BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], by and through [redacted], **Petitioners,** **v.** **HENRY COUNTY SCHOOL DISTRICT,** **Respondent.**	**Docket No.: 2224443** **2224443-OSAH-DOE-SE-75-Schroer**

FINAL DECISION

[redacted], by and through his mother, [redacted] ("Petitioners") filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA" or "Act"), 20 U.S.C. §§ 1400 to 1482, and its implementing regulations, 34 C.F.R. Part 300, against Respondent Henry County School District ("Respondent" or the "District") alleging a denial of a free appropriate public education ("FAPE").

I. RELEVANT PROCEDURAL HISTORY

Petitioners filed their due process complaint on April 19, 2022.[1] The District filed its Defenses of Law and Answer on April 27, 2022, generally denying Petitioners' request for relief, but admitting that [redacted] had not been evaluated since 2013 in violation of IDEA. On May 3, 2022, the District reported that the parties had met for an early resolution session but been unable to resolve the disputed issues. An evidentiary hearing was held at the Office of State Administrative Hearings on June 15, 2022. Petitioners [redacted] and [redacted] were present and represented themselves. The District was represented by Megan Murren Rittle, Esq. and Jeremy A. Trimble, Esq. Petitioner

[1] Any claims arising before April 19, 2020, therefore, are barred by the statute of limitations. 20 U.S.C. § 1415(b)(6)(B); Mandy S. v. Fulton Cnty. Sch. Dist., 205 F. Supp. 2d 1358 (N.D. Ga. 2000), aff'd without opinion, 273 F.3d 1114 (11th Cir. 2001).

[redacted] testified in Petitioners' case in chief, and Petitioners also presented testimony of two District employees: [redacted], a Speech and Language Pathologist, and [redacted], an assistant principal at [redacted]'s school. After Petitioners rested their case, the Court granted the District's motion for involuntary dismissal on one of Petitioners' claims relating to attendance records, and denied or took under advisement the motion as to the remaining contested claims. The Court also allowed Petitioners to reopen their case to introduce an exhibit, as discussed further below. In their case, the District recalled [redacted] and also called [redacted], a para-professional at [redacted]'s school.

After the hearing concluded, the parties jointly requested that the record remain open to file post-hearing briefs. The Court granted the request, and the parties agreed to file post-hearing briefs on July 1, 2022, and requested that the Court hold the record open until July 8, 2022 for the parties to file optional response briefs. (Neither party filed a response.) The deadline for issuance of the decision was extended to August 15, 2022, and for the reasons discussed below, Petitioners' request for relief is **GRANTED** in part and **DENIED** in part.

II. FINDINGS OF FACT

The claims before this Court are those set forth in the Due Process Complaint, as follow:

(1) On April 13, 2022, a teacher stated, "I will write him up every day."

(2) On April 13, 2022, [redacted] was bullied and harassed by another student, [redacted], and although both [redacted] and [redacted] signed a "No Contact" contract, the school "refuses to hold [[redacted]] responsible for her actions."

(3) [redacted] was placed in I.S.S. [In-School Suspension] for failing to attend his 4th Block class, where [redacted] was present.

(4) [redacted] has not been evaluated in the past nine years.

(5) [redacted] was not provided special education services while in ISS, with the exception of speech.

(6) Attendance records for [redacted] are inaccurate.

(7) Educators are not being held responsible for unethical behavior.

(8) [redacted] was discriminated against based on his disability and his race, and the school's disciplinary referrals were retaliatory.

A. Educational Background

1.

[redacted] is sixteen years old and was in ninth grade during the 2021-2022 school year. He has attended District schools since he was in pre-kindergarten and has been eligible for special education services under the categories of (1) Other Health Impairments, (2) Specific Learning Disabilities, and (3) Speech/Language Impairment since before 2013. [redacted] has been diagnosed with Attention Deficit Disorder ("ADD"), dyslexia, oppositional defiant disorder, and a speech impairment. (Testimony of [redacted]; Ex. P-9.)

2.

