IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] **by and through** [redacted] **Petitioner,**	:	
	:	**Docket No. 1741135**
v.	:	**OSAH-DOE-SE-1741135-33-Woodard**
COBB COUNTY SCHOOL DISTRICT, Respondent.	:	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION

I. INTRODUCTION

Petitioner filed this action to seek relief for the Respondent's alleged failure to properly place, identify, or evaluate [redacted] as required under the Individuals with Disabilities Education Act ("IDEA"), which resulted in an alleged denial of a Free Appropriate Public Education ("FAPE"). Petitioner seeks private, compensatory educational services for [redacted] as well as additional assessments and technological assistance devices.

On August 16, 2017, Respondent filed a Motion for Summary Determination ("Respondent's Motion"). On September 8, 2017, Petitioner filed a Response to Respondent's Motion ("Petitioner's Response") and, on September 27, 2017, Respondent filed a Reply in Support of Its Motion ("Respondent's Reply"). Having carefully reviewed the parties' filings, the Court **GRANTS** Respondent's Motion for Summary Determination for the reasons set forth below, and the Due Process hearing scheduled for December 5-7, 2017, is CANCELED.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." *Pirkle v. Envtl. Prot. Div., Dep't of Natural Res.*, OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing *Porter v. Felker*, 261 Ga. 421, 421 (1991)); *see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res.*, 282 Ga. App. 302, 304-05 (2006) (noting summary determination is "similar to summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary determination).

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3). *See Lockhart v. Dir. Envtl. Prot. Div., Dep't of Natural Res.*, OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing *Leonaitis v. State Farm Mutual Auto Ins. Co.*, 186 Ga. App. 854 (1988)). Respondent, as the party seeking relief, bears the burden of proof at the hearing in this matter. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) ("The party seeking relief shall bear the burden of persuasion . . . .")

III. STATEMENT OF UNDISPUTED FACTS

Having reviewed the motions for summary determination, responsive filings, and exhibits, the Court concludes that the following facts are not in dispute:

A. [redacted] - Background

1.

[redacted] was born on March [redacted], and is currently [redacted] years old. (Due Process Compl., ¶ 2.)

2.

[redacted] has been a student in the Respondent school district since she was three-and-a-half years old. When [redacted] moved to the Respondent school district, she arrived as a student with an out-of-state eligibility. (Jessica Coleman Aff., ¶ 4.)

3.

According to the most-recently-completed physician referral form, [redacted] has been diagnosed with cerebral palsy, seizure disorder, and scoliosis. (Due Process Compl., ¶ 3; Coleman Aff., ¶ 5.)

4.

As a result of [redacted]s disabilities, [redacted]s verbal skills are limited. She can only use a handful of words, and also struggles with gross motor skills. (Coleman Aff., ¶ 7.)

5.

In elementary school, [redacted] was found to be eligible for services under the Severely Intellectually Disabled ("SID") category. In April 2004, [redacted]'s eligibility category was changed from SID to Moderately Intellectually Disabled ("MOID"). [redacted] remained in the MOID eligibility category from April 20, 2004 to October 2015. Prior to the dispute at issue in this

matter, [redacted] last received a psychoeducational evaluation, ordered and conducted by the Respondent, in March and April, 2015. (Coleman Aff., ¶ 8, Exhibit B-1.)

B. The October 8, 2015 IEP Meeting

6.

On October 8, 2015, the IEP team convened for [redacted]'s annual IEP meeting. As part of that IEP meeting, the IEP team was required to discuss re-determination of eligibility. At the meeting, the IEP team, minus [redacted]s parents, agreed that [redacted]s eligibility category should be changed to SID. (Phyllis Joyner Aff., ¶ 4, 5.)

7.

The IEP team, minus [redacted]'s parents, determined that, based on the change in [redacted]'s eligibility category, [redacted] would be removed from the MOID small group classroom at Wheeler High School, as Wheeler High did not have a SID program, and placed in the SID small group classroom at Pope High School. [redacted]'s parents disagreed with the change, as they did not want [redacted] moved to a different school from her siblings. (Joyner Aff., ¶ 6.)

8.

