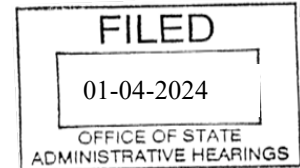


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

████ BY AND THROUGH █████  
Petitioner,  
  
v.  
  
HALL COUNTY SCHOOL DISTRICT,  
Respondent.

Docket No.: █████  
████ OSAH-DOE-SE-69-Howells  
  
Agency Reference No.: █████



**FINAL DECISION AND ORDER**  
**GRANTING RESPONDENT’S MOTION FOR INVOLUNTARY DISMISSAL**

**I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY**

On September 29, 2023, Petitioner filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On October 9, 2023, Respondent Hall County School District (“School District” or “HCSD”) filed a Notice of Insufficiency, and the undersigned issued an Order on Notice of Insufficiency on October 13, 2023, determining that the complaint was insufficient and ordering Petitioner to file an amended complaint. On October 23, 2023, Petitioner filed an amended complaint, and on November 2, 2023, the School District filed a Notice of Insufficiency of Amended Due Process Complaint. On November 6, 2023, the School District filed a Motion to Re-Set Timelines and Hearing Date.<sup>1</sup>

On November 8, 2023, the undersigned issued an Amended Order on Notice of Insufficiency and Order on Motion to Reset Timelines and Hearing Date (“November 8 Order”),<sup>2</sup> identifying six claims the Court discerned in the amended complaint after careful review. The

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<sup>1</sup> The hearing previously had been set for November 13, 2023. See Court File.

<sup>2</sup> The November 8 Order amended an order issued the previous day, November 7, 2023, to correct a clerical error regarding the rescheduled hearing date, which erroneously had been included as “December 7, 2024,” rather than “December 7, 2023.”

November 8 Order stated clearly that Petitioner would be allowed to present the following six claims at a hearing:

Claims regarding related services requested by the parent in 2022 and 2023 –

1. The District's alleged failure or refusal to provide speech therapy as recommended by a third-party independent speech evaluator.
2. The District's alleged failure or refusal to evaluate Petitioner for physical therapy.
3. The District's alleged failure or refusal to read or consider the OT evaluation paid for by the District and its failure or refusal to provide six (6) months of OT services.
4. The District's alleged failure or refusal to give Petitioner accommodations in IB classes.
5. The District's alleged failure or refusal to provide a one-to-one aid and/or smaller class size as recommended by Dr. Walter.

Claim regarding math grades –

6. The District's alleged refusal to assign math grades on 5/18/23, 5/10/23, 3/10/23, 2/23/23 and the Final Exam Cumulative Review Project on 5/18/23.

The November 8 Order also stated that although Petitioner could file pleadings or motions via the Court's ePortal, the other numerous documents that Petitioner had uploaded on November 6, 2023—such as correspondence, medical records, and evaluations—would not be reviewed by the Court unless Petitioner “presents those documents as exhibits to a pleading and labels them as such, or unless those documents are exchanged with Respondent five business days prior to the hearing, as stated in the Prehearing Order, and presents them to the court as an exhibit at the hearing.” Despite these instructions, Petitioner uploaded numerous additional documents on November 29 and 30, 2023, without heeding the Court's express instructions.

## II. DUE PROCESS HEARING

The due process hearing was held on December 7, 2023, at the Office of State Administrative Hearings (“OSAH”). HCSD was represented by Elizabeth Kinsinger, Esq. and Audrianna Harris, Esq. Petitioner [REDACTED] representing her daughter [REDACTED] who was not present, proceeded *pro se*.

### A. Relevant Procedural and Evidentiary Rulings

As a preliminary matter, HCSD informed the Court that Petitioner had failed to provide a witness list or to identify or exchange exhibits, as required under the IDEA and specified in the Prehearing Order, issued on October 3, 2023, and the November 8 Order. Tr. 24-25;<sup>3</sup> see also 34 C.F.R. § 300.512(a)(3), (b); J.N. v. S.W. Sch. Dist., 55 F. Supp. 3d 589, 597 (M.D. Pa. 2014) (“[T]he ‘five-day rule’ furthers the IDEA’s goal of prompt resolution of disputes by reducing the potential for protracted hearings due to untimely disclosures.”) (citations omitted); T.O. v. Cumberland Cnty. Bd. of Educ., 2017 U.S. Dist. LEXIS 35293, at \*11-14 (E.D.N.C. Mar. 13, 2017) (ALJ properly exercised authority under federal regulations to bar non-attorney parents from introducing any documentary or testamentary evidence due to their failure to disclose evidence they intended to use in due process hearing by required deadline). Because Petitioner is *pro se*, the undersigned afforded some leeway and allowed Petitioner to move to admit exhibits that had been identified by the School District; all such exhibits requested by Petitioner were admitted into evidence without objection.