[redacted] began the 2021-2022 school year at [redacted] High School. In November 2021, he transferred to [redacted] High School. [redacted] testified that she moved [redacted] from [redacted] High School because she was not satisfied with the provision of special education services at that school. After becoming dissatisfied with [redacted], [redacted] withdrew [redacted] from District schools on April 25, 2022, and enrolled him in Southern Crescent Technical College in Griffin, Georgia, where he is working toward a GED. [redacted] is very pleased with [redacted]'s progress at Southern Crescent and does not intend for him ever to return to District schools. (Testimony of [redacted]; Ex. P-18.)

B. Attendance Records

3.

Petitioners presented evidence at the hearing that proved that [redacted]'s attendance records as reported on the District's online parent portal were not always accurate. Specifically, [redacted] testified that she kept track of the dates and times that she dropped [redacted] off at school in the morning, and she would regularly check the District's parent portal to see whether he was marked present or absent from class. She noted several inconsistencies, including times when the portal did not consistently mark him absent when he was home for out-of-school suspension, unexcused absences when he was sent home sick, and being marked absent when he was in In-School Suspension ("ISS"). There was no evidence regarding whether his official attendance records were later updated or revised from what appeared on the parent portal, but the evidence was sufficient to prove that the parent portal was not always a reliable means of tracking [redacted]'s actual attendance in each of his classes. (Testimony of [redacted]; Exs. P-1 through P-7.)

4.

In the spring of 2022, [redacted] notified [redacted] that [redacted] was skipping classes, and [redacted] spoke with [redacted], an assistant principal, about this problem on multiple occasions. The evidence also proved that on several days that spring, [redacted] left the school campus after his mom dropped him off and walked with friends to a nearby gas station to get snacks. Although the evidence was not sufficient to prove when [redacted] staff first became aware of [redacted]'s morning trips, [redacted] testified that when he learned [redacted] was leaving campus, he immediately notified [redacted] and took disciplinary action against the students, including [redacted] At least on a few of these mornings, the preponderance of the evidence proved that the online parent portal did not indicate that [redacted] was absent or tardy for his first block class. (Testimony of [redacted], [redacted].)

C. Bullying

5.

[redacted] is on a block schedule, with students attending four classes per day. During the spring of 2022, [redacted] had a science class during his fourth block. Initially, he was in a biology class, which he skipped routinely. [redacted] and [redacted] told [redacted] that he skipped the class because he did not like his teacher. [redacted] was moved to an environmental science class for fourth block, which was taught by a different teacher, [redacted], but he continued to skip fourth block. [redacted] told [redacted] that he was "uncomfortable" in [redacted] class but did not tell [redacted] that he was being bullied. (Testimony of [redacted], [redacted].)

6.

Sometime in March 2022, [redacted] had a confrontation with a female student, [redacted] Although both [redacted] and [redacted] relayed information at the hearing about the possible cause of the conflict, there was no probative evidence regarding the nature of the conflict, whether one student was the aggressor and one the victim, or any other reliable, non-hearsay evidence regarding this confrontation.[2] On March 16, 2022, [redacted] and [redacted] signed a Student Confrontation Contract, in which they agreed not to have contact with one another, including electronically, through social media, or indirectly through friends. The contract prohibited bullying or harassing by either student, and [redacted] testified that the school used such contracts to assist students in resolving conflicts. (Exhibit R-16; Testimony of [redacted], [redacted]

[2] [redacted] suggested that the conflict between [redacted] and [redacted]. arose because [redacted] was jealous when [redacted] talked to her sister. [redacted] testified that [redacted] complained to the school that [redacted]. had threatened [redacted]'s boyfriend with a knife. There was no evidence from a witness with personal knowledge about what occurred between [redacted] and [redacted] and no other reliable evidence upon which the Court could base findings of fact regarding the underlying cause of the conflict or the behavior of either of the two students.

7.

