

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

█████. by and through █████. and █████;	:	
█████.; and █████.,	:	
Petitioners,	:	Docket No. 2208287
v.	:	2208287-OSAH-DOE-SE-67-Kennedy
GWINNETT COUNTY SCHOOL	:	
DISTRICT,	:	
Respondent.	:	

FINAL ORDER

Petitioner █████ is an █████ child whose family resides within the Gwinnett County School District. He is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

On September 28, 2021, █████, by and through his parents █████ and █████, filed a Due Process Hearing Request alleging that Respondent denied █████ a Free and Appropriate Public Education (FAPE) for the 2021-2022 school year by failing “to develop an appropriate IEP”¹ and failing to provide him “a placement that appropriately addresses his complicated and numerous behavioral problems.”

On October 8, 2021, Respondent filed its response to Petitioner’s Due Process Hearing Request.

A hearing was held January 24 through January 27, 2022. Dayna Friduss, Esq. represented Petitioners. Catherine Followill, Esq. and Melissa Stewart, Esq. represented Respondent. The record closed on April 5, 2022, with the filing of post-hearing briefs and proposed orders. Due to the complexity of the issues and length of the record, the Court issued an order extending the time to issue a decision until May 27, 2022.

¹ IEP referencing Individualized Education Program under IDEA.

I. FINDINGS OF FACT

Background

1.

█████ was born on █████, in █████. At that time, his █████ parents, █████ and █████, were working in █████ as █████ serving in sustainable development. They began the process of █████ prior to his birth but, due to a change in █████ laws around that time, children put up for █████ had to be placed in an “infant place of safety” for a period of time prior to being allowed to go to the █████ parents’ home. As a result, █████ did not come home to █████ and █████ until he was █████ (Tr. p. 10 lines 4-5 and 19-25; Tr. p. 11 lines 1-25; Tr. p. 12 lines 1-7)

2.

█████ spent the first 10 weeks of his life in an █████, and it is speculated that this early trauma may have caused █████ mental health issues, including █████² (Tr. p. 12 lines 2-7 and 16-21; Tr. p. 14 lines 2-6; Tr. p. 530 lines 7-10)

² According to Dr. █████, attending psychiatrist at █████ residential facility in █████, “█████ is a disorder of young childhood beginning in early childhood. Most frequently we see it following birth up through ages 18 months for onset. It is a pervasive disorder that persists into adolescence and into adult life if it’s not treated.” (Tr. p. 527 lines 16-22). It “is characterized by children who have a difficult time developing relationships. These are kids who have not learned to make relationships early in life. Generally it’s through neglect or abuse, doesn’t have to be from those situations, those are the most common causes and these are children who because they don’t know how to make relationships when they’re in the early stages of development when it’s important to learn to trust our world, they grow up still not trusting the world and have to learn through extensive treatment to begin to have some trusts and to be able to develop relationships in an appropriate manner.” (Tr. p. 527 line 25; Tr. p. 528 lines 1-13).

3.

Approximately [REDACTED] after [REDACTED] was born, [REDACTED] gave [REDACTED], [REDACTED]. [REDACTED] later [REDACTED] gave [REDACTED] to another [REDACTED], [REDACTED] (Tr. p. 13 lines 12-15; Respondent's Exhibits p. 90)

[REDACTED]'s Diagnoses and Effect of his Disabilities

4.

[REDACTED] is a complex child with disabilities that affect his social, behavioral, and mental health. [REDACTED] has been diagnosed with [REDACTED], [REDACTED] [REDACTED] compounded by [REDACTED], and [REDACTED] (Tr. p. 20 lines 6-8; Tr. p. 553 lines 7-8; Tr. p. 564 lines 4-10; Respondent's Exhibits pp. 89 and 119).

5.

[REDACTED] also suffers from severe [REDACTED]. He was diagnosed at age [REDACTED] but his parents believe he was experiencing these [REDACTED] as early as [REDACTED] old. (Tr. p. 19 lines 10-25; Tr. p. 20 lines 21-22; Tr. p. 177 lines 2-9; Respondent's Exhibits pp. 66-88, 98-103, and 115-118).

6.

A letter written by child psychiatrist [REDACTED], on September 18, 2017, states that [REDACTED] was referred in February by his Occupational Therapist and a local Pediatric Neurologist. Dr. [REDACTED] noted that [REDACTED] was homeschooled but was hampered by short attention span, impulsivity, and hyperactivity. She determined his history and clinical assessment were consistent with a diagnosis of [REDACTED], [REDACTED]. She further found that his [REDACTED] was [REDACTED]. (Respondent's Exhibits p. 89) [REDACTED], [REDACTED]'s Occupational Therapist, prepared a report

dated September 25, 2017, indicating that she had worked with [REDACTED] from February 27, 2013 through May 31, 2017. In her report she noted that [REDACTED] “showed great academic skill” and that a “huge change was noticed in [REDACTED] when he commenced Stratera (18mg) earlier [in 2017]. He copes with change more easily, transitions between tasks smoothly and is able to attend to his less favourable tasks such as drawing and hand-writing practice for longer.” However, his motor skills when writing and drawing were still “not great.” (Respondent’s Exhibits pp. 90-93)

7.

[REDACTED] diagnosis occurred while he was attending [REDACTED], a [REDACTED] facility located in [REDACTED], that specializes in treating children with [REDACTED]. [REDACTED] had been privately placed by his parents at the facility in January 2021 following a third psychiatric hospitalization in a one-month period. Dr. [REDACTED],³ [REDACTED] attending psychiatrist, diagnosed [REDACTED] with [REDACTED] in February or March 2021. (Tr. p. 530 lines 7-10 and 20-21) As a result of his [REDACTED] “has developed the characteristics of a child who is having difficulty with relationships, he’s not able to associate with people, he’s not able to be comfortable with people and wants to be more independent, wants to be able to make all of his own decisions and do things for himself even though he’s not old enough to and mature enough to be able to make those decisions.” (Tr. p. 528 lines 13-23). Children with [REDACTED] “have difficulty developing positive relationships. They don’t trust people, they want to take care of themselves, they will do everything they can to avoid making contact with other people or to be dependent upon other people.” In [REDACTED]’s case, “he’s more defensive, I’ve got to protect myself, not going to trust the whole world and take my chances.” (Tr. p. 529 lines 8-15; Tr. p. 530 lines 4-6).

³ Dr. [REDACTED] works for [REDACTED] in [REDACTED] and through them he contracts to work 1.5 days per week at [REDACTED]. (Tr. p. 519, lines 21-23).

1-11) [REDACTED]
[REDACTED]. In addition to placing [REDACTED] in therapy, [REDACTED] and [REDACTED]. also made changes to their home such as placing door chimes on doors to know if someone went in or out, and they built a bedroom next to their bedroom so [REDACTED] would be closer to them to be supervised. [REDACTED] and [REDACTED] also became hypervigilant and did not leave their children with babysitters, although they were close to one family they trusted that could provide respite when needed. There were times, if [REDACTED] was concerned for [REDACTED]'s safety or his daughters, that [REDACTED] required [REDACTED] to remain by [REDACTED]'s side to provide constant supervision. (Tr. p. 34 lines 5-25; Tr. p. 35 lines 1-8; Tr. p. 199 lines 7-10; Respondent's Exhibits pp. 235-236; Tr. p. 703 lines 15-25; Tr. p. 704 lines 1-6).

10.

Over the years as [REDACTED] and [REDACTED] have sought treatment for [REDACTED], they learned that [REDACTED]. is "a very difficult child to medicate." (Tr. P. 167 lines 22-23) They have "tried a bunch of medications" because [REDACTED] "needs the chemical support. Without it . . . we see the aggression spike or the depression spike." (Tr. p. 167 line 24; Tr. p. 168 lines 20-22).

11.

[REDACTED]'s disabilities have manifested themselves in a variety of ways, including elopement and severe physical and verbal aggression that has been directed toward his parents, siblings, peers, schoolteachers, and other school support staff. He has threatened to kill people, has attempted to fatally injure his [REDACTED], and has had a violent encounter with a law enforcement officer.⁴

⁴ Regarding the incident involving a law enforcement officer that occurred on [REDACTED], [REDACTED] left the classroom around 8:10am without permission after a disagreement with a peer. [REDACTED] Staff followed [REDACTED] as he left the school building but eventually lost sight of him. Non-emergency police were contacted around 8:27am and assisted in searching for [REDACTED]. After [REDACTED] was located, he walked behind the squad car and stood in the roadway. When the

He has also engaged in making inappropriate remarks such as, “are you going to stick that in your mouth or how would that feel in your butt.” He has also made comments for the purpose of frustrating peers if he becomes aware of triggers for others. These behaviors have occurred in the home, in the community, and at the school and residential settings at [REDACTED]. (Tr. p. 37 lines 9-10 and 18-25; Tr. p. 343 lines 8-21; Tr. p. 475 lines 8-24; Tr. p. 477 lines 3-17; Tr. p. 602 lines 1-15; Tr. p. 695 lines 14-17; Tr. p. 696 lines 8-13)

Educational History

12.

Prior to [REDACTED] being privately placed at [REDACTED] in [REDACTED], he was exclusively homeschooled by [REDACTED] and participated in a [REDACTED]. In fact, [REDACTED] has home-schooled all [REDACTED] of [REDACTED] from [REDACTED]. [REDACTED] continues to home-school [REDACTED], while [REDACTED] has remained at [REDACTED] since [REDACTED].

law enforcement officer grabbed [REDACTED] by the arm to escort him out of the roadway, [REDACTED] tried to bite the officer and kicked the officer. After [REDACTED] was placed in the back of the squad car the officer began transporting [REDACTED] back to [REDACTED]. During the drive, the officer tried to talk with [REDACTED] who responded by saying “shut the fuck up nigger.” When the officer told [REDACTED] he did not have a good attitude, [REDACTED] began punching the Plexiglas divider in the back of the squad car. At one point the officer pulled the squad car over and advised [REDACTED] that he needed to stop hitting the inside of the squad car. [REDACTED] continued anyway so the officer placed [REDACTED] in handcuffs for the remainder of the drive back to [REDACTED]. [REDACTED] was returned to [REDACTED] where he continued his assaultive behavior as he was walked to the low stimulus reflection area. Once inside the reflection room, the officer removed the handcuffs and [REDACTED] began hitting and kicking the staff. [REDACTED] staff then initiated a 1-minute CPI hold from 8:52am to 8:53am and kept [REDACTED] in the reflection room until he was able to calm down and be moved to an alternate location. Around 10:10am, [REDACTED] staff switched out and [REDACTED] seemed anxious. [REDACTED] asked a couple of times if he could watch a movie and when he was told no, he struck the wall with a wooden fidget and walked out AWOL, leaving the building again. While outside, [REDACTED] tried to jump into oncoming traffic, but [REDACTED] staff jumped into the street stopping an oncoming truck. When Behavior Manager [REDACTED] arrived, [REDACTED] picked up rocks and threw them at [REDACTED]’s car striking it. [REDACTED] staff then initiated a 12-minute CPI hold while waiting on a police officer to arrive. When the officer arrived, he called for backup due to [REDACTED]’s continued unsafe and aggressive behaviors. [REDACTED] stated he wanted to go to the hospital and play video games because a peer told him that is what he got to do. The officer then asked [REDACTED] if he wanted to hurt himself and [REDACTED] said yes and continued to try to fight the [REDACTED] staff, so the officer placed him in handcuffs. [REDACTED] stated he wanted to run into traffic. At that point, the officers called for an ambulance to transport [REDACTED] to the hospital. When the paramedics arrived, [REDACTED] walked to the ambulance and agreed to go to [REDACTED]. (Petitioner’s Exhibits 603; Respondent’s Exhibits pp. 320-327).

2021 where receives services to address his disabilities and an education in [REDACTED]'s therapeutic day school. When homeschooling [REDACTED], [REDACTED] tailored the lessons to each child. For example, for [REDACTED] she used kinetic and visual input.⁵ Regarding the [REDACTED], it had a maximum of 7 students with one teacher and one assistant. Despite the low student to teacher ratio, [REDACTED] experienced difficulties in the [REDACTED] including frustration and incidences of elopement. In addition to home-schooling and participating in a [REDACTED], [REDACTED] had the [REDACTED] participate in extracurricular activities like group nature field trips because she believes it is necessary to learn in a community environment to be well-rounded. (Tr. p. 16 lines 12-14; Tr. p. 17 lines 19-25; Tr. p. 18 lines 1-16; Tr. p. 210 lines 16-18; Tr. p. 211 lines 23-25; Tr. p. 759 lines 2-4; Respondent's Exhibits p. 91)

13.

At the end of each school year, [REDACTED] would take all [REDACTED] to an assessor to get benchmarks where the children were and what she should work on with them for the following school year. (Tr. p. 42 lines 1-10)

14.

At one point, [REDACTED] became concerned that [REDACTED]'s mental illness was outpacing his education because of an assignment in his creative writing class in which the students were instructed to create an amusement park. [REDACTED] created a park that had alligators and machetes and he laughed at who got eaten, which was very disturbing to the parents of the other students and to his peers.

⁵ [REDACTED] used a variety of techniques and found that some worked, and some did not. For example, she used visual charts, countdown calendar, sensory bins, trampoline, wobble chair, manipulatives, sticker charts, award systems and using the sliding glass doors to complete math work with erasable markers. Although some of these techniques were effective, the award system she found was ineffective. (Tr. p. 39 lines 9-25; Tr. p. 40 lines 1-7 and 15-25; Tr. p. 41 lines 18-21)

(Tr. p. 42 lines 10-15; Tr. p. 43 lines 1-25; Tr. p. 44 lines 1-11) Following this incident, [REDACTED] scheduled a psycho-educational evaluation. (Tr. p. 44 lines 11-14) The evaluation was completed on [REDACTED] by [REDACTED], Education Psychologist. (Respondent's Exhibits pp. 104-114). The report states that [REDACTED] was referred by his neurologist, [REDACTED], because she and [REDACTED]'s parents were concerned about [REDACTED]'s emotional wellbeing, specifically meltdowns, moods and temperament, and they wanted to know his cognitive and scholastic level of functioning. (Id.) Dr. [REDACTED]' testing showed that [REDACTED]'s verbal scale was in the superior range and his non-verbal scale was in the high average range, although he showed struggles with working memory and processing speed, and he scored below age level for areas that tested short-term memory and concentration. [REDACTED] scored average for reading and below average for spelling. Dr. [REDACTED] also noted that the Connors 3 Parent questionnaire showed [REDACTED] has challenges with impulsiveness and attention, but the scores weren't high enough at that time to warrant a diagnosis of [REDACTED]. However, she further noted that [REDACTED]. shows some signs of [REDACTED], mood disorders, attention and concentration difficulties and anxiety, all of which she recommended should be further assessed and monitored by his psychiatrist. (Id.) She concluded that [REDACTED]. "would be able to cope very well with academic demands" but he "would need direct interventions" in the areas of learning that seem to be challenging for him, which included ordering, sequencing and planning. (Respondent's Exhibits p. 112)

15.

