

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



12/08/2023

Devin Hamilton, Legal Assistant

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

v.

ATLANTA INDEPENDENT SCHOOL
SYSTEM,
Respondent.

Docket No.: ██████████
██████████-OSAH-DOE-SE-60-Teate

FINAL DECISION

I. Introduction

On April 3, 2023, ██████████ by and through his parents, ██████████ and ██████████ (hereinafter “Petitioners”) filed a Due Process Hearing Request (“Complaint”) under the Individuals with Disabilities Education Act (IDEA) related to ██████████’s individualized education program (IEP), placement in the least restrictive environment, parent participation, and a free appropriate public education. In the Complaint, Petitioners seek reimbursement for costs associated with the private placement at ██████████ and ██████████ as well as the costs of a psychological evaluation.

Pursuant to the parties’ request, a hearing was scheduled and held on August 21, 22, and 23, 2023. After consultation with the parties at the conclusion of the evidentiary hearing, the hearing record remained open through November 3, 2023, for submission of written closing arguments, proposed findings of fact and conclusions of law.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of the evidence, the Court makes the following findings of facts, conclusions of law, and Final Decision.

II. Findings of Fact

General Background

1. Petitioner [REDACTED] lives within the Atlanta Independent School System (hereinafter “the District”) and is eligible for special education services. [REDACTED] is a child with autism spectrum disorder (ASD); his condition has been described as “high-functioning autism.” T. at pp. 13, 269–71.¹ He suffers from anxiety and has associated sensory integration dysfunction. *Id.* at pp. 13, 140, 285, 286, 289–90. [REDACTED] struggles with perspective taking, realizing danger, considered impulsivity, and limited social awareness. *Id.* At the time of the hearing, [REDACTED] was twelve years old. *Id.* at p. 15. [REDACTED]’s autism causes him to have difficulty with transitioning and changes in his routine. *Id.* at p. 279. He is also extremely small for his age both in height and weight, and he looks much younger than his actual age. *Id.* at p. 14. However, he has no cognitive impairment and has a history of average to superior IQ scores. T. at pp. 275–76.

2. [REDACTED] is able to access the general education curriculum in all areas, with modifications. T. at pp. 373, 509. He tends to “shut down” when presented with curriculum that is significantly above or below grade level. T. at 374–75.

[REDACTED]’s Withdrawal from District Schools

3. [REDACTED] attended an elementary school in the District from kindergarten to third grade. T. at p. 17. When last enrolled in the District, he virtually attended [REDACTED] Elementary School in the emotional behavior disorder regional unit. T. at pp. 17, 232, 588–89. His parents withdrew him from the District and enrolled him in [REDACTED] a private school. His first day at [REDACTED] was on September 21, 2020. T. at pp. 29–31; 232.

4. For a period of time, [REDACTED] received his educational services at [REDACTED] in a one-to-one

¹ References to the transcript are cited herein as “T. at p(p). [page number].”

learning environment and, after some success, a two-to-one learning environment. T. at p. 32.

5. ██████████ has four programs: The Hope School, The Ladder Program, Compass, and Foundations. T. at p. 339. ██████ attended The Hope School at ██████████ *Id.* at p. 351; Ex. P-8. Students in The Hope School do not have significant cognitive impairments. T. at p. 339.

6. In April 2021, Petitioners and the District entered into a settlement agreement that released all claims and provided ██████ with a free appropriate public education through July 31, 2022. T. at pp. 19–20.

7. Since ██████'s withdrawal from the District in 2020, he has not been enrolled with the District and has not attended any school within the District. T. at p. 34.

