

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

██████
Petitioner,

v.

**COBB COUNTY SCHOOL DISTRICT,
Respondent.**

**Docket No.: 1930833
1930833-OSAH-DOE-SE-33-Woodard**

Agency Reference No.: 1930833

FINAL DECISION

For Petitioner:

Chris Vance, Esq.

For Respondent:

Randall S. Farmer, Esq.
Gregory, Doyle, Calhoun & Rogers, LLC

I. INTRODUCTION

Petitioner ██████ is a student with a disability who is eligible for special education services under the Individuals with Disabilities Education Act of 2004 (“IDEA”). On March 13, 2019, ██████. filed a due process hearing request (“Complaint”) against Respondent, the Cobb County School District (“Respondent” or “District”).¹ In his Complaint, ██████. alleged that the District violated IDEA with respect to his educational placement, as well as by denying him a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”).

The evidentiary hearing took place from September 19 to September 22, 2019, in Atlanta, Georgia. The record closed on December 13, 2019 when the parties filed their proposed Findings

¹ As discussed more fully in a previous order, ██████. is the sole listed petitioner in this case because he was 18 at the time the Complaint was filed. His mother and father filed the Complaint on his behalf pursuant to their authority under a general durable power of attorney. (See Case File, Order issued Aug.16, 2019.)

3.

OCD involves two elements—obsessions, which are recurrent thoughts, ideas, or images; and compulsions, which are the rituals performed in response to anxiety caused by the recurrent thought, idea, or image. (T. 35, 370; see also Ex. R-53, p. 836.) OCD-driven behavior can be a defense mechanism against depression and self-esteem problems arising from the patient’s family issues, social matters, and academic matters. (T. 369.)

4.

█████ OCD has manifested in various ways. Depending on his level of anxiety, he will repeatedly examine his face in mirrors for a nonexistent facial scar. (T. 35-36, 365.) During school, █████ often looks for a scar between on every mirror in the building, which causes him to be habitually late to class. (T. 36, 37, 907.) He also will repeatedly ask the same or similar question in class, as he seeks reassurance that he gets things “just right.” (T. 36, 37, 196.) His father described the cycle of questioning as follows:

█████. gets stuck in a cycle. And you can answer him and if your answer either sounds wrong in what he thinks it should sound like or he doesn’t understand it, he’ll stay on that question until he feels comfortable that he has understood it. And it can, hopefully, be two or three times, or you could sit there for 20 minutes with an easy yes or no answer and he’s not been able to process it.

(T. 196.)

5.

█████ OCD is a brain-based disorder, not a behavioral disorder. (Ex. R-53, pp. 837-838.)

One of the District’s Individual Education Plans (IEPs) notes as follows:

. . . █████ is no more in control over the thoughts or compulsive behaviors than people with epilepsy are over their seizures. . . . Being seizure-free doesn’t mean they can “control” their seizures through force of will or that the seizures aren’t genuine. In exactly the same way, █████’s OCD symptoms are not within his control and he is neither faking it nor trying to get out of doing something.

...

The repetition compulsion could also manifest itself as argumentativeness in that it may be hard for ██████ to let something go or stop arguing his point until he has a sense of completion.

(Ex. R-53, pp. 837-838; see also Ex. J-27, pp. 437-438.)

6.

██████ autism spectrum disorder causes him to have poor social skills, making it difficult for him to know how others act and think, or to properly observe and understand social nuances and expressions. (T. 36, 66, 68, 155-156, 194.) Rather, ██████ is extremely literal. (See Ex. R-8, p. 145). Autism spectrum disorder also causes sensory issues, making ██████ hypersensitive to sounds or bright lights. (T. 155.) In school, ██████ would put his head down on his desk to block out these sensory stimulations. (T. 37.) ██████ also is prone to a rigidity in thinking, in which he holds on to a belief and opposes any change or transition. (T. 37, 154, 155.) Such rigidity can come across at times as self-righteousness or as a non-deviating moral compass. (T. 154-155.)

7.

██████ three diagnoses—OCD, ADHD, and autism spectrum disorder—form a unique combination, as all three are closely intertwined; changes in one condition will exacerbate problems with another. (T. 97, 359, 369-371, 414-415.) As one of ██████ treating psychiatrists described:

[I]f you looked at just his ADHD, you would say it's moderate; if you looked at just his autism, you would say moderate; and if you looked at his OCD, you perhaps would say moderate to severe. But the combination of the three made ██████ profoundly impaired.

(T. 359.) ██████ anxiety can further exacerbate his other disorders. (T. 97.) And further complicating his conditions is their detrimental effect on his functioning and self-esteem, which then affects his social functioning and academic performance. (T. 366-367, 391, 442.) As

explained by the same treating psychiatrist:

. . . ██████'s academic and intellectual success at a public school is heavily intertwined with his psychiatric conditions, so you cannot separate the two when talking about psychiatric treatment as well as his education plan. . . . His self-esteem is greatly affected by whether he's having success at school.

(T. 415-416.)

8.

By all accounts, ██████. is very self-aware of his disabilities and their impact. (T. 177, 486, 1070, 1104; Ex. J-12, p. 117.) Although he is socially awkward, he wants friends and places great importance on being respected by his peers and teachers. (T. 42, 177, 487.) Overall, ██████ is very bright and has both the cognitive and academic strength to perform well in the classroom, though he remains weak in executive functioning. (T. 372, 1070, 1106; Ex. J-12, p. 122.) Success in school, in fact, is extremely important to ██████, as is participation in athletics. (T. 76, 174, 177, 376, 487; Ex. R-8, pp. 143, 145.)

2. *Education in Virginia*

9.

Prior to moving to Georgia with his family in 2014, ██████ attended public schools in Fairfax, Virginia for eight years. (T. 166, 172, 537; Ex. R-53, p. 809.) While in first grade, he was diagnosed with OCD and ADHD. (Ex. R-53, p. 809.) Shortly thereafter, he was found eligible for special education services in the areas of Emotional Disability and Other Health Impairment ("OHI"). (Ex. R-53, p. 809; see also T. 267; Ex. J-12, pp. 116, 123.) ██████ has generally positive memories of his time in the Fairfax school system, where he was a straight-A student, participated in athletics, had friends, and felt socially included. (T. 42, 56, 153, 171, 172, 596.)

3. *2014-2015: Move to the District & Eighth-Grade Year at Dodgen*

10.

In 2014, █████ and his family moved from Virginia to Cobb County, Georgia. (T. 166.) █████. enrolled in the District and began attending eighth grade at Dodgen Middle School (“Dodgen”) in August of that year. (T. 44, 47; Ex. J-1.) █████. retained eligible for special education under the Other Health Impairment classification. (Ex. J-1, pp. 1, 9.)⁵

11.

The eighth-grade year at Dodgen was difficult for █████. He had numerous discipline issues, mainly for incidents of insubordination such as failing to get on task or arguing with a teacher and received more than 15 days in total of in-school and out-of-school suspensions. (T. 173, 199, 201; Ex. P-2, pp. 19-20; Ex. R-76, pp. 1151-1154.) Academically, he failed two classes and required private tutoring in order to pass the grade. (T. 168, 175, 197, 199; Ex. P-2, pp. 17, 18.) In the summer following his eighth-grade year, █████ was admitted twice to psychiatric hospitals after exhibiting atypically aggressive behavior. (T. 599.)

12

Throughout his eighth-grade year, the District made several efforts to assess █████ educational needs. In October 2014, the District’s school psychologist, Dr. Vicki Bunke, evaluated █████. to update his special education eligibility.⁶ (T. 1064-1065, 1074; Ex. J-12, p. 115, 123.) Dr. Bunke conducted a battery of assessments, including the Behavior Assessment System for

⁵ It is not entirely clear from the record when █████. dropped eligibility for Emotional Disability between first and eighth grade.

⁶ Dr. Bunke’s report contains several typographical or scrivener’s errors. Both parties stipulated at the hearing that the evaluation took place October 30, 2014, despite the incorrect date of October 30, 2015 found on the written report’s front page. (T. 43, 1093-1094; Ex. J-12, p. 115.) Dr. Bunke also testified that the evaluation took place in 2014 during █████ eighth-grade year, not his seventh-grade year as stated on the report’s front page. (T. 1074, 1093; Ex. J-12, p. 115.) She further clarified that she signed the report on February 7, 2015, not in 2014 as stated in the report. (T. 1094; Ex. J-12, p. 115.)

Children (“BASC”), a report of emotional measures with several ideations. (T. 49, 1067; Ex. J-12, pp. 116, 130-132.) In the BASC self-report section, of the 16 categories rated, ■■■. was considered “at-risk” in two categories—Anxiety and Hyperactivity—and “clinically significant” in four categories—Attitude to Teachers, Locus of Control, Attention Problems, and Relationships with Parents. (Ex. J-12, p. 132; see also T. 49-51.) Dr. Bunke concluded her report by recommending ■■■. for special education eligibility under Emotional Behavior Disorder as well as Other Health Impairment. (T. 1072; Ex. J-12, p. 123.) The District, however, never officially identified ■■■ as a child with an emotional disability. (T. 295-296, 1072.)

13.