When [REDACTED]. arrived at [REDACTED] in [REDACTED], he was reading at or above grade level and was slightly below grade level for math. (Tr. p. 594 lines 11-14) [REDACTED], Assistant Principal at [REDACTED], did not have any academic concerns about [REDACTED]. when he enrolled at the facility. (Tr. p. 595 lines 15-17) Similarly, when Gwinnett County School District staff met with [REDACTED] and

█████ to develop an Individualized Education Plan (IEP) after █████ had been found eligible to receive special education services, the IEP team did not have concerns regarding █████'s academics. Rather, his needs centered around behavioral and emotional issues, physical aggression, elopement, verbal aggression, and verbal inappropriateness, which are areas that can be addressed in a school environment in certain cases. (Tr. p. 949 lines 7-15) At the IEP meeting held █████, the IEP team, with the exception of █████. and █████, agreed that the least restrictive environment in which █████ could receive supports that would allow him to access his education and make educational progress was a █████ school. (Tr. p. 843 lines 10-25; Tr. p. 953 lines 10-25; Tr. p. 954 lines 1-20; Tr. p. 955 lines 3-25; Tr. p. 956 lines 1-13; Joint Exhibits pp. 96-97 and 111-116)

16.

█████ has done well at █████. He has passed all his academic classes and is on grade level. (Tr. p. 606 lines 14-23; Tr. p. 607 lines 11-25; Tr. p. 608 lines 1-16; Tr. p. 625 lines 24-25; Tr. p. 626 line 1; Petitioner's Exhibit D Tab 15 pp. 573-579).

Calendar Year 2020

17.

In █████, █████. and █████ moved their family from █████ to the █████ and settled in Gwinnett County, Georgia. (Tr. p. 47 lines 17-22; Tr. p. 693 lines 14-16)

18.

After arriving in the █████, █████. and █████ noticed that █████'s mental state deteriorated. █████ began eloping more often and acting out by urinating out his window or throwing things out

his window and making statements that he hates [REDACTED]. (Tr. p. 49 lines 24-25; Tr. p. 50 lines 5-14; Tr. p. 699 lines 11-18; Tr. p. 700 lines 23-24)

19.

As his actions worsened, [REDACTED] and [REDACTED] took [REDACTED] to his pediatrician and asked for a change in medication. (Tr. p. 51 lines 12-17) In [REDACTED] or [REDACTED], [REDACTED] was prescribed [REDACTED] and it seemed to turn “the volume down on his -- the rage in his mind.” But really he just, “went more inward in his thought and became a lot darker, more calculated.” (Tr. p. 51 lines 24-25; Tr. p. 52 lines 1-3 and 24-25; Tr. p. 53 lines 1-4)

20.

In [REDACTED], [REDACTED] stated he hated [REDACTED] and wanted [REDACTED] dead. He denied ever attempting to hurt her but admitted that he had thought about hurting her and would “probably poison her with bleach.” (Tr. p. 55 lines 6-9 and 16-21)

21.

On [REDACTED] [REDACTED] accidentally kicked over a cup of water that was on the floor of his [REDACTED] room near the doorway. He asked [REDACTED] which one of them had placed the cup there and [REDACTED] told him that [REDACTED] had put the cup there. When [REDACTED] returned to [REDACTED]’ room with [REDACTED] to have [REDACTED] clean up the spill, [REDACTED] smelled bleach and determined the odor was coming from the liquid spilled from the cup. [REDACTED] then remembered that [REDACTED] had told [REDACTED] a few months prior that he had considered trying to kill [REDACTED] with bleach. [REDACTED] and [REDACTED] now refer to that day as “the earthquake” because they felt they were living on a fault line and had felt the trembles and that day the earthquake struck and changed their lives forever. (Tr. p. 59 lines 1-14; Tr. p. 62 lines 14-25; Tr. p. 63 lines 1-25; Tr. p. 64 lines 1-3; Tr. p. 701 lines 21-

25; Tr. p. 702 lines 1-25) Initially, when asked by [REDACTED] if that was bleach he smelled, [REDACTED] denied it and said it was not but then, according to [REDACTED], [REDACTED] admitted “yes, I tried to poison [REDACTED].” (Tr. p. 702 lines 24-25; Tr. p. 703 lines 1-6)

22.

Following this incident, [REDACTED] and [REDACTED] sent [REDACTED] to [REDACTED] to stay with their grandparents while a friend watched [REDACTED] for 72 hours as [REDACTED] and [REDACTED] contemplated what their next steps would be. When [REDACTED] and [REDACTED] tried to talk with [REDACTED] about the incident [REDACTED] never apologized and said that bleach was just one idea he had and that another idea he had was to stab her in the stomach. He further told [REDACTED] that it makes him feel excited to think about it. In response to concerns that [REDACTED] may physically harm someone, [REDACTED] and [REDACTED] got fingerprint lock boxes to keep all possible weapons secure, such as kitchen knives., and they installed a keypad to be able to access the laundry room in order to keep chemicals out of reach. (Tr. p. 66 lines 15-25; Tr. p. 67 lines 1-25; Tr. p. 68 lines 1-25; Tr. p. 69 lines 1-16; Tr. p. 71 lines 3-5; Tr. p. 77 lines 23-25)

23.

As of at least [REDACTED], [REDACTED] and [REDACTED] began considering [REDACTED] for [REDACTED] because he “was not remorseful,” was continuing with “ideations,” and had just “attempted to murder [REDACTED] [REDACTED].” They believed he would need at least a 30-to-60-day residential placement for stabilization. (Tr. p. 184 lines 11-25; Tr. p. 185 lines 1-3; Tr. p. 187 lines 4-7; Tr. p. 191 lines 7-10; Respondent’s Exhibits p. 118).

24.

On [REDACTED], [REDACTED] was admitted to [REDACTED]. (Tr. p. 69 lines 17-22; Respondent's Exhibits pp. 119-183) His parents advised the staff that [REDACTED] was refusing to take his psychiatric medication Risperdal. (Respondent's Exhibits p. 161) Additionally, the parents shared that they had concerns about his diagnosis; extensive home care need; family conflict; inadequate coping skills; mental health issues and socialization issues. His parents were generally "concerned for [REDACTED]'s] own wellbeing as well as the safety of other family members." According to the admission documentation, Petitioners were in the process of having [REDACTED] placed at [REDACTED], but they expected the process to take 3 to 4 weeks.⁶ [REDACTED] spent the night at [REDACTED] and then transferred to [REDACTED]. (Tr. p. 70 lines 11-16; Tr. p. 74 lines 16-19; Respondent's Exhibits pp. 119-183). [REDACTED] was discharged from [REDACTED] on [REDACTED]. (Respondent's Exhibits pp. 184-202)

25.

Following his discharge on [REDACTED], [REDACTED] continued to exhibit severe behaviors including telling his parents that he was "going to cut off [his] penis and leave it on [their] pillow or in [their] shoe." He also expressed suicidal ideation telling his parents, "just let me poison myself, let me do it, let me end this misery." Additionally, he made "animal sounds, excessive swearing, paranoia, defecating on the floor." (Tr. p. 83 lines 7-9 and 13-14; Tr. p. 234 lines 1-10).

⁶ The documentation states "long term facility" but [REDACTED] testified they were only seeking/expecting a 30, 60, or 90 day stay for stabilization. (Tr. p. 92 lines 11-12; Tr. p. 187 lines 2-16; Tr. p. 752 lines 9-20; Respondent's Exhibits pp. 161, 170)

On [REDACTED] [REDACTED], took [REDACTED] to [REDACTED], his pediatrician since mid-2020. They provided him a written summary of the events that had occurred. (Tr. p. 79 lines 16-18) Dr. [REDACTED] is a primary care pediatrician who has provided care for many children, including children suffering from mental health issues. However, in [REDACTED], Dr. [REDACTED] felt that [REDACTED]'s behaviors as reported by his parents exceeded what he could treat. Therefore, he recommended to [REDACTED] and [REDACTED] that they take [REDACTED] to the hospital for a mental health intake evaluation. He subsequently, at the request of [REDACTED] and [REDACTED], provided a written statement dated [REDACTED] [REDACTED], recommending that [REDACTED] be placed in a [REDACTED] for his safety.⁷ Specifically, Dr. [REDACTED] stated that due to [REDACTED]'s mental health drastically deteriorating over the past few months "his psychologist, psychiatrist, neurologist and primary care physicians, advise that [REDACTED] be placed in a [REDACTED] to ensure his safety." Personally, Dr. [REDACTED] felt that [REDACTED] needed hospitalization for stabilization. (Tr. p. 232 lines 3-9 and lines 23-25; Tr. p. 233 lines 1-9 and 24-25; Tr. p. 234 lines 1-10; Tr. p. 235 lines 9-21; Tr. p. 236 lines 13-21; Tr. p. 239 lines 5-7; Petitioner's Exhibit B Tab 8, p. 958)

[REDACTED] had two hospitalizations at [REDACTED] from [REDACTED], until [REDACTED] [REDACTED], at which time he was discharged from [REDACTED] and taken directly to [REDACTED] for [REDACTED] by his parents. (Tr. p. 84 lines 20-25; Tr. p. 85 lines 1 and 4-6; Tr. p. 104

⁷ Licensed Clinical Social Worker [REDACTED] also wrote a letter dated [REDACTED], stating that [REDACTED] "continues to deteriorate and is now at the point to where residential treatment is the best option, not only for his recovery but for his safety and the safety of others." (Respondent's Exhibits p. 233)

lines 8-10; Tr. p. 112 lines 11-12; Tr. p. 709 lines 6-14; Petitioner's Exhibit B Tab 7 pp. 141-143; Respondent's Exhibits pp. 205-212 and 221-222)

28.

After being discharged from [REDACTED] the first time on [REDACTED], [REDACTED] was placed in the Partial Hospitalization Program (PHP). However, when [REDACTED] picked [REDACTED] up after his first day in the PHP, [REDACTED] attempted to harm himself by throwing himself into traffic and wrapping a seat belt around his neck. Once he arrived home, his behaviors escalated with the destruction of property, resulting in his parents returning him to [REDACTED] and the hospital readmitting him "due to suicidal ideation with a plan to hang himself with a rope." During this stay, [REDACTED] called [REDACTED]'s parents "every day, every other day, asking for authorization to sedate him" because he was reportedly "attacking peers, he was attacking staff. He was agitated and dysregulated and . . . severely aggressive." [REDACTED], [REDACTED]'s treating psychiatrist at [REDACTED], recommended [REDACTED] be placed in a residential facility because it would not be safe for him to return to his home. (Tr. p. 88 lines 5-25; Tr. p. 89 lines 1-12; Tr. p. 90 lines 14-15; Tr. p. 97 lines 15-25; Tr. pp. 98 to 102 lines 1-25; Tr. p. 103 lines 1-11 and 15-25; Tr. p. 104 lines 1-2 and 13-15; Petitioner's Exhibit B, Tab 5, pp. 126-128 and Tab 6 pp. 130-140; Respondent's Exhibits pp. 210-212, 221-223 and 237)

29.

Dr. [REDACTED] subsequently wrote a letter dated [REDACTED], in which he summarized his prior recommendation that [REDACTED] be placed in a residential therapeutic school/program "directly after discharge from [REDACTED] [on [REDACTED]] to avoid any possible risk while at home." He further stated that it is appropriate for [REDACTED] "to be in a therapeutic schooling program as a safety

consideration for other students around and as he is currently a child in crisis.” (Petitioner’s Exhibit B Tab 9, p. 960; Respondent’s Exhibits p. 237)

30.

██████████, Social Worker in Private Practice – MSW (Play Therapy), BSocSc (SW), who worked with ██████████. from ██████████ to ██████████ as his play therapist, wrote a letter dated ██████████, to “advocate for [██████████]’s] best interests within his context as well as the context of his family system.” She noted that “due to the suddenness of the Covid-19 Pandemic in 2020, preparation for ██████████]’s] termination of therapy and grief processing at leaving ██████████ ██████████ was unexpectedly halted.” Additionally, because of the pandemic, leaving ██████████ happened in a state of crisis. ██████████ struggles with transitions and it manifests itself as “angry outbursts and tempers.” However, she had observed over the 3 years and 4 months that she had therapeutic contact with ██████████ that he “was able to show empathy, curiosity about people and the world, as well as deep loyalty and care to family and friends.” Based on the update she received from ██████████ for the 4 months prior to the writing of the letter “regarding the disruptive challenges that have emerged” since the family moved to the ██████████, it appeared to Ms. ██████████ that ██████████’s “ability to make informed choices, in good conscience, as well as regulate his emotions has been disrupted significantly.” She opined that it is in ██████████’s and his family’s best interests “to assist him with ongoing therapeutic intervention which will respect the role of his family and their relationships while still keeping ██████████] safe from self-harm or harm towards others” and that this should be done through a “long term intervention plan.” (Respondent’s Exhibits pp. 242-243)

Private Residential Placement – [REDACTED]

31.