According to [redacted]s mother, she "objected to the change in [[redacted]s] eligibility and placement. [She] repeatedly stated that [[redacted] needed to remain at Wheeler and attend the same school as her siblings. Being able to attend school with her siblings was for social, educational and safety reasons." (Swain Aff., ¶ 4.)

C. Response to the October 8, 2015 IEP Meeting

9.

Despite their disagreement with the IEP team's recommendation, [redacted]s parents did not file a due process complaint, request mediation, or permit [redacted] to move to Pope High School to

attend classes. Instead, [redacted]'s parents withdrew her from Wheeler High School on November 20, 2015, and did not enroll her in any other educational program. (Due Process Comp., ¶ 5; Coleman Aff., ¶ 10.)

10.

In December 2015, [redacted]s legal counsel sent an email to Cathy Jordan, the Assistant Director of Middle School/High School Special Education Programs with the Respondent, requesting that [redacted] receive her services in the MOID classroom at Wheeler High School. (Coleman Aff., ¶ 11; December 1, 2015 letter, attached as Exhibit B-2 to Coleman Affidavit.)

11.

In response, on March 3, 2016, Ms. Jessica Coleman, Assistant Director of Special Education for the Respondent, provided [redacted]s counsel with written notice explaining the reasons for the IEP team's decision to move [redacted] from the MOID classroom to the SID classroom. Ms. Coleman also explained to [redacted]'s counsel that she could not unilaterally return [redacted] to the MOID classroom. Instead, the IEP team would need to meet as a team to discuss current functioning and the appropriate placement for [redacted] Ms. Coleman then invited [redacted]s counsel for an IEP meeting to discuss [redacted]s current functioning. (Coleman Aff., ¶ 11, 12; December 1, 2015 letter, attached as Exhibit B-2 to Coleman Affidavit.)

12.

Ultimately, [redacted]s parents and counsel agreed to hold an IEP meeting on March 29, 2016. At the meeting, [redacted]s special education teacher told [redacted]s parents that [redacted] was not making progress towards her goals. (Swain Aff., ¶ 7.)

13.

Discussion at the March 29, 2016 IEP meeting centered around [redacted]s eligibility determination. The IEP team, again minus [redacted]'s parents, continued to agree that [redacted] was correctly categorized as SID, while [redacted]s parents, through counsel, continued to demand that [redacted] be returned to the MOID classroom at Wheeler High School. The IEP team eventually agreed to return [redacted] to Wheeler High School while they continued to collect data to determine which placement was most appropriate. [redacted]'s parents also agreed to re-enroll [redacted] in school. (Coleman Aff., ¶ 12, 13, 14; Swain Aff., ¶ 4.)

D. [redacted]'s Re-enrollment at Wheeler High School

14.

On April 11, 2016, [redacted]s parents re-enrolled her at Wheeler High School. (Coleman Aff., ¶ 14.)

15.

During the March 29, 2016 IEP meeting, the IEP team agreed to conduct a Functional Behavior Assessment ("FBA") to help design a Behavior Intervention Plan ("BIP") for [redacted] The FBA was performed at Wheeler High School, and a BIP designed, on May 19, 2016. (Coleman Aff., ¶ 14.)

16.

On May 24, 2016, another IEP meeting was held. At the meeting, the IEP team discussed [redacted]s goals and objectives for the 2016-2017 schoolyear, and the IEP team reviewed a draft of [redacted]s BIP. The IEP team agreed to revise the BIP once more data was collected. Because of time constraints, the IEP team was unable to complete the goals and objectives discussion, but

agreed to reconvene at a later date to complete the discussion. (Coleman Aff., ¶ 15; Exhibit B-5.)

17.

In June 2016, [redacted]s parents requested an IEE at public expense related to the FBA and speech-language evaluation that the Response has performed earlier in the year. The Respondent agreed to [redacted]s parents' request. As [redacted]s annual IEP was set to expire in October 2016, the IEP team agreed to continue [redacted]'s previous IEP until they received results from the IEE. (Coleman Aff., ¶ 16.)

18.

On December 28, 2016, Michael Mueller completed an independent FBA of [redacted] After discussing Dr. Mueller's findings with him, the IEP team revised [redacted]s BIP. (Coleman Aff., ¶ 16.)