Additionally, although Petitioner claimed that she had subpoenaed witnesses, the School District, through its attorney, asserted that it was not served with any subpoenas. See Tr. 168.

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<sup>3</sup> The transcript from the hearing will be cited as “Tr. [page number],” and admitted exhibits will be cited as “Ex. R-#” or “Ex. P-#.”

Review of the Court File shows that on November 6, 2023, Petitioner uploaded to the ePortal a document labeled “Subpoena Request,” using a template form provided on the OSAH website. The document included the names and titles of three individuals, “Dr. Betsy Ainsworth, SPED Director,<sup>4</sup> David Behrendsen, Math Teacher, and Cayla Hicks, Former Nurse of [REDACTED] High School,” and indicated they were to appear on behalf of Respondent (sic). It further included a list of documents for production, to wit: “Each FIEP document and recordings of last 2 FIEP meetings; Medical Records April – May 2023 Algebra records of tests, retests and projects.” It indicated a hearing date of November 13, 2023, and included a checkmark next to the box indicating personal service. However, Petitioner provided no evidence that she had, in fact, served anyone, even though the template contains instructions regarding service. See also OSAH Rule 19(1)(c).<sup>5</sup> Simply uploading this document to the ePortal does not constitute service to the individuals listed because it is not a method of service authorized by the rule. Cf. Smith v. State, 308 Ga. 81, 90-91 (2020) (discussing O.C.G.A. § 24-13-24, which substantively mirrors the requirements of OSAH Rule 19(1)(c), and observing that “e-mail is not a proper means of serving a subpoena”).

At the close of Petitioner’s presentation, the School District moved for involuntary

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<sup>4</sup> Dr. Ainsworth attended the hearing as the representative for the School District.

<sup>5</sup> As set forth in OSAH Rule 19(1)(c) and summarized on the template form on the OSAH website:

Service of subpoenas shall be completed as follows:

- 1 .A subpoena may be served at any place within Georgia and by any sheriff, sheriff's deputy, or any other person not younger than eighteen (18) years of age. Proof of service may be shown by certificate endorsed on a copy of the subpoena.
2. Subpoenas may also be served by registered or certified mail, and the return receipt shall constitute prima facie proof of service.
3. Service of a subpoena directed to a party may be made by serving the party’s counsel of record.

Ga. Comp. R. Regs. 616-1-2-.19(1)(c).

dismissal, pursuant to OSAH Rule 35.<sup>6</sup> The undersigned deferred ruling on the motion. Instead, out of an abundance of caution, the Court requested to hear additional evidence related to certain of the six claims: (3) the failure or refusal to read or consider the OT evaluation, and the failure or refusal to provide six months of OT services, and (6) the alleged refusal to assign math grades.

**B. Findings of Fact**

*i. Educational Background*

1.

During the relevant time period, ██████ was a 17-year-old senior who was a dual enrollment student at ██████ High School in the Hall County School District and ██████ University in ██████, Georgia. At the time of the hearing, ██████ was enrolled in an art class during seventh period at the high school and two online courses at ██████. She turned 18 on December 23, 2023. ██████ is eligible for special education services under the categories of Other Health Impairment and Autism,<sup>7</sup> and at all times she has received instruction in the general education setting. ██████'s unweighted GPA is 3.433, and her weighted GPA is 3.85. She is on track to graduate in the spring

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<sup>6</sup> OSAH Rule 35 provides as follows:

(1) After a party with the burden of proof has presented its evidence, any other party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden. A party's decision to move for dismissal shall not constitute a waiver of the party's right to offer evidence in the event the motion is denied.

(2) Upon a party making such a motion, the Court may determine the facts and render a Decision against the party that has presented its evidence as to any or all issues or the Court may decline to render a Decision until after the close of all the evidence.

Ga. Comp. R. Regs. 616-1-2-.35.

<sup>7</sup> ██████'s medical diagnoses include Autism Spectrum Disorder Level I-2, social anxiety disorder, generalized anxiety disorder, Tourette's disorder, persistent disorder, motor tic disorder, developmental coordination disorder, obsessive compulsive disorder, specific learning disability in math, syncope, selective mutism, and postural orthostatic tachycardia syndrome. (R-10.)

of 2024, and her class rank currently is 57 of 217 students. [REDACTED] is described as creative, smart, kind, and thoughtful. (Testimony of [REDACTED] Michelle Shepard, Hall County School District Occupational Therapist; Johnathan Edwards, [REDACTED] High School Principal; T. 72, 141-42, 189, 224; Ex. R-7, R-8, R-9, R-21.)

