



IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS FEB 1 2012
STATE OF GEORGIA

Kevin Westray, Legal Assistant

██████ by and through his guardian and next
friend, █████ █████ and █████

Plaintiffs,

v.

FULTON COUNTY SCHOOL DISTRICT,

Defendant.

Docket No.:
OSAH-DOE-SE-1135718-60-Schroer

FINAL DECISION

I. INTRODUCTION

On June 16, 2011, Plaintiff █████ █████¹ through his parents, Doug and Lisa █████ filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The due process hearing was held before the undersigned Administrative Law Judge of the Office of State Administrative Hearings (“OSAH”), on November 7, 8, 9, 10, 14, and 16, 2011. Chris E. Vance, Esq. and Matthew H. Patton, Esq. represented Plaintiffs and Todd Hatcher, Esq. and Neeru Gupta, Esq. represented Defendant Fulton County School District. The record remained open until December 27, 2011, in order for the parties to review the transcript and file post-hearing briefs. The deadline for the issuance of this decision was extended pursuant to 34 C.F.R. § 300.515(c) and OSAH Rule 616-1-2-.21.

After careful consideration of the evidence and the arguments of the parties, the Court finds that Defendant violated Plaintiffs’ right to a free and appropriate public education and that Plaintiffs are entitled to relief as set forth below.

¹ █████ mother is █████ legal guardian and granted permission to identify him by name in this proceeding.

II. FINDINGS OF FACT

1.

██████████ was born in December ██████████ and is ██████████ years old. He lives in Alpharetta, Georgia, with his two siblings and his parents, ██████████ a pediatric oncologist, and ██████████ a homemaker and former pediatric nurse. ██████████ was born with hydrocephalus, a mid-brain abnormality that prevents spinal fluid from draining away from the brain. He also has cerebral palsy, a history of seizures, and is significantly developmentally delayed. On his most recent psycho-educational evaluation in 2010, ██████████ earned a full-scale IQ score of 40. (Plaintiffs' Exhibit Book 1, Tab 1, at p. 2,² Ex. P-7, at 397; Ex. P-14; at 467-68; Ex. D-20; Tr. 465-66)

2.

From February 1996 through May 2011, ██████████ attended school in the Fulton County School District ("School District") and was eligible for special education services. During this time period, while he was attending Hopewell Middle School

² Plaintiffs tendered exhibits in four tabbed binders, identified as Plaintiffs' Document Books 1 through 4. Almost each page is Bates-stamped and Books 1 through 3 are also tabbed by Exhibit number. (Book 4 does not have tabs for all the exhibits, but the pages are Bates-numbered, with the exception of Plaintiffs' Exhibits J through N.) Hereinafter, Plaintiffs' exhibits will be cited with reference to the exhibit tab number or letter, and, if available and relevant, the Bates-page number, such as "Ex. P-[Tab # or letter], at [Bates-page #]." Defendant's Exhibits, which were tendered in two tabbed binders and were not Bates-stamped, will be cited as "Ex. D-[Tab #]." While reviewing the record, the Court discovered pages within Plaintiffs' Exhibit 15 relating to a child, P.K., who was not mentioned in connection with any of the issues relating to this proceeding. These pages, which were Bates-stamped 596 through 610, appear to be unrelated to this case. Accordingly, they have been removed from the record and have been mailed, under seal, to Plaintiffs' counsel. Finally, the Court notes for the record that Plaintiffs' Exhibit P-5 contains numerous comments and markings written in pencil. It is unclear who made such markings and the Court has not considered them.

("Hopewell") during the 2006-2007 school year, [REDACTED] was severely mistreated and abused by his classroom teacher. Although the School District knew of the abuse, it did not disclose the abuse to [REDACTED] parents. Mrs. [REDACTED] learned of the abuse from another parent in July 2009, shortly before [REDACTED] entered Roswell High School. (Ex. P-14, at 468; Ex. P-15; Tr. 494)

3.

In the two years that followed, [REDACTED] parents attempted to discover the nature and extent of the abuse, particularly after [REDACTED] demeanor, functional skills, and behavior began to deteriorate, and he was diagnosed with Post-Traumatic Stress Disorder. In the summer of 2011, frustrated by what they considered the School District's intentional cover-up of the abuse, [REDACTED] parents filed a due process hearing request, and [REDACTED] has remained at home since that time, receiving limited occupational therapy and physical therapy services from private providers. [REDACTED] parents seek compensatory education and related services for [REDACTED] to be provided in his home and community over the next eight to ten years. They will not allow [REDACTED] to be educated by the School District any longer and do not want him to be placed in any other traditional school setting that might remind him of the past abuse. (Ex. P-7, at 397; Ex. P-9; Tr. 481, 487, 513-14, 548-49, 701, 707-09)

A. Overview of [REDACTED] Medical Conditions

4.

[REDACTED] was diagnosed in utero with hydrocephalus. Shortly after he was born, a shunt was inserted into [REDACTED] brain to drain spinal fluid and a second shunt was inserted when he was in elementary school. Throughout his early years, [REDACTED] had intermittent

seizures, particularly when he was ill and had a fever. Over time and after being prescribed Keppra, a seizure medication, [REDACTED] seizures stopped and he has had only one, five-minute seizure in the past nine years. (Ex. P-7, at 397; Ex. P-14, at 476; Tr. 465-67, 559, 599, 607-08)

5.

[REDACTED] also has cerebral palsy, with right-side hemiparesis or muscle weakness. [REDACTED] right hand is often fisted or tightened, and he resists straightening his fingers. In addition to impeding his fine motor skills, cerebral palsy also affects [REDACTED] ability to walk. [REDACTED] did not walk until age nine and used a walker to ambulate through much of his early school years. However, by 2005, his last year in elementary school, [REDACTED] was walking independently at school and did not need or want to use a walker.³ Currently, [REDACTED] walks independently, with a rotating, side-to-side gait. (Ex. P-14, at 468; Ex. P-15, at 526-30, 572, 632, 682, 926; Ex. P-16, at 1164-66; Ex. P-20, at 1770; Ex. D-1; Tr. 431)

B. [REDACTED] Education in the Fulton County School District

1. Barnwell Elementary and Esther Johnson Elementary

6.

In June 1995, [REDACTED] enrolled in the Adaptive Learning Center (“ALC”), a private, therapeutic preschool that offered occupational therapy (“OT”), physical therapy (“PT”), and speech therapy (“ST”), along with other special programming. In February 1996, [REDACTED] began attending a public, special needs preschool at Barnwell Elementary School in

³ [REDACTED] records also indicate that he has been diagnosed with other medical conditions, including spina bifida with Arnold Chiari malformation, Agenesis of the Corpus Callosum, and strabismus. *See, e.g.*, Ex. P-14, at 468; Ex. P-16, at 1164, 1208, 1210; Ex. D-7. Neither party provided any evidence about these conditions. The Court therefore makes no findings with respect to these conditions.

the School District, alternating days with ALC. Early evaluations conducted by the School District showed that [REDACTED] had significant developmental delays in the areas of personal social skills, adaptive behavior, motor skills and cognitive development. At age three, [REDACTED] demonstrated age-equivalent skills in the five to fourteen month range, with scores in the first percentile for his age in speech and language skills. At Barnwell, [REDACTED] used a walker to ambulate and sat in a Rifton chair⁴ to encourage proper body positioning. (Ex. P-14; Ex. P16, at 1113; Ex. D-1; Ex. D-2; Ex. D-25; Ex. D-27)

7.

After attending the special needs preschool at Barnwell, [REDACTED] began first grade⁵ at Esther Jackson Elementary School during the 1998-1999 school year. [REDACTED] school records indicate that he was very resistant to following his teacher's directions during this time and was stubborn and uncooperative when asked to complete non-preferred tasks or activities. [REDACTED] Individual Education Program ("IEP") from April 1999 reported that [REDACTED] would bite his hands and bang his head when he was angry or did not want to participate. In terms of daily living skills, [REDACTED] was not toilet-trained and would not use a fork to eat. However, [REDACTED] was becoming more interested in walking independently, and

⁴ A Rifton chair is a specially designed seating system that provides body support for students who have difficulty with posture or stability. It is adjustable and can be inclined backwards. A Rifton chair also has various straps or seatbelts, as well as a large tray or platform board that slides in over the lap, upon which a child can perform work or eat a meal. As noted *infra*, the tray, along with the straps, can also serve as a restraint, preventing a child from getting out of the Rifton chair. (Ex. P-29, at 2330; Tr. 960)

⁵ Most of the records indicate that this was [REDACTED] first grade year in school. However, some records refer to it as his kindergarten year and others indicate that he was retained in preschool and first grade. See, e.g., Ex. D-11. Overall, the Court found the IEP records to be somewhat confusing and inconsistent with respect to [REDACTED] "grade" in school from year to year. Henceforth, unless otherwise noted, the Court will refer only to the school year or [REDACTED] age, rather than his grade in school.

although he continued to use a walker, he now took a few steps without assistance. According to a psycho-educational evaluation conducted during this school year, [REDACTED] adaptive behaviors were in the moderately deficient to severely deficient ranges (less than .1 %), as were his intellectual abilities and daily living skills.⁶ His IEP team described his progress during this school year as “slow” and his gains as “small.” (Ex. D-7; Ex. D-28; Ex. D-29; Ex. P-15, at 502, 506, 526-28, 530)

2. Alpharetta Elementary School

a) **1999-2000 School Year**

8.

In August 1999, at age 6, [REDACTED] was transferred to Alpharetta Elementary School and placed in a self-contained special education classroom for students with moderate intellectual disabilities (“MOID classroom”). [REDACTED] remained at Alpharetta Elementary for the next seven years, during which time he received OT, PT, ST, and adaptive physical education (“P.E.”). During the 1999-2000 school year, [REDACTED] had hip surgery and, as a result, regressed in some areas, such as walking. However, he made some progress in speech language (using three-word sentences), daily living skills (scooping food with a fork and spoon), and motor skills (throwing a ball). His behavior continued to impede his progress during this year, with continued hand biting, head banging, and tantruming when asked to do work. (Ex. P-15, at 555-59, 568; Ex. D-8; Ex. D-30)

⁶ In the home, [REDACTED] language skills began to improve during this time, he began to use the toilet at home in “highly motivated situations, and his mother observed improvements in his behavior as well. (Ex. P-15, at 506, 537)

b) 2000-2001 School Year

9.

During the 2000-2001 school year, [REDACTED] was placed in an MOID classroom, with thirty minutes per day in regular education for assemblies, recess, and music. [REDACTED] became more independent this school year and was able to walk twenty-five feet in the hallway while holding onto a rail. He also made progress toward his speech language goals and was able to make requests and comment on a variety of activities and items. Although his negative behaviors, such as hand biting, spitting, and head banging were still present, [REDACTED] was described as “a happy child” at school, and his mother commented to the IEP team that he had made “excellent progress” during the year. (Ex. P-15, at 572-74, 589; Ex. D-32)

c) 2001-2002 School Year

10.

For the 2001-2002 school year, [REDACTED] was placed in an MOID classroom, but participated in general education for approximately forty-five minutes per day for lunch, recess, and music. [REDACTED] IEP reported that he made progress this school year, with gross motor skills and mobility being two of his greatest areas of improvement. [REDACTED] was able to cruise independently within his classroom and seldom wanted his walker, asking for it to be “folded up.” His expressive language also “blossomed” this year, and he was often able to participate in request and comment activities with three to five word utterances. [REDACTED] also learned to use a fork and spoon correctly and used a cup with a straw. However, he still did not use the bathroom at school during this time period. (Ex. P-15,

at 612-15, 617-23; Ex. D-14; Ex. D-31)

11.

█ behaviors during the 2001-2002 school year continued to impede his progress. In November 2001, shortly before █ ninth birthday, the School District conducted a psycho-educational reevaluation of █. During the first day of the evaluation, during which time █ sat in a Rifton chair, █ often tried to avoid the tasks asked of him. The evaluator, a school psychologist, made the following observations during the first day of the evaluation:

█ was primarily alert and responsive throughout the session. He did ask for the lights to be turned off and they were. After the lighting was lowered, █ seemed to comply with requests and perform a bit better.... When he was taken back to the classroom, he seemed tired and asked for a blanket. We laid him in a bean bag chair with a blanket which he asked to be put over his head. He sat contently for a while with the blanket over him. The examiner sat with him and frequently played peek-a-boo with him.... He laughed and enjoyed the game but wanted the blanket over his head as if his senses were overloaded.