[REDACTED] and [REDACTED] researched various residential facilities, both in-state and out-of-state, and decided to place [REDACTED] at [REDACTED] in [REDACTED]. [REDACTED] was transported directly from [REDACTED] to [REDACTED] by his parents overnight from [REDACTED] to [REDACTED]. [REDACTED] has remained at [REDACTED] since his admission in [REDACTED] through at least the filing of Petitioner’s post-hearing brief on April 5, 2022. (Tr. p. 96 lines 7-20 Tr. p. 105 lines 7-21)

32.

[REDACTED] is an internationally recognized leader in the treatment of children suffering from the psychological, emotional, and spiritual effects of significant abuse, neglect, and trauma. They have served children with various diagnoses for over twenty years. (Tr. p. 170 lines 20-24; Petitioner’s Exhibit D Tab 2 pp. 504-505). [REDACTED] provides 24/7 programming for children enrolled in the residential facility, which includes schooling during the day and residential placement at their Cottages overnight. [REDACTED] also serves certain students only at the therapeutic day school program because they attend [REDACTED] as their educational placement but are not enrolled in the residential program. (Tr. p. 273 lines 15-18; Petitioner’s Exhibit D Tab 2 pp. 504-505) For those enrolled in [REDACTED]’s residential program, the child is provided a Core Treatment Team. [REDACTED]’s team is comprised of a Cottage Manager ([REDACTED]); a Family Service Coordinator ([REDACTED]); a Clinical Therapist at the cottage ([REDACTED])⁸; and a

⁸ [REDACTED] is a Licensed Clinical Therapist at [REDACTED]. (Tr. p. 242 lines 9-14) He is an expert in the treatment of trauma and attachment disorders. (Tr. p. 247 lines 3-5) He has been treating [REDACTED] since [REDACTED] 2021. (Tr. p. 251 lines 3-10). Although [REDACTED] was physically aggressive toward his initial therapist at [REDACTED], [REDACTED] has only had once incident of physical aggression toward [REDACTED]. (Tr. p. 260 lines 8-22)

Clinical Supervisor at the school ([REDACTED]). The Core Treatment Team, along with other [REDACTED] personnel, apply the Development Trauma and Attachment Program’s attachment-based and trauma-informed interventions, which includes Trust Based Relational Intervention (TBRI). TBRI is an attachment-based trauma informed intervention that is designed to meet the complex needs of vulnerable children. (Tr. p. 448 lines 18-24; Tr. p. 453 lines 10-13; Tr. p. 460 lines 13-25; Tr. p. 465 lines 17-24; Tr. p. 466, Lines 10-22; Petitioner’s Exhibit D Tab 2 pp. 504-505).

33.

For children enrolled in the [REDACTED] facility, the children participate in several after school therapeutic group activities from the time school ends through dinner and up until bedtime. For [REDACTED], “the entire day is filled with therapeutic programming meant to aid him in expanding on his ability to deal with others, deal with his own frustrations and learn how to coregulate with adult supervision.” The afterschool activities focus on four principles – structure, nurture, fun and physical activity to meet sensory needs. At all times the staff is focused on working on the students/residents’ goals and thinking about the student/residents’ treatment goals. (Tr. p. 261, Lines 6-25; Tr. p. 262, Lines 1-5; Tr. p. 453 lines 15-19; Tr. p. 460, Lines 8-10, 24; Tr. p. 461 Lines 7-9 and 13-15; Tr. p. 468 lines 2-25; Tr. p. 469 lines 1-25; Tr. p. 470 lines 1-13 and 24-25). Additionally, [REDACTED] receives individual counseling services, along with family therapy services for half an hour a week via Zoom, or if the family is present at the facility, they attempt an hour-long session. (Tr. p. 136 lines 15-25; Tr. P. 259, Lines 1-6).

34.

██████████, ██████████'s family service coordinator, continually updates, works with, and teaches families on how to respond to their child more appropriately. He holds weekly calls with the families of the children who reside at ██████████ to update the families on the child's behaviors, comings and goings, and scheduling things. He also coaches parents in psycho education. (Tr. p. 449 lines 6-13)

35.

For purposes of determining whether to accept a child at ██████████, the staff looks "at the behaviors of the child, we look at the history of what's happened, we look at the prior treatment. When we see a child is out of control who is aggressive, who is at risk of hurting someone else or at risk of hurting themselves, we consider them for admission." At the time of his admission, ██████████'s behaviors were extreme, as set forth above in Findings of Fact 21, 25 and 28, with ██████████ attempting to poison his ██████████, defecating on the floor, making animal sounds, and requiring sedation. Dr. ██████████ opined that ██████████ "was in crisis" at that time because "his behaviors were severe, and he had attempted to poison a ██████████." By March 2021, ██████████ was still having difficulty admitting it, talking about it and he was reacting abnormally and oppositional to family and to society in general. ██████████ continued to be extremely angry and aggressive and very difficult to manage. Accordingly, on March 30, 2021, Dr. ██████████ wrote a letter opining that ██████████ continued to require residential placement "for his own safety as well as the safety of peers [because it] is only with the intensity of a program that focuses on attachment disorders that his needs can be met and he ultimately will safely be able to be discharged back to society." (Tr. p. 83 lines 7-9 and 13-14; Tr. p. 234 lines 1-10; Tr. p. 531 lines 9-18; Tr. p. 533 lines 17-25; Tr. p. 534 lines 1-11; Petitioner's Exhibits B Tab 10 pp. 336-337).

36.

Dr. [REDACTED] did not believe that [REDACTED] “was anywhere near ready for discharge” as of March 2021 because [REDACTED] “still had anger, he still had aggression, he still had difficulty relating to adults, he still had difficulty following directions and focusing his attention” even though he was beginning to show progress. (Tr. p. 534 lines 17-25; Tr. p. 535 lines 1-3). “Typically, children with reactive attachment disorder that” [REDACTED] admits “with the severity of the illness are going to be [there] from six months to a year and a half.” (Tr. p. 535, lines 3-9). Dr. [REDACTED] opined [REDACTED] still, as of January 2022, has not made sufficient changes “to show safety because he still shows the anger and aggression here on a fairly regular basis.” Each “time he becomes aggressive [it] delays his discharge that much more.” (Tr. p. 556 line 25; Tr. p. 557 lines 1-3 and 12-13) Dr. [REDACTED] does not believe [REDACTED] will make a full recovery, but he believes [REDACTED] will be better in the future. He further believes that [REDACTED] can assist [REDACTED] in making better choices, but [REDACTED] is going to be an impulsive young man who is always going to have some difficulty controlling his impulses. Dr. [REDACTED]’ goal for [REDACTED] right now “is to get him to stop and think enough to make better decisions and better choices when he gets an urge or an impulse to do something. Give himself a couple of seconds before he acts to think about what he needs to do.” (Tr. p. 559 lines 10-21).

37.

Shortly after being admitted to [REDACTED], [REDACTED] attempted to engage a peer in inappropriate [REDACTED] [REDACTED] on January 28, 2021, but [REDACTED] staff intervened. They placed [REDACTED] in a different cottage to separate the children and they moved [REDACTED] to a class where he would be the youngest student rather than the oldest because they were concerned that he was showing grooming

behaviors and it was causing “serious dysregulation in the other child.”⁹ (Tr. p. 126 lines 22-25; Tr. p. 127 line 1; Tr. p. 128 lines 14-25; Tr. p. 129 lines 10-25; Tr. p. 597 lines 18-22; Tr. 598 lines 1-5; Petitioners’ Exhibit D Tab 20 p. 684). Subsequently, ██████ created a safety plan on February 22, 2021 because ██████ “has demonstrated unsafe behaviors including grooming behaviors” and there had been “accusations made by a peer that inappropriate ██████ behaviors have taken place and staff have caught him in what appears to be exposing himself when he feels the adults are not paying attention.” Additionally, ██████ noticed that while the accusations were being investigated by ██████, ██████’s behaviors changed from grooming to bullying-like behaviors by making statements to the peer such as, “you’re the smallest kid in the cottage” and “come and fight me, you aren’t big enough” or “you stink.” ██████ also began “transferring his grooming behaviors to the adults that are taking care of him” by approaching female staff and saying, “you look good today, do you want a hug?” Finally, ██████ noted that when ██████ “feels as though he is not in control or is being challenged beyond his window of tolerance, he resorts to physical and verbal aggression.” (Tr. p. 129 lines 24-25; Petitioners’ Exhibit D Tab 5 p. 530; Respondent’s Exhibits pp. 426-427). The safety plan lapsed March 8, 2021. ██████ no longer has a safety plan in place at ██████ because he hasn’t continued to engage in ██████ behaviors toward peers or because he has not exhibited a level of physical aggression at a frequent enough basis to warrant a safety plan at the present time. (Tr. p. 276 lines 21-25; Tr. p. 277 lines 1-3; Petitioner’s Exhibit D Tab 5 p. 530; Respondent’s Exhibits pp. 426-427)

⁹ The grooming predatory behaviors included being “superficially charming, try to be their friend and be overly kind and interested in them to get them to trust him.” (Tr. p. 597 lines 18-22)

38.

During ██████'s stay at ██████ he has exhibited “physical aggression, verbal aggression, elopement . . . [an] unwillingness to do the work” and [has] sometimes been called out for inappropriate things that he writes or says or draws or tries to look up on the monitor device that he does some of his Apps with, sexually inappropriate things, homicidally inappropriate things. He has had homicidal intent; he has had suicidal intent at school.” (Tr. p. 137 lines 9-21) The goals that ██████ is working on at ██████ is to focus on why he is there as well as being able to deal with his frustration tolerance and understanding how to regulate himself in all settings. (Tr. p. 279 lines 2-7)

39.

Most of the reason that ██████ misbehaves before he walks out of the classroom is “because somebody else is getting more attention than he is.” (Tr. p. 603 lines 22-24). So, when ██████ has been placed in ISS he has been intentionally placed with a non-preferred staff member to avoid encouraging behavior to seek out the one-on-one time that he enjoys. Otherwise, ██████ can be “manipulative . . . by using the relationship that you have” to spend more time out of the classroom and with the staff that he prefers. (Tr. p. 603 lines 11-21; Tr. p. 604 lines 3-8) ██████ addresses these behaviors by communicating and setting firm boundaries that ██████ “has to communicate and ask for what he needs from his classroom staff.” (Tr. p. 604 lines 11-14)

40.

According to Dr. ██████, ██████ is difficult to treat and “[i]t takes a specialized team” to do so properly. For Dr. ██████, ██████ is the first facility he has worked with that specifically focuses on ██████. At ██████, they “work with the child, [they] try to build a confidence in the child and

frequently will have one staff person, primarily, working with that child to develop a relationship there and once that relationship builds then we can begin to program it out to learn to trust other people and work with other people.” (Tr. p. 535 lines 13-19; Tr. p. 536 lines 1-7).

41.

█’s treatment model involves three phases that are fluid, meaning a student may be in phase three one day but then later that week experience a stressor and be back in phase one because that is the product of developmental trauma. To assist the students, █ staff utilizes two modalities – theraplay and therapy like activities, and trust based relational and behavioral interventions. They also provide eye movement desensitization and reprocessing (EMDR) and developmental psychotherapy, as well as trauma focused cognitive behavioral therapy when a resident is in the phase three treatment model. (Tr. p. 246 lines 18-25 and Tr. p. 247 line 1; Tr. p. 462 line 25; Tr. p. 463 lines 1-14 and 24)

42.

When working with a child, if that child has an Individualized Education Plan (IEP) from the child’s local school district, █ implements that IEP. However, if a child does not have an IEP, █ develops its own Education Plan that documents what █ is working on with the child and the child’s strengths and weaknesses. (Tr. p. 593 lines 13 and 22-25; Tr. p. 594 lines 1-13; Petitioner’s Exhibit D Tab 18 p. 587)

43.

█’s treatment plan at █ identifies treatment areas to include interpersonal relationships, focusing on █’s ability to improve, create, build and maintain healthy trusting relationships with family members in his home, staff at school, and others generally in the

community setting. Behavior management is another treatment area identified where he will ideally decrease the intensity, frequency, and duration of problematic and unsafe behaviors across those settings. (Tr. p. 254 lines 6-15; Tr. p. 509 lines 20-22; Petitioner’s Exhibit D Tab 12 pp. 560-566) One of his goals is to work “on obtaining appropriate physical and verbal boundaries with staff and peers and working on utilizing coping mechanisms instead of running from the classroom.” (Tr. p. 596 lines 4-8) [REDACTED] has not conducted a Functional Behavior Analysis (FBA) despite being aware that the IEP developed by Respondent’s IEP team recommended one. [REDACTED] also does not have a formal Behavior Intervention Plan that correlates to what Respondent would develop based on information gathered from an FBA. Rather, [REDACTED] has steps they take based on behavior that is exhibited and also utilizes PACE and Love and Logic, which are trust based relational interventions. (Tr. p. 273 lines 19-25; Tr. p. 274-275 lines 1-25; Tr. p. 276 lines 1-20; Tr. p. 622 lines 22-25; Tr. p. 623 lines 1-17; Tr. p. 625 lines 17-21)

44.

Initially, when [REDACTED] arrived at [REDACTED] the staff began by providing for his basic needs to build trust and a feeling of safety. Then, [REDACTED] moved toward therapeutic treatment. “Anger management is treated by trying to understand the reasons behind those behaviors as well as dealing with the behavior itself rather than simply addressing the behavior and not addressing what had been happening underneath.” (Tr. p. 255 lines 14-25; Tr. p. 256 lines 14-19) According to [REDACTED], [REDACTED] has not yet reached what [REDACTED] refers to as Phase Three, “which would be when he’s able to have those reciprocal relationships and have those complex moments of understanding his effect on others.” (Tr. p. 262 lines 24-25; Tr. p. 263 lines 1-3)

45.

At [REDACTED], when [REDACTED] is cursing or shouting, he is given an opportunity to take a break in a low stimulus room. If he becomes physically aggressive to the point of posing a danger to himself or others, [REDACTED] utilizes non-lethal physical interventions to put him in holds that are approved to keep him safe, or to place him in seclusion, if necessary, in the residential setting. In the school setting, [REDACTED] law prohibits seclusion so longer holds or the low stimulus or sensory room is used instead of seclusion when [REDACTED] is in [REDACTED]'s school environment. (Tr. p. 273 lines 21-25; Tr. p. 274 lines 1-14; Tr. p. 457 lines 3-6 and 12-23; Tr. p. 458 lines 20-25)

46.