2.

[REDACTED] was determined to be eligible for special education services on October 17, 2022. Since then, her Individualized Education Program (“IEP”) has been amended several times, most recently on October 26, 2023. Prior to the initial determination of eligibility, on July 6 and 11, 2022, [REDACTED] saw Warren Walter, Ph.D., for an independent neuropsychological evaluation. The report prepared by Dr. Walter included Appendix A, which provides numerous recommendations, certain of which were incorporated into the initial IEP and those amended versions to follow, including the current version implemented on October 26, 2023. Not all of the recommendations in the extensive Appendix A appear in the IEP in their entirety. (Tr. 155; Ex. R-4, R-5, R-6, R-7, R-8, R-9, R-10.)

3.

As noted above, Petitioner [REDACTED] asserts that [REDACTED] has been denied a free appropriate public education (“FAPE”) under the IDEA and has raised six claims, relating to speech therapy, physical therapy, occupational therapy, accommodations in IB classes, a one-to-one aide or smaller class size, and missing math grades.

*ii. Speech Therapy*

4.

At present, [REDACTED] has not been found eligible for special education services in the category

of speech or language impairment.<sup>8</sup> A preliminary Speech and Language Evaluation was conducted by clinician Misty Cox on behalf of the School District on October 19, 20, 23, and 24, 2023. The report contains the following qualifying language: “This is a preliminary report drafted to share with parents during [REDACTED]s] annual review meeting. The final report will be completed and shared with the team once the evaluation is completed.” The preliminary report includes results of the Comprehensive Assessment of Spoken Language-2 (“CASL-2”), including scores of “average” or “above average” in twelve areas and scores of “below average” in two areas: Sentence Comprehension and Inferences. The School District has agreed to pay for an independent speech evaluation, at [REDACTED]s request, although such evaluation has not yet occurred. (Testimony of [REDACTED] Tr. 136-37; Ex. R-9, R-10, R-18.)<sup>9</sup>

5.

[REDACTED] understands that speech therapy is a related service<sup>10</sup> available to students who are eligible for special education under the category of speech or language impairment. [REDACTED] is concerned that [REDACTED] needs speech therapy in order to advocate for herself. As one example, [REDACTED] described [REDACTED]s reluctance to order her own lunch at school. (Testimony of [REDACTED] Tr. 64-65, 148.)

### *iii. Physical Therapy*

6.

According to [REDACTED] she has requested physical therapy for [REDACTED] repeatedly, and the School District has replied that [REDACTED] does not need it. The School District recently has agreed to fund an

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<sup>8</sup> “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).

<sup>9</sup> Upon review of the hearing transcript, it appears that [REDACTED] and counsel for the School District also referred to a previous independent speech evaluation, the report of which was not entered into evidence. (Tr. 20, 105.)

<sup>10</sup> “Related services” encompass those supportive services that “are required to assist a child with a disability to benefit from special education.” 34 CFR §300.34; Ga. Comp. R. & Regs. 160-4-7-.21(36).

independent physical therapy evaluation. (Testimony of [REDACTED] Tr. 68, 124-27, 137.)

*iv. Occupational Therapy*

7.

A school-based occupational therapy evaluation was conducted on November 8, 2022, by Michelle Shepard, Occupational Therapist for the Hall County School District. Currently, [REDACTED] receives 35 minutes of consultative occupational therapy each month. Ms. Shepard explained that she sees [REDACTED] every month but consults primarily with the teachers. According to Ms. Shepard, in a school setting, occupational therapy is focused on “the impact that a disability or diagnosis is having on a student’s ability to access the education or meet IEP goals.” Ms. Shepard described her work with [REDACTED] as focusing on independence throughout multiple environments at school, including the classroom, the cafeteria, the media center, the courtyard, and the hallways. (Testimony of [REDACTED] Testimony of M. Shepard; Tr. 208-09, 189-90, 193-94; Ex. R-10, R-42.)

8.

Ms. Shepard, who also works in a private clinic, contrasted occupational therapy in a school setting, as described above, with occupational therapy under what she called “a medical model” in a private clinic setting. In the medical model, the occupational therapist develops goals related to broader activities of daily living, such as money management, for example. (Testimony of M. Shepard, Tr. 188-89.)

9.