In March 2015, ■■■ was evaluated by Dr. Ty Lightfoot, a licensed psychologist. (Ex. J-4, pp. 19, 34.) Dr. Lightfoot conducted ■■■’s second BASC assessment in four months and reported that ■■■’s self-report scores degraded in several categories. (T. 42, 50-51; Ex. J-4, pp. 28-29.) Most notably, the scores for Social Stress and Depression went from normal to “clinically significant,” while Atypicality and Sense of Inadequacy moved from normal to “at-risk.” (Ex. J-4, pp. 28-29.) Based on the March 2015 evaluation, Dr. Lightfoot diagnosed ■■■. with autism spectrum disorder. (T. 543; Ex. J-4, pp. 30, 34.)

14.

Pursuant to Dr. Lightfoot’s diagnosis, ■■■. was found eligible for special education services in the categories of Autism Spectrum Disorder (“AU”) and Other Health Impairment (“OHI”) on May 13, 2015. (Ex. J-7, p. 71.) That same day, the IEP team reviewed results from ■■■ functional behavior assessment (“FBA”), which called for a “behavior intervention plan . . . to take into account the multi-functional nature of ■■■]’s behavior and focuses on teaching more

appropriate replacement behaviors.” (Ex. J-19, pp. 92-94.)⁷

15.

According to ██████’s father, the District told ██████ and his parents that the situation would be different and better for ██████ once he transitioned from Dodgen to ninth grade at Pope High School, another school within the District. (T. 261.)

4. 2015-2016: Ninth Grade at Pope

16.

██████ entered Pope High School (“Pope”) as a ninth grader in August 2015. (Ex. R-64, p. 987.) Pope has approximately 2,000 students and operates on a traditional schedule of seven class periods per school day. (T. 865, 914.) Courses are scheduled for a full year but are divided into A and B units. (T. 865.) The A unit is taken from August to December and is worth a half-credit. (T. 865.) The B unit is taken from January to May and is also worth a half-credit. (T. 865.)

17.

██████ showed slight academic improvement from eighth grade to ninth grade. He initially passed all but one of his courses, with grades ranging from 70 to 84. (Ex. R-64, p. 987.) He later made up his one failing grade in Biology 1B during self-study, for full credit. (Ex. R-64, p. 987; see also Ex. J-16, p. 163.)

18.

Pope assigned a paraprofessional to assist ██████ for his ninth-grade year. (T. 142, 545.) The paraprofessional, Laura Mullen, maintained frequent contact with ██████ parents by email, and provided updates on both progress and regressions she observed in her working relationship with their son. (See Exs. R-115, R-120, R-124, R-125, R-135, R-143, R-144, R-169.) ██████ parents

⁷ A behavior intervention plan is commonly called a “BIP.”

advised Ms. Mullen to stay in the background and operate “undercover,” so that it was not fully apparent she was assigned to specifically assist [REDACTED] (T. 546-547; Ex. R-108, p. 1045.) Even so, her relationship with [REDACTED] ultimately degraded because [REDACTED] felt uncomfortable with her presence, and her services were eventually terminated. (T. 154, 276.)

19.

[REDACTED] disciplinary issues also improved slightly during his first year at Pope, with only two days of in-school suspension for reported incidents of insubordination. (Ex. R-76, p. 1153-1154.) Even so, [REDACTED] still struggled socially. He declined in January 2016 to participate in the “Breakfast Club,” which was run by the school’s social worker and catered to male students who needed help making peer connections. (Ex. R-184, p. 1630; see also T. 1176; Ex. J-31, 5/17/2017 Recording, 00:39:30 to 00:40:45.) Although [REDACTED] ultimately developed a good relationship with his case manager and football coach, Nick Anderson, he would refuse at times to go to the separate spaces Mr. Anderson and another faculty member created for him to work. (T. 534, 847.)

5. August-December 2016: 10th Grade at Pope

20.

In August 2016, [REDACTED] returned to Pope for his 10th-grade year. (Ex. J-19, p. 319; Ex. R-64, p. 987; see also T. 1214.) Despite receiving private tutoring paid for by his parents, [REDACTED] grades plummeted: He ended the fall semester with a 59 in Geometry A; was failing World History A at one point during the semester; and received a final grade of 16 in 10th Grade Literature/Composition, scoring at a “21% in reading comprehension and a 21[%] in writing.” (T. 176, 211, 249-250, 895; Ex. J-17, p. 308; Ex. P-2, p. 194; Ex. R-64, p. 987.) [REDACTED] second attempt with a one-on-one paraprofessional accompanying him to classes also proved unsuccessful, as [REDACTED] became upset with her and felt embarrassed by her presence. (T. 885-886, 904, 910; see also R-

212, p. 1748.)

21.

During ██████ 10th-grade year, his parents were told by several people, including Mr. Anderson, that their son was experiencing bullying and harassment from both teachers and students. These distressing incidents were often due to behaviors stemming from ██████'s OCD and autism, such as repeating questions. (T. 613, 626, 630-631; see also Ex. J-31, 3/24/2019 Recording, 00:51:00 to 00:52:30.) ██████ younger sister also reported to their parents that ██████ was ostracized by his peers and called names. (T. 626, 630.) Further, although he loved playing football and attended every practice, ██████ eventually quit the school's team after encountering what his father termed a "lack of understanding" from his fellow players. (T. 39-40, 298, 627.)⁸

22.

Andrea Jenkins-Mann, an assistant principal at Pope at the time, frequently interacted with ██████ during his 10th-grade year. (T. 842-843; Ex. R-305, p. 2310.) Dr. Jenkins-Mann fostered a positive relationship, to the point where ██████ often would come to her office if he was not having a good day, or to get work done one-on-one with a teacher such as Mr. Anderson. (T. 842, 843, 845.) She and ██████ also discussed his nonexistent facial scar, and at times she found him in the hallways either late to class or upset after spending "an inordinate amount of time" in the bathroom. (T. 844.) Dr. Jenkins-Mann described how ██████ would "verbally abuse" a teacher when he was upset, and how he would refuse to work in class and instead take his assignment home so he could work with the private tutors. (T. 603-604, 895, 923, 924.) These same behavioral concerns were

⁸ Much of the evidence cited above constitutes hearsay, as neither ██████, nor his sister, nor Mr. Anderson testified at the hearing. See O.C.G.A. §§ 24-8-801(c), 24-8-802. As no objections were raised to these out-of-court statements at hearing, however, the statements of these three out-court-declarants are admissible. See O.C.G.A. § 24-8-802. Furthermore, in weighing reliability and probity, this Court finds the evidence largely indicates ██████ was subject to some mocking and bullying behaviors while attending Pope. See Ga. Comp. R. & Regs. 616-1-2-.18(10).

echoed by Mr. Anderson. (Ex. P-2, pp. 192-193; see also T. 210.) Although Pope provided counselors for students, █████ did not want to see one. (T. 868, 927.)⁹

23.

Dr. Jenkins-Mann also handled █████'s disciplinary infractions, during which he would come to her office to talk through the incident and identify other ways to approach a situation. (T. 844, 848-849, 949.) Even with Dr. Jenkins-Mann's involvement, █████ 10th-grade record is riddled with suspensions, mostly for reported insubordination. (Ex. R-76, pp. 1151-1153; see also T. 919-923.) In total, █████ received ten days of in-school suspension and six days of out-of-school suspension from August through November of 2016. (Ex. R-76, pp. 1151-1153.) These suspensions were for such reported behaviors as arriving late to class; sleeping in class; failing to begin assignments or refusing to work in class; failing to comply with instructions; being "argumentative and belligerent"; and being "verbally combative." (Ex. R-76, pp. 1151-1153.) An IEP Progress Report further detailed that █████. "still continues to procrastinate over assignments that require effort"; "is late to class everyday"; "[r]efused to do work in class"; and "always requires prompting and even then, he is only complying with directives about 10% of the time." (Ex. J-17, p. 308.)

24.

Throughout his attendance at Pope, █████ OCD symptoms grew more acute, which led to even more bathroom trips to check his nonexistent facial scar in a mirror. (T. 36, 37; see also Ex. P-2, pp. 192-193.) █████ also began experiencing heightened anxiety and depression during this

⁹ Dr. Jenkins-Mann testified she was not aware that █████ was being bullied and in fact thought █████. "was enjoying Pope . . . , especially his opportunity . . . to play football." (T. 915, 945-946.) While Dr. Jenkins-Mann otherwise is a credible witness, her observation here is given little weight, particularly since she attended an IEP meeting in which Mr. Anderson and █████'s parents described █████'s struggles with being teased and mocked. (See 19, pp. 319-320; Ex. J-31, 3/24/2017 Recording, 00:11:30 to 00:12:15 and 00:51:00 to 00:52:30.)

period. (T. 42-43, 152.) According to his father, ██████ “dreaded going to school,” and his self-esteem and confidence got so low that he became increasingly self-isolating. (T. 169, 182.)

6. January-February 2017: Hospitalization at Rogers

25.

By the start of January 2017, ██████ mental condition had deteriorated to the point he required hospitalization. (T. 207, 360; Ex. R-217, p. 1755.) His parents subsequently placed him in Rogers Memorial Hospital in Oconomowoc, Wisconsin (“Rogers”), beginning January 5. (T. 353, 354; Ex. R-8, p. 143.) Rogers features a specialized residential treatment center for adolescent patients with OCD, anxiety, and other psychological conditions such as depression. (T. 353-355.) ██████. was under the primary care of Dr. Peter Lake, a board-certified child and adolescent psychiatrist who also serves as the adolescent center’s director. (T. 351, 353, 357, 403-404.)

26.

