BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH
JAN 2 2 2018
Kevin Westray, Legal Assistant

[redacted] by and through [redacted] and [redacted]
Petitioners,

v.

DEKALB COUNTY SCHOOL DISTRICT,
Respondent.

Docket No.: 1814155
1814155-OSAH-DOE-SE-44-Schroer

FINAL DECISION

I. SUMMARY OF PROCEEDINGS

Petitioners filed a due process hearing request pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") on October 10, 2017, alleging numerous violations of the IDEA on the part of the Respondent, DeKalb County School District (hereinafter "the District").

Petitioners filed a motion for default judgment after the District failed to timely respond to the due process hearing request in accordance with 34 C.F.R. § 300.508(e) and the Court's pre-hearing order. Prior to the hearing, the Court declined to grant default judgment in favor of Petitioners, but shifted the burden of proof to the District pursuant to OSAH Rules 7 and 30. See Ga. Comp. R. & Regs. 616-1-2-.07(2), -.30(2).

The evidentiary hearing took place on November 16 and 17, 2017. The record closed on December 4, 2017 when the parties filed written closing arguments. Due to the complexity of the issues and the length of the record, the deadline for issuance of the decision was extended to January 22, 2018, pursuant to 34 C.F.R. § 300.515(c) and Ga. Comp. R. & Regs. 616-1-2-.27.

After consideration of the evidence and for the reasons explained below, the Court concludes that Petitioners are not entitled to relief under the IDEA.

II. FINDINGS OF FACT

[redacted]'s Move to the District and Transfer IEP

1. [redacted] is [redacted] years old. He and his mother, [redacted] formerly resided in Richmond County. While attending school in Richmond County School District ("RCSD"), [redacted] who is diagnosed with attention deficit hyperactivity disorder, was determined eligible to receive special education services under the category "Other Health Impairment." (Exhibits R-2, R-3).

2. RCSD referred [redacted] for a psychoeducational reevaluation on October 24, 2016 (hereinafter "RCSD psychoeducational reevaluation"). [redacted]'s eligibility category did not change as a result of this reevaluation. (Exhibits R-1, R-3; Exhibit P-20).

3. On a behavioral assessment administered during the RCSD psychoeducational reevaluation, [redacted] and [redacted]s special education teacher rated [redacted] as "Clinically Significant" in the areas of "Hyperactivity," "Aggression," and "Externalizing Problems." (Exhibit R-1).

4. A team consisting of [redacted] [redacted] and RCSD personnel developed an individualized education program ("IEP") for [redacted] during a meeting on November 15, 2016. The IEP included a behavior intervention plan. The IEP also included a finding that [redacted] did not require extended school year services. (Exhibits R-3).

5. Petitioners filed several due process hearing requests concerning RCSD in 2016. On January 18, 2017, Petitioners entered into a resolution agreement with RCSD (hereinafter "Resolution Agreement"). Per the terms of the Resolution Agreement, RCSD agreed, in pertinent part, to provide [redacted] with "compensatory services" through an online tutoring program and provide the cost of extended school year services "by paying the cost of High School Summer School as recommended by the Parent and/or the Student's school district at the time such services are to be rendered." In exchange, Petitioners agreed to dismiss their due process

