IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] by and through [redacted] and [redacted]; and [redacted] Petitioners,	:	**Docket No. 1804044**
	:	**OSAH-DOE-SE-1804044-33-Woodard**
v.	:	
COBB COUNTY SCHOOL DISTRICT, Respondent.	:	

FINAL DECISION

This matter arises from a Due Process Hearing request filed by [redacted] by and through his parents [redacted] and [redacted] and [redacted] and [redacted] in their own right. A hearing was held from March 26, 2018, to March 30, 2018. The official transcript was received on May 2, 2018, and the parties submitted various post-hearing briefs, which included proposed findings of fact. By Order, the deadline for issuance of this Decision was extended to October 1, 2018.

I. Relief Sought

In this matter, Petitioners are seeking reimbursement for the costs they incurred in unilaterally placing [redacted] in a private educational placement for the 2015-2016, 2016-2017, and 2017-2018[1] school years, for a total of $233,446.61.[2] Specifically, Petitioners are seeking $94,156.25 in reimbursement for the 2015-2016 school year, $83,451.17 for the 2016-2017 school year, and $55,839.19 for the 2017-2018 school year. (Petitioner's Amended Statement of Claims.)

[1] For the 2017-2018 school year, Petitioners are seeking reimbursement for expenses incurred from August 2017 to March 2018. (Petitioner's Amended Statement of Claims.)

[2] Petitioners initially sought $233,093.31 in reimbursement, but that amount was altered after discrepancies were discovered at the hearing. Petitioners filed an Amended Statement of Claims on April 18, 2018.

II. Findings of Fact[3]

1.

[redacted] is a [redacted]-year-old male born on August [redacted]. (T. 406; P-2.) [redacted] has been diagnosed with autism; a language disorder; apraxia; and anxiety. (T. 219, 222, 306, 462-63, 559; P-2.)

2.

At two years old, [redacted] began receiving services through the state's Babies Can't Wait program as a child with speech and language disabilities. (Ex. P-1.)

3.

In 2008, [redacted] began attending school within Cobb County School District (the "District"). On September 9, 2008, [redacted] was found to qualify under the Individuals with Disabilities Education Act ("IDEA"), based on his significant developmental delay and speech and language impairment. (P-2.)

4.

On May 25, 2010, the District found [redacted] eligible for IDEA services as a child with autism, and he was placed in a small group autism classroom. [redacted] remained in a small-group autism classroom until November 2, 2013, when [redacted] revoked her consent for [redacted] to receive special education and related services, and [redacted] was thereupon placed in a general education setting. (R-47; T. 685.)

5.

On December 20, 2013, [redacted] was withdrawn from the District. He was placed, by [redacted] in a private educational program. (R-48, P-3.)

[3] Transcript is referred to as "T." Exhibits are referred to as "P" for Petitioner and "R" for Respondent, followed by the appropriate exhibit number.

6.

On June 22, 2015, the District, [redacted] and [redacted] parents entered into a Settlement Agreement and Release (the "Agreement"), which stated that all claims "from and/or out of any educational services or program offered and/or provided to [redacted] and his Parents by the District, up through and including [July 28, 2015]" have been resolved. The Agreement provided that the District would conduct: (1) a psychoeducational evaluation of [redacted] (2) a speech language evaluation of [redacted] (3) and a VB-MAPP. The Agreement stated that once the evaluations were conducted, the District and [redacted] Parents would hold an IEP meeting. (R-7.)

7.

Much of [redacted] parents' distrust of the District, and their primary reason for insisting on a private placement for [redacted] arises out of the events leading to [redacted] initial withdrawal from the District in 2013, and their past litigation. (T. 351-352, 593-599, 608, 620-621.) Those events were resolved by the Agreement, and are not at issue in this matter. [4]

A. The July 2015 Evaluations of [redacted]

8.

On July 13 and 15, 2015, pursuant to the Agreement, Dr. [redacted] J[redacted] conducted a Psychoeducational Evaluation of [redacted] (R-15A.) On July 13, 15, and 16, 2015, [redacted] P[redacted] conducted a Speech Language Evaluation of [redacted] (R-11.) Also in July 2015, [redacted]

[4] Over the District's objections, the administrative court allowed significant testimony and documentary evidence regarding events prior to entry of the Settlement Agreement. The court finds this evidence useful as background information relevant to the present case, and also for preservation of the record for any future judicial appeal.

[5] At the hearing, Dr. [redacted] J[redacted] PhD, was qualified as an expert in psychology; evaluating special education students; consulting with special education teachers on educational services; evaluating students with the Leiter-R and Leiter-3; scoring the results of the Leiter-R and Leiter-3; and interpreting the results of standardized testing data for K-12 students. (T. 1465-1466.)

[6] Ms. [redacted] P[redacted] MA, CCC-SLP, was qualified as an expert in speech language pathology; identification, evaluation, eligibility, placement, and services for students with speech language disorders; evaluating students with

S[redacted] conducted a VB-MAPP of [redacted] (P-2; T. 1123.) [redacted] parents were sent a copy of the VB-MAPP report on July 21, 2015, and a copy of the psychoeducational report on July 22, 2015. (R-14, R-15.)

9.

At [redacted] parents' request, the July 2015 evaluations of [redacted] were not conducted in the school's speech therapy ("ST") room, and took place primarily in the [redacted] Elementary School library. The change in planned location occurred after [redacted] parents informed the evaluators that [redacted] could not sit at a table, and that they disapproved of the ST room. (T. 1409, 1472.) The first day of evaluations did not take place in the library, but instead occurred at [redacted] home. (R-11.) [redacted] parents maintain that [redacted] became sick at school and threw up, necessitating the change, but none of the evaluators witnessed such an event. (T. 1168, 1515.)

10.

At the request of [redacted] parents, the evaluators were required to discontinue their evaluation if [redacted] pushed away a task, or said "no." (T. 1119-1120, 1381, 1477.) At the hearing, Ms. S[redacted] testified that this requirement was unique to [redacted] parents and that, in a standard evaluation, she would have tried to continue to administer the test. (T. 1120-1121.) Ms. S[redacted] elaborated that it is helpful to continue, despite a student saying "no" or pushing away a task, because going through the sequence helps students to understand what they are being asked to do. (T. 1126.)