Events Preceding the April 25, 2022 IEP Meeting

8. On February 18, 2022, Petitioners contacted the District via email, seeking an IEP meeting “during the last two weeks of April.” Ex. R-30; T. at pp. 33-34. The District responded, saying they required “written confirmation that [Petitioners] planned to re-enroll” ██████ in the District. Petitioners wrote in reply that they planned “to keep ██████ at ██████████ at public expense and without any lapse in his education.” *Id.*

9. On March 21, 2022, Petitioners requested an “independent educational evaluation” because ██████ had “nothing current” and the evaluation would “assist in determining levels of support, progress, and the setting goals” at the April 25, 2022 IEP meeting. Ex. R- 32. The District refused Petitioners’ request as untimely, but stated that they planned for the IEP team to discuss reevaluation for ██████ at the upcoming IEP meeting. *Id.* In a subsequent email, Petitioner ██████ indicated that Petitioners sought an independent educational evaluation because they disagreed with the neuropsychological evaluation performed by the District. *Id.* At that time, the most recent evaluation of ██████ was conducted in 2019. Ex. J-1.

10. Dr. Samantha Fitts, the District’s Special Education Coordinator, has observed ██████ twice;

once when he was a student at [REDACTED] and later, in March 2022, when he was at [REDACTED] [REDACTED] T. at pp. 577–79. She observed [REDACTED] at [REDACTED] for approximately twenty minutes. *Id.* at p. 705. She noted that [REDACTED] was engaged and participated in a lesson pertaining to the Industrial Revolution. *Id.* at p. 578.

11. In the days prior to the IEP meeting, the District communicated with [REDACTED] about [REDACTED]'s educational performance. T. at pp. 580–83; Exs. R-31, R-33.

Dr. Saulnier's Evaluation

12. Because the District declined to evaluate [REDACTED] at that time, his parents obtained an evaluation at their own expense. T. at pp. 35, 267; Ex. P-3, p. 10. This evaluation was conducted by Dr. Celine Saulnier. *Id.*; Ex. J-2. On April 24, 2022, a day prior to the April 25 IEP meeting, Petitioners provided the District with an evaluation report completed by Dr. Saulnier. Ex. R-37.

13. In Dr. Saulnier's report, she stated that [REDACTED] required an "intensive and multi-disciplinary intervention in a specialized school setting equipped to address the needs of children with ASD." *Id.*; Ex. J-2, p. 12; T. at p. 286. She encouraged his parents to "consider school placements that allow him more opportunities to interact with his typical peers while also providing appropriate accommodations." Ex. J-2. She recommended that his academic setting "continue to include specialized and individualized instruction, as well as access to multidisciplinary service provision . . . that is appropriate for children with autism spectrum disorders." *Id.*

14. The District did not reach out to Dr. Saulnier to discuss her findings before or after the IEP meeting. T. at pp. 293–94. She was not invited to the IEP meeting. *Id.*

The IEP Meeting

15. An IEP meeting for [REDACTED] was held on April 25, 2022. Ex. J-1. Meeting participants included [REDACTED]'s parents; Dr. Samantha Fitts, the District's LEA representative and Special Education Coordinator; attendees from [REDACTED] Elementary School (where [REDACTED] was last served);

attendees from Sutton Middle School (█████'s zoned school); Chela Powell, school psychologist; and Jennifer Schmidt, a Board Certified Behavioral Analyst who had previously served ██████ *Id.* at p. 22.

16. A representative from ██████ Ericka Cooper, was also present for a portion of the meeting. *Id.* However, her schedule required that she depart prior to the meeting's conclusion. The District did not invite Ms. Cooper to the meeting; she came at the invitation of ██████'s parents. T. at p. 416.

17. The minutes provide that the purpose of the meeting was “[t]o develop an IEP as ██████ prepare[s] to transition back to Atlanta Public Schools from ██████ Ex. J-1. Dr. Fitts indicated that the purpose of the meeting was to transition ██████ from ██████ to the District, and that his most recent least restrictive environment in the District was ██████ Ex. P-3, p. 17; Ex. P-29A. District personnel repeatedly emphasized that the meeting's purpose was to transition ██████ back to District schools. Ex. P-29A; T. at pp. 60–61, 383.

18. At the IEP meeting, Ms. Cooper opined that ██████ needed to remain in fifth grade and recommended that he remain at ██████ T. at pp. 382–85, 390–91. She explained that ██████ needed more time at ██████ to learn to self-regulate more independently. Ex. P-3, p. 16–17; Ex. P-29A.