During his time at [REDACTED], the staff has noted that [REDACTED] responds better to male staff than female staff, in part, because he “feels he can bully or intimidate” the female staff. (Tr. p. 479 lines 1-25; Tr. p. 480 lines 11-20; Tr. p. 605 lines 22-25; Tr. p. 606 line 1) Moreover, [REDACTED] “really struggles with staff who are very black and white and who are more structured.” (Tr. p. 605 lines 12-13.) He does better with staff who are more nurturing. (Tr. p. 605 lines 17-19) Additionally, the staff has noted that [REDACTED] struggles with transitions. For example, leaving the cottage in the morning to go to school can be extremely difficult. [REDACTED] staff typically provide [REDACTED] with a countdown when a transition is coming up and attempt to move him quickly and keep him engaged to avoid difficulties arising. (Tr. p. 481 lines 4-17)

47.

At the time of the hearing in January 2022, [REDACTED] staff noted [REDACTED] continues to exhibit some “paranoid way of thinking. He often thinks there’s these elaborate . . . plans and plots against him, whether it be . . . you can’t watch this movie of [sic] you can’t do this activity.” When staff attempt

to explain it is not personal and they are not trying to make him mad but simply believe this is best for him, [REDACTED] does not believe them and will get frustrated. (Tr. p. 478 lines 6-17)

48.

[REDACTED] has made some progress in terms of frequency of his behavior while at [REDACTED], but the intensity has remained the same. For example, during the second quarter of 2021, [REDACTED] had 8 instances of aggression, a decrease from the 19 noted as the baseline in the IEP goals and objectives developed on July 6, 2021. (Tr. p. 476 lines 10-12; Petitioner’s Exhibit D Tab 17, pp. 584-585). However, when he is on a “down cycle” he becomes “more aggressive and more withdrawn, more irritable” including “more episodes of aggression at school” and eloping from the classroom. [REDACTED] “frequently goes AWOL and leaves the classroom, may leave the class – the school building, may be out on campus refusing to go back into the classroom, back into the building, becomes extremely agitated and irritated when the staff approach him to try to get him to come back into where he’s supposed to be.” (Tr. p. 540 lines 8-25).

49.

Despite ongoing behavioral issues that [REDACTED] continues to exhibit, [REDACTED] feels that [REDACTED] has provided “wonderful care.” [REDACTED] allows [REDACTED] and [REDACTED] “an enormous amount of access to [REDACTED] and the ability to continue to foster that attachment and that relationship” and [REDACTED] has provided “an enormous amount of training and support.” [REDACTED] also believes that [REDACTED], as of January 2022, is “starting to feel safe there.” (Tr. p. 171 lines 8-16).

Gwinnett County School District

50.

On December 16, 2020, [REDACTED] contacted Christine Farrell, Special Education Coordinator for Gwinnett County School District, because [REDACTED] “was trying to figure out what would [they] do if [they] couldn’t get [REDACTED] into residential.” (Tr. p. 92 lines 20-24; Tr. p. 297 line 25; Tr. p. 298 lines 1-4; Tr. p. 779 lines 17-25; Tr. p. 780 line 1) At that time, [REDACTED] understood that she should contact the school district again once [REDACTED] completes the [REDACTED] in order to have an evaluation completed. (Tr. p. 93 lines 1-4; Tr. p. 299 lines 3-7; Tr. p. 782 lines 12-19)

51.

In February or March 2021, [REDACTED] contacted Ms. Farrell again to follow-up on seeking special education services under the Individuals with Disabilities Education Act (IDEA). Ms. Farrell explained Child Find under IDEA and scheduled a Student Support Team meeting for April 2, 2021. At that meeting, the team discussed [REDACTED]’s medical diagnoses to include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The team agreed that it would be

appropriate to complete an evaluation of [REDACTED] and Respondent obtained [REDACTED] and [REDACTED]’s consent

to conduct the evaluation to assist in determining if [REDACTED] was eligible for services under IDEA.

(Tr. p. 131 lines 19-25; Tr. p. 132 lines 1 and 10-18; Tr. p. 143 lines 4-14; Tr. p. 202 lines 2-9; Tr.

p. 298 lines 14-16; Tr. p. 299 lines 15-25; Tr. p. 301 line 25; Tr. p. 302 line 1; Tr. p. 337 lines 2-

4; Tr. p. 718 lines 13-25; Tr. p. 781 lines 8-19; Tr. p. 782 lines 7-9; Tr. p. 793 lines 2-9; Tr. p. 794

lines 5-12; Tr. p. 795 lines 21-25; Tr. p. 796 line 1; Tr. p. 933 lines 16-20; Tr. p. 945 lines 6-11; Joint Exhibit 1-42)

52.

Tom Owen, director of psychological services for Gwinnett County Public Schools, assigned two lead psychologists to complete the evaluation. One conducted psychological testing¹⁰ and one conducted achievement testing.¹¹ Respondent also contracted with a third party to perform a speech/language evaluation and agreed to rely on an occupational therapy evaluation recently conducted by Quincy Medical Group. Following the completion of the evaluation, ██████'s parents met with Respondent's staff for an eligibility meeting on June 7, 2021. At the conclusion of that meeting, ██████'s parents and Respondent's staff agreed that ██████ was eligible for services under IDEA categories of ██████ and ██████. (Tr. p. 131 lines 19-25; Tr. p. 132 lines 1 and 10-18; Tr. p. 143 lines 4-14; Tr. p. 202 lines 2-9; Tr. p. 298 lines 14-16; Tr. p. 299 lines 15-25; Tr. p. 301 line 25; Tr. p. 302 line 1; Tr. p. 337 lines 2-4; Tr. p. 718 lines 13-25; Tr. p. 781 lines 8-19; Tr. p. 782 lines 7-9; Tr. p. 793 lines 2-9; Tr. p. 794 lines 5-12; Tr. p. 795 lines 21-25; Tr. p. 796 line 1; Tr. p. 933 lines 16-20; Tr. p. 945 lines 6-11; Joint Exhibit 6-42 and 59-81).

¹⁰ The instruments administered for the psychological testing included the WISC-V, which measures intelligence and provides an overall measure of ability; portions of the NEPSY-II, which is a neuropsychological assessment that provides information about neuropsychological processes; a developmental test of visual motor integration; the BASC-3, which is a survey to provide a broadband measure of behavior and emotion and yields clinical scales for each person completing the survey; the childhood autism rating scale; a sentence completion test; and a student interview. (Tr. p. 935 lines 14-25; Tr. pp. 936-940 lines 1-25; Tr. p. 941 lines 1-18; Joint Exhibits pp. 6-20)

¹¹ For achievement testing, selected portions of the Kaufman Test (KTEA-3) were administered. (Joint Exhibit p. 21) ██████ was assessed in reading, writing and math. His academic skills varied among the areas assessed and the evaluator "suspected that these scores are an underestimate of his actual skill level because of his lack of persistence and incompletion of some tasks." (Joint Exhibit p. 22)

After ██████ was found eligible for services on June 7, 2021, the IEP team had 30 days to to develop an IEP. In preparation for that, Ms. Farrell visited and toured ██████ to gather information about the facility and about ██████¹² While there she spoke with ██████ staff, including ██████'s summer schoolteacher to ask for any information she might want to share, including ██████'s strengths and weaknesses. The ██████ staff generally advised ██████ that, from their perspective, ██████ continued to need residential placement and was not ready to step down to a less restrictive environment. In addition to touring ██████, Ms. Farrell also toured the school portion of ██████ but did not tour the residential side because ██████ could not provide residential placement. ██████ also reached out to ██████, another residential facility, and she researched ██████, a residential facility she had previously toured although ██████ ██████ is not currently contracting with Gwinnett County to take residential students. She did this to be informed of various options that may be available to discuss during the IEP development meeting. (Tr. p. 337 lines 21-24; Tr. p. 338 lines 2-25; Tr. p. 358 lines 6-17; Tr. p. 359 lines 9-15 and 22-25; Tr. p. 360 lines 1-2; Tr. p. 361 lines 1-25; Tr. p. 362 lines 1-25; Tr. p. 363 lines 1-24; Tr. p. 367 lines 8-25; Tr. P. 368 lines 1-25; Tr. p. 395 lines 7-12; Tr. p. 598 lines 21-25; Tr. p. 599 lines 1-14; Tr. p. 796 lines 14-18; Tr. p. 797 lines 1-3, 10-12, and 20-25; Tr. p. 798 lines 6-11; Tr. p. 800 lines 4-14; Tr. p. 801 lines 15-25; Tr. p. 802 lines 1-8; Tr. p. 804 lines 17-18; Tr. p. 805 lines 3-17; Tr. p. 890 lines 9-20)

¹² Ms. Farrell attempted to observe ██████. but was unable to do so because he had been given his monthly migraine injection, which typically makes him sleepy. When he returned to the classroom he did, in fact, sit down and covered up with a blanket. (Tr. 21 lines 6-9; Tr. p. 338 lines 18-25; Tr. p. 339 lines 1-6; Tr. p. 797 lines 12-17 and 24-25; Tr. p. 798 lines 1-5)

Prior to the June 7, 2021 eligibility meeting and the July 6, 2021 IEP development meeting, Ms. Farrell served as the main liaison between Petitioners, the school district staff, and [REDACTED] staff. [REDACTED] set up a Dropbox that she shared with Ms. Farrell that included [REDACTED]'s hospitalization records from [REDACTED], [REDACTED], and [REDACTED], Hospital, and incident reports from [REDACTED]. The Dropbox also included prior evaluations performed at the request of [REDACTED]'s parents while the family resided in [REDACTED], as well as numerous statements and reports from therapists and medical service providers. Ms. Farrell reviewed all information [REDACTED] provided. However, not all IEP team members reviewed the extensive amount of documentation. For example, Dr. Jennifer Tolbert, GNETS North Metro coordinator, had knowledge of the incident reports based on the summary provided by Ms. Farrell, but Dr. Tolbert did not personally read the incident reports prior to the July 6, 2021 IEP development meeting. (Tr. p. 132 lines 23-25; Tr. p. 133 lines 1-12; Tr. p. 309 lines 16-22; Tr. p. 310 lines 14-19; Tr. p. 318 Lines 18-21; Tr. p. 403 lines 5-25; Tr. p. 404 lines 1-25; Tr. p. 405 lines 1-21; Tr. p. 789 line 25; Tr. p. 790 lines 1-6; Tr. p. 800 lines 6-8; Tr. p. 802 lines 9-15; Tr. p. 803 lines 1-25; Tr. p. 890 lines 1-4; Respondent's Exhibits pp. 66-244)

On July 6, 2021, [REDACTED]'s parents and Respondent's staff met again to develop an IEP. Respondent's staff at the meeting included Christine Farrell, special education coordinator; Tom Owen, director of psychological services; [REDACTED], principal of [REDACTED]'s zoned school [REDACTED] Elementary; [REDACTED], an EBD teacher at [REDACTED]; and [REDACTED], a [REDACTED] general education teacher. In addition, [REDACTED], the coordinator for the North Metro GNETS separate day program located at Oakland Meadow School and connected to Winn

Holt Elementary School. Also, at the meeting for part of the time were [REDACTED], Program Manager for [REDACTED]'s virtual Intensive Outpatient Program and intensive in-home program; [REDACTED], [REDACTED] assistant principal; [REDACTED], a [REDACTED] school clinical supervisor; [REDACTED], a [REDACTED] school Licensed Clinical Social Worker; and [REDACTED], [REDACTED]'s Summer School teacher at [REDACTED]. (Tr. p. 346 lines 9-23; Tr. p. 347 lines 8-25; Tr. p. 348 lines 1-4; Tr. p. 397 lines 20-23; Tr. p. 403 lines 6-8; Tr. p. 616 lines 16-19; Tr. p. 808 lines 13-25; Tr. p. 809 lines 1-10; Joint Exhibit pp. 82-117). These representatives represented someone from various potential placements on the continuum of services from the least restrictive to the most restrictive so the team could have an informed discussion in determining the best placement in the least restrictive environment for [REDACTED] (Tr. p. 810 lines 1-14)

56.

During the July 6, 2021, IEP development meeting, Ms. Farrell served as the meeting facilitator. Thus, she guided the participants in the conversation and the writing of the IEP document. (Tr. p. 346 lines 9-23)

57.

Ms. Farrell began the meeting by providing [REDACTED]'s history, including information about [REDACTED]'s problem behaviors that she had analyzed/summarized from school insight management system documents [REDACTED] provided her, as well as incident reports [REDACTED] sent to [REDACTED] that [REDACTED] had shared with Ms. Farrell via a Dropbox. The Present Levels of Academic Achievement and Functional Performance were written by Ms. Farrell and discussed by the IEP team regarding [REDACTED]'s grades, standardized testing scores, evaluation results, strengths, needs, parental concerns and the impact of his disability on his involvement and progress in the general education

curriculum. The focus for [REDACTED] was on how his emotional and behavioral issues impact his education. The team discussed the incident reports from [REDACTED] and anecdotal information provided by [REDACTED]. In this section, it indicates that [REDACTED] had been involved in 24 days of incident reports out of 96 days from January 6, 2021, through May 28, 2021. Ms. Farrell surmised that 13 of the 24 incident reports involved elopement; 18 of the 24 incident reports involved physical aggression, including hitting, kicking, head butting, biting and throwing objects; 19 of the 24 incident reports involved inappropriate comments/verbal aggression including profanity, [REDACTED] suggestive comments, encouraging peers to engage in harmful behavior, instigating peers, verbal threats, suicidal and homicidal comments. In addition, there were 9 days of incident reports out of 96 days at Chaddock's cottage, the residential area of the facility. Of those incident reports, 2 of 9 involved elopement; 7 of 9 involved physical aggression; and 3 of 9 involved inappropriate comments/verbal aggression. (Tr. p. 798 lines 15-25; Tr. p. 799 lines 1-16; Tr. p. 804 lines 17-18; Tr. p. 805 lines 3-17; Tr. p. 810 lines 21-25; Tr. p. 811 lines 1-10; Tr. p. 812 lines 10- 25; Tr. p. 813 lines 1-25; Tr. p. 814 lines 1-21; Tr. p. 900 lines 15-20; Joint Exhibits pp. 82-117; Respondent's Exhibits pp. 245-378)¹³ Ms. Farrell's summary did not provide frequency or duration data to the IEP team because, from her perspective, [REDACTED] wrote summaries of incidents rather than gathering frequency, duration and intensity data in the same manner that Gwinnett County Public School staff does. Thus, if an incident report from [REDACTED] stated that [REDACTED] acted aggressively toward staff more than once during a particular incident, Ms. Farrell

¹³ Respondent's Exhibits pp. 245-378 were identified for the record but were not tendered or admitted. At this time, the Court hereby admits these documents given the discussion regarding Ms. Farrell's review of these exhibits prior to the July 6, 2021 IEP development meeting and her reliance on this information to summarize the incident reports. (Tr. p. 804 lines 17-25; Tr. pp. 805-806 lines 1-25; Tr. p. 807 lines 1-13). Such admission is subject to an objection being filed within the 10-day reconsideration period.

counted the behavior as “one incident of physical aggression” for purposes of reporting it to the IEP team. (Tr. p. 351 lines 10-13; Petitioner’s Exhibits D Tab 19 pp. 596-597)

58.