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speech language disabilities; development and provision of speech language programming for students with disabilities; and preparation and implementation if IEP goals and objectives as they relate to speech or language services. (T. 1374-1377.)

[7] Ms. [redacted] S[redacted] MA, BCBA, was qualified as an expert in behavioral analysis, evaluation of students with disabilities based on the testing methods she is trained in; programming for students with disabilities; preparation and implementation if IEPs; functional behavior assessments and behavior intervention plans; discrete trial teaching; and data collection. (T. 1113-1115.)

11.

[redacted] parents were also present at the evaluations, both at their home and at the library. (T. 1122.) According to Ms. S[redacted] this was not entirely unheard of, as "some" parents do request to be present for evaluations, but that [redacted] parents "did step in and rephrase [directions or questions] sometimes." (T. 1122.) Ms. P[redacted] testified that [redacted] parents "frequently restated the test directions," which was not typical for parents allowed within a testing room. (T. 1384.) Dr. J[redacted] also testified that it was unusual for parents to be present during her evaluations. (T. 1472.)

12.

Ms. S[redacted] testified that [redacted] did not seem anxious during the evaluations. (T. 1124.) Dr. Ja[redacted] agreed that [redacted] did not "seem distressed" during the evaluations, and remarked that his behaviors were more consistent with autism than anxiety. Dr. J[redacted] also noted that [redacted] engaged in more unusual or disruptive behaviors when a task was more challenging. (T. 1483.) Ms. P[redacted] testified that, during her evaluations, [redacted] engaged in behaviors such as "flapping, walking away, pushing away test items and stating no, flicking the examiners," and "requesting bathroom breaks." (T. 1385.)

13.

For her Speech Language Evaluation, Ms. P[redacted] included [redacted] parents' report of [redacted] skills within her report for the Preschool Language Scale-5 ("PLS-5"), and the Children's Communication Checklist-2 ("CCC-2") was based entirely on [redacted] parents' report. (T. 1386; R-11.) For her Psychoeducational Evaluation, Dr. Ja[redacted] interviewed [redacted] for the Vineland Adaptive Behavior Scales, Second Education ("Vineland-II"), the Behavior Assessment System for Children ("BASC-2") Parent Rating Scales, and the Developmental Profile, Third Edition

("DP-3"). (T. 1476; R-15A.) For the DP-3, Dr. J[redacted] gave [redacted] credit for skills that [redacted] reported [redacted] could perform, even though Dr. J[redacted] did not see him perform those skills. (T. 1477; R-15A.) In total, Dr. J[redacted] testified that a "majority of the information came from [redacted] parents" for the Psychoeducational Evaluation. (T. 1483.)

14.

At the hearing, [redacted] parents maintained that the evaluations were invalid and unreliable, due to [redacted] illness on the first day of testing, and the busy, hot, and distracting conditions in the school library on the remaining days. (T. 624-629.) [redacted] parents also testified that at no time did any evaluator suggest their presence was not appropriate and, as evidence of that, that the evaluators asked [redacted] parents to interpret what he was saying. (T. 627.)

B. The July 29, 2015 IEP Meeting

15.

On July 29, 2015, per the Agreement, an IEP meeting was held. The meeting continued on August 6, 2015. [redacted] and [redacted] private tutor, [redacted] T[redacted] attended the July 29, 2015 meeting in person. (R-18.) [redacted] parents attended the August 6, 2015 meeting by phone. (R-21.) [redacted] was represented by counsel at both meetings. (P-2.) [redacted] C[redacted][8] the Assistant Director, Support and Specialized Services for the District, attended as the Local Education Agency ("LEA") representative. Also in attendance were [redacted] H[redacted], Occupational Therapist; [redacted] M[redacted], Special Student Services Administrator ("SSA"); [redacted] W[redacted] General Education Teacher; [redacted] H[redacted] Principal of [redacted] Elementary ([redacted] home school); [redacted] A[redacted] Compliance Specialist; [redacted] A[redacted], Special

[8] Ms. [redacted] C[redacted] was qualified as an expert in programming instruction for special education students; programming instruction for students with autism; drafting and implementing IEPs; and using standardized tests to determine programming. (T. 1214, 1218.)

Education Teacher; counsel for the District; and Dr. J[redacted] I[redacted] P[redacted], and [redacted] S[redacted] (the evaluators). (P-2, R-38; T. 1064.)

16.

On July 24, 2015, [redacted] parents were sent a draft copy of the IEP. (R-16.) After the first IEP meeting, and before the second meeting on August 6, 2015, [redacted] parents were sent an updated draft. (R-19.) [redacted] parents were sent a finalized copy of the IEP on August 7, 2015. (R-23.)

17.

During the IEP meetings, the members of the IEP team reviewed and discussed the results of [redacted] recent evaluations by Dr. J[redacted] Ms. P[redacted], and Ms. S[redacted] [redacted] parents objected to the evaluations, citing the same reasons set forth *supra*. (P-4.) [redacted] parents offered the results of a private psychological evaluation showing [redacted] had a nonverbal IQ of 81, but it was rejected by the IEP team for failing to use a standardized method. (P-3; T. 341, 1141-1142, 1451, 1458, 1528-1530.)

18.

[redacted] parents and tutor also shared their thoughts on [redacted] current functioning. (P-2.) During her testimony at the hearing, Ms. H[redacted] described [redacted] parents and tutor's presentation as being "told a lot of things about how [redacted] was performing at his other schools," but without being provided any supporting data. (T. 1074-1075.) Similarly, Ms. C[redacted] testified that [redacted] tutor gave verbal reports about [redacted] skills, but did not have the requisite data to support her reports, which the IEP team requires to make "data-driven decisions." (T. 1225, 1283-1285.)

19.

At the hearing, [redacted] tutor, Ms. T[redacted] testified that, outside of her notes, which do not include dates, years, or "every question asked," she does not keep data on [redacted] (T. 149.) Ms. T[redacted] notes contained little information about whether [redacted] answered a question wrong or failed to answer at all; whether she or [redacted] was reading a book, and how often they alternated; any information about the level of prompting, the number of prompts, or the types of prompts used; or any information regarding whether a question was answered orally or in written format. (T. 150, 162, 170, 193.) Ms. T[redacted] further admitted that she did not have her notes with her at the July 29, 2015 IEP meeting. (P-2.) Ms. T[redacted] was also unable to present any samples of [redacted] work, as the notebooks containing such samples were unable to be located prior to the hearing. (T. 183.)

