

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

█████ by and through █████ and █████, and █████	:	
and █████,	:	
Petitioners,	:	
v.	:	Docket No. 1903101
	:	1903101-OSAH-DOE-SE-33-KENNEDY
	:	
COBB COUNTY SCHOOL DISTRICT,	:	
Respondent.	:	

FINAL DECISION

I. INTRODUCTION

Petitioner █████ is a rising 4th-grade student who lives within the Cobb County School District. She is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

On July 26, 2018, █████ and her parents, █████ and █████, filed a Due Process Hearing Request alleging issues related to █████'s individualized education program (IEP), eligibility under the category of Mild Intellectual Disability (MID), re-evaluations, the Georgia Alternate Assessment (GAA), placement in the least restrictive environment (LRE), independent educational evaluations (IEEs), parent participation, and a free appropriate public education (FAPE).

On November 9, 2018, Petitioners filed an amended hearing request to plead facts arising after July 26, 2018, related to their IEE claims.

A hearing was held on January 9, 10, 14, 17 and February 25 through 28, 2019. Additionally, one witness testified by telephone on March 11, 2019. The record closed on May 8, 2019, with the filing of closing arguments and proposed orders. On June 7, 2019, the Court issued an order extending the time to issue a decision until June 24, 2019.

II. FINDINGS OF FACT

GENERAL OVERVIEW AND BACKGROUND

1.

█ (D.O.B. 5/18/09) just completed 3rd grade. She has attended Ford Elementary School, her zoned home school, in Cobb County since kindergarten (School Year 2014-2015). █ repeated Kindergarten during the 2015-2016 school year at her parents' request. (Tr. 839, 1239-40, 1248, 1253, 1257; P-17).

2.

█ has three siblings all of whom have attended or will attend Ford Elementary School. (Tr. 1239-40).

3.

█ and █ father and mother, are aware of █ academic limitations and are seeking a balance between academics, behavior, and social goals to improve her long-term quality of life. (Tr. 1239, 1468, 1546; P 154). Cobb County School District (CCSD or District) is focused primarily on █ educational progress. CCSD seeks to place █ in a small group Mild Intellectually Disabled (MID) classroom for Reading, English Language Arts, and Math to provide █ a slower pace and repetition in these subject areas. If placed in the MID classroom, █ would have to transfer to Lewis Elementary School. CCSD seeks this placement based on a belief that █ will make more meaningful progress by being provided a slower pace and more repetition. █ parents are concerned that the slower pace will result in exposure to less grade level standards and actually hinder the progress she has been making. (Tr. 1317-18, 1395-98, 2550, 2601; P-17 at p. 4; P-125 to P-127).).

4.

█████ was diagnosed with Down Syndrome at birth. Despite her medical condition, █████ met developmental milestones at a similar pace as that of her non-disabled siblings, but she remains academically below her average peers. (Tr. 1240-42; P-16).

5.

At the age of 16-17 months, █████ received chemotherapy after being diagnosed with leukemia. Additionally, █████ suffers from sleep apnea, a thyroid disorder, and vision and hearing difficulties, including issues with her ears requiring tubes. (Tr. 1242, 1244, 2111).

6.

█████ is eligible to receive special education and related services from CCSD pursuant to IDEA. She was initially determined eligible for services in May 2012, under the category of Significant Developmental Delay (SDD) and Speech-Language Impaired (SI). (Tr. 873-74; P16 █████0257).

7.

During █████ first grade year (2016-2017), an annual IEP meeting was held on February 15, 2017. (Tr. 1273; P-14). Pursuant to this IEP, the IEP team placed █████ in the general education setting with the co-taught service model for reading, social studies, science, and for one segment of math, and in the small group setting for language arts and for a second segment of math. (P-14, █████0231-0232).

8.

During the February 2017 IEP meeting, the team discussed that categorical eligibility would need to be addressed because █████ would be turning nine (9) before the end of the next school year and SDD is an eligibility category that is only available through age nine (9). (P-14,

0233) [REDACTED] parents felt “it would be best to re-evaluate [REDACTED] the following school] year when she is in second grade . . .,” so the discussion was postponed. (P-14, [REDACTED] 0223).

9.

During [REDACTED] second grade year (2017-2018), on December 14, 2017, an IEP amendment meeting was convened to discuss the re-evaluation and re-determination process. (Tr. 873-74, 1261, 1287; P-14B; R-84, CCSD 000851, 000862). [REDACTED] attended the meeting and had an opportunity to ask questions and raise concerns, including about specific assessments or areas that would be evaluated. (Tr. 1261, 1287-88, 1300, 1311, 1767, 2067; R-84, CCSD 000846). The team later agreed to extend the February 2017 IEP goals and objectives so the re-evaluation could be completed and the results could be discussed during an annual review held later in the school year. (Tr. 905, 1259-62, 1454; R-85, CCSD 000885). The assessments to be conducted as part of the re-evaluation included psychological testing of [REDACTED], a speech and language evaluation, and a Wide Range Assessment of Visual Motor Abilities (WRAVMA). (Tr. 1288, 1300, 1490-91, 1725, 1909; P-14B; R-84).

10.

From January to March 2018, CCSD conducted the agreed-upon re-evaluation for [REDACTED] (P-16; R-61).

11.

At the present time, [REDACTED] most challenging subject is math. Regarding reading, she enjoys reading, has strong word recall, and can read grade level words, although she has difficulty understanding abstract words. (Tr. 646-47, 847, 851-52, 1090-92, 2426-27, 2434).

12.

█ has difficulty with fine motor skills, including her pincer grasp, or thumb to index finger, which impacts her writing and other tasks. (Tr. 945-46, 1986).

13.

█ also struggles with articulation. It can be difficult to understand her if you are unfamiliar with her. (Tr. 1255).

14.

█ also suffers from a high level of distractibility and inattention. (Tr. 822-23, 830, 889-890).

15.

At Ford Elementary School, █ has been able to function similarly to her classmates in going to and from class, specials, the bus,¹ getting class supplies, and turning in papers. (Tr. 1440-41). Additionally, █ has been able to interact with peers in her co-taught classes, participating in conversations and group discussions. (Tr. 852). Although her responses in class are sometimes off-topic, she has not been disruptive to the class. (Tr. 782-83).

16.

█ rides the regular education bus, which allows her to sit and socialize with friends or her brother, and to play with non-disabled peers from her bus stop. (Tr. 1250-53, 1418). She also has the opportunity to interact with non-disabled peers in her church community, on the swim team, and in dance class. (Tr. 1248-49, 1421-22). █ enjoys socializing and looks to others for social cues. (Tr. 723-24, 1246-50, 2622).

¹ █ can become upset if there is a change with the bus. (Tr. 816)

17.

█████ Individual Education Plan (IEP) includes goals and objectives in the areas of math, reading, fine motor skills, learning strategies, and speech and language. During 2nd grade and the 1st quarter of 3rd grade, █████ progressed on her IEP goals and objectives. (Tr. 417-19, 441, 798, 803-07, 1336, 1339-40, 1387-88, 1807, 1823-26, 1839, 1932, 1950-51, 2370-71, 2620-21; P17 █████ 0315-22; R129; R262; R-324). However, █████ goals and objectives for 3rd grade were not based on 3rd grade standards. Instead, they were based on kindergarten and some first grade standards because she was working toward the required prerequisite skills that were designed to move her forward toward grade-level standards. (Tr. 1653-54, 1827-30, 2406-07). This may eventually adversely impact █████'s ability to continue to progress in the general education classroom as she goes from grade to grade because the gap between █████ standards and those of her peers may continue to widen. For example, while █████ current goals and objectives are based on kindergarten and first grade standards, students going from 3rd grade to 4th grade go from “learning to read” to “reading to learn” – meaning “reading and writing becomes all about content,” which may lead to █████ falling further behind her peers. (Tr. 2348).

18.

For 2nd grade, █████'s IEP was implemented in a 2nd grade co-taught general education class² for reading, science, social studies and one math segment, and in a small group interrelated resource (IRR) class for language arts and a second segment of math. (Tr. 14-15; P14 █████ 230-32). Her teacher, Ms. Goodman, provided a number of supports and modifications to assist █████ in the general education co-taught classroom. (Tr. 828, 847-49, 864-65, 869-870). For math,

² A co-taught class is a general education placement with two teachers, one who is a general education teacher and content specialist and the other who is a special education teacher and learning specialist. (Tr. 814-15, 1021-22). This allows for grade level instruction to be given to the whole class, and direct specialized instruction on the student's level to be provided individually or when the class breaks into smaller groupings. (Tr. 814-15, 1026-30, 2335, 2356, 2374-75, 2405, 2409-10).

Ms. Goodman provided [REDACTED] a number line for addition and subtraction, as well as a whiteboard. (Tr. 847-48) The whiteboard provided an opportunity to modify state standards for [REDACTED] during instruction by starting off a lesson “working in the hundreds” and allowing [REDACTED] to work on that before “tak[ing] away a digit and work[ing] with her more on prerequisite skills leading up to what the standard was.” (Tr. 848-49). In addition, for reading, Ms. Goodman brought in differentiated, lower-level materials for [REDACTED], and would modify the reading level for a subject if [REDACTED] required it. (Tr. 849, 868-69). Ms. Goodman also modified spelling assessments by giving [REDACTED] fewer words. (Tr. 828, 865).

19.

For 3rd grade, [REDACTED]’s IEP was again implemented in a co-taught general education class for reading, science, social studies and one math segment, and in a small group interrelated resource (IRR) class for language arts and a second segment of math. Ms. Shaleen Kappel, former Support and Services Administrator for CCSD, observed [REDACTED] during her third-grade year in both the co-taught and small group settings, as she had previously done when [REDACTED] was in 2nd grade. (Tr. 2393, 2545). Ms. Kappel observed that there was an extreme difference in third grade as far as content and what [REDACTED] was being asked to complete based on where she was performing at that time. Ms. Kappel further observed that, in the resource room, [REDACTED] was working on her IEP goals and objectives “mainly . . . in a group of one.” Thus, Ms. Kappel concluded “there was a bigger gap in what [REDACTED] was producing and expected to do and able to do versus that of her peers” in third grade as compared to second grade. (Tr. 2545-46).

20.

As part of her IEP, [REDACTED] was pulled from co-taught academics for occupational therapy twice a week and for speech-language services twice a week. (Tr. 840-43, 898-99).

21.

After CCSD completed the re-evaluation, the IEP team met on May 10, 2018 to re-determine eligibility and begin drafting ██████ IEP. The team met again on May 21, 2018, to finish drafting the IEP. (Tr. 1261-62, 1453-55; P125 to P127).

22.

At the conclusion of the IEP meetings held in May 2018, the CCSD members of the IEP team identified ██████ as eligible for services under the Mild Intellectual Disability (MID) category³ over ██████'s parents' and advocate's objections. Additionally, CCSD members determined, over ██████'s parents' objection, that her placement for math, reading, and language arts would be in a self-contained MID classroom located at Lewis Elementary School,⁴ and that she would take the Georgia Alternate Assessment rather than Milestones Assessment. The CCSD IEP team members reached this determination based, in part, on the results of the re-evaluation, as well as ██████'s lack of progress on state grade level standards. (Tr. 432-33, 441, 798, 804-08, 879, 896, 1275-76, 1336, 1339-40, 1387-88, 1562-63, 1807, 1823-26, 1829, 1839, 1932, 2370-71, 2557; P17 ██████ 315-22; P52; P126 at 1:59:04-2:07:35; and P127 at ██████ 1001-06; R129).

³ MID is defined as “[i]ntellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and . . . [d]eficits in adaptive behavior that significantly limit a child’s effectiveness in meeting the standards of maturation, learning, personal independent or social responsibility, and especially school performance that is expected of the individual’s age level and cultural group . . .” Ga. Comp. R. & Regs. 160-4-7-.05 App’x (e).

⁴ ██████ and ██████ had several concerns with ██████ attending school at Lewis Elementary School, including hearing that students in the MID class are openly labeled “MID students.” For example, ██████ heard that students wear shirts that label them as MID on field trips. (Tr. 1506, 2154-56) Additionally, ██████’s parents were concerned that the MID class at Lewis Elementary School is not inclusive. For example, the MID students sit together with a 3rd, 4th, or 5th grade class during “specials” as well as during “lunch” and are not integrated into the regular education class. (Tr. 1398-99).

23.

Given that CCSD's IEP team members proposed to change [REDACTED] educational placement, [REDACTED] parents were entitled to receive Prior Written Notice (PWN). An IEP can serve as PWN in Georgia. Accordingly, CCSD trains its staff to include certain information in IEP documentation to meet the PWN procedural requirements. (Tr. 348). Nevertheless, following the May 2018 IEP meetings, on June 7, 2018, CCSD sent [REDACTED] parents PWN per their advocate's request. (Tr. 486; P-16 [REDACTED] 019; P-50). The focus of the PWN was on placement based on the discussions between the family and Ms. Kappel. (Tr. 349).

24.

[REDACTED] placement did not change during her 3rd grade year (2018-19) despite the determination reached in May 2018, because [REDACTED] s parents invoked "stay-put" provisions of IDEA in connection with this litigation. (Tr. 1324; 34 C.F.R. § 300.518).

25.

CCSD maintains that the MID class at Lewis Elementary School is the most appropriate placement for [REDACTED] because, in part, CCSD believes it will allow [REDACTED] to be instructed by a teacher "qualified with her disability" of MID, and be with "students that are similar" or "more on her language developmental level." (Tr. 44-45, 314, 878, 2411-12, 2558, 2586-87, 2590).

RESPONDENT'S RE-EVALUATION OF E.G.

26.

[REDACTED] was initially found eligible to receive special education services under the category of Significant Developmental Delay (SDD) and Speech-Language Impairment (SI). The SDD eligibility category is available for students until their 9th birthday. Given that [REDACTED] s eligibility under SDD was coming to an end in May 2018, a December 14, 2017 IEP meeting was held to

obtain parental consent for re-evaluation to re-determine eligibility. (Tr. 873-74, 1286-90, 1766-67, 2029, 2063-64; P100; P11; P14B [REDACTED] 248; P33; 34 C.F.R. § 300.8(b)).

27.

The consent form provided to [REDACTED] for her signature indicated that [REDACTED] was being referred for an evaluation to determine eligibility. CCSD did not check the box that indicated consent was being sought for an evaluation to assist in “educational planning,” because CCSD only checks that box if the team is not going to be considering eligibility. It is typical for Respondent to only indicate eligibility when a re-determination of eligibility is required, such as in this matter, because educational planning would not occur unless the student is determined eligible for services. CCSD’s practice to only check the eligibility box when eligibility is at issue does not prevent or prohibit an IEP team from also considering any information obtained for educational planning purposes after the student is found eligible for services. In fact, [REDACTED] understood “that the evaluations were going to be used for educational planning.” Moreover, if after determining eligibility, the IEP team determines that additional information is needed to complete educational planning, such testing can be discussed and agreed upon between the parties. (Tr. 58-59, 157-59, 318, 375-76, 1289-90, 1311, 1495-1500, 2069-70; P11, [REDACTED] 0165; P153 at p. 71).

28.

The consent form stated that CCSD’s evaluators had discretion to determine the scope of the evaluation and may assess vision, hearing, achievement, motor, intelligence/cognitive ability, speech/language, social/emotional, cognitive processing, and adaptive functioning. (Tr. 59-61, 1291, 1299, 1454; P11). The consent form further stated that the evaluation would include a review of records and may include observation. (Tr. 1290-92, 1297-98, 1308; P11). Finally, the

Consent Form notified the parents that they could provide the District with any additional information they thought would be relevant or helpful. (Tr. 2181; P-11).

29.

To assist the District, Petitioners provided a Medical Form during the December 14, 2017 IEP meeting. The medical evaluation report from [REDACTED] doctor indicated she had diagnoses of Down Syndrome, developmental delay, and speech and language delay, but it did not indicate any diagnosis of ADHD, anxiety, depression, or autism spectrum disorder. (Tr. 2066; R-60).

Psychoeducational Evaluation by Kristen Snell

30.

On January 16, 2018, Barbara Moroney, an educational diagnostician with CCSD, conducted the Kaufman Test of Educational Achievement, 3rd Ed. (KTEA-3). [REDACTED]'s academic functioning on the KTEA-3 showed standard scores above the MID-range for Letter and Word Recognition, 90; Reading Comprehension, 82; and Spelling, 78. (Tr. 531-32, 1293-94, 1427-28, 2104-05, 2203-13; R61). The results of this assessment were listed as “background history” in an evaluation report completed by psychologist Kristen Snell on behalf of CCSD after Ms. Snell conducted her own evaluation later the same month. (Tr. 2080-81; R-61).

31.

On January 23, 2018, Ms. Snell administered the Differential Ability Scales, 2nd Ed. (DAS-II). On January 25, 2018, Ms. Snell administered the Weschler Intelligence Scale for Children, 5th Ed. (WISC-V). She also assessed adaptive behavior using the Vineland Adaptive Behavior Scales, 3rd Ed. (Vineland-3). (Tr. 2017, 2055, 2063, 2079-80, 2163, 2190, 2313-14; R61).

32.

As part of her evaluation, Ms. Snell reviewed [REDACTED]'s "previous evaluations, eligibility reports, previous IEPs, grades, progress on goals and objectives, and "just [about] anything that [she could] review in order to prepare." (Tr. 2079). However, Ms. Snell did not observe [REDACTED] in the classroom nor did she take a history from [REDACTED] parents. (Tr. 2175, 2182). In completing her evaluation, Ms. Snell only reviewed records in CCSD's possession and did not ask [REDACTED] parents if they had additional reports or information. (Tr. 1291-92, 1297-98, 1435-37, 2181-82, 2200-01; P153 at 68; R61).

33.

In administering assessments, Ms. Snell did not inquire what time was best for testing [REDACTED]. Ms. Snell also did not inquire how [REDACTED] slept the night before testing even though she was aware that [REDACTED] suffers from sleep apnea and that it can affect a child's quality of sleep, which can impact a child's performance on assessments. (Tr. 1254, 1292-94, 1428-29, 1435-37, 2164-66).

34.

During the administration of the assessments, Ms. Snell noted that [REDACTED] was "easily distracted, responded impulsively to some tasks, and required verbal redirection from the examiner and repetition of directions, particularly when tasks increased in difficulty." (Tr. 1435, 2108-09, 2118; R61 CCSD 348, 353). [REDACTED] inattention was an area of concern identified by the IEP team when determining the scope of the evaluation. (P4 [REDACTED] 150). Despite this, Ms. Snell did not suggest or conduct an additional evaluation for attention. Ms. Snell determined an additional evaluation for attention was unnecessary because the Vineland-3 "maladaptive behavior domain section," which can serve as a screening to see if a more formal assessment for

inattention is warranted, rated [REDACTED] within the average range.⁵ (Tr. 1435, 2112, 2239-41). Additionally, Ms. Snell testified that she did not find [REDACTED]'s attention to be unmanageable and found redirection or short breaks were effective. However, Ms. Snell's notes do not identify whether [REDACTED] was provided with breaks between subtests, even when she administered seven subtests of the WISC-V in a single hour. (Tr. 2109, 2239, 2298, 2305, 2313-15). Ultimately, Ms. Snell determined that, despite inattention issues, "[REDACTED]'s responses seemed to be the result of genuine effort" and were "a valid estimate of her current functioning," but the scores she obtained were significantly lower than other assessments [REDACTED] has been administered. (Tr. 1435; R61 CCSD348).