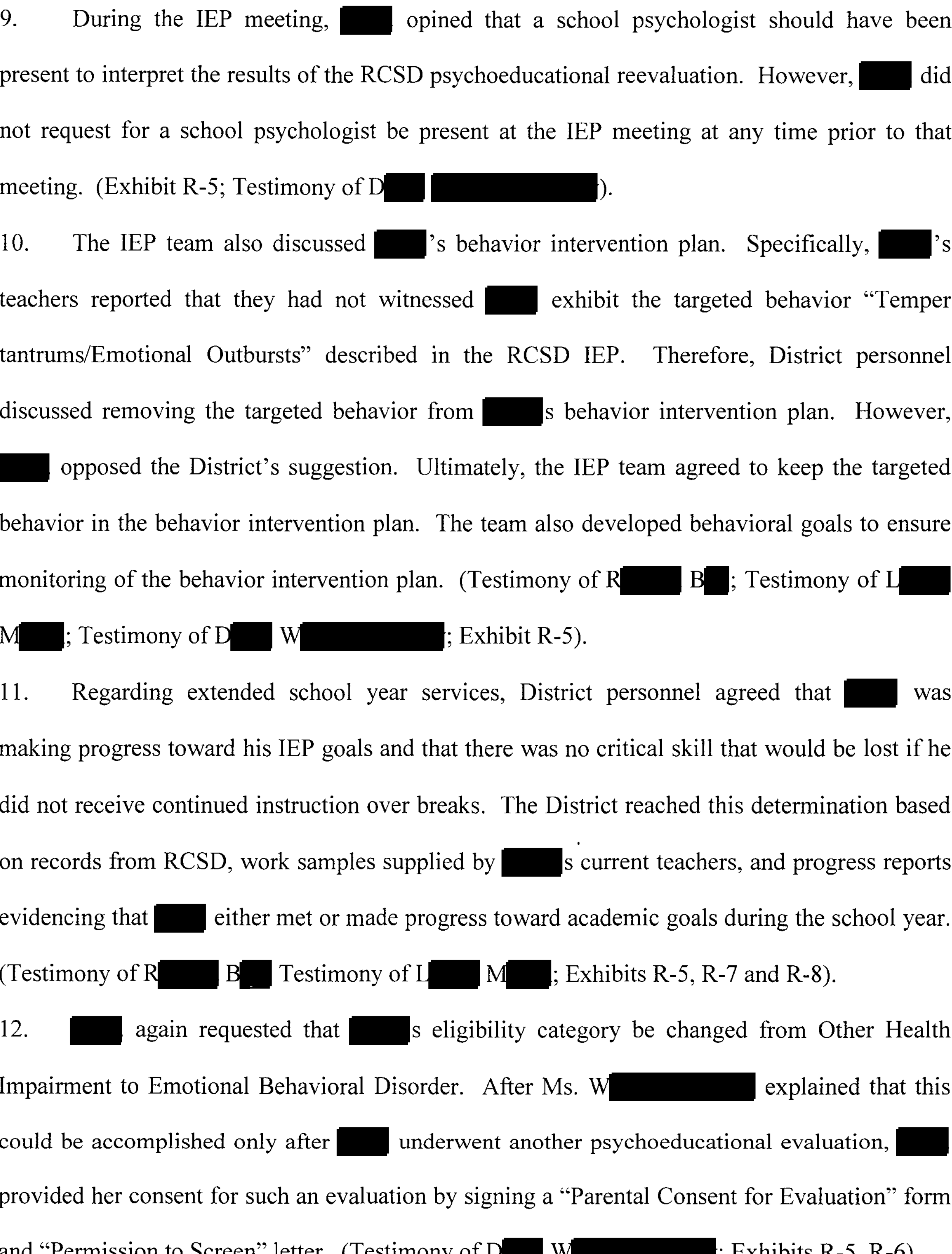
hearing requests concerning RCSD. According to the Resolution Agreement, an "external expert" reviewed the results of the RCSD psychoeducational reevaluation with Petitioner. (Exhibits R-11).

6. and moved from Richmond County to DeKalb County in January 2017, whereupon transferred to Middle School (hereinafter " Middle"), a school in the District. Upon s entry into the District, the District implemented the IEP developed in Richmond County on November 15, 2016. (Exhibit R-3; Testimony of K M).

7. At 's request, D W , the District's Lead Teacher of Special Education, met with her on April 18, 2017 to review s IEP and discuss the Resolution Agreement. During this meeting, requested that the District incorporate the services described in the Resolution Agreement into s IEP. also asked that the District change s eligibility category from Other Health Impairment to "Emotional Behavioral Disorder." Finally, asserted that was entitled to extended school year services because RCSD had "ordered" such services. (Exhibit R-4; Testimony of D W).

May 2, 2017 IEP Meeting and Current IEP

8. On May 2, 2017, an IEP team consisting of Ms. y; L M , Special Education Middle School Coordinator; R B , s social studies teacher; and other District personnel met to review s progress and develop a new IEP. (Exhibit R-5; Testimony of R B Testimony of D e W ; Testimony of L M).



9. During the IEP meeting, █ opined that a school psychologist should have been present to interpret the results of the RCSD psychoeducational reevaluation. However, █ did not request for a school psychologist be present at the IEP meeting at any time prior to that meeting. (Exhibit R-5; Testimony of D█ █).

10. The IEP team also discussed █'s behavior intervention plan. Specifically, █'s teachers reported that they had not witnessed █ exhibit the targeted behavior "Temper tantrums/Emotional Outbursts" described in the RCSD IEP. Therefore, District personnel discussed removing the targeted behavior from █s behavior intervention plan. However, █ opposed the District's suggestion. Ultimately, the IEP team agreed to keep the targeted behavior in the behavior intervention plan. The team also developed behavioral goals to ensure monitoring of the behavior intervention plan. (Testimony of R█ B█; Testimony of L█ M█; Testimony of D█ W█; Exhibit R-5).