█ and █ shared their parental concerns during the IEP development meeting. There number one concern was for █’s life, in part, due to his suicidal ideations he has had since age █. They also had concerns regarding the potential for grooming opportunities. Additionally, they were concerned about elopement and the possibility of █ having another entanglement with law enforcement as he did in June 2021, that could possibly lead to entering the juvenile justice system. (Tr. p. 732 lines 13-25; Tr. p. 733 lines 1-11; Tr. p. 814 lines 22-25; Tr. p. 815 lines 1-22; Tr. p. 948 lines 4-8; Joint Exhibit pp. 86-87) █ noted that in December 2020 █ was unable to access his education because of his multiple hospitalizations and sedation that took place while hospitalized. (Tr. p. 733 lines 14-19) █ believes that █ would not be able to access his education if he is arrested or even in the juvenile detention system.” (Tr. p. 733 lines 19-21) Ms. Farrell noted that Respondent also considers █’s safety and life to be a primary concern. In order to address this need and parental concern, Respondent made sure that when/if █ was in Respondent’s care in the school environment he would have sufficient staff to support him and also to provide him a therapeutic approach so he could start generalizing skills learned at school into the community and home settings. (Tr. p. 815 lines 17-25; Tr. p. 816 lines 1-6)

59.

The information Ms. Farrell gathered showed that █’s behaviors, as reported in incident reports reviewed by her, included elopement, physical aggression, inappropriate comments, and verbal aggression, all of which are behaviors that are typically seen/addressed in local public

school special education settings. Other types of behaviors that Respondent, either at their local public school or through the GNETS program, have addressed are suicidal and homicidal ideation, and students who use sexually inappropriate comments or gestures. Ms. Farrell noted that a reoccurring behavior for ██████ appeared to be elopement. Ms. Farrell's primary concern focused on the dangers related to ██████ being able to elope from ██████ and exit the building freely. (Tr. p. 799 lines 17-25; Tr. p. 800 lines 1-3; Tr. p. 807 lines 16-25; Tr. p. 808 lines 1-6; Tr. p. 813 lines 21-25; Tr. p. 814 lines 1-5; Tr. p. 840 lines 8-25; Tr. p. 841 lines 1-11)

60.

██████ is eligible under IDEA because his behaviors interfere with his education. (Tr. p. 961 lines 11-14; Joint Exhibit pp. 59-81, 91, 109-110). The goals and objectives the IEP team developed address the behaviors that the IEP team determined were identified in the incident reports – those being elopement, physical aggression, inappropriate comments, and verbal aggression. These were identified as ██████'s functional needs and the goals and objectives were designed to help ██████ gain access to instruction. (Tr. p. 816 lines 13-17; Tr. p. 948 lines 9-25; Tr. p. 949 lines 1-15; Tr. p. 973 lines 10-13; Joint Exhibit pp. 87-90 and 105-106). The IEP team set the mastery criteria for elopement and physical aggression at zero because of the safety aspect. Even one act of elopement or physical aggression could be dangerous. For inappropriate comments, the IEP team sought to see a decrease from 19 days of incidents per period to 14 days of incidents per period. The IEP team did not set the mastery criteria for inappropriate comments at zero because although inappropriate comments/verbal aggression can be hurtful, it does not involve safety concerns in the same way that elopement and physical aggression do. (Tr. p. 853 lines 3-5 and 15-25; Tr. p. 854 lines 1-4 and 14-25; Joint Exhibit pp. 87-90) ██████ has implemented the IEP

goals that were developed by the IEP team on July 6, 2021. (Tr. p. 618 lines 24-25; Tr. p. 619 lines 1-2; Joint Exhibit pp. 87-88; Petitioner's Exhibit D Tab 11 and 17 pp. 559, 584)

61.

In addition to establishing goals and objectives based on the information known at that time, the IEP team also discussed the need to conduct a Functional Behavioral Analysis over a 4 to 6-week period to gather information to identify the function of [REDACTED]'s behaviors, whether it be escape, attention, tangible or automatic. The IEP team, including [REDACTED]'s parents, agreed that an FBA should be conducted. Respondent expected that once the information was gathered the team could meet again to develop targeted interventions through the development of a Behavior Intervention Plan. (Tr. p. 817 lines 9-25; Tr. p. 818 lines 1-3 and 22-25; Tr. p. 819 lines 1-6; Joint Exhibit pp. 109-110)

62.

The IEP team also discussed supplemental aids and services. (Tr. p. 819 lines 14-25; Tr. p. 820 lines 1-12; Joint Exhibits pp. 93-95 and 110-111)

63.

Near the conclusion of the IEP development meeting, Ms. Farrell went through the continuum of services/placements starting with the least restrictive and progressing along the continuum. At this point in the IEP meeting [REDACTED] representatives were no longer present to provide input because they had other commitments that required them to leave the meeting earlier. [REDACTED] wanted to have a "conversation about where the right residential place would be to put" [REDACTED] (Tr. p. 170 lines 1-2; Joint Exhibit pp. 96-97 and 111-116). Dr. Tolbert asked whether there was any "data that supports [REDACTED] is ready or not to step down from the residential space. Just a thought that

[she] was having.” Dr. Tolbert did not receive a direct response to her question. (Petitioner’s Exhibit B, Tab 10 pp. 336-337; Petitioner’s Exhibit I, File 3 of 3, starting at 10:00 minutes). Ultimately Ms. Farrell recommended placement at GNETS based on an opinion that [REDACTED] required a therapeutic setting and that GNETS was the least restrictive environment because it was less restrictive than a residential placement but structured sufficiently to meet [REDACTED]’s unique needs.¹⁴ Respondent’s staff agreed that the least restrictive environment that could meet [REDACTED]’s educational needs would be the GNETS program in Gwinnett County’s School District, which could provide [REDACTED] an education in a therapeutic environment with wrap around services for [REDACTED] and his family and the school. GNETS also has a smaller student to teacher ratio than other less restrictive environments¹⁵ and the GNETS program has social workers, a psychologist, a Board-Certified Behavior Analyst on site and works with Viewpoint¹⁶ to provide therapy on a weekly basis. [REDACTED] and [REDACTED] inquired as to when the IEP would be effective and were told that it would be effective the following day, July 7, 2021, but that school would not commence until August 4, 2021. [REDACTED] and [REDACTED] tried to understand if Respondent was suggesting that they needed to pick up [REDACTED] from [REDACTED] and bring him immediately home. Respondent did not directly answer their question but rather maintained that the IEP becomes effective the following day and is in place for one year. The IEP team did not discuss any transition plan other than to say that [REDACTED] would work with Petitioners to transition [REDACTED] back home. [REDACTED] and [REDACTED] raised their concerns that [REDACTED] could not return home the following day without placing himself and his family in danger, especially since he had just been hospitalized recently from June 15 to June 21

¹⁴ GNETS “provides comprehensive educational and therapeutic support services to students who exhibit intense social, emotional, and/or behavioral challenges . . .” Ga. Comp. R. & Regs. 160-4-7-.15.

¹⁵ The North Metro GNETS program offered to [REDACTED] has 22 to 24 students and 16 staff members for a low student to teacher ratio. (Tr. p. 866 lines 5-8)

¹⁶ Viewpoint is a community health service in Georgia that goes to North Metro on Tuesdays and Thursdays to provide support and services to students and their families. (Tr. p. 867 lines 18-25)

following an elopement and physical aggression incident involving a law enforcement officer and [REDACTED] staff. Thus, [REDACTED] and [REDACTED] objected to Respondent's proposed IEP. (Tr. p. 138 lines 24-25; Tr. p. 139 lines 1-25; Tr. p. 140 lines 1-4; Tr. p. 144 lines 22-25; Tr. p. 146 lines 2-25; Tr. p. 147 lines 1-18; Tr. p. 158 lines 9-18; Tr. p. 389 lines 15-20; Tr. p. 390 lines 13-25; Tr. p. 394 lines 11-13; Tr. p. 422 lines 18-23; Tr. p. 737 lines 8-15; Tr. p. 831 lines 4-15; Tr. p. 832 lines 20-25; Tr. p. 833 lines 1-8; Tr. p. 843 lines 14-25; Tr. p. 955 lines 22-25; Tr. p. 956 lines 1-25; Tr. p. 957 lines 1-5; Joint Exhibit 82-117)

64.

Respondent's offered IEP was to provide all of [REDACTED]'s academic content at the GNETS therapeutic day school program, and to add a social emotional segment known as affective skill for 90 minutes per day of direct instruction in the school setting. (Tr. p. 827 lines 13-25; Tr. p. 828 lines 1-2) Affective skills is direct instruction of social skills behaviors. For example, "teaching of understanding of your own feelings, teaching of theory of mind, how you interpret somebody else's feelings and how that might impact others." The direct instruction is provided through roleplaying, through social scripts, and through social stories. The instruction is research-based and evidence-based curriculum and it is also based on a student's particular needs. (Tr. p. 862 lines 24-25; Tr. p. 863 lines 1-9)

65.

In addition to offering GNETS as [REDACTED]'s educational placement, Respondent also offered to provide wrap-around services through [REDACTED] Behavioral Health's Intensive Outpatient Program. Respondent offered to provide 4 hours a week of in-home therapy for three months with a therapist trained in de-escalation but who is not trained in how to restrain individuals. The Intensive

Outpatient Program works collaboratively with different community programs and is adapted to the individual client with the goal of maintaining the client in the community. The therapists are trained in dialectical behavioral therapy, which addresses the fields of emotion regulation, distress tolerance, inner personal effectiveness, and mindfulness, in order to assist with high levels of emotional outbursts. ██████'s representative, ██████, recommended that ██████. also have an outpatient private therapist in addition to the wraparound services to be provided by ██████ because children with ██████ typically need a long-term therapist. (Tr. p. 370 lines 12-25; Tr. p. 433 lines 19-25; Tr. p. 434 lines 1 and 9-12; Tr. p. 436 lines 14-22; Tr. p. 440 lines 23-25; Tr. p. 441 lines 1-2; Joint Exhibit p. 109; Audio at 1:44)

GNETS - North Metro Program

66.

North Metro is the school-based site of the GNETS program in Gwinnett County. It is housed at Oakland Meadow Elementary School and Winn Holt Elementary School, which are two of Gwinnett County's local public schools. Therefore, students who attend the North Metro program "not only have access to everything encompassed with the GNETS program, but they have access to nondisabled peers in a general education environment" as well. (Tr. p. 860 lines 16-24) ██████'s IEP provided that he be served for all segments in small group from his four core academic areas (language arts, math, science, social studies) to his lunch, recess and specials. (Tr. p. 862 lines 10-16) However, at any point in time that his IEP team determined that he was ready to transition and try to be pushed out for lunch, recess or specials with nondisabled peers based on the data collection showing progress on his goals and objectives he would have that access with the North Metro program being attached to Winn Holt and Oakland Meadow Elementary schools. (Tr. p. 861 lines 11-19)

67.

During the July 6, 2021, IEP development team meeting, Dr. Tolbert provided information about the GNETS program. She discussed the amount of support provided, which includes social workers, behavior specialists, teachers, paraprofessionals and BCBA's. GNETS is set up to provide behavior support, academic support, and therapeutic support. (Tr. p. 405 lines 22-25; Tr. p. 406 lines 1-10). The staff initially works with students to help them identify triggers and to communicate their needs. (Tr. p. 419 lines 11-20). She also described the behavior modifications strategies and techniques used. GNETS follows whatever behavior modification strategies and techniques are set out in a student's Behavior Intervention Plan (BIP). However, if a child enters the program without a BIP, GNETS will begin by requesting consent to conduct an FBA to gather the data necessary to create a BIP that is tailored to the student's unique needs. (Tr. p. 406 lines 12-25; Tr. p. 407 lines 1-8; Tr. p. 408 17-25; Tr. p. 409 lines 1-25; Tr. p. 410 lines 1-25; Tr. p. 413 lines 12-18 and 23-35; Tr. p. 414 lines 1-25; Tr. p. 415 lines 1-19; Tr. p. 417 lines 2-9; Tr. p. 418 lines 11-25; Tr. p. 420 lines 1-5; Tr. p. 869 lines 1-5)

68.