35.

For the DAS-II, Ms. Snell explained that this is an "individually administered assessment of cognitive ability," which looks at verbal skills, nonverbal skills, and spatial skills. Ms. Snell chose to administer this assessment to get an understanding of [REDACTED]'s "overall cognitive ability" and to help establish special education criteria. (Tr. 2095). Ms. Snell reported standard scores of Verbal Cluster, 48; Nonverbal Cluster, 64; Spatial Cluster, 45; and General Conceptual Ability, 49. (Tr. 2095-96; R61).

36.

Ms. Snell administered the WISC-V to compare to the results of the DAS-II and to get additional information on [REDACTED] cognitive ability. (Tr. 2084, 2089-90). Ms. Snell administered the assessment using an iPad. She explained that she chose to use an iPad because of [REDACTED] motor limitations and because it only requires the student to touch the answer rather than use

⁵ Additionally, Ms. Snell testified that [REDACTED] parents later provided a second medical evaluation report from [REDACTED] doctor, dated May 21, 2018, that stated: "Down Syndrome – trouble keeping attention on tasks, does not finish tasks, has trouble organizing, easily distracted . . .," which is consistent with Ms. Snell's understanding of the relationship between Down Syndrome and attention. (Tr. 2117-19; R-59)

keyboarding or scrolling. (Tr. 2091-94, 2242). However, Ms. Snell noted that [REDACTED] often pushed “buttons on the iPad impulsively, without thinking, and required redirection,” which calls into question whether the results are a true and accurate depiction of [REDACTED] cognitive ability.⁶ Ms. Snell had not asked [REDACTED] parents about [REDACTED]’s use of an iPad and did not know that she used it as a recreational tool, prior to choosing to administer the assessment using this method. (Tr. 1446-47, 2092-94, 2108-09, 2243-44).

37.

IDEA requires assessments to be administered consistent with instructions of the test producer as reflected in the manual. (Tr. 2254-55; see 34 C.F.R. 300.304(c)(5). The WISC-V manual indicates that prior to testing a child with physical, language, or sensory difficulties, the examiner should become familiar with the child’s limitations. (Tr. 2256). Ms. Snell knew that [REDACTED] had language and motor difficulties, yet she did not observe [REDACTED] in the classroom, she did not take a history from her parents, and she did not review medical records or private evaluations prior to administering the assessment. (Tr. 1291-92, 1297-98, 1435-37, 2175, 2181-83, 2200-01, 2257; P153 at 68; R61).

38.

For the WISC-V, Ms. Snell administered the seven (7) subtests that are used to calculate the Full Scale IQ (FSIQ) – Similarities, Vocabulary, Block Design, Matrix Reasoning, Figure Weights, Digit Span, and Coding. (Tr. 2085; R-61). She reported standard scores⁷ for Verbal Comprehension, 65; Fluid Reasoning, 61; and FSIQ of 49. (Tr. 532-34, 2087, 2095; R61).

⁶ Although Ms. Snell testified that if she saw [REDACTED] was going to answer a question impulsively, she would stop [REDACTED], repeat the direction, and instruct [REDACTED] to look at all the choices before responding, it is unknown whether Ms. Snell noticed and redirected [REDACTED] effectively throughout the entire assessment to ensure the results were an accurate and true reflection of [REDACTED] cognitive ability. (Tr. 2109, 2244).

⁷ Standard scores are based on a normal distribution or bell curve with a mean of 100 and standard deviation of 15. The standard scores identify where a student performed in comparison with same-age or same-grade peers. (Tr. 539-40). Scaled scores have a mean of 10 and average range of 7-13. (Tr. 1731-32)

However, Ms. Snell did not administer the full WISC-V battery and did not assess [REDACTED] working memory or processing speed, or report a General Abilities Index (GAI) score. (Tr. 531-32, 2085, 2090-92).

39.

The Vineland-3 assessment measures adaptive functioning in communication, daily living skills, and socialization. The scores are based on rating scales completed by teachers and parents. (Tr. 2097, 2103; R61). The parent checklist can be administered by either sending it to the parent for completion or by conducting a full interview of the parent during which the evaluator fills out the checklist. (Tr. 2218, 2230-31). In this instance, Ms. Snell sent the Vineland questionnaire to [REDACTED] parents to complete. Ms. Snell later called [REDACTED] to ask about some, but not all, of the items that [REDACTED] had marked. (Tr. 1431-32, 1433-35, 2097-98, 2102, 2218, 2224-25, 2231). Prior to calling [REDACTED] Ms. Snell had already calculated scores for the assessment. Specifically, the scores from [REDACTED] questionnaire before Ms. Snell called [REDACTED] were Communication, 80; Daily Living Skills, 78; Socialization, 89; and Composite, 79. (Tr. 2219-20). When Ms. Snell called [REDACTED], she suggested that [REDACTED] had marked [REDACTED] too high and changed a few of the responses. (Tr. 1432-34, 2102). The changes resulted in lowering the scores in all domains by several points. (Tr. 2231; R61 [REDACTED] 352). Despite these changes, [REDACTED] scores remained above 70, including an 87 for socialization and an overall Composite score of 77. (Tr. 2103-04, 2115, R61 [REDACTED] 352). Similarly, the scores obtained from Ms. Goodman, [REDACTED]'s teacher who completed the Vineland-3 questionnaire, were average for Communication and Socialization, and fell low only for Daily Living Skills. Ms. Goodman's Composite Score for [REDACTED] was 67. (Tr. 2103, 2216; R61 CCSD352). Ms. Snell reported that across both the school and home settings, [REDACTED]. "was rated as having difficulty attending, understanding, and

responding appropriately to information from others and [in] demonstrating self-sufficiency with daily living skills compared to her same aged peers.” [REDACTED] was also noted to struggle with age appropriate socialization with her same aged peers in the school setting, although as noted above, [REDACTED] does interact with her peers. (Tr. 852, 2097-2100; R61).

40.

Based on her evaluation, Ms. Snell recommended the IEP team consider MID eligibility. (R61 CCSD363; Tr. 2293). According to Ms. Snell, although [REDACTED]’s FSIQ fell in the Moderately Intellectually Impaired Disability (MOID) range, she recommended MID because [REDACTED] “was functioning higher with adaptive behavior.” (Tr. 2107, 2293; R-361).

41.

Ms. Snell’s evaluation report was provided to [REDACTED] prior to the May 2018, eligibility meetings. (Tr. 1302, 1614-15, 2077-78; R-305, R-361 CCSD 003463).

Speech-Language Evaluation by Tracy Ferguson

42.

Tracy Ferguson, M.A. CCC-SLP, conducted a Speech-Language evaluation of [REDACTED] on Respondent’s behalf to address identified and suspected areas of disability and areas of need. (Tr. 1766, 1781-85). A speech evaluation typically assesses four (4) areas: articulation, voice, fluency, and language. (Tr. 1775-76, 1798). Ms. Ferguson addressed each of the four areas, but conducted a full evaluation only of those areas she determined were a concern. Regarding articulation, Ms. Ferguson opined it was not necessary to conduct an additional assessment because she had determined it to be a relative strength for [REDACTED], and she had not seen that it was a specific concern raised by the IEP team. (Tr. 1726, 1735, 1739, 1767, 1777, 1798-1800).

43.

The scores obtained on all assessments that were administered were included in the Eligibility Report. (Tr. 220-21, 347-48, 447, 1696, 1768-69; P16). Specifically, the Eligibility Report includes the following:

- Peabody Picture Vocabulary Test – 4: SS 60,
- Expressive Vocabulary Test – 2: SS 66,
- Clinical Evaluation of Language Fundamentals – 5: sentence comprehension 2, linguistic concepts 1, word structure 3, word classes 1, following directions 2, formulated sentences 2, recalling sentences 3, Core language score 55, Receptive language index 50, Expressive language index 57, Language content index 48, and Language structure index 57;
- Oral and Written Language Scales – II: listening comprehension 40, oral expression 43, and oral language composite 40;
- Language Processing Test 3 elementary: associations 63, categorization 56, similarities <53 (raw score 1), differences <55 (raw score 1), multiple meanings (raw score 1), attributes 72, total test <61;
- Communication Sample

(P16 [REDACTED] 273-74).

44.

The Eligibility Report does not include an explanation of the assessments or the meanings of the scores, nor does it include any recommendations or information about the Communication Sample. (P16 [REDACTED] 273-74; Tr. 1443-44, 1722-26, 1730-33). However, Ms. Ferguson included information from her evaluation in the “strengths and weaknesses” column of

the Eligibility Report. (Tr. 1723-25, 1741, 1775-76, 1797; P-16; R-385). Additionally, Ms. Ferguson attended the 2018 eligibility meeting to share and discuss information regarding her evaluation with the IEP team, including ██████'s parents. (Tr. 1715, 1781-85; P-125).

45.

In considering the validity of the test results, Ms. Ferguson testified that ██████ "level of attention . . . was appropriate" during her evaluation and that, in fact, ██████ "actually attended very well." (Tr. 1721-22). Ms. Ferguson evaluated ██████ "over many . . . short sessions" to ensure "that distraction was not a factor that would negatively impact her performance." (Id.)

46.

Based on her evaluation, Ms. Ferguson determined that "██████ presents with a language disorder," her "fluency and voice are within normal limits," and "her articulation skills contribute to her overall intelligibility, but that is a personal strength for her." (Tr. 1801; P-16).

Occupational Therapy Evaluation by Julie Merrill

47.

CCSD Occupational Therapist (OT) Julie Merrill conducted the WRAVMA and listed her scores in the Eligibility Report. (P16; Tr. 1904, 1911, 1913-15, 1993-95). The WRAVMA "gives standardized scores in the area of visual motor, visual spatial, and fine motor skills." (Tr. 1911). Ms. Merrill reported standard scores of Visual-Motor = 87, Visual-Spatial = <45; and Fine Motor = 49. (P16 ██████ 275-76; Tr. 1915-16). The Eligibility Report provides no explanation, analysis or recommendations, and it includes no assessment for sensory processing. (Tr. 1993-95, 2033-35; P16). Nevertheless, the WRAVMA results were discussed during the May 2018, IEP meeting. (Tr. 1914-16; P-16). According to Ms. Merrill, ██████ scored in the

average range for visual motor, significantly below average for fine motor, and her visual spatial score fell below the table for her age range. (Tr. 1915-16).

48.

A complete OT evaluation includes “standardized testing that might look at anything from hand functioning to visual perception to visual motor to sensory.” Additionally, the assessor will conduct “an observation assessment that includes neuromuscular abilities, gross motor, fine motor abilities, handwriting, and sensory.” Ms. Merrill did not conduct a complete evaluation because her understanding was that the IEP team had agreed to request only the WRAVMA evaluation be completed, in part, because [REDACTED] had been evaluated by Ms. Merrill three years earlier in 2015. (Tr. 1490, 1911-12, 1916-17, 1988, 1995, 2044).

49.

Ms. Merrill understood that the WRAVMA would be administered to provide a comparison to the WRAVMA administered in 2015 during [REDACTED] kindergarten year and determine “if she [wa]s making progress or having additional weaknesses in those areas.” Based on the scores obtained, it showed that [REDACTED] had maintained her functioning at the same levels. (Tr. 1917).

50.

Ms. Merrill did not consider the scores to “necessarily indicate a lack of progress because other factors [could] be contributing to these scores, such as cognitive understanding” and “issues with attention,” which can impact the scores. The scores have to be viewed with caution when the student is known to have attention issues. (Tr. 2035-36).

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

Independent Psychological Evaluation by Dr. Kellie Murphy, Ph.D.

51.

On or about June 26, 2018, [REDACTED] completed an intake form for Kellie Murphy, Ph.D. to complete an independent psychoeducational evaluation. (Tr. 512-15, 614; P39; P40). Then, sometime between June 26, and July 3, [REDACTED] met with Dr. Murphy to plan the evaluation. (Tr. 613-615).

52.

After Dr. Murphy conducted assessments on July 3, 5, and 12, 2018, she determined [REDACTED]'s inattention was so significantly severe that it threatened the validity of the testing. Thus, Dr. Murphy advised [REDACTED] that she required a physician's intervention prior to continuing the assessment. (Tr. 515-18; P-39). Completion of the evaluation was postponed until [REDACTED] was seen by a physician and prescribed medication for ADHD. (Tr. 519-21). When the evaluation continued on October 4, 2018, Dr. Murphy observed the medication was not working, but she was able to manage [REDACTED] attention behaviorally in compliance with professional standards, including by giving her breaks between subtests. (Tr. 519-23, 2311-16)

53.

In July 2018, Dr. Murphy administered the WISC-V, the Weschler Individual Achievement Test, 3rd ed. (WIAT III), and the WRAVMA. She also assessed parent rating scales for the Adaptive Behavior Assessment System, 3rd Ed. (ABAS-3), and the Conner's Comprehensive Behavior Rating Scales (Conner's CBRS). (Tr. 516-20, 549, 630-31; P39 [REDACTED]0467).

54.

In October, Dr. Murphy conducted the Comprehensive Test of Nonverbal Intelligence, 2nd Ed. (CTONI-2) and assessed Conner's CBRS and ABAS-3 teacher ratings. (Tr. 575; P40).

55.

Dr. Murphy conducted the complete battery of the WISC-V and reported the following standard scores: Verbal Comprehension Index, 78; Visual Spatial Index, 61; Fluid Reasoning Index, 85; Working Memory Index, 62; Processing Speed Index, 45; Full Scale IQ (FSIQ), 67; and General Abilities Index (GAI), 72. (Tr. 653, 655; P39 [REDACTED] 0469). Although Ms. Snell had administered the WISC-V just 6 months earlier, Dr. Murphy opined that there was no practice effect in this instance. (Tr. 548-53, 2121, 2188-89, 2250-51, 2255). Dr. Murphy further opined that scores on subtests that increased could be true scores because she controlled the environment and managed [REDACTED]'s attention. Additionally, Dr. Murphy administered subtests that Ms. Snell did not, which impacted the composite scores. (Tr. 550-52, 2259-61) For example, Dr. Murphy substituted the Visual Puzzles subtest for Block Design subtest because [REDACTED] did not appear to understand the instructions for Block Design.⁸ (Tr. 558-60, 667-68, 2244-49; P-39). Finally, based on the significant discrepancy in index scores, Dr. Murphy determined that the best measure of [REDACTED] ability is the GAI, which excludes working memory and processing speed. (Tr. 532-34, 554-56, 21255, 2241-42). [REDACTED] GAI of 72 is "approximately 70" and thus not necessarily too high to be determined eligible for MID under IDEA. However, [REDACTED] scores on various subtests and her composite scores in certain areas are much higher and above the "approximately 70" score to be found eligible for MID. (Tr. 548-49, 553-56, 560, 564).

⁸ If Dr. Murphy had not substituted Visual Puzzles for Block Design [REDACTED]'s FSIQ would have been 63. (Tr. 640, 653, 2124-25).

56.

█ standard scores on the CTONI-2, which measures intellectual abilities, reached into the low average range, including Pictorial Scale 82; Geometric Scale 70; and Full Scale, 73. (Tr. 2135-36; P40 █482).

57.

On the WIAT-III, which measures academic progress compared to peers, █ standard scores in reading subtests ranged from 78-104, from average to low average, with a total reading score of 86, in the low average range compared with same-grade peers. (P39 █472-73; Tr. 572-75). Her oral reading fluency score of 100, including an oral reading rate of 104, was in the average range, while reading comprehension, 81, was in the low average range. (Id.). On the math subtests, █ standard scores were in the extremely low range, with a Math Composite of 60. (Id.).

58.

Dr. Murphy used the ABAS-3 parent and teacher rating scales to assess adaptive behavior. (P39; P40; Tr. 575-76). Standard scores on the parent scales included Conceptual Skills, 76; Social Skills, 88; Practical Skills, 70; and General Adaptive Composite (GAC) 75, in the low average to very low average range. (P39 █473-74). The teacher scales showed significant deficits in adaptive behaviors, including scores of Conceptual Skills, 60; Social Skills, 75; Practical Skills, 67; and GAC of 64. (Tr. 589-90; P40 █484). Both parent and teacher reported strength in social skills. (P39 █474; P40 █484)

59.

The Conner's CBRS, which assesses behavioral, emotional, academic and social skills, was based on scales completed by █ and █'s teacher. (Tr. 577; P39 █475; P40 █485).

rating scales indicated [REDACTED] exhibits symptoms of ADHD, autism spectrum disorder, and depression. However, there were not enough symptoms to provide a diagnosis. Instead, Dr. Murphy determined that she needed additional data because she had not yet received the teacher's rating scales. (Tr. 580-582, 646; P39 [REDACTED] 475). After obtaining additional data, Dr. Murphy diagnosed [REDACTED] with ADHD and a learning disability in math, and recommended additional evaluation be conducted for autism. (Tr. 577, 580-83, 592).

60.

On the WRAVMA, Dr. Murphy reported standard scores of Drawing (Visual-Motor) – 81, in the low average range; Matching (Visual-Spatial), 70, in the very low average range; Pegboard (timed, dominant, right hand), <45, in the extremely low average range; and Pegboard (timed, non-dominant left hand), 48, in the extremely low average range. (Tr. 568-69; P39 [REDACTED] 472). Dr. Murphy noted there was no practice effect from giving this assessment after Ms. Merrill's administration of the WRAVMA because [REDACTED] performance did not improve with the exception of [REDACTED] visual spatial score, which increased. However, this increase could be explained by Ms. Merrill's testimony that [REDACTED] lacked attention to detail during her administration of the assessment. (Tr. 569, 1913, 1915-16, 1984-85, 2026).

Independent Speech-Language Evaluation by Connie Spencer

61.

In early June 2018, Petitioners contacted Connie Spencer, M.A. CCC-SLP, to conduct an independent speech and language evaluation. Subsequently, SLP Connie Spencer conducted an independent speech-language evaluation on July 10, 16, 17 and 23, 2018 to assess [REDACTED] articulation, expressive and receptive language, and pragmatic skills. (Tr. 685-87, 702, 740-41; P35). The cost of her evaluation was \$1,000, which included "some initial document time,

reviewing records, meeting – offering a meeting with the parents afterwards, writing up strategies, goals.” (Tr. 739)

62.