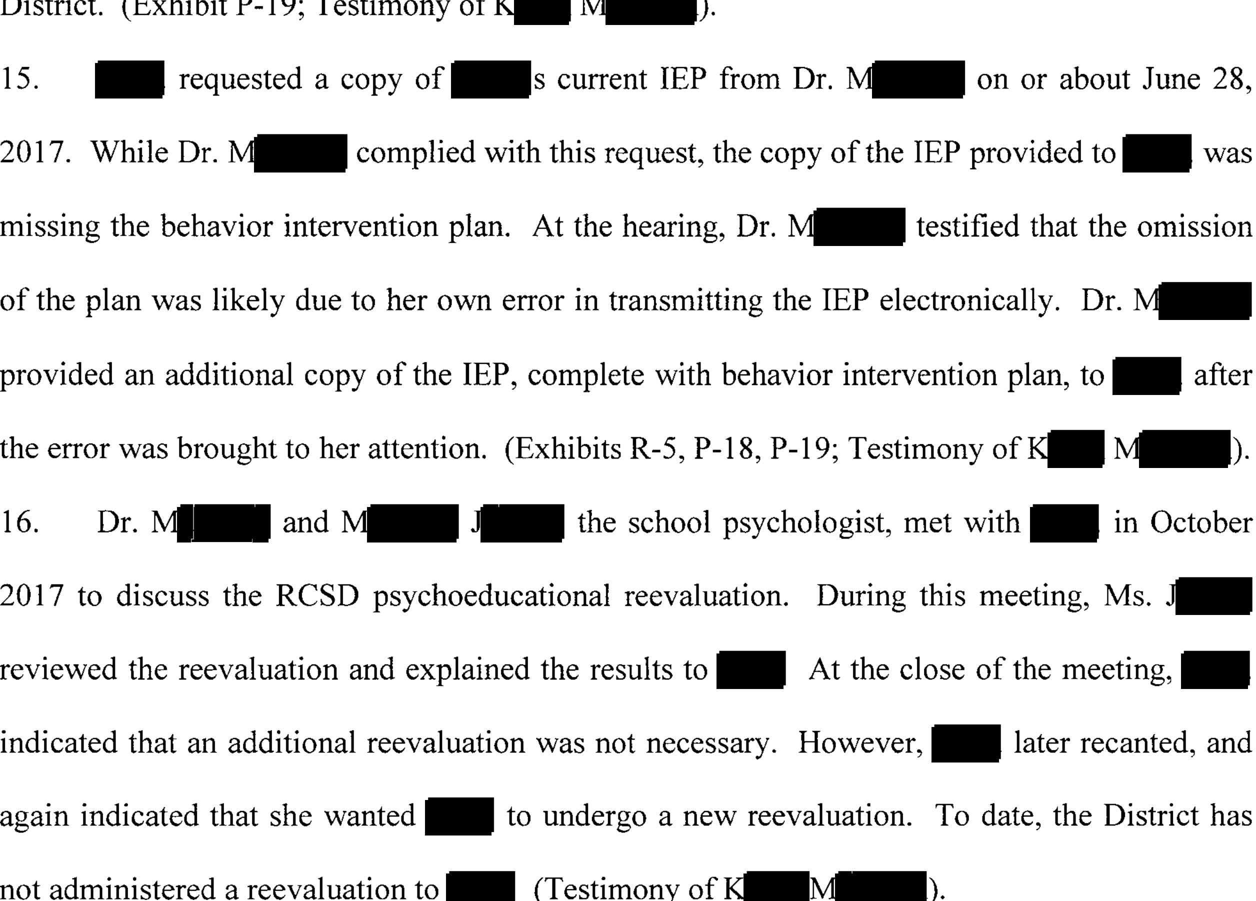
11. Regarding extended school year services, District personnel agreed that █ was making progress toward his IEP goals and that there was no critical skill that would be lost if he did not receive continued instruction over breaks. The District reached this determination based on records from RCSD, work samples supplied by █s current teachers, and progress reports evidencing that █ either met or made progress toward academic goals during the school year. (Testimony of R█ B█ Testimony of L█ M█; Exhibits R-5, R-7 and R-8).

12. █ again requested that █s eligibility category be changed from Other Health Impairment to Emotional Behavioral Disorder. After Ms. W█ explained that this could be accomplished only after █ underwent another psychoeducational evaluation, █ provided her consent for such an evaluation by signing a "Parental Consent for Evaluation" form and "Permission to Screen" letter. (Testimony of D█ W█; Exhibits R-5, R-6).

13. asserted that the services described in the Resolution Agreement should be incorporated into the IEP. In response, Ms. M explained that the District was not responsible for implementing the Resolution Agreement reached between and RCSD. (Testimony of L M; Exhibit R-5).

Subsequent Communications between and the District

14. After the IEP meeting, continued to communicate with District personnel regarding the Resolution Agreement, extended school year services, the psychoeducational reevaluation, and other areas of concern discussed during the IEP meeting. On or about June 21, 2017, the District referred to Dr. K M, Special Education Compliance Coordinator for the District. (Exhibit P-19; Testimony of K M).