19. Petitioners asserted that ██████ was ██████'s appropriate placement and least restrictive environment. Ex. R-29, 00:24:10; T. at pp. 66–70. They requested that ██████ be placed in fifth grade at ██████ Ex. R-29, 00:28:30. They spoke of the trauma ██████ experienced in co-taught and self-contained classrooms in District schools, and at the emotional and behavioral disorder program at ██████ *Id.* at 00:25:00–00:29:00.

20. The District disagreed with Petitioners' proposal for continued placement at ██████ *See* Ex. R-29, 1:54:40–1:56:05. The District's staff members told ██████'s parents that private school was not on the “continuum of placements” available to ██████ *Id.*; *see* Ex. P-3, p. 52; Ex. P-29A; T.

at p. 670.

21. Petitioners also suggested that [REDACTED] could attend a hybrid program in which he was simultaneously enrolled in [REDACTED] and the District's autism regional unit and attend each program for certain days each week. Ex. R-29, 02:14:45. [REDACTED] asked about a co-op program or afterschool program at one of the District's elementary schools to start getting [REDACTED] around neurotypical students. *Id.* The District also rejected these proposals. Ex. R-29, 02:14:53-02:15:32.

22. The District proposed to enroll [REDACTED] in the autism regional unit at Sutton Middle School, his "zone school," for the 2022-2023 school year. T. at pp. 613, 615, 798; Ex. P-3 p. 71; Ex. P-29A. For the 2022-2023 school year, the autism regional unit was located on the seventh- and eighth-grade campus of Sutton Middle School. *Id.*

23. [REDACTED]'s parents expressed concerns with location of the regional autism unit on the seventh and eighth grade campus at Sutton Middle School. *See* Ex. R-29, 02:18:00, 02:21:10. [REDACTED]'s father opined that [REDACTED] was not academically, socially, or emotionally ready for sixth grade middle school. Ex. P-3, pp. 15-16; Ex. P-29A.

24. If [REDACTED] was retained in the fifth grade in the District, he would attend the autism regional unit at E. Rivers Elementary School. T. at p. 619; Ex. R-29, 02:21:03. However, the IEP team did not arrive at a conclusion regarding whether [REDACTED] should be retained in the fifth grade. Exs. P-3, p-29; T. at pp. 193, 678-79.

25. The District's IEP team members concluded that [REDACTED]'s appropriate placement for the 2022-2023 school year was the District's autism regional unit. Ex. J-1; Ex. R-29; T. at pp. 610-11. Petitioners did not indicate that they agreed with the District's recommended placement. Ex. R-29, 02:04:00-02:09:00. Indeed, they expressed reservations that the plan would fail, leaving them with limited options since readmitting him to [REDACTED] would prove extremely difficult. *Id.*

26. Per the IEP, [REDACTED] would attend the autism regional unit all day, with the exception of one

elective, during which he would be accompanied by a paraprofessional. Ex. J-1; T. at p. 866.

27. Petitioners [REDACTED] and [REDACTED] also inquired as to whether extended school year services would be appropriate in order to prepare [REDACTED] to return to the District. T. at p. 197. The District declined to offer extended school year services. *Id.* at 873. The IEP states that [REDACTED] “is not eligible for [extended school year services] at this time and will address at a later date if needed.” Ex. J-1.

Sutton Middle School

28. Sutton Middle School is a “large” public school. T. at p. 449. It is split into two campuses, hosting its sixth-grade students on one campus, and its seventh- and eighth-grade students on another, separate campus. T. at p. 613. For the 2022-2023 school year, one of the District’s autism regional units was located at the Sutton Middle School seventh/eighth grade campus. *Id.*

29. According to Dr. Fitts, the District’s autism regional unit is a “classroom that offers intensive specialized instruction in the area of behavior, academic, and social skills.” T. at p. 612. It serves special education students; an autism diagnosis is not required. *Id.* The autism regional unit has one special education teacher and one paraprofessional. *Id.* at p. 613.