Ms. Spencer assessed [REDACTED] articulation using the Goldman Fristoe Test of Articulation-3. She found mild distortion for the S and Z sounds due to a tongue forward position; substitution errors, including S for SH, TS for CH, F for voiceless TH, and DZ for J; and articulation errors during conversations, including using B for V and omitting syllables, all of which adversely affect [REDACTED] ability to be understood. (P35 [REDACTED] 430; Tr. 695-93, 759-60) Ms. Spencer determined that [REDACTED] has the motor capability to progress and identified areas of priority where improvement would have an immediate impact on how well [REDACTED] is understood. (Tr. 696-98, 759-60; P35 [REDACTED] 435-39). [REDACTED] fluency and voice were in the normal range. (P35 [REDACTED] 430-31; Tr. 705-06).

63.

Ms. Spencer administered the Expressive Language Test 2, reporting scores in the below average range on all subtests given. (P35 [REDACTED] 435-36; Tr. 711). [REDACTED] standard score was 80 on the Receptive Vocabulary quotient of the Receptive One Word Picture Vocabulary Test, 4th Ed., and 68 on the Expressive Vocabulary quotient of the Expressive One Word Picture Vocabulary Test, 4th Ed., both in the below average range. (P35 [REDACTED] 434; Tr. 713-14). The statistically significant difference in receptive (80) and expressive (68) language scores indicates [REDACTED] understands more than she can express. (Tr. 711-12). Based on this assessment, Ms. Spencer recommended an environment for [REDACTED] that is rich in reading and exposure to age-appropriate vocabulary. (Tr. 713-14, 719-21).

64.

Ms. Spencer conducted the Listening Comprehension Index Test of Auditory Processing Skills, 4th Ed., and identified that [REDACTED] had difficulty with directions and other areas of auditory comprehension, impacting her ability to comprehend oral language and listen in the classroom. (Tr. 702, 713-18; P35 [REDACTED] 431). She assessed oral and written language using the Test of Integrated Language and Literacy Skills, and her narrative language skills using the Story Retell portion of the Emerging Literacy and Language Assessment, which resulted in a standard score of 77, in the below average range. (P35 [REDACTED] 433-39; Tr. 712-13, 753).

65.

Based on her evaluation, Ms. Spencer concluded that [REDACTED] has delayed communication skills, but average scores in reading fluency. (P35 [REDACTED] 349; Tr. 712-14). She further concluded that [REDACTED] would benefit from a placement exposing her to vocabulary above her ability with increased accommodations and modifications, including pre-teaching vocabulary, concepts, and topics, using class materials, and modified classroom assignments, visual aids, and additional reading and writing support. (Tr. 714-18, 721-23, 725-29; P35). Ms. Spencer recommended goals and objectives addressing articulation, language comprehension, expressive language and pragmatic language. (P35 [REDACTED] 440-41) In order to meet these goals and objectives in a timely manner, Ms. Spencer recommended 60 minutes per week of 1:1 services, 60 minutes per week in small group, and 60 minutes per month of consultative time between the SLP and [REDACTED] teacher. (Tr. 714-18, 729-35; 35)

66.

Many of Ms. Spencer's recommendations were already being addressed through [REDACTED] IEP, including opportunities to be exposed to age-appropriate vocabulary, exposure to same-aged

peers for social and academic interactions, building on age-appropriate reading fluency, continued confidence and social skills building, teacher proximity and preferential seating, and systematic reading instruction. (Tr. 1831-35, 1884; P-35)

Independent Occupational Therapy Evaluation

67.

Occupational Therapist (OT) Kimberlee Wing completed an independent evaluation of [REDACTED] on July 13, 2018. (Tr. 917-18; P36)

68.

Ms. Wing administered the Miller Function and Participation Scales (M-FUN), Developmental Profile-3 (DP3), Beery-Buktenica Test of Visual Motor Integration-6 (VMI-6), and Sensory Profile-2 (SP2). (Tr. 917-18; P36). She reported that [REDACTED] was auditorily distracted and easily distracted when tasks were difficult. (Tr. 937-39).

69.

The M-FUN assesses how motor competency affects engagement in activities and social engagement. It is designed for children with motor delays who are younger than [REDACTED]. Ms. Wing chose to administer this assessment even though [REDACTED] was out of age range for the assessment. (Tr. 941, 1981; P136 [REDACTED] 443) [REDACTED] scored at the 2:10 year level on fine motor development, demonstrating a significant discrepancy between visual motor and fine motor age. (P36; Tr. 941-44).

70.

[REDACTED] scores on the DP3, measuring physical, adaptive behavior, social-emotional, cognitive, and communication, were based on parent input and showed delay in all areas with skills in the 4-5 year old range. (P36; Tr. 939-41).

71.

Results of the VMI, measuring [REDACTED] ability to translate with her hands what she perceives visually, showed [REDACTED] perceptual skills to be higher than her motor skills, which causes her to experience frustration. (P36; Tr. 947-49).

72.

The SP2 measures sensory processing and showed that [REDACTED] has a high threshold for sensory input, low muscle tone and endurance, and difficulty with social interactions and attention. (P36; Tr. 956-60). Ms. Wing recommended that [REDACTED] needs more sensory input, such as jumping jacks and seat pushups, to help regulate attention. (Tr. 913-14, 958-59).

73.

Ms. Wing's clinical observations examined [REDACTED] processing and motor performance, including hand preference, muscle tone, reflex integration, behavior, and attention. (P36; Tr. 951-56). She identified that [REDACTED] has difficulties with fine motor skills, including her thumb to index finger or "pincer" grasp. (Tr. 945-46, 1916). [REDACTED] has dyspraxia, or difficulty learning motor tasks, which impacts writing, letter formation, Physical Education and other areas, and also has low muscle tone, which can be improved with intervention. (Tr. 923-24, 934-36, 952-53-957-58). Ms. Wing further identified that [REDACTED] has abnormal vestibular function, or sensitivity to motion, which can impact her attention and ability to sit and stand in line. (Tr. 931-34).

74.

Ms. Wing opined that [REDACTED] cannot perform at the level she expects for herself, which causes her frustration and anxiety and which can impact learning. Ms. Wing further opined that [REDACTED] is aware of her difficulty in motor planning and is frustrated and resistant to trying. (Tr.

938-39, 959-61). [REDACTED] has observed these issues at home and agrees with Ms. Wing's opinions. (Tr. 1368-71).

75.

Based on her evaluation, Ms. Wing opined that the writing goal in [REDACTED] IEP is insufficient because it focuses on the end result instead of the foundational skills needed to reach that goal, such as shoulder stability, hand strength, and finger dexterity. (Tr. 936-37). She identified that the OT services in [REDACTED] IEP are insufficient and recommended three 30-45 minute OT sessions per week, including in small group, 1:1, and push in to the regular classroom. (Tr. 961-62, 968-69). Additionally, due to [REDACTED] awareness, perception, and need for social interaction, Ms. Wing recommended [REDACTED] "be within the inclusion or mainstream environment to learn from age-appropriate peers." From an OT's perspective, the benefits of being in a mainstream environment outweigh the difficulties, because they have "good role models and [are] seeing appropriate behaviors which then they can model later on." (Tr. 963-65; P36 [REDACTED] 449).

Independent Educational Consultation

76.

Educational consultant Dr. Holly Ward, Ph.D., assessed [REDACTED] on July 19, 2018.⁹ (Tr. 1002-03, 1005). Dr. Ward observed [REDACTED] at home, and planned to observe her at school, but Dr. Ward was unable to do so because of conflicts that arose between the parties regarding the process to approve the observation. (Tr. 1007, 1088; P37). While [REDACTED] sent an email to CCSD requesting that Dr. Ward be allowed to observe [REDACTED] at school, the email did not identify Dr. Ward as an IEE evaluator and, in fact, Dr. Ward viewed her work as a consultation, not an IEE. Thus, CCSD proceeded in treating Dr. Ward as an outside individual requesting an opportunity

⁹ Dr. Ward conducted a consultation, not an evaluation. (Tr. 1167).

to observe at the school, rather than treating Dr. Ward as an independent evaluator. CCSD's policy for outside individuals to conduct observations requires certain forms be completed and also limits the time the individual has to observe at school. (Tr. 1088-89, 1142, 1164-66, 1171, 1628; P-62 [REDACTED] 0541).

77.

During the home observation, Dr. Ward observed that [REDACTED] was reading fluently with familiar books; could decode basic words and some multisyllabic words; exhibited basic knowledge and recall; and that she answered questions on the level of second grade standards, such as identifying main characters. (Tr. 1090-92, 1168, 2340; P37). However, Dr. Ward acknowledged that [REDACTED] is below grade level for reading comprehension. (Tr. 1209). Dr. Ward also noted that [REDACTED] struggles with higher-order questions requiring analysis and synthesis. (Tr. 1091-92, 1137; P37). This is consistent with what [REDACTED] teachers have seen in the classroom. (Tr. 2352-53). [REDACTED] can write basic information, but struggles to elaborate. (Tr. 1093; P37). She can spell phonetically and write legibly, but without correct capitalization or punctuation. (Tr. 1093; P37). In math, [REDACTED] demonstrated 1:1 correspondence, can add sums under 12, and subtract sums under 10. (Tr. 1093-94, 1179; P37). Similar to reading comprehension, Dr. Ward acknowledged that [REDACTED] is below grade level for math. (Tr. 1209). In addition, Dr. Ward also observed that [REDACTED] demonstrated attention challenges that could interfere with standardized testing. (Tr. 1152-53).

78.

Dr. Ward recommended an inclusive classroom for [REDACTED]. She opined that placing [REDACTED] in a self-contained class aimed at meeting fewer standards would provide [REDACTED] less opportunity to meet grade-level standards and would not provide equivalent academic, social and emotional

opportunities. (Tr. 1094-1100, 1141-42). An inclusive setting is academically more rigorous with rich language exposure and exposure to peer models to support development of [REDACTED] language, behavior, and social skills. (Tr. 1097-98, 1138-39, 2558). Ms. Ward advised against limiting [REDACTED] access to third grade reading material since [REDACTED] can read and is still developing as a reader and improving her reading. Ms. Ward believes that continued access to grade level curriculum will help [REDACTED] progress toward grade level standards and expand her opportunities. (Tr. 1098-99, 1122-23, 1141-42).

79.

Dr. Ward recommended various accommodations and modifications for [REDACTED] in an inclusive setting, including (1) previewing of vocabulary and content, (2) using visuals in all subjects, (3) modelling and guided practice, (4) using graphic organizers for concept mapping, (5) incorporating movement, (6) using manipulatives, (7) reducing numbers of expected outcomes on assignments, and (8) working with peers in a specific role as a part of a cooperative group. (Tr. 1041-47, 1105-08, 1114-0, 1123-25; P37 [REDACTED] 460). She identified that intensive accommodations and modifications are needed to allow exposure to reading on grade level, given [REDACTED] current level, to enable her to progress toward standards. Further, she stated that more planning time for teachers in the co-taught class is needed. (Tr. 1106-07, 1141-42, 1198-99, 1203-04).

80.

Ms. Kunst testified that the District was already implementing many of Dr. Ward's recommendations, including (1) reading aloud, (2) giving choices for answers, (3) simplifying vocabulary, (4) using assistive technology such as TouchMath, (5) using visual models, (6) using

manipulatives, (7) using graphic organizers, (8) incorporating movement, and (9) modifying the instruction/curriculum. (Tr. 2356-58).

Observation of MID at Lewis Elementary School

81.

CCSD asked [REDACTED] to observe the MID class at Lewis Elementary School, as well as an Interrelated Resource Room (IRR) class and co-taught class at Ford Elementary School, before the IEP meeting was held in May 2018. (Tr. 1313-15, 1321; P43). [REDACTED] observation was limited and supervised by CCSD staff. (Tr. 1318-19, 1321, 1393-95; P43).

82.

[REDACTED] believed, based on what she observed at Lewis Elementary School and what she has heard from parents of children who have attended MID classes at Lewis, that this placement was not appropriate or sufficiently inclusive for [REDACTED]. For example, [REDACTED] was told that the students in the class were required to wear t-shirts identifying them as “MID class” on field trips. Additionally, when [REDACTED] visited the classroom, she did not observe any of the students currently in that placement going to inclusion settings, such as for homeroom or for other segments of the day. This indicated to [REDACTED] that the students in the class were not similar to [REDACTED] and her placement in the class could cause her to progress more slowly than she has thus far. (Tr. 1317-18, 1395-98, 2550, 2601; P-17 at p. 4; P-125). [REDACTED] and [REDACTED] were so concerned about the possible consideration of a change in placement to Lewis Elementary School that they emailed Ms. Christensen on May 17, 2018, to advise that if CCSD chose to place [REDACTED] at Lewis, she would not attend because of what they had heard about the placement from other parents. (Tr. 1505-08, 1666; P-46; P-49 [REDACTED] 0505-06).

83.

The MID class at Lewis is a 3rd to 5th grade class, which concerned [REDACTED] since [REDACTED] was entering 3rd grade and would be in class with students who are two grade levels above [REDACTED] grade level. (Tr. 809-10, 1317-19). [REDACTED] also observed that the room was set apart from other general education classes in a separate hall, next to another self-contained class and the computer lab, which [REDACTED] believed would limit [REDACTED] exposure to non-disabled peers even if she continued to attend co-taught general education classes for science and social studies. (Tr. 1319-21, 1395-97, 1481-85; P152).

84.

[REDACTED] was told the MID class attends specials with 3rd, 4th, or 5th grade general education students based on their schedules. (Tr. 1538-39).

85.

[REDACTED] was told that the MID class went to lunch with 3rd, 4th, or 5th grade general education students, based on their schedules, but sat separately from the general education students. (Tr. 1398).

86.

[REDACTED] believed that the MID class was inappropriate for [REDACTED] given her success in forming relationships with non-disabled peers. (Tr. 1398-99). Additionally, [REDACTED] also observed the class being given work that would be inappropriate for [REDACTED], such as writing in journals to address inappropriate behaviors that [REDACTED] does not exhibit. (Tr. 1320-21).

May 10 and 21, 2018 Eligibility and IEP Meetings

87.

On May 10, 2018, the IEP team met to re-determine [REDACTED] eligibility and then begin her IEP annual review. (Tr. 1261-62, 1453-55; P-16, P125; P126; P127). The team reconvened on May 21 to finish drafting goals and objectives and determine her method of assessment and placement. (Id.)

Eligibility Determination

88.

On May 10, the IEP team discussed [REDACTED] eligibility for special education. [REDACTED] parents attended the meeting with Debbie Dobbs, their advocate. (Tr. 1327, 1454-55). Also in attendance at the meeting were Christine Jaffee,¹⁰ Supervisor of Psychological Services; Sandra Powell, Special Education Supervisor; Shari McCrary, Intellectual Disabilities Supervisor; Tracy Ferguson, Speech Language Pathologist (SLP); Julie Merrill, Occupational Therapist (OT); Heather Fritts and Rebecca Goodman, Special Education Teachers; Renee Hess, Local Education Agency (LEA) Representative; Barbara Moroney, Diagnostician; and Christina Noblet, General Education Teacher. (P-16; P-125).

89.

During the eligibility meeting, [REDACTED] second grade teachers and her speech provider reported information on [REDACTED] academic achievement. It was noted that [REDACTED] was “working on acquiring the skills needed to access grade level tasks,” and that she “struggles to demonstrate an understanding of text that she reads, to write sentences to express her ideas, and understand and solve math problems,” which are skills typically expected of 2nd grade students. Additionally, it

¹⁰ Ms. Jaffee attended in place of Ms. Snell who was out on maternity leave at the time of the meeting. (R-361 CCSD 003463).

was noted that [REDACTED] has difficulty “independently using communication for functional purposes and completing many daily livings tasks.” She was also having difficulty interacting with her peers at school in “more of an age appropriate manner.” Finally, the District noted that [REDACTED] will respond when other kids say something to her, but she isn’t having the level of conversation a typical 2nd grader would. (P-16, P-125)

90.

During the eligibility meeting, it was also noted that [REDACTED] performs better on discrete skill tasks and when presented with fewer skills at a time. (P-125). District staff further noted that [REDACTED] “does best with more routine tasks and repeated exposure.” (P-16; P-125).

91.

During both the May 10 and May 21, 2018 meetings, [REDACTED] teachers presented information on [REDACTED] progress on goals and objectives, and Ms. Dobbs asked questions during the discussion. (P-125). After eligibility had been determined, the parties addressed [REDACTED] goals and objectives and changed them, as necessary, to address areas of need and concern raised during the meetings, as well as to provide clarification regarding data collection. (Tr. 1811-14; P-125 to P-127).

92.

In math, [REDACTED] was “working at a kindergarten, first-grade level.” (Tr. 2402). At the time of the meetings, [REDACTED] could only inconsistently add numbers through twelve. [REDACTED] modified math lessons allowed her to be exposed to whole group instruction on double- or triple-digit addition and subtraction with or without regrouping, but Ms. Kalra would then “pull out . . . just the single-digit addition and subtraction” and work on that with [REDACTED] “with the number line or the touch-math strip . . . or manipulatives.” (Tr. 2405).

93.

In discussing [REDACTED] math objectives related to subtraction, it was noted that she needs a visual number line in order to see the numbers to count backward, and that she needs prompting to start at the biggest number and move backward. (P-125).

94.

In discussing [REDACTED] math objective to name/state the value of a penny, nickel, dime and quarter, it was noted that while she can name and state the value of a penny consistently, the others are inconsistent. (P-125). Nevertheless, the IEP was changed to increase the target to 80% at the parents' request. (Tr. 1465; P-17 [REDACTED] 0304; P-126; R-329).

95.

In discussing [REDACTED] objective on answering literal questions on an unfamiliar text, she was noted to be on a Level 1 reading level on the Edmark Reading Program, which is a Kindergarten to 1st grade reading level, and that she had not met the target on that objective. (P-125).

96.

In discussing her objective to retell the beginning, middle, and end of a story heard or read, it was noted that she had not met the target on that objective. However, the level of difficulty in what she was reading had increased. (P-125).

97.

On her objective to write three (3) sentences legibly, [REDACTED] had demonstrated improvement and progress. (P-125). However, it was noted that her readability was still impacted because of her weakness in spelling, and that she was still working on being able to simultaneously think and write. (P-125).

98.

With respect to cutting irregular shapes, it was noted that she had mastered that objective, and that the only time she had trouble was when the irregular shapes were intricate or small. (P-125).

99.

In discussing her objective related to identifying vocabulary words, Ms. Goodman noted that when the words are “concrete” and [REDACTED] can look in books for the words, [REDACTED] properly identifies them. (P-125). However, Ms. Goodman also testified that [REDACTED] struggles with abstract terms and cannot always show evidence of understanding or comprehension. (Tr. 851). Specifically, words such as “segregation” or “civil rights,” despite being used “over and over again” in the classroom are hard for her – [REDACTED] gets used to hearing them and can pick them out, but she would not be able to say what they mean or use them in a sentence. (P-125).

100.

Regarding how well [REDACTED] retains information, Ms. Goodman noted that if she went back to what was studied during the first nine (9) weeks, [REDACTED] would probably not have retained that information. (P-125).

101.