20.

When the IEP team began comparing [redacted] parents' reports of [redacted] skills with the skill level reported on the July 2015 educational evaluations, there was a dramatic difference. For example, Ms. S[redacted] observed [redacted] "using one to three words" to make requests, and [redacted] parents reported that [redacted] made requests in full sentences. (T. 1141.) Dr. J[redacted] testified that [redacted] parents report at the IEP meeting of [redacted] current functioning "was inconsistent with what [she] saw" during the evaluation. Specifically, Dr. J[redacted] did not observe [redacted] correctly perform subtraction or multiplication problems, or even "write at all." While Dr. J[redacted] did see [redacted] read, the books he was reading were on the "prekindergarten first-grade level," as opposed to the third-grade reading level his parents reported. (T. 1489; P-2.) Ms. C[redacted] concurred with Dr. J[redacted] testifying that, while [redacted] parents reported that he was on grade level, she found that to be unlikely, in her professional opinion, based on the available data. Ms. C[redacted] elaborated, explaining that, during the IEP meetings, she "mentioned many times that it sounded

like there might be either two skills sets or [redacted] was not generalizing that skill over." (T. 1235.)

21.

As part of the IEP process, the IEP team discussed goals and objectives for [redacted] (P-2.) To draft the goals and objectives, the IEP team considered both the recent evaluations and input from [redacted] parents and tutor. (T. 1224.) At the hearing on this matter, [redacted] admitted that she was able to give suggestions about goals and objectives, and both of [redacted] parents brought suggested goals and objectives to the July 29, 2015 meeting, which the IEP team considered. (T. 671, 1074, 1230.) Ms. C[redacted] testified that, at the IEP meeting, she "certainly was considering the parents' input and . . . trying to reach consensus," which also "trying to come up with an IEP that was . . . reasonable for what [the educators] knew based on [their] professional experience." (T. 1235-1236.)

22.

Many of the goals and objectives in [redacted] final IEP were based, at least in part, on input from [redacted] parents. (See, e.g. T. 872, 1230-1232.) For example, the following objectives in the IEP reflected [redacted] parents' suggestions: writing two sentences; playing three games; adding two digits by one digit with regrouping; [redacted] ability to request a break at an appropriate time; naming five items from prescribed categories; and expressing five new words in context for units (T. 1230-1232.) [redacted] also testified that she agreed with having an objective about answer "who" questions. (T. 872.) Both Ms. C[redacted] and Dr. J[redacted] testified that the goals and objectives in [redacted] August 6, 2015 IEP were appropriate. (T. 1224, 1508.) Ms. P[redacted] agreed, explaining that if [redacted] mastered a goal, it would be amended and advanced accordingly. (T. 1396.)

23.

The July 29 and August 6, 2015 IEP meetings also contained discussion of the appropriate educational placement for [redacted] (R-2.) [redacted] was able to state her preference for [redacted] placement at the Montessori school [redacted] previously attended after [redacted] removed him from the District.[9] (T. 671, 883, 904.) The IEP team members knew [redacted] was currently enrolled at the Montessori school, and had attempted to observe [redacted]. there, but the observation was cancelled by [redacted] and never rescheduled. (T. 1223-1224, 901-903; R-57; R-58.) [redacted] parents maintained, however, that the District delayed observing at the Montessori school until the last few available days, and that [redacted] fell ill on the day of the scheduled visit and remained ill for the remainder of the observation period. (P-4.)

24.

As the IEP team discussed the Montessori placement, both Ms. C[redacted] and Dr. J[redacted] were opposed—believing that a Montessori school was inappropriate for [redacted] who they believed requires structure and direct instruction. (T. 1224, 1238, 1288, 1488.) Ms. S[redacted] agreed, believe that [redacted] needed a more structured setting. (T. 1144.) Despite their contentions to the contrary at the IEP meeting, [redacted] parents and his tutor apparently agreed, as they had removed [redacted] from the Montessori school "around when the evaluation[s] started," and prior to the IEP meetings. (T. 199, 651, 653.) By early August 2015, [redacted] parents had decided not to return [redacted] to the Montessori school and, despite insisting on a Montessori placement from the District, [redacted] did not attend Montessori school during the 2015-2016 or 2016-2017 school years. (T. 653, 904.)

[9] No representative from the Montessori school attended either the July 29 or August 6, 2015 IEP meetings. (P-2.)

25.

According to [redacted] parents, [redacted] was removed from the Montessori school because he was "getting a little loud," "it seemed like [his anxiety] was going up," and he "wasn't making that much progress." (T. 653, 655.) [redacted] tutor, Ms. T[redacted] agreed with this decision. At the hearing, Ms. T[redacted] testified that [redacted] was not yet ready for the Montessori setting, and that his "anxiety was getting higher" at the Montessori school. (T. 199-200.) Ms. T[redacted] further testified that the Montessori teacher was not "really integrating the Montessori with [redacted]' and that Ms. T[redacted] was working one-on-one with [redacted] at the Montessori school, "teaching him his own program that [they] developed without using Montessori materials." (T. 189, 200-201.) Ms. T[redacted] also admitted that [redacted] was not able to "be a part of the classroom as much as . . . [they] had hoped." (T. 200.)

26.

After deliberation, the IEP team determined that [redacted] would be best served by the District in a small group autism RISE 3-5 access class for reading, language arts, math, and science/social studies. (P-2.) Under that August 6, 2015 IEP, [redacted] would have participated in specials, recess, and lunch with neurotypical peers. (P-2; T. 899.) In total, Ms. C[redacted] estimated that [redacted] would have spent almost half of the seven-hour school day with neurotypical peers. (T. 1346-1347.) [redacted] would also have received 480 minutes of Speech Therapy each month, and 30 minutes of small group Occupational Therapy ("OT") each week. (P-2.)

27.

[redacted] evaluators supported the IEP team's recommended placement in the autism small group classroom, with Dr. J[redacted] testifying that she was "supportive" of the placement and Ms. S[redacted] describing it as "appropriate." Ms. S[redacted] elaborated that she believed [redacted]

"would benefit from" being taught by "someone who has experience working with kids with autism." (T. 1144-1145, 1487.)