15. requested a copy of s current IEP from Dr. M on or about June 28, 2017. While Dr. M complied with this request, the copy of the IEP provided to was missing the behavior intervention plan. At the hearing, Dr. M testified that the omission of the plan was likely due to her own error in transmitting the IEP electronically. Dr. M provided an additional copy of the IEP, complete with behavior intervention plan, to after the error was brought to her attention. (Exhibits R-5, P-18, P-19; Testimony of K M).

16. Dr. M and M J the school psychologist, met with in October 2017 to discuss the RCSD psychoeducational reevaluation. During this meeting, Ms. J reviewed the reevaluation and explained the results to At the close of the meeting, indicated that an additional reevaluation was not necessary. However, later recanted, and again indicated that she wanted to undergo a new reevaluation. To date, the District has not administered a reevaluation to (Testimony of K M).

Pre-hearing Filings

17. Petitioners filed a due process hearing request on October 10, 2017. In a Notice of Insufficiency filed October 26, 2017, the District moved for dismissal of Petitioners' hearing request for failure to meet the notice requirements of 34 C.F.R. § 300.508(b). Petitioners responded to the District's Notice of Insufficiency on October 30, 2017.

18. On October 31, 2017, the Court granted the District's motion with respect to all but five of Petitioners' claims:

> 1) Petitioner ████ requested that a psychologist be present at the first IEP meeting relating to ████ to interpret a psychological evaluation, but the School District refused this request.
>
> 2) The School District did not include a Behavior Intervention Plan as part of ████s IEP.
>
> 3) The School District denied Petitioner ████s request for ESY services for ████ because it lacked data upon which to base such determination.
>
> 4) At a May 1, 2017 meeting,[1] Special Education Coordinator Mrs. M████ was rude and oppositional.
>
> 5) The School District refused Petitioner ████s request to review ████'s eligibility category and did not provide ████ an explanation for the refusal.

(Order on Sufficiency of Due Process Complaint, Oct. 31, 2017).

19. On November 6, 2017, the District moved for dismissal of Petitioners' fourth claim concerning an allegation that an IEP team member was "rude and oppositional" during the May 2017 IEP meeting. Prior to the hearing, the Court granted the District's motion, but clarified that Petitioners could present evidence of the underlying allegation if it related to her remaining claims.

[1] Based on a review of the record, it appears ████ is referring to the May 2 IEP meeting. (Exhibit R-5).

The Due Process Hearing

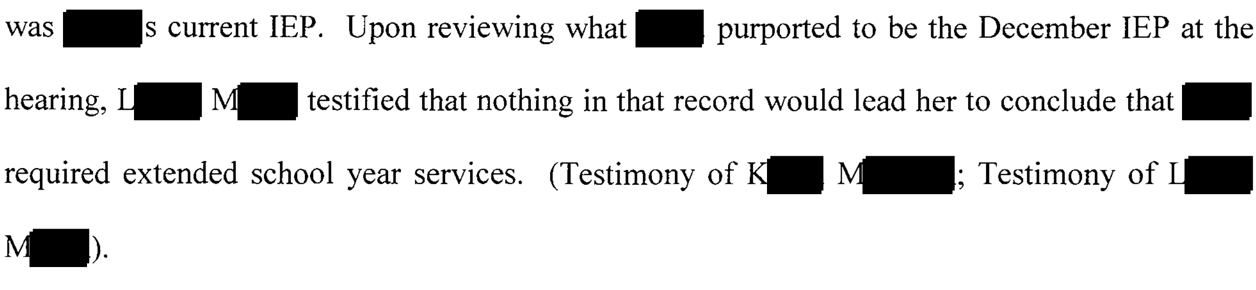
20. At the evidentiary hearing, the District presented the testimony of D[redacted] W[redacted] [redacted] R[redacted] B[redacted], and L[redacted] M[redacted] all of whom were qualified as experts in the planning and provision of special education services. Additionally, the District introduced the testimony of Dr. K[redacted] M[redacted]. (Testimony of L[redacted] M[redacted]n; Testimony of D[redacted] W[redacted]).

21. Ms. M[redacted] and Ms. [redacted]—both of whom were present during the May 2 IEP meeting—testified that they, and other District personnel present during the IEP meeting, were competent to interpret the instructional implications of the RCSD psychoeducational reevaluation. (Testimony of L[redacted] M[redacted]; Testimony of D[redacted] W[redacted]).

22. Ms. M[redacted], Ms. W[redacted], Ms. B[redacted], and Dr. M[redacted] all reaffirmed in their testimony that, based on the available data, [redacted] did not appear to require extended school year services. They based their conclusions on (1) the records supplied by RCSD, (2) impressions of [redacted] as reported by his teachers, (3) samples of [redacted]s classwork supplied by his teachers, and (4) progress reports generated by [redacted]s teachers during the school year. (Testimony of Rh[redacted] B[redacted] Testimony of L[redacted] M[redacted]n, Testimony of D[redacted]e W[redacted]; Testimony of K[redacted] M[redacted].