Ms. Goodman further noted that, “from time to time,” she would have to work one on one with [REDACTED] due to [REDACTED] “transitions and her coming in and missing the first part of a lesson.” Additionally, there were times when [REDACTED] was in smaller groups, but [REDACTED] did not fully understand what the group was working on and needed to be worked with one on one to gain a better understanding of the topic. (Tr. 845-46; P-125).

102.

In discussing [REDACTED] objective to remain on task for ten (10) minutes,¹¹ it was noted that [REDACTED] performance depends on what the activity is, her interest level, and her ability to understand the task. [REDACTED] loves to read, so if it is a reading task she will be on task for ten (10) minutes. However, as it relates to comprehension, Ms. Goodman noted “if [REDACTED] reads for ten minutes and then you ask her what she read she may not be able to tell you exactly what it was,” unless it is a familiar text. (P-125).

103.

In discussing [REDACTED] objectives under speech and language, it was noted that [REDACTED] was making good progress on those related to naming three items in a category, demonstrating comprehension of spatial concepts, and retelling a short story. (P-125). [REDACTED] parents proposed an objective on similarities and differences and multiple meanings, but Ms. Ferguson explained a student needs to first understand what category something is in before the student can understand similarities and differences. Thus, although generally similarities may be discussed when introducing categories, the focus is on ensuring a mastery of the understanding of categories before moving on to a specific goal or objective addressing similarities and differences. Ms. Ferguson opined this was true generally for students, but especially for [REDACTED] because she shows better progress when she focuses on fewer items at a time. (P-126; P-127 at pp. 13-15). [REDACTED] progress on answering who, what, and where questions has been the most inconsistent, but she has gotten better on where questions. (P-125) Additionally, at the parents’ advocate’s request, an objective to “ask a question or make a comment to extend a conversation with a teacher or peer . . .” was added under Speech-Language Pragmatics. (P-17 at p. 14; P-125).

¹¹ [REDACTED] attention and task completion behaviors impede her learning. Accordingly, [REDACTED] IEP includes an objective related to remaining on task for ten minutes to address this behavior through her goals and objectives. (P-14 [REDACTED] 0227; P-17 [REDACTED] 0305; P-125).

104.

The results of each of the District's evaluations were also reviewed and discussed during the eligibility meeting on May 10, 2018. (P-16; P-125). Ms. Jaffee reviewed Ms. Snell's psychoeducational evaluation since Ms. Snell was out on maternity leave, and the remaining evaluations were discussed by each respective evaluator who conducted the assessment. In discussing Social/Emotional/Behavioral areas, it was noted that [REDACTED] "demonstrates consistent difficulties with sustaining her attention, initiating, progressing through, and completing tasks independently, and following directions." (P-16, P-125). Further, [REDACTED] "struggles to remember and apply learned information to new tasks." (P-16 at p. 23). Additionally, it was noted that when [REDACTED] "volunteers to share during class . . . her responses are not on topic and she becomes upset if she is not called on." (Id.)

105.

Classroom/Structured Observation was discussed during the meeting as well, and [REDACTED] was noted to have weaknesses in answering "wh" questions (such as who, what, where, when, and why); understanding time markers (last week, yesterday, last night, next week); initiating conversations with peers; not wiping her mouth after eating; keeping her pants pulled up after visiting the toilet; and needing prompts and assistance to wipe her nose. (P-16 at pp. 27-28, P-125). In addition, [REDACTED] work samples were discussed and showed she was working on below grade level tasks and not meeting grade level standards. (P-125).

106.

Based on all of the information discussed and reviewed at the May 10, 2018 eligibility meeting, the CCSD IEP team members determined that [REDACTED] met the eligibility criteria for the MID category under IDEA. [REDACTED] parents and Debbie Dobbs, the parents' advocate, who also

are part of the IEP team, disagreed with this determination. (Tr. 433-34, 1275, 1521, 1562-63; P1; P16). Aside from the MID eligibility determination by CCSD IEP team members, [REDACTED] was also found eligible under the categories of Other Health Impairment (OHI) and Speech Impairment (SI). (Tr. 434-35, 1328, 1802).

107.

MID eligibility includes two main components: intellectual functioning and adaptive behavior, which addresses how the student is functioning in his or her daily life. These two areas may be, but are not always, correlated. (Tr. 541-44).

108.

Where an IQ score falls in the MID range, approximately 70 or below, a higher adaptive behavior score can indicate the student underperformed on the IQ test and/or is not functioning in the MID range. (Tr. 543-44, 2148; Ga. Comp. R. & Regs. 160-4-7-.05 App'x (e) at (a)).

109.

In making its eligibility determination, there was no discussion of why Ms. Snell's FSIQ score of 49 was so much lower than the Vineland-3 and KTEA-3 scores, nor did the team resolve whether the Vineland-3 scores were consistent with the determination of MID eligibility. (Tr. 538-39, 544-46, 1429-31, 1559-63; P16). Similarly, during the meeting, although inattention was noted during the psychological and OT evaluations, the IEP team did not discuss the validity of those evaluations even though CCSD's rules provide that the team should carefully consider sensory, motor or communication impairments that could impact the evaluation when determining a child's eligibility. (Tr. 1439-40, 1559-63, 1720, 1913, 1915-16, 2026-29, 2035-38; P153 at 77).

Assessment of [REDACTED]'s Progress

110.

[REDACTED] IEP progress reports show she progressed on and/or mastered numerous IEP goals and objectives during the 2017-18 school year (2nd Grade).¹² (Tr. 441, 798, 803-07, 1336, 1339-40, 1387-88, 1807, 1823-26, 1839, 1932, 2370-71, 2620-21; P17 [REDACTED] 315-22; R129). Goals and objectives should be designed to enable the child to meet, or at least access, grade level standards. [REDACTED] progress on her goals and objectives indicates she is progressing on either meeting, or at least accessing, grade level standards. (Tr. 160, 164-65, 796-98). Susan Christensen, former Special Education Director for CCSD, testified that “some students won’t be able to meet state standards.” (Tr. 50, 165). Thus, goals are not always based on grade-level work. Instead, goals and objectives of an IEP are designed to address a need or deficit in a particular area that has been identified to assist the student in accessing or progressing toward grade level standards. (Tr. 1199)

111.

[REDACTED] instructional level is below grade level, and her IEP goals and objectives are below grade level standards,¹³ (Tr. 2339, 2406), which means she can progress on goals and objectives identified as appropriate by the IEP team and still be below grade level. (Tr. 1827-30, 2407).

¹² CCSD reported a regression just prior to the IEP meeting, but the team did not come to any conclusion as to the cause of this regression or whether it was an anomaly. For example, there was discussion that it may have been related to being distracted or excited about her upcoming birthday. (Tr. 805-06; P127).

¹³ During 3rd grade, Kara Kalra, a Special Education Teacher assigned to work with [REDACTED] in reading, social studies, science, and one segment of math, modified instruction for [REDACTED] by “look[ing] for materials that [were] on [REDACTED]’s instructional level” to help [REDACTED] learn what the whole class was learning “but through a text that she’s better able to read and comprehend.” (Tr. 2332-33). The 3rd grade class was structured in such a way as to allow [REDACTED] to “be involved in the whole group lesson” and then “go to Ms. Kalra’s table where she would work on a passage on her own instructional level.” (Tr. 2335, 2410).

112.

During the May meetings, the CCSD staff members on the IEP team decided to change █████ placement and method of assessment due to her failure to master state grade-level standards. However, there was little to no discussion of what specific standards █████ had not met. (Tr. 443-44, 829-30; P126; P127 █████ 969-88).

113.

During the first part of 3rd grade year (2018-2019), █████ made progress on four of her math objectives, although she struggled on another. (Tr. 2467; R-130 CCSD 001227-28). Nevertheless, █████ still received all 1's in her academic classes in her first quarter report card, indicating she had made limited progress and/or was not meeting standards. (Tr. 1658, 2347, 2350; R-158 CCSD 001321).

Georgia Alternate Assessment (GAA)

114.

During the May 21, 2018 IEP meeting, the IEP team addressed whether █████ should participate in the Milestones Assessment or the Georgia Alternate Assessment (GAA). The CCSD staff members of the IEP team decided █████ should participate in the GAA, over the parents' objections, because she was not meeting grade-level standards and needed a modified curriculum.¹⁴ (P-17, P126; P127 █████ 969-88). █████ attentional issues impact her across the board, including her performance on standardized testing. (Tr. 475). Accordingly, █████ offered to opt █████ out of both the GAA and Milestones assessment because he did not believe that either assessment would provide any benefit, and because he was concerned that placing her on GAA could "drive placement" toward a self-contained classroom. (Tr. 432-33; P126; P127).

¹⁴ CCSD staff noted that the GAA was being changed, but the staff did not know any specifics regarding the upcoming changes. (Tr. 429-30, 1331-32).

The GAA is for students with the most significant cognitive disabilities, those who cannot participate in the general statewide assessments, even with maximum appropriate accommodations. If a student's IEP team determines that a student cannot meaningfully access the general statewide assessments, even with maximum appropriate accommodations, then the student must participate in the GAA.¹⁵ A decision to place a student on GAA should be based on the "Participation Flowchart" in the Georgia DOE's *GAA Score Interpretation Guide*.

(Tr. 1015-19; P153 at 213; See https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Assessment/Documents/GAA/GAA_17-18/2017-18_GAA_SIG_FINAL.pdf at pp. 2,

4). The Participation Flowchart asks the following,

- Can the student show what he/she knows on a general assessment using accommodations?
- If yes to the question immediately above, the child should participate in Milestones. If no, does the student have a disability that presents "unique and significant" challenges to participation in statewide assessments regardless of available accommodations?
- If no to the question immediately above, the child should participate in Milestones. If yes, does the student have significant intellectual disabilities or a combination of intellectual disabilities with motor, sensory, or emotional behavior disabilities?
- If no to the question immediately above, the child should participate in Milestones. If yes, does the student require substantial adaptations and support to access the general education content standards?

¹⁵ Ms. Kunst, ██████ third-grade teacher, concluded that ██████ "ability to access the grade-level content standards isn't necessarily there" – "[e]ven with the accommodations and support" in her IEPs. (Tr. 2546-47).

- If no to the question immediately above, the child should participate in Milestones. If yes, does the student require instruction focused on application of state standards through relevant life skills?
- If no to the question immediately above, the child should participate in Milestones. If yes, the child should participate in GAA.

(Id.)

116.

At the May meeting, the IEP team read aloud the questions in the Flowchart and briefly discussed each. The CCSD members of the IEP team concluded that, based on the determinations they made to the questions listed on the Flowchart, ■■■ should take the GAA instead of Milestones. For example, in discussing whether ■■■ “can show what she knows on a general assessment using accommodations,” both ■■■ small group and co-taught teachers noted that on Touchstone testing ■■■ often chooses the same letter for every answer choice. The team did not address what accommodations could be offered to address this issue other than the possibility of reading the questions and answers to ■■■ which they determined would not change the result because she would likely still choose the same letter for multiple choice questions. The final question on the Flowchart asks, “Does the student require instruction focused on application of state standards through relevant life skills?” The CCSD IEP team members answered, “yes.” The basis provided for reaching this conclusion was that “■■■ does not apply her knowledge consistently across settings, has difficulty packing her backpack, putting on her jacket and asking for help,” and her IEP goals and objectives address time and money, all of which are life skills. However, the life skill goal asking for help was added at the parents’ request. Moreover, difficulty packing a backpack is common for many students and not

specific to [REDACTED]. Similarly, objectives related to time and money in second grade is not unusual as it is part of their curriculum at that age. (Id.; P-17 [REDACTED]0304; P-126; P127 [REDACTED]974-80; R-329).

MID Self-Contained Placement

117.

During the May 21 meeting the team discussed what kind of placement would be appropriate for [REDACTED] for each subject. The team considered the general education setting with the co-teaching service model and the small group setting, as well as what kind of small group classroom would be appropriate, IRR or MID. (Tr. 457; P-126; P-127 [REDACTED]0996-1019).

118.

Regarding specials, [REDACTED] had been in the general education setting with additional support. (P-17 [REDACTED]309-11; P-126; P-127 [REDACTED]0997). At the May 21 meeting, the team agreed that placement in general education with additional supports continued to be appropriate for [REDACTED] specials. (Id.)

119.

Regarding social studies/science, [REDACTED] had been in a general education co-taught setting. (P-17; P-127 [REDACTED]0998). Ms. Goodman felt that [REDACTED] could continue to be successful in the general education co-taught setting for these two subject areas because of “the hands-on activities that we can do,” and because it is “very visual.” (P-126). Ms. Ferguson concurred with Ms. Goodman’s assessment. (Tr. 1816). The team ultimately agreed that general education co-taught setting continued to be appropriate for social studies/science. (Tr. 1486, 2586; P-126).

Regarding reading, ██████ had been receiving instruction in the general education co-taught setting.¹⁶ (P-14 ██████230-32). Ms. Goodman noted that ██████ was “below grade level,” and that while ██████ had “made progress on her phonic skills,” they were not “seeing grade level comprehension life skills” in line with second grade standards. (P-126; P-127 at p. 68). Ms. Ferguson also noted that ██████ “is not working at a level of any other students in her same grade that are in small group.” (P-126). As noted above, in the Edmark reading program, ██████. was on Level 1,¹⁷ “which focuses on 153 frequently seen sight words from kindergarten and grade 1 reading levels, as well as the endings /s/, /ed/, and /ing/. (P-17 at p. 5; P-126). While students are expected by the end of 2nd grade to “read fluently on grade level passages with at least 90 correct words per minute,” ██████ was reading “an average of 80 correct words per minute on her instructional level.” (Id.) Based on the foregoing, Ms. Goodman recommended that ██████ receive reading in small group and the team agreed. (P-126; P-127 at pp. 69-74).

Regarding math, ██████ had been receiving instruction for one segment in small group and one segment in the general education co-taught setting.¹⁸ (P-14; P-126; P-127 ██████1006). Ms. Goodman noted that ██████ was losing attention during whole group instruction in math because the class was “talking about skills that she’s just not ready for yet.” (Tr. 845-46; P-126; P-127 at pp. 74-75). While ██████ class was working on adding/subtracting to one thousand, ██████ was

¹⁶ ██████ received two modifications for reading – peer/adult reading assistance and simplifying the complexity of text. (Tr. 1477-78; P-17 ██████0307).

¹⁷ Throughout 2nd grade, ██████ read on a DRA level of 6-8, which corresponds to “ending kindergarten, first grade level.” (Tr. 849-50, 868). Ms. Goodman also explained that while ██████ has good word recall and can read words, she does not always understand what they mean. (Tr. 851). By 3rd grade, ██████ was reading on a 8-10 DRA level, which corresponds to first half of first grade. (Tr. 2333, 2337, 2416, 2418-19, 2421-22; R-328).

¹⁸ Supportive Aids and Services for math included providing “hands on manipulatives paired with math worksheets,” “model of numbers,” “Touch Math for addition and subtraction,” and “TouchMoney for use with Money.” (Tr. 2402-04; P-17 ██████0307).

still working on adding/subtracting to ten. (P-17 [REDACTED]0305; P-126; P-127 [REDACTED]1004). It was further noted that [REDACTED] weakness in 1:1 correspondence impacts her ability to calculate problems while her difficulties in reading comprehension and understanding vocabulary impact her ability to determine operations needed to solve the problems. (P-17 at p. 5; P-126; P-127). While [REDACTED]. “generally can read a word problem, word calling, [she] does not understand what is being asked.” (P-17 at p. 5; P-126; P-127). [REDACTED] also “needs prompting regarding how to add or subtract” and “[w]hen given independent work she will write down random numbers without using taught strategies.” (P-17 at p. 5; P-126; P-127). Furthermore, “[s]he requires many prompts for redirection during tasks involving math and will not always be able to complete the assignment.” (P-17 at p. 5; P-126; P-127). Accordingly, Ms. Goodman recommended small group placement for math and the team agreed. (P-126; P-127 [REDACTED]007).

122.

Regarding language arts, [REDACTED] had been receiving instruction in the small group setting. (P-14). Ms. Goodman noted that reading and language arts are related, and that [REDACTED] required “a lot of 1:1 with writing and giving her modeling of whatever the task is, keeping her on topic . . . if we give her examples of grammatically correct sentences we will walk her through that.”¹⁹ (Tr. 2431-34; P-126; P-127 at p. 75; R-328 CCSD 003372). It was also noted that [REDACTED] had a “decreased number of words for her spelling test that follow the grade level pattern,” and that she was “responsible for five [words] with the phonics pattern where other students have ten.”²⁰ Further [REDACTED] was “responsible for completing two sentence dictations where peers have three.” Ultimately, the team agreed on small group placement for language arts. (P-126; P-127).

¹⁹ Supportive Aids and Services provided to support writing included providing three lined paper; models, if necessary; graphic organizers; topic boards; and word banks. (P-17 [REDACTED]0307).

²⁰ For the phonics part of reading, referred to as decoding, [REDACTED] reads at the end of 2nd grade level. However, when comprehension is considered, it drops her to early first grade. (Tr. 2339, 2434).

123.

For Speech, Ms. Ferguson recommended “continuing in the small group setting for [repetition] and practice and instruction,” and because “█ still requires a significant level of prompting” and is “still working on a lot of prerequisite skills that she needs to get a good mastery level on before [they] can work on carry-over into other environments.” Ms. Ferguson opined that “social skills . . . need to start out being taught in a pull-out environment” so the student can “learn the skill before . . . transitioning into practicing those with peers in a general-education environment” and that █ “skills are [not] at a point where she’s ready to be generalizing in the general education setting.” To address these areas of need, Ms. Ferguson recommended that █ receive 90 minutes of speech per week to be broken up into three segments, which is “an increase in time” from █ previous IEP and should be sufficient time to address █ speech-and-language objectives. (Tr. 1705, 1707-08, 1815; P-126; P-127 at p. 77; compare P-17 EG0311 with P-14 █ 0231).

124.

As to Communication, it was noted that █ “does best when skills are consistently targeted and presented in a structured format.” (Tr. 1805; P-17 at p. 6; P-126; P-127 █ 0297). According to Ms. Ferguson, █ “makes better progress” when a skill is “frequently reviewed and . . . continually worked on.” (Tr. 1806). Ms. Ferguson further believes that █ needs frequent review and a lot of repetition to make progress on her goals and objectives and that she does better focusing on one word at a time, rather than alternating between five or six words. (Tr. 1806, 1816-17, 1825-27).

125.