Dr. Lake assessed ██████ as “at a significant risk for depression” when he first arrived at Rogers. (T. 360.) Dr. Lake also found ██████. was “severely impaired” in the areas of personal self-worth, socialization, and academics. (T. 360.) During his stay at Rogers, ██████ engaged in cognitive behavioral therapy (“CBT”) to address behaviors brought on by his OCD. (T. 368; Ex. R-8, p. 144.) While being treated, the District placed him on Hospital/Homebound (“HHB”), whereby he received packets of work from Pope, along with seven hours of instruction from an in-house teacher. (T. 270; Ex. J-18, p. 311.)

27.

On February 24, 2017, ██████ was discharged from Rogers. (Ex. R-8, p. 143.) By this time, he had improved to the degree that he was checking his face for a scar less often, and he could be successfully redirected from his cycles of repeated questioning. (Ex. R-8, p. 144; see also T. 301.)

████ family called the District sometime during winter break in February 2017 and requested an IEP meeting. (T. 1156.)

B. March 2017-May 2018: HHB and enrollment at Boulder Creek

1. *March 2017 – Hiring of Educational Consultant*

28.

Sometime in March 2017, following █████ return home to Georgia from Rogers, Dr. Lake notified Christie Woodfin that he would be referring █████ parents to her. (T. 34, 99-100, 111.) Ms. Woodfin is a certified educational planner who helps families find and identify appropriate school placements for children ages nine to adulthood. (T. 18, 20, 21.) The largest body of her clientele consists of children struggling with learning disabilities. (T. 26-27.) █████ parents contacted her shortly thereafter and expressed concern that █████ was not receiving the right accommodations at Pope. (T. 34, 35.) Ms. Woodfin proceeded to interview and work with █████ parents, spoke with █████ several times, reviewed █████ IEPs and other educational records, and consulted with Dr. Lake and Dr. Chilakamarri, █████ local psychiatrist in Georgia. (T. 34-35, 52-53, 106-07.)

2. *March 24, 2017 – IEP Meeting*

29.

On March 24, 2017, █████ IEP team convened an IEP amendment meeting. (Ex. J-19, p. 319.) In attendance were █████ parents and their attorney; Mr. Anderson; Terri Browne, a District representative; Dr. Jenkins-Mann; and Dr. Lake, who attended by phone.¹⁰ (T. 361; Ex. J-19, p. 320.) The stated goal for the meeting was to determine how █████ would finish out the school year. █████ had not returned to Pope when the IEP meeting commenced. (Ex. J-31, 3/24/2017 recording,

¹⁰ Also in attendance were two of █████ District teachers and a counselor. (Ex. J-19, p. 320.)

00:01:15 to 00:01:45.)

30.

At the start of the meeting, Dr. Lake gave an overview of [REDACTED] disabilities, describing them as presenting a “unique combination of issues” that are “intertwined” with [REDACTED] ability to be educated. (Ex. J-31, 3/24/2017 Recording, 00:08:00 to 00:18:00.) For instance, he noted that “self-esteem follows function,” and success in school for [REDACTED] correlates with a decrease in OCD behaviors. (Id. 00:17:30 to 00:18:45; 00:52:25 to 00:53:15.) Dr. Lake also mentioned that people unfamiliar with [REDACTED]. would never think he had autism, as he did not appear awkward or “geeky”; thus, they “don’t give him the benefit of the doubt” and think he is acting like “a jerk.” (Id. 00:10:15 to 00:16:00.) Dr. Lake further explained that the District’s past responses to [REDACTED] behaviors—including reprimands in class, suspensions, and teachers’ reactions to frequent bathroom visits to check his scar—proved unhelpful because they punished behavior that [REDACTED] could not stop. (Id. 00:08:15 to 00:12:00; 00:15:00 to 00:16:30; 00:27:30 to 00:28:45.) The end results for [REDACTED]. were low self-esteem, a spiral-down into anxiety, OCD, and depression, and [REDACTED] belief that he was the “worst kid in Pope.” (Id. 00:15:00 to 00:16:30; 00:20:30 to 00:22:00; 00:27:00 to 00:28:00.)

31.

Dr. Lake told the IEP team that he “can’t imagine a school district in the country that can handle [REDACTED],” nor had he personally seen such a school district. (Ex. J-31, 3/24/2017 recording, 00:15:00 to 00:17:00; 00:25:00 to 00:26:00; see also T. 407.) Instead, Dr. Lake stated there were specialized schools all over the country that could meet [REDACTED]’s needs, though he did not know of one in the greater Atlanta area. (Id., 00:26:00 to 00:29:00; 00:41:00 to 00:43:00; 00:52:15 to 00:53:15; see also T. 362.) Dr. Lake stated that [REDACTED]. particularly needed a program “that looks,

feels, and acts like a normal school” with regular experiences like lunch and gym, but that also would offer therapeutic opportunities in a much smaller setting. (Id., 00:24:30 to 00:25:30; 00:43:00 to 00:45:15; 00:49:00 to 00:50:30.) On one end of the spectrum, gigantic high schools are “really, really difficult for kids with this level of special needs,” while at the other end, individual instruction or very small classes would not be suitable, because “if he’s totally isolated, he’s going to get really bad in a hurry.” (Id. 00:40:00 to 00:50:45.) Dr. Lake also stated that the District’s proposals of regular check-ins with █████. were “spot-on,” but he commented that █████. still needed a certain level of expertise throughout the day. (Id. 00:30:00 to 00:40:00.) He also warned that █████ did not respond well to being “shepherded” from class to class by a one-to-one aide. (Id. 00:50:30 to 00:50:45.)

32.

In responding to Dr. Lake’s comments, Ms. Browne stated that she wanted to look at how to make █████. successful “in a class of 33,” as at Pope, or whether to offer another type of environment. (Ex. J-31, 3/24/2017 recording, 00:19:00 to :0020:30.) At various points during the 50-minute discussion, Ms. Browne and other District team members asked the psychiatrist a variety of questions about his recommendations. These questions included: (A) what creative ways other school districts around the country have used to help students like █████. (id. 00:18:45 to 00:19:30); (B) whether █████ could access education without built-in counseling services (id. 00:26:00 to 00:29:00); (C) what options existed for public schools contracting with day programs (id. 00:40:00 to 00:41:15); and (D) how a typical high school could handle █████ (id. 00:49:00 to 00:50:45.)

33.

After Dr. Lake concluded his call, the meeting continued with the IEP team discussing

ways for [REDACTED] to make up needed credits. (Ex. J-31, 3/24/2017 recording, 00:59:00 to 01:40:00.) As one District official noted, the goal was for [REDACTED] to get “back on track” as a high school junior. (Id. 01:00:15 to 01:01:00.) The team briefly discussed the District’s options, including therapeutic programs like HAVEN, the District’s program with the Georgia Network for Educational and Therapeutic Support (“GNETS”). (Id. 01:02:15 to 01:04:45; 01:07:00 to 01:08:15; 01:10:30 to 01:16:30; 01:32:00 to 01:35:00; 01:52:00 to 01:59:30’ see also T. 819, 1133-1134.) GNETS is designed for students with severe emotional behavioral disorders and offers individualized interventions, therapy, and education in the most restrictive environment. (T. 1000, 1023, 1133.) Ms. Browne later clarified at the meeting she would not recommend GNETS for [REDACTED]. (Id. 01:13:00 to 01:15:00.)

34.

At one point, [REDACTED] mother stated her son was not willing to return to Pope, as he believed everyone hated him there and did not want to deal with questions from others. (Ex. J-31, 3/24/2017, recording, 01:08:00 to 01:11:00.) When asked by another team member from the District regarding what options were available for cases such as [REDACTED], Dr. Jenkins-Mann responded that HHB or the District’s online school are typically used when “very bright students” either cannot or will not return to school: “That’s the only thing, at this point of the year, that I can think of, if [REDACTED] won’t come into the building.” (Id. 01:08:45 to 01:10:00.) The IEP team ultimately settled on a continuation of HHB services, with the same tutors who previously worked with [REDACTED] to provide instruction in Environmental Science B and Geometry A. (Id. 01:39:45 to 01:43:30; Ex. J-19, p. 332.) [REDACTED] initially would receive five hours of instruction per week, depending on how he tolerated the work demands. (Ex. J-31, 3/24/2017 Recording, 01:44:30 to 01:48:30; Ex. P-2, p. 275.) The District’s officials emphasized that HHB was “not a long-term

fix”; rather, as ██████ had not interacted with schoolwork for some time, the team first should gather information about how he responds to the HHB tutors. (Ex. J-31, 3/24/2017 Recording, 02:05:30 to 02:06:45.) ██████ mother, in turn, mentioned concerns about her son becoming isolated during HHB, and emphasized that ██████. wants the “brick-and-mortar experience” of attending an actual school. (Id. 01:04:30 to 01:06:00; 02:07:00 to 02:08:00.) Nonetheless, ██████ parents raised no objections to HHB, with ██████’s father even stating five hours of instruction seemed like “a solid start.” (Id. 01:42:30 to 01:50:00; 02:15:00 to 02:17:00.) No mention was made of Dr. Lake’s comments regarding ██████’s HHB assignment. (Id. 00:58:30 to 02:17:00.)

35.