23. The District tendered the progress reports reviewed by the IEP team into evidence at the hearing. According to these progress reports, [redacted] either met, or made progress toward, all academic goals during the school year. (Exhibits R-7, R-8, and R-9).

24. [redacted] referenced an IEP generated in Richmond County in December 2016. However, none of the District's witnesses recalled reviewing a December IEP. Further, Dr. M[redacted] testified that when she contacted the record-keeper at RCSD regarding the purported December IEP, the record-keeper indicated that there was no such record and that the November 2016 IEP


was s current IEP. Upon reviewing what purported to be the December IEP at the hearing, L M testified that nothing in that record would lead her to conclude that required extended school year services. (Testimony of K M ; Testimony of L M).

25. clarified in her testimony that she did not request an additional psychoeducational reevaluation for but was told by the District that one was needed after she requested a change in his eligibility category. (Testimony

26. asserted that experienced regression during breaks, as evidenced by records from RCSD. Specifically, cited "I-Ready" progress monitoring reports documenting s performance on math and reading assessment tests administered in his 5th and 6th Grade school years, when he was a student in RCSD. (Exhibit P-4; Testimony

27. According to the I-Ready reports submitted by obtained the following scores on reading assessment tests administered during his 5th Grade year:

a. Test 1 – 9/4/2015: 528

b. Test 2 – 1/6/2016: 522

c. Test 3 – 3/16/2016: 582

d. Test 4 – 5/6/2016: 470

obtained a score of 527 on a reading assessment test administered on 9/6/2016, during his 6th grade year. (Exhibit P-4).[2]

28. obtained the following scores on math assessment tests administered during his 5th Grade year:

a. Test 1 – 9/3/2015: 422

[2] From the report, it appears that the minimum score a student must obtain in order to be considered "On Level" is slightly less than 600. (Exhibit P-4).

b. Test 2 – 1/7/2016: 433

c. Test 3 – 5/9/2016: 438

█████ obtained a score of 427 on a math assessment test administered on 9/6/2016, during his 6th grade year. (Exhibit P-4).[3]

III. CONCLUSIONS OF LAW

1. The case at bar is governed by the IDEA, 20 U.S.C. § 1400, et seq.; its implementing federal 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. As mentioned supra, the Court placed the burden of proof on the District prior to the commencement of the hearing in the interest of justice. Ga. Comp. R. & Regs. 616-1-2-.07(2). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

A. The District was not required to ensure that a school psychologist was present at the IEP meeting to interpret the results of the psychoeducational reevaluation.

3. According to the IDEA's implementing regulations, school districts must ensure that the IEP team includes "[a]n individual who can interpret the instructional implications of evaluation results . . . ." 34 C.F.R. § 300.321(a). This individual may be the child's general or special education teacher. Id.

4. D████ W█████████, █████s special education teacher, and L████ M████, a Special Education Coordinator, were present during the May 2, 2017 IEP meeting. Ms. M████ and Ms. W█████████ were qualified as experts in the provision and planning of special education services. In their testimony, they indicated that they and others present during the IEP meeting

[3] From the report, it appears that the minimum score a student must obtain in order to be considered "On Level" is slightly less than 500. (Exhibit P-4).

were competent to interpret the instructional implications of the psychoeducational reevaluation. Petitioners did not refute their testimony. Moreover, Petitioners pointed to no other authority that would require the District to have a school psychologist present during IEP meetings. Accordingly, Petitioners are not entitled to relief with respect to this claim.

B. The District included a behavior intervention plan in [REDACTED]s IEP.

5. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports to address that behavior when developing the IEP. 34 C.F.R. § 300.324(a)(2)(i). The District presented sufficient evidence that [REDACTED]s current IEP includes a behavior intervention plan. Although the copy of the IEP Petitioner presented at the hearing was missing the plan, both copies of the IEP include notations to the effect that such a plan was discussed during the meeting and was to be retained in the IEP. Dr. M[REDACTED] credibly testified that she omitted the plan from the electronic version of the IEP she sent to Petitioner by accident, but that it was part of the IEP in his educational record.