In addition to the foregoing, ██████'s IEP developed in May 2018 provided that she would receive supportive aids and services for listening, speaking, and study skills. For listening, ██████ received supports including “checklists for multistep tasks,” “visual models for new instruction,” “breaking directions into smaller steps – especially in the case of novel tasks,” having her repeat back directions and the questions of a story, topic boards, and “[using a] [h]elp box when appropriate.” (Tr. 2395-96; P-17 ██████0307). For speaking, ██████ received “visual and verbal prompts and modeling for initiating conversations with peers” and “topic board during whole group instruction.” (Id.) For study skills, ██████ received “[f]requent positive reinforcement,” “[f]irst/then language and visual[s],” “least to most prompting,” and “behavior communication through agenda or classroom communication folder.” (Id.) ██████ also received a “visual timer to show elapsed time of the end point of an activity,” “visual prompts to ask for help,” and “checklist for packing backpack.” (P-17 ██████0307-08). It was further indicated that staff should “[p]rovide opportunities for ██████ to be a leader in the classroom (ex. passing out lunch boxes).” (P-17 ██████0307).

126.

For Occupational Therapy, the team discussed the Consideration for Educationally Relevant Therapy Tool (“CERT”) from the GaDOE. (P-126; P-127 at pp. 77-8; R-319). Although the CERT tool indicated ██████ should receive only sixty minutes a month or less, Ms. Merrill recommended providing ██████ with thirty minutes per week. (Tr. 1921-22; P-126; P-127 ██████1010). The team agreed with Ms. Merrill’s recommendation. (P-127; P-127 ██████010).

127.

Having agreed upon the small group setting for [REDACTED] reading, math, and language arts classes, the team next discussed where the small group instruction would take place. (P-126; P-127 [REDACTED] 010-19).

128.

The District staff noted that small group MID curriculum was more “integrated” and would provide the frequent review and slower pacing that the staff believed [REDACTED] required to make meaningful progress. (P-126; P-127 [REDACTED] 1004-05). Ms. Ferguson noted that IRR classes “have to keep moving at the scope and sequence that’s in the curriculum whether or not [REDACTED] is ready to move on.” (P-126; P-127 at p. 71). Thus, Ms. Ferguson opined that small group MID for reading, math, and language arts, rather than IRR, was appropriate because [REDACTED] requires specialized instruction and “frequent review.” (Tr. 1816-17, 1892).

129.

Similarly to Ms. Ferguson, Ms. McCrary expressed a concern that, in light of the modifications [REDACTED] needed in reading and math, “[i]f we just keep throwing stuff at her she’s not going to get the basics to be able to build on it. And . . . I don’t think she’s going to get that in a small group interrelated classroom. Those kids are already moving on.” (P-126; P-127 [REDACTED] 1002). Based on these concerns, Ms. McCrary recommended that [REDACTED] small group classes be in the MID setting to allow for slower pacing and to focus on basic skills, and because the content in the general education and small group IRR settings would “keep getting harder.” (P-126; P-127 [REDACTED] 1010).

130.

Ms. Merrill concurred with Ms. McCrary's recommendation because she believed that the MID small group classroom was "where [REDACTED] needs to be academically," specifically to ensure that [REDACTED] is "getting the educational support that she needs and getting the amount of information decreased a little bit and going at her pace until she masters things." (P-126; P-127 [REDACTED] 011).

131.

Likewise, Ms. Kappel believed an MID class was most appropriate for [REDACTED] because "she would get to work more at her pace rather than having to try and keep up with the standards and the pace of a typical co-taught general-ed classroom" and because "[s]he's working significantly below grade level" and the MID classroom would allow grade-level standards to be integrated into authentic real life experiences. (Tr. 2411-12, 2558).

132.

After CCSD staff expressed their opinions, the CCSD staff IEP team members, over the parents' objections, changed [REDACTED] co-taught placement for reading, math, and language arts, to the MID class at Lewis Elementary School. (Tr. 808, 1275, 1284-85; P126; P127 [REDACTED] 1019). The reasons given for the change in placement included [REDACTED] need for modifications; participation in the GAA; failure to master grade level standards; need to minimize the number of transitions and the number of teachers; and the need for slower pacing. (Tr. 879, 896, 1829; P126; P127 [REDACTED] 1001-05). [REDACTED] and [REDACTED] were primarily concerned about the impact that such a change would have on [REDACTED] because it would uproot her from her familiar background and the relationships she had developed over the years. Additionally, it would remove her from the school that her siblings attend and the bus she is currently able to ride with her siblings and

friends. Additionally, [REDACTED] and [REDACTED] were concerned that CCSD's recommendation to change [REDACTED] placement to a MID class at Lewis would reduce her exposure to general education peers and inclusion opportunities. (Tr. 1401, 1424, 1425, 1566, 1648, 1672). The change in placement would also reduce [REDACTED] exposure to grade level standards. In a MID class, [REDACTED] curriculum would include less standards and would be "less vigorous." (Tr. 1891-930).

133.

In addition to what was stated at the May 2018 IEP meeting, at the hearing, Ms. Coleman testified that small group MID classrooms can offer a student something different than small group IRR, such as "pacing," based on the student's needs, as well as repetition and an "integrated curriculum . . . that . . . kind of spirals back . . . so that the skills are seen more than once in . . . various ways." (Tr. 311, 2485). Moreover, the MID classroom "focuses on how to communicate . . . some self-help skills, some social skills, as well as any sensory needs that students may have." (Tr. 311-12). Coleman described "social skills" as "how to interact with peers and adults, how to play games, how to read nonverbal cues," and "how to respond appropriately." (Tr. 312). She described "self-help skills" as including "putting on and off jackets, buttoning, toileting skills" and "eating-related skills such as being self-aware of . . . any mess you may have" or "using a tissue to wipe your nose." (Tr. 312, 2485).

134.

Regarding Functional Skills, it was noted during the May 21st meeting that [REDACTED] "has improved with unpacking her backpack independently and putting homework in the proper placement," that she "is independent in the bathroom," "able to transition independently to familiar places within her daily routine," and "can open most package containers for snack or lunch." (P-126; P-127 at p. 6). However, for items that [REDACTED] "cannot open like her water bottle

at lunch she will just do without rather than asking for help.” (P-127 at p. 6). ■■■ had also “been seen putting too much food in her mouth and has needed reminders to slow down when eating.” (P-126; P-127 at p. 6). On two occasions, “teachers needed to remove food that she could not manage.” (Id.)

135.

CCSD’s Practitioner’s Manual states that the IEP team “always begins by considering how the goals can be met in the general education classroom. The IEP team should determine the education services, related services, supplementary aids and services, and assistive technology that are necessary for the student to stay in general education, continue to have access to the standards, and meet the goals in the IEP.” (P153 at 110); Tr. 2575, 2591-93).

136.

Assessing standards and meeting standards “are quite different.” Mastering standards is not required for co-taught classes given that the class includes children on varying levels, including children without IEPs who have not obtained grade level standards. (Tr. 165, 895-96, 2381-82, 2409).

137.

■■■ co-taught and IRR classes at Ford Elementary School provide her access to the standards, consistently exposing her to grade level materials, questions, and vocabulary. (Tr. 2356, 2366, 2405, 2409-10, 2474). The MID class would provide access to fewer grade level standards. (Tr. 1892-93). Nevertheless, Respondent maintains ■■■ “would benefit most educationally” from the MID class (Tr. 1934-35). Respondent further maintains that the MID class is the “best” or “most appropriate setting” because it would allow for frequent review and presentation of fewer concepts, and ■■■ could work at a slower pace, rather than keeping up

with the standards.” (Tr. 44-45, 878, 1806-07, 1816-17, 1827, 2411-12, 2558, 2586-87, 2509). According to Respondent, a need for frequent review is consistent with mild intellectual impairment, and other children in the MID class would be “more on her language developmental level,” and have “similar issues” so [REDACTED] would likely have an “easier time socially with those children.” (Tr. 1811, 1935, 2590).

138.

CCSD’s Practitioner’s Manual also provides that the team can consider placement outside general education “only when the IEP team has evidence that even with the use of supplemental aids and services, education in the general education settings will not be successful.” (P153 at 111).

139.

[REDACTED] goals and objectives can be implemented and mastered in a co-taught class and do not require a MID self-contained placement, as shown by the IEP team’s agreement that [REDACTED] was progressing on and mastering her goals and objectives in her co-taught classes. (Tr. 441, 798, 803-07, 1104-05, 1336, 1339-40, 1414-17, 2464-68; P17 [REDACTED] 0315-22). In fact, [REDACTED] mastered a number of her objectives at different times throughout the year, including objectives for subtracting numbers to ten (10); stating the value of a penny, nickel, dime, and quarter; decoding single syllable words with digraphs and sight words in sentences; and retelling a short story after a minimum of two readings, including character, setting, and three part action sequence. (P-17 [REDACTED] 0315-22). However, regarding Math, [REDACTED] goals and objectives for third grade were significantly below grade level that she would likely lose attention during whole group instruction and not be able to meaningfully access the standards in this particular subject area. (P-127)

140.

CCSD's Manual also provides that: "If the student is placed in a setting other than general education setting . . . , high expectations for achievement in the GPS and a plan for moving back into less restrictive settings should continue to be in place." (P153 at 111). However, the team did not discuss or plan for how [REDACTED] could progress out of the MID class. (Tr. 445, 1893; P17). In fact, CCSD's reasoning for insisting that [REDACTED] must attend the MID class at Lewis Elementary School rather than Pickens Elementary School was based on feeder patterns so that she would be in a class with the students that CCSD apparently believed she would likely continue to be with when she reaches high school. (Tr. 99-100, 107-108, 110, 113, 304-09, 378, 1336, 2549; P-49 [REDACTED] 0504).

141.

CCSD staff stated that [REDACTED] need for modifications support a change to self-contained placement, but modifications do not require removal from co-taught and, in fact, are intended to enable students to stay in the LRE and access grade level curriculum. (Tr. 167, 439-40, 904, 1049, 1106-07, 1140, 1198-99, 1473, 1480). Similarly, a need for slower pacing does not require a restrictive, self-contained placement, because pacing can be adjusted in small groups in a co-taught class. (Tr. 166-67, 1121-22, 1139-40, 2335).

142.

Once the CCSD staff members of the IEP team determined that a change in placement to the MID classroom at Lewis was appropriate, they failed to address [REDACTED] transition and did not answer all of the questions that were raised regarding the change in placement. The team did somewhat address parental concerns regarding whether the culture and level of social interaction in the MID class at Lewis could impact [REDACTED] receipt of FAPE by explaining that [REDACTED] would

attend specials with general education students, as well as Science and Social Studies classes. However, most of the parental concerns raised regarding the placement and its effect on [REDACTED] receipt of FAPE were dismissed by CCSD staff members who incorrectly believed the concerns were related to location rather than placement, in part because [REDACTED] parents did not thoroughly articulate their concerns. (Tr. 90-91, 96-98, 101-07, 113-16, 283-84, 344-45, 445, 280-82, 448-50, 811-14, 834-35, 1332-1337, 1356-58, 1420, 1467, 1448-49, 1541-42, 1567-68, 1674-75, 2550-51, 2556, 2598-2601, 2618-19; P17; P49; P125; P127; P154; R363). However, the team did not thoroughly discuss the impact of removing [REDACTED] from Ford Elementary, where she has relationships with friends, peers, and siblings, to Lewis Elementary, where she knows no students or teachers. At Ford Elementary, [REDACTED] benefits from peer modelling by taking cues from peers and siblings on how to act and behave and modelling and parroting the actions of these peers. (Tr. 810-11, 815-19, 1280-81, 1417-18, 1424-25, 1531, 2408, 2559-60, 2589-90, 2594, 2622). *See* 34 C.F.R. § 300.116(d).

143.

The team did not consider minimizing transitions in [REDACTED] schedule at Ford Elementary, which was set by CCSD without parental input and which resulted in [REDACTED] missing instruction four days per week.²¹ Under [REDACTED] designated schedule, she was pulled out from science or social studies classes mid-lesson four days per week for OT and Speech services and pulled aside upon her return for 1:1 instruction to catch her up with the class. (Tr. 840-46, 845-46, 896-99, 1388-89, 1409-12, 1571, 1699-1702, 1708-10, 2462-64; P44; P155). Transitions can be managed and do not require a self-contained class. (Tr. 1130-33; P86). Likewise, CCSD's

²¹ CCSD claimed that the times chosen for [REDACTED] speech services were "designed to be the least impactful in terms of academic exposure." However, if reducing the number of transitions were truly a concern of the team, then a discussion should have been had regarding [REDACTED] specific schedule and whether there was a manner in which transitions could be reduced while maintaining [REDACTED] in a less restrictive environment. (Tr. 897, 1700-02, 1709-10).

concern that [REDACTED] schedule for third grade could require her to have three different resource teachers was also something that was within CCSD's control and does not necessarily require a more restrictive placement. (Tr. 1136-38; P 127 [REDACTED]1003).

Accommodations, Modifications, and Supportive Aids and Services

144.

Modifications and accommodations should be determined by the IEP team and included in the IEP. (Tr. 160-62, 1196-97). Accommodations level the playing field and allow access to curriculum, but do not change the instruction, while modifications do. (Tr. 438-39). CCSD's Practitioner's Manual defines accommodations as "changes to the manner in which instruction/assessment is administered or how a student responds to a learning task/assessment" while modifications "change how the student receives instruction" and "what the student is expected to master." (P153G at 113-14). Whether a support is an accommodation or modification depends on the standard. For example, a lower reading level on the same topic is a modification for reading but an accommodation for social studies. (Tr. 193-95, 438-39).

145.

At the May 2018 meetings, the team did not consider adding modifications to allow [REDACTED] to remain in co-taught classes. (Tr. 437-38, 445, 1119, 1275-76, 1363, 1473, 1571). While [REDACTED] IEP had two modifications – peer/adult reading assistance and simplifying complexity of text – carried over from the prior IEP, few additional accommodations were made and her assessments were not modified. (Tr. 865, 1199-1200, 1363, 1403-05, 1477-78; P17 [REDACTED]0307; P14 [REDACTED]228). Moreover, the IEP did not include supports for school personnel, (Tr. 1878-83, 2009-13, 2052; P17) and the team did not consider adding supports or planning time for inclusion, modifications, or consultation between specialists and teachers. (Tr. 1403-05).

Finally, the team did not discuss [REDACTED] inattention, outside of providing an objective that she accurately remain on task for 10 minutes, despite CCSD's evaluation identifying this as an area of concern. (Tr. 1439-40). The team should have started with grade level standards and adjusted them based on [REDACTED] current level, i.e., adapt a lower grade level with similar content, and then take steps to help [REDACTED] build on that to progress to grade level standards. (Tr. 1117-21).

146.

During the hearing, Petitioners suggested the incorporation of the following accommodations and modifications into [REDACTED] IEP: (1) previewing vocabulary and content, (2) modelling and guided practice, (3) reduction in the number of expected outcomes, (4) working with peers in a cooperative group, (5) movement, (6) use of graphic organizers, (7) visuals, (8) manipulatives, (9) touch Math, and (10) number lines. (Tr. 851-52, 893, 1041-47, 1105-08, 1114-20, 1345-46). Additionally, a peer model could have been provided to work with [REDACTED] to integrate her socially with peers and foster authentic relationships, but this was not in [REDACTED] IEP. (Tr. 2594-96).

147.

At the May 2018, meetings, the team decreased [REDACTED] OT from 60 to 30 minutes per week. (Tr. 1921-22; 2034-35).

148.

“Push in” speech-language and OT services, or services provided directly to [REDACTED] in the co-taught class, as opposed to pulling her out of the class for these services, have not been provided. (Tr. 1704, 2361-62, 2457-59).

September 2018 Assistive Technology (AT) Consult

149.

At the May 10th meeting, Ms. Dobbs, the parents' advocate, requested that assistive technology be considered because [REDACTED] needs to become more familiar with the keyboard. Ms. Dobbs also believed that assistive technology could potentially assist [REDACTED] with spelling through word prediction software . (Tr. 2677; P-125). CCSD's policy and practice is to conduct an AT consult before considering conducting an evaluation. Despite the referral being agreed upon in May, CCSD's AT specialist Kelly Bramlett did not receive the referral until September, most likely because, in order to obtain useful information, an AT consult could not easily take place at the end of the school year, nor at the start of the new school year before the student has had an opportunity to acclimate to the new environment. (Tr. 2481, 2503, 2505, 2527-29, 2531-33, 2669-70, 2672-73, 2677; P-17 [REDACTED]0301, [REDACTED]0313).

150.

On September 12, 2018, Ms. Bramlett sent [REDACTED] parents a questionnaire. (R-298). However, [REDACTED] parents did not return the completed questionnaire, nor did they respond in any way to Ms. Bramlett's request for their input. (Tr. 2509-10; R-373 CCSD 001402).

151.

On September 21, 2018, CCSD's AT specialist Kelly Bramlett conducted an AT consult for [REDACTED] based on the referral that indicated [REDACTED] was struggling with written expression and spelling. Ms. Bramlett further understood that the team was interested in whether word prediction software could help [REDACTED] (Tr. 2502-05, 2503, 2510; R173). To prepare for the consultation, Ms. Bramlett (1) reviewed [REDACTED] IEP, (2) reviewed work samples from [REDACTED], (3)

conducted two observations, (4) trialed word prediction software, and (5) conducted a keyboarding skills assessment. (T. 2507, 2510, 2514).

152.

In an AT consult, an AT specialist considers the student, their current functioning in their environment, and trials tools that might help the student with a task on which they are not progressing. (Tr. 2498). AT is “about trial and error” and “[t]here is no standardized test” that would be given for an AT evaluation. (Tr. 2497).

153.

Ms. Bramlett observed [REDACTED] for 30 minutes in co-taught math and one hour in small group language arts, briefly reviewed [REDACTED] keyboarding skills, and did a one-time trial of Co-Writer word prediction software. (Tr. 2510, 2512-17, 2533-34, 2646, 2649).

154.

To assess keyboarding, Ms. Bramlett demonstrated once how to type words on a screen and then asked [REDACTED] to do the same task and concluded [REDACTED] is not familiar with the keyboard. (Tr. 2515-16, 2657-58, 2709). Though [REDACTED] has impairments that may impact keyboarding, Ms. Bramlett did not consult an OT to understand [REDACTED] motor skills or an SLP regarding speech skills or field of vision. (Tr. 2656). Additionally, keyboarding is a learned, physical and functional skill, which can be taught as a part of IEP goals and objectives, but was not a goal or objective of [REDACTED]’s IEP. Moreover, it is not unusual for a third grader to not be familiar with keyboarding. (Tr. 2663-64, 2673-74).

155.

Ms. Bramlett tested Co-Writer as an aid in spelling, but concluded [REDACTED] needs to know how to spell the beginning of words and include spacing between words before Co-Writer can effectively assist her. (Tr. 2516-17, 2521-23, 2708; R-307).

156.

Ms. Bramlett did not test other software or tools, including the iPad, which has keyboarding functionality. (Tr. 2658-59, 2667-68).

157.

An AT evaluation, as opposed to a consult, typically includes assessment of the student's skills to determine what AT tools are available at her skill level and then actually teach the student how to use the technology. (Tr. 2660-62). An evaluation can establish trials of AT tools that extend over a period of time to allow introduction of the tools, instruction on how to use them, time to use them, and an assessment of whether they are working, similar to what occurred with the word prediction software that Ms. Bramlett installed on the classroom computer and then data was taken by [REDACTED] small group teacher to track its effectiveness. (Tr. 2497, 2533-34, 2660-61, 2674-76, 2678-79).