19.

On January 18, 2017, Michelle Needle, M. Ed. CCC, completed a speech and language evaluation of [redacted] The IEP team then took the speech IEE into consideration when creating [redacted]s IEP goals and objectives in the areas of speech and language. (Coleman Aff., ¶ 16, Exhibit B-5.)

20.

The IEP team did not adopt every recommendation made by Dr. Mueller or Ms. Needle. (Mueller Aff., ¶ 23.)

21.

The IEP team met three times in 2017: March 23, 2017; April 19, 2017; and May 12, 2017. In total, these meeting lasted more than six hours. During these meetings, the IEP team

discussed [redacted]s current functioning, goals and objectives, extended school year, and other required IEP topics. (Coleman Aff., ¶ 17, Exhibit B-5.)

22.

During the April 19, 2017 meeting, the IEP team discussed the results of [redacted]s "Brigance" testing to help determine goals and objectives. The Brigance assessment is an established method used to determine a student's functional [redacted]'s teacher conducted the assessment with oversight from the Respondent's ID trainer. Because of [redacted]s age and disability, the IEP team, minus [redacted]s parents, agreed to limit the Brigance assessment to those assessments related to functional skills. (Coleman Aff., ¶ 18, Exhibit B-5; Mueller Aff., ¶ 18.)

23.

During the May 12, 2017 meeting, the IEP team continued to discuss [redacted]s goals and objectives. During that meeting, Dr. Mueller, as [redacted]s outside expert, discussed an assessment that he had conducted. Like the Brigance assessment, Dr. Mueller claimed that his assessment was designed to determine [redacted]s functional skills and he made several suggestions for amending [redacted]'s goals and objectives, particularly as related to her BIP. The IEP team adopted some, though not all, of Dr. Mueller's suggestions. The IEP team determined that some suggestions were inappropriate for [redacted] to undertake at school (i.e. dressing and undressing). (Coleman Aff., ¶ 19, Exhibit B-5.)

24.

For example, one of [redacted]s goals for the 2017-2018 schoolyear was "to "increase vocabulary skills, starting 5/12/2017, as measured by the following objectives, completed by 5/11/2018." Methods of evaluations would be observation and data collection. The objective for this goal was:

[redacted] will identify by pointing to picture of 3-5 new words per story or unit of study given a three-picture choice, starting 5/12/2017, with verbal/visual prompt, with a baseline of 40%, and with a target of 70% completed by 5/11/2018.

(Coleman Aff., Exhibit B-5.)

25.

Due to the length of the discussion on [redacted]s goal and objectives, the IEP team decided to finalize [redacted]s annual IEP with the agreed upon goals and objectives, and agreed that the team would consider revisiting Dr. Mueller's suggestions at an amendment IEP meeting in the fall of 2017. (Coleman Aff., ¶ 19, Exhibit B-5.)

E. [redacted]'s Current Placement and Progress

26.

Since [redacted]s return to the MOID small-group class at Wheeler High, her classroom is composed of six students, one teacher, and two paraprofessionals. [redacted]'s parents have requested that a paraprofessional be assigned to [redacted] exclusively, because they do not believe that [redacted] could make progress on her goals and objectives without a one-to one paraprofessional. (Coleman Aff., ¶ 20; Mueller Aff., ¶ 14.)

27.

The Respondent disagrees, arguing that a one-to-one paraprofessional is not necessary to provide [redacted] with FAPE—as students near [redacted]s age with similar disabilities often show slow and incremental progress. (Coleman Aff., ¶ 20.)

28.

When [redacted]'s expert, Dr. Mueller, and his staff observed [redacted] in the MOID classroom, they reportedly found a lack of engagement between the teacher and paraprofessionals and [redacted] Dr. Mueller observed that long periods passed without [redacted] "being exposed to any instruction at all or with activities or materials that had no chance of benefitting her." Dr. Mueller believes that

[redacted] is capable of making academic progress, but needs instruction to be provided on the level of her cognitive abilities and current skill base. (Mueller Aff., ¶ 14, 30.)

29.