6. Petitioners appear to allege a substantive failure of the District to retain the behavior intervention plan, rather than a procedural failure in providing a complete copy of the IEP to [REDACTED] See 34 C.F.R. § 300.322(f). However, even if Petitioners' claim could be construed to encompass a procedural failure, Petitioners have nonetheless failed to demonstrate that they are entitled to relief. In order to recover for a procedural violation of the IDEA, the claimant must show that harm flowed from the violation. DeKalb Cty. Sch. Dist. v. J.M., No. 1:06-CV-125-TCB, 2008 U.S. Dist. LEXIS 120177, at *5 (N.D. Ga. Sept. 3, 2008) aff'd, 329 F. App'x 906 (11th Cir. 2009); see also G.J. v. Muscogee Cty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012) ("Not every procedural defect results in a violation of the IDEA. Rather, '[i]n evaluating

whether a procedural defect has deprived a student of a [free and appropriate public education], the court must consider the impact of the procedural defect, and not merely the defect *per se*.'") (quoting Weiss v. Sch. Bd. of Hillsborough Cty., 141 F.3d 990, 994 (11th Cir. 1998)). The claimant must prove one of two types of harm: "(1) failure to provide educational benefit or (2) restriction of the parents' ability to participate fully in their child's education." Gwinnett Cty. Sch. Dist. v. J.B. ex rel. D.B., 398 F. Supp. 2d 1245, 1249 (N.D. Ga. 2005). In the present case, the evidence does not support a finding that Dr. M[redacted] inadvertent failure to include the behavior intervention plan in the copy of the IEP she sent to Petitioner adversely affected [redacted] or restricted [redacted]s ability to participate in the process. Accordingly, Petitioners are not entitled to relief for this claim.

C. The District appropriately determined that [redacted] did not require extended school year services.

7. In developing an IEP, the IEP team must evaluate whether the child needs extended school year services in order to receive a free and appropriate public education. See 34 C.F.R. § 300.106; A.L. v. Jackson Cty. Sch. Bd., 635 F. App'x. 774, 783 (11th Cir. 2015) ("A public school must provide [extended school year services] if a child's IEP team determines that such services are necessary for the student to receive a [free and appropriate public education]."). Extended school year services are defined as special education and related services that are provided beyond the normal school year at no cost to the parents and in accordance with the child's IEP. 34 C.F.R. § 300.106(b)(1).

8. Federal regulations do not provide guidance for determining whether a child requires extended school year services. Rosemary Queenan, School's Out for Summer — But Should It Be?, 44 J.L. & Educ. 165, 166 (Spring 2015). However, like most other states, the Georgia Department of Education has developed multiple criteria for IEP teams to consider in

determining whether such services are necessary for the provision of a free and appropriate public education. Id. at 183. Although courts in the Eleventh Circuit have not specifically addressed Georgia's standards for extended school year services, other circuits have held that such services are only necessary to a free and appropriate public education when the benefits a disabled child gains during a regular school year will be "significantly jeopardized" if extended school year services are not provided. See M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cty., 303 F.3d. 523, 537–38 (4th Cir. 2002) (citing Cordrey v. Euckert, 917 F.2d. 1460, 1473 (6th Cir. 1990); Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ., 790 F.2D 1153, 1158 (5th Cir. 1986);[4] Johnson v. Indep. Sch. Dist. No. 4, 921 F.2d 1022, 1028 (10th Cir. 1990). "[A] claimant seeking [extended school year] must satisfy an even stricter test because providing an [extended school year] is the exception and not the rule under the regulatory scheme." N.B. v. Hellgate Elem. Sch. Dist., 541 F.3d 1202, 1211 (9th Cir. 2008) (quoting Bd. of Educ. of Fayette Cty. v. L.M., 478 F.3d 307, 315 (6th Cir. 2007)) (internal quotations omitted).

9. In this case, the District presented sufficient probative evidence to support its determination that ████ did not require extended school year services. Specifically, the District relied on data obtained from RCSD, reports from ████s teachers, and documentation ██████s academic performance during the school year, including work samples and progress reports. Having reviewed the documentation supplied by both parties, and having heard the testimony of ████s teachers, the Court concludes that there is insufficient evidence to demonstrate that ████ is in need of extended school year services. ████s previous IEP from RCSD indicated that extended school year services were not necessary. Further, according to recent progress reports,

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[4] The Fifth Circuit held that "if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the . . . child may be entitled to year-round services. The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months. Id. at 1158.

███ consistently met or exceeded his academic goals. The data supplied by Petitioners does not contradict the District's findings. Indeed, based on the I-Ready data provided by Petitioners, ███ showed no signs of significant regression during 5th or 6th grade: his assessment scores remained substantially the same, and in some cases improved, over time. Petitioners presented no other evidence that ███ had a unique need for special education services over breaks, such as expert testimony to that effect.[5] Extended school year services are required under the IDEA only when such regression will substantially thwart the goal of 'meaningful progress.'" M.M. ex rel. D.M., 303 F.3d at 538 (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 855 F.2d 171, 184 (3d Cir. 1988)). Accordingly, Petitioners are not entitled to relief with respect to this claim.

D. The District did not unlawfully refuse to review ███s eligibility category.

i. The District was not required to change ███s eligibility category without conducting a new reevaluation.