158.

Ms. Bramlett concluded that the recommendations she would make based on her consultation were already happening in the classroom, including the use of graphic organizers, sentence starters, checklists for multistep tasks, and visual models. (Tr. 2524-25, 2699; R-173). Ms. Bramlett further concluded that there was no AT available that could help [REDACTED] to get better access to an IRR small group class or a co-taught class. (Tr. 2694, 2700).

IEE Requests

159.

On June 26, 2018, [REDACTED] emailed Special Ed. Director Susan Christensen stating, “We disagree with the recent multi-disciplinary evaluation [by CCSD, and] are seeking an independent multi-disciplinary evaluation at Cobb County’s expense.” (Tr. 64-65, 177, 1579; P52 [REDACTED] 515). At that time, Petitioners had already started the process of obtaining independent evaluations with the expectation of being reimbursed by CCSD. (T.1619, 1624; 1518).

160.

Unlike the initial request that generally referenced a “multi-disciplinary evaluation” without further clarification, Petitioners’ July 26 hearing request specifically pled that they sought independent psychological, OT, SLP, AT, and instructional evaluations at CCSD’s expense, to include both the costs of each evaluation and the cost for evaluators to attend IEP/eligibility meetings. (Tr. 66-67, 1581, 1584-85; P1 [REDACTED] 17, [REDACTED] 80).

161.

CCSD’s first response to the IEE request was a July 27, 2018 letter from Ms. Christensen attaching CCSD’s IEE Guidelines and asking the parents to complete its IEE request form.²² (Tr. 69, 84-85, 88-89, 1580-89; P54; P55). CCSD’s guidelines include requiring a contract between CCSD and the evaluators prior to the IEE, and that evaluation reports be provided to the parents and CCSD concurrently at least 10 days before any meeting. (Tr. 133-37, 147, 1589-92; P54; P58 [REDACTED] 0533; P60; P153 at 70). CCSD’s guidelines also provide a maximum fee, which typically covers the evaluation only and not attendance at IEP/eligibility meetings or feedback sessions or travel. However, some evaluators on the District’s list include the cost of attending

²² During July of 2018, CCSD staff had Fridays and the entire week of July 4th off from work. (Tr. 86-7, 180-81, 320-21). Thus, between the time of Petitioners’ IEE request and the District’s initial response, there were 16 working days. (Tr. 323).

the IEP within their fee. For those who don't, the District has previously agreed on occasion to pay evaluators to attend IEP meetings. These maximum fees were not identified in the July 27, 2018 letter. (Tr. 129-33, 215-16, 218, 270-71, 345-46; P54; P58; P153 at 25-26). CCSD pays for an IEE only upon receipt of a written report. (Tr. 138, 143-44, 215-18; P54; P153 at 25-26). Finally, CCSD requires IEE evaluators be located within 50 miles of the county. (Tr. 215-220; P54; P58).

162.

On July 30, 2018, Petitioners responded that they had begun the IEEs and objected to CCSD's maximum fee schedule, requirement of a contract, and 50-mile geographical limitation. (Tr. 207, 1584; P54; P55).

163.

On August 31, 2018, Ms. Christensen sent the parents a letter stating CCSD "has approved your request for a Multi-Disciplinary [IEE] due to your disagreement with the District's Multi-Disciplinary Evaluation (Psychoeducational, Speech-Language and Occupational Therapy) for your student." (Tr. 119, 121, 334, 1631; P58). The letter did not specifically address the parents' request for an independent AT evaluation and instructional evaluation that were requested in Petitioners' Due Process Complaint. The letter also did not address the fact that the IEEs had already begun prior to any evaluator entering into a contract with CCSD, the cost of each evaluation exceeded the maximum fees set by CCSD, and the parents' request that CCSD pay the cost of the independent evaluators attendance at IEP meetings. (Tr. 201-04, 213-16, 221-22, 1584-90, 1633; P1; P55; P58). However, the letter included the District's maximum fee schedule for IEEs and provided a list of pre-approved evaluators. (P-58, [REDACTED] 0533-36). It also provided the Petitioners "an opportunity to demonstrate

that unique circumstances exist to select” an evaluator whose fee exceeds the District’s maximum fee. (Tr. 126-27, 1632; P-58 [REDACTED] 0533). Finally, the letter requested that Petitioners notify the District once they select an evaluator and explained that they did not have to select an evaluator from the District’s list. (Tr. 335; P-58).

164.

Petitioners requested the procedures for showing “unique circumstances” to warrant an IEE that exceeds its maximum fee criteria, but CCSD does not have written procedures for showing “unique circumstances.” (Tr. 126-28, 1584-86, 1588-92; P60; P61; P153 at 23-28). Thus, Petitioners chose not to provide any information or explanation why they needed, or were requesting, CCSD to pay the IEE evaluators an amount that exceeded CCSD’s maximum fee. (Tr. 1633-36).

165.

On October 24, 2018, Petitioners again wrote CCSD, explaining their concerns with CCSD’s criteria and the maximum fees for psychological, SLP, OT, and educational IEEs, and restated their request for CCSD to pay for the evaluators to attend meetings. (Tr. 1599; P78). CCSD did not specifically respond to this communication. (Tr. 257-59, 268, 1584-89, 1600). However, Petitioners never informed CCSD that they had selected Ms. Spencer, Dr. Murphy, or Ms. Wing as IEE evaluators prior to the document exchange in this litigation, nor did they make a specific request for one of the aforementioned evaluators to observe [REDACTED] in school or attend a specific IEP meeting. (Tr. 1627-28, 1630-31). [REDACTED] felt there was no reason to request that any IEE evaluator be allowed to observe [REDACTED] at school because of the issues that arose when Dr. Ward attempted to schedule an observation. Based on their experience with their request for Dr. Ward to observe [REDACTED] at school, Petitioners believed that CCSD would require evaluators to sign

forms that Petitioners' objected to due to the content of the form and the limitations placed on the observation. (Tr. 1628).

166.

On October 24, 2018, Petitioners also restated their request for an AT IEE with estimated costs, including for the evaluator to attend meetings. (Tr. 260, 357, 1598-99; P76; P78). CCSD responded on November 2, 2018, stating that it approved this IEE, but ignoring that the anticipated costs exceeded its maximum fee. (Tr. 340, 357, 1602; P79(a); R333).

167.

CCSD's maximum fee for an AT evaluation is based on one provider with reduced costs due to its association with Georgia Tech. (Tr. 368-69). Although there are other AT evaluators in the area, the provider at Georgia Tech is the only one that agreed to abide by CCSD's maximum fee of \$500. Thus, Petitioners are limited to choosing the one and only evaluator on CCSD's pre-approved list, or risk exceeding the maximum fee and having to plead unique circumstances to request approval for CCSD to pay the evaluator an amount that exceeds the maximum fee. (Tr. 341, 355-56, 365-59; P58; P145).

168.

Hourly rates for Petitioners' independent evaluators include \$200 per hour for Dr. Murphy and Ms. Wing (Tr 973, 1606), and \$140 per hour for Ms. Spencer (Tr. 738-39). Dr. Ward, who conducted a consultation, charges \$150 per hour for consulting, and \$125 per hour to observe, write her report, and travel. (Tr. 1150, 1165-66). If compensated for her time, Dr. Ward would attend IEP and eligibility meetings to help the team determine accommodations and modifications for [REDACTED] and monthly meetings afterwards to revisit and revise such accommodations and modifications, as needed. (Tr. 153-57).

For reasons that are not entirely clear from the record, although Petitioners requested independent evaluations at CCSD's expense and CCSD agreed to their request so long as the IEEs met CCSD criteria, Petitioners did not provide copies of the independent evaluation reports until the document exchange during this litigation. (Tr. 338, 1624).

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include IDEA, the Family Educational Rights Privacy Act (FERPA) (20 U.S.C. § 1232g), O.C.G.A. § 20-2-152, and Ga. Comp. R. & Regs. 160-4-7 *et seq.* (GaDOE Rules).

2.

Hearings before OSAH are *de novo* proceedings, and the standard of proof is the preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21. Petitioners bear the burden of proof in this matter. Ga. Comp. R. & Regs. 160-4-7-.12(3)(n). In order to prevail, Petitioners must show, by a preponderance of the evidence, that the District failed to offer a FAPE in the LRE. Regarding procedural violations, in order to be entitled to relief under IDEA, the procedural violation must have impeded the child's right to a FAPE, significantly impeded the parent's right to participate in the decision-making process, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2). See also G.J. v. Muscogee Cty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012).

3.

This Court's review is limited to the issues Petitioners raised in their due process complaint.²³ 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(j); see also Co. of San Diego v. Ca. Special Educ. Hearing Office, 93 F.3d 1458, 1460 (9th Cir. 1996); B.P. v. New York City Dept. of Educ., 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012).

4.

In this matter, Petitioners allege:

- a) Respondent's re-evaluation was inadequate and inappropriate and failed to evaluate ██████ in all areas of suspected disability;
- b) Respondent's evaluations and processes were inadequate to support its decision to identify ██████ as eligible under MID;
- c) Respondent's determination to remove ██████ from the general education Milestones assessment to the GAA was based on an improper standard and failed to consider accommodations to enable continued participation in the Milestones assessment;
- d) Respondent relied on an improper standard to require ██████ removal from her general education placement to a self-contained MID class at a different school;
- e) Respondent failed to consider supports to enable ██████ to remain in her general education placement;
- f) The MID class was not the LRE;

²³ Additionally, claims brought under IDEA are typically subject to a two-year statute of limitations. 20 U.S.C. § 1415(b)(6)(B); Mandy S. v. Fulton County Sch. Dist., 205 F. Supp. 2d 1358 (N.D. Ga. 2000), aff'd without opinion, 273 F.3d 1114 (11th Cir. 2001). Accordingly, claims related to events occurring before July 26, 2016 are not at issue in this matter.

- g) Respondent's IEP, based on the inadequate evaluation, cannot and does not provide FAPE;
- h) Respondent predetermined [REDACTED]'s placement prior to the IEP meeting;
- i) Respondent's process denied parent participation and FAPE; and
- j) Petitioners are entitled to an IEE or, alternatively, to reimbursement for necessary evaluations as an equitable remedy.

FAPE and IEP

5.

School Districts must provide a free appropriate public education (FAPE) to children with disabilities who, because of their disabilities, need special education and related services. 20 U.S.C. § 1400(d)(1)(A); 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.101(a); O.C.G.A. § 20-2-152; Ga. Comp. R. & Regs. 160-4-7-.02(1)(a)(2013); Hendrick Hudson Sch. Dist. V. Rowley, 458 U.S. 176, 203 (1982); Andrew F. v. Douglas Cnty. Sch. Dist., 137 S.Ct. 988, 1000 (2017). FAPE is achieved by the timely implementation of an IEP tailored to the unique needs of the child. Loren F. v. Atlanta Indep. Ch. Sys., 349 F.3d 1309, 1312-13 (11th Cir. 2003); Doe v. Ala. State Dept. of Educ., 915 F.2d 651, 654 (11th Cir. 1990); 34 C.F.R. § 300.320.

6.

IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Andrew F., 137 S.Ct. 988, 1001 (2017). If grade-level advancement is not a reasonable prospect for a child, the IEP does not have to aim for grade-level advancement so as long as it is “appropriately ambitious in light of [the child’s] circumstances.” Id.

7.

The IEP is written by the IEP team, which includes the parents. 34 C.F.R. §§ 300.321(a)(1), 300.324; R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1177 (11th Cir 2014) (The IEP is “the culmination of a collaborative process between parents, teachers, and school administrators . . . with the goal of providing the student with [FAPE].”). The parents serve as “members of any group that makes decisions on the educational placement of their child.” 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(a)(1), 300.327; determinations on eligibility, 34 C.F.R. § 300.306(a); and review of data to determine the need for evaluation/re-evaluation, 34 C.F.R. § 300.305(a)(1).

8.

The IEP is a written statement developed, reviewed, and revised by the IEP team in accordance with 20 U.S.C. § 1414(d) and 34 C.F.R. §§ 300.320-300.324. The IEP includes both a statement of the special education, related services, and supplementary aids that will be provided to the child and a statement of the program modifications or supports that will be provided for school personnel. These provisions are intended to enable the child to make progress in the general education curriculum and to participate with other children with disabilities, as well as with nondisabled children. 34 C.F.R. § 300.320(a)(4).

9.

“Supplementary aids and services” include “aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. . .” 34 C.F.R. § 300.42 ; Ga. Comp. R. & Regs. 160-4-7-.21(41). “Related services” encompass those supportive services that “may be required

to assist a child with a disability to benefit from special education.” Cedar Rapid Sch. Dist. v. Garrett F., 526 U.S. 66, 73 (1999). Related services include OT, speech therapy, and transportation. 34 C.F.R. § 300.34.

10.

The IEP must include “[t]he projected date for the beginning of the services and modifications. . . and the anticipated frequency, location, and duration of those services and modifications.” 34 C.F.R. § 300.320(a)(7).

11.

IDEA requires the IEP team to address the child’s progress in the general education curriculum, but does not require mastery of the general education standards, looking instead at attainment of IEP goals. Andrew F., 137 S.Ct. 988, 1001 (2017) The IEP must include a statement describing “[h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) . . .” 34 C.F.R. § 300.320(a)(1)(i). Moreover, the district must ensure the IEP team reviews and revises the IEP “to address -- (A) any lack of expected progress toward the annual goals . . . and in the general education curriculum . . .” 34 C.F.R. § 300.324(b).

12.

The IEPs that were put in place by the District between July 26, 2016 and May 21, 2018, provided █████ FAPE. Her goals and objectives addressed the required prerequisite skills and were designed to move her forward towards grade-level standards. Further, she demonstrated progress on those goals and objectives that were appropriately ambitious in light of her circumstances.

13.

During ██████ second grade year (2017-2018), it is undisputed that ██████ demonstrated progress on her IEP goals and objectives. ██████ mastered a number of her objectives at different times throughout the year, including objectives for subtracting numbers to ten (10); stating the value of a penny, nickel, dime, and quarter; decoding single syllable words with digraphs and sight words in sentences; and retelling a short story after a minimum of two readings, including character, setting, and three part action sequence. Furthermore, during the first quarter of her third-grade school year, ██████ continued to demonstrate progress on her IEP goals and objectives, although she did not meet state grade-level standards.

14.

As set forth in the Findings of Fact above, ██████'s IEPs provided accommodations, modifications, and supportive aids. For example, ██████ spelling assessment had fewer words, and ██████ was provided a number line for addition and subtraction. Ms. Goodman also used a whiteboard in math to modify state standards when working with ██████. Ms. Goodman would start off a whole group class lesson working in the hundreds and allow ██████ to work on that standard before taking away a digit and working with her on her level. In reading, Ms. Goodman brought in differentiated, lower-level materials for ██████ and Ms. Goodman modified reading in other subject areas for ██████ when needed.

15.

Additionally, ██████ IEP also provided her opportunities to be exposed to age-appropriate vocabulary and same-aged peers for social and academic interactions. It also provided ██████ opportunities for continued confidence and social skill building, which were among the recommendations made by Ms. Spencer in her Speech-Language IEE. Similarly, CCSD gave

choices for answers; provided simplified vocabulary; used visual models, manipulatives, and graphic organizers; and incorporated movement, all of which were recommended by Dr. Ward in her independent educational consultation. CCSD was also implementing many of Ms. Wing's recommendations set forth in her OT IEE that were appropriate for the school setting.

Eligibility for Services and Evaluation Process

16.

To be eligible for services under IDEA, the student must meet the criteria of one or more categories of disabilities specifically defined in IDEA, which include intellectual disability (ID), Speech Impaired (SI), and Other Health Impaired (OHI). The student must also need special education and related services as a result of his or her disability. 34 C.F.R. § 300.8(a)(1); Ga. Comp. R. & Regs. 160-4-7-.05(1). Additionally, a child between the ages of three and nine who experiences developmental delays and who, by reason thereof, needs special education and related services, qualifies as a child with a disability under IDEA under the category of SDD. 34 C.F.R. § 300.8(b). Once a child is determined eligible, the District's obligation is to "[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and . . . [m]eet each of the child's other educational needs that result from the child's disability." 34 C.F.R. § 300.320(a)(2)(i).

17.

The evaluation process is central to identification of students with disabilities and to development of the IEP. See 20 U.S.C. §§ 1412(a)(3), 1414; 34 C.F.R. §§ 300.122, 300.300-300.311; Ga. Comp. R. & Regs. 160-4-7-.03, 160-4-7-.04. The district must conduct an initial evaluation of the child, pursuant to 20 U.S.C. § 1414(a)(1)(A), and thereafter a reevaluation "at least once every 3 years . . ." unless the parents and district agree it is not needed. 20 U.S.C.

§ 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ga. Comp. R. & Regs. 160-4-7-.04(1)(a), (3)(a), (b).

18.

IDEA requires the District to evaluate and address all areas of known or suspected disability. 20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(c)(1)-(7); Ga. Comp. R. & Regs. 160-4-7-.04(4)(c); see 20 U.S.C. § 1412(a)(6)(B). Prior to an evaluation, the district “must provide notice to the parents . . . that describes any evaluation procedures the agency proposes to conduct,” and the district must “obtain informed parental consent.” 34 C.F.R. § 300.304(a); 34 C.F.R. § 300.300(c)(i).

19.

Evaluations and re-evaluations are not solely for determining IDEA eligibility, but are also used to determine “the educational needs of the child.” 34 C.F.R. § 300.301(c)(2)(ii); see also 34 C.F.R. § 300.303. “Each public agency must ensure [that] . . . [a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.” 34 C.F.R. § 300.304(c)(7). In developing the student’s IEP, the IEP team must consider the evaluations of the child. 20 U.S.C. § 1414 (d)(3).

20.

In conducting the re-evaluation, CCSD was required to conduct evaluations that addressed all areas of known or suspected disability, 20 U.S.C. § 1414(b)(2)-(3); 34 C.F.R. § 300.304(c)(1)-(7); Ga. Comp. R. & Regs. 160-4-7-.04(4)(c). CCSD was also required to:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about [REDACTED] including information provided by [her] parent[s], that may assist in determining –

- a. Whether [REDACTED] is a child with a disability under § 300.8; and
 - b. The content of [REDACTED] IEP, including information related to enabling [her] to be involved in and progress in the general education curriculum;
- (2) Not use any single measure or assessment as the sole criterion for determining whether [she] is a child with a disability and for determining an appropriate educational program for [her]; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. § 300.304(b); see also 20 U.S.C. § 1412(a)(6)(B).

21.

CCSD was required to ensure its assessments were selected and administered in the form most likely to yield accurate information on what [REDACTED] knows and can do academically, developmentally, and functionally, rather than reflecting her impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with any instructions provided by the producer of the assessments. 34 C.F.R. § 300.304(c)(1)(ii)-(v); Ga. Comp. R. & Regs. 160-4-7-.04(4)(c)(1)(ii)-(v).