On the second day of the evaluation, the school psychologist observed █ in his classroom working on a scissor-cutting activity with his teacher. He exhibited many non-compliant, avoidant behaviors, such as hand biting, drooling and spitting, squealing in a high pitched voice, and refusing to cut. The teacher and the psychologist were able to calm him down and coax him to finish the task and comply with the evaluation. (Ex. D-11)

12.

Overall, the assessments administered by the evaluator indicated that █ was functioning in the severely intellectually disabled range of intelligence, although the evaluator determined that this was a minimal estimate of his functioning due to his

physical limitations and interfering behavior. His adaptive behavior skills, which were rated by both his teacher and his mother, ranked in the less than .1 percentile and yielded an age score of thirty months. (Ex. D-11)

d) 2002-2003 School Year

13.

During the 2002-2003 school year, at age nine, [REDACTED] was placed in an MOID classroom, but was mainstreamed for music, lunch recess, circle time, and assemblies. [REDACTED] made progress on many of his goals during this year. For example, [REDACTED] was able to eat independently and assist in many self-help tasks, such as washing and drying his hands and pulling up and down his pants. He was also beginning to use the bathroom at school, although inconsistently. [REDACTED] walked in the hallways and around the school grounds without a walker, using a rail, teachers' hands, or the wheelchair of another student for stability. [REDACTED] parents attributed his gains this school year, particularly in language, to a change in his seizure medications. (Ex. P-15, at 635-647; Ex. D-33)

e) 2003-2004 School Year

14.

[REDACTED] continued to make progress during the 2003-2004 school year at Alpharetta Elementary. He was able to order food at a restaurant when the class went out into the community, and he could complete a two-step fine motor task. With sixty percent accuracy, [REDACTED] could match the letters of his last name and the numbers one through ten. [REDACTED] could walk ten meters without stopping and could throw a ball three meters. [REDACTED] also began to interact more with his peers during this year and his IEP team agreed that he should be included with more verbal children during the next school year. [REDACTED] still

required a behavior intervention plan to address his hand biting and head banging. (Ex. P-15, at 660-61, 668)

f) 2004-2005 School Year

15.

█████ made great gains in the 2004-2005 school year. For example, in the area of speech and language, █████ was able to express his wants and needs in complete sentences and able to answer yes/no questions with eighty percent accuracy. He was described by his IEP team as a social child, who could identify all the peers and staff in his class. █████ participated in turn-taking activities and initiated and engaged in play activities with his peers for fifteen to twenty minutes. █████ also began to use the bathroom at school this year and replaced his hand biting and head banging with verbal expressions. Finally, █████ was able to walk from the bus drop off to his classroom, walk independently for twenty-five meters on an outside track, and rise from a chair and walk around his classroom independently. (Ex. P-15, at 682-83, 701)

16.

At a March 2005 IEP meeting, █████ mother commented that she thought █████ progress this year was excellent, noting his increased mobility, language, and letter recognition. Mrs. █████ believed that █████ was motivated by his enjoyment of his teachers and was happy to go to school. (Ex. P-15, at 583)

g) 2005-2006 School Year

17.

█████ enjoyment of school and his progress toward his IEP goals continued during the 2005-2006 school year, his last at Alpharetta Elementary. In March 2006, his

IEP team concluded that [REDACTED] had made good progress toward his goals and objectives and stated that he was “all smiles when [he got] off the bus.” [REDACTED] was able to walk into the school independently and navigate around his classroom without an assistive device despite his somewhat unstable gait. He did fall occasionally, but was able to improve his stability by holding onto a rail or a teacher’s arm. [REDACTED] personal care skills improved this year also. He used the restroom on a schedule and began occasionally to request to go to the bathroom at non-scheduled times. [REDACTED] continued to use a fork and spoon and drank from a cup during meals. [REDACTED] enjoyed his classmates this year and improved his ability to play games, such as cards, at the table with his peers. (Ex. P-15, at 706-09; Ex. D-34)

18.

[REDACTED] behavior also improved during 2005-2006, with his teachers reporting that they had not seen any head banging and very little hand biting. [REDACTED] teachers were able to use either positive reinforcement or brief time-outs to motivate [REDACTED] to complete assigned tasks. Mrs. [REDACTED] noted during the March 2006 IEP meeting that [REDACTED] continued to be more cooperative and she believed that the “positive environment” and “upbeat teachers” were the most successful components of [REDACTED] education program. Both Mrs. [REDACTED] and the rest of the IEP team noted that [REDACTED] had grown “much more confident” this school year. (Ex. P-15, at 709, 718)

3. Hopewell Middle School

19.

At the age of 13, [REDACTED] transitioned to Hopewell Middle School for the 2006-2007 school year. He was placed in an MOID classroom and provided ST, OT, PT, and

adaptive P.E. services. [REDACTED] MOID classroom was in a section of Hopewell known as “G Hall,” which contained a number of special education classrooms, speech therapy, adaptive art, and music rooms, and both regular and handicapped restrooms. G Hall was separate from the rest of Hopewell and was used for only moderately, severely, and profoundly intellectually disabled students, their teachers and paraprofessionals or “parapros.” It was in this placement that [REDACTED] was abused by his classroom teacher, Melanie Pickens. (Tr. 29-33)

a) History of Abusive Conduct by Pickens

20.

In 2002, Pickens began her employment with the School District at Holcomb Bridge Middle School as a teacher of moderately and severely disabled students. From the start, Pickens had difficulty dealing with these students. According to Dorothy Pettes, who is the Special Education Coordinator for the School District, Pickens had a short temper and would get rough with her students – yanking them and yelling at them – when she became frustrated. Although Pettes arranged for Pickens to receive support and training during her first year, Pickens was not responsive to the training. Accordingly, based on her professional opinion that Pickens was “not a good fit” as a teacher of disabled children, Pettes recommended that Pickens’ contract not be renewed. However, the Holcomb Bridge principal told Pettes that such decisions were “personnel” matters, which were not part of Pettes’ job responsibilities, and Pickens remained as a special education teacher at Holcomb Bridge for a second year. (Ex. P-5, at 372; Ex. P-22, at 1798; Tr. 172-78, 182, 186)

21.

In August 2004, Pickens was hired as a special education teacher for moderately and profoundly disabled students at the newly-opened Hopewell Middle School. Shortly after arriving at Hopewell, Pickens began mistreating her disabled students, particularly a student named ██████ M.⁷ Judy Reddick, a special education nurse with the School District, worked at Hopewell during the 2004-2005 school year. By November 2004, Reddick had observed conduct by Pickens that she considered abuse, and she reported it to her supervisor, the coordinator of student health services for the School District. Reddick's supervisor directed her to notify Hopewell's principal. (Ex. P-5, at 73; Ex. P-10; Tr. 148, 151, 182-83)

22.

On November 16, 2004, Reddick wrote a letter to Hopewell's Special Education Instructional Support Teacher ("IST"), Paula Merritt, and met with Hopewell's principal, Frances Boyd, to report Pickens' conduct. She reported that Pickens frequently hit ██████

⁷ ██████ M.'s guardian testified at the hearing and gave permission to refer to him by name in this proceeding. Although not the only child mistreated by Pickens at Hopewell, ██████ M. appears to have borne the brunt of Pickens' most severe abuse. ██████ M. is a very large child, who was placed in Pickens' class for three years in a row. Although he was twelve years old his first year in Pickens' class, he had the mental capacity of a toddler and was essentially non-verbal. ██████ M. was a challenging child to work with at school, often "plopping" down on the floor and refusing to move or yelling or striking out at teachers and students. Pickens' conduct toward ██████ M. is relevant to this case for several reasons. First, the evidence shows that numerous School District employees knew about and reported the conduct prior to and during ██████ placement with Pickens. Second, the evidence also shows that ██████ was present and observed the abusive treatment of ██████ and other classmates during the year he was placed in Pickens' classroom. Third, when a Hopewell teacher finally made a formal report of Pickens' abuse of ██████ in 2007, the ensuing investigation revealed the abusive treatment of other students, including ██████ which was not disclosed to their parents. (Ex. P-4, at 7; Ex. P-5, at 10, 64, 88; Ex. P-10; Ex. P-24; Tr. 45, 109, 111, 115, 119, 234, 333)

M. in the head with an open hand. These strikes were “hard enough to hurt,” and Reddick reported that [REDACTED] would often cower or cover his head in anticipation of the blows. Reddick also reported to Merritt and Boyd that she had observed Pickens spray a different child, [REDACTED] P.,⁸ with Lysol and put her out in the hallway after she passed gas. In addition to these incidents, Reddick observed mistreatment by Pickens of other students, which she disclosed to Boyd and Merritt. For example, Pickens often used vulgarities in front of her students, calling them “little fuckers” and “little shits.” Reddick also saw Pickens isolate [REDACTED] and other students in a room across the hallway by themselves. (Ex. P-5, at 304-10; Ex. P-10; Tr. 150, 152-54, 157-58)

23.

When Reddick met with Boyd, Boyd did not appear to believe her, and Reddick felt intimidated by Boyd.⁹ Boyd referred Reddick’s report to a School District social worker, who investigated Reddick’s report and characterized Pickens’ actions as “poor choices.” The social worker did not report Pickens to the Department of Family and Children’s Services (“DFCS”) for suspected child abuse even though Pickens admitted hitting [REDACTED] M. in the head.¹⁰ After receiving the social worker’s investigative report,

⁸ [REDACTED] P.’s mother testified at the hearing and granted permission to use her daughter’s name in these proceedings. (Tr. 456-61)

⁹ Later that year, Boyd told Reddick that she did not want Reddick back at Hopewell. Reddick was transferred the next school year. Similarly, Merritt, the IST, described an incident during the next school year, in which a custodian attempted to report to Boyd that Pickens was mistreating [REDACTED] M. by kicking him. According to Merritt, Boyd degraded and intimidated the custodian so much that he recanted his report. She then upbraided the custodian in front of his supervisor. (Ex. P-5, at 73, 309; Tr. 156, 234)

¹⁰ Pettes, the Special Education Coordinator, had discussed the matter with Boyd and asked for Reddick’s charges to be referred to DFCS. Boyd assured Pettes that the

Boyd wrote a letter of concern to Pickens regarding her “inappropriate strategies” and required Pickens to participate in meetings with her co-workers, including Reddick, in order to “build a more collegial relationship” with them. Although Boyd’s letter indicated that it was to be placed in Pickens’ personnel file, the evidence in the record shows that it was not. (Ex. P-5, at 304, 307, 309; Ex. P-10; Tr. 150-51, 179, 536)

24.

By all accounts, Pickens’ mistreatment of her students continued unabated and unchecked despite Reddick’s report. In her second year at Hopewell, the 2005-2006 school year, another special education nurse, Terri Goodman, observed Pickens tell a disabled student, ██████ H.,¹¹ that his mother was a “crack-head,” “doesn’t care about you,” and “was not going to pick you up.”¹² Goodman reported these comments to her supervisor and to Reddick. They advised Goodman to go to the principal immediately, which she did. According to Goodman, when she told Boyd that she wanted to report inappropriate comments by a staff member on G Hall, Boyd said, “What has Melanie

matter had been “taken care of” and Pettes believed, erroneously, that a DFCS report had been made. At the hearing, Pettes explained that in the face of concerning reports about Pickens, her only recourse was to relay her concerns to the principal, who had the authority to make personnel decisions relating to discipline and retention of teachers at the school. According to Pettes, “it was not my job to question the principal.” (Tr. 179, 181-84)

¹¹ ██████ H.’s father testified at the hearing and granted permission to use the name of his son, who is now deceased, in these proceedings. (Tr. 235)

¹² Both Reddick and Clarendia Baugh, a parapro who worked in Pickens’ classroom, heard Pickens make these same types of comments to ██████ H. Baugh described ██████ as a “screamer,” whose screaming would “set [Pickens] off” and then “all the kids would get it because of ██████ doing the screaming.” Baugh also described a practice that Pickens called “scream therapy,” where Pickens would scream loudly right next to ██████ H.’s ear. Pickens continued to treat ██████ H. in this manner through the 2006-2007 school year, when ██████ was in Pickens’ class. (Ex. P-5, at 304; Tr. 107, 116, 119)

done this time?’ before I could even get the name out.” (Ex. P-5, at 326-27; Tr. 109, 120, 162-65)

25.

Boyd told Goodman that she would “take care of it” and Goodman requested that Boyd keep their conversation confidential. The next day, however, Pickens confronted Goodman about her report to Boyd and thereafter Pickens was guarded around Goodman. Nevertheless, Goodman continued to observe inappropriate conduct by Pickens, such as loud banging on the table to startle the children and an incident where Pickens “jacked up” ■■■ M. She reported both these instances to Boyd and the IST, who assured her that they were “working with” Pickens. (Ex. P-5, at 328; Tr. 164-67, 170)

26.