Apart from the assignment of HHB, the IEP for ██████. was largely unchanged in anticipation of an IEP renewal later that year. (Ex. J-31, 3/24/2017 Recording, 02:03:00 to 02:04:00; Ex. J-19, p. 332.) Even so, ██████ parents aired several concerns about their son’s educational performance, including the following: (A) his difficulty with testing and the potential need for accommodations (Ex. J-31, 3/24/2017 Recording, 01:23:00 to 01:24:00; 01:26:30 to 01:27:30); (B) a need to reduce the volume of work material so long as ██████. shows he has mastered the concept (id. 01:24:00 to 01:25:00); (C) ██████’s need for more assurances and teachers who understand his processes (id. 02:00:30 to 02:02:00); and (D) a request to remove goals and objectives related to rule-following (id. 02:00:30 to 02:02:00.)

36.

Mr. Anderson also told the team about ██████’s social struggles at school, particularly on the football field:

Unfortunately, football was another disservice to ██████. . . . I think some of the questioning—the repetitiveness of having to have a question answered—I think with the other students and players, it’s no different than in the classroom. They would either mock him or tease him. We really didn’t see much difference,

unfortunately.

(Ex. J-31, 3/24/2019 Recording, at 00:51:00 to 00:52:30; see also T. 297-98, 612-613.) [REDACTED] mother further added that [REDACTED] would not even leave his home to walk his dog for fear of being seen by Pope students. (Ex. J-31, 3/24/2017 Recording, 02:08:00 to 02:09:00.)

37.

At the conclusion of the meeting, [REDACTED] parents and attorney told the District team members that the family was working with Ms. Woodfin, and that she was researching options for placement at other schools. (Ex. J-31, 3/24/2017 Recording, 02:08:00 to 02:13:00.)

3. April 9-10, 2017 – Evaluation by Dr. Feroletto

38.

On April 9 and 10, 2017, Corbin Feroletto, Ph.D., performed a psychological evaluation of [REDACTED], his third BASC self-report in three years. (Ex. P-2, pp. 253-272.)¹¹ Dr. Feroletto found that [REDACTED] showed continued regression. [REDACTED] ratings for three categories—Attitude Toward Teachers, Social Stress, and Depression—were at the very top of the rating scale for “clinically significant.” (Ex. P-2, p. 267; T. 50-51.) Dr. Feroletto also reported that [REDACTED] parents had “determined that upon returning from Rogers, [REDACTED] would not return to Pope, and they sought the services of . . . Christie Woodfin to determine the school that would provide the best fit for [REDACTED]” (Ex. P-2, [REDACTED] 255.) During cross-examination at the hearing, Mr. [REDACTED] conceded that this statement was true at the time, based on the existing IEP. (T. 309-311.)

¹¹ At the hearing, the parties stipulated to the admittance of Exhibit P-2, pages 253-272, which constitutes the entirety of Dr. Feroletto’s report. (See T. 6-7; Ex. P-2, pp. 253-272.) Dr. Feroletto did not testify at the hearing.

4. April-May 2017 – Start of HHB Services

39.

On April 11, 2017, more than two weeks after HHB was put in place by the IEP team, ██████ officially began HHB studies at his home. (Ex. J-19, p. 319; Ex. P-2, pp. 275, 279.) It appears from the hearing record that ██████ began with only one course, Geometry A, for which he received five hours of instruction from a District-paid teacher who visited him at home. (T. 220-221; Ex. P-2, pp. 275, 279.) In addition to this instruction, ██████ parents separately paid for up to 20 additional hours of private tutoring a week in Environmental Science B. (T. 187, 220-221; see also Ex. P-2, pp. 276-279.)

40.

While completing HHB at home, ██████ overall condition started to decline. (T. 48, 72, 149-152.) Anxiety and other behaviors that had come under control during his time at Rogers—such as asking repetitive questions—began to reappear. (T. 277; see also Ex. J-31, 5/17/2017 Recording, 00:17:00 to 00:19:15; 00:37:45 to 00:39:30.) He also grew increasingly agitated and had difficulty leaving the house. (Ex. J-31, 5/17/2017 Recording, 00:17:00 to 00:19:15; 00:22:15 to 00:27:00.)

5. May 17, 2017 -- IEP Annual Review

41.

As ██████ continued HHB studies, his IEP team met again on May 17, 2017 for the annual review. (Ex. J-31, 5/17/2017 Recording.) Attending this meeting were ██████ parents and their attorney; Mr. Anderson; Ms. Browne; and Stephanie Smith, the District's special education supervisor.¹² (Id. 00:00:00 to 00:01:15.) The team discussed that ██████ was completing

¹² Also attending were a special education support specialist, and both a general-education and special-education teacher. (Ex. J-31, 5/17/2017 Recording, 00:00:00 to 00:01:15.)

Environmental Science B through HHB, and his work—including a 93 on a test—was described as “exceptional.” (Id. 00:28:00 to 00:28:30; Ex. J-21, p. 345.) His mother noted, however, that ██████. could not do the work alone, and one of ██████ teachers at the meeting commented that the HHB service time had increased to seven hours that week because he needed extra time for reassurances, breaks, and to work through issues. (Ex. J-31, 5/17/2017 Recording, 00:28:00 to 00:30:15; 01:57:00 to 01:59:30; see also Ex. P-2, p. 281.) Ultimately, the team determined that HHB services should continue. (Ex. J-31, 5/17/2017 Recording, 02:20:15 to 02:20:35.)

42.

The IEP also carefully reviewed written IEP recommendations from Cathie Schoenike, an education therapist and special education specialist at Rogers.¹³ (T. 670; Ex. J-31, 5/17/2017 Recording, 07:30:00 to 00:00:00; Ex. R-8, pp. 143-148.) Ms. Schoenike described ██████ least restrictive environment as being in general-education classes with faculty who are educated in his disorders, who can differentiate instruction based on need, and who employ behavior modification strategies. (Ex. R-8, p. 146.) She also recommended ██████. attend full days in school and have a BIP, in place. (Ex. R-8, pp. 144, 145, 146.) As for ██████ existing IEP, Ms. Schoenike stated explicitly that “[i]t is not recommended for ██████] to return to Pope High School, due to past anxiety and depression related to his experiences at Pope High School.” (Ex. R-8, p. 146.) Other recommendations to address ██████ ADHD, OCD, and autism spectrum disorder included the following:

- Having ██████ work individually with a “trusted adult . . . who should check in with him throughout the day . . . or when his OCD/Anxiety levels rise;
- Educating school staff about OCD, autism, and strategies to assist with both;
- Providing ██████. a way to signal school staff that he needs a self-care break, “without

¹³ Ms. Schoenike did not testify at the hearing.

- feeling like he is ‘standing’ out to his peers”;
- Giving [REDACTED], a specific space where he could go when feeling anxious;
- Using a “Thought Challenge Sheet” to process anxiety related to OCD; and
- Redirecting repeated questions.

(Ex. R-8, p. 144-146.)

43.

Additionally, the IEP team discussed having [REDACTED] undergo a speech and language evaluation to examine his social and pragmatic-language abilities and deficits. (Ex. J-31, 5/17/2017 Recording, 00:54:44 to 01:04:00.) The parents gave their consent for such an evaluation. (Id. 00:01:01 to 01:04:00; Ex. R-58, pp. 882-883.) Discussion later turned to having [REDACTED] under another FBA, though the parents ultimately did not consent to this assessment. (Ex. J-31, 5/17/2017 Recording, 02:48:00 to 02:53:45; T. 674-75.) It was noted that [REDACTED] parents had already visited two private schools, both of which said [REDACTED] was not ready for them. (Ex. J-31, 5/17/2017 Recording, 01:36:41 to 01:37:03.) The meeting ended without the IEP review being yet completed. (T. 676.)

6. June 2, 2017 -- IEP Annual Review, continued

44.

On June 2, 2017, another meeting took place to continue the review of [REDACTED] IEP. (T. 676; Ex. J-21, p. 340; Ex. J-31, 6/2/2017 Recordings, pts. 1 and 2) Attending this meeting were [REDACTED] mother and her attorney; Mr. Anderson; Stephen Benson, Pope’s autism program supervisor; Ms. Browne; Cathy Jordan,¹⁴ Pope’s assistant director; and Ms. Smith.¹⁵ (Ex. J-31, 6/2/2017

¹⁴ Ms. Jordan’s first name is spelled as “Kathy” in the transcript. (See, e.g., T. 701.) As her name appears as “Cathy” in multiple IEP documents, the Court shall defer to those records. (See, e.g., Ex. J-26, p. 407.)

¹⁵ Also in attendance for the District were a behavioral trainer and another support specialist. (Ex. J-31, 6/2/2017 Recording, pt. 1, 00:00:01 to 00:01:00.)

Recording, pt. 1, 00:00:01 to 00:01:00.) The IEP team continued to revise █████ goals and objectives and supportive aids and services many of which implemented recommendations from Ms. Schoenike at Rogers. (T. 677-679; Ex. J-31, 6/2/2017 Recording, pt. 1, 01:56:15 to 02:47:45.)

45.

█████ mother informed the District that her son was slated to return to the residential unit at Rogers in the next two weeks. (Ex. J-21, pp. 343-344, 352-352; Ex. J-31, 6/2/2017 Recording, pt. 1, 00:29:15 to 00:30:15.) █████ mother told the team that HHB—the services for which had concluded as of May 24, 2017—had led to isolation that increased █████ depression and anxiety. (Ex. J-21, p. 344; Ex. J-31, 6/2/2017 Recording, pt. 1, 00:59:15 to 01:00:15; 01:10:00 to 01:12:00.) However, having determined that █████ was “not able to access any educational setting at this time,” the team decided █████. would continue to recoup missing credits through HHB until he was re-hospitalized. (Ex. J-21, p. 357; see also Ex. J-31, 6/2/2017 Recording, pt. 1, 02:47:30 to 02:49:30.) The IEP meeting report stated that when █████. was ready to return home, “the team will reconvene for a plan moving forward.” (Ex. J-21, p. 357; see also T. 683.)