Petitioners allege that student [redacted] violated the Student Confrontation Contract and bullied [redacted] by contacting him on April 13, 2022. However, there is simply no probative evidence in the record to support this allegation. Neither [redacted] nor [redacted] testified at the hearing, and no other witness with personal knowledge of the alleged April 13 bullying incident testified. Petitioners asked [redacted] about text messages that [redacted] showed another assistant principal, [redacted], and [redacted] testified that he recalled [redacted] showing his cell phone to [redacted], but [redacted] did not look at the phone and did not read any text messages. The alleged texts were not admitted into evidence, and there is no evidence to prove who sent the alleged text messages or what they said. (Testimony of [redacted], [redacted].)

8.

Petitioners also alleged an instance of bullying by a teacher on April 13, 2022. The Court finds that Petitioners alleged and proved by a preponderance of evidence that [redacted]'s fourth block teacher, [redacted], said during a meeting on April 13, 2022, that she was "going to write him up every day" for not coming to her class. [redacted] testified that he believed that the meeting was handled in a professional manner, and that [redacted] statement that she intended to write [redacted] up for a code of conduct violation – i.e., skipping class – every day the violation occurred was not inappropriate. (Testimony of [redacted])

9.

Although [redacted] alluded to other instances of what she considered "bullying" by teachers, particularly by [redacted], another assistant principal, such instances were not described in the due process complaint, nor were they supported by reliable, non-hearsay evidence on the record. (Testimony of [redacted])

D. ISS

10.

Petitioner asserted two claims relating to ISS. The first claim was that the District improperly disciplined [redacted] for skipping [redacted] fourth block class by sending him to ISS, despite the fact that [redacted] was in that class and that the two students were subject to the no-contact contract. The second claim was that while [redacted] was in ISS, he did not receive any of his IEP services, except for speech therapy. With respect to the first ISS claim, the Court finds that Petitioners failed to provide enough background information regarding the circumstances that led to the ISS referrals for the Court to determine whether they were appropriate or not. First, it is unclear how many days [redacted] was assigned to ISS for missing fourth block and over what period. The witnesses estimated he was in ISS for at least 3 days and up to 7 days. In addition, although the witnesses seem to agree that the majority of [redacted]'s time in ISS was a result of his skipping class, it is unclear which of the ISS referrals were for skipping fourth block and which were for going to the gas station during first block. Finally, even assuming that [redacted] was placed in ISS on multiple occasions for skipping fourth block and that [redacted] was also assigned to that class, the evidence does not prove that ISS was not a proper consequence for repeatedly skipping that class or that [redacted]'s presence in the class was justification for [redacted] to refuse to attend. Thus, even assuming that such a claim is actionable under IDEA,[3] Petitioner did not present sufficient evidence to prove that ISS was not appropriate discipline for refusing to attend fourth block. (Testimony of [redacted], [redacted], [redacted]; Exs. P-6, R-19.)

[3] See 34 C.F.R. § 300.530(b)(school personnel may remove a child with a disability who violates a code of conduct from his current placement to an interim alternative educational setting, another setting, or suspension for not more than 10 consecutive days, to the extent those alternative are applied to children without disabilities). The preponderance of the evidence proved that [redacted] was not referred to ISS for more than 10 days in the spring of 2022.

11.

With respect to the second ISS claim, [redacted] testified that none of the students, including [redacted], did any work while in ISS. In fact, the students all loved getting ISS, according to [redacted], because they just played games on their phones all day. In addition, [redacted] alleged that [redacted] did not receive any of his special education services or accommodations while in ISS. [redacted], an ISS monitor, testified, however, that teachers send work for students to complete while they are in ISS, and students who have IEPs are visited by their special education teachers and pulled out to attend therapies or small groups, as appropriate. [redacted] also testified that there were typically two to fifteen students in ISS, and the school tried to keep the number below 10 due to COVID distancing rules. The District also presented evidence that on some days, some of [redacted]'s special education teachers visited the ISS room and that [redacted] was pulled out for speech therapy. (Testimony of [redacted], [redacted]; Ex. R-19.)

12.