These were just two of many reports made by staff at Hopewell to either the IST or to Boyd about Pickens’ conduct in the two years prior to ■■■ arrival at Hopewell. According to Baugh, it was common knowledge on G Hall that Pickens was abusing students, and the abuse was happening “pretty much” on a daily basis. Moreover, Baugh testified that she reported many instances of abuse to the IST and that nothing was ever done to stop it. Pettes confirmed that many of the paraprofessionals and other staff members expressed their concerns to her about Pickens’ inappropriate behavior at Hopewell and that she would advise them to notify the IST and Boyd. Pettes also testified that the staff “kept reporting it and they felt nothing was getting done.” When Pettes inquired about these reports, Boyd told her, “I’ve taken care of it, I’m doing what I’m supposed to be doing.” According to Goodman, the paraprofessionals on G Hall often wondered, “How many

times does this girl have to be reported before something is done?”¹³ (Ex. P-5, at 74, 84, 328; Tr. 44, 108-09, 120-1, 183-84, 204)

27.

The evidence in the record shows that Boyd created an “atmosphere of intimidation” at Hopewell and that many of the educators and staff were afraid they would lose their jobs if they continued to make reports about Pickens. When they did make verbal reports, Boyd took no action, insisting that, “If it’s not in writing, it didn’t happen.” In fact, Boyd appeared to be protective of Pickens, stating to Pickens after receiving a verbal report from a speech teacher regarding Pickens’ inappropriate conduct, “I’m so sorry. It looks like they’re picking on you again.” Conversely, Boyd demonstrated little concern for the students on G Hall. She rarely spoke to the students in the hallway, did not attend activities on G Hall, such as Thanksgiving parties or Special Olympics, and stated that she did not see why these children are in school because they “can’t really do anything.” (Ex. P-5, at 73-74; Tr. 90, 93-94, 121, 215-17, 220-21, 234)

¹³ Goodman made this statement during a taped interview with an independent investigation agency, Business Decisions Information, Inc. (“BDI”), which was retained by the School District in 2007 to investigate allegations of abuse by Pickens against ██████ M. At the hearing, the parties stipulated that the transcripts of the BDI investigative interviews, as well as statements and interviews given by witnesses during an investigation by the Professional Standards Commission (“PSC”), were admissible, and they were made part of the record of this hearing. (Tr. 9-11, 798) In addition, Goodman and the other witnesses who testified during the hearing stated that the statements made during their interviews were accurate and truthful. Finally, in the case of some witnesses, the parties specifically stipulated that the interview transcripts were accurate and truthful statements and they were admitted in lieu of live testimony from those witnesses. (Tr. 121, 204, 234) Accordingly, the Court has reviewed these interview transcripts and statements and has cited them where relevant.

b) 2006-2007 School Year

28.

████ arrived at Hopewell Middle School a happy, thirteen-year-old boy, who was making progress toward his IEP goals and objectives and who enjoyed going to school. As his mother explained, █████ was “ready to start being the best he could be.” █████ was placed in a classroom with three other moderately or profoundly disabled students, █████ M., █████ P., and █████ L.¹⁴ Pickens was their classroom teacher. (Ex. P-15, at 706-09; Ex. D-34; Tr. 102, 467-68, 647-49)

29.

The evidence in the record proves that Pickens’ abusive conduct toward her students worsened during the 2006-2007 school year and that █████ was a direct victim of such abuse, as well as a helpless observer of the abuse of others. Although █████ M. and █████ L. appeared to have been the prime targets of Pickens’ mistreatment, █████ also endured Pickens’ inappropriate, abusive, and, at times, malicious conduct. (Ex. P-5, at 79, 252, 364; Tr. 45, 47, 219, 234)

30.

With respect to the general classroom environment, the undisputed evidence is that Pickens would scream at all the children, including █████ every day. She would burp in their faces, shake and press her breasts in their faces, and press her buttocks into their faces and pass gas. When she took the children out into the community on outings, she

¹⁴ █████ L.’s parent granted permission prior to the hearing to use his name in this proceeding. The written permissions from all of the children’s parents or guardians are filed in the OSAH records for this case.

would curse at them. [REDACTED] was sometimes the direct recipient of these demeaning acts and sometimes a bystander. (Ex. P-5, at 73; Tr. 45, 79, 109-11, 116-17, 211-12, 216, 234)

31.

In terms of physical abuse, Pickens would slam [REDACTED] into the lockers almost every morning. [REDACTED] who was walking independently and carrying a backpack at this time, was very slow getting from the bus to Pickens' classroom because of his gaited walk. His slow pace appeared to frustrate Pickens, and she would shove him face first into the lockers, hard enough to make a loud noise, in an apparent attempt to get him to hurry. On one occasion, when [REDACTED] was moving too slowly from the bus to the school, Pickens pushed him down on the concrete, where he fell and scraped his hand. At the end of the school day, when [REDACTED] was often tired and would be slow to pack up his things, Pickens would get frustrated and "throw his bookbag off his desk and tell him to go get it and get on the bus." Pickens also insisted that [REDACTED] carry his backpack to and from the bus without assistance, which would cause him to be unsteady and fall. (Tr. 42-44, 57, 78-79, 110, 113-15, 212-13, 222)

32.

All of the teachers and staff on G Hall were aware of Pickens' pushing and rough treatment of [REDACTED] and at least two paraprofessionals, Baugh and Amanda Mathis Grover, specifically reported Pickens' conduct toward [REDACTED] to Hopewell administrators during the 2006-2007 school year. Grover, who had known [REDACTED] at Alpharetta Elementary and had babysat for his family, "begged" the department chair for special education, Stacy White, as well as IST Merritt, and Principal Boyd to do something about Pickens' mistreatment

of [REDACTED]. She was told that “Ms. Boyd was handling it in her own manner.” Baugh also reported several times to White that Pickens was pushing [REDACTED] down, but nothing was ever done. (Ex. P-5, at 132, 136; Tr. 107, 215-18)

33.

In addition to the pushing, Pickens mistreated [REDACTED] in other ways. For example, approximately twice a week, Pickens would not allow [REDACTED] to go to lunch because he had not finished his work. [REDACTED] would either not have any lunch or he would have to eat a peanut butter sandwich, which he did not like, when the lunch period was over. In addition, one day during the 2006-2007 school year, [REDACTED] participated in the Special Olympics, completing a fifty-meter walk and winning a medal. After returning to Hopewell on the bus, [REDACTED] was very tired and could not get off the bus by himself. Pickens left him on the bus and would not help him or allow any of the paraprofessionals to offer him assistance. Contrary to Pickens’ wishes, Grover went back on the bus and helped [REDACTED] walk back to his classroom, which made Pickens angry. (Ex. P-5, at 87; Tr. 208, 212-14)

34.

Perhaps the worse abuse of [REDACTED] by Pickens was when she isolated him and restrained him in a dark, windowless room, which happened on at least three occasions during the 2006-2007 school year. Susan Tallant, an experienced special education teacher who began teaching at Hopewell during the 2006-2007 school year, observed [REDACTED] alone in the adaptive art room across from his classroom on at least two occasions and alone in the handicapped bathroom down the hall, which doubled as a storage room, on one occasion. Both rooms were windowless and the lights were turned out. In one

instance, Tallant entered what she believed was the empty art room and heard a noise. She discovered [REDACTED] in the darkened room and was startled. He was strapped into a Rifton chair, which had been inclined and pushed into the corner, facing the wall. When she asked him if he was in trouble, he nodded his head, "yes." When Tallant saw [REDACTED] in the darkened handicapped restroom/storage room, he was sitting in a Rifton "potty" chair, which was inclined at a 45-degree angle with the tray locked into place. He was left alone there for at least thirty minutes. (Tr. 37-39, 41-42, 44, 76-78)

35.

Tallant considered Pickens' conduct toward her students to be abusive and testified that "everyone" on G Hall knew that Pickens was isolating children in empty rooms and strapping them into Rifton chairs. She stated that the other educators would have "had to be deaf, dumb, and blind" not to have seen it. In fact, all the witnesses who either testified at the hearing or whose statements have been made part of the record agreed that Pickens frequently used isolation and restraint with her students. Although [REDACTED] H. and [REDACTED] L. were isolated and restrained by Pickens, [REDACTED] M. was the most frequent target of this treatment. The undisputed evidence in the record shows that [REDACTED] M. was isolated in a Rifton chair alone in a room with the door shut for several days per week, sometimes for a few hours and sometimes for most of the school day. (Ex. P-5, at 251-52, 304, 312-14, 381; Tr. 37, 45, 112)

36.

At the end of the school year, on May 21, 2007, Tallant found [REDACTED] in the adaptive P.E. room with the door shut. He was alone, strapped in the Rifton chair and "covered in feces from head to toe, all over the chair, all over the floor." Tallant testified that the

stench was overwhelming and could be detected outside the room. The next day, Tallant wrote a written statement and gave it to White, the department head. White and Tallant took her statement to Merritt, the IST. Both Merritt and White asked Tallant if she knew what a written report of Pickens meant and whether she was “ready for this.” She said she was and they took the written statement to Boyd.¹⁵ (Tr. 48-52)

37.

Tallant’s written statement, unlike all the past verbal reports, triggered a formal investigation by the School District, which was conducted by BDI. BDI’s investigative report revealed the long history of abusive conduct by Pickens toward █████ M., as well as Pickens’ mistreatment and abuse of other students, including █████ It further revealed that the abuse was known and reported by the G Hall staff, but that Boyd refused to act on their reports. The BDI investigator, Joseph Umbarger, testified that even after conducting investigations for thirty-five years, this investigation was particularly difficult because of the “outrageous,” almost “unbelievable” information that it uncovered.¹⁶ (Tr.

¹⁵ Sometime after her report of Pickens, Tallant was briefly hospitalized due to complications with chemotherapy. She was confronted in the hospital by Stephanie Sosebee, another IST at Hopewell who was friendly with Pickens. Sosebee had learned that Tallant had filed the complaint and was angry with Tallant for doing so. Once it became known at Hopewell that Tallant was the reporter, some of the Hopewell office staff and teachers refused to speak to her. She was abruptly moved off of G Hall and placed in a position in the special education department with which she had no experience or background. Tallant believes this treatment was in retaliation for filing the report. (Tr. 62-66)

¹⁶ Although Plaintiffs spent considerable time at the hearing trying to determine why multiple versions of the BDI report existed, including some versions that referenced interview tapes and transcripts that were not produced by the School District, the Court finds that there is insufficient probative evidence to show that the different versions were the result of a deliberate attempt by the School District to alter the report, rather than the more plausible explanation that the School District received several drafts of the report, at various stages of completion.

127, 750-51, 771)

38.

Umbarger's reaction was not unusual. In fact, every witness who was asked about Pickens' conduct toward her students, including the president of the Fulton County School Board, Linda Schultz, and all of the witnesses called by the School District, agreed that Pickens' actions constituted abuse, describing it as "outrageous" and "appalling." Although Schultz testified that the Board members themselves did not know about the abuse until after the BDI investigation, Pettes, the School District's Special Education Coordinator, agreed that the School District was aware that Pickens was hurting children for many years and yet allowed her to remain as a teacher at Hopewell. Pettes also testified that, following multiple informal reports during the 2006-2007 school year, as well as the formal BDI report, the School District knew that [REDACTED] had been abused at Hopewell. Finally, Pettes acknowledged that placing a child in a classroom where the child is being abused is not an appropriate placement. (Tr. 55, 154, 185, 190, 192-93, 249, 258-59, 816-17, 820, 849-50, 982-83)

39.

The School District witnesses did not dispute that parents should be informed if their children are abused at school. In fact, according to Schultz, current School Board policy requires that abuse at school be reported to parents, as well as to DFCS. Moreover, in the case of children with disabilities, particularly those whose disabilities prevent them from being effective reporters themselves, it is particularly important for their parents to be notified of any abuse so that the parents can take care of their children and make appropriate educational decisions on their behalf. (Tr. 252-58, 817, 826, 829,

40.

In this instance, however, the School District did not inform [REDACTED] parents of Pickens' abuse in 2007.¹⁷ This was despite the BDI investigation report, which clearly mentions Pickens being rough and pushing [REDACTED] the School District's "separation" of Pickens and Boyd¹⁸ following the BDI investigation, and the revocation of Pickens' teaching certificate by the PSC. Thus, although [REDACTED] mother began to notice some changes in [REDACTED] both at home and at school during the 2006-2007 school year, she did not suspect abuse at school. For example, [REDACTED] mother observed that [REDACTED] was becoming more stubborn and defiant. He also did not want to have a bowel movement at school and would "stool hold" during the day. Still, Mrs. [REDACTED] did not consider these behaviors to be a sign of anxiety or a reaction to anything abusive occurring at school. (Ex. P-5, at 35-36, 87, 132; Tr. 469, 470, 494)

41.