Since returning to Wheeler High, [redacted] has made progress on many, but not all, of her goals and objectives. As [redacted] has not yet turned twenty-two-years-old, or transitioned to an alternative employment/education/training setting, [redacted] has the right to continue services with the Respondent through her twenty-first birthday. She began the 2017-2018 school year in July 2017, when she was still only [redacted] years old. (Cf. Progress Reports attached to Exhibits A-1, B-3, B-4, and B-5; Coleman Aff., ¶ 22.)

IV. CONCLUSIONS OF LAW

1.

The overriding purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education ["FAPE"] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). To facilitate compliance with this mandate, IDEA offers procedural safeguards that allow a parent to request a due process hearing regarding the "identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6)(A). In this case, the Petitioner's mother alleges, *inter alia*, that the Respondent failed to properly place, identify, evaluate, or provide a FAPE to [redacted] The Court will address each claim in turn, as well as the remedy sought.

A. Introduction to Free Appropriate Public Education (FAPE)

2.

Under IDEA, states are required to ensure that "[a] free appropriate public education is available to all children with disabilities." 20 U.S.C. § 1412(a)(1)(A). "The purpose of the IDEA generally is 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living . . . .'" *C.P. v. Leon County Sch. Bd.*, 483 F.3d 1151, 1152 (11th Cir. 2007) (*quoting* 20 U.S.C. § 1400(d)(1)(A)). In order to achieve this goal, a written IEP specifically tailored to each disabled student delineates the special education services that the student must receive in order to obtain a FAPE. *See* 20 U.S.C. § 1414(d)(1)(A). The IEP serves as the roadmap for a student's special education services. *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C. § 1414; Ga. Comp. R. & Regs. 160-4-7-.06.

3.

The IEP team is the group of individuals responsible for developing, reviewing, and revising an IEP. The IDEA specifically states that the following individuals must be included on the IEP team: the child's parent(s); at least one regular education teacher if the child is or may be participating in the regular education environment; at least one special education teacher; a representative of the local educational agency; a person who can interpret the instructional implications of evaluation results; others who may have knowledge or expertise regarding the child; and the child, when appropriate. 20 U.S.C. § 1414; Ga. Comp. R. & Regs. 160-4-7-.06.

4.

The United States Supreme Court established a two-part test to determine the sufficiency of an IEP, and this test has been applied by the Eleventh Circuit. *Rowley, supra.; J.S.K. v. Hendry Cnty. Sch. Bd.,* 941 F.2d 1563 (11th Cir. 1991). A court must consider (1) whether there has been compliance with the procedures set forth in the IDEA and (2) whether the IEP is reasonably calculated to enable the child to receive educational benefit in the least restrictive environment. *J.S.K.,* 941 F.2d at 1571, *(citing Rowley,* 458 U.S. at 206-7).

5.

In *Endrew F. v. Douglas County School Dist.*, 137 S. Ct. 988 (2017), the Supreme Court clarified and expanded upon its holding in *Rowley*. In *Endrew*, the Court held that to provide a FAPE, the school district must provide an "educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 1237 S. Ct. at 1001. The "reasonably calculated" language reflects that the creation of an IEP "requires a prospective judgment by school officials" and that the IEP will not necessarily be "ideal." *Id.* at 999. Nonetheless, "[t]he IEP must aim to enable the child to make progress." *Id.* If grade-level advancement is not a reasonable prospect for a child, the IEP "must be appropriately ambitious in light of [the child's] circumstances," but need not aim for grade-level advancement. *Id.* at 1000.

6.

As such, and despite the Petitioner's contentions to the contrary raised in her response to the District's Motion for Summary Determination, *Endrew* is not a major shift in the FAPE standard in the Eleventh Circuit. Although the Eleventh Circuit has not yet compared its previous standard to the Supreme Court's recent decision, several courts have held that their

previous standards were consistent with *Endrew*. *See, e.g., C.G. v. Waller Indep. Sch. Dist.*, __ Fed. Appx. __, 2017 WL 2713431, *2 (5th Cir. 2017.) (holding that the previous Fifth Circuit standard was consistent with *Endrew* even though the previous standard used different language); *E.D. v. Colonial School District*, 2017 WL 1207919, *12 (E.D.Penn. March 31, 2017) (holding that the Third Circuit's previous FAPE standard was consistent with *Endrew*). Like those circuits, the Eleventh Circuit's previous FAPE standard is consistent with *Endrew*.