30. The majority of students in the autism regional unit have significant cognitive impairments. T. at pp. 425, 447.

31. Students in the autism regional unit interact with their nondisabled peers during connection courses, lunch, field trips, and transitions. T. at p. 440.

32. [REDACTED] would not be able to attend sixth-grade general education classes on the seventh/eighth grade campus. T. at pp. 423–24. He would have to be transported to the sixth-grade campus. *Id.* at p. 448.

33. In May 2022, Petitioners [REDACTED] and [REDACTED] toured Sutton Middle School for the first time. T. at p. 121. They observed no academic instruction at that time; the students were watching a video. T. at pp. 121–23. According to [REDACTED] the students appeared “low functioning.” T. at p. 123. He

heard echolalia and observed “stimming.” *Id.* █████ asked if there was a “safe room” for children with autism to go in order to calm down when feeling overwhelmed. *Id.* at p. 125. School personnel took █████ and █████ to a room with boxes, a storage cabinet, and a mini fridge. *Id.* at p. 125–26; Ex. P-5.

34. Petitioners █████ and █████ toured Sutton Middle School for a second time in April 2023. There were eight students of varying instructional needs in the autism regional unit classroom at the time of that tour. T. at pp. 428, 438–41. █████ and █████ observed the children receive academic instruction in the form of a basic math problem involving simple addition, which was well below the academic level to which █████ was accustomed. T. at 128–29. The children also watched seemingly non-academic videos; specifically, movie trailers for Barbie and Peter Pan. T. at p. 130. █████ opined that the students in the room were “very low functioning.” T. at p. 133. One student banged something on a desk and kept repeating the teacher’s directive to “stay calm.” T. at pp. 129–30.

35. The transition of classes at Sutton Middle School is marked by the ringing of a loud bell. T. at p. 134. As Sutton Middle School has a large student body, this transition also comes with the inevitable clamor of students heading to their classes. T. at pp. 134, 449.

Events Following the IEP Meeting

36. On May 12, 2022, the District emailed Petitioners, offering another IEP meeting. T. at p. 629–30. On May 25, 2022, Petitioners sent a notice of private placement at public expense. Ex. R-38; T. at p. 631. The District responded by sending Prior Written Notice on June 2, 2022. Ex. R-41; T. at pp. 632–33. In that notice, the District again offered an IEP meeting. Ex. R-41.

37. Petitioners did not enroll █████ in the District for the 2022-2023 school year. █████ attended █████ through the end of 2022. In January 2023, he began attending █████ another private school. T. at p. 213. He remained at █████ through the 2022-2023 school year.

38. On June 23, 2023, the District sent an email to Petitioners, requesting an IEP meeting and a new evaluation of [REDACTED] in light of his enrollment and education at [REDACTED] Ex. R-34.

Testimony Regarding [REDACTED]'s Needs

39. Ericka Cooper is director of client programming at [REDACTED] T. at p. 332. She has worked there for twelve years. *Id.* at 333. She has a Bachelor of Science degree in psychology and is certified in cognitive behavioral therapy, dialectical behavioral therapy, and crisis prevention intervention. *Id.* Formerly, she was a registered behavior technician. *Id.* At the hearing, she was qualified as an expert in psychology, various therapies related to children with disabilities, and educating students with developmental and other disabilities, among other specialties. *Id.* at 346–47.

40. Ms. Cooper oversaw [REDACTED]'s educational program while he was enrolled at [REDACTED] T. at p. 357. In her testimony, she opined that [REDACTED] needed a small group placement without “a lot of cacophony.” *Id.* at p. 358. She testified that [REDACTED] compared himself to others frequently and, would not do well if he was “too high functioning or too low functioning in a group.” *Id.* She further opined that it would be very challenging for [REDACTED] to be placed in a large school with a high number of students. *Id.* According to Ms. Cooper, sensory processing is an area of greater sensitivity for [REDACTED] and he can get overstimulated in environments with a lot of noise. T. at p. 376.