10. A "group of qualified professionals" and the parents of the child (collectively, the Eligibility Team) must determine whether a child is "a child with a disability" under the IDEA, as well as the educational needs of the child, "[u]pon completion of the administration of assessments and other evaluation measures . . . ." 34 C.F.R. § 300.306(a); Ga. Comp. R. & Regs. 160-4-7-.05(2)(a). A child is considered to have a disability under IDEA if he or she meets criteria of any category of eligibility. Ga. Comp. R. & Regs. 160-4-7-.05(1); see also 34 C.F.R. § 300.8(a). Two such categories of eligibility are "other health impairment"[6] and "emotional and behavioral disorder."[7] Id.

[5] Although evidence of actual regression is not required, courts have held that claimants must show through "expert opinion testimony" that extended school year services are necessary to permit the child to benefit from instruction. See N.B. v. Hellgate Elem. Sch. Dist., 541 F.3d at 1212; M.M. ex re. D.M., 303 F.3d at 538.

[6] According to IDEA regulations, "Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the

11. [redacted] provided the District with her consent for evaluation on May 2, 2017. At the hearing, [redacted] clarified that she did not want [redacted] to undergo another reevaluation. Rather, she wanted the District to change [redacted]'s eligibility category absent such reevaluation. The District did not violate the IDEA by insisting on an additional reevaluation to determine whether a change in [redacted]s eligibility category was warranted. IDEA regulations contemplate that school districts base changes in eligibility categories on evaluations. See 34 C.F.R. § 300.306(a); Ga. Comp. R. & Regs. 160-4-7-.05(2); see Mt. Vernon Sch. Corp. v. A.M., No. 1:11-cv-637-TWP-TAB, 2012 U.S. Dist. LEXIS 122918, at *15 (S.D. Ind. July 10, 2012) ("Congress included the evaluation and reevaluation requirements in IDEA because they are essential to implementing an individually designed IEP that is reasonably calculated to provide educational benefits."). Nothing in the record suggests that the results of [redacted]s most recent psychoeducational reevaluation merited a change in his eligibility category.

ii. The District's delay in providing the reevaluation was not unreasonable and did not result in substantive harm.

12. School districts must ensure that a child is reevaluated (1) if it determines that his or her "educational or related services needs . . . warrant a reevaluation;" or (2) if the child's parent or

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educational environment, that –

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

34 CFR 300.8(c)(9)(i)-(ii).

[7] IDEA regulations refer to the category of emotional behavioral disorder as "emotional disturbance." 34 C.F.R. § 300.8(a). Under the IDEA regulations, "[e]motional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4).

teacher requests a reevaluation. 34 C.F.R. § 300.303(a)(1), (2). School districts must conduct reevaluations of the child at least once every three years, unless the school district and parent agree that reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). However, reevaluations may not occur more than once a year, unless the parent and school district agree otherwise. 34 C.F.R. § 300.303(b)(1); see also Ga. Comp. R. & Regs. 160-4-7-.04(3)(b).

13. Neither the IDEA, nor its implementing regulations set a timeframe for when a parent-requested reevaluation must take place. Jackson-Johnson v. D.C., Civil Action No. 13-528 (TSC-AK), 2015 U.S. Dist. LEXIS 53909, at *15 (D.D.C. March 30, 2015). However, guidance from the Office of Special Education Programs ("OSEP"), "a research and training center funded by the U.S. Department of Education"[8] and the entity "responsible for implementing the IDEA,"[9] indicates that reevaluations must be conducted within a reasonable period of time from the parent's request. Letter to Saperstone, 21 IDELR 1127 (OSEP 1998); see also Herbin v. Dist. of Columbia, 362 F. Supp. 2d. 254, 261 (D.D.C. 2005) ("Though the brevity of an academic school year counsels against protracted delays in responding to requests for reevaluation, a delay may be reasonable and therefore not deprive the student of a free appropriate public education."). This guidance further provides that "what constitutes a reasonable period of time for the public agency to respond to a request for . . . a reevaluation must be made on a case-by-case basis." Id.

14. As discussed above, [redacted] requested a reevaluation on May 2, 2017. It does not appear that the District took action of any kind on [redacted]s request for reevaluation until October 2017, when Dr. M[redacted]n and a school psychologist met with her to discuss the RCSD psychoeducational reevaluation and [redacted] verbally indicated that she did not wish for [redacted] to be reevaluated. Although [redacted] did not provide written verification and later asserted that she *did*

[8] D.L. v. Dist. of Columbia, 194 F. Supp. 3d. 30, 38 (D.D.C. 2016).

[9] Jackson-Johnson, 2015 U.S. Dist. LEXIS 53909, at *16 n.1.

want the reevaluation, the District has yet to provide ████ with a new psychoeducational reevaluation.