28.

Ms. C[redacted] also particularly supported the placement, noting that small group is only one step down the continuum from a general education setting, and therefore was the Least Restrict Environment ("LRE") for [redacted] educational placement. (T. 1237.) Ms. C[redacted] further noted that teachers in the autism classroom receive two or three trainings regarding students with autism throughout each school year, autism trainers are in the autism classrooms "on a weekly basis providing job and beta training," and Dr. [redacted] R[redacted] of the [redacted] Autism Center also provides training regarding autism for District employees. (T. 1348.) Autism classrooms in the District are also supervised by a team of autism trainers and an autism supervisor, who beginning in 2015, contracted with Board Certified Behavior Analysts to provide additional support. (T. 1251-1252.)

29.

After determining [redacted] would be best served by placement in the small-group autism classroom, the IEP team recommended a transition plan for [redacted] to return to the District. [redacted] would first come to the school for a meet and greet; then start school with a modified schedule of three and a half to four hours, with home based services for the remainder of the day; and finally transition to attending school for a full day. (T. 1238-1239.) After [redacted] was settled in, the IEP recommended the District then conduct an updated Functional Behavior Analysis ("FBA"). (T. 1239; P-2.)

30.

[redacted] parents did not agree with the IEP team's recommendations. Ms. C[redacted] testified that she believed [redacted] parents did not seriously consider placement within the District, and [redacted] S[redacted] agreed that [redacted] parents "were pretty quick to not want to discuss or allow [the District's] options to be considered.." (T. 1142-1143, 1268.) When the IEP team decided at the August 6, 2015 meeting on the small group autism RISE 3-5 access classroom, [redacted] parents rejected it on the spot and, while at the meeting, gave notice of private school placement at public expense. (P-2.) Based on their pre-2013 experiences (which, as stated previously, are not at issue in this matter), [redacted] parents considered the small group autism classroom as detrimental to [redacted] functioning. (P-4.)

31.

After rejecting the August 6, 2015 IEP and giving notice of private placement, [redacted] parents requested to observe the small group autism program. (P-2.) At the hearing, Ms. C[redacted] testified that, as [redacted] parents had already made clear that they would not be enrolling [redacted] in any placement within the District, she believed they only "asked to observe for potential future litigation." (T. 1268.) However, Ms. C[redacted] agreed, per District policy, to allow [redacted] parents to observe the proposed placement if they indicated an intent to re-enroll [redacted] (T. 1268-1269; P-4; R-31.)

C. [redacted] Private Placement

32.

As noted above, [redacted] had already been withdrawn from the Montessori school prior to the conclusion of the IEP meetings. After determining [redacted] would not return to the Montessori

school, [redacted] parents decided [redacted] would learn through a home study program, but did not file a declaration of intent to utilize a home study program with the District. (T. 906.)

33.

Rather than utilize an established, unified private program, [redacted] home study program was designed by several different people, with his mother, father, "and his therapist and teachers...all g[etting] involved." (T. 609.) The result was a program that combined private home tutoring, programming at Lindamood-Bell and Brain Balance, ST, OT, Physical Therapy ("PT"), and vision therapy ("VT"), with all services provided one-on-one. (T. 573-580, 898.) At no point was [redacted] administered any standardized tests as part of his home study program. (T. 156, 906-907.)

34.

Much of [redacted] education was through private tutoring, which was primarily administered by Ms. T[redacted] During her testimony, [redacted] also referenced three other tutors who worked with [redacted] --T[redacted]H[redacted], Ms. C[redacted] and Ms. Ch[redacted]--none of whom testified. (T. 568, 577, 579.) Ms. T[redacted] whom the undersigned finds to be a credible and persuasive witness, has a master's degree in brain-based teaching, a specialist degree in formation science and learning technology, and significant training in teaching and testing students with disabilities. (T. 56-81.) Ms. T[redacted] began working with [redacted] in January 2014, and remained one of his tutors until June 2017, when she moved away from the Cobb County area. (T. 82.)

35.

Prior to the 2015 IEP meetings, Ms. H[redacted] observed [redacted] and Ms. T[redacted] during a home tutoring session. (T. 1066.) Ms. H[redacted] testified that, during the session she observed, [redacted] "wasn't really seeming to attend to the reading at hand," and seemed "kind of agitated" and

"was getting up and moving around quite a bit." (T. 1066-1067.) Her estimate was that, out of an hour of tutoring, [redacted] spent not "more than fifteen minutes" with "real tutoring and instruction going on." (T. 1069.) Ms. H[redacted] observed [redacted] spell a few words and practice counting, but otherwise found that "there were really no skills witnessed during that time." (T. 1069.) Ms. T[redacted] admitted that the session Ms. H[redacted] attended was not [redacted] "best session." (T. 1068.)

36.

Despite her other qualifications, Ms. T[redacted] is not a certified teacher, nor has she ever designed a curriculum for a student with autism. (T. 64, 65, 69-70.) She selected textbooks for [redacted] by reviewing the District's website, as well as the websites of local private schools and homeschools to find out what textbooks they were using, and then selecting the books aligned with common core that she thought [redacted] would engage with. (T. 157.) None of the textbooks Ms. T[redacted] selected were designed for students with autism, and Ms. T[redacted] testified that she "did not modify anything from the textbook" for [redacted] (T. 159.).

37.

In addition to private tutoring, [redacted] attended classes at [redacted] ("LMB"). (P-3.) LMB is a one-to-one, research-based, language-based learning program that provides individualized instruction. For [redacted] LMB addressed basic vocabulary, sequencing, and early language vocabulary concepts. (T. 58-60, 75-78, 82-84, 91-97, 274, 364-64.) Ms. T[redacted] is the one who initially recommended [redacted] attend LMB for a program that focuses on basic communication. (T. 117-118.)

38.

[redacted] had to take a break from LMB programming because he was exhibiting negative behaviors and "causing some disturbance" by "hit[ting] on the tables." (T. 614, 971.) [redacted] testified that she had received reports that [redacted] had hit or bitten teachers at LMB, Ms. T[redacted] testified that LMB testing showed that [redacted] was not on grade level for reading, and both [redacted] and Ms. T[redacted] admitted that the LMB documents do not show progress. (T. 176, 911, 916; P-3.) Ms. T[redacted] maintained, however, that the reason the LMB documents do not show progress is because the tests take off points for slow reading or repeating words, and do not allow for repetition or explanation of instructions, which [redacted] requires. (T. 118-122, 180.)