46.

█████ mother and father also set forth their specific concerns, which include the following:

- █████. was not being provided an appropriate education or effective IEP;
- █████. had been punished for behaviors stemming from his disabilities or after being provoked by other students;
- Faculty and staff had a lack of knowledge in educating █████. in light of his disabilities;
- Experts’ advice on █████. was being ignored; and
- The school knew █████ was being provoked at school, including an instance █████. relayed to Rogers staff about a football coach being mean to him and students following suit, calling him “stupid,” an “idiot,” and “Captain Chromosome”

(Ex. J-21, pp. 343-344; see also Ex. J-31, 6/2/2017 Recording, 00:14:30 to 00:14:60; 00:46:00 to 00:47:00.)

47.

█████ mother once again told the IEP team that she had been working with Ms. Woodfin to locate a private placement for █████. (Ex. J-31, 6/2/2017 Recording, pt. 1, 00:51:15 to 00:53:45.) The District's team members noted that the District needed to be part of a partnership of █████. being released from Rogers and looking at private placements. (Id. 01:27:45 to 01:32:45; 01:37:30 to 01:38:30; 01:40:00 to 01:45:00.)¹⁶ The District also took the mother's statement as notice of private placement and stated that such placement could remain a possibility for █████. (Id. 01:24:00 to 01:28:00.) However, the District also emphasized that the parents should hear several "out-of-the-box" options it had to offer, including support from a Board Certified Behavior Analyst ("BCBA") in the classroom; having █████ attend another high school in the District or perhaps the county's GNETS school; or assigning a paraprofessional for support. (Id. 01:08:15 to 01:10:15; 01:33:45 to 01:34:45; Ex. J-31, 6/2/2017 Recording, pt. 2, 00:04:00 to 00:10:30.) █████ mother and attorney, in turn, reminded the team that a paraprofessional had failed previously, and they also stated that the family had already tried a privately hired BCBA. (Ex. J-31, 6/2/2017 Recording, pt. 1, 01:00:00 to 01:01:00; Ex. J-31, 6/2/2017 Recording, pt. 2, 00:06:30 to 00:09:00.)

7. June 12-13, 2017 – Speech and Language Evaluation

48.

On June 12-13, 2017, Denise Pennington, MA, CCC-SLP, performed the Speech and

¹⁶ Ms. Smith also mentioned at the meeting that the District had attempted to contact Dr. Chilakamarri, █████ local psychiatrist. The goal was to ensure everyone was "on the same page" with █████. Though Ms. Smith stated she left a number with the doctor's office, nothing in the record suggests the District ever had a conversation him. (See Ex. J-31, 6/2/2017 Recording, pt. 1, 00:26:00 to 00:28:00.)

Language evaluation of █████. agreed to at the annual IEP meeting. (T. 966; Ex. J-23, p. 363; Ex. R-58, pp. 882-883.) The evaluation consisted of a battery of standardized assessments on his social language and pragmatics.¹⁷ (T. 968-970; Ex. J-23, pp. 363-366.) Based on these assessments, Ms. Pennington concluded █████ had a social pragmatic language disorder, “as noted by [his] difficulty noticing the listener’s mood, distraction or comprehension, difficulty with topic initiation, and difficulty with repairing communication breakdowns.” (T. 968-969, 975-976; Ex. J-23, pp. 365-367.) Notably, Ms. Pennington indicated in her report that his OCD and anxiety presented “an additional layer of difficulty with his pragmatic speech.” (Ex. J-23, p. 367.)

8. June & July 2017 – Readmission to Rogers & Private-Placement Search

49.

█████. was readmitted to Rogers sometime in June 2017 and again treated by Dr. Lake, who found that his patient’s depression, self-esteem, and OCD had worsened. (T. 365, 379-380, 387.) Dr. Lake found that █████ OCD had evolved into “identity formation,” which is characterized by the patient having questions such as “Who am I, where am I from, where am I going?”, as well as “Am I succeeding socially, do I have friends, do people like me, can I work out differences with them?” (T. 365, 379, 401.) In the words of Dr. Lake, “his OCD morphed from ‘I have this disfigured spot on my face’ to ‘I have no friends, no one likes me, no one understands me.’” (T. 366-367.) Dr. Lake also found █████ was suffering from psychological trauma after being “extremely devastated due to what he perceived as bullying, harassment, teasing.” (T. 365-366, 401-402.) █████ also was “demoralized” and had developed a dislike for school and a feeling of hopeless. (T. 380.)

¹⁷ At the hearing, Ms. Pennington defined social language as either verbal or nonverbal communication with others, as well as a person’s ability to interact with others, read nonverbal language such as body language and facial expressions, and infer meaning from words or actions. (T. 968.) Pragmatic language, in turn, is “the understanding and the carrying out of communications with others in an appropriate manner.” (T. 976-977.)

50.

Meanwhile, Ms. Woodfin continued her consulting work for █████ and his family through the spring and summer of 2017. At the hearing, Ms. Woodfin testified her search did not find any local schools willing to consider █████ “[T]hey didn’t think they could be successful with . . . a child . . . whose emotional issues were at the . . . level that █████s were at this point.” (T. 54.) However, she did identify several other private schools as possibilities, including a school called Middlebridge that catered to students needing social-skills training. (T. 101-102, 106.) She also testified that █████. at one point interviewed with Middlebridge in the summer of 2017, and that the school’s head “had anticipated holding a place for █████” (T. 101.)

51.

By the end of the summer of 2017, █████ had recovered credits in Geometry A and Environmental Science B. (T. 628-29; Ex. R-64, p. 987.) With those recovered credits, he had accrued a total of 9.5 hours of credit at Pope (1 of those hours being a credit from middle school Spanish), but these were not enough to allow his promotion to the junior year. (T. 895, 911, 929; Ex. P-2, p. 330.) █████. finished the summer of 2017 with a 2.083 grade point average and ranked 467 out of 495 students.

9. August 1-10, 2017 – Start of School Year & Private Placement Notice

52.

The District’s school year typically starts on or around August 1 each year. (T. 1214.) On August 1, 2017, Ms. Smith; Mr. Benson; and Ms. Jordan had a conference call with █████ mother to get an update on █████, who had yet to return to school. (T. 700, 774; Ex. R-244., pp. 1969-1970.) According to the district’s notes on the meeting, █████s mother informed the school she was going to visit two schools the family was considering for █████—Boulder Creek Academy

(“Boulder Creek”) and Gateway Academy. (Ex. R-244, p. 1970.) Also according to the notes, Ms. Jordan encouraged ██████ mother to “observe the social skills framework” at the District’s Kell High School. (Ex. R-244, p. 1970.)

53.

██████ mother ultimately visited Boulder Creek on August 4, 2017, and initially she did not commit ██████ to attend. (T. 563.) This position changed, however, and on August 10, 2017, ██████ parents sent a letter to the District which stated they intended to place ██████ at Boulder Creek upon his release from Rogers in the next few weeks. (T. 226-227, 311, 562, 622, 1211-1213; Ex. R-245, p. 1973.¹⁸) ██████ parents explained that, “[d]espite attempting many different placement options within the . . . District, ██████] became increasingly unable to access his education.” (Ex. P-2, p. 332.) The letter further stated that “[i]t is clear that there are no appropriate placement options left within the . . . District that we could try, and that ██████ needs a therapeutic school environment to be educated.” (Ex. P-2, p. 332.)

10. August 17, 2017 – IEP Meeting

54.

██████ IEP team met again on August 17, 2017. (Ex. J-31, 8/17/2017 Recording.) In attendance were ██████ parents and their attorney; Mr. Anderson; Ms. Browne; Mr. Benson; Jessica Coleman, who at the time was assistant director of special education compliance; Ms. Jordan; Ms. Pennington; Miles Price, one of ██████’s HHB tutors; and Ms. Smith.¹⁹ (Ex. J-31, 8/17/2017 Recording, 00:00:01 to 00:02:15.) During this meeting, the results of the Speech and Language evaluation were reviewed. (Id. 00:06:05 to 00:19:45.)

¹⁸ Exhibit R-245 includes the same letter as Exhibit P-2, pages 332.

¹⁹ Also in attendance were a student support administrator (SSA) for Kell; another speech pathologist; a school counselor, and an attorney for the District.

55.

Dr. Lake also called into the meeting, marking his second time speaking with the IEP team. (Ex. J-31, 8/17/2017 Recording, 00:19:45 to 01:18:00.) During an hourlong discussion, Dr. Lake reiterated his recommendation for residential placement for ██████ (Id. 00:24:00 to 00:28:15.) He noted that ██████ “perfect storm” of conditions called for therapeutic supports integrated throughout every moment of the school day, while at the same time ██████ required what looked like a mainstream social and academic environment. (Id. 00:24:15 to 00:26:00; 00:30:30 to 00:31:30; 00:33:00 to 00:34:00; 00:44:15 to 00:46:00.) Dr. Lake also described ██████ as having one of the most unique cases of autism he had seen in 30 years. (Id. 00:24:45 to 00:26:00.)

56.