During the 2006-2007 school year, [REDACTED] parents were most concerned about the reports from the school that [REDACTED] was becoming clumsy and falling down. They were not

¹⁷ Although [REDACTED] M.'s mother was told about the May 21, 2007 incident, she did not begin to learn about the extent of the abuse until she requested and received a redacted version of the BDI report. [REDACTED] H.'s father and Rapheka P.'s mother testified that the School District has never told them about the abuse that occurred when their children were in Pickens' class. They and [REDACTED] parents did not learn about the abuse until July 2009, when [REDACTED] M.'s mother contacted them. (Tr. 236, 333-36, 457)

¹⁸ Boyd was not terminated outright by the School District. Rather, as part of a settlement agreement, Boyd was allowed to remain on as a "curriculum support analyst," using all of her leave and taking unpaid leave until she retired on June 30, 2008. (Ex. P-29, at 2366; Tr. 274-77)

aware at that time that his falls were often the result of being pushed by Pickens. Accordingly, [REDACTED] parents, given their medical background, looked for medical solutions to this problem, exploring and later obtaining medical treatment for [REDACTED] in the summer of 2007. Specifically, after consultation with an orthopedic surgeon regarding [REDACTED] “clumsiness” and falling, [REDACTED] was given Botox injections in both hamstrings, which caused a temporary paralysis and allowed the surgeon to “stretch” [REDACTED] muscles to keep up with his bone growth. After the injections, he was very weak and had trouble supporting himself. He had to use a walker or a wheelchair to get around and had intensive PT to rebuild his muscle strength. His mother estimates that it “set him back” for about a year. (Tr. 471-76)

42.

[REDACTED] IEP in April 2007 did not disclose or mention the treatment he was receiving from Pickens. Rather, it described his progress¹⁹ and indicated that he enjoyed many aspects of school, including interacting with his peers and teachers, taking trips in the community, and adaptive P.E. activities. However, the IEP did note that [REDACTED] was regressing in some areas, including reports of toileting accidents, hitting his head on the

¹⁹ Plaintiffs, in their post-hearing brief, alleged that the underlying data that Pickens used to show progress toward [REDACTED] IEP goals was unreliable, in part, because Pickens reported taking data on dates that [REDACTED] attendance records and Pickens own notes indicated that he was absent from school. The Court has reviewed these records and finds that in some instances Pickens’ own records confirm that [REDACTED] was not present on dates that Pickens reported collecting data on his IEP goals. For example, on February 21 and 22, 2007, [REDACTED] attendance records and Pickens’ own contact log indicate that he was absent from school. However, Pickens reported in [REDACTED] IEP records that she collected data on his cognitive and self-care goals on 2/22 and his social and emotional goals on 2/21. (Ex. P-C, at 2457; Ex. D-41) There are other examples of these inconsistencies in the record. Consequently, the Court concludes, based on the evidence in the record, that the report of [REDACTED] progress in the April 2007 IEP is unreliable.

table, or biting his hand very hard when asked to do a task. Mrs. [REDACTED] who did not know about the abuse, did not indicate any concerns during the annual review of his IEP in April 2007, and [REDACTED] returned to Hopewell the following year. (Ex. D-35)

c) 2007-2008 School Year

43.

For the 2007-2008 school year, [REDACTED] was placed in Tallant's classroom and Grover was his parapro. ²⁰ [REDACTED] mother believed that this combination was "ideal," and [REDACTED] seemed to be doing well in this class. A few months into the school year [REDACTED] was moved out of Tallant's class and placed back into Pickens' old classroom with a new teacher who had been hired to replace Pickens. [REDACTED] did not seem as happy at school after the move and his mother noticed changes as well. For example, [REDACTED] began to develop a type of shyness that his family had never seen. Even in the home, [REDACTED] began to withdraw and wanted to stay in his room more. (Tr. 82, 223, 226-28, 477-79, 481)

44.

[REDACTED] IEP team met in March 2008 and reported that [REDACTED] had made good progress and was doing well. He could recognize his name from the names of his classmates and could spell out the letters in his name. [REDACTED] could count from one to twenty independently and recognize community signs with ninety-eight percent accuracy. His IEP described "tremendous progress" in functional academics and steady progress in vocational skills. [REDACTED] continued to use a fork and spoon effectively while eating and

²⁰ Mrs. [REDACTED] testified that when she took [REDACTED] to orientation at the beginning of 2007-2008, the lighting in his new classroom was dimmed and [REDACTED] was reluctant to go in, saying "lights on, lights on" repeatedly. The teacher turned the lights up and they convinced [REDACTED] to go into the classroom. Because she was not aware of [REDACTED] being put in a darkened room by Pickens, Mrs. [REDACTED] did not read anything into this reaction at that time. (Tr. 488)

demonstrated “good self-help skills.” His social and emotional progress was described as “great,” with only a few occurrences of head banging or biting. According to the March 2008 IEP, [REDACTED] had made friends with two students in his class and enjoyed playing games with them. During community outings, [REDACTED] ordered and purchased food with limited verbal cues. (Ex. P-15, at 846; Ex. D-36)

45.

Nevertheless, at the March 2008 IEP meeting, [REDACTED] mother told the team that she was concerned about [REDACTED] considerable shyness, which had been “shocking” to his parents. She conveyed to the team that she believed the shyness may be hindering [REDACTED] ability to progress with toileting and other behavioral goals. Mrs. [REDACTED] also advised the team that [REDACTED] displayed more advanced skills at home than in school and that she would like him to be around more verbal students. His IEP noted that [REDACTED] had had a few toileting accidents that year and that his ability to walk had diminished. Overall, his IEP team decided that [REDACTED] should remain in an MOID classroom, with participation in general education for lunch, grade level activities, and some adaptive P.E. Because the School District had not disclosed the abuse to [REDACTED] parents, it was not discussed or considered in assessing his performance or planning for the upcoming school year. (Ex. D-26)

d) 2008-2009 School Year

46.

[REDACTED] progress during the 2008-2009 school year appeared to be mixed. He continued to enjoy outings in the community and most of the time could complete certain functional tasks, such as locating prices and rounding up to the next dollar amount for

items twenty dollars or less. He had also started using new vocabulary and full sentences when talking, which Mrs. ██████ noted in the parental comment section of his IEP. ██████ was also being more social with his peers and adults while at school. In March 2009, his IEP team reported that he had mastered all of his IEP goals except the requesting the restroom goal. (Although he could use the restroom independently without asking at home, he did not at school, and he still occasionally had accidents.) The IEP team noted, however, that ██████ had shown some regression in the area of vocational skills, particularly in maintaining balance and stability. Although ██████ continued to walk independently, he had decreased balance and would sometimes fall. The team also noted that ██████ had decreased functioning in his right hand and required prompting to use it. ██████ also needed verbal prompting to remember names and was easily distracted. Although ██████ continued to use a fork and spoon while eating, the IEP team noted that he did so by bringing his mouth down to his food rather than his food to his mouth. (Ex. P-15, at 875-78, 906; Ex. D-37; Tr. 554-55)

47.

When the IEP team met in March 2009, they discussed ██████ transition to high school. The team agreed that ██████ would attend five periods in a self-contained special education setting and one period in general education. He was to continue to receive ST, PT, OT, and adaptive P.E. in high school. ██████ teacher and his mother requested a full comprehensive evaluation, which was supposed to be done before ██████ left Hopewell, but was not completed until he got to high school. (Ex. D-37; Tr. 500)

4. Roswell High School

a) **2009-2010 School Year**

48.

The month before [REDACTED] entered Roswell High School, in July 2009, [REDACTED] mother received a telephone call from [REDACTED] M.'s mother. [REDACTED] M.'s mother was having trouble getting services for [REDACTED] M. following the abuse and wanted to ask other parents what they were doing. Mrs. [REDACTED] learned of the abuse from [REDACTED] M.'s mother that day and later obtained a redacted copy of the BDI investigative report from her. Because the names of the students were redacted, Mrs. [REDACTED] attempted to measure the whited-out spaces to determine whether it was referring to [REDACTED]. She also contacted the Governor's office in July 2009, asking him to look into the abuse. On the first day of school that year, Mrs. [REDACTED] went to Roswell High to meet with School District administrators and IST Mary Waters, who testified that Mrs. [REDACTED] was crying when she discussed the abuse at Hopewell and wanted assurance that [REDACTED] would be placed with a "patient teacher." (Ex. P-12; Tr. 494, 521, 523, 537, 562, 830-31)

49.

[REDACTED] began school at Roswell High in August 2009. On his first day in his new classroom, which did not have windows, [REDACTED] repeatedly said, "Lights on, lights on, lights on" to his new teacher, Melanie Averitt. Averitt, who was [REDACTED] teacher for two years at Roswell High, did not know that [REDACTED] had been isolated in a darkened room at Hopewell. However, she agreed that there could be a link between his experience in isolation and his desire for the lights to be turned on in her classroom. Averitt did not detect any anxiety or fear in [REDACTED] at any time while at Roswell High, but she

acknowledged that she was unsure how [REDACTED] would exhibit such feelings. (Tr. 1006, 1008-10, 1019-20, 1032, 1061)

50.

Overall, [REDACTED] had good days and bad days in Averitt's classroom, and his progress was inconsistent. During both years [REDACTED] attended Roswell High, there were five or six moderately intellectually disabled students in his class. His April 2010 IEP noted that he did not interact much with his peers or initiate conversation with them and that he only inconsistently responded to his name when called by peers and adults. However, the IEP reported that he had become "more expressive and happy in the classroom with his peers and teachers" over the course of the year. (Ex. D-20; Ex. D-39; Tr. 863, 1002, 1074)

51.

A primary focus of [REDACTED] educational programming at Roswell High was to increase his independence. Averitt's class generally spent one day per week going out into the community to places like the grocery store, the library or a bowling alley. Students worked on reading safety and community signs, determining pricing and purchasing items, and similar functional activities. Two days per week, [REDACTED] performed jobs at the school, such as delivering mail, cleaning, and copying. The remaining two days of the week the students focused on therapies, such as music therapy, and worked on academics and daily living skills, such as cooking and laundry. The students also interacted with regular education students occasionally through attending school-wide functions, moving about the campus, and working with regular education student mentors. (Ex. D-39; Tr. 1002, 1004-05)

Dr. Michael Mueller, a behavioral analyst with Southern Behavioral Group and an expert in developing educational programs for students with disabilities,²¹ reviewed all of █████ IEP records. Based on his review, Dr. Mueller testified that █████ progress took a “tremendous downturn” after he was abused in Pickens’ classroom, particularly in his two years at Roswell High. Although Dr. Mueller opined that █████ progress was slow prior to the abuse, his skills and goals were at least increasing in difficulty from year to year. After the abuse, Dr. Mueller testified that █████ IEP goals and his skill levels went “in reverse.” That is, skills █████ had mastered in elementary school, he no longer could perform, and they were put back on as goals and objectives in his Roswell High IEPs. This regression was seen across several areas, including speech and language and toileting,²² and Mrs. █████ saw similar declines at home. (Tr. 611-12, 639, 646-48)

²¹ Dr. Mueller works mainly with public school systems in Georgia, including the Fulton County School District. One of his main professional activities is to prepare educational programs for disabled children by assessing their skills and determining the appropriate instructional methods that should be used. In the summer of 2011, █████ parents retained Dr. Mueller to help develop an integrated educational service plan for █████ as well as to review and assess his past educational programming. Dr. Mueller met with █████ three times, interviewed Mrs. █████ approximately ten times, and has reviewed all of █████ educational records, therapy and medical records, and the BDI investigative report. Based on his education, experience, and training, as well as his thorough review of the records in this case, the Court gives considerable weight to Dr. Mueller’s testimony and expert opinion regarding the educational programming and services provided to █████ by the School District. As stated *infra*, Dr. Mueller was not qualified to testify as an expert on PTSD, and his testimony and opinions relating to PTSD, its triggers, and its potential impact on █████ educational placement is given less weight. (Tr. 625-29, 634)

²² For example, in 2006, █████ was beginning to ask to use the bathroom at school. However, Averitt testified that █████ “never” asked to use the bathroom at Roswell High. █████ was reported to be staying “dry all day” at Alpharetta Elementary in March 2006. He began having accidents at Hopewell and continued to have accidents at Roswell High. With respect to his language skills, █████ was using two to three word sentences at age