On July 5, 2023, an independent occupational therapy evaluation was conducted for [REDACTED]. The evaluator, Yuridia Garza, prepared a report that [REDACTED] provided to the IEP team in advance of a meeting scheduled for August 28, 2023. [REDACTED] was disappointed that the entire IEP team did not thoroughly review the independent evaluation report before the meeting. Ms. Shepard read the



report during the meeting, however, and has reviewed it since. During the IEP meeting, she discussed with the team the difference between school-based occupational therapy and that which would be provided under a medical model. Although the independent evaluation report recommended 60 minutes of occupational therapy per week, or until certain goals were reached, Ms. Shepard explained that, based on [REDACTED]'s current level of educational performance, she does not think that an increase in the current 35 minutes of consultative occupational therapy is necessary. (Testimony of [REDACTED]; Testimony of M. Shepard; Tr. 120, 195-99, 215-16; Ex. R-15.)

*v. Accommodations in I.B. Classes*

10.

[REDACTED] has never taken an International Baccalaureate (“I.B.”) class. According to [REDACTED] [REDACTED] was accepted into the I.B. program, but when she arrived for orientation, her name was not on the class roster. Ultimately, beginning in her junior year, [REDACTED] participated in the dual enrollment program with [REDACTED] University. (Tr. 140-41.)

*vi. One-to-One Aide and/or Smaller Class Size*

11.

As noted, Dr. Walter conducted an independent neuropsychological evaluation in July of 2022. In his report, Dr. Walter stated that [REDACTED] had begun using a cane to help prevent falls. He stated that use of a cane “is in no way an adequate intervention” to address potential falls, and he further stated, [REDACTED] “requires a one-to-one aide to walk with her from class to class and to accompany her so that the aide can prevent her from falling and injuring herself due to her syncope or tic disorder.” On the other hand, a nurse practitioner in the office of [REDACTED]'s healthcare provider did not specify the need for a one-to-one aide when completing an Individual Health Care Plan, dated October 4, 2023. Ms. Shepard, who has known [REDACTED] for two years and observed her moving

throughout the school, opined that a one-on-one aide to escort her between classes was not required. (Ex. R-4 at R-56; Ex. R-11.)

12.

Dr. Walter also mentioned a modification of student-to-teacher ratio, stating that “[a] lower student-to-teacher ratio may be necessary to allow for more frequent interaction between [REDACTED] and their instructors.” (Ex. R-4 at R-64.) [REDACTED] speculated that [REDACTED]’s math class and math support class each had “20- plus students.” (Tr. 47-48.)

***vii. Math Grades***

13.

During the spring semester of 2023, certain math grades in the Infinite Campus online grading system appeared as blanks. The amended complaint alleged that the School District refused to assign math grades to [REDACTED] on 5/18/23, 5/10/23, 3/10/23, 2/23/23. As explained by Principal Johnathan Edwards, the February 23 blank was a result of the teacher’s inadvertent creation of a shell placeholder for an assignment. The placeholder showed up as a blank for all students, not just [REDACTED]. The blanks for March 10, May 10, and May 18 (including a May 18 Final Exam Cumulative Review Project) resulted when [REDACTED] did not complete these assignments. Because the math teacher recognized that [REDACTED] otherwise had shown that she understood the material, he did not penalize her by giving her a zero on these assignments. He simply did not count them. He only gave credit when students completed the work. (Testimony of J. Edwards, Tr. 223-29; Ex. R-22.)

***viii. Other Concerns***

14.

Despite the Court’s limitation of this hearing to the claims discernible from Petitioner’s

amended complaint, as set forth in the November 8 Order, █████ attempted to address additional concerns during the hearing, including, but not limited to, general frustrations with the School District’s accountability, a complaint against a school nurse, the accuracy of statements in a police report regarding █████’s disabilities (Ex. P-1), and the upcoming transfer of IDEA rights once █████ turns 18. Concerns beyond the six claims enumerated in the November 8 Order were not properly brought before the Court, and therefore will not be taken up at this time. The undersigned wishes to acknowledge, however, that █████ is a caring and involved parent who is zealously advocating on behalf of her child.

### **C. Conclusions of Law**

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 *et seq.*; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 *et seq.*; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. (“Ga. DOE Rules”), Ch. 160-4-7.

2.

The IDEA enables a parent to bring challenges to the “identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to [the] child” by filing a due process complaint. 20 U.S.C. § 1415(b)(6)(A); Shaffer v. Weast, 546 U.S. 49, 62 (2005). The “[IDEA] ‘creates a presumption in favor of the education placement established by a child’s IEP, and the party attacking its terms bears the burden of showing why the educational setting established by the IEP is not appropriate.’” Id.; see Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) (“The party seeking relief shall bear the burden of persuasion with the evidence at the administrative hearing.”). Thus, in this case, Petitioner bears the burden of persuasion and must produce sufficient evidence to support the allegations raised in the Amended Complaint.