At one during the conversation with Dr. Lake, District team members listed possible strategies it was considering for ██████ within the public-school environment, including a Study Skills class; utilizing a BCBA for daily support; having autism and behavioral specialists “push into” classrooms to train faculty; or employment a GNETS day program. (Ex. J-31, 8/17/2017 Recording, 01:01:30 to 01:07:30.) Dr. Lake responded that the District could “piece together” their options if ██████ was more autistic and had a lower IQ; in his current state, however, ██████ would “react vehemently” to those strategies, especially since he did not identify with other special-education students. (Id. 01:12:00 to 01:13:00.) Dr. Lake also told the team a BCBA would be a good option only if ██████ was more impaired. (Id. 01:14:30 to 1:15:45.)

57.

During this meeting, ██████ parents again noted that they had hired Ms. Woodfin and had begun touring private-placements options. (Ex. J-31, 8/17/201, Recording, 01:23:10 to 01:26:00.) Ms. Coleman stated during the meeting that the team would need to look at what ██████ required,

and she requested consent to talk with Boulder Creek. (Id. 01:29:15 to 01:30:45.) The parents also provided the District with more written information about Boulder Creek, including its fees. (Id. 01:36:00 to 01:37:00.) The parents further reported they had toured the District’s GNET’s option, though they found the option to be “disturbing” and “insulting” based on their observations of the students and teachers. (Id. 01:17:45 to 01:19:30; 01:25:45 to 01:27:150.)

11. August 22, 2017 – IEP Meeting

58.

Five days later, on August 22, 2017, the IEP team held another meeting. (Ex. J-31, 8/22/2017 Recording.) In attendance were █████ parents and their attorney; Mr. Anderson; Mr. Benson; Ms. Browne; Ms. Jordan; Ms. Pennington; and Mr. Price.²⁰ (Id. 00:00:05 to 00:01:30.) At this meeting, the team determined that █████ continued to be eligible in the areas of AU and OHI, and it added eligibility in the area of Speech/Language Impaired. (Id. 00:59:15 to 01:00:15.)

59.

Mr. Benson discussed a phone conversation he held with Theresa Wardle of the admissions office at Boulder Creek, in which they discussed the academy and what it offers. (Ex. J-31, 8/22/2017, Recording, 00:02:15 to 00:27:45.) Mr. Benson described details he learned about Boulder Creek’s program, including its use of different “phases” for its students, its therapy sessions, its implementation of outside IEPs, and its use of contracted BCBAs. (Id. 00:02:30 to 00:21:00.) He also noted that Boulder Creek indicated to him the academy did not specialize in OCD, though it does support students with the condition. (Id. 00:06:30 to 00:07:30.) There was no further discussion about Boulder Creek or placement following Mr. Benson’s report, as the meeting instead turned to amending the full IEP written in June 2019. (See id. 00:27:45 to

²⁰ Also in attendance were the SSA for Kell; a BCBA from Pathways; another speech therapist; and an attorney for the District. (Ex. J-31, 8/22/2017 Recording, 00:00:05 to 00:01:30.)

02:54:30.)

60.

The team discussed a revised Private Support Plan (“PSP”) for ██████ to develop strategies for handling behaviors. (Ex. J-31, 8/22/2017, Recording, 01:09:30 to 02:13:00.) The team specifically discussed the success ██████ experienced during HHB in using a timer in certain instances, like breaks. (Id. 01:45:00 to 01:49:00; T. 274-275.) ██████ parents clarified, however, that the timer only worked during one-on-one instruction, and would embarrass ██████ if used in a regular classroom setting. (Id. 01:47:30 to 01:49:00.) The team also discussed ██████ goals and objectives, particularly in the areas of speech. (Id. 02:03:30 to 02:36:15.) During these discussions, District team members frequently referred to Dr. Lake’s comments from prior phone calls. (Id. 02:12:00 to 02:13:00; 02:19:00 to 02:28:45.)

61.

Throughout the meeting, ██████ parents and their attorney continued to voice criticisms of the District’s choices and proposals. They again shared their concerns that ██████ had difficulty fitting in and that he was mocked by Pope’s own teachers; their opinion that the PSP would not work; the “clearly detrimental effect” that HHB had on ██████; and his need for pullout sessions during the school day with licensed therapists that can last anywhere from 10 to 90 minutes. (Ex. J-31, 8/22/2017 Recording, 00:33:00 to 00:36:00; 01:54:30 to 01:55:30; 02:02:45 to 02:04:00; 02:09:45 to 02:11:30.) On more than one occasion, District team members told the parents that the IEP team needed to consider the available data before making a placement decision. (Id. 01:58:00 to 01:59:15; 02:01:00 to 02:03:00; 02:46:00 to 02:49:00.) The parents agreed with the process, though ██████’s father noted that it was “hard to understand” that the environment at Pope was not yet being considered, “given what Dr. Lake said.” (Id. 02:00:00 to 02:01:15.)

12. August 25, 2017 – IEP Meeting

62.

Three days later, on August 25, 2017, an IEP team meeting was again convened. (Ex. J-31.) In attendance were ██████'s parents and their attorney; Mr. Anderson; Mr. Benson; Ms. Coleman; Ms. Jordan; Ms. Pennington; Mr. Price; and Ms. Smith.²¹ (Id. 00:00:01 to 00:01:15.) The meeting was largely spent discussing and refining the final version of the PSP. (Ex. J-31, 8/25/2017 Recording; see also T. 684; Ex. J-25, pp. 403-405.) The PSP identified ██████ targeted behaviors, and the supports and protocols that the teachers, case manager, Registered Behavior Technician (“RBT”), speech therapist, BCBA, and other trainers would follow. (T. 686; Ex. J-25, p. 403.) Specifically, the PSP targeted the following behaviors for ██████:

- Noncompliance with instructions given an adult, including when ██████ puts his head on his desk in response to instructions;
- Inappropriate speech;
- Repetitive questioning; and
- Repetitive rituals and behaviors, including “checking scars in mirrors.”

(Ex. J-25, p. 403.) The PSP provided the following daily behavioral supports:

- Functional communication training (“FCT”), which would allow ██████ to request breaks throughout the day. The PSP stated that “[t]imers may be used to signal the end of breaks.”
- Extended time to arrive to class, to accommodate any need “to engage in repetitive behaviors or rituals.”
- Use of a timer to initiate all tasks “of ██████’s choice,” with the timer running only when he is on task.

(T. 686-689; Ex. J-25, pp. 403-404.) Lastly, if behaviors were displayed, the PSP provided the

²¹ Also in attendance were another speech pathologist; a BCBA from Pathways; an SSA from Kell; and an attorney for the District. (Ex. J-31, 8/25/2017 Recording, 00:00:01 to 00:01:15.)

following protocols:

- For noncompliance: The RBT, District BCBA, and other behavior/autism trainers would first wait thirty seconds, then request [REDACTED] to conference with the RBT “using a pre-determined sign or gesture to request a conference.” During the conference, the Thought Challenge Process would be used, and [REDACTED]. would then return to class.
- For inappropriate speech: The RBT, District BCBA, speech therapist, and behavior/autism trainers would “remind [REDACTED] of expected behaviors/classroom rules.” If the speech continues, [REDACTED]. would be requested to conference with the RBT (in the same manner described for noncompliance), during which he would complete a “social behavior map strategy using language of expected and unexpected behavior.”
- For repetitive questioning: The case manager, assigned teacher, RBT, District BCBA, speech therapist, and behavior/autism trainers would first answer [REDACTED] question “directly and fully.” If he asks a second question, [REDACTED]. would be asked to “recall the information provided to him initially and confirm the answer.” If he cannot recall the information, the answer is provided again and [REDACTED]. is asked to restate it until he can “accurately recall the information.” If the questions persist, he will be told it will be answered one last time and no more. If questions continue, staff will ask [REDACTED]. if needs a break of a specific duration, using a timer. Once the break is over, [REDACTED] returns to his tasks.
- For ritual behaviors: The case manager, teacher, RBT, and District BCBA would allow [REDACTED]. to enter class without addressing his tardiness or giving any attention to his arrival. The PSP directs as follows: “*Adults should be mindful of nonverbal cues that give attention such as facial expressions, body language, discussing behavior as it is happening, or other non-verbal way of attending to behavior. To the greatest extent possible, all of these cues should be eliminated.*” Once [REDACTED]. arrived, the academic task would be indicated and a timer started. (T. 696.)

(T. 686, 689-696; Ex. J-25, pp. 404-405.) School staff would continue to capture and record data on [REDACTED] during these protocols. (T. 691.) A copy of the PSP would be provided to any District staff who encounter or work with [REDACTED] as well as any outside consultants, to ensure consistency in reinforcement. (T. 697, 764.)

63.

According to the hearing record, the RBT would be the person directly supporting [REDACTED]. regarding his behaviors and conferences, and who would also provide applied behavior analysis

(“ABA”) and collect and record behavior data. (T. 698, 706, 1119; see also T. 1020.) According to Ms. Smith, ABA “looks at the behavior in its environment and then change[s] the behavior through positive reinforcement.” (T. 655.)

64.

Ms. Smith stated in the IEP meeting that she, the District’s BCBA, and a BCBA from a consulting company called Pathways prepared and fleshed out the operative definitions for the PSP. (Ex. J-31, 8/25/2017 Recording, 01:35:00 to 01:40:00; see also T. 686.) At the hearing, Ms. Smith explained that the protocol was derived from several sources, including Dr. Lake and one of █████ HHB teacher. (T. 692-695.) █████ parents and their attorney, however, told the team that its PSP was not proper, stating that such strategies as using a timer could exacerbate █████ anxiety; the District was trying to “fit” █████ into a BCBA model; the District was calling for more data despite the volumes of anecdotal data already available; and the frequency or length of needed interventions for █████ remained unpredictable. (Ex. J-31, 8/25/2017 Recording, 00:07:40 to 02:57:00; see also T. 301, 302-303.)