39.

When [redacted] began exhibiting behavior concerns at LMB, LMB recommended he attend Brain Balance, which would attempt to address his issues with sensory and emotional regulation, motor abilities, sensory processing, and cognitive skills. (T. 25, 207, 284, 286, 612.) At Brain Balance, [redacted] was periodically administered the Wechsler Individual Achievement Test-Third Edition ("WIAT-III"). (P-3.) [redacted] admitted that, in 2015, she received reports that [redacted] became frustrated when taking the WIAT-III and was hitting, banging, or kicking the table. (T. 926; P-3.) When Dr. J[redacted] compared the results of a 2017 WIAT-III to the skills that [redacted] parents stated that [redacted] could do in 2015, she found the results of the WIAT-III to be significantly lower. (T. 1506-1507.) Ms. B[redacted] [redacted] teacher at Brain Balance, testified that, when she administered the WIAT-III in 2017, she "began every section at the 4th grade level," but had to "reverse grades in several areas due to lack of mastery." (T. 1002.)

40.

The final pieces of [redacted] home study program are OT, ST, PT, and VT. [redacted] W[redacted] has been administering OT one-on-one to [redacted] for approximately seven years. (T. 214.) Mr. W[redacted] testified that [redacted] "will add in his own full sentences occasionally now" when writing and, in a "good session," will be approximately fifty percent independent in contributing to a paragraph. That, however, would be one of [redacted] "best day[s]." (T. 240.) It is worth noting that, at the 2015 IEP meetings, [redacted] parents requested that one of [redacted] objectives be to write as essay—an objective which the rest of the IEP team opposed as too challenging. (P-2.) Had [redacted] enrolled in the District under his August 6, 2015 IEP, [redacted] would have received thirty minutes of OT services each week. (T. 1229, P-2.)

41.

[redacted] receives ST from Ms. C[redacted]. [redacted] began receiving ST in August 2015, after the IEP meetings. (T. 291, 884-885.) In their sessions, Ms. C[redacted] uses cues or "little reminders of how to do" things with [redacted] to get [redacted] to greet people or continue discussing a topic. Ms. C[redacted] also has [redacted] perform oral-motor exercise that she believes will help with [redacted] oral musculature—a technique that Ms. P[redacted] testified there is no research to support. (T. 400, 402, 419, 423, 1399.) At the hearing, Ms. C[redacted] testified that she did not review [redacted] educational records from the District before beginning work with him, and Ms. P[redacted] noted that some of the goals Ms. C[redacted] drafted for [redacted] in September 2015 were similar to the goals and objectives created at the IEP meetings. (T. 385, 890, 1394; P-2, P-3.)

42.

[redacted] receives VT from Dr. [redacted] G[redacted] and has been seeing Dr. G[redacted] "off and on" since 2014. (T. 509.) VT is a medical approach, and therefore not educationally relevant, but it

is worth noting that Dr. G testified that did not show "clinically significant" improvement on LMB's administration of the Woodcock Reading Mastery Tests – III, Form A ("Woodcock") between 2014 and 2017, and convergence and divergence remained at seven percent between November 2015 and December 2016. (T. 535-538, 1030-1031; P-3.) did not receive notes from Dr. G regarding progress. (T. 566.)

43.

G,[10] a teacher specializing in teaching vision impaired children for the District, testified that VT is not necessary to access educational curriculum because teacher's can use standard accommodations to support students who struggle with tracking or shifting gaze. (T. 1011, 1037.) Ms. G further testified that there is no research indicating whether VT is effective, and Ms. C concurred that there is no evidence suggesting that VT would help a student like (T. 1033, 1329-1330.)

44.

receives PT from P who evaluated him in November 2015 and began treating him in March 2016. (T. 454, P-3.) At the hearing, Ms. P testified that she has never received any educational documents from the District regarding and that all of the goals and objectives she created for could be accomplished in a school setting. (T. 482, 486.) At the 2015 IEP meetings, parents did not raise any questions or objections regarding PT. (T. 1223.)

45.

With a single exception, none of private tutors, OT, ST, PT, or VT providers ever spoke with former or suggested teachers or service providers at the District, observed

[10] Ms. G was qualified as an expert in visual impairments; the identification, evaluation, eligibility, placement, and services for students with visual impairments; and teaching students with visual impairment. (T. 1017-1018, 1023.)

[redacted] while he was a student in the District, attended the 2015 IEP meetings, or provided goals and objectives for consideration at the 2015 IEP meetings. (T. 251, 370, 492, 523, 809, 811.) The single exception, Ms. T[redacted], did attend the July 29, 2015 IEP meeting, but has never observed [redacted] as a student within the District or spoken with any of his former or suggested teachers. (T. 155.)

46.

The entirety of [redacted] home study program consists of one-on-one programming. Ms. C[redacted] testified that one-on-one instruction is very restrictive, and is not appropriate for [redacted] a child with social, speech, and language goals and objectives, which require peers. (T. 1225.) [redacted] parents have also reported that [redacted] could gain skills independently, which negates the need for one-on-one instruction. (T. 1225.)

47.

At the hearing, Ms. C[redacted] further testified that there was no evidence that [redacted] was making progress with Lindamood-Bell, Brain Balance, or with his tutors. (T. 1244, 1351.) Ms. C[redacted] also testified that there was no evidence that [redacted] was being taught to standard or directly instructed on his deficit areas. (T. 1244.)

48.

One of Petitioner's experts, Dr. [redacted] M[redacted],[11] a board-certified behavior analyst, testified that the District's autism program was the inappropriate placement for [redacted] (T. 782.) Dr. M[redacted] has never met [redacted] and admitted that his opinions of the District's proposed placement were based primarily on pre-2013 documents. (T. 724-787.)

[11] Dr. [redacted] M[redacted] was qualified as an expert in providing, overseeing, monitoring and adjusting educational and skill acquisition programs in public schools in Georgia. Dr. M[redacted] also qualified as an expert in areas of teacher and parent training involving students with disabilities, especially autism; applied behavioral analysis; discrete trial training; data selection; program development; oversight monitoring and modification; functional behavioral assessment; functional behavior analysis; treatment of severe problem behavior; and compliance training.