According to [redacted]'s IEP, [redacted] was entitled to small-group instruction for math and language arts. However, the evidence in the record did not prove that [redacted] did not have small group instruction in these subjects on the days he was in ISS. Rather, he clearly was in a small group of students during ISS – 2 to 15 – and his small-group teachers were able to provide work for him to complete while he was in ISS. As to the allegation that he did not do the assigned work during the days he was in ISS, the Court finds that the evidence is insufficient to prove what work was assigned or what work he completed, if any, while in ISS. [redacted] did not testify, nor did any of his teachers. Petitioners presented no exhibits reflecting his work assignments or grades from ISS, and [redacted] only testified about the typical procedures for distributing work to ISS students, and not about [redacted]'s specific performance while in ISS. Presumably, [redacted]'s testimony

regarding ISS is based on hearsay statements from [redacted] or other students, but the Court does not find this to be probative. Simply put, there is not enough reliable evidence in the record to prove what IEP services [redacted] received while he was in ISS. (Testimony of [redacted]; Ex. R-1.)

E. Evaluation

13.

The District admitted that it had not evaluated [redacted] since 2013, approximately nine years ago, and that it was obligated under IDEA to conduct an evaluation at least every three years in all areas of suspected disability. See 34 C.F.R. § 300.304(c)(4). The District also acknowledged that when members of [redacted]'s team met to design his IEP and make a manifestation determination, they relied on information that was almost ten years old.[4] The District agreed on the record that it must conduct a comprehensive evaluation of [redacted], at the District's expense, and has committed to fulfilling its obligation to do so.

F. Unethical Behavior

14.

Petitioners alleged in the due process complaint that District educators "are not being held responsible for unethical behavior." At the hearing, [redacted] made general, mostly unsubstantiated statements of behavior that she considers unethical or unprofessional on the part of [redacted] teachers and administrators, including (1) [redacted] failing to notify her immediately of [redacted]'s morning trips to the gas station, (2) a teacher responding to her email inquiry about [redacted]'s attendance in an unprofessional manner, namely, by stating that he was at basketball practice and would let her know if [redacted] missed class tomorrow; (3) various District educators not satisfactorily responding to her email requests in a timely or complete manner, (4) a teacher

[4] The evidence proved that even relying on outdated assessment data, the team determined that [redacted]'s code of conduct violation in April 2022 was, in fact, a manifestation of his disability, which Petitioners do not contest.

"raising her voice" to a child with a disability, (5) a teacher calling [redacted] a liar in class in front of other students, and (6) [redacted] threatening to write [redacted] up every day if he skips class. As to all but the last two statements, the Court finds that Petitioners failed to present sufficient evidence to prove that such behavior occurred. First, there was insufficient probative evidence to prove when [redacted] discovered [redacted]'s trips to the gas station and when he notified [redacted] [redacted] testified that [redacted] may have waited until he had confirmation of the alleged trips off campus, but [redacted] notified [redacted] as soon as he became aware of the situation. As to the second and third alleged unethical acts described above, Petitioners did not tender the emails at issue, and the Court finds that [redacted]'s description of the emails do not describe unethical conduct on the part of educators, even accepting, for purposes of argument, that the emails were impolite or unresponsive. As to the fourth alleged unethical act regarding a teacher raising her voice to a student with a disability, although [redacted] admitted that such behavior could be considered unprofessional in some context, Petitioners presented insufficient probative evidence that one of [redacted]'s teachers raised her voice to him inappropriately.

15.

With respect to the fifth alleged unethical act relating to [redacted] calling [redacted] a liar in class, the Court finds that Petitioners proved that [redacted], an [redacted] teacher, admitted to making this statement to [redacted] Although [redacted] testified that under some circumstances, this would be unprofessional behavior on the part of an educator, he could not agree with [redacted]'s characterization of the context in which [redacted] made this statement. Although the Court agrees with Petitioners that, as a general matter, calling a student a "liar" in front of his peers is unprofessional, the Court is unable to assess, without additional information about when, where, and under what circumstances the comment was, whether this unprofessional act rises to the level

of an ethical violation. Moreover, there is no evidence to prove that the District was notified of [redacted]' statement, what, if anything, they did in response, or how this action affected [redacted]

16.