65.

At one point in the meeting, District members noted that █████ parents and counsel were fixated on the end goal of placement at Boulder Creek. (Ex. J-31, 8/25/2017 Recording, 01:28:15 to 01:29:15.) When asked if it was the parents’ ultimate goal for █████. to never return to public school, █████ father reiterated that their “professionals” were recommending residential placement. (Id. 01:20:30 to 01:23:00.)

13. September 5, 2017 – IEP Meeting

66.

On September 5, 2017, yet another IEP team meeting took place. (Ex. J-26, p. 406.) In

attendance were ██████ parents and their attorney; Mr. Anderson; Mr. Benson; Ms. Browne; Ms. Coleman; Ms. Jordan; Ms. Pennington; Mr. Price; and Ms. Smith.²² (Id. 00:00:01 to 00:01:15.) It was noted that ██████ father would be traveling the next day to pick up ██████ from his second stay at Rogers. (Id. 03:02:00 to 03:04:00.) The team primarily discussed ██████ placement for the 2017-2018 school year. Ultimately, the following offer of FAPE was made: Study Skills in the small-group, special-education setting; an elective in the general-education setting; Social Skills in the small-group, special-education setting; and Speech and Language Services in the small-group, special-education setting. (Ex. J-26, p. 430.) ██████ also was to receive support from an RBT throughout the school day, with six hours weekly of oversight from a BCBA. (Ex. J-26, pp. 429-430; see generally Ex. J-31, 9/5/2017 Recording.)

67.

Kell High School (“Kell”), which has a student body of about 1,500 students and general-education classes accommodating as many as 35 students, was determined to be the appropriate location for ██████ within the District. (Ex. J-31, 9/5/2017 Recording, 02:07:00 to 02:09:00; 03:14:15 to 03:15:00; T. 1034.) Kell is on a four-by-four, or “block,” class schedule. (T. 739, 816, 865-866, 1045.) This format has students take a total of eight classes in a year, divided between semesters. Each class runs 90 minutes a day and counts for a full credit at the end of the semester. (T. 865, 943-944, 1045.) Unlike the traditional seven-period schedule at Pope, where a student can only earn six credits a year,²³ block schedules give students the chance to accumulate eight credits per year. (T. 865, 866.) Kell was described as having a higher population of special education students, including those with ADHD and OCD. (Ex. J-31, 9/5/2017 Recording,

²² Also in attendance were another speech pathologist; a BCBA from Pathways; an SSA from Kell; and an attorney for the District. (Ex. J-31, 9/5/2017 Recording, 00:00:01 to 00:01:15.)

²³ One of the seven periods is lunch, which does not count for credit. (T. 866.)

02:10:45 to 02:19:00.) ██████ mother told the team that she needed to visit Kell to observe its special education students. (Id. 02:08:45 to 02:09:45.) At one point, when ██████ mother brought up GNETS' H.A.V.E.N., the team members quickly noted that H.A.V.EN. was not on the table. (Id. 02:10:30 to 02:11:30.)

68.

The IEP team also discussed ██████ attendance at Boulder Creek, with Mr. Benson reiterating that he had spoken with Ms. Wardle, the academy's registrar and a licensed therapist. (Ex. J-31, 9/5/2017 Recording, 00:31:45 to 00:37:00; 02:54:30 to 03:02:00.) ██████ mother disputed Mr. Benson's initial description of Boulder Creek's orientation and academic emphasis. At Ms. ██████ request, Ms. Wardle provided a red-line, corrected copy of the summary of her discussion with Mr. Benson. (Id. 00:31:45 to 00:37:00; 02:54:30 to 03:02:00; see also T. 1196-1197.) Mr. Benson, in turn, acknowledged that he may have misunderstood Ms. Wardle. (Id. 00:36:15 to 00:37:15; 02:56:30 to 02:57:00.)²⁴

69.

During this IEP meeting, the District considered Boulder Creek as one placement option, though it did not feel the academy was the proper solution for ██████. (Ex. J-31, 9/5/2017 Recording, 01:24:00 to 01:25:00; 02:54:00 to 02:56:00.) Ms. Coleman said she was struggling to see what Boulder Creek could offer that the District could not. (Id. 02:55:30 to 02:56:45.) ██████'s mother, however, stated that she believed ██████ would have success at Boulder Creek. (Id. 02:22:00 to 02:22:30.) She offered at one point to call Ms. Wardle to join the meeting. (Id. 02:55:30 to

²⁴ ██████'s mother further asserted at the meeting that she had learned from Ms. Wardle that Mr. Benson had called Ms. Wardle in the last three minutes of a scheduled two-hour window, and that Ms. Wardle did her best to provide information. (Ex. J-31, 9/5/2017 Recording, 02:56:30 to 3:00:00; see also T. 294-295.) Mr. Benson countered that he understood the schedule to mean Ms. Wardle was available to speak at the time he called. (Ex. J-31, 9/5/2017 Recording, 02:56:30 to 3:00:00.) In the absence of other evidence, this Court declines to read anything further into the incident other than a routine failure of communication.

02:56:45.) However, nothing in the record suggests that this phone call was actually placed.

70.

In further discussing the reasoning behind the proposed placement at Kell, the District emphasized that it needed more data on [REDACTED] performance in order to determine the services he needed. (Ex. J-31, 9/5/2017 Recording, 00:27:15 to 00:28:00; 03:42:30 to 03:44:00.) Ms. Coleman described the Kell placement as a transitional period for [REDACTED], where his issues could later be reviewed and re-addressed. (Id. 03:15:00 to 03:17:00.) She noted that the District still could not say that [REDACTED]'s placement should be in a residential setting, and that “we’re not going to know until we get there.” (Id. 03:50:00 to 03:52:30.) Ms. Coleman also stated her “problem” with private placement at that time was its “skipping over the continuum” of placement. (Id. 03:15:00 to 03:17:00.)

71.

In turn, [REDACTED] parents and their attorney emphasized the need for counseling and a therapeutic setting where [REDACTED] would receive constant support. (Ex. J-31, 9/5/2017 Recording, 00:47:00 to 00:48:00; 01:12:00 to 01:17:45.) [REDACTED] father admitted that the family was looking into private schools, though no final decisions had been made about a private school placement. (Id. 01:49:00 to 01:50:00.) The parents further stated that [REDACTED] refused to return to a District school, that he had lost trust, and that his reaction to being asked to attend a District school was “bad.” (Id. 02:17:00 to 02:19:00; 02:21:00 to 02:22:00; 02:24:15 to 02:26:45; 03:22:30 to 03:23:00; Ex. J-26, p. 429; Ex. R-269.)

72.

The meeting concluded with the District discussing [REDACTED] transition back to the District, stating that he would have the opportunity to meet people, including the RBT, in a comfortable

situation and walk through the school before starting class. (Ex. J-31, 9/5/2017, Recording, 03:44:45 to 03:48:15.) The District also said it would re-evaluate the question of providing counseling as a related service. (Id. 03:39:00 to 03:43:30.) The team decided it would meet again in four weeks “to look at the data and determine the success of the programming.” (Ex. J-26, p. 429; T. 1022.)

14. September 6-19, 2017 – Transition Plans & Tour of Kell

73.

On September 6, 2017, the day after the IEP meeting concluded, ██████'s parents received a copy of the final PSP and the transition plan. (Ex. R-262, p. 2187.) The plan stated ██████ would begin school at Kell on September 11, 2017, and that the RBT and BCBA would support the implementation of his PSP. (Ex. R-262, p. 2188.) The plan also laid out an initial orientation during ██████ first day at Kell, when he would become acquainted with the staff and building, give his input on the PSP, review his schedule, and set goals for every class. (Ex. R-262, p. 2188.) Mr. Anderson would temporarily move from Pope to Kell to provide ██████ with a source of additional support and a familiar face. (T. 708-709; Ex. R-262, p. 2188.)

74.

██████. was supposed to arrive at Kell on September 13, 2017 to enroll. (Ex. R-269, p. 2204.) On that day, however, ██████ mother sent an email to Ms. Browne and other members of the IEP team which stated that ██████] is refusing to go to Kell High School.” (Ex. R-269, p. 2204.) She reported that when she and her husband approached ██████ about the Kell option:

He did not react well. He viewed the RBT just like a para[professional], despite the clarification that the RBT has different training. He kept asking if the RBT worked for the new school. Also, he asked if the RBT would be just for him. ██████] said it would be just like Pope—he would be viewed as the weird kid and didn't want to be singled out. He said it was all “bullsh--” and he said he does not want to go there. He felt it would be like Pope all over again and said that he would not go to

Kell.

(Ex. R-269, p. 2204.) Later that day, a revised transition plan was sent by email to ██████'s parents, calling for ██████ to first build rapport at home with support from the BCBA and RBT for two weeks before transitioning to Kell. (T. 710, 794-795 Ex. R-270, pp. 2208-2209.) Ms. Smith testified at the hearing that revisions were made because the District was told that ██████. "wasn't doing well, or [they] wouldn't be starting as quickly as they thought," so they "took a little more time and stretched out the rapport building piece . . . in the home to then start to pull him back to school." (T. 710.) However, ██████'s mother replied by email that very day to voice the parents' disagreement with the update, as it "was never discussed or included in ██████.]'s IEP" and "[i]t was made very clear during the IEP meeting that data obtained for ██████] needed to be obtained in the classroom setting." (Ex. R-272, p. 2214.) ██████'s mother requested another IEP meeting in the next few days to resolve the issue "immediately." (Ex. R-272, p. 2214.)