49.

[redacted] did not request an IEP meeting for the 2016-2017 or 2017-2018 school years, never informed the District that she was considering re-enrolling [redacted] in the District, and, in fact, never attempted to re-enroll [redacted] due to his private placement. (T. 933-934.)

III. Conclusions of Law

A. The IDEA, Generally

1.

This matter is governed by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*; its implementing regulations, 34 C.F.R. § 300.1, *et seq.*; and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01, *et seq.*

2.

The Court's review is limited to the issues Petitioners raised in their due process hearing request; Petitioners may raise no other issues at the due process hearing unless the opposing party agrees or acquiesces. See 20 U.S.C. § 1415(f)(3)(B); see 34 C.F.R. § 300.511(d).

3.

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

in the due process hearing requests. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

4.

Claims brought under the IDEA are typically subject to a two-year statute of limitations. 20 U.S.C. § 1415(b)(6)(B); Mandy S. v. Fulton county Sch. Dist., 205 F. Supp. 2d 1358 (N.D. Ga. 2000), (aff'd without opinion, 273 F.3d 1114 (11th Cir. 2001). Additionally, the Agreement between the parties states that claims "from and/or out of any educational services or program offered and/or provided to [redacted] and his Parents by the District, up through and including [July 28, 2015]" have been resolved. (R-7.)

5.

The purpose of IDEA 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 future education, employment, and independent living . . . ." 20 U.S.C. § 1400(d)(1)(A).

B. Free Appropriate Public Education (FAPE)

i. Generally

6.

The IDEA requires school districts to provide an eligible student a free appropriate public education (FAPE) in the least restrictive environment (LRE). 20 U.S.C. § 1412; 34 C.F.R. §§ 300.17, 300.114-300.118. The requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982). The Supreme Court in Rowley defined a FAPE as follows:

> Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.

Id. at 200-201.

7.

In Rowley, the Supreme Court set out a two-part inquiry to determine if a local educational agency satisfied its obligation to provide a FAPE to a student with disabilities. 458 U.S. 176, at 206 (1982). First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is "reasonably calculated to enable the child to receive educational benefit." Id. at 206-207.

8.

Regarding the first portion, 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). Therefore, not all procedural breaches are IDEA violations. One example of a procedural right parents have is the right to be members of "any group that makes decisions on the educational placement of their child." 20 U.S.C. § 1414(e); 34 C.F.R. § 300.322. 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." Id. see generally Evanston Community Consol. School Dist. No. 65 v. Michael M., 356 F.3d 798, 804 (7th Cir. 2004) (holding "[o]nly procedural inadequacies that result in the loss of educational opportunity" constitute a denial of FAPE).

9.

In 2017, the Supreme Court clarified the second portion of the aforementioned Rowley

inquiry: "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. ex rel. Joseph F. v. Douglas County School District, 137 S. Ct. 988, 999 (2017). This requirement does not require that a child's IEP bring the child to grade-level achievement, but it must aspire to provide more than *de minimis* educational progress. Id. at 1000-01. Importantly, the Court in Endrew F. noted that its lack of clarity in defining what exactly "appropriate progress will look like" is not an excuse for reviewing courts "to substitute their own notions of sound educational policy for those of the school authorities which they review. Id. at 1001 (quoting Rowley at 206.)

10.

In matters alleging a procedural violation of IDEA, the undersigned may find that a child did not receive a FAPE only if the procedural inadequacies:

(i) impeded the child's right to a FAPE; or
(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.

20 U.S.C. § (f)(3)(E)(ii); 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's, or parents, substantive rights. See Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 518 (2007) (holding "parents enjoy rights under IDEA, they are entitled to prosecute IDEA claims on their own behalf").

11.

IDEA contemplates a continuum of educational placements to meet the needs of children with disabilities. Depending on the nature and severity of their disability, a child may be instructed in the following educational placements:

(1) the general education classroom with age-appropriate non-disabled peers; or

(2) outside the general classroom with other individuals or in small groups; or
(3) at a separate day school or program; or
(4) through home-based instruction; or
(5) a residential placement in-state or out-of-state; or
(6) hospital/homebound instruction.

20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115; Ga. Comp. R. & Regs. 160-4-7-.07(3)(d).

12.

In addition to offering a continuum of educational placements, IDEA requires school districts to educate children with disabilities in the LRE possible. 20 U.S.C. § 1412(a)(5). IDEA allows "removal of children with disabilities from the regular educational environment . . . only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Id. The goal of this statutory requirement is to "mainstream" children with disabilities to the maximum extent possible, reserving more restrictive educational placements for children with special needs. It is up to the IEP Team to determine the LRE for each student. 34 C.F.R. § 300.116(a). While mainstreaming is not required, the IDEA maintains a strong preference for it. 20 U.S.C. § 1412(a)(5); Beth B. v. Van Clay, 282 F.3d 493, 498 (7th Cir. 2002) (holding a "district must mainstream [a student] -- that is, provide her an education with her nondisabled peers -- to the greatest extent appropriate.").

13.

"'In order to satisfy its duty to provide a free appropriate public education to a disabled child, the state must provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." WC v. Cobb County Sch. Dist., 407 F. Supp. 1351, 1359 (N.D. Ga. 2005) (citations omitted). However, IDEA does not require that a student's potential be maximized; "rather, it need only be an education that is specifically

designed to meet the child's unique needs, supported by services that will permit him to benefit from instruction." Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d at 1312 n.1 (11th Cir. 2003) (citations omitted).

14.

The term "individual education program" or "IEP" means a written statement that is developed in compliance with Section 1414 and includes a statement of the special education and related services and supplementary aids and services that will be provided to the disabled child and the frequency, location, and duration of those services. 20 U.S.C. § 1414(d)(1)(A)(i). The term "related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. 20 U.S.C. § 1401(26)(A).

15.