41. By Ms. Cooper’s account, [REDACTED] showed demonstrable progress at [REDACTED] and is doing “really well” at [REDACTED] T. at pp. 368–73, 386–87.

42. Ms. Cooper testified that, at the IEP meeting, District personnel were insistent upon [REDACTED] returning to the District. T. at p. 383. According to Ms. Cooper, Ms. Fitts was “consistently shutting down” any suggestions of continued private placement and “very adamant that APS was the only option for him to go back to.” *Id.*

43. Ms. Cooper opined that the IEP was not appropriate for [REDACTED] did not take into account his needs as a child with disabilities, and was not designed to result in meaningful progress. T. at pp. 383–

84.

44. Dr. Celine Saulnier is a licensed clinical psychologist. T. at p. 259. She owns her own practice, which is a combination of private practice for diagnostic evaluations throughout the lifespan of autism and neurodevelopmental disorders. *Id.* at pp. 259–60. She provides consultation services worldwide and teaches a course on autism at Emory University. *Id.* at p. 260. She received her doctorate in clinical psychology from the University of Connecticut and did her post-doctoral fellowship for two years at the Yale Child Study Center. *Id.* She stayed on at Yale for an additional nine years, conducting diagnostic evaluations, and became the clinical director of their developmental disabilities clinic. *Id.* She was later recruited to the Marcus Autism Center at Emory. At the hearing, she was qualified as an expert in psychology, neuropsychology, autism spectrum disorder and neurodevelopmental disorders, and the design of effective intervention and service programs for individuals with ASD and neurodevelopmental disorders. T. at p. 265–66.

45. According to Dr. Saulnier, a classroom with children who had significant cognitive impairments would not be an appropriate placement for [REDACTED] T. at pp. 292, 311. Although, she opined, [REDACTED] could benefit from a more inclusive environment at some point, a large school classroom environment would be overwhelming for him at the time she evaluated him. T. at p. 296–97.

46. Julie Lynn Bosworth is the principal of [REDACTED] T. at p. 454. She has a Bachelor of Science degree in Community and Family Services from the University of Delaware, and obtained a Master’s Degree in Educational Leadership in 2020. *Id.* at p. 455. She has been a certified educator since 2009. Prior to her current position, she was an inclusion teacher in the District, and was involved in the development of “many” IEPs. *Id.* at pp. 459–60. At the hearing, she was qualified as an expert in education, special education, designing educational programs and plans, school leadership and administration, and developing curriculum. T. at pp. 454–66.

47. Ms. Bosworth knows [REDACTED] and was involved in the process of admitting him to [REDACTED]

██████ T. at p. 493–94.

48. Although private schools are not obligated to develop IEPs for students under the IDEA, ████████ develops such programs for its students, including ████████ T. at pp. 503–04; *see* Ex. P-15.² ████████ obtained ████████'s input when developing his program. *Id.* It also considered Dr. Saulnier's evaluation. Ex. P-15.

49. According to Ms. Bosworth, ████████ progressed remarkably at ████████ T. at pp. 509–12. He was on grade level and obtained above-average grades in all subjects. *Id.*; Exs. P-16 through P-21.

50. At ████████ ████████ does not attend classes with students who have significant cognitive impairments. Indeed, as Ms. Bosworth explained in her testimony, ████████ is unable to accept students with significant cognitive deficits. T. at pp. 471, 473.

51. Having reviewed the IEP developed by the District, Ms. Bosworth concluded that it was not reasonable, appropriate, or designed to meet ████████'s needs. T. at pp. 527, 534. She opined that ████████ would become “frustrated” by his placement in the regional autism unit, and that this frustration would manifest in his behavior. *Id.* She could not understand the District's proposal to place ████████ in the regional autism unit on a seventh- and eighth-grade campus, where he would not have access to general education classes on grade level. *Id.* at 529–31.