Finally, with the respect to the sixth alleged unethical act identified by [redacted] at the hearing – the statement by [redacted] that she intended to write [redacted] up every day – the Court, as set forth in the discussion above on bullying, does not find that this statement was unprofessional or unethical. Rather, with the limited information in the record regarding the context in which this statement was made, [redacted] stated intention of writing up a student who refuse to attend her class does not appear improper.

G. <u>Discrimination and Retaliation</u>

17.

Petitioners failed to prove by a preponderance of the evidence that the District discriminated against [redacted] because of his disability or his race, or that the District retaliated against [redacted] or [redacted] because they exercised their rights to pursue claims under IDEA or other laws that provide protections to students with disabilities. Rather, the Court finds that the evidence in the record regarding [redacted]'s disciplinary referrals proved only that they were often the result of his refusal to attend class or to go to ISS, actions that fairly subject a student to disciplinary measures, and that Petitioners did not meet their burden to prove that the referrals were, in fact, for an impermissible purpose. Finally, although [redacted] alleged that she filed a formal state action against the District prior to filing this due process complaint, there was insufficient evidence in the record to prove when such action was filed and what disciplinary referral was allegedly made in retaliation of that filing.

H. Relief Sought

18.

In the due process complaint, Petitioners requested a number of solutions to the alleged problems identified in the complaint. Specifically, Petitioners requested a psychological/psychoeducational reassessment, private tutoring, one hour of speech therapy twice a week, and summer school. In addition, Petitioners requested that [redacted] and [redacted] be separated at school, that all staff working with [redacted] receive a copy of his IEP, with any amendments, and that all District employees receive training on "how to work with and educate students that have disabilities, no matter what the disability is." At the administrative hearing, Petitioner [redacted] confirmed that she did not intend to send [redacted] back to [redacted] or any other District school, and she withdrew her requests for private tutoring, speech therapy, summer school, or for [redacted]'s IEP to be provided to his teachers. Rather, [redacted] stated that she is now seeking only a comprehensive reevaluation for [redacted] and, she renewed her request, on behalf of other students, that District staff be train on working with students with disabilities. (Testimony of [redacted])

III. CONCLUSIONS OF LAW

1.

Petitioners bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49, 62 (2005). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Under both the IDEA and Georgia law, students with disabilities have the right to a free appropriate public education, or "FAPE." See 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.101-300.102; Ga. Comp. R. & Regs. 160-4-7-.01(1)(a). The 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. v. Rowley, 458 U.S. 176, 206-07 (1982). Ultimately, a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988, 1001 (2017).

3.

The scope of an IDEA due process hearing is limited to those issues raised in the due process complaint, which cannot be amended without the consent of the opposing party. See 20 U.S.C. § 1415(f)(3)(B) (preventing the party who requests the due process hearing from raising "issues at the due process hearing that were not raised in the [due process complaint] unless the other party agrees otherwise"). In addition, a due process complaint must include a description of the nature of the problems and "a proposed resolution of the problem to the extent know and available to the party at the time." 20 U.S.C. § 1415(b)(7)(A)(ii)(III) and (IV). Petitioners did not amend their complaint, except to withdraw certain requests for relief during the hearing.

A. Reevaluation

4.

The Court first considers the District's failure to conduct a reevaluation for nine years. It is undisputed that the District has not evaluated [redacted], now sixteen, since he was a young elementary school student in 2013, and that IDEA and Georgia regulations require triennial reevaluations of students receiving services under IDEA. 20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ga. Comp. R. & Regs. 160-4-7-.04(3)(a), (b). Specifically, IDEA requires that at least once every three years, the District conduct a comprehensive evaluation of a student with