22.

Additionally, CCSD was required to ensure that the evaluation was “sufficiently comprehensive to identify all of [REDACTED] special education and related service needs, whether or

not commonly linked to the disability category in which [REDACTED] has been classified,” 34 C.F.R. § 300.304(c)(6).

23.

Generally speaking, CCSD complied with the aforementioned requirements. However, Ms. Snell failed to follow the testing manual for the Vineland-3 when she gave it to [REDACTED] parents to complete, but then later called and asked [REDACTED] to change her answers to several questions based on Ms. Snell’s belief that [REDACTED] scores were too high. Additionally, Ms. Snell did not note whether she gave [REDACTED] breaks during the administration of the WISC-V, including when she administered seven subtests in one hour, even though the manual specifically provides that a break should be given to a child who becomes fatigued or fidgety during testing, and for those with attentional limitations. These minor issues warranted the parents’ request for an IEE to be provided at public expense, which Respondent assented to.

24.

Although Ms. Ferguson testified that her evaluation met the criteria set forth in 34 C.F.R. § 300.304, her Speech Language (SL) evaluation did not thoroughly assess articulation errors. Thus, it was insufficient and warranted the parents’ request for an IEE at public expense, which Respondent assented to. After careful review of Ms. Ferguson’s SL evaluation and the IEE SL evaluation completed by Connie Spencer, the Court agrees with Ms. Spencer’s recommendation that [REDACTED] requires speech therapy to help her carry over her skills into conversation. Furthermore, the Court agrees with Ms. Spencer’s recommendation that [REDACTED] should continue to be exposed to age appropriate vocabulary (to continue developing her relative strength in receptive vocabulary and to help build her expressive vocabulary), and to same aged peers for social and academic interactions. Moreover, the Court concludes that Ms. Spencer’s

recommendation to increase direct SL therapy to address all delayed areas of communication (such as articulating clearly during conversation, telling narratives about daily events and academic material, and answering questions) is appropriate. SL services shall be provided 60 minutes per week through one-on-one SL therapy, 60 minutes per week through small group SL therapy, and 60 minutes per month of SLP consultation with the classroom teacher for carry-over and consistency to address objectives across settings. The IEP team shall reconvene within a reasonable time following issuance of this decision, but no later than August 31, 2019, to discuss the goals and objectives set forth in Ms. Spencer's evaluation report to develop appropriate goals and objectives for the upcoming school year (2019-2020), as well as to discuss the appropriateness of increased accommodations²⁴ to support ██████ in the classroom. (P-35 ██████ 439-40)

25.

Ms. Merrill's OT evaluation consisted of only one single assessment, the WRAVMA. Ms. Merrill acknowledged that the evaluation could have been broader in all areas, and that the use of this single assessment failed to evaluate ██████ in the area of sensory processing. Thus, it was insufficient and warranted the parents' request for an IEE at public expense, which Respondent agreed to. After careful review of Ms. Merrill's OT evaluation and the IEE OT evaluation completed by Ms. Wing, the Court concludes that OT services shall be provided in the school-setting two times a week for 45 minute sessions each to address the foundational skills of reflex, integration, vestibular processing, muscle tone, balance, motor planning, and fine motor control, as well as to improve visual perceptual skills, self-confidence and social

²⁴ Accommodations to consider include pre-teaching/previewing and reviewing class vocabulary, concepts, and topics to increase comprehension; rewording and simplifying complex questions and directions; providing preferential seating; modifying classroom assessments (e.g. allowing some testing of competency of class material to be done orally instead of written); and providing additional reading and writing support (e.g. more visual cues and systematic reading instruction). (P-35 ██████ 439)

participation.²⁵ The sessions should include activities in small group, 1:1, and in the regular classroom. Additionally, the OT provider should consult with the classroom teacher on a monthly basis (30 minutes monthly consultation). Finally, the IEP team should reconvene within a reasonable time after the issuance of this decision, but no later than August 31, 2019, to address the concerns raised by Ms. Wing that the current writing goal in [REDACTED] IEP is inadequate because it focuses on the end result, rather than the foundational skills needed to reach that goal, such as shoulder stability, hand strength, and finger dexterity.

IEEs

26.

Parents have a right to an IEE at public expense if they disagree with an evaluation conducted by the school. 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. § 300.502(b)(1).

27.

In response to an IEE request, the district “must, without unnecessary delay, either . . . [f]ile a due process complaint . . . to show that its evaluation is appropriate; or . . . [e]nsure that an [IEE] is provided at public expense, unless the agency demonstrates in a hearing . . . that the evaluation obtained by the parent did not meet agency criteria.” 34 C.F.R. § 300.502(b)(2).

28.

The criteria for an IEE at public expense “must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an [IEE].” 34 C.F.R. § 300.502(e)(1). The district may not impose additional conditions on the IEE that it does not impose on its own evaluations, and must provide its IEE

²⁵ Ga Comp. R. & Regs. r. 160-7-4-7-.21(36)(c)6.(i) limits OT to “improving, developing, or restoring functions . . . related to the student’s ability to perform school-related tasks . . .” Although not all recommendations made by Ms. Wing can be implemented in the school setting, the ones that can are essential for helping [REDACTED] to improve and develop her ability to perform school-related tasks.

criteria to the parents upon their IEE request. 34 C.F.R. § 300.502(a)(2), (e)(2). Districts must allow parents the opportunity to demonstrate unique circumstances warranting an IEE at public expense that does not meet its criteria. See e.g., Guidance Letter from Stephanie S. Lee (OSERS Oct. 9, 2002).

29.

Regarding the IEEs obtained by Petitioners, the Court concludes that the IEE evaluations were appropriate and complied with 34 C.F.R. § 300.304. Together and individually, Dr. Murphy, Ms. Spencer, and Ms. Wing used a variety of approaches and assessment tools to gather relevant functional, developmental, and academic information about ██████ including meeting with her parents to gather information about ██████ reviewing prior evaluations and medical history, and conducting clinical observations. This information is relevant to assist the IEP team in determining ██████ IDEA eligibility and the contents of her IEP, as well as to enable her to participate in the general education curriculum. 34 C.F.R. § 300.304(b)(1).²⁶

30.

The IEE evaluations included multiple measures and assessments to determine ██████ eligibility and educational program, and assessed all areas of known or suspected disability. 34 C.F.R. § 300.304(b)(2), (c)(4). Dr. Murphy assessed ██████ IQ by administering the WISC-V and the CTONI-2, which is appropriate for ██████ given her significant language and motor impairments; evaluated ██████ achievement using the WIAT III; and assessed adaptive functioning using the ABAS-3 and Conners CBRS Parent and Teacher rating scales. Dr. Murphy complied with the test manual and procedures in selecting and managing her evaluation,

²⁶ The Court does not include Dr. Ward with the others as she served in the capacity of an educational consultant and not an evaluator. However, when the IEP team reconvenes within a reasonable time following issuance of this decision, but no later than August 31, 2019, the team should discuss and take into consideration Dr. Ward's recommendations regarding accommodations and modifications for ██████ to remain in an inclusive setting to the maximum extent appropriate for her in light of her circumstances.

in an effort to understand ██████ actual abilities. For speech-language, Ms. Spencer assessed articulation using the Goldman Fristoe Test of Articulation – 3; assessed expressive and receptive language skills and vocabulary using the Expressive Language Test 2, Receptive One Word Picture Vocabulary Test, 4th Ed. and the Expressive One Word Picture Vocabulary Test, 4th Ed.; assessed auditory processing using the Listening Comprehension Index of the Test of Auditory Processing Skills, 4th Ed., Test of Integrated Language and Literacy Skills; and assessed oral and written language using the Emerging Literacy and Language Assessment. For OT, Ms. Wing assessed motor competency using the M-Fun; physical, adaptive behavior, social-emotional, cognitive, and communication skills using the DP3; the relationship between ██████ perceptual and motor skills using the VMI; and sensory processing using the SP2. These identified evaluators used accepted technically sound instruments, or approaches, in the evaluators' respective fields. 34 C.F.R. § 300.304(b)(3). Also, each independent evaluator was trained and knowledgeable in her respective field. 34 C.F.R. § 300.304(c)(1)(iv). Finally, each evaluator administered assessments in the form most likely to yield accurate information about what ██████ knows and can do academically, developmentally, and functionally, and the tests were administered in accordance with the instructions of the test manufacturer. 34 C.F.R. § 300.304(c)(1)(ii), (v).

31.

As ██████ has impaired sensory, manual, and speaking skills, it was necessary that the assessments reflect ██████ abilities and not her impairments, 34 C.F.R. § 300.304(c)(3). Each independent evaluator took steps to ensure the accuracy and validity of the assessment results in their respective area. Although ██████ struggled with inattention during testing, steps were taken to manage ██████ attention medically, by referring her to be evaluated by her pediatrician to

determine if medication for ADHD should be prescribed, and also behaviorally by taking steps to regain ██████'s attention and by conducting assessments over multiple sessions.

32.

Based on the foregoing, the Court concludes that the Petitioners' evaluations were appropriate and complied with the requirements of 34 C.F.R. § 300.304. In this matter, CCSD approved Petitioners' request for the requested IEEs covering psychoeducational, Speech-Language, OT, and AT so long as the evaluations met CCSD's criteria or unique circumstances were shown to support a waiver of the criteria. Petitioners have not shown unique circumstances that would warrant non-compliance with CCSD's criteria for IEE, with the exception of the AT evaluation. Petitioners have established that they do not have a meaningful opportunity to obtain an AT evaluation given the maximum fee constraint of \$500. Accordingly, as to the AT evaluation, Petitioners must act in good faith in choosing an evaluator to propose to CCSD who will, in turn, work in good faith to enter into an agreement with the AT evaluator to conduct the evaluation during the 2019 Fall Semester. However, the cost of the AT evaluation shall not exceed \$1,000. As to each of the IEEs already obtained (psychoeducational, Speech Language and OT),²⁷ in addition to paying the cost of the evaluation up to the maximum fee set by CCSD policy, CCSD shall also cover the cost of one feedback session (not to exceed 3 hours at the evaluator's hourly rate), which can be conducted during an IEP team meeting.

²⁷ The Court has not included the instructional consultation conducted by Dr. Ward because CCSD did not conduct an instructional evaluation subject to parental disagreement. Additionally, Dr. Ward's consultation did not address known or suspected areas of need that CCSD failed to address in their evaluations. Stated another way, although parents have a right to an IEE at public expense if they disagree with an evaluation conducted by the school, there was no evaluation to disagree with in this circumstance. Nonetheless, CCSD should work cooperatively with Petitioners to allow Dr. Ward to complete an observation in the school setting if still sought by the parents.

Procedural Violations

33.

A procedural defect must be more than *de minimus* to require relief. To determine whether a procedural violation constitutes a denial of FAPE, courts identify the “harm” flowing from the violation. Doe v. Alabama State Dept. of Educ., 915 F.2d 651, 660-62 (11th Cir. 1990); see also Burke County Bd. Of Educ. v. Denton, 895 F.2d 973, 982 (4th Cir. 1990) (Procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents opportunity to participate in the IEP formulation process clearly result in the denial of FAPE). Given that “most of the procedural requirements are designed to insure [sic] both full parental participation and thorough analysis of the various educational approaches available to meet the unique educational needs of the handicapped student, procedural violations will most often have a harmful effect.” Doe, 915 F.2d at 661, n. 9; Spielberg v. Henrico Cnty. Pub. Schools, 853 F.2d 256, 259.

34.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies –

- (i) Impeded the child’s right to a FAPE;
- (ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
- (iii) Caused a deprivation of educational benefit[s].

34 C.F.R. § 300.513(a)(2); see also 20 U.S.C. § 1415(f)(3)(E)(ii).

35.

Based on the record, the Court concludes that Petitioners have not shown that CCSD committed a procedural violation as it relates to conducting a re-evaluation, providing PWN, determining eligibility, or developing the IEP.

MID

36.

Intellectual Disability (ID) means “significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior, [that is] manifested during the developmental period, [and] that adversely affects a child’s educational performance.” 34 C.F.R. § 300.8(c)(6).

37.

A child with an ID may be classified as having mild, moderate, severe or profound intellectual disability. Ga. Comp. R. & Regs. 160-4-7-.05 App’x (e) at (a). Mild ID, or MID, is defined as “[i]ntellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and . . . [d]eficits in adaptive behavior that significantly limit a child’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual’s age level and cultural group, as determined by clinical judgment.” Id. at (d).

38.

The IEP Team reasonably determined, based on the information known at the time of the May 2018 meetings, that █████ met the eligibility criteria for MID under IDEA. In fact, even Dr. Murphy’s calculation of █████’s IQ indicates that she could meet MID eligibility criteria, in part, because her IQ is “approximately 70.” However, after careful review, the Court concludes that

Dr. Murphy's determination that [REDACTED] demonstrates borderline intellectual functioning, not a mild intellectual disability, is credible and supported by the evidence. The Court further concludes that Ms. Snell's evaluation is an anomaly and not an accurate reflection of [REDACTED] abilities or intelligence. Moreover, when the IEP team reconvenes within a reasonable time following issuance of this decision, but no later than August 31, 2019, the team should discuss and consider Dr. Murphy's recommendations regarding addressing [REDACTED] diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

Georgia Alternate Assessment

39.

Whether a student participates in an alternate assessment is an IEP team decision. Letter to Anonymous, 54 IDELR 172 (OSEP 2009). IDEA requires that if the IEP team determines that a student "must take an alternate assessment," then the IEP must include "a statement of why— [t]he [student] cannot participate in the regular assessment; and [t]he particular alternate assessment selected is appropriate for the [student]. 34 C.F.R. § 300.320(a)(6)(ii).

40.

[REDACTED] IEP states that the consensus of the IEP team is that [REDACTED] cannot show what she knows on a general assessment using accommodations. It also states that the consensus of the IEP team is that [REDACTED] has a significant intellectual disability or a combination of intellectual disabilities with motor, sensory, or emotional behavior disabilities. It further states that the consensus of the IEP team is that [REDACTED] requires substantial adaptations and support to access the general educational curriculum. Finally, the IEP states that the consensus of the IEP team is that [REDACTED] requires instruction focused on the application of state standards through relevant life skills.

The aforementioned consensus reached by the team is not supported by the evidence. Petitioners established that [REDACTED] did not meet the criteria to take the Georgia Alternate Assessment (GAA) in lieu of Milestones. Respondent's "Participation Flowchart" required the IEP team to consider whether [REDACTED] could show what she knows on a general assessment using accommodations, and whether her disability presents unique and significant challenges to participation in statewide assessments regardless of available accommodations. During the May 2018 IEP meetings, there was no substantive discussion of what accommodations [REDACTED] needed or could be offered, or whether such accommodations would allow [REDACTED] meaningful access to take the Milestones as opposed to the GAA. Moreover, according to [REDACTED] teachers, [REDACTED] can show what she knows through assessments depending on how she is assessed. One repeated concern as to why [REDACTED] cannot demonstrate what she knows is that she has a tendency to choose the same letter when presented with a multiple choice assessment. When this concern was raised, the IEP team should have engaged in a thorough discussion of what accommodations could be provided so [REDACTED] could show what she knows on the Milestones Assessment. Instead of a thorough discussion, the CCSD staff only considered whether accommodating [REDACTED] by reading the questions to her would allow her to show what she knows and determined that such accommodation would be insufficient. However, given that [REDACTED] can demonstrate her knowledge depending on the form of the assessment, it appears that [REDACTED] can be provided accommodations to allow her to do so. According to the participation flowchart, if the student is able to show what they know on an assessment with accommodations, they should be permitted to participate in the Milestones Assessment. Thus, in May 2018, the IEP Team should have reached the conclusion that [REDACTED] could participate in Milestones. However, this is a procedural

violation that did not result in harm because [REDACTED] parents' intention was to waive her participation in the assessment regardless of whether her IEP provided for the GAA or Milestones.

MID Self-Contained Placement at Lewis is not the LRE

42.

IDEA requires school districts to ensure –

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ga. Comp. R. & Regs. 160-4-7-.07(1) .

43.

Every student must be placed in the Least Restrictive Environment (LRE) appropriate to his or her individual needs and abilities. Greer v. Rome City Sch. Dist., 950 F.2d 688, 692 (11th Cir. 1991), opinion withdrawn by and remanded by 956 F.2d 1025 (11th Cir. 1992), and opinion reinstated in part, 967 F.2d 470 (11th Cir. 1992). The student's placement must conform to the LRE requirements found in 34 C.F.R. §§ 300.114-300.118. 34 C.F.R. § 300.116(a)(2).

To this end, school districts must provide a “continuum of alternative placements” to meet the special education needs of students, and these options must include provisions for supplementary aids, services and supports in the general education setting. 34 C.F.R. § 300.115(b); Ga. Comp. R. & Regs. 160-4-7-.07(3). “To determine a particular child’s place on this continuum, the desirability of mainstreaming must be weighed in concert with the Act’s mandate for educational improvement.” Roland M. v. Concord Sch. Comm., 910 F.2d 983, 993 (1st Cir. 1990) (School’s proposed IEP appropriate where it called for both self-contained classrooms and regular classrooms, allowing for increased mainstreaming in social studies and science where he had attained an acceptable level of performance). However, “a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming.” Id. quoting Roncker v. Walter, 700 F.2d at 1063. Conversely, if a school “determines that the handicapped child will make significantly more progress in a self-contained special education environment and that education in a regular classroom may cause the child to fall behind his or her handicapped peers who are being educated in the self-contained environment, mainstreaming may not be appropriate.” Greer, 950 F.2d at 697. Ultimately, schools districts must aim to minimize the restrictiveness of the student’s environment while also considering the educational benefits available in that environment, “seek[ing] an *optimal* result across the two requirements.” T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist. 752 F.3d 145 (2nd Cir. 2014) quoting M.W. v. New York City Dep’t of Educ. 725 F.3d 131 (2nd Cir. 2013)

45.

Education benefits are not limited to academic achievement. In *Cobb Cnty. Sch. Dist.*, the Court stated:

[A]cademic achievement is not the only purpose of mainstreaming. Integrating a handicapped child into a nonhandicapped environment may be beneficial in and of itself. Accordingly, a determination by the school district that a handicapped child will make academic progress more quickly in a self-contained special education environment may not justify educating the child in that environment if the child would receive considerable non-academic benefit, such as language or role modeling, from association with his or her non-handicapped peers.

Cobb Cnty. Sch. Dist., 112 LRP 43250 at *22 (Ga. SEA May 25, 2012) (quoting *Greer*, 950 F.2d at 697) (finding that, while placement in a self-contained classroom may have enabled the student to progress more quickly, he was making progress in the regular classroom).

46.

The district must ensure that placement is determined annually, “based on the child’s IEP,” and “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b). “Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.” 34 C.F.R. § 300.116(c).

47.