7.

The Petitioner argues that the *Endrew* decision requires an ambitious IEP that guarantees progress. This is not true. No school district can guarantee progress. What *Endrew* does require is appropriate progress—which the Supreme Court chose not to define, as what is "appropriate progress" will depend "on the unique circumstances of the child for whom [the IEP] was created." *Endrew* at 1001.

B. The Respondent's Provision of FAPE: Prior to the 2016-2017 Schoolyear

8.

In general, the IDEA bars recovery for any alleged wrong that occurred more than two years from the date of the request for a due process hearing. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2). Accordingly, any claim arising more than two years prior to Petitioner's Due Pro June 2015 is statutorily time-barred. The Petitioner contends that the Respondent denied her FAPE from June 2015 to the present, which is within the applicable statutory period.

9.

From June 2015 through October 2015, there is no evidence that the Petitioner disagreed with the Respondent's administration of the Petitioner's IEP. After the October 8, 2015 IEP meeting, the Petitioner's parents were upset with the Respondent's decision to move the

Petitioner to another school, but did not complain that she was being denied FAPE or that the educational goals and objectives were inappropriate. Instead, they were upset by the Respondent's decision to change the Petitioner's placement in a different classroom setting, and in a different high school within the Cobb County district. In response, Petitioner's parents voluntarily withdrew [redacted] from school. Accordingly, there is no evidence that the Respondent did not provide the Petitioner with a FAPE from June 2015 – October 2015.

10.

The Petitioner also claims that [redacted] was denied a FAPE while withdrawn from school for almost five months (November 20, 2015 to April 11, 2016). The Petitioner presented no evidence that [redacted] was enrolled in a home school program or private school during the withdrawal period. Nevertheless, the Petitioner argues that she was denied FAPE and is entitled to compensatory education services for this time frame based on those cases in which courts have approved reimbursement where parents have unilaterally withdrew their children from public school and enrolled them in private schools. In order for parents to seek reimbursement for private school placements, however, parents are required to provide the school district with written notice, at least ten business days prior to withdrawing the child from public school, of their concerns about placement and their intent to enroll their child in private school at public expense. 34 C.F.R. § 300.148(d). In this case, there is no record evidence that the Petitioner's parents ever provided the Respondent with such notice.

11.

Additionally, reimbursement for private school placement requires that the private school placement be appropriate. *See W.C. v. Cobb County School Dist.*, 407 F. Supp. 2d 1351, 1362 (N.D. Ga. 2005) (denying reimbursement to parents because the private school chosen by parents

was not appropriate for the student). In this case, the Petitioner's parents chose to keep the Petitioner at home, and there is no evidence that she was educated appropriately by her parents or anyone else during this time frame. Accordingly, the Petitioner cannot now claim that the Respondent did not provide the Petitioner with a FAPE during the time period they withdrew her from school and declined to enroll her elsewhere.

C. The Respondent's Provision of FAPE: the 2016-2017 School Year

12.

As stated above, under *Rowley*, when considering whether there has been a denial of FAPE, a court must consider (1) whether there has been compliance with the procedures set forth in the IDEA and (2) whether the IEP is reasonably calculated to enable the child to receive educational benefit in the least restrictive environment. *J.S.K.*, 941 F.2d at 1571, *(citing Rowley,* 458 U.S. at 206-7). Here, the Petitioner alleges that the Respondent failed to ensure that the Petitioner's IEP was reasonably calculated to allow the Petitioner to receive educational benefit.

13.

Specifically, in her Complaint, the Petitioner claims that "the educational program for [redacted] was not appropriate and was not implemented using appropriate research-based special education instruction, related services, and supplemental services, modifications, accommodations nor any adequate emotional supports." The Petitioner also alleges that the Respondent denied FAPE by failing "to create an educational plan for [redacted] that confers upon her any meaningful educational benefit in light as a student with significant intellectual delays that require intensive educational interventions, as well as communication and behavioral

services to ensure she can access her environment." The Petitioner fails to provide any other specific allegations regarding the inadequacies of the IEP.