a disability in "all areas of suspected disability." 20 U.S.C. § 1414(b)(3)(B). "[T]here is a general consensus that a failure to comply with the timeliness requirements imposed by the IDEA are typically procedural, not substantive, violations of the Act," including delays in evaluations or reevaluations. Glass v. District of Columbia, 2020 U.S. Dist. LEXIS 217950, *30-31 (D.D.C. 2020) (citing Leggett v. District of Columbia, 793 F.3d 59, 67 (D.C. Cir. 2015); Shaw v. District of Columbia, 238 F. Supp. 2d 127, 135 (D.D.C. 2002); Jackson-Johnson v. District of Columbia, No. 13-CV-528, 2015 U.S. Dist. LEXIS 53163 at *1 (D.D.C. Apr. 23, 2015) ("[D]elays in evaluations and reevaluations are typically deemed procedural, and not substantive, violations of the IDEA.")). However, some courts confronted with lengthy delays in conducting evaluations have found that the delay is a *per se* substantive violation. See James v. District of Columbia, 194 F. Supp. 3d 131, 143-144 (D.D.C. 2016). For example, as explained in James:

> Defendant's contention that its failure to provide a comprehensive psychological evaluation was only a procedural error and not a denial of a FAPE is, to say the least, confounding. The role of an evaluation "is to contribute to the development of a sound IEP." Harris v. District of Columbia, 561 F. Supp. 2d 63, 67 (D.D.C. 2008). "[C]ontinual evaluations [a]re necessary, and parents must have the ability to seek redress for a school's failure to sufficiently monitor a child's progress under the IEP . . . ." Id. at 68 (citing Honig, 484 U.S. at 311-12). The court in Harris found that a failure to act on a request for an evaluation of a child "is certainly not a mere procedural inadequacy; indeed, such inaction jeopardizes the whole of Congress' objectives in enacting the IDEA." Id. at 69. The same is true here. The failure to conduct a new comprehensive psychological evaluation of V.J. means that her IEP might not be sufficiently tailored to her special and evolving needs. This potentially compromises the effectiveness of the IDEA's protections as they pertain to V.J. Accordingly, Defendant DCPS is ordered to provide and fund a full comprehensive psychological evaluation of V.J.

Id.

5.

In this case, the District did not challenge Petitioners' claim that a six-year delay in conducting a reevaluation of a student with multiple disabilities was a serious violation of IDEA.

The Court concludes that Petitioners made a prima facie case by a preponderance of evidence that a six-year delay in conducting a required reevaluation significantly impeded [redacted]'s opportunity to participate in the decisionmaking process regarding the provision of FAPE to [redacted] and that Petitioners are entitled to compensatory education. See J.N. v. Jefferson Cnty. Bd. of Educ., 12 F.4th 1355, 1366 (11th Cir. 2021) (citing 20 U.S.C. § 1415(f)(3)(E)(ii)). Moreover, the District has agreed that it is obligated to conduct a comprehensive reevaluation of [redacted], which is the only relief that Petitioners are currently requesting, with the exception of District-wide training. Having considered the record in this case, the Court concludes that requiring the District to pay for a comprehensive reevaluation of [redacted] in all areas of suspected disability is the appropriate equitable remedy in this case. The Court further concludes that given the District's lengthy delay in fulfilling its fundamental obligation to periodically evaluate a student with a disability, as well as [redacted]'s enrollment at Southern Technical and [redacted]'s declaration that he will not return to District schools, Petitioners should have the right to select the evaluator or evaluators to conduct the comprehensive evaluation, which shall be paid for by the District. Within two weeks of the date of this Final Decision, Petitioners shall notify the District of the identity and qualifications of the evaluator(s) they have selected. Within three weeks of this Final Decision, the evaluator(s) shall provide the District with a summary of the assessment tools and instruments the evaluator(s) intends to use to conduct the evaluation, as well as the evaluator's rate and anticipated cost to conduct the evaluation and prepare a report. The District shall have one week from the date of receipt of the evaluator's information to make a written request for additional information about the evaluation, the evaluator's qualifications, or the cost. However, the District does not have the right to veto Petitioners' selection or the proposed assessment instruments and may not impose a cap on the cost.

6.