Consideration must be given “to any potential harmful effect on the child or on the quality of services that he or she needs.” 34 C.F.R. § 300.116(d); Ga. Comp. R. & Regs. r. 160-4-7-.07(2)(d). “A child with a disability [should] not [be] removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” 34 C.F.R. § 300.116(e); Ga. Comp. R. & Regs. r. 160-4-7-.07(2)(e).

48.

The district must ensure that the placement decision is made by a group that includes the parents. 34 C.F.R. § 300.116(a)(1). It is during the IEP process “that school officials should consider the full range of supplemental aids and services that may be provided in conjunction with regular classroom education, and they should share these considerations with the child’s parents at the IEP meeting. It is not sufficient that school officials determine what they believe to be the appropriate placement for a handicapped child and then attempt to justify this placement only after the proposed IEP is challenged by the child’s parents.” Greer, 950 F.2d at 696.

49.

The Eleventh Circuit, after addressing FAPE in Greer, adopted a two-part inquiry to determine whether placement complies with the LRE requirements: (1) “whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily,” and (2) if it cannot, “whether the school has mainstreamed the child to the maximum extent appropriate.” Greer, 950 F.2d at 696 (citing Daniel R.R. v. State Bd. Of Educ., 874 F.2d 1036, 1045 (5th Cir. 1985)). If the student meets the standard in the first prong, that ends the inquiry. Id., 950 F.2d at 698. The court in Greer found an LRE violation where there was “no indication that, in developing the IEP and [the student’s] proposed placement, the school district considered the option of [the student] remaining in a regular education class with supplemental services such as a resource room, itinerant instruction . . . , or curriculum adjustment.” Id., 950 F.2d at 692.

50.

To resolve the first prong of the Greer test, the Court asks whether the district took steps during the IEP process to accommodate ██████ in the regular classroom. Id., at 697.

[B]efore the school district may conclude that a handicapped child should be educated outside the regular classroom, it must consider whether supplemental aids and services would permit satisfactory education in the regular classroom. The school district must consider the whole range of supplemental aids and services, including resource rooms and itinerant instruction, for which it is obligated under the Act and the regulations promulgated thereunder to make provision.

Greer, 950 F.2d at 696; 34 C.F.R. § 300.114(a)(2); Ga. Comp. R. & Regs. 160-4-7-.07(2), (3).

51.

In order to determine whether education in the regular classroom may be achieved satisfactorily, the district may consider several factors including the effect of ██████ presence on the education of other students in the regular classroom, and “the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the handicapped child in a regular classroom.” Greer, 950 F.2d at 697.

52.

On the LRE inquiry, the Court first assesses whether ██████ can be educated satisfactorily in the general education classroom with the use of supplemental aids and services. In this matter, it has been shown that ██████ consistently mastered and/or progressed on her goals and objectives throughout second grade in her co-taught placement and that CCSD determined to move her from that placement to the MID class despite her progress. Further, CCSD staff at the May 2018 IEP meetings did not thoroughly consider accommodations and modifications; supportive aids; or services that could be provided to allow ██████ continued placement in the co-taught classes or, alternatively, in the IRR small group classroom at Ford Elementary. In this matter, ██████ has

gained significant educational value by being exposed to grade level standards even though she is not able to meet such standards in math, reading, and language arts. *Compare S.M. v. Gwinnett Cty. Sch. Dist.*, 646 F.App'x 763 (11th Cir. 2016) (change in placement appropriate when it is unlikely the student will gain any additional benefit in a regular education classroom for math, reading, and writing because the student's deficits were such that the curriculum would need to be modified beyond recognition). CCSD asserts, in part, that [REDACTED] requires a class within a class because of the amount of time her teachers had to work with her one on one. However, according to her teacher, most of the time that [REDACTED] teachers had to work with her one on one was following her return from SL therapy or OT therapy in order to catch her up to her classmates since she missed part of the lesson and only occasionally did her teachers have to work with her separately because she did not understand a particular topic that her small group was working on.

53.

Additionally, CCSD staff at the May 2018 IEP meetings did not thoroughly consider or weigh the educational benefits to [REDACTED] staying in the co-taught class, which included access to peer models that supported development of her language, behavior, and social skills. Nor did the CCSD staff thoroughly consider the potential harm to [REDACTED] in being removed from her current placement in her home school such as the removal of access to her peers with whom she has developed relationships and who serve as social role models, as well as her siblings who attend the same school.

54.

Furthermore, CCSD admitted that [REDACTED] is not disruptive to others, her behavior was not a factor in the placement decision, and that cost was not a factor in the decision, thus eliminating

these Greer factors. Additionally, the record does not indicate that [REDACTED] has negatively affected the education of other students in the regular classroom in any way. Daniel R.R., 874 F.2d at 1049.

55.

CCSD's determination to require a more restrictive placement on the basis that [REDACTED] did not master grade level general education standards is based on an incorrect standard and violates the LRE requirements. IDEA does not require [REDACTED] to master state standards to remain in the general education classroom. Instead, the inquiry is whether she, with appropriate aids and services, can achieve satisfactory progress on her goals and objectives in the general education classroom. See L.H. v. Hamilton Cty. Dep't. of Ed. 900 F.3d 779, 792-93 (6th Cir. 2018). Moreover, it is not clear from the record how the MID placement, which would expose [REDACTED] to fewer standards, would assist her in meeting grade level standards rather than cause her to fall further behind her peers.

56.

[REDACTED] is, and has been, able to progress on goals and objectives while accessing the general education curriculum in her co-taught and small group IRR placement at Ford Elementary with accommodations and modifications. Although the MID self-contained classroom at Lewis Elementary may provide [REDACTED] the opportunity to focus on fewer standards and provide more repetition of those standards, it does not provide her an appropriately ambitious educational program.

57.

Based on the record, [REDACTED] placement in May 2018 should not have been changed to the more restrictive MID self-contained classroom at another school solely to provide her an

opportunity to work on fewer standards so that she could master those few, rather than allowing her to continue to achieve satisfactory progress in a less restrictive environment that exposed her to more grade level standards. In Cobb Cnty. Bd. Of Educ. v Jennifer K., the Court found:

An LEA is not required to provide a student with the “best education” possible. Rather, it only has to provide the student with an appropriate education. Board of Educ. v. Rowley, 458 U.S. 176 (1982). Conversely, if a student is making progress in a regular classroom, even if the student is at the bottom of the class, the student should not be required to attend another program that may provide better education services. Thus, if a school does not have to provide the best education possible, then a parent should not have to agree to the best education, or a better educational program, if the student is making some progress in a regular educational program.

Cobb Cnty. Bd. Of Educ. v Jennifer K., 401 IDELR 338 at *3-4 (Ga. SEA May 16, 1989).

58.

The Court concludes that the reasons given for moving ██████ to a more restrictive placement do not support the change in placement. First, removal from the general education setting because modifications are needed is prohibited by 34 C.F.R. § 300.116(e) and Ga. Comp. R. & Regs. r. 160-4-7-.07(2)(e). Additionally, the frequency of transitions, and the number of teachers who work with ██████ is entirely within the control of CCSD who sets ██████ schedule. Also, ██████ has shown that she can achieve satisfactory progress in an IRR small group placement at Ford Elementary School for math, reading, and language arts with appropriate supports and services. This placement, though still a small group setting, is a less restrictive environment than the placement offered by CCSD, in part, because it exposes her to students who are accessing more grade level standards. Thus, the change in placement to a self-contained MID classroom is not the LRE. Instead, ██████ should be placed in an IRR classroom at Ford Elementary school for math, reading and language arts.

Parent Participation and Pre-Determination

59.

Parents have procedural and substantive rights to participate in IEP and placement decisions, and the failure to provide meaningful parent participation may result in a denial of FAPE. See 34 C.F.R. §§ 300.513(a)(2)(ii) and 300.322. Parent participation “must be more than a mere form; it must be meaningful.” Deal v. Hamilton Cnty. Bd. Of Educ., 392 F.3d 840, 858 (6th Cir. 2004) (citing W.G. v. Bd. Of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1485 (9th Cir. 1992)); see also Ms. C. ex rel. N.L. v. Knox Cty. Sch., 315 F.3d 688, 694-95 (6th Cir. 2003) (school officials must be willing to listen to parents with open minds). Simply because parents attend an IEP team meeting and have an opportunity to speak does not alone constitute adequate participation. R.L., 757 F.3d at 1188; Deal, 392 F.3d at 858. The “concerns parents have for ‘enhancing the education for their child’ must be considered by the team.” Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 524 (2007)(quoting 20 U.S.C. § 1414(d)(3)(A)(ii)). However, the right to participate in the development of a student’s educational programming does not equate to a right to dictate an outcome. Chatham Cnty. Sch. Dist. 51 IDELR 294 (GA SEA 2008) (quoting Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657 (8th Cir. 1999).

60.

Pre-formed opinions by school districts “must not obstruct the parents’ participation in the planning process.” R.L., 757 F.3d at 1188; Deal, 392 F.3d at 858 (the finding of predetermination was “bolstered by evidence that the School System steadfastly refused even to discuss the possibility of providing an ABA program, even in the face of impressive results”). “Predetermination occurs when the state makes educational decisions too early in the planning

process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.” R.L., 757 F.3d at 1188; Deal, 392 F.3d at 858 (8th Cir. 2004)(“the School System had an unofficial policy of refusing to provide one-to-one ABA programs and that School System personnel thus did not have open minds and were not willing to consider the provision of such a program); Spielberg v. Henrico Cnty. Pub. Schools, 853 F.2d 256, 259 (4th Cir. 1988), cert. denied, 489 U.S. 1016 (decision to place child at particular facility without first developing IEP violated procedural requirements of IDEA.) J.A. v. Smith Cnty. Sch. Dist., Civ. Act. No. 2:18-CV-00043 (M.D. Tenn. Dec. 20, 2018) (finding predetermination where district rejected parent’s request for a 1:1 aide to support a preschooler with Down Syndrome in his general education placement, instead requiring removal to a more restrictive placement based on behaviors without functional behavior assessment or behavior intervention plan or considering supports in current placement).

61.

The prohibition on predetermination arises out of 34 C.F.R. § 300.116(b)(2)’s requirement that placement be based on the IEP. R.L. 757 F.3d at 1188. “[T]he state cannot come into an IEP meeting with closed minds, having already decided material aspects of the child’s educational program without parental input.” Id. However, coming to a meeting with a proposed placement does not constitute predetermination so long as the state has an open mind and allows meaningful parental participation in the IEP process. To avoid a finding of predetermination the district must show it was “‘receptive and responsive at all stages’ to the parents’ position, even if it was ultimately rejected.” Id.; Deal, 392 F.3d at 858 (citing Doyle v. Arlington Cty. Sch. Bd., 806 F. Supp. 1253, 1262 (E.D. Va. 1992)). These responses should

“make it clear that the state had an open mind about and actually considered the parents’ points.”
R.L. at 1188-89 (citing N.L. v. Knox Cnty Schs., 315 F.3d 688, 695 (6th Cir. 2003)).

62.

The Court concludes that [REDACTED] parents were able to meaningfully participate in the May 2018, IEP meetings.²⁸ Throughout the school year, CCSD provided [REDACTED] parents progress reports and report cards so they were up-to-date and informed about [REDACTED] education. Also, prior to the meetings, CCSD sent a draft eligibility report and a draft IEP home to the parents to allow them an opportunity to review the documents prior to the meetings. Additionally, prior to the meetings, Ms. Kappel suggested [REDACTED] parents visit the classroom settings that could potentially be discussed at the meeting so [REDACTED] parents would have seen any potential option and been able to ask questions or raise concerns, as they in fact did. The Court further concludes that, at the time of the May 2018 IEP meetings, there was a genuine misunderstanding regarding the parents’ concerns and that CCSD reasonably believed that the parents’ concerns were solely related to the location of the class being at Lewis Elementary School rather than a concern that the placement, regardless of location, was not sufficiently inclusive.²⁹ In addition to concerns regarding the inclusiveness of the placement and regression that [REDACTED] might experience being with students who may not be at her level, [REDACTED] parents were also concerned with the

²⁸ This is true even though Ms. Ferguson and Ms. Merrill embedded their assessment scores in the Eligibility Report without explanations, conclusions, or recommendations, and Ms. Moroney provided no report for the KTEA-3. Instead, the scores from the KTEA-3 were included only as “background history” in Ms. Snell’s report. “Evaluation report” is not defined as including specific information or being formatted in a particular way. Accordingly, CCSD did not violate the letter of the law. Moreover, CCSD staff were present at the meeting to explain the information provided, answer any questions, and respond to any concerns.

²⁹ During the May 21, 2018 meeting, the District staff sought to clarify the parents’ objection to the MID small group as an objection to the location at Lewis Elementary School or whether it was the MID classroom itself, regardless of the location where the class would be held. [REDACTED] responded, “we can just agree to disagree and move forward.” When the District staff tried again to clarify, [REDACTED] replied, “I think we’re going to decline to answer that.” (Tr. 281, 1669, 1934; P-126; P-127).

location of the placement at Lewis Elementary School based on the experiences of other families who had a child attend the same placement.

63.

After the parents raised their concerns regarding the change in placement, the IEP team should have, but failed to, discuss whether [REDACTED] could be successful in either the IRR class or co-taught class with appropriate supports. Instead, CCSD staff focused on their determination that [REDACTED] required slow pacing and repetition and exposure to fewer standards rather than considering whether supports could allow [REDACTED] to continue to be exposed to more standards and continue to achieve satisfactory progress as she had from kindergarten through second grade.

64.

Despite the misunderstanding and lack of a thorough discussion regarding the parental concerns that CCSD misunderstood to be regarding location only, the Court concludes that CCSD did not violate the prohibitions against predetermination and finds that the parents had meaningful participation. CCSD did not come to the meeting with closed minds with a predetermination of placement.

Prior Written Notice

65.

IDEA includes parental rights of Prior Written Notice (PWN) “whenever the . . . agency proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education.” 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a). This notice must include, in pertinent part:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

...

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. § 300.503(b); 20 U.S.C. § 1415(c)(1). See Schaffer, 546 U.S. at 53 (parents have same rights as schools to information). In the "Parental Rights" required by 20 U.S.C. § 1415(d)(1), CCSD "informed" the parents of the right to "(4) Have the notice . . . describe the options considered by the school system, and explain why those other options were rejected. (5) Be notified of each evaluation procedure, test, assessment, record, or report the school system has used as a basis for . . . refusal," and "(6) A description of any other factors which are relevant to the agency's . . . basis for refusal." P3 [REDACTED] 133.

66.

IDEA also requires a second, separate, pre-trial notice after the complaint is filed if the "LEA has not sent a prior written notice under 300.503." 34 C.F.R. § 300.508(e).

67.

Thus, IDEA requires districts "to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision." Schaffer, 546 U.S. at 61.

68.

In this matter, as set forth in the Findings of Fact above, CCSD met its obligation in regard to PWN.

Relief

69.

This Court has equitable authority to award appropriate relief. 20 U.S.C. § 1415(i)(2)(C); Burlington Sch. Com. V Commonwealth of Mass., 471 U.S. 359 (1985). Parents may contest the placement and/or FAPE offered by providing a private placement and seeking public reimbursement if the LEA “had not made FAPE available to the child in a timely manner . . .” 34 C.F.R. § 300.148 . The Court may correct the placement recommendation and the IEP; determine eligibility; order a new IEP under certain conditions; and afford reimbursement for services, evaluations, or compensatory instruction. See Burlington; Florence Cnty. Sch. Dist. v. Carter, 510 U.S. 7 (1993). The Eleventh Circuit summarized IDEA relief:

The Act directs the district court to base its decision on a preponderance of the evidence and to “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). “This Circuit has held compensatory education appropriate relief where responsible authorities have failed to provide handicapped student with an appropriate education as required by [the Act].” Todd D. ex. rel. Robert D. v. Andrews, 933 F.2d 1576, 1584 (11th Cir. 1991) (citing Jefferson Cnty. Bd. Of Educ. v. Breen, 853 F.2d 853, 857 (11th Cir. 1988)). Compensatory education provides services “prospectively to compensate for a past deficient program.” G. ex rel. RG v. Fort Bragg Dependent Sch., 343 F.3d 295, 308 (4th Cir. 2003).

AISS v. Draper, 518 F.3d 1275, , at 2 (11th Cir. 2008). The Circuit further explained:

The Act requires “appropriate” relief, and “the only possible interpretation is that the relief is to be ‘appropriate’ in light of the purpose of the Act.” Burlington, 471 U.S. at 369, 105 S.Ct. at 2002. “[E]quitable considerations are relevant in fashioning relief,’ and the court enjoys ‘broad discretion’ in so doing. *Id.* at 369, 105 S.Ct. at 2002.” Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 16, 114 S.Ct. 361, 366, 126 L. Ed. 2d 284 (1993). “This Circuit has held compensatory education appropriate relief where responsible authorities have

failed to provide a handicapped student with an appropriate education as required by [the Act].” Andrews, 933 F.2d at 1584 (citing Breen, 853 F.2d at 857).

Id.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the court concludes that Petitioners have met their burden as to certain claims and failed to meet their burden as to other claims. Accordingly, Petitioners’ request for relief is **GRANTED, in part**, and the undersigned **ORDERS** the following:

- (a) [REDACTED] placement for math, reading, and language arts will be small group as agreed upon by the IEP team, but shall be in the IRR classroom at Ford Elementary School instead of the more restrictive MID classroom at Lewis Elementary School;
- (b) [REDACTED] shall have the opportunity to participate in the Milestones statewide assessment instead of the Georgia Alternate Assessment, if her parents do not waive her participation;
- (c) [REDACTED] shall receive an increase in direct SL therapy to address all delayed areas of communication (such as articulating clearly during conversation, telling narratives about daily events and academic material, and answering questions). SL services shall be provided 60 minutes per week through one-on-one SL therapy, 60 minutes per week through small group SL therapy, and 60 minutes per month of SLP consultation with the classroom teacher;
- (d) OT services shall be provided in the school setting two times a week for 45 minute sessions each to address the foundational skills of reflex, integration, vestibular processing, muscle tone, balance, motor planning, and fine motor control, as well as to improve visual perceptual skills, self-confidence, and social participation. The

sessions should include activities in small group, 1:1, and in the regular classroom. Additionally, the OT provider should consult with the classroom teacher on a monthly basis (30 minutes monthly consultation);

- (e) The parties shall work cooperatively to have an AT evaluation completed during the 2019 Fall Semester at public expense, not to exceed \$1,000; and
- (f) CCSD shall reimburse Petitioners the cost of the psychoeducational, Speech Language, and OT evaluations already completed up to the maximum fee set by CCSD policy. In addition to paying the cost of the evaluation up to the maximum fee set by CCSD policy, CCSD shall also cover the cost of one feedback session (not to exceed 3 hours at the evaluator's hourly rate), which can be conducted during an IEP team meeting.

SO ORDERED, this 3rd day of July, 2019.



Ana P. Kennedy
Administrative Law Judge