Dr. Mueller was particularly concerned with the amount of prompting, either through verbal cues or physical assistance, that was required for [REDACTED] to perform skills at Roswell High that previously [REDACTED] could do independently. Dr. Mueller referred to this practice as “prompt dependency” and testified that reliance on multiple prompts was built into the goals and objectives developed for [REDACTED] at Roswell High. In addition, Dr. Mueller was concerned that [REDACTED] skill levels were actually inflated on the Roswell High IEP progress reports because [REDACTED] teachers often marked as correct those responses that were only achieved after multiple prompts.²³ (Tr. 651-54, 661-65; Ex. D-39)

b) 2010-2011 School Year

PTSD Diagnosis

From the time of the abuse until before [REDACTED] began his second year at Roswell High, Mrs. [REDACTED] described [REDACTED] as in a “slow, gradual deterioration.” However, in

five, three to five word sentence at age nine, and using complete sentences to express his wants and needs at age thirteen when he left Alpharetta Elementary. At Roswell High, his IEP notes that [REDACTED] used two to three word “phrases” at school and did not initiate conversation with others. (Ex. P-15, at 708, Ex. D-21; Ex. D-38; Ex. D-39; Ex. D-44; Ex. D-46; Tr. 1035 , 1064, 1067-68)

²³ Dr. Mueller provided this example. If the objective is for [REDACTED] to be able to identify a stop sign, a teacher might show [REDACTED] a stop sign and a yield sign and ask [REDACTED] to point to the stop sign. If he does this independently, that should be marked as a correct response. If he points instead to the yield sign, the teacher may continue the lesson, giving a verbal prompt such as, “No, that’s not it. Try the other one.” If [REDACTED] does not choose correctly after multiple verbal prompts, the teacher could physically take his hand and point to the correct sign, so that he had the experience of completing the activity. According to Dr. Mueller, such prompting following an incorrect response is an appropriate teaching method; however, it is uncommon and misleading to mark the eventual, physically-prompted response as “correct” in the data, which was done throughout data collected at Roswell High. (Tr. 654-56)

the summer of 2010 Mrs. ██████ began to notice significant and alarming changes in ██████ He wanted to sleep all the time and was gaining weight rapidly. Upon ██████ return to school for the beginning of the 2010-2011 school year, Averitt also noticed that ██████ was very tired in school. According to Mrs. ██████ “he just started acting like he wasn’t thinking anymore.” Dr. and Mrs. ██████ suspected that something was wrong with his shunts. (Tr. 481, 592-93, 1039, 1074)

55.

██████ parents arranged for ██████ to have a CT scan to assess the functioning of the shunts, which ruled out shunt malfunction. They took ██████ to the neurologist, who admitted ██████ to the hospital in October 2010 for an EEG and MRI to look for thyroid/pituitary dysfunction, check for infection, and perform other assessments. Dr. and Mrs. ██████ believed that the changes they saw in ██████ were medical issues, and they were attempting to determine the source. According to Mrs. ██████ by the time of ██████ admission to the hospital on October 27, 2010, he was in an almost “catatonic state” and he was “losing his personality.” (Ex. P-6; Tr. 482-84, 593)

56.

Once ██████ was admitted to the hospital and the testing began, he had to stay in his room and could not leave. Upon realizing that he was going to be confined to the room, ██████ began acting “very odd.” He began ringing his hands and repeating certain words and phrases over and over, such as “Check bottoms, check bottoms, check bottoms,”²⁴ “Rope, rope,” “Lysol,” and “Lights on, lights on.” Mrs. ██████ described his behavior

²⁴ Tallant testified that if Pickens smelled an odor, she would tell her paraprop to “check everybody’s bottoms.” (Tr. 67)

as almost trance-like. “It was like nothing I’d ever seen him do before. And it was very scary because he had had such a precious personality and we were losing him, and I didn’t know why.” (Tr. 484-89)

57.

After a fairly short observation by a psychiatrist, [REDACTED] was diagnosed with PTSD. When the psychiatrist questioned Mrs. [REDACTED] in [REDACTED] presence, Mrs. [REDACTED] told the psychiatrist about [REDACTED] abuse at Hopewell. [REDACTED] covered his face and cried. (Ex. P-7; Tr. 490, 493, 582-83)

58.

After [REDACTED] was discharged, he was prescribed Zoloft by a psychiatrist, Dr. Lee. According to [REDACTED] neurologist, Dr. Edward Goldstein, as of April 11, 2011, “[t]here has been no suggestion of shunt malfunction” and Dr. Lee’s interventions have led to “stable progress in his mood, affect, and return to functional independence.” Mrs. [REDACTED] confirmed that the Zoloft has helped, but that [REDACTED] continues to have periods of anxiety and stress. For example, he now wants to sleep with the television on because “it’s dark and spooky,” he wants his blanket, and he will not use a public restroom. In addition, when [REDACTED] gets stressed or agitated,²⁵ he will at times curse and say “Little fuckers” or his hands will sweat. Nevertheless, [REDACTED] mood and demeanor have improved since his “crash” in October 2010. He is not sleeping as much, he is coming out of his room and joining the family, and his language skills are returning. (Ex. P-8; Ex. D-46; Tr. 488,

²⁵ One source of stress for [REDACTED] appears to be the household “chatter” concerning the abuse, the related investigation and the court proceedings. According to Mrs. [REDACTED] they are making an effort not to talk about these issues around [REDACTED] and he will not be going back to see Dr. Lee again until the proceedings are over. (Tr. 491, 590)

490-91, 495, 589, 609-10, 617)

59.

Mrs. [REDACTED] does not know what the “triggers” are for [REDACTED] PTSD symptoms and does not know if there are triggers in the school setting. She admitted that she is “still learning” about PTSD and what circumstances might trigger his memory of the abuse, particularly because she is still learning about the abuse he experienced while at Hopewell. She testified that it “could have been the cologne [Pickens] wore” or the sound of “the slamming of lockers.” Mrs. [REDACTED] also speculated that because [REDACTED] sometimes pulls her hair when they drive by a new school near their home, the concept of “school” in general could be a PTSD trigger for [REDACTED]. She admitted though that she does not know what this behavior really means. “I wonder if he’s doing that because he sees that school and thinks I’m going to pull in. I don’t know. It’s just – it’s every time I drive by that school he pulls my hair.” (Tr. 485, 491, 513)

60.

Dr. Mueller, who admitted he is not an expert in PTSD and that he would want to consult with experts in psychology or psychiatry to determine what [REDACTED] PTSD triggers were and how to treat them, was willing to speculate that school was a trigger for [REDACTED] PTSD. Referring to the report of hair pulling while driving by a school, Dr. Mueller stated, “That, to me, is an indication that there is a trigger in that general area. How specific that is, I don’t know.” Similarly, Lori Brown, an expert in conducting forensic interviews with child abuse victims and for helping children obtain services following abuse, testified broadly about PTSD triggers, which she called “stimulus generalization.” According to Brown, who also was not qualified as an expert in PTSD, some triggers for

█████ “could be the – the noise of the slamming against the lockers. It could be the tactile, whatever he feels sensory-wise with the – with it on the wires. It could be tactile, how he felt on the cold floor on the – on the ground.... Smells are big triggers, both for negative and positive memories at times.... Sensory is a very big trigger.”²⁶ Brown also testified that placing █████ with a teacher whose first name was the same as Pickens’ first name – Melanie – “could have been a trigger.”²⁷ Both Mueller and Brown opined that █████ should not be placed back in a school setting of any kind because of the risk that a school environment might trigger anxiety, hyper-vigilance, nervousness or fear in █████ which would impede or prevent learning. (Tr. 356-58, 371-72, 696, 701, 708, 735-37, 1174-75)

61.

Notwithstanding Plaintiffs’ witnesses’ willingness to speculate and generalize regarding what might trigger PTSD symptoms in █████ there is no credible, reliable evidence in the record to prove that any particular environment, sound, sight, smell or experience is, in fact, a trigger for PTSD in █████ other than being confined in a hospital room. Further, Plaintiffs presented no expert testimony on PTSD generally, how and when it manifests after a traumatic event, its duration, or its recommended treatment, particularly as these issues affect a person with significant developmental delays such as

²⁶ Dr. Mueller similarly hypothesized that a trigger could be the slamming of the lockers, the sound of a bus, or the hustle and bustle of students in the halls. However, he also testified that he did not know whether any of those things caused a reaction in █████ at all, and he was not sure how one would go about determining whether they were triggers or not. (Tr. 1175)

²⁷ Averitt testified that no one in the school setting ever called her “Melanie.” In fact, she has never been known as “Melanie” in any setting. (Tr. 1065-66)

██████²⁸ Rather, Plaintiffs' experts have relied on the fact that ██████ has regressed considerably in the school setting since the abuse and their opinion that the regression is likely a result of the abuse. (Tr. 1174-75)

Disclosure of ██████ Records

62.

Mrs. ██████ expended considerable effort after ██████ hospitalization attempting to get all of ██████ records from the School District, with little success. She described her dealings with the School District over ██████ records as a "nightmare." She eventually retained an attorney to intercede on her behalf. Among the records that were not provided to Mrs. ██████ in a timely manner were ██████ attendance, OT, PT, and ST records, some of which were not turned over until this hearing had begun, as well as an unredacted copy of the BDI report and interview tapes. The School District gave Mrs. ██████ a copy of the BDI report in or around March 2011, but ██████ name was

²⁸ A recent law review article examines the relationship between PTSD and the law, including the history of PTSD, its inclusion in the Diagnostic and Statistical Manual of Mental Disorders, and the role the diagnosis should play in determining causation and liability in a legal context. Deirdre M. Smith, *Diagnosing Liability: The Legal History of Post-Traumatic Stress Disorder*, 84 Temp. L. Rev. 1 (Fall 2011). Although Professor Smith notes that there is "no dispute that many people who experience serious and distressing events may have resulting long-term psychological symptoms, some quite severe, ... the widespread use of the term [PTSD], particularly in the wider culture, has rendered it loaded, diluted and confused, and it risks being a misleading and unreliable tool in the hands of lay fact finders for purposes of assigning legal responsibility or assessing harm." *Id.*, at 53, 67-68. Professor Smith cautions courts to be aware that "laypersons lack the tools to understand the limitations of this diagnosis and may misapprehend the significance of the diagnostic label." *Id.*, at 67. Although Mueller and Brown both were qualified as experts in other areas, their admitted lack of expertise in PTSD, as well as their acknowledgment that ██████ significant intellectual delays complicate both the identification and treatment of PTSD, highlights the absence of a qualified expert's opinion relating to ██████ PTSD diagnosis. The Court is mindful, however, of Mueller's testimony that he does not know, either by name or reputation, an expert in the field of PTSD who is also an expert in children with severe developmental disabilities. Such an expert may be hard to find. (Tr. 735-36)

still redacted and all the attachments were not included. They charged her \$152.75 for this copy. After Mrs. [REDACTED] retained an attorney, some, but not all of [REDACTED] education records were released. In fact, even records that were clearly part of [REDACTED] education record and that were covered by a valid subpoena in this proceeding, such as speech therapy records and IEP data collected by Averitt during the 2010-2011 school year, were not produced to Plaintiffs until the hearing was almost over. (Ex. P-20; Ex. P-25; Ex. P-K; Ex. P-N; Tr. 502, 525-26, 529, 547, 866-68, 898-99, 907, 969-70, 1052, 1120, 1134).

2011-2012 Proposed IEP

63.

[REDACTED] IEP team met on May 2, 2011 to review his performance and plan for the following school year. [REDACTED] academic development and functional performance through the 2010-2011 school year showed very little progress and quite a bit of regression. For example, [REDACTED] needed prompting to use his fork while eating, had difficulty following two-step directions despite frequent prompting, and rarely initiated conversations, speaking in one to four word utterances. Although [REDACTED] had increased his interactions with peers, he was now grabbing his peer's belongings, which he had not done in the past. His performance on his speech objectives was described as inconsistent, and he continued to require multiple prompts to achieve them. Similarly, in adaptive P.E., [REDACTED] needed constant verbal reminders and physical prompting to stay on task. In addition, [REDACTED] P.E. teacher noted that [REDACTED] was not keeping his head upright and that he needed to work on strengthening his neck. Overall, however, his teachers noted that they had seen improvement in [REDACTED] in the spring semester, that he was more outgoing and that

his bathroom issues had resolved. Mrs. [REDACTED] attributed these improvements to Zolof. (Ex. D-46)

64.