In developing an appropriate IEP for a disabled student, the IEP team, which includes the parents as well as other individuals who have knowledge or special expertise regarding the student, must consider the strengths of the child, the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. 20 U.S.C. §§ 1414(d)(1)(B)(i) and (vi) and (d)(3). The category under which the student is found eligible for special education does not determine the special education services to which the student is entitled. Further, regardless of the eligibility category assigned, the school system's obligation to the child is met if the IEP offered to the child is "'reasonably calculated' to deliver 'educational benefits.'" C.G. *ex rel.* A.S. v. Five Town Cmty. Sch. Dist., 513 F.3d 279, 284 (1st Cir. 2008) citing Rowely, 458 U.S. 176, 207 (1982).

16.

The IDEA does not require a school district to "guarantee a particular outcome." WC, 407 F. Supp. 2d. at 1359, citing Rowley, 458 U.S. at 192. "In determining whether a student has received adequate educational benefit, moreover, the Eleventh Circuit has noted that courts should pay 'great deference' to the educators who developed the IEP." WC, 407 F. Supp. 2d at 1359, citing JSK, 941 F.2d at 1573. For instance, in Devine v. Indian River Cty. Sch. Bd., the court discounted the parent's experts because "both witnesses based their determination on limited observations of [the child] and on the word of [the child's] parents. The district court noted that neither witness consulted [the child's] teachers nor requested documentation underlying the IEP." 249 F.3d 1289, 1292-1293 (11th Cir. 2001).

17.

A child's educational placement must be appropriate for their unique situation. Both federal and state regulations provide that "[i]n selecting the LRE, consideration [must] be given to any potential harmful effect on the child or on the quality of services that he or she needs." 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116(d); Ga. Comp. R. & Regs. 160-4-4-.07(2)(d); see also Greer v. Rome City School Dist., 950 F.2d 688, 696 (11th Cir. 1991), *quoting* Daniel R.R. v State Bd. of Educ., 874 F.2d 1036, 1045 (5th Cir. 1989) ("[N]o single factor will be dispositive under this test. 'Rather, our analysis is an individualized, fact-specific inquiry that requires us to examine carefully the nature and severity of the child's handicapping condition, his needs and abilities, and the schools' response to the child's needs.'"). This balancing of considerations—potential harm versus quality of necessary services—in order to determine the LRE is a task delegated to the IEP team under IDEA. R.L. v. Miami-Dade County Sch. Bd., 757 F.3d 1173, 1177 (11th Cir. 2014) ("Among the decisions that must be made by the IEP team is the

educational placement—that is, the setting where the student will be educated—which must be 'based on the child's IEP'") (*citing* 34 C.F.R. §§ 300.116(a)-(b)). As mentioned above, removal of children with disabilities should only occur when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5).

ii. The August 6, 2015 IEP Provided FAPE

18.

As stated *supra*, in order for the Petitioners to prove that the District failed to provide FAPE, the Petitioners must show that either:

(1) The District failed to meet the procedural requirements of the IDEA and [redacted] or [redacted] parents' substantive rights were affected as a result, or

(2) The August 6, 2015 IEP was not "reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances."

Rowely at 206; Endrew at 999.

19.

Petitioners allege the District failed to meet the procedural requirement of the IDEA by (a) failing to allow them an opportunity to sufficiently participate in planning [redacted] education; (b) "pre-determining" [redacted] placement into a small group autism classroom; (c) relying upon improper assessments; and (d) failing to provide a proper placement based on [redacted] IEP. Petitioners did not allege that the August 6, 2015 IEP was not "reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances." Accordingly, each alleged procedural violation will be addressed in turn.

a. Alleged Failure to Allow Sufficient Opportunity to Participate

20.

The IDEA "establishes various procedural safeguards that guarantee parents . . . an opportunity for meaningful input into all decisions affecting their child's education . . . ." Honig v. Doe, 484 U.S. 305, 311 (1988). Nothing in a parents' right to participate in the development of a student's educational programming, however, is the "right to dictate an outcome." Chatham County School District, 51 IDELR 294 (GA SEA 2008) (quoting Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657 (8th Cir. 1999). See also, T.M. by S.M. v. Gwinnett Cnty Sch. Dist., No. 1:10-CV-370-ODE, 2010 WL 11527001, at *14 (N.D. Ga. Dec. 20, 2010) ("Nothing requires the IEP team to obtain the parents' assent on every detail of the IEP; rather, the IDEA merely requires that the parents have a meaningful voice."). In Fulton County School District, the court held that the parents had participated where one or both parents attended the IEP meetings, the parents presented their ideas, and their ideas were considered by the IEP team. 106 LRP 20640 (GA SEA 2004). See also, M.W. ex rel. Wang v. Clarke Cty. Sch. Dist., No 3:06-CV-49 CDL, 2008 WL 4449591, at *14 (M.D. Ga. Sept. 29, 2008) (holding that the parents had participated where at least one parent was present at each IEP meeting, the parents were given the opportunity to convey information to the IEP team, and the IEP team took the parents' suggestions into account when formulating the IEP.).

21.

Here, the Petitioners allege that the District could not explain to them how its current autism program differed from the previous autism program with which they had an extensive and adversarial history. The Petitioners allege this failure, along with the failure of the District to allow them to observe the proposed placement deprived them of their rights to be fully informed

and participate in the decision making process, amounting to a denial of FAPE. D.C. v. N.Y.C. Dep't. of Educ., 950 F. Supp. 2d 494, 510 (S.D.N.Y. 2013) ("prior to making a placement decision, a parent must have sufficient information about the proposed placement school's ability to implement the IEP to make an informed decision as to the school's adequacy."). The Petitioners' argument is not persuasive. Not only did both of [redacted] parents attend and actively participate in the two 2015 IEP meetings, but during those meetings they shared their views on [redacted] current functioning and provided input on goals and objectives, some of which was accepted by the IEP team and adopted in [redacted] final IEP. Also at the IEP meeting, District personnel provided information regarding the training and ongoing support of the teachers in its autism program. Regarding the District's failure to allow an observation of the proposed placement, the Petitioners had already rejected the proposed placement prior to any request to observe.

b. Alleged Pre-Determination of [redacted] Educational Placement

22.

"Predetermination may violate IDEA and constitute a denial of FAPE when it deprives parents' of meaningful participation in the IEP process which causes a substantial harm." Cobb County School District, 109 LRP 72062 (GA SEA 2009). However, the rule against predetermination does not prohibit a school district from attending an IEP meeting with a proposed placement. Id. Nor is a school district prohibited from ultimately disagreeing with and refusing to implement the parents' requests, so long as it allows the parents to participate and considers their input. Id. "A difference in opinion regarding the resolution does not create predetermination." Id.