15. The delay in administering the reevaluation to ████ is substantial. However, based on the evidence presented, the Court does not conclude that the delay was unreasonable. Nothing in the record indicates that ████ had emergency needs or other special circumstances necessitating a prompt reevaluation. See Herbin, 362 F. Supp. 2d. at 261 ("[A] delay in responding to a reevaluation request can be reasonable when no exigencies are present."). Further, the RCSD psychoeducational reevaluation, was fairly current at the time. Id. ("[T]he more current an evaluation and IEP determination, the less likely that a delay in responding to the reevaluation request will be prejudicial or injurious."). Notably, the delay in providing the reevaluation to ████ was partially attributable to ████s rescission of her original request for a reevaluation.

16. Even assuming that the District's conduct violated the IDEA, the failure to provide a timely reevaluation amounts to a procedural violation. See T.C. v. N.Y.C. Dep't of Educ., No. 15-CV-3477 (VEC), 2016 U.S. Dist. LEXIS 42545, at *22-24 (S.D.N.Y. Mar. 30, 2016); Smith v. District of Columbia, Civil Action No. 08-2216 (RWR), 2010 U.S. Dist. LEXIS 125754, *9 (D.D.C. Nov. 30, 2010); Bell v. Bd. of Educ. of the Albuquerque Pub. Sch., No. CIV 06-1137 JB/ACT, 2008 U.S. Dist. LEXIS 108748, at *70 (D.N.M. Nov. 28, 2008). As discussed supra, under the IDEA, claimants may only recover for procedural violations that cause substantive harm. See G.J., 668 F.3d at 1270. There is no evidence that ████ was denied a free and appropriate public education as a result of the District's purported failure to conduct a timely reevaluation. See LeSesne v. District of Columbia, Civil Action No. 04-0620 (CKK), 2005 U.S. Dist. LEXIS 35699, *30 (D.D.C. July 26, 2005) ("In cases where a student is seeking a reevaluation, but is already in a placement, a court may not find delay substantially harmed the

child."); see also Letter to Saperstone, 21 IDELR 1127 (OSEP 1998) (providing that a parent may file an due process hearing request or state-level complaint "if the parent believes that the public agency's delay in responding to their request is resulting in a denial of [a free and appropriate public education]."). Further, there is no evidence that the delay significantly impeded ███s ability to participate in ███s education. See J.B. ex rel. D.B., 398 F. Supp. 2d at 1249.

iii. The District was not on notice that ███ had an emotional and behavioral disorder.

17. In addition to the requirement for reevaluations, school districts have "'a continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability . . . .'" Phyllene W. v. Huntsville City Bd. of Educ., 630 F. App'x 917, 925 (11th Cir. 2015) (quoting P.P. ex rel. Michael P. v. W. Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009)); see also 20 U.S.C. § 1401(3)(A)(i) ("'[e]ach local educational agency shall ensure that . . . the child is assessed in all areas of *suspected* disability."). This obligation exists where the school district is already providing services to the child with a disability. Phyllene W., 630 F. App'x at 921, 925.

18. Here, the information available to the District was insufficient to trigger the obligation to assess ███ for an emotional and behavioral disorder. Although the RCSD psychoeducational evaluation indicated that ███ exhibited clinically significant behavior with regard to hyperactivity, aggression, and externalizing problems, nothing in the evaluation or other available records suggested that this behavior was attributable to an emotional and behavioral disorder, as opposed to a disability under the category of other health impairment, such as attention deficit hyperactivity disorder. See 34 C.F.R. § 300.8(c)(4), (9)(i). Further, ███s teachers in the District reported that ███ had not exhibited disruptive behavior. Moreover,

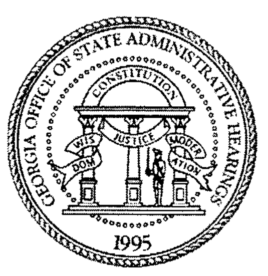
there is nothing in the record to indicate that [redacted] exhibited the characteristics of an emotional and behavioral disorder, i.e., "[a]n inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers[,]" "[a]n inability to learn which cannot be adequately explained by intellectual, sensory or health factors[,]" "[a] consistent or chronic inappropriate type of behavior or feelings under normal conditions[,]" "[a] displayed pervasive mood of unhappiness or depression," or "[a] displayed tendency to develop physical symptoms, pains or unreasonable fears associated with personal or school problems." Ga. Comp. R. & Regs. 160-4-7-.05, App'x (d); see also 34 C.F.R. § 300.8(c)(4). Accordingly, the Court concludes that the evidence in the record did not show that the District had reasonable grounds to suspect that [redacted] had an emotional and behavioral disability under IDEA such that the District was obligated to conduct a reevaluation.

IV. DECISION

Based on the foregoing findings of fact and conclusions of law, the undersigned concludes that Petitioners are not entitled to relief under the IDEA.

SO ORDERED, this 22nd day of January, 2018.

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(e)(3). 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(3). 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 Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-818-3724; 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.

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