3.

The goals of IDEA are “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs” and “to ensure that the rights of children with disabilities and parents of such children are protected.” 20 U.S.C. § 1400(d)(1)(A) – (B); J.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1362 (11th Cir. 2021). In addition, IDEA includes a “specific directive” that disabled children be placed in the “least restrictive environment” or “LRE.” Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991), withdrawn, 956 F.2d 1025 (11th Cir. 1992), reinstated in part, 967 F.2d 470 (11th Cir. 1992); see also 34 C.F.R. § 300.114(a)(2); 20 U.S.C. § 1412(a)(5)(A).

4.

The Individualized Education Plan or IEP is the “centerpiece” of IDEA’s extensive procedural framework. J.N., 12 F.4th at 1362 (citing Honig v. Doe, 484 U.S. 305, 311 (1988)); 20 U.S.C. § 1401(9)(D)); see also Andrew F.. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 391 (2017). An IEP is a “written statement that describes the child’s academic performance and how the child’s disability affects her education, states measurable educational goals and special needs of the child, establishes how the child’s progress will be measured and reported, and states the services available, based on peer-reviewed research, to enable the child to attain the goals, advance educationally, and participate with disabled and nondisabled children.” A.L. v. Jackson Cnty. Sch. Bd., 635 Fed. App’x. 774, 777 (11th Cir. 2015) (quoting ██████ v. Fulton Cnty. Sch. Dist., 741 F.3d 1195, 1201 (11th Cir. 2013)).

5.

The IEP is developed by the IEP team, including the parents. 34 C.F.R. §§ 300.324, 300.321(a)(1); R.L. v. Miami-Dade Cnty Sch. Bd., 757 F.3d 1173, 1177 (11th Cir. 2014) (IEP is

“the culmination of a collaborative process between parents, teachers, and school administrators . . . with the goal of providing the student with [FAPE].”). Parents must be afforded the opportunity for meaningful participation, but they do not have a “veto” if they do not agree to a proposed amendment or if all of their input is not incorporated into the IEP. █████ 741 F.3d at 1206; see also Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657 (8<sup>th</sup> Cir. 1999)(“[T]he IDEA does not require school districts simply to accede to parents’ demands without considering any suitable alternatives.”).

6.

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 580 U.S. at 399. This requirement does not require that a child’s IEP bring the child to grade-level achievement, but it must aspire to provide more than a *de minimis* educational progress. Id. at 402.

7.


In this case, the Court concludes that Petitioner failed to meet her burden to prove a denial of FAPE or any educational impact related to the six claims, as follows: (1) With respect to the request for speech therapy, Petitioner did not present any evidence that such a service is necessary, particularly when the objective articulated by █████ is for █████ to better advocate for herself. (2) Similarly, regarding physical therapy, Petitioner relied on her own assertions that █████ needs such a service, rather than presenting evidence to support her assertions. (3) Regarding occupational therapy, Petitioner alleged that the School District failed or refused to read or consider the independent evaluation and failed or refused to provide six months of occupational therapy services. The evidence showed, however, that the IEP team did consider the independent evaluation (even if Ms. Shepard read the report during the meeting, rather than beforehand) and

decided not to incorporate the recommendations. The evidence further showed that [REDACTED] has been receiving the occupational therapy services outlined in her IEP. (4) Regarding accommodations for I.B. classes, [REDACTED] was never in an I.B. class, and [REDACTED] did not provide any evidence that [REDACTED]'s name was not on the class roll at orientation because she is eligible for special education. (5) Dr. Walter's recommendation for a one-on-one aide to walk with [REDACTED] between classes in case of a fall was not connected to provision of FAPE. His recommendation as to class size is a suggestion in a vacuum, with no evidence having been presented to show, for example, how many students are actually in each of [REDACTED]'s classes or what an optimum number would be and why. (6) Finally, [REDACTED] failed to provide any evidence that the absence of grades on certain math assignments had anything to do with [REDACTED]'s IEP. The credible explanations for the apparently missing math grades revealed no connection to a denial of FAPE. In sum, Petitioner failed to present sufficient evidence to prove that the lack of speech therapy, a physical therapy evaluation, additional OT services, a one-on-one aide, a smaller class size, and certain math grades caused the IEP to not be reasonably calculated to enable [REDACTED] to make progress appropriate in light of her circumstances. Andrew F., 580 U.S. at 399.

### III. DECISION

For the reasons herein, the School District's Motion for Involuntary Dismissal is **GRANTED**, and the matter is hereby **DISMISSED**.

**SO ORDERED**, this 4th day of January, 2024.

  
**Stephanie M. Howells**  
**Administrative Law Judge**

