to show that ■■■■■ required extended school year services related to his behavior or Math goals in order to access FAPE. The extended school year services provided to

█ in Reading provided █ with FAPE.

39. To summarize, using the list of concerns identified by Petitioner, the Court reaches the following conclusions:

- During the period in issue in this case—i.e., from August 11, 2019, through August 11, 2021—the District did not fail to reevaluate █ with proper testing in a timely manner. While it is true that this testing may, in some measure, have been in response to the findings of the DOE in the DOE Letter, the testing was in fact done.
- Various errors were indeed made in █'s IEP and testing results (e.g., incorrect addresses carried forward from prior documents, the use of cut and pasting techniques to create documents resulting in questionable inclusions of material from prior documentation, appearance of incorrect birthdate for █ in certain evaluation data). It is completely understandable that these errors caused █ great anxiety and caused her to doubt the credibility and accuracy of those documents and the conclusions they contained. But a preponderance of the evidence does not show that such errors caused substantive failures in the provision of educational services or resulted in a failure to provide FAPE.
- A preponderance of the evidence supports the District's decision not to implement either an FBA or a BIP. This is true for █ even though █ had a BIP while attending school in the Richmond County School System. The preponderance of the evidence shows that these issues were addressed as part of the IEP process.
- The preponderance of the evidence supports the District's determination as to █'s needs for addressing his speech issues. The preponderance of the evidence does not support the conclusion that █ has receptive speech issues.
- █ raised the issue of the District failing to modify █'s IEP to address the impact of the COVID-19 pandemic and the resultant shift to virtual in-home education. █ did not introduce evidence as to what adverse consequences this technical failure to modify the IEP may have had. Nor did she present evidence as to whether in-home virtual learning was an inappropriate response to the COVID-19 pandemic. It is particularly noteworthy on this score that when in person learning became available, she continued to elect in-home virtual learning for █. It was at █'s election that █ did not participate in in-person learning during his eighth-grade year.
- While it is true that the District failed to provide extended school year

services until after it received the DOE Letter, after that time the District in fact did so. Therefore, any failure to provide FAPE with respect to extended school year services was rectified during the period in issue by the provision of such services.

- Although there was scattered testimony referring to ██████'s request for the District to agree for ██████ to move from full days to half days, there is a dearth of evidence providing justification for such action or showing why it would be in ██████'s best educational interest. Moreover, Petitioners did not provide medical authorization for such a program. ██████ Test., Tr. 34).

#### *Available Remedies Under IDEA*

40. “The purpose of IDEA is to provide educational services, not compensation for personal injury, and a damages remedy—as contrasted with reimbursement of expenses—is fundamentally inconsistent with this goal.” *Ortega v. Bibb Cty. Sch. Dist.*, 397 F.3d 1321, 1325 (11th Cir. 2005) (quoting *Polera v. Bd. of Educ.*, 288 F.3d 478, 486 (2nd Cir. 2002)). “Although the IDEA provides various types of remedies for plaintiffs—including restitution for some parental expenses, compensatory education for students, and procedural remedies—the state does not provide tort-like relief.” *Id.* “[T]ort-like damages are simply inconsistent with IDEA’s statutory scheme.” *Id.* (quoting *Sellers v. Sch. Bd. of the City of Manassas*, 141 F.3d 524, 527 (4th Cir. 1998)).

41. In this action, Petitioner ██████ repeatedly testified she was not seeking reimbursement of parental expenses or private placement at public expense. (Tr. 395–96, 397, 399–400; 406–07, 410, 417, 443). Rather, ██████ testified she is seeking “legal damages” in the amount of \$300,000.00 and nothing more. When asked whether any portion of that amount would be allocated toward reimbursement of past expenses, ██████ testified “no.”

42. Petitioners failed to present any evidence regarding ██████'s specific need for compensatory services in terms of type of service, amount of service, or cost. When asked whether any portion of the “legal damages” would be allocated toward compensatory services, ██████ testified, “[W]hat I came up with was a plethora of education.” (Tr. 424–25). She indicated she wanted a

minimum of \$10,000.00 for a Lindamood Bell reading program but failed to show why such program would be necessary to enable ██████ to make reasonable progress and access the general education standards. (*Id.* at 424).

*Petitioners' ADA and Section 504 Claims*

43. Petitioner's 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").

44. 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), -41. Accordingly, the Court has jurisdiction to conduct the impartial due process hearing required under the IDEA.

45. 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. . . .”<sup>4</sup> 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513; Ga. Comp. R & Regs. 160-4-7-.12(3)(p).

46. This Court’s 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 must be **DISMISSED**.

#### *Concluding Observations*

47. IDEA cases are factually 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.

48. There are few situations that provoke greater anxiety for parents than the education that their children receive. Every good parent is dedicated to getting that parent’s child the best possible education and the best start in life possible. The Court is convinced such is the case with ██████. There is no question that ██████ loves ██████ deeply and is profoundly concerned about his education. She is desperately concerned about the success of ██████ and his academic progress.

49. The Court applauds ██████’s dedication to ensuring that A.J receives an appropriate free public education. But the Court must also note that ██████’s high emotional investment in this

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<sup>4</sup> 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).

matter has caused her at times to engage in questionable and erratic behavior, to make unwise decisions in the presentation of her case, and to make inappropriate allegations and statements. The Court also wishes to recognize the professionalism of counsel for the District and the District's cooperation with the Court in the efforts to make sure that the full record in this matter was developed so that [REDACTED] has been given every possible opportunity to present her case.

50. 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 his 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).

51. 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 the District did not satisfy its obligation to provide FAPE during the period in issue.

52. During the current academic year and for so long as [REDACTED] is enrolled in schools in the District, the District has continuing obligations to provide [REDACTED] with FAPE and [REDACTED] has a continuing obligation to cooperate with the District to enable that to happen. This Court sincerely hopes that the parties will now focus upon what is important, which is getting [REDACTED] the education to which he 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 Court hopes that the parties can reflect upon their respective obligations and attempt to find common ground focused on [REDACTED]'s academic needs.


#### **IV. Decision**

Petitioner has not shown by a preponderance of the evidence that the District failed to



provide [REDACTED] with a free appropriate public education during the period from August 11, 2019, through August 11, 2021. Therefore, the Petitioner's claims in this matter are **DISMISSED**.

**SO ORDERED**, this 28th day of September, 2022.

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**Charles R. Beaudrot**  
**Administrative Law Judge**