Requested Relief

52. In their complaint, Petitioners seek the following relief:

- \$2,238.50 for summer programming at ████████ in 2022;
- \$25,127.50 in tuition, plus the deposit of \$4,238.00, for ████████'s first semester at ████████
- \$3,440.80 for transportation costs associated with the first semester at ████████
- \$22,750.00 in tuition for ████████'s second semester at ████████

² From the record, it appears that Petitioners misidentified P-15 as “P-16” and mistakenly concluded it had been entered into evidence. T. at p. 501. In context, it is clear that Petitioners intended to tender exhibit P-15, to which the District had no objection. *Id.* Therefore, the Court considers that exhibit admitted.

- \$3,440.80 for transportation costs associated with the second semester at [REDACTED]
- \$35.00 for education software; and
- \$2,500.00 for Dr. Saulnier’s evaluation.

Complaint at p. 17. Petitioner’s sought total reimbursement of \$66,489.70.³ *Id.* In addition, Petitioners sought continued placement at [REDACTED] or, alternatively, a small private school with specialized instruction and necessary services, as selected by his parents. *Id.* They asserted that [REDACTED] was entitled to an IEP placing him in a small, specialized day school until he graduated with a high school diploma or turned 22, whichever occurred first. *Id.* They further requested reimbursement for transportation at the federal tax mileage rate and [REDACTED]’s educational records. *Id.* In their exhibits, Petitioners clarified that they sought reimbursement in the following amounts:

- Tuition
 - [REDACTED] (2022) – \$25,127.50
 - [REDACTED] (Jan. – June 2023) – \$12,584.00
 - [REDACTED] (2023-2024 school year) - \$26,610.00
- Mileage
 - Aug. – Dec. 2022 - \$3,675.56
 - Jan. – June 2023 - \$3,213.96⁴
 - 2023-2024 school year (estimated) - \$6,354.02
- Evaluation (Dr. Saulnier) - \$2,500.00

In total, Petitioners seek reimbursement in the amount of \$80,065.73.⁵ At the hearing, they presented

³ The Court is unable to replicate this total. The sum of the costs delineated in the Complaint is \$63,770.60.

⁴ According to Petitioners’ summary of cost, total mileage for Spring 2023 should be \$3,215.48:

Month	Reported Mileage
<i>January</i>	\$ 702.24
<i>February</i>	\$ 628.32
<i>March</i>	\$ 776.16
<i>April</i>	\$ 554.40
<i>May</i>	\$ 480.48
<i>June</i>	\$ 73.88
<i>Total</i>	\$ 3,215.48

⁵The Court is likewise unable to replicate this calculation. Adding the costs of tuition and mileage detailed in Petitioners’ report results in a total of \$80,065.04. With the correction described in footnote 4, the total would be \$80,066.56.

documentation of their expenses. Ex. P-22; T. at p. 186.

III. Conclusions of Law

1. The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). The intent of the IDEA is as well “to ensure that the rights of children with disabilities and parents of such children are protected.” 20 U.S.C. § 1400(d)(1)(B).

2. The IDEA “provides important procedural rights.” *JSK v. Hendry Cty. Sch. Bd.*, 941 F.2d 1563, 1565 (11th Cir. 1991). Procedural violations of the IDEA may result in a denial of FAPE when they: (1) impede the child’s right to a FAPE; (2) significantly impede the parents’ opportunity to participate in the decision-making process; or (3) cause a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

3. Among the procedural requirements imposed by the IDEA and its implementing regulations is the provision that parents be afforded an opportunity to participate in IEP meetings with respect to the placement and provision of a free and appropriate public education to the child. 34 C.F.R. § 300.501(b); *see also* 34 C.F.R. § 300.116(a)(1) (school districts must ensure that “[t]he placement decision . . . is made by a group of persons, including the parents, and other persons knowledgeable about the child . . .”).