Regarding behavioral issues such as elopement, aggression, or inappropriate comments, GNETS staff would employ general strategies including adult proximity, eyes on [REDACTED] at all times, and use of verbal de-escalation techniques, until an FBA is completed and a BIP is developed. GNETS staff also has protocols in place to keep eyes on the child and return him safely to the intervention room¹⁷ if he elopes from the classroom. However, prior to any elopement taking place, staff will pay attention to potential triggers and behaviors and if it appears a student is irritated or may elope

¹⁷ The intervention room is located outside of the classroom and has no objects or materials in it. It serves as a room where the staff can work toward managing severe behaviors. (Tr. p. 419 lines 21-25)

the staff will attempt de-escalation. If the staff is unable to deescalate the situation, they can call on the staff social workers and psychologists to address the situation. If a student does elope, there are procedures in place to have the classroom staff call the front office who then advises administrative personnel via radio of the elopement so that the staff can position themselves at exit doors to “stand and block.” GNETS is not a locked facility, but it does have two time-release doors to prevent the student from having quick access to leave the building. If a student does exit the building, staff would search for the student and could call the school resource officer for additional support. Regarding physical aggression, the staff’s goal is to understand the triggers and to initially try to deescalate any situation. However, if there is imminent danger to the student or others, the GNETS staff is trained in Mindset to de-escalate the situation or properly apply physical restraints if deemed necessary. In addition to the foregoing, GNETS also has a therapeutic room where students can sit and talk if they want to do so or feel a need to do so, and a sensory room if a student needs a sensory break. (Tr. p. 379 lines 8-12; Tr. p. 406 lines 12-25; Tr. p. 407 lines 1-8; Tr. p. 408 lines 17-25; Tr. p. 409 lines 1-25; Tr. p. 410 lines 1-25; Tr. p. 413 lines 12-18 and 23-35; Tr. p. 414 lines 1-25; Tr. p. 415 lines 1-19; Tr. p. 416 lines 2-15; Tr. p. 417 lines 2-9; Tr. p. 418 lines 11-25; Tr. p. 420 lines 1-5; Tr. p. 591 lines 16-22; Tr. p. 869 lines 1-5)

69.

The GNETS program runs during a typical school day of 7:45am to 2:45pm. (Tr. p. 423 Lines 18-24). According to Dr. Tolbert, one of the behavior modifications programs used at GNETS is Positive Behavior Interventions and Supports (PBIS), which could include the use of a token economy system. (Tr. p. 420 lines 20-22). However, according to [REDACTED], [REDACTED]’s Elementary School Principal, behavior modification techniques don’t work well with children diagnosed with [REDACTED]. For example, [REDACTED] has observed that under a token economy a child

may work toward obtaining the token for a short period, but it does not carry over to day-to-day life because once they receive the token they are done and will not try any longer to modify their behavior. (Tr. p. 583 lines 8-25; Tr. p. 584 lines 1-3 and 13-18).¹⁸ She opined that a reward base behavior modification program would not work for [REDACTED]. because [REDACTED] “is very good at manipulating and working towards things for a short period of time, but I don’t think that he can change how he truly feels inside with a reward base system.” He will work for a short period of time to get what he wants but it won’t change his internal working model to have him do something because it’s the right thing to do. If you want a child to “truly make a change you have to change their relationships with people and do it because it’s the right thing because I have developed this trust with you.” (Tr. p. 613 lines 21-25; Tr. p. 614 lines 1-8 and 17-21) At [REDACTED], if they have rewards it’s all relationship based so it’s going to be a special time with a staff member, it’s going to be connecting on doing like in a play capacity so that they feel safe in their environment because they believe that the adults around them are going to take care of them. (Tr. p. 585 lines 2-11; Tr. p. 614 lines 17-23; Tr. p. 616 lines 2-15)

[REDACTED] and GNETS

70.

Respondent, both during the IEP meeting and in its Prior Written Notice, asserted that GNETS with ESY provided through [REDACTED] would be comparable to [REDACTED]’s Residential Program, in part, because the staff at both locations are trained on how to properly apply physical restraints, the staff at both locations are capable of addressing [REDACTED]’s disabilities, the staff at both locations

¹⁸ [REDACTED] noticed that a problem he ran into over and over with [REDACTED] was that he would do what he needs to do to earn the reward but if he wants something else more than the reward the reward system becomes ineffective and [REDACTED] still escalates or gets aggressive. (Tr. p. 698 lines 22-25; Tr. p. 699 lines 1-5)

are trauma informed, and both locations are able to provide counseling services. Additionally, both programs focus on building relationships with the students. (Tr. p. 286, lines 15-25; Tr. p. 287, lines 1-2; Tr. p. 451 lines 6-13; Tr. p. 473 lines 13-25; Tr. p. 834 lines 8-25; Tr. p. 835 lines 1-25; Tr. p. 836 lines 1-14; Tr. p. 837 lines 17-24; Joint Exhibits pp. 89, 106-109 and 118-125). However, while [REDACTED] and GNETS staff can respond to acts of physical aggression by using self-restraint, [REDACTED] staff that would be providing wraparound services are not trained in techniques of self-restraint. (Tr. p. 273, lines 21-25; Tr. p. 274, lines 1-14; Tr. p. 281, lines 21-25; Tr. p. 282, lines 1-8; Tr. p. 458 lines 20-25). Instead, [REDACTED] therapists are trained to use verbal de-escalation and if the therapist is unable to de-escalate the situation, they remove themselves to a safe location and, if deemed necessary, would call 911. If the therapist removes themselves, it leaves the parents to have to handle the physical aggression alone or by calling for assistance through the Georgia Crisis Hotline.¹⁹ (Tr. P. 434 lines 9-21; Tr. P. 436 lines 5-7).

71.

[REDACTED] teacher to student ratio is around one (1) to three (3). [REDACTED]'s fourth grade class had two (2) staff and four (4) students. [REDACTED]'s fifth grade class has two (2) staff and five (5) students. (Tr. p. 580 lines 21-25; Tr. p. 598 lines 10-19) The GNETS North Metro program offered to [REDACTED]. has 22 to 24 students overall, and 16 staff members. (Tr. p. 866 lines 5-8)

72.

The sensory room at the GNETS North Metro program provides access to fidgets, bouncy balls, weighted vests, weighted seats, and bands on the chair. (Tr. p. 867 lines 2-8) Similarly, [REDACTED]

¹⁹ [REDACTED] had called the Georgia Crisis Hotline in November 2020 and found it to be useless, in part, because they required 45 minutes of intake information. (Tr. p. 70 lines 16-25)

has calm rooms, break rooms and a sensory room. (Tr. p. 587 lines 21-25; Tr. p. 588 lines 1-4) At [REDACTED], if a child is being disruptive in the classroom, [REDACTED] staff would increase their proximity to the child. Each child also has a sensory box that has items tailored to the child that may help the child to calm down so that they can remain in the classroom. However, if the child becomes verbally aggressive or appears to be “amping up”, they can request a break or staff can ask the child if they want a break. The student can go to a break room or can do other activities. For example, [REDACTED] likes to walk and talk or play basketball to re-regulate. The student can also utilize the calm room or break room if they simply need time away from the group because they are frustrated or upset with a peer or teacher. (Tr. p. 587 lines 4-25; Tr. p. 588 lines 1-3; Tr. p. 589 lines 1-16) If the child becomes physically aggressive, then that child can go to the low stimulus room and, as a last resort, staff can employ the use of CPI techniques for restraint. (Tr. p. 589 lines 16-21) During and after the physical aggressive incident, the staff will talk with the child “about the issue, making commitments, talking to that person that you have the issue with and how we could do things differently” before the child will be allowed to move on with the goal being to get the child back in the classroom as quickly as possible. (Tr. p. 603 lines 1-5)

73.

GNETS uses behavior management strategies and modifications. For example, GNETS employs the use of a token economy. In contrast, [REDACTED] does not employ behavior modification strategies but, instead, focuses more on relationship-based techniques, in part because [REDACTED] has not found behavior management strategies and modifications to be beneficial for children with [REDACTED] Disorder. (Tr. p. 383 lines 20-25; Tr. p. 384 lines 1-25; Tr. p. 385 lines 1-14; Tr. p. 386 lines 8-10; Tr. p. 420 lines 20-25; Tr. p. 421 lines 1-9; Tr. p. 584 lines 18-19) [REDACTED] uses a treatment model called PACE (playful, accepting, curious and empathetic) that

helps their students “connect with adults and start to form meaningful relationships” because most of the students at the facility “view relationships as transactional, what can I get from this person to get what I want to survive and those other reciprocal things.” (Tr. p. 276 lines 7-20; Tr. p. 462 lines 14-23; Petitioner’s Exhibit p. 563)

Parental Objection to GNETS

74.

█████ believes that the “approach that was explained to [her that GNETS implements] is not effective for children with [█████’s] disabilities.” (Tr. p. 172 lines 19-21). She is concerned that the system that GNETS implements has been trialed by █████ and she worries it will “reinforce this maladaptive behavior he has towards the world” and “could potentially worsen his condition” and “goes against medical advice” that █████ should not return to the community. (Tr. p. 172 lines 21-25; Tr. p. 173 lines 5-8). █████ is further concerned that “as his parents [they] do not have data to support that he is ready to come home, that there is a level of clinical progress and safety that has been met, that he can just suddenly now step down and go from that much support to back into our home.” (Tr. p. 174 lines 2-7). According to █████, █████ “hasn’t even visited our home for an evening, let alone just come back and move right in.” █████ feels that the “position that that puts [her] in as a parent is untenable.” She’s concerned that when “or if [█████] hurts one of [her] other children or the kid down the street or someone in school” she will have endangered others. (Tr. p. 174 lines 7-13; Tr. p. 504 lines 4-6; Tr. p. 562 lines 9-11). █████ can be “unstable” and “calculating.” He “thinks through how could [he] harm someone, how could [he] get away with it and he’s not yet showing remorse or repentance for that or understanding of the impact of his choices.” (Tr. p. 174 lines 17-18 and 20-24). However, █████ apologized to Mr. █████ after one incident of intense physical aggression. █████ told Mr. █████ after the incident, “oh man, I

don't really realize what I was doing, I'm sorry, I didn't mean to hurt you. He just told [Mr. ██████] he was so mad." (Tr. p. 476 lines 23-25) Nevertheless, ██████ has not determined that ██████ is ready for home visits because before that can occur the staff wants "to have a better sense of not having other family members be in danger if we were to send him home."²⁰ ██████ wants "to feel very strongly that no one else – we weren't putting anyone in danger because of that." (Tr. p. 505 lines 4-10) ██████ staff also would like to see ██████ "be honest and genuine about his homicidal attempts towards his ██████ . . . and his feelings around that" as well as ██████ problematic behaviors he has exhibited while at ██████. (Tr. p. 506 lines 3-11) It is not necessary that ██████ acknowledge the act itself but more so "what's underneath the act . . . this feeling of worthlessness not being loved and seeing other people as a means to an end or and/or dangerous." ██████ needs "to start understanding how the way he feels inside impacts his view of the outside world, in particular why would it cause him to want to poison his sister or why would it want to cause him to have sexually problematic behaviors with a younger kid." (Tr. p. 507 lines 7-20) By doing so, it will help ██████ to understand those feelings if they occur again and cope with those feelings in more appropriate ways that are not dangerous. (Tr. p. 507 lines 22-25)

75.

██████ does not believe he can have ██████ in the home because he has a "responsibility to all ██████ of [his] kids to keep them safe. And if [he] was to bring ██████ home now, [he's] not keeping [██████] ██████ safe from [██████] and [he's] not keeping [██████] safe from [██████]'s] own actions." (Tr. p. 742 lines 13-17) ██████ is also concerned that if ██████ were to return home he may harm a sibling or another member of society and then face criminal charges for his actions.

²⁰ ██████ has had one overnight stay with his family at a hotel in ██████. During the day, ██████ and ██████ supervised ██████ with his ██████. At night, ██████ stayed in one hotel room with their ██████ and ██████ stayed in a separate hotel room with ██████ (Tr. p. 715 lines 4-22)

(Tr. p. 742 lines 15-23) Generally, [REDACTED] is concerned that if he were to accept Respondent's offer under the IEP developed and placement at GNETS then [REDACTED] would wind up hospitalized or arrested and, thus, from his perspective the IEP does not offer [REDACTED] a free and appropriate public education. (Tr. p. 746 lines 16-23)

76.

On January 5, 2022, Petitioners provided Respondent their statutorily required written notice that they have privately placed [REDACTED] at the [REDACTED] School, a residential facility in [REDACTED], based on his parents "and our team of medical and educational professionals" belief that he requires residential placement in order to access his education. By sending the letter they indicated they were "preserving our legal right to seek the District's reimbursement for expenses incurred with the private placement." (Respondent's Exhibit p. 56)

[REDACTED] Staff Position Regarding [REDACTED]

77.

At the time of the hearing in January 2022, [REDACTED]'s therapist at [REDACTED], [REDACTED], explained that [REDACTED] needs "24-hour monitoring and care [because] [REDACTED] is a young man who requires a lot of attention and support in both the school and in the cottage settings." (Tr. P. 265, lines 18-22). Mr. [REDACTED] further explained that [REDACTED] requires "a great deal of structure and monitoring to make sure that he is on track." (Tr. p. 267 lines 1-3) [REDACTED] [REDACTED]'s treating psychiatrist at [REDACTED], agreed that [REDACTED] meets criteria for residential care and requires 24/7 consistent programming because [REDACTED] "is dangerous to society." Dr. [REDACTED] opined that [REDACTED] is at risk of harming other people, in part, because [REDACTED] has made threats multiple times that he's angry at somebody and he's going to get even with him. [REDACTED] has also told one of the teachers that he wants to kill her

but refused to answer when asked if he had plans. Dr. [REDACTED] believes that [REDACTED] is not safe to be discharged back to an open environment with anybody that he could become angry with, including teachers, peers, family members and others. (Tr. p. 534, lines 21-22; Tr. p. 538, Lines 7-25). Dr. [REDACTED] and LCSW [REDACTED]'s opinions and recommendations focus on the potential dangers [REDACTED] may pose to himself, his family and others if he were not in a residential placement and are not related to any educational need. (Id.)

78.