14.

Upon review of Petitioner's Response to the Respondent's Motion for Summary Determination, the Court notes that the Petitioner bases much of her argument on the Respondent's alleged failure to provide sufficiently challenging goals and objectives for the Petitioner in the Petitioner's IEP, and argues that the Petitioner's progress towards the goals and objectives was not properly measured. Thus, argues the Petitioner, the IEP was not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew* at 1001.

15.

The Court will first address the Respondent's alleged failure to provide sufficiently challenging goals and objectives. Under IDEA, an IEP must be "likely to produce progress, not regression or trivial educational advancement." *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997). And, in *Endrew*, the Supreme Court found no issue with an IEP that "largely carried over the same basic goals and objectives from one year to the next." *Endrew*, 137 S. Ct. at 996. In this case, the evidence shows that the Petitioner has significant cognitive disabilities. These disabilities do limit her ability to make progress on goals and objectives. However, each of the Petitioner's IEPs contains a list of goals and objectives, many but not all of which are accompanied by an indication that the Petitioner has not made progress toward the specific goal. In her Response to the Respondent's Motion, the Petitioner contends both that the IEP goals and objectives are not challenging enough, and that the Petitioner has not

made significant progress in achieving the existing goals. This is difficult to reconcile, and undercuts the Petitioner's position.

16.

IDEA does provide that an IEP must have "measurable" goals. 34 C.F.R. § 300.320(a)(2); *see Evans v. Bd. of Educ. of Rhinebeck Sch. Dist.*, 930 F. Supp. 83, 98 (S.D.N.Y. 1996) (failure of measurable objectives denies FAPE). However, a mastery of goals and objectives is not required to provide FAPE. *Rowley*, 458 U.S. at 192. Each of the Petitioner's IEPs contains measurable goals, despite the Petitioner's disagreement with the rubric used for measuring.

17.

Accordingly, the Court finds that the Petitioner's IEP is reasonably calculated to enable the Petitioner to receive educational benefit.

18.

The Court is sympathetic to the Petitioner's parents' frustration regarding her lack of academic progress, but feels compelled to point out their role in this dispute. The Petitioner's parents unilaterally removed her from school for five months, only agreeing to reenroll her after the IEP team, despite the strong concerns and objections of other team members, acquiesced to the Petitioner's parents' demand that the Petitioner be returned to the MOID classroom at Wheeler High. The Petitioner's parents now insist that the Petitioner is not making educational progress, and object to the instruction provided in the MOID small-group classroom.

19.

One of the purposes of the IDEA is to provide parents with the ability to meaningfully participate in their child's educational planning. *Loren F. v. Atlanta Indep. Sch. Syst.*, 349 F.3d 1309, n.2 (11th Cir. 2003). However, a parent's right to provide meaningful input does not

include the right to dictate an outcome. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003); *Lachman v. Ill. State Bd. of Educ.*, 852 F. 2d 290, 297 (7th Cir. 1988); *Renner v. Bd. of Educ. of the Pub. Sch. of Ann Arbor*, 185 F.3d 635 (6th Cir. 1999); *Barnett v. Fairfax Cnty. Sch. Bd.*, 927 F.2d 146 (4th Cir. 1991); *Daniel R.R.*, 874 F.2d at 1051.

D. Placement

20.

The Respondent's decision to move [redacted] from the MOID classroom at Wheeler High to the SID classroom at Pope High was the impetus for all of the disputes at issue in this case. However, [redacted] never actually transferred to Pope High, nor has she received services in an SID classroom. Instead, [redacted]s parents refused to enroll [redacted] at Pope High and withdrew her from Wheeler High. There is no evidence that the IEP team's decision to move [redacted] from the MOID classroom at Wheeler High to the SID classroom at Pope High was inappropriate in light of Petitioner's circumstances.

21.