Mrs. [REDACTED] requested and the IEP team agreed to have [REDACTED] evaluated for PT, which had been discontinued as a stand-alone therapy service. Mrs. [REDACTED] also shared information with the team about the PTSD diagnosis and Waters requested a copy of the psychiatric evaluation so that they could use any recommended techniques at school.²⁹ The IEP team agreed on [REDACTED] proposed IEP for the 2011-2012 school year, which would include placement in an MOID class with speech therapy and adaptive P.E. The team also agreed on goals and objectives for the upcoming year, which included following two-step directions with one verbal prompt and requesting to use the bathroom, verbally or with a picture, with one verbal prompt. (Ex. P-15, at 1080-1108; Ex. D-46)

65.

Dr. Mueller opined that the proposed IEP was not appropriate for [REDACTED] for a number of reasons. First, it was based on faulty or non-existent data from the prior year, rather than a formal, reliable assessment of [REDACTED] current skill levels and a reinforcer assessment, which would identify those things that [REDACTED] likes and which could be used to motivate him to complete his work. Also, the proposed goals and objectives for 2011-2012, many of which related to skills that [REDACTED] had mastered before the abuse, continued

²⁹ Mrs. [REDACTED] never provided this information to the IEP team, although she acknowledged that it might have been useful for them in planning for [REDACTED]. She appeared to resent that she would have to provide records for private services that she paid for when the School District had resisted providing her with [REDACTED] education records for so long. In addition, Mrs. [REDACTED] testified that it was at the May 2, 2011 IEP meeting that she first decided that she would not send [REDACTED] back to Roswell High. She did not notify the team of this decision, wanting first to discuss it with Dr. [REDACTED] (Tr. 575-78)

the pattern of prompt dependence from the previous IEPs. Dr. Mueller further opined that the nine to twelve identified goals were far too few and that [REDACTED] should be working on sixty to seventy different skills that could easily be incorporated into different teaching programs throughout the week. Finally, Dr. Mueller opined that the placement in a traditional school setting was not appropriate because of the abuse [REDACTED] had suffered in such a setting, which has not been addressed through therapy and other supportive services. He based this opinion on his speculations about [REDACTED] PTSD triggers, stating that “[a] public school setting is going to be absolutely filled with the sights and sounds and triggers for his anxiety. The level of fear that he probably has walking into a school building is probably at times overwhelming.” (Ex. 46; Tr. 661, 666-69, 672-74, 699-700, 707-08, 1158, 1162, 1165-67)

C. Future Educational Programming and Compensatory Education

66.

As stated above, Dr. Mueller’s opinion is that [REDACTED] should not be placed in any school setting at this time. In addition to the potential for triggering PTSD symptoms, [REDACTED] age is a factor. He is now nineteen years old and the focus of his educational plan should be “getting him as independent as possible. Teaching him safety skills, skills of independence. Everything from getting dressed, and toileting, and making food, ... public transportation.... Basically, living in the community, living in the world.” According to Dr. Mueller, education in his home and community would be “ideal.” Moreover, [REDACTED] current educational plan should be developed in collaboration with experts in OT, psychology or psychiatry, and child abuse. For example, Lori Brown, the expert in child abuse, recommended immediate therapy for [REDACTED] to help with his coping

skills. However, because [REDACTED] is not a candidate for traditional insight therapy, “play therapy” might be appropriate. In addition, Kimberly Wing, an expert in the field of occupational therapy who had evaluated and provided therapy to [REDACTED] for approximately one month at the time of the hearing, opined that [REDACTED] needs OT three to five times per week in order to regain skills he has lost.³⁰ In the one month [REDACTED] has been receiving OT therapy in Wing’s clinic, he has shown great improvement, gaining endurance and muscle tone, as well as using more language and laughing. (Tr. 355, 360, 405, 417-19, 442-44, 669, 696, 707-08, 736)

67.

Dr. Mueller has not yet designed an educational plan for [REDACTED] but he has identified some of the broad contours of such a plan. First, [REDACTED] plan should be developed in collaboration with experts in OT and psychology or psychiatry. At a minimum, the initial plan should include a skills assessment, a reinforcer assessment, development of detailed goals and objectives, trial-based instruction and frequent data collection, and reassessment every six to nine months. Dr. Mueller recommended that

³⁰ Wing reviewed the OT records provided by the School District. First, she opined that the amount of OT called for by his IEPs was insufficient given [REDACTED] deficits in muscle tone, endurance, range of motion, postural stability and fine motor skills, all of which he needs to perform daily living tasks and pre-academics. Second, according to the documentation, long periods of time went by where [REDACTED] did not receive any OT, either through direct service or consultation with his classroom teacher, contrary to his IEP. The Court has reviewed the therapy records provided by the School District for [REDACTED] two years at Roswell High and finds that at times the therapies were not provided as frequently as called for in his IEP or, at the very least, the record-keeping was shoddy and incomplete. For example, Laurie Sperry, a PT for the School District who worked with [REDACTED] during the 2009-2010 school year, admitted that she did not document providing any PT to [REDACTED] from November 2009 through January 2010. Although Sperry believes she provided some therapy during that time but just failed to document it, she understands how [REDACTED] parents would be upset and think that [REDACTED] did not receive the services he was entitled to under his IEP. (Ex. P-16; Ex. P-H; Tr. 411-17, 941, 943)

█ receive thirty-two to forty hours per week of instruction and services. In terms of how long █ would need to receive instruction and services under this yet-to-be developed education plan, Dr. Mueller opines that █ needs, at a minimum, five-and-a-half additional years of education to compensate for the denial of appropriate educational programming from the time of the abuse to the present. Thus, given that █ is entitled under IDEA to an appropriate education for the next three years, until he turns twenty-two, Dr. Mueller opined that █ should receive appropriate educational programming for a total of eight-and-a-half years. (Tr. 669, 680-82, 696, 703-05, 707-09, 713-14)

68.

Wing testified that █ “probably” needs ten years of OT, although the frequency and intensity of such services may decrease over time. Wing testified that there are “spurts of growth and development,” and █ is currently demonstrating good growth now in his twice-weekly OT sessions. Eventually, he will plateau, but he will need to continue therapy for some period of time to maintain his muscle strength, range of motion, and endurance. Thereafter, he may need only OT consultation as he moves further into adulthood. (Tr. 427-28)

69.

After weighing the testimony of these witnesses and keeping in mind that both appeared to be well-qualified in their fields, the Court finds that their opinions regarding the duration of the compensatory education and services █ needs are not supported by sufficient reliable evidence. In particular, the Court finds Dr. Mueller’s estimate of an additional five-and-a-half years, on top of the three years of appropriate educational programming to which █ is automatically entitled under IDEA, to be little more than

conjecture. First, when the Court asked Dr. Mueller to explain this opinion, he answered, “To me, he made no progress during those years, and so they were essentially absent of education. So, I don’t know how else you would make up that much time, other than to give that much time.” Dr. Mueller admitted that he was unaware of any data or research that would support this conclusion, however. In fact, he is not aware of any research that offers a particular percentage of time necessary to make up for regression due to abuse. With respect to Wing’s testimony, the Court finds her estimate, although overall a longer period of time, to be slightly more reasonable, given her testimony regarding an initial intensive period of OT services, with a gradual reduction over time as his skills, strength, and endurance improve. (Tr. 704-07)

D. Parents’ Distrust of School District

70.

As stated above, Mrs. ████████ decided that she could not send ████████ back to school in the School District at the May 2011 IEP meeting. Since that time, Mrs. ████████ has learned of additional abuse by Pickens, including information she learned for the first time at the administrative hearing in this case. She testified that if she had known in August of 2007 what she knows today about the abuse at Hopewell, she and Dr. ████████ would never have sent him back. In fact, Mrs. ████████ testified that knowing what they know today, they will never allow ████████ to go back to Fulton County Schools, regardless of what happens in these proceedings, and that he does not want to go back.³¹

³¹ Both Linda Schultz and Mary Waters testified that they understood how a family whose child has been abused in the school setting, but who had not been told of the abuse by the school, would not wish to keep their child in the School District. According to Waters, it would be almost impossible for parents to trust the School District after such an occurrence. Lori Brown, an expert in child abuse, testified that she would “question”

(Tr. 493, 511, 548-49, 734)

71.

At the hearing, Mrs. [REDACTED] explained her attitude toward a placement in the School District, as follows:

Q. [W]ould you feel safe for him to ever go back?

A. Absolutely not. I – how do you – how do you trust what they say. And they tell me he's having a good day, and he's probably in a room in the dark. No. No. He's not going back. I'm sorry. He's 18 now. He doesn't have to.

Q. But he's entitled to an education until he's 22.

A. Yeah.

Q. If they come in and bring a teacher in and she says, ... I would never abuse a child and I'm nice and you can trust me, can you trust her?

A. No. And I worry about that. I worry about how I'm going to trust anybody.

Q. Did you trust Ms. Pickens?

A. I did. I didn't have a reason to know I shouldn't, because – I mean, how does this happen? The whole – the building, everybody is required reporters. It should be the safest place for our children to be.

Q. Did you ever think that this kind of abuse could happen to your son repeatedly.

A. Not while I was alive and could protect him.

Q. His reduction in anxiety since he's been out of school, his pulling your hair when he rides by the school bus and those buses, how does that play into the effect of your decision not to have him go back to the public – Fulton County Schools.

the decision of parents who allowed their children to go back into a school system where systemic abuse occurred and teachers and staff failed to report it. (Tr. 258, 380, 853-54)

- A. I just – I just – there is no reason. It’s like it’s just like re-abusing him all over again.... I’m just not going to do it. I just can’t do it.

(Tr. 548-50)

E. Medical Expenses

72.

██████ parents tendered receipts and bills for the medical treatment and services they obtained for ██████ following the abuse, including the botox injections, his psychiatrist, and the October 2010 hospitalization. These bills total approximately \$32,000.00. (Tr. 546; Ex. P-25)

III. CONCLUSIONS OF LAW

A. General Law

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 *et seq.*; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 *et seq.*; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. (“Ga. DOE Rules”), Ch. 16-4-7.

2.

Plaintiff bears the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. DOE Rule 160-4-7-.12(3)(1); OSAH Rule 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

3.

Claims brought under IDEA are subject to a two-year statute of limitations. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. §§ 300.507(a)(2), 511(e). The limitation period begins as of the date the parents “knew or should have known about the alleged action that forms the basis of the due process complaint.” *Id.* ““The parents must be in possession of ‘critical facts’ which indicate that the child has been hurt and the defendants are responsible for this injury.”” Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331, 1340 (N.D. Ga. 2007), *aff’d* 518 F.3d 1275 (11th Cir. 2008), *quoting* K.P. v. Juzwic, 891 F. Supp. 703, 716 (D. Conn. 1995). IDEA provides an exception to the two-year statute of limitations in the event that the school district withholds information from the parent that was required to be provided under IDEA. 34 C.F.R. § 300.511(f)(2).

4.

Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. DOE Rule 160-4-7-.01(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living’” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), *quoting* 20 U.S.C. § 1400(d)(1)(A).

5.

The United States Supreme Court has developed a two-part inquiry to determine whether a school district has provided FAPE: “First, has the State complied with the

procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982). "This standard, ... has become known as the *Rowley* 'basic floor of opportunity' standard." C.P., 483 F.3d at 1152, *citing JSK v. Sch. Bd.*, 941 F.2d 1563, 1572-73 (11th Cir. 1991). *See also Draper*, 518 F.3d at 1280. Under the *Rowley* standard, a disabled student "is only entitled to some educational benefit; the benefit need not be maximized to be adequate." Devine v. Indian River County Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001). The Eleventh Circuit has defined "'appropriate education' as making measureable and adequate gains in the classroom." JSK v. Sch. Bd., 941 F.2d at 1573. Nevertheless, "public schools do not satisfy the IDEA by offering mere token gestures or a trifle of benefits." Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d at 1345.

6.

IDEA is also intended "to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. § 1400(d)(1)(B). In 2007, the United State Supreme Court considered the nature of the rights granted to parents under the IDEA. Winkelman v. Parma City Sch. Dist., 127 S.Ct. 1994 (2007). In Winkelman, the Supreme Court noted that parents play "'a significant role'" in the development of the IEPs for their disabled children, including serving as essential members of the IEP Team. Id., at 2000, *quoting Schaffer*, 546 U.S. at 53. "The statute also sets up general procedural safeguards that protect the informed involvement of parents in the development of an education for their child," including mandating that States provide an

opportunity for parents to examine all relevant records. Id., *citing* 20 U.S.C. 1415(b)(1).

7.