4. In the present case, Petitioners allege that the District’s decision to place █████ in the regional autism unit at Sutton Middle School was predetermined. Predetermination occurs when an educational agency preliminarily decides material aspects of a child’s education program without parental input. *See, e.g., R.L. v. Miami-Dade Cty. Sch. Bd.*, 757 F. 3d 1173, 1188 (11th Cir. 2014). Predetermination is prohibited under the IDEA, which, as discussed *supra*, ensures meaningful parental participation in the process of developing the IEP. *See id.* (quoting *Deal v. Hamilton Cty. Bd.*

of Educ., 392 F. 3d 840, 858 (6th Cir. 2004)) (“Parental ‘[p]articipation must be more than a mere form; it must be meaningful.”) (emphasis in original).

5. The overall record supports a finding of predetermination on the part of the District. During the IEP meeting, District personnel repeatedly and emphatically pronounced that the purpose of the meeting was to transition ██████ to a public school setting. District personnel also repeatedly insisted that private placement would not be considered in any form, and continuously rejected ██████’s and ██████’s suggestions for alternative placement or offers of compromise based on ██████’s needs. *See R.L.*, 757 F.3d 1173, 1189–90 (finding predetermination based in part on school district’s rejection of private placement). Their commitment to placing ██████ in the regional autism unit did not waver even slightly, despite hearing concerns from ██████’s parents and an educator familiar with his needs. *See id.* at 1188 (“To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents’ opinions and support for the IEP provisions they believe are necessary for their child.”); *see also Deal*, 392 F. 3d at 858 (“The clear implication is that no matter how strong the evidence presented by the [parents], the School System still would have refused to provide the services.”). Thus, the Court concludes that the District entered the IEP meeting with the predetermined goal of placing ██████ in the regional autism unit. Overall, the Court finds that ██████’s parents were not afforded a meaningful opportunity to participate in the IEP meeting. *See, e.g., Deal*, 392 F.3d at 858 (“The district court erred in assuming that merely because the [parents] were present and spoke at the various IEP meetings, they were afforded adequate opportunity to participate.”).

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. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). “The instruction and services must likewise be provided with an eye toward ‘progress in the general education curriculum.’” *Id.* at 401 (citing 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb)). The “educational program must be appropriately ambitious in light

of [the student's] circumstances.” *Id.* at 402.

7. Here, the IEP developed incident to the April 25, 2022 meeting was not reasonably calculated to enable [REDACTED] to make progress appropriate in light of his circumstances. By all accounts, [REDACTED] experienced progress at [REDACTED] such as he never experienced in District schools. At the time of the IEP meeting, this was evidenced by his academic records, as well as the statements of his parents and the education coordinator at [REDACTED] all of whom were more familiar with [REDACTED]’s needs than the District’s IEP team members. Yet, as discussed *supra*, the District did not take this information into account, instead remaining steadfast in its predetermined conclusion that the appropriate placement for [REDACTED] was its regional autism unit.

8. The District presented no evidence whatsoever that placement in the regional autism unit would enable [REDACTED] to make progress appropriate in light of his circumstances. Logically speaking, if [REDACTED] was experiencing progress at [REDACTED] a course of action calculated to enable a child to make progress would attempt to approximate that program. But the District’s proposed program bore no resemblance to [REDACTED] [REDACTED] would receive services in a self-contained unit. Unlike [REDACTED] most of the other students in the unit had significant cognitive deficits. This contravenes Dr. Saulnier’s report, which provided that [REDACTED]’s appropriate placement should “allow him more opportunities to interact with his typical peers.” Moreover, according to Ms. Cooper, [REDACTED] would not benefit if placed in a setting where he functioned significantly better or worse than his classmates. With the exception of one segment of the day (not including lunch), he would have no access to general education classes at his grade level, even though he was able to access grade-level curriculum at [REDACTED]. The planned placement was also in an environment with a large student population and a high noise level, despite the fact sensory processing is an area of greater sensitivity for [REDACTED] and he can get overstimulated in noisy environments.

9. Dr. Saulnier, Ms. Cooper, and Ms. Bosworth unanimously concluded in their testimony that the IEP developed by the District was not reasonable, appropriate, or calculated to provide educational benefit

to [REDACTED]. The District offered no contrary testimony from an individual familiar with [REDACTED]'s needs.