The typical length of a residential stay at [REDACTED] is 12 to 18 months, although some children have stayed up to two and a half to three years. (Tr. p. 265 lines 5-6; Tr. p. 485 lines 17-19; Tr. p. 534, lines 21-22). To be discharged from [REDACTED], the staff reviews a child's present levels to see if there has been a decrease in intensity, frequency and duration of acting out behaviors. [REDACTED] wants to see that the child can function in the home, school and cottage and community environment, and has learned how to develop meaningful, genuine relationships, as well as coping skills they can use when dealing with major feelings. [REDACTED] also monitors the students/resident's level of self-esteem because many of the students/residents "personally feel unlovable, they look at the adults in their life as not trustworthy and dangerous and see the world at large as an unsafe place to live." So [REDACTED] wants to see "a shift in that to more general ways of living where I'm a person who deserves care, I can trust that my family and the adults in my life are going to provide that . . . and the world's a safe place to live in." (Tr. p. 280 lines 2-24; Tr. p. 485, lines 19-25, Tr. p. 486, lines 1-17). Once discharge is considered, [REDACTED] typically takes 90 days to transition a student/resident to another environment. (Tr. p. 486 lines 24-25; Tr. p. 489 lines 15-19) "If at 18 months we continue to believe that a young man or woman is not meeting criteria to return home due to unsafety on their part, that would mean that we should be

considering if ██████ would be the right program at that point, if they require a higher level of care, or if they require a lateral move.” (Tr. p. 282 lines 21-25; Tr. p. 283 lines 1-3; Tr. p. 288 lines 6-20).

Mr. Owen and Dr. Dinella Position Regarding ██████

79.

Mr. Owen’s review of the BASC evaluation conducted by Laura Ryan shows that “there are fewer concerning behaviors being reported by the school, by the teacher, than when you compare that to the cottage or to the parent as a general rule. There are some that are at-risk and clinically significant for both.” Primarily, ██████’s emotional and behavioral functioning were areas of concern. (Tr. p. 941 lines 12-18; Joint Exhibit 13-18) Based on the information known to the School District, Mr. Owen opined that GNETS North Metro Program can meet ██████’s needs by providing therapeutic supports from specially trained people in a structure that is appropriate for ██████ and it the least restrictive environment that can meet ██████’s unique needs. (Tr. p. 952 lines 15-20; Tr. p. 955 lines 3-13)

80.

██████████, a psychiatrist, completed a private evaluation of ██████ at the request of ██████’s parents in September 2021. Based on his review of information provided to him by ██████ and ██████, as well as a virtual 30-minute interview with ██████²¹ and an interview with his parents, Dr. ██████ opined that ██████ requires residential placement due to “the severity of his

²¹ During the interview, Dr. ██████ noted that ██████ was “on his best behavior.” ██████ “did not display any of the behaviors from the incident reports.” He was not suicidal and he did not show any evidence of hallucinations or delusions. (Tr. p. 688 lines 10-22) A ██████ Staff member was also present who provided some information about ██████’s behaviors. (Tr. p. 645 lines 20-25; Tr. p. 646 lines 1-12; Tr. p. 688 lines 23-25; Tr. p. 689 lines 1-16)

aggression,” in part, because he has concerns that there is no facility in Georgia that can treat [REDACTED] properly or “contain his behaviors so that harm doesn’t come to him or any other students or teachers.” (Tr. p. 222 lines 22-25; Tr. p. 223 lines 1-2; Tr. p. 629 lines 18-21; Tr. p. 665 lines 4-6 and 12-16; Tr. p. 668 lines 7-9; Petitioner’s Exhibit B Tab 12 pp. 387-394) Dr. [REDACTED] opined that residential facilities are required for children who pose a danger to themselves or others because families are typically unable to control the behaviors, are not knowledgeable on how to safely implement restraints, and they can’t stay awake 24 hours a day to manage behaviors. (Tr. p. 671 lines 6-25; Petitioner’s Exhibit B Tab 12 pp. 387-394) Dr. [REDACTED] further opined that [REDACTED]’s attempt to murder his [REDACTED] may have been a clumsy attempt because of his young age and that as he grows older he could become “more knowledgeable about how to harm someone, he could become more effective with those behaviors” of predatory aggression. (Tr. p. 672 lines 19-22; Tr. p. 673 lines 6-8; Petitioner’s Exhibit B Tab 12 pp. 387-394) Dr. [REDACTED]’s opinion and recommendation focuses on the danger [REDACTED] may pose to himself, his families and others if he were not in a residential placement and is not related to any educational need. (Id.)

Due Process Hearing Request

81.

On September 28, 2021, Petitioners filed a Due Process Hearing Request. In the request, Petitioners alleged Respondent committed the following IDEA violations:

1. Failed to appropriately develop an IEP that meets [REDACTED]’s unique needs, instead, insisting on using a behavioral management program that has proved ineffective with [REDACTED] in the past, and not appropriate based on his current diagnosis.
2. Failed to consider information from [REDACTED]’s treating physicians opining that he is still a danger to himself and others and still requires residential treatment.

3. Failed to provide an appropriate placement that meets [REDACTED]'s needs, instead only offering services throughout the school day, and for a minimal amount of time right after school for only four days a week from a program that had already rejected [REDACTED] due to his aggression.
4. Failed to develop an appropriate, effective, and safe plan to transition [REDACTED] back home when he is hopefully deemed ready to step down into a less restrictive environment than his current residential placement.

In their Due Process Hearing Request, Petitioners request the following relief:

1. Continued placement in the residential treatment facility he currently attends, the [REDACTED] School, in [REDACTED] paid for by the District until the program and/or his treating medical staff agrees it is time to transition to another facility.
2. Placement at a step-down facility once the [REDACTED] staff and [REDACTED]'s treating medical professionals have determined he is ready to step down and he no longer presents a substantial risk of harm to himself and others, including his family.
3. Attorney's fees.

II. CONCLUSIONS OF LAW

Applicable Law

1.

This case 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); Ga. Comp. R. & Regs. 160-4-7-.12(j)(3).

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 request. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) and 616-1-2-.21(4).

4.

One 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 further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). It is designed to open the door of public education to disabled children, but there is no entitlement to the best program available or to a parent’s preferred program. JSK v. Hendry Co. Sch. Bd., 941 F.2d 1563 (11th Cir. 1991); Devine v Indian River Co. Sch. Bd., 249 F.3d 1289 (11th Cir. 2001); Pace v. Bogalusa City Sch. Bd., 403 F.3d 272 (5th Cir. 2005); White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003); Lachman v. Illinois Bd. of Educ., 852 F.2d 290 (7th Cir. 1988). IDEA emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Lenn v. Portland Sch. Comm., 988

F.2d 1083 (1st Cir. 1993).

5.

In the Eleventh Circuit, IDEA special education services are required to the extent necessary to allow the student to make measurable and adequate gains in the classroom but need not ensure that such gains in the school setting carry over to the home setting. M.W. v. Clarke Co. Sch. Dist., 2008 WL 4449591 (M.D. Ga); see JSK, 941 F.2d at 1573; L.G. ex. rel. B.G. v. Sch. Bd., 255 F. App'x 360 (11th Cir. 2007).

6.

The IDEA requires school districts to provide the aforementioned special education services to an eligible student by providing 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. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 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.

In 2017, the Supreme Court clarified the second portion of the aforementioned 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. Moreover, because the question the court must answer is whether the IEP was “reasonably calculated” to provide a FAPE, “courts have concluded that a FAPE may not be the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice” Doe v. Newton Pub. Sch., 537 F. Supp. 3d 56 (D. Mass. 2021), *quoting* G.D. v. Westmoreland Sch. Dist., 930 F. 2d 942, 948 (1st Cir. 1991) (emphasis in original).

9.

Regarding the first test under *Rowley*, the Eleventh Circuit has held that “violation of any of the procedures of the IDEA is not a *per se* violation of the Act.” Weiss v. Sch. Bd., 141 F.3d 990, 996 (11th Cir. 1998). Therefore, not all procedural breaches are IDEA violations. One 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.

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.

Petitioners did not specifically raise a procedural violation in their Due Process Hearing Request. Instead, Petitioners dispute focuses on allegations that Respondent’s proposed educational placement, that being the GNETS North Metro Program at Winn Holt Elementary School/Oakland Meadow Elementary School, fails to meet ██████’s unique needs and would place him in harm’s way because it would provide ██████ an opportunity to harm himself, his siblings or someone else since it would not provide 24/7 supervised care. To the extent that Petitioners have raised a

procedural violation by arguing that Respondent failed to appropriately develop an IEP and failed to consider information from [REDACTED]'s treating physicians, the Court concludes that Respondent did not violate IDEA. The Court concludes that the July 6, 2021 IEP was appropriately developed and that Respondent did take into consideration information from [REDACTED]'s treating medical professionals that were made known to Respondent by [REDACTED] and/or [REDACTED].

12.

The IDEA sets forth the components necessary to the development of an appropriate IEP. 20 U.S.C. § 1414; Ga. Comp. R. & Regs. 160-4-7-.06. The IEP must include: (1) a statement of the child's present levels of academic and functional performance; (2) a statement of measurable annual goals; (3) a description of how the child's progress will be measured and reported; (4) a statement of the special education and related services and supplementary aids and services to be provided or available to the child and a statement of the program modifications or supports for school personnel that will be provided to the child; (5) an explanation of the extent, if any, to which the child will not participate with nondisabled children; (6) a statement of any individual appropriate accommodations; (7) the projected date for the beginning of the services and the anticipated frequency, location, and duration of the services; and (8) beginning at the first IEP when the child is 16, post-secondary and transition services and transfer of rights. (Id.)

13.

The IEP developed on July 6, 2021 contains each of the required components set forth under IDEA. Specifically, the July 6, 2021 IEP contains a statement of [REDACTED]'s Present Levels of Academic Achievement and Functional Performance including evaluation and assessment results, strengths, and needs. The IEP team discussed [REDACTED]'s grades, standardized testing scores, evaluation results,

strengths, needs, parental concerns, and the impact of his disability on his involvement in the general education curriculum. All team members, including [REDACTED]'s parents, agreed with [REDACTED]'s present levels of academic achievement and functional performance. Additionally, the July 6, 2021 IEP contains a statement of measurable annual goals and objectives and a description of how they should be measured and reported and the team, including [REDACTED]'s parents, agreed with the goals and objectives. In fact, [REDACTED] received a copy of the IEP and has implemented them. The July 6, 2021, IEP also contains special considerations individualized to [REDACTED]'s needs, and contains supplemental aids and services designed to support [REDACTED] in accessing his education. The July 6, 2021, IEP addresses Extended School Year (ESY) services and the agreement of the entire team that [REDACTED] would need ESY and Respondent's offer to provide four (4) hours per week of wrap around services during the summer before school commenced on August 4, 2021, and then continuing for a period of time after as well. Moreover, the special education services to be provided in the recommended educational placement are included in the July 6, 2021, IEP along with the anticipated frequency, location and duration. Finally, the requirement for a transition plan once a child turns 16 is inapplicable because [REDACTED] was only [REDACTED] years old at the time of the development of the IEP. A step-down from residential placement transition plan that Petitioners argue should have been in the IEP is not actually a required component of an appropriate IEP. 20 U.S.C. § 1401; 34 C.F.R. 300.320(b). It is unknown whether, if [REDACTED] and [REDACTED] had accepted the IEP, if the parties would have then discussed any services necessary to transition from [REDACTED] to GNETS outside of providing wraparound services of four (4) hours per week through [REDACTED]. Considering the language of the IDEA and the circumstances of this case, the Court concludes that Respondent did not violate IDEA by not specifically including a written and more detailed transition plan for [REDACTED] to leave [REDACTED] and transfer to GNETS.

14.

This matter revolves around educational placement, which was the focus and primary concern of [REDACTED] and [REDACTED] at the July 6, 2021 IEP development meeting. [REDACTED] and [REDACTED] expected the IEP team to agree that [REDACTED] required residential placement. However, IDEA contemplates a continuum of educational placements to meet the needs of children with disabilities. “A student who can make educational progress in a day program is not entitled to a residential placement even if the residential placement would more nearly enable the child to reach his full potential.” Lenn v. Portland Sch. Comm., 998 F.2d 1083 (1st Cir. 1993). 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).

15.

IDEA requires school districts to educate children with disabilities in the least restrictive environment (LRE) possible along the continuum of educational placement options referenced above. 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 that require a more restrictive educational placement. 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 and, more importantly, a State is forbidden from funding a placement that fails to educate the child in the least restrictive environment. 20 U.S.C. § 1412(a)(5)(A)-(B); L.G. ex. rel. B.G. v. Sch. Bd., 255 F. App'x 360 (11th Cir. 2007); 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.'"). Along the continuum of alternative educational placements, from least restrictive to most restrictive, residential placement is one of the most restrictive. 34 C.F.R. § 300.115(b)(1).

16.

In this matter, [REDACTED] and [REDACTED] placed [REDACTED] in a residential setting in January 2021, due to severe emotional, behavioral, and mental health issues he was experiencing. This placement occurred prior to [REDACTED] and [REDACTED] commencing the IEP process with the Gwinnett County School District. After contacting Gwinnett County School District representative Christine Farrell in February or March 2021 to begin the IEP process, [REDACTED] and [REDACTED] subsequently rejected the IEP developed at a subsequent July 6, 2021, IEP development meeting. In September 2021, Petitioners filed the Due Process Hearing Request that serves as the basis for the matter before this Court. In their Due Process Hearing Request, Petitioners assert that the July 6, 2021, IEP proposed by Gwinnett County School District fails to provide [REDACTED] a FAPE, in part, because they object to the

methodologies and treatment models that were described to them as being utilized in the GNETS North Metro Program.²²

17.