The evidence (including the affidavit of Ms. Swain) does show, however, that [redacted]s parents' primary objection to the Respondent's decision to move [redacted] was based on the actual geographical change from Wheeler High to Pope High. [redacted]'s mother strongly believed that [redacted] needed to remain at the same school as her siblings. Such a claim is not actionable, even when a parent believes that staying put at a particular school is in the student's best interest. *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 381, 383 (5th Cir. 2003) ("no federal appellate court has recognized a right to a neighborhood school assignment under the IDEA.") As [redacted] has never attended the SID classroom, and continues in the MOID classroom to this day, any claim

by [redacted]s mother that the Respondent failed to properly place [redacted] when it attempted to move her to the SID classroom is also not actionable.

E. Identification

22.

IDEA imposes on the local educational agency ("LEA") – in this case, the Respondent - an obligation to identify, locate, and evaluate all children with disabilities, a process called "Child Find" by Federal law. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a)(i); Ga. Comp. R. & Regs. 160-4-7-.03(1)(a). To prevail on an identification claim, the Petitioners must show that the LEA "overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." *Clay T. v. Walton County Sch. Dist.*, 952 F. Supp. 817, 823 (M.D. Ga. 1997); *see Bd. of Educ. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) (adopting *Clay T.* standard).

23.

In this case, the uncontroverted evidence plainly shows that the Respondent did not violate the Child Find provisions of IDEA. Respondent did not overlook evidence of [redacted]'s disability. To the contrary, the Respondent recognized [redacted]s disabilities as being more severe than [redacted]s parents believed. From the day that [redacted] enrolled in one of the Respondent's schools, she was recognized as a student with a disability who was eligible for an IEP.

24.

In March and April of 2015, and prior to the dispute over SID placement that gave rise to this matter, the Respondent reevaluated [redacted] as required by IDEA, for current functioning. *See* 34 C.F.R. 300.303 (child must be reevaluated once every three years). In May 2016, after [redacted]s parents had reenrolled [redacted] in school, [redacted]s parents requested an FBA and the Respondent

conducted one. When [redacted]s parent requested an IEE at public expense in June 2016, the Respondent also granted that request.

25.

The Petitioner, in support of its allegation that the Respondent failed to properly identify [redacted] claims that the Respondent "incorrectly identified the scope and type of [[redacted]s] disabilities and her educational needs." The Petitioner then elaborates, claiming that the Respondent's failure to conduct an FBA and develop a BIP prior to the Petitioner's request for one shows that the Respondent failed to order testing. The Petitioner makes no mention of the psychoeducational testing performed by the Respondent in the spring of 2015.

26.

The Petitioner has presented no evidence that the Respondent failed to identify [redacted] as a student with a disability. Their argument rests on the Respondent's alleged failure to conduct a behavioral analysis and design a BIP to assist in curbing some of [redacted]s behavioral challenges, not failure to identify [redacted] as disabled. Accordingly, their identification claim fails as a matter of law.

F. Evaluation

27.

The Petitioner claims that the Respondent failed to properly evaluate [redacted] When conducting an evaluation of a student for IDEA purposes, a school district must:

> ...use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining --
>
> (i) whether the child is a child with a disability; and
>
> (ii) the content of the child's individualized education program ....

20 U.S.C. § 1414(b)(2)(A). As noted above, the undisputed evidence shows that [redacted] underwent a psychoeducational evaluation in the spring of 2015. [redacted] was removed from the Respondent's school system on November 20, 2017. After [redacted] was returned to Wheeler High on April 11, 2016, [redacted] underwent, at the request of her parents, an FBA assessment. When [redacted]s parents requested an IEE in June 2016, the Respondent agreed. When Dr. Mueller conducted an independent FBA in December 2016, the IEP team considered his suggestions and made revisions to [redacted]s BIP. *See* 34 C.F.R. § 300.502(c)(1) (schools must consider results of independent educational evaluations obtained by parents "in any decision made with respect to the provision of FAPE to the child"). There is no requirement that the Respondent adopt every suggestion made by an independent evaluator. Accordingly, the Respondent has shown that they complied with 20 U.S.C. § 1414(b)(2)(A).

V. DECISION

Based on the foregoing, Respondent's Motion for Summary Determination is hereby **GRANTED**. As there is no need for an evidentiary hearing on Petitioner's Due Process Complaint, all currently scheduled hearing dates are Cancelled.

SO ORDERED, this 7th day of November, 2017

M. PATRICK WOODARD
Administrative Law Judge