23.

While Petitioners may have disagreed with the District's placement offer, that is not evidence of predetermination. Id. Here, as in Fulton County School District, discussed *supra*, the District held two IEP meetings at which both the Petitioners' and the District resolutions were discussed and evaluated. [redacted] admitted that she was able to state her preference for [redacted] educational placement. Ms. C[redacted] testified that the IEP team discussed the Petitioners' proposed placement for [redacted] at Montessori school, but ultimately rejected it for the same reasons that [redacted] was eventually removed from that placement by his parents. Accordingly, Petitioners' disagreement with the District's proposed placement does not mean that the District predetermined [redacted] placement.

c. Alleged Reliance on Improper Assessments

24.

"[I]f the parent disagrees with an evaluation obtained by the public agency," then the parents may request an Independent Education Evaluation ("IEE"). 34 C.F.R. § 300.502(b)(1). Here, although [redacted] parents disagreed with the results of the District's July 2015 evaluations, [redacted] parents withdrew their request for an IEE. The evidence presented shows that the District's July 2015 evaluations were valid and thorough, consistent with testing done at Brain Balance and LMB, and accurately depicted [redacted] skills at that time. Accordingly, Petitioners have failed to prove that the District relied on improper assessments.

d. Alleged Failure to Provide a Proper Placement Based on [redacted] IEP

25.

For this contention, Petitioners argument is based primarily on the District's decision to place [redacted]. back in a program that [redacted] had previously been withdrawn from—a program that

was also the subject of prior litigation by [redacted] parents. Petitioner provided expert testimony from two witnesses regarding the supposed inappropriateness of the proposed placement. Neither witness, however, has ever attended an IEP meeting for [redacted] observed [redacted] at the District, or spoken with any District personnel regarding the proposed placement. One of the witnesses has never met [redacted] and based his testimony primarily on records from 2013 and earlier. Accordingly, the opinions of the aforementioned experts hold little weight. See Devine v. Indian River Cty. Sch. Bd. 249 F.3d 1289, 1292-1293 (11th Cir. 2001) (discounting the opinions of experts who had not observed the proposed placement, attended an IEP meeting, or spoken with placement personnel.)

26.

The evidence shows that the District's autism program is specifically designed for children like [redacted], who have an autism spectrum disorder. The placement would have provided necessary structure and allowed [redacted] to interact with neurotypical peers for approximately half of his school day. Had [redacted] attended school within the District according to his proposed IEP, he would have had a teacher with experience teaching autistic students and a program designed specifically for students with autism. Evidence shows that autism classrooms in the District receive substantial support and are supervised by a team of autism trainers, who are in the autism classrooms on a weekly basis. Accordingly, Petitioners have failed to prove that the District did not offer a proper placement based on [redacted] 2015 IEP.

27.

Petitioners have failed to show that the District committed procedural violations of FAPE that impacted their substantive rights. Accordingly, Petitioners have failed to prove a denial of FAPE.

iii. The District Was Not Obligated to Create an IEP for the 2016-2017 School Year

28.

Petitioners claim that the District violated IDEA by failing to create an IEP for [redacted] for the 2016-2017 school year. Under the IDEA, "the obligation to deal with a child in need of services, and to prepare an IEP, derives from residence in the district, not from enrollment." James v. Upper Arlington City Sch., 228 F. 3d 764, 768 (6th Cir. 2000). However, "[n]o parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." 34 C.F.R. § 300.137. In this case, [redacted] had an IEP created for the 2015-2016 school year, but that IEP was rejected by his parents. After the rejection of the IEP, [redacted] remained removed from the District and in a private placement. At the hearing, [redacted] admitted that she did not request an IEP meeting for the 2016-2017 school year, or at any time after the 2015 IEP meetings. [redacted] also admitted that, after 2015, she never informed the District that she was considering re-enrolling [redacted] in the District, nor did she in fact attempt to do so. The District would only have been obligated to create an IEP for the 2016-2017 school year if Petitioners had indicated an intent to re-enroll in the District. D.P. ex rel. Maria P. v. Council Rock Sch. Dist., 482 Fed. Appx. 669, 672 (3rd Cir. 2012). As Petitioners never indicated an intent to re-enroll [redacted] the District was under no independent obligation to create an IEP for the 2016-2017 school year.

C. Reimbursement for Unilateral Private Placement

29.

A court may award a disabled student the cost of placement in a private educational program if the court concludes that:

(1) the public placement violated the IDEA by providing an inappropriate IEP, and
(2) the student demonstrates that the private placement was appropriate.

20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(a),(c) (stating that a court may require a school district to reimburse the cost of enrolling a student with disabilities in a private placement if the school district did not make a FAPE available "in a timely manner prior to enrollment [in the private placement]"). Petitioner bears the burden of proof showing that private placement is appropriate. See W.C. v. Cobb County Sch. Dist., 407 F. Supp. 2d 1351, 1362 (N.D. Ga. 2005).

30.

It is well-recognized that IDEA does not guarantee reimbursement for private placement to parents who unilaterally move their child to a private placement after disagreeing with the IEP offered by a public school. Such a unilateral move is taken "at [the parents] own financial risk," and reimbursement will only be issued by an order of the court upon finding that the school district failed to offer a FAPE and that the private placement was proper. Id. at 12. "Under IDEA, parents who unilaterally decide to place their disabled child in private school, without consent of local school officials, 'do so at their own risk.'" Schoenbach v. District of Columbia, 309 F. Supp. 2d 71, 77 (D.C. 2004) citing Florence Cty. Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993).

31.

As the Petitioners did not meet their burden and show that the District denied [redacted] FAPE, their claims for reimbursement for private placement at public expense fail to meet the requirements set forth in 20 U.S.C. § 1412(a)(10)(C) and 34 C.F.R. § 300.148(a),(c).

IV. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, the Petitioners' request for reimbursement for unilateral private placement at public expense is hereby **DENIED**.

SO ORDERED, this 1st day of October, 2018.

M. PATRICK WOODARD
Administrative Law Judge