The District must promptly pay all reasonable costs associated with the comprehensive reevaluation of [redacted] by the evaluator selected by Petitioners upon presentation of the invoice from the evaluator. Upon completion of the evaluation, the evaluator must prepare and provide a written report, which must be provided to the District and Petitioners. If Petitioners wish to seek special education or related services from the District following the evaluation, the IEP team must reconvene, consider the evaluation report, and create an IEP that complies with the recommendations of the evaluator. In addition, if the IEP team determines that additional evaluations are necessary in order to create an IEP for [redacted], the District may conduct additional evaluations at its own expense and by its own chosen evaluators. Petitioners shall sign all required consent forms to permit the evaluator to conduct the evaluation and provide a report to the District.

B. <u>Remaining Claims</u>

7.

The Court concludes that Petitioners failed to prove that they are entitled to relief for any of their remaining claims.[5] As set forth in the Findings of Fact above, Petitioners did not present sufficient evidence to prove (i) that [redacted] was bullied by student [redacted] and teacher [redacted] on April 13, 2022, (ii) that ISS was inappropriate discipline for [redacted]'s skipping fourth block or that the District failed to provide [redacted] IEP services while he was in ISS; (iii) that educators committed unethical acts toward Petitioners that were overlooked by the District; or (iv) that the District discriminated against [redacted] because of his disability or race or retaliated against Petitioners because

[5] For the reasons stated on the record, the Court involuntarily dismissed the claim related to inaccurate attendance records following Petitioners' case in chief because Petitioners failed to prove that the inaccuracies in the online parent portal attendance records are actionable violations of IDEA or denied [redacted] FAPE.

of their exercise of legal rights under IDEA.

C. IEP

8.

In its post-hearing brief, the District reiterated its objection to the admission of [redacted]'s current IEP, which the District identified as its first exhibit, but the unrepresented Petitioners neglected to introduce into evidence before they rested their case. Although the District did not assert that it did not have notice of its own exhibit or that [redacted]'s current IEP was not relevant, counsel for the District objected to allowing Petitioners to re-open their case shortly after they rested in response to the District's motion for involuntary dismissal. As an initial matter, "[w]hether or not a party may be allowed to reopen his case after he has rested and present additional evidence is a matter within the discretion of the trial judge." Dimmick v. Pullen, 120 Ga. App. 743, 744 (1969) (citations omitted); see also Hibiscus Assocs. v. Bd. of Trustees of the Policemen & Firemen Ret. Sys., 50 F.3d 908, 917-918 (11th Cir. 1995) (citing Zenith Radio Corp. v. Hazeltine Rsch., Inc., 401 U.S. 321, 331 (1971) (judge has broad discretion to reopen case to accept additional evidence); Ga. Comp. R. & Regs. 616-1-2-.22(1)(n) (OSAH rules allow ALJ to examine witnesses and subpoena evidence "the Court believes necessary for a full and complete record"). Moreover, "[c]ourts do and should show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education." GJR Invs. V. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998). See also BFS Retail & Com. Operations, LLC v. Harrelson, 701 F. Supp. 2d 1369, 1377-1378 (S.D. Ga. 2009) (court provided *pro se* litigant "with as much leniency and guidance as it could without becoming his *de facto* counsel," including, during the trial itself, instructing litigant on, among other things, how to impeach witness with deposition testimony, how to examine witness, and how to refresh a witness' recollection).

Under the circumstances in this case, the Court concludes that the District demonstrated no undue prejudice by the Court's admission of this exhibit, nor was the District denied its due process rights to fully defend itself against Petitioners' claims. See generally Wells v. Ortho Pharm. Corp., 615 F. Supp. 262, 298 (N.D. Ga. 1995) (decisions on motions to reopen are committed to sound discretion of trial court, which may consider whether reopening evidence would cause undue hardship and expense for opposing party and whether the court has already rendered decision). Finally, the Court notes that Petitioner [redacted]'s distrust of the District and her reluctance to have [redacted] return to District schools were not likely assuaged by the District's lawyers' dogged pursuit of this procedural objection.

IV. DECISION

For the reasons herein, Petitioners' request for relief is **GRANTED** in part and **DENIED** in part.

SO ORDERED, this 15th day of August, 2022.

Kimberly W. Schroer
Administrative Law Judge

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.