In residential cases involving unilateral placement, only two types of relief may be awarded: (1) compensatory education to remedy substantively deficient educational services provided to the student by the school district, or (2) reimbursement for actual costs incurred by parents who unilaterally placed their child in a residential setting in response to a substantively deficient IEP. School Committee of Town of Burlington, Mass., 471 U.S. 359 (2002); R.L. v. Miami-Dade Cty. Sch. Bd., 757 F.3d 1173 (11th Cir. 2014); J.N. v Jefferson Cty. Bd. Of Educ., 12 F.4th 1355 (11th Cir. 2021). Compensatory education is inapplicable in this matter because the parents have not requested such relief and because this matter involves an initial IEP so Respondent has never had an opportunity to provide [REDACTED] educational services for there to be a review to determine if educational services provided by the District were substantively deficient. Reid v. D.C., 401 F.3d 516 (D.C. Cir. 2005); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275 (11th Cir. 2008). Likewise, Petitioners have not requested reimbursement for past costs but rather have requested a determination that the July 6, 2021 IEP failed to provide [REDACTED] a FAPE and to have this Court conclude that the appropriate educational placement for [REDACTED] is residential until such time that his treating physicians determine he is ready to step-down from a residential setting. Accordingly, in this matter the Court is considering reimbursement for the unilateral private placement going forward.²³ Petitioners presented no evidence regarding prior expenses to seek reimbursement for

²²The Court notes that parents do not have a legal right to dictate methodology, location of service, or identity of the personnel that works with their child. Rowley, 458 U.S. at 208; Renner v. Bd. Of Educ. Of the Pub. Schools of the City of Ann Arbor, 185 F.3d 635 (6th Cir. 1999); Daniel R.R. v. State Bd. Of Educ., 874 F.2d 1036 (5th Cir. 1989).

²³ When parents unilaterally place a child in a private placement before the development of an IEP, there can be no recovery for that period of time. Tucker v. Calloway Co. Bd. Of Educ., 136 F.3d 495 (6th Cir. 1998)

such costs, nor is there evidence of current costs or anticipated costs. Instead, Petitioners have simply requested that the Court conclude that Respondent's IEP must include residential placement as ██████'s educational placement rather than the GNETS therapeutic day school believing that the residential placement is the only placement that can meet ██████'s unique needs.

18.

In cases addressing whether parents are entitled to reimbursement for a private placement, the Court would begin by determining whether the parents and/or child's representative proved by a preponderance of the evidence that the school district failed to offer the child a FAPE. Schaffer, 546 U.S. at 62 (*); Burlington, 471 U.S. at 370 (*); L.G. ex. rel. B.G. v. Sch. Bd., 255 F. App'x 360 (11th Cir. 2007). If the parents and/or child's representative do not meet this burden, recovery would be barred and the Court's inquiry would end. Mandy S. v Fulton County Sch. Dist., 205 F. Supp. 2d 1359 (N.D. Ga. 2000).

19.

“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” as set forth in an IEP. Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d at 1312 n.1 (11th Cir. 2003) (citations omitted).

20.

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 (including psychological services, recreation including therapeutic recreation, social work services, and counseling services including rehabilitation counseling) as may be required to assist a child with a disability to benefit from special education and includes the early identification and assessment of disability conditions in children. 20 U.S.C. § 1401(26)(A). Related services under the IDEA can also include parent counseling and training. 34 C.F.R. § 300.34(c)(8).

21.

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. Furthermore, 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 Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176, 207 (1982).

22.

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.

23.

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 carefully examine 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)); Marc V. v. North East Indep. Sch. Dist., 455 F. Supp. 2d 577, 594 (W.D. Tex. 2006), aff’d 242 Fed. Appx. 271 (5th Cir. 2007) (finding an IEP team was not required to consent to hospital/homebound instruction, or home-based, placement prescribed by physician

and, in fact, there is no authority under IDEA for an IEP team to delegate its duty to ensure an IEP in the least restrictive environment). 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). Additionally, “[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parent of the child.” 34 C.F.R. § 300.104.

24.

When residential placement is “precipitated by alarming and dangerous behaviors in the home, and not for the purpose of making educational progress, the school district is not responsible for the cost of the private placement. Fayette Co. Sch. Dist., 52 IDELR 176, p. 11 (Ga. SEA 2009) In this case, ██████ had been homeschooled his entire life until placed at ██████ on January 4, 2021. ██████ was placed at ██████ because of significant and severe behaviors including adding bleach to a cup for his ██████ to drink, defecating on the floor, making animal sounds and being extremely destructive among other extremely disturbing behaviors, which resulted in three hospitalizations within a one-month period and requests from hospital staff during the third hospitalization for authorization to frequently sedate him. By the time the IEP team met on July 6, 2021, to develop an IEP, ██████’s maladaptive behaviors continued with physical and verbal aggression, inappropriate comments, and elopement, but were not as severe as the behaviors that led to three hospitalization within a one-month period. The IEP team was aware of an incident that had occurred just three weeks prior, on June 15, 2021, but even that episode, although resulting in a hospitalization, did not rise to the level of behavior seen in November and December 2020.

On June 15, 2021, [REDACTED] eloped and ran into traffic after which he told a law enforcement officer that he wanted to go to the hospital because he believed he would be allowed to play video games if sent there based on what a peer had said to him. The incident appears to relate back to the manipulative behaviors that [REDACTED], [REDACTED], [REDACTED] staff, and [REDACTED]'s treating physicians have noted. The main concern of [REDACTED], [REDACTED], [REDACTED] staff, and [REDACTED]'s treating physicians is a concern that it is not safe for [REDACTED] to return home because he continues to exhibit physical aggression, verbal aggression, inappropriate comments, elopement, and possible suicidal ideation, but these are all areas that can be appropriately addressed in the educational setting in certain circumstances. In this case, the evidence shows that despite these behaviors [REDACTED] has continued to perform adequately in his academics at [REDACTED]'s therapeutic day school, and also made educational progress when home-schooled as well. Severe behaviors in the home, even behaviors that prevent parents from meeting other important obligations such as working or parenting their other children, do not warrant residential placement if the student can make educational progress in the school setting. Devine, 249 F.3d at 1292-1293; see also L.G., 255 F. App'x. at 366; R.H. v. Fayette Cty. Sch. Dist., 2009 WL 2848302 at *3 (N.D. Ga. Sept. 1, 2009); see also Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 433-34 (3d Cir. 2013) (parents not entitled to reimbursement when student was placed at residential facility for mental health, rather than educational needs). Compare Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E., 798 F. Supp. 2d 1177 (D. Colo. 2011) (student's mental health was intertwined with her educational success so psychological services were related services under 20 U.S.C.S. 1401(26)(A)).

25.

[REDACTED] is concerned that if [REDACTED] returns home and is hospitalized or arrested then he will not be able to access his education and, thus, any IEP that provides for less than residential placement is

not appropriate. However, the issue in determining whether a school district has offered a FAPE in the least restrictive environment to ensure educational benefit in light of a child's circumstances is whether the residential placement is necessary for educational purposes, and not merely supportive. For example, in *River Forest Sch. Dist. No. 90 v. Illinois State Bd. of Educ.*, 1996 U.S. Dist. LEXIS 4988 (N.D. Ill. April 17, 1986), a child that was barely communicative required rehabilitation services because without such services the child would not be able to benefit from any type of education. Only if the educational benefits provided through the residential care are essential for the child to make educational progress at all is residential care required under IDEA. *Braydon K. v Douglas Cty. Sch. Dist. RE1*, 2020 U.S. Dist. LEXIS 94024 (U.S. Dist. Ct. Colorado, May 29, 2020) citing *Y.B. v. Bd. of Educ. Of Prince George's Cty.*, 895 F. Supp. 2d 689, 706 (D. Md. 2021) (quoting from *Denton*, 895 F.2d at 980). In this matter, the July 6, 2021 IEP provided instruction in not only academic core subjects, but provided a daily social/emotional component as well, and was written to facilitate ██████'s educational progress in the least restrictive environment. The evidence has not shown the necessity of residential placement for ██████ to make educational progress. *Compare Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E.*, 798 F. Supp. 2d 1177 (D. Colo. 2011) (student's mental health was intertwined with her educational success such that residential placement was necessary for educational purposes). This matter is distinguishable from *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493 (9th Cir. 1996). In *Seattle Sch. Dist. No. 1*, the child's frequent behavioral problems at school seriously affected her ability to benefit from classroom instruction. In fact, she had long exhibited behaviors that adversely affected her educational performance and the Administrative Law Judge found that A.S.'s educational progress was deteriorating from her past education and the School District's new proposal was unlikely to provide educational benefit. Moreover, the child's treating physicians

concluded that she “was unlikely to derive any meaningful educational benefit from the School District’s proposed day program, as only a residential school could provide the intensity, structure, and consistency necessary for A.S. to progress” educationally. See also Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (1997) (residential placement necessary for educational purposes for child who failed to obtain any educational benefits in a mainstream placement due to child’s extremely disruptive and dangerous behaviors). In this matter, the evidence shows that [REDACTED] progressed academically while homeschooled and while at [REDACTED]’s therapeutic day school despite his maladaptive and severe behaviors.

26.

An IEP must be judged based on the information that was available at the time the IEP was developed. “An IEP is a snapshot, not a retrospective.” Doe v. Newton Pub. Sch., 537 F. Supp. 3d 56 (D. Mass. 2021), *quoting* Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990). The information available to the IEP team, as provided by [REDACTED] and [REDACTED], showed that [REDACTED] has consistently been successful in the educational setting. He made educational progress during his homeschooling experience and has continued to make educational progress in [REDACTED]’s therapeutic day school as evidenced by passing his classes and being on grade level. Moreover, at the time that the IEP team met, [REDACTED] had not shown the severe and disturbing behavior that caused a crisis in November and December 2020. Rather, his maladaptive behaviors in the months preceding the July 6, 2021 IEP meeting centered around elopement, physical aggression, and inappropriate comments and the IEP team developed goals and objectives to address these identified behavioral needs. Although his behaviors were certainly an area of need that had to be addressed, the information available to the IEP team showed that the behaviors were not preventing [REDACTED] from making measurable and adequate gains in the classroom. When

working along the continuum of services from least restrictive to most restrictive the lower placements, such as a General Education Setting, would not meet [REDACTED]'s needs but a therapeutic day school such as GNETS North Metro Program located at Oakland Meadow School could so the team stopped there and recommended that placement. GNETS can provide comprehensive educational and therapeutic support services to students who exhibit intense social, emotional, and/or behavioral challenges. GNETS services support students with behaviors that includes significant aggressive, self-destructive, atypical, and withdrawal behaviors. Students at GNETS are taught coping skills, behavior regulation, and adaptive behaviors with a keen focus on developing positive interpersonal relationships with others. Ga. Comp. R. & Regs. 160-4-7-.15. Additionally, the GNETS North Metro Program specifically has experience educating students with needs similar to [REDACTED]'s.

27.

When determining whether a residential setting is appropriate for a student, a Court's "analysis must focus on whether [the residential] placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary [but] quite apart from the learning process." Ashland Sch. Dist. v. Parents of Student E.H., 587 F.3d 1175, 1185 (9th Cir. 2009) quoting Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings, 903 F.2d 635, 643 (9th Cir. 1990). See also J.G. v. Creighton Elem. Sch. Dist., 122 LRP 4265 (D. Ariz. Jan. 31, 2022); L.G., 255 F. App'x at 365 (parents not entitled to residential placement based on student's violent behaviors in home); Devine, 249 F.3d at 1292-1293 (parents not entitled to residential placement even though IEP did not address behaviors at home or respite care). Each of [REDACTED]'s treating physicians, which included Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED], opined that [REDACTED] required residential placement because of the possibility

of dangerous behavior if [REDACTED] were to return home, which included elopement, physical and verbal aggression, and suicidal and homicidal ideation. However, each of these behaviors as set forth in the incident reports and personal observations can be addressed in a therapeutic school setting such as the GENTS North Metro Program to enable [REDACTED] to make measurable and adequate gains in the classroom. In fact, [REDACTED] has implemented the goals and objectives developed in the July 6, 2021 IEP and [REDACTED] is making adequate gains in the classroom such that the July 6, 2021 IEP aspires to provide more than *de minimis* educational progress for [REDACTED]. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894 (1984) (school districts must provide only services necessary to aid a child to benefit from special education); Ashland Sch. Dist. v. Parents of Student R.J., 588 F.3d 1004, 1009 (9th Cir. 2009) (residential placement at public expense is appropriate only if it is necessary to provide special education and related services); Richardson Indep. Sch. Dist. v Michael Z., 580 F.3d at 300 (if a child can receive an educational benefit without residential placement the school is not required to pay for it under IDEA).

28.

[REDACTED] and [REDACTED]'s request for continued placement at [REDACTED] rather than GNETS North Metro Program is not educationally based. The Court concludes that where, as here, the IEP offers [REDACTED] the supports that are educationally necessary to allow him to make measurable and adequate gains in the classroom in an educational setting that is less restrictive than residential placement, then the School District cannot provide for residential placement at public expense. Banwart v. Cedar Falls Cmty. Sch. Dist., 489 F. Supp. 3d 846 (N.D. Iowa 2020).

29.

“A finding that an IEP is reasonably calculated to enable a student to meet his or her IEP goals is tantamount to a finding that the school district met its obligations under the IDEA.” Braydon K. v. Douglas Cty. Sch. Dist. RE-1, 2020 U.S. Dist. LEXIS 94024 at *27 (U.S. Dist. Ct. of Colorado, May 29, 2020) citing Andrew F., 137 S. Ct. at 999 (“To 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”). Respondent offered [REDACTED] an IEP that was reasonably calculated to confer educational benefit in the least restrictive environment. Petitioners did not meet their burden to prove otherwise. Once Respondent offered a FAPE, “the parent’s decision to place their child in private school is viewed as being voluntary” and Petitioners are entitled to no relief. M.M., 437 F.3d at 1101; see 20 U.S.C. 1412(a)(10)(C)(i); 34 C.F.R. 300.454(a)(1).

III. DECISION

Respondent Gwinnett County Public School District offered Petitioner [REDACTED] a Free and Appropriate Public Education under the Individuals with Disabilities Education Act. Accordingly, Petitioner is not entitled to the requested relief. Petitioner’s request for relief is **DENIED**.

This 27th day of May, 2022.

Ana Kennedy

Ana Kennedy
Administrative Law Judge





NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. 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 Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Bringing a Civil Action

A party aggrieved by the Final Decision has the right to bring a civil action in the appropriate court within 90 days from the date of the Final Decision. 34 C.F.R. § 300.516; Ga. Comp. R. & Regs. 160-4-7-.12(3)(u). A copy of the civil action must also be filed with the Georgia Department of Education, Special Education Services and Supports, at 1870 Twin Towers East, 205 Jesse Hill Jr. Drive, Atlanta, Georgia 30334, and the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.93.