The right of a parent to be “fully informed” is also recognized in IDEA in the definition of “consent.” If a parent’s consent is sought for an activity, the parent must be “fully informed of all information relevant to the activity.” 34 C.F.R. § 300.9(a). IDEA requires the School District to obtain “informed consent from the parent of such child before providing special education and related services to the child.” 20 U.S.C. § 1414(a)(1)(D). The purpose behind IDEA’s extensive procedural framework is to provide parents the opportunity for “full and effective participation in the IEP process.” Weiss v. Sch. Bd. of Hillsborough County, 141 F.3d 990, 996 (11th Cir. 1998), *citing* Doe v. Alabama State Dept. of Educ., 915 F.2d 651, 662 (11th Cir. 1990).

8.

If a parent disagrees with a child’s IEP or believes the school district has violated IDEA in terms of the identification, evaluation, educational placement or the provision of FAPE, the parent is entitled to file a due process complaint. 34 C.F.R. § 507(a). Under Eleventh Circuit case law, parents have the right to a due process hearing to ensure that their child’s IEP be “likely to produce progress, not regression or trivial educational advancement.” Draper, 480 F. Supp. 2d at 1345 (citations omitted). In addition, because the definition of FAPE requires special education and related services that are provided “in conformity with the IEP,” a parent can also seek relief under IDEA if the school fails to implement a “substantial,” “material,” or “essential” provision of the IEP. B.F. v. Fulton County Sch. Dist., 2008 U.S. Dist. LEXIS 76714, *72 (N.D. Ga. 2008) (failure to implement must be more than *de minimus*), *citing* Van Duyn v. Baker Sch.

Dist., 502 F.3d 811, 822 (9th Cir. 2007); Houston Indep. Sch. Dist. V. Bobby R., 200 F.3d 341 (5th Cir. 2000); Neosho R-V Sch. Dist. V. Clark, 315 F.3d 1022 (8th Cir. 2003).

B. The School District Violated Plaintiffs' Rights Under IDEA.

1) Statute of Limitations

a) **Abuse-Related Claims**

9.

Plaintiffs filed their complaint on June 16, 2011. Based on the evidence in the record, the Court concludes that Plaintiffs' claims relating to the abuse, which include the School District's placement of ██████ in Pickens' classroom during the 2006-2007 school year, the abuse he experienced during that year, and the School District's failure thereafter to fully inform ██████ parents about the abuse, did not accrue until July 2009. Prior to that time, although Mrs. ██████ detected some deterioration in ██████ functioning, stability, and mood, she did not know, and reasonably could not have known, the "critical facts" that ██████ had been hurt and that Pickens and the School District were responsible for the injury. Draper, 480 F. Supp. 2d at 1340. First, Mrs. ██████ testified credibly that she had not heard of the abuse from anyone prior to speaking with ██████ M.'s mother in July 2009, and her actions both before that time and afterward are consistent with this testimony. In addition, the evidence was undisputed that no one from Hopewell or the School District ever informed ██████ parents about the abuse before July 2009.

10.

Based on the evidence in the record, the Court rejects the School District's argument that ██████ parents should have known about the abuse prior to July 2009.

First, [REDACTED] was not able to come home and tell his parents what was happening in Pickens' classroom. Second, given that the abuse was occurring within the confines of G Hall, where most of the other students were non-verbal and where the educators' reports were ignored, no inkling of the abuse reached [REDACTED] parents from any source inside of Hopewell. Thus, in order to find that Dr. and Mrs. [REDACTED] should have known about the abuse, they must have been expected to deduce from [REDACTED] conduct – such as his repetition of the phrase, “Lights on,” when he went to his new classroom in August 2007 or his regression in using the restroom at school – that he was being abused in school by his teacher. The Court finds this argument to be untenable. *See Draper*, 518 F.3d 1275; *compare A.B. v. Clarke County Sch. Dist.*, 2009 U.S. Dist. LEXIS 27102, *36-37 (M.D. Ga. 2009). Accordingly, the Court concludes that Plaintiffs' claims that relate to the abuse during the 2006-2007 school year are not barred by the statute of limitations.

b) Non-Abuse Claims

11.

With respect to alleged violations that are not related to the abuse, such as deficiencies in the development and implementation of [REDACTED] IEP and the amount and frequency of related services, the Court concludes that the statute of limitations does apply and that claims based on facts prior to June 16, 2009 are barred. Thus, Plaintiffs are only entitled to seek relief on the non-abuse related claims that arose while [REDACTED] was at Roswell High during the 2009-2010 and the 2010-2011 school years.³²

³² The Court set forth historical facts about [REDACTED] IEPs prior to this time “as background material and to provide context for the claims, not to support a violation of the IDEA.” *Draper*, 480 F. Supp. 2d at 1341.

2. The School District Violated [REDACTED] Right to FAPE.

12.

Plaintiffs claim that Pickens' abuse and mistreatment of [REDACTED] as well as the abuse of his classmates in his presence, prevented him from receiving a free, appropriate public education. The Court agrees. When a parent alleges that a School District's abuse of a disabled child interfered with the child's right to a FAPE, IDEA can provide relief in the form of education and additional services to compensate for any educational deficits caused by the past abuse. Bowden v. Dever, 2002 U.S. Dist. LEXIS 5203, *13-15 (D. Mass. 2002) (holding that claims arising out of physical and psychological abuse of autistic children by teacher were subject to the IDEA's exhaustion requirement). *See also* M.M. v. Tredyffrin/Easttown Sch. Dist., 2006 U.S. Dist. LEXIS 62918 (E.D. Pa. 2006) ("when faced with students' disability discrimination claims based on abuse by school employees, many courts have required administrative exhaustion because the claims related to the denial of FAPE"), *citing* Charlie F. v. Bd. of Educ. of Skokie Sch. Dist., 98 F.3d 989 (7th Cir. 1996); Bowden v. Dever, *supra*; Kubistal v. Hirsch, 1999 U.S. Dist. LEXIS 1613 (N.D. Ill. 1999). *But see* Edwards v. County Bd. of Educ. of Richmond County, 2007 U.S. Dist. LEXIS 59789 (S.D. Ga. 2007) (claims of physical and mental abuse and injuries were unrelated to the provision of FAPE); Witte v. Clark County Sch. Dist., 197 F.3d 1271 (9th Cir. 1999); McCormick v. Waukegan Sch. Dist. #60, 374 F.3d 564 (7th Cir. 2004).

13.

When "[b]oth the genesis and the manifestations of the problem are educational[,] the IDEA offers comprehensive educational solutions," including psychological

counseling for children and parents. Charlie F., 98 F.3d at 993, *citing* 34 C.F.R. § 300.16(b)(8)(v) (parents of disabled child who alleged that teacher had subjected child to humiliation, resulting in loss of confidence and disruption of educational progress, were required to exhaust administrative remedies under IDEA). Of course, in some cases, as Judge Easterbrook acknowledged in *Charlie F.*, a child's adverse reaction to alleged teacher misconduct may not be overcome by services available under IDEA, "so that in the end money is the only balm." Id. Nevertheless, such claims are actionable under IDEA if they violate a school district's duty to provide FAPE.

14.

In this case, the fact that ■■■ was denied an appropriate educational placement for the year he was in Pickens' class is essentially undisputed. The School District's own witnesses admitted that the placement of a severely disabled child in a classroom with a teacher who was known to be abusive, in a school that was headed by a principal who repeatedly failed to act on reports of such abuse, constituted an inappropriate educational placement. Moreover, the undisputed evidence in the record showed that ■■■ was, in fact, abused by Pickens during the 2006-2007 school year and that the abuse contributed to long-term regression in his skills across a wide-range of academic, social, physical, and functional areas. Finally, the evidence showed that the abuse significantly impeded his ability to benefit from his education, both during the 2006-2007 school year and thereafter.

15.

The events that transpired on G Hall are reminiscent of the types of inequalities that Congress attempted to eliminate when it enacted the first version of IDEA in 1975.

See Terry Jean Seligmann, *A Diller, A Dollar: Section 1983 Damage Claims for Special Education Lawsuits*, 36 Ga. L. Rev. 465, 471 (Winter 2002), citing 20 U.S.C. §§ 1414(d)(4), (a)(2). At that time, Congress “had before it a record of widespread exclusion and miseducation of children with disabilities,” where disabled students were often “warehoused” in special, segregated classes or schools. *Id.* See also *Honig v. Doe*, 484 U.S. 305, 309 (U.S. 1988), citing H.R. Rep. No. 94-332, p. 2 (1975). In this case, the abuse was allowed to continue unchecked in part due to the physical segregation of the severely disabled students from the rest of the school.³³ Moreover, the isolation and restraint of █████ █████ M., and other students in empty, dark rooms on G Hall was not dissimilar to the warehousing of disabled children in the 1970s, in its worse form.

16.

Therefore, the Court concludes, based on a preponderance of the evidence, that █████ placement in Picken’s MOID classroom was inappropriate, that █████ was physically and psychologically abused by Pickens during the 2006-2007 school year, and that such abuse has had a lasting effect on his progress in school. Accordingly, █████ is entitled to compensatory education and services under IDEA.

³³ Of course, the primary reason the abuse was not stopped was the inexplicable refusal of Boyd to act on the complaints, or for any of the other educators in the School District, until Tallant came forward, to stand up to Boyd and insist that corrective action be taken. Nevertheless, the Court concludes that the physical segregation of the mostly non-verbal disabled students to G Hall allowed the abuse to go unnoticed by others in the school community – such as parents and other regular education students – whose jobs were not dependent on Boyd’s favor and who might have more readily complained of Pickens’ misconduct.

3. The School District Violated [REDACTED] Parents' Procedural Rights.

17.

The Eleventh Circuit has held that “violation of any of the procedures of the IDEA is not a *per se* violation of the Act.” Weiss v. Sch. Bd., 141 F.3d 990, 996 (11th Cir. 1998). Under IDEA, in order to prove a denial of FAPE based on a procedural violation, Plaintiffs must show that 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.” 34 C.F.R. § 300.513(2); 20 U.S.C. § 1415(f)(3)(E). In Weiss, the Court held that where a family has “full and effective participation in the IEP process . . . the purpose of the procedural requirements are not thwarted.” 141 F.3d at 996.

a) **Right to Be Fully Informed**

18.

The Court concludes that [REDACTED] parents had procedural rights under IDEA to be fully informed of information relevant to [REDACTED] education and that those rights were violated by the School District. The School District’s own witnesses testified that information about the abuse was relevant to planning for [REDACTED] education. Moreover, the Court concludes that the failure of the School District to tell his parents about the abuse impeded their opportunity to fully and effectively participate in the IEP decision-making process. Mrs. [REDACTED] testified credibly at the hearing that she would not have allowed [REDACTED] to return to Hopewell if she had known all she knows now about the long history of abuse by Pickens and the school’s failure to stop it. At the very least, such

information would have been important to the parents and would have influenced their decision-making during the IEP process. Accordingly, the Court concludes that the School District's failure to fully inform the parents of the abuse was a significant procedural violation that amounted to a denial of FAPE.

b) Access to Records

19.

With respect to Plaintiffs' procedural claim regarding access to [REDACTED] education records, the Court concludes that the School District denied the parents an opportunity to inspect and review education records as required under 34 C.F.R. §§ 300.501 and 300.613. Although "parental access to 'education records' does not extend so far as to allow access to each individual piece of student work," IDEA does require the School District to provide access to parents to those records that relate to their child and that are "collected, maintained, or used by" the School District in providing special education to the child. K.C. v. Fulton County Sch. Dist., 2006 U.S. Dist. LEXIS 47652 (N.D. Ga. 2006); 34 C.F.R. § 300.613(a). Moreover, access must be provided to parents "without unnecessary delay and before any meeting regarding an IEP." 34 C.F.R. § 300.613(a).

20.

The Court concludes that the School District failed to provide Mrs. [REDACTED] access to a number of education records as required under IDEA. In addition to a properly redacted version of the BDI report, the School District withheld other education records from Mrs. [REDACTED] including the data relating to [REDACTED] Roswell High IEP goals, his attendance records, and his therapy records. Further, this procedural violation "seriously infringed" on the parents' opportunity to participate in the IEP process. *See*

K.C., 2006 U.S. Dist. LEXIS at *31. First, the data relating to his 2010-2011 IEP goals, once produced late in the hearing, revealed that [REDACTED] teachers were not implementing all of [REDACTED] IEP objectives and that their data collection was faulty. With respect to [REDACTED] belatedly-produced attendance and therapy records, such records demonstrated a pattern of shoddy record-keeping and significant gaps in service over the past two years. The Court therefore concludes that the denial of timely access to [REDACTED] education records was a procedural violation that had a demonstrable impact on this proceeding.