10. Once an IDEA violation is found, the Court is authorized to “grant such relief as [it] determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii); see *Bouabid v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 62 F.4th 851, 861 (4th Cir. 2023) (“Courts have thus viewed ALJs in IDEA cases as having broad remedial authority as well.”). The Court has substantial discretion under the IDEA to “tailor relief to the needs of [the] child.” *Id.* Such relief may include reimbursement for the expenses of a private school. See *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1285 (11th Cir. 2008).

11. In the present case, the Court finds such relief appropriate, as Petitioners have unequivocally shown that private placement has enabled [REDACTED] to make progress, and the District failed to offer an appropriate placement in a public setting. *Id.* (quoting *Loren F. ex rel. Fisher v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir. 2003) (“[W]hen a public school fails to provide an adequate education in a timely manner a placement in a private school may be appropriate.”) (internal quotations omitted)). Accordingly, Petitioners are entitled to reimbursement for tuition expenses incurred at [REDACTED] and [REDACTED] for the 2022-2023 school year, as well as tuition expenses for [REDACTED]'s attendance at [REDACTED] for the 2023-2024 school year.

12. Petitioners are also entitled to transportation costs related to [REDACTED]'s attendance at [REDACTED] [REDACTED] and [REDACTED]. *Dunn-Fischer v. Dist. Sch. Bd.*, No. 2:10-cv-512-FtM-29SPC, 2011 U.S. Dist. LEXIS 114896, at *20 (M.D. Fla. Aug. 30, 2011) (“[C]ourts have found that reimbursement awards may encompass numerous areas including private school placement, private tutoring, transportation expense, and therapies if the defendant is found to have violated the IDEA.”).

13. The District argues that [REDACTED]'s March 24, 2022 request for an independent educational evaluation in advance of the IEP meeting was time-barred, citing the statute of limitations in the IDEA and implementing regulations. See 34 C.F.R. 300.507; see also *Atlanta Pub. Sch.*, 51 IDELR 29, Docket No. OSAH-DOE-IEE-0828123-80-Barnes (OSAH Aug. 13, 2008). The Court agrees that the two-

year statute of limitations applies to requests for independent educational evaluations. *Bryan Cty. Sch. Dist.*, 113 LRP 4536, OSAH-DOE-SE-1326293-15-Teate (OSAH Jan. 25, 2013). It is undisputed that the challenged evaluation was conducted more than two years before Petitioners made their request for an independent evaluation. Therefore, the District correctly concluded that it was untimely, and it is not required to reimburse Petitioners for Dr. Saulnier’s evaluation. *See* 34 C.F.R. § 300.502(b); *see also N.D.S. v. Acad. for Sci. & Agric. Charter Sch.*, Case No. 18-CV-0711, 2018 U.S. Dist. LEXIS 200987 (D. Minn. Nov. 28, 2018).


14. With respect to tuition and transportation expenses, the Court accepts Petitioners’ calculation of the total reimbursement amount, with an \$0.83 mathematical correction: \$77,566.56. The District did not refute this calculation.

15. The Court declines to enter a finding that the *only* appropriate placement for [REDACTED] is at [REDACTED] [REDACTED] as requested in the Complaint, or grant private placement as suggested by Petitioners until [REDACTED] “graduate[s] with a high school diploma or turn[s] 22 whichever occur[s] first.” The Court by no means forecloses the possibility that the District could develop an IEP prior to the 2024-2025 school year that is reasonably calculated to enable [REDACTED] to make progress, whether in a public setting, a private setting, or a combination of both.

IV. Decision

Based on the foregoing findings of fact and conclusions of law, private placement is authorized until the end of the 2023-2024 school year and the District is **ORDERED** to reimburse Petitioners in the amount of \$77,566.56.

SO ORDERED, this 8th day of December, 2023.



Steven W. Teate
Administrative Law Judge