4. [REDACTED] Roswell High IEPs were Inadequate and Not Appropriately Implemented.

21.

[REDACTED] failed to make adequate progress toward his IEP goals and objectives during the two years he attended Roswell High. In fact, in many areas, including toileting, speech and language, social interactions, and self-help skills, [REDACTED] regressed from year to year. Moreover, [REDACTED] IEPs were replete with goals that fostered prompt dependency, as opposed to independent skill acquisition. The Court concludes that [REDACTED] IEPs for the 2009-2010 and 2010-2011 school years were not reasonably calculated to lead to “measurable and adequate gains in the classroom,” but rather were designed to confer “a mere trifle of benefits” in violation of IDEA. Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d at 1345; JSK v. Sch. Bd., 941 F.2d at 1573. Finally, the School District failed to work on at least one of the important objectives on [REDACTED] 2010-2011 IEP and failed to provide therapy with the frequency that was called for in his IEP. The Court concludes that these were not *de minimis* violations, but constituted material failures to implement [REDACTED] IEPs.

5. ██████████ Proposed IEP for 2011-2012 is Not Reasonably Calculated to Confer Educational Benefit.

22.

The proposed IEP for the 2011-2012 school year is not an appropriate education plan for ██████████ both in terms of the services offered, the goals and objectives identified, and the proposed placement at Roswell High. Based on the testimony of Dr. Mueller, the Court concludes that in order to address the regression in ██████████ skills and functioning since the abuse and to provide for measureable and adequate gains, ██████████ needs intensive educational programs and related services that focus on his home and community life. His IEP goals and objectives need to be specifically tailored to ██████████ abilities and based on assessments of his current skill level and functioning. The Court concludes that the proposed 2011-2012 IEP does not provide ██████████ with the basic floor of opportunity upon which to learn and prepare “to lead [a] productive and independent adult [life] to the maximum extent possible.” 20 U.S.C. § 1400(c)(5).

23.

With respect to whether Roswell High or another school within the School District is the appropriate placement for ██████████ the Court has taken into account ██████████ parents’ deep distrust of the School District, his own reluctance to return to “school,” and Mrs. ██████████ resolute rejection of a proposed placement within a School District facility. Although certainly not determinative, the Court concludes, based on the unique circumstances of this case, including the history of Pickens’ abusive conduct, the widespread knowledge of her actions by employees of the School District, and the School District’s failure to disclose the abuse to ██████████ parents, that parental hostility toward the

placement is a factor to consider “in analyzing the educational benefit which could be expected to flow from that placement.” Bd. of Educ. of Community Consol. Sch. Dist. No. 21 v. Illinois State Bd. of Educ., 938 F.2d 712 (7th Cir. 1991) (district court did not err in considering parents’ hostile attitude toward a proposed placement, which was severe enough to doom any attempt to educate the child in that placement and thus had “obvious and direct relevance to any assessment of the probable benefit” of the placement). *See also* Greenbush Sch. Comm. V. Mr. K, 949 F. Supp. 934 (D. Me. 1996).

24.

After weighing the testimony of Mrs. [REDACTED] and assessing her demeanor and manner of testifying, as well as considering the testimony of current School District employees, the School Board president, and an expert in child abuse, the Court finds that Mrs. [REDACTED] adamant refusal of a placement within the School District is a genuine, understandable parental reaction to the facts that have come to light in this case. The Court finds that Mrs. [REDACTED] is not “feigning” opposition to obtain a preferred placement and there is no evidence that her feelings of betrayal and anger toward the School District are “manufactured” in any way. *Id.* at 718. Accordingly, as the court held in *Board of Education of Community Consolidated Schools*, an IEP that calls for [REDACTED] to be placed in a Fulton County school setting is “doomed” and can offer no educational benefit to [REDACTED]. *Id.* at 717.

25.

However, even without considering Plaintiffs’ opposition to this placement, the Court finds that other factors weigh against Roswell High as an appropriate placement for [REDACTED]. Although there was insufficient reliable evidence to show that a school

environment in fact triggers PTSD-like symptoms in ██████ the evidence showed that ██████ regressed in the school setting and has begun to regain skills since being away from school. In addition, there is at least the possibility that ██████ experiences some PTSD symptoms based on his exposure to the school setting and that risk has not been assess by an expert in PTSD at this time. Finally, and importantly, the Court has given considerable weight to Dr. Mueller’s testimony that ██████ age and unique needs make it appropriate for him to be educated in the natural environment where he will be expected to live. Although this is a more restrictive environment than a public high school, and arguably more restrictive than a private special school placement, the Court concludes, based on all the above factors, that a home and community-based educational program is the least restrictive appropriate placement available for ██████ at this time.

C. Remedy

26.

“Once a court holds that the public placement violated IDEA, it is authorized to ‘grant such relief as the court determines is appropriate.’” Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16 (1993), *quoting* 20 U.S.C. § 1415(e)(2). The Eleventh Circuit has held that compensatory education is considered “‘appropriate relief where responsible authorities have failed to provide a handicapped student with an appropriate education as required by [the Act].’” Draper, 518 F.3d at 1280, *quoting* Todd D. ex rel. Robert D. v. Andrews, 933 F.2d 1576, 1584 (11th Cir 1991). The *Draper* court found that “‘equitable considerations are relevant in fashioning relief’” under IDEA and that courts enjoy “broad discretion” in doing so. Id., *quoting* Sch. Comm. of the Town of Burlington, Mass. v. Dep’t of Educ. of Mass., 471 U.S. 359, 374 (1985).

27.

In addition to compensatory education involving “discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student,” reimbursement of expenditures for private special education services paid by parents pending review is also available under IDEA if such services are deemed appropriate. Draper, 480 F. Supp 2d at 1352-53, *quoting* G. v. Fort Bragg Dependent Schs., 343 F.3d 295, 309 (4th Cir. 2003), Burlington, 471 U.S. at 369. The amount of reimbursement and prospective relief to be awarded are to be “determined by balancing the equities. Factors that should be taken into account include the parties’ compliance or noncompliance with state and federal regulations pending review, the reasonableness of the parties’ positions, and like matters.” Burlington v. Dep’t of Educ., 736 F.2d 773, 801-801 (1st Cir. 1984), *aff’d sub nom.* Burlington, 471 U.S. at 359.

28.

The Court has given careful consideration to all the evidence in this case, including the opinions of the experts, the seriousness of the underlying FAPE violations, and the School District’s role in prolonging the period during which █████ regressed and was denied needed services. Moreover, the Court is mindful of the admonition by some courts not to rely on a strictly quantitative, “cookie-cutter” approach to fashioning equitable remedies in IDEA cases. *See* Reid v. Dist. of Columbia, 401 F.3d 516 (D.C. Cir. 2005) (Where child was “neglected by the school system charged with affording him free appropriate education,” he was entitled to compensatory instruction in an amount not “predetermined by a cookie-cutter formula, but rather [by] an informed and reasonable

exercise of discretion regarding what services he needs to elevate him to the position he would have occupied absent the school district's failure").

29.

The Court's ability to craft a qualitative compensatory award in this case, however, is constrained by two deficiencies in the evidence. First, there is no evidence from which to glean or predict how █████ education would have progressed but for the failure of the School District to provide him with FAPE. For example, there is no easily-identifiable marker, such as obtaining a high school diploma or passing a reading test, from which to judge that █████ has attained the education he would reasonably have been expected to reach but for the denial of FAPE. The evidence shows only that █████ left elementary school happy and progressing toward his goals, and that his skills and abilities stalled or regressed following the abuse at Hopewell. Dr. Mueller testified that although █████ would never have achieved full independence through FAPE, he had considerable potential for continued progress, and it is impossible to accurately predict how far down the road toward a more independent life he might have traveled absent the abuse. (Tr. 1208)

30.

Another troubling deficiency is the absence of any reliable evidence regarding how long █████ will need additional education and services to compensate for the FAPE violations. Of course, Plaintiffs' witnesses were hampered by the uniqueness of these circumstances, leading to a lack of research and personal experience on which to base a reasoned opinion about how long compensatory services are needed. Nevertheless, the Court finds that the opinion of Plaintiffs' experts that █████ needs eight-and-a-half to ten

years of compensatory instruction and supportive services to be the result of the type of cookie-cutter, “hour-by-hour” approach criticized in *Reid*.

31.

The Court is left in a quandary. Plaintiffs are entitled to compensatory relief, but for how long? Without sufficient reliable, non-speculative evidence upon which to base the kind of qualitative analysis favored by *Reid*, the Court is left to determine the amount of appropriate compensatory relief based on the available quantitative measures. Consequently, having considered all the evidence and having weighed the equities in this case, the Court concludes that Plaintiffs are entitled to compensatory education and related services, as set forth below, for the next five school years, consisting of 180 school days per year. The Court is persuaded that five school years of intensive, integrated, home and community-based instruction and services will compensate ██████ for the five school years during which he did not receive a FAPE. As Kimberly Wing, the OT currently providing services to ██████ observed, ██████ made significant progress in just one month when guided by careful, caring and trained providers. Five school years of integrated instruction is sufficient and appropriate to compensate ██████ and his family for the School District’s denial of FAPE and will enable him to move toward a more “productive and independent adult life to the maximum extent possible,” as contemplated by IDEA.

32.

Accordingly, the Court grants the following compensatory relief to Plaintiffs:

- 1) Education and necessary related services, including occupational therapy, physical therapy, and speech therapy, as well as supplementary aids and

services, to be provided by private providers primarily in [REDACTED] home and community and pursuant to an individualized education plan designed by Dr. Mueller or another person qualified in developing educational programming for students with developmental disabilities. An initial individualized education plan shall be developed promptly after the following assessments are completed, by providers selected by Plaintiffs:

- a) Comprehensive skills assessment;
 - b) Reinforcer assessment;
 - c) Psychological evaluation and consultation by a pediatric psychologist or psychiatrist, who is identified and selected by Plaintiffs and who is trained in diagnosis and treatment of PTSD.
- 2) Psychological counseling or therapy, to the extent and of the type recommended by a pediatric psychologist or psychiatrist, including family or play therapy.
 - 3) The individualized education plan shall include, at a minimum, measurable goals and objectives, trial-based instruction and a provision for regular data collection, and a schedule for at least annual reassessment and review. All reassessments shall include an evaluation from each private service provider regarding the level of service needed in the coming assessment period, and whether the level should be reduced.
 - 4) A maximum of eight hours per day of instruction and services for a period of time equivalent to five 180-day school years, provided by private service providers pursuant to an individualized education plan. Such instruction and

services shall be paid for by the School District upon receipt of periodic invoices for services rendered. Such invoices shall be paid promptly, but the School District is not required to pay for services in advance.

- 5) Within one week of the development or reassessment of an individualized education plan for [REDACTED] Plaintiffs shall provide the School District with a copy of the plan. If the School District wishes to do so, it may notify Plaintiffs of alternative providers or supplementary aids or services that might be available through the School District, including providers who are employed by the School District or supplementary aids owned by or procured through the School District. Plaintiffs must consider the suggested alternative provider or supplementary aid or service, but are not obligated to use them.
- 6) If at any time, the pediatric psychologist or psychiatrist monitoring [REDACTED] determines that education in a school setting no longer presents a risk of harm due to PTSD or other psychological concerns, [REDACTED] parents shall notify the School District in writing within two weeks of this determination. The parties shall convene a meeting, at a time, place, and location agreed upon by the parties, to consider whether enrollment in a school-based program, whether private or public, would meet [REDACTED] educational needs and be the least restrictive appropriate environment for his education program. The parties may agree on such a placement at any time and under any terms, but neither party is obligated to do so.

33.

In addition, Plaintiffs are entitled to reimbursement for appropriate, reasonable, private OT and PT services, as well as the educational planning services provided by Dr. Mueller, to the extent they were provided for [REDACTED] and not solely in anticipation of litigation, since the filing of the due process complaint. Within two weeks of the date of this order, Plaintiffs shall file proof of such costs for review and consideration by the Court and serve a copy on the School District. The School District shall have one week to file a response or objection to the proof of costs. The Court will enter an order amending this Final Decision to include specific reimbursement for such expenses, if appropriate.


34.

All other requested relief not specifically granted above, is hereby denied.

IV. DECISION

For the reasons stated above, the Court finds that the Fulton County School District did not provide [REDACTED] [REDACTED] with a free appropriate public education under IDEA. Plaintiffs are entitled to compensatory relief as set forth above.

SO ORDERED, this 1st day of February, 2012.



KIMBERLY W. SCHROER
Administrative Law Judge