75.

The next day, September 14, 2017, team members from Pathways visited ██████'s home. (T. 302, 306; Ex. R-271, p. 2210; see also Ex. R-273, p. 2218.) Although his parents disagreed with the IEP plan that included an RBT, they did not object to this visit. (See Ex. R.-274, p. 2221.) ██████. answered their questions but "repeatedly told them that he did not want to attend Kell." (Ex. R-271, p. 2210.) ██████ later left the room, and the representatives left the home soon after. (Ex. R-271, p. 2210.) In an email to the IEP team, ██████'s mother repeated her request for an immediate IEP meeting, "as I am concerned about the likelihood of ██████]'s depression returning (as well as increased anxiety and OCD symptoms) due to him being isolated at home." (Ex. R-271, p. 2210.)

76.

The Pathways representatives returned to ██████'s home on September 15, 2017, but he

refused to see them. (T. 302, 306; Ex. R-274, p. 2219.) ██████ mother reported this unsuccessful visit to the District by email, and again requested an IEP meeting “ASAP.” (Ex. R-274, p. 2219.) ██████ parents also emailed Ms. Browne that day, stating that “█████ made it clear today that he will not go to Kell.” (Ex. R-275, p. 2223.)

77.

At some point in September 2017, ██████ mother visited Kell and received a tour from Margaret Lytle-Griffin, who was slated to serve as ██████'s case manager. (T. 186, 297, 1008, 1026.) Based on what ██████'s mother observed, the parents did not think it would be a good fit for ██████.²⁵ (T. 236, 1026-1027.)

15. September 20, 2017 – Final IEP Meeting for 2017

78.

On September 20, 2017, the final IEP team meeting for the 2017 calendar year was held. (Ex. J-27, p. 435; Ex. J-31, 9/20/2017 Recording.) In attendance were ██████ parents and their attorney; Mr. Anderson; Mr. Benson; Ms. Browne; Ms. Coleman; Ms. Lytle-Griffin; and both an RBT and BCBA from Pathways.²⁶ (Ex. J-31, 9/20/2017 Recording, 00:00:45 to 00:02:00.) The team discussed the transition plan and Pathways' efforts to meet with ██████ following his failure to enroll at Kell as scheduled. (Id. 00:02:00 to 00:06:15.) It was noted that ██████ told Pathways he did not want to attend Kell and was only interested in going to Boulder Creek, and the District

²⁵ Versions differ as to how the tour came about. According to Ms. Lytle-Griffin, ██████, and his family were invited to visit Kell, but only the mother came. (T. 1026.) The mother got to see the classroom and then sat down with Ms. Lytle-Griffin and a special student services administrator to discuss her concerns, at which time she expressed that she did not think ██████ would want to attend school there or be with the students that she had seen in the classroom. (T. 1026-1027.) In contrast, ██████ father testified at the hearing that his wife “took the initiative” to visit the school but was not allowed to observe a social skills class. (T. 186, 235, 297.) He stated that his wife observed the students when they exited the classroom, and she believed they were “low functioning students.” (T. 236.)

²⁶ Also attending were a support specialist and an attorney for the District. (Ex. J-31, 9/20/2017 Recording, 00:00:45 to 00:02:00.)

stated it had to take things day-by-day the previous week with respect to the altered transition plan. (Ex. J-31, 9/20/2017 Recording, 00:03:00 to 00:04:00; 01:08:00 to 01:11:15.)

79.

The final IEP ultimately was “amended to incorporate . . . credit recovery.” (Ex. J-27, p. 459.) ■■■■■ final block schedule for the 2017 fall semester was revised as follows:

- Grade Point Recovery for English in the general-education setting with support services;
- Study Skills in a small-group, special education setting;
- An elective in a general-education setting; and
- Social Skills in a small-group, special-education setting.

(Ex. J-27, pp. 459-460.) Credit recovery for 10th Grade Literature would be held in a lab with a special education teacher and a GNETS teacher. (T. 1038-1039; Ex. R-262, p. 2188.) An elective, instead of another academic course, was included to ease ■■■■■ back into a public-school setting without aggravating his anxiety. (T. 1018-1019.) Study Skills, taught by Ms. Lytle-Griffin, would be a time where ■■■■■ could complete unfinished work, receive additional support on assignments or tests, and develop plans to stay organized in class. (T. 1015-1016.) Students in Study Skills maintained a 2.5 to 2.6 GPA. (T. 1016.) Lastly, in Social Skills, ■■■■■. would work on issues he struggled with emotionally, such as developing replacement skills or strategies for following directions or maintaining self-control, as well as modeling and learning awareness of his disability. (T. 1019-1020.) If ■■■■■. felt overwhelmed at any time, he could go see Ms. Lytle-Griffin. (T. 1015.)

80.

Under the revised IEP, ■■■■■. was to receive two hours a week of speech therapy in a small group education setting. (T. 993, 994; Ex. J-27, p. 459.) Although it was not listed in the IEP,

Ms. Pennington testified that the speech therapist would be speaking throughout the day with [REDACTED] teachers and other involved school staff. (T. 993.) The IEP also established a new annual goal and added objectives so [REDACTED] could “understand when there is a need to adjust [his] manner and style of speaking to suit audience or situation.” (Ex. J-27, p. 453.) The IEP established another annual goal for study skills, so [REDACTED] could “improve his work habits” by meeting the following objectives:

- Increase time in class by 50% over baseline, to address [REDACTED] struggle to remain in class due to his anxiety and OCD.
- Attend to assigned tasks until completion, to address [REDACTED] struggle to focus attention and complete assignments.
- Initiate tasks within one minute without a verbal/gestural prompt, to address [REDACTED] difficulty in starting a task without direction.
- Work cooperatively with one other student when assigned a group task, to address [REDACTED] struggle with interacting with other students.

(T. 1009-1010; Ex. J-27, pp. 453-454.)

81.

The final 2017 IEP provided the following supportive aids:

- Testing accommodations, such as preferential seating, frequently monitored breaks; and extending testing time up to 50%.
- Reduction in the number of math problems “as long as mastery is evidenced.”
- Verbal/gestural prompts for task initiation as needed after one minute.
- Allowing [REDACTED] to tell faculty/staff he needs a self-care break “without feeling like he is ‘standing out’ to his peers.”
- A specific place [REDACTED]. can go to when he is feeling anxious and needs a break.
- References to the PSP, including use of the Thought Challenge Sheet.

(Ex. J-27, pp. 455-456.) The IEP also included the following language regarding recommended

supports:

Throughout ██████'s day, there will be a certified RBT (Behavior Technician) to work with him and transition him... and to collect data on the behavioral supports. *Methodology may include cognitive based therapy.* The BCBA indicated that looking at data and following trends it is possible to determine the underlying thought processes, even if the behavior appears to be irrational.

(Ex. J-27, p. 459.) (Emphasis added.)

82.

The final IEP provided ██████ with the following strategies to help improve his study skills:

- Instructions in analyzing a task and planning to carry out, including the use of checklists, having assignments broken into manageable chunks.
- Stick to a structured routine as much as possible, and prepare ██████ for potential changes or transitions.
- Use verbal cues that are “shored, direct, and concrete.”
- Making up instruction with his case manager/teacher for any time missed for interventions, with the focus on key points only so ██████ did not feel overwhelmed.
- Necessity of a reduced schedule during the transition period.

(T. 1011-1013; Ex. J-27, pp. 454-456.)

83.

The IEP team recommended two hours weekly of counseling services and “wrap-around services . . . transitioning between home and school.” (Ex. J-27, p. 456.) Lastly, the District discussed ██████ riding a special education bus, as Kell was not his home school; however, the parents declined, stating this would only trigger more anxiety. (T. 91, 239-40; Ex. J-27, p. 460.)

84.

██████'s parents ultimately rejected the final IEP as being inappropriate for ██████ (T. 239.)

16. September 26, 2017 – District’s Rejection of Private Placement

85.

On September 26, 2017, the District sent ██████’s parents a Prior Written Notice (“PWN”) regarding their decision to place ██████. at Boulder Creek Academy instead of a District high school. (Ex. R-30, pp. 518-525.) In the PWN—signed by Ms. Coleman—the District reviewed, *inter alia*, the 2014 psychoeducational evaluation of ██████ and IEP team meetings from 2015 to 2017. (Ex. R-30, pp. 518-525.) The PWN went on to state as follows:

Thus, although you participated during the recent IEP Team meetings and reported making some effort at implementing the 2017 Amended IEP, you have enrolled ██████.] at Boulder Creek Academy, which is consistent with what you have communicated has been your family’s plan for some time.

(Ex. R-30, p. 523.) The PWN further noted that despite the decision by ██████ and his parents that he would not attend a District school, “the IEP Team worked at great length over several days” to develop an IEP for him. (Ex. R-30, p. 523.) Ultimately, the District concluded in its PWN that it had developed an IEP for ██████. that was designed to provide him “with a FAPE in the least restrictive environment.” (Ex. R-30, pp. 523, 524.) As for the proposed residential placement:

[T]he IEP team considered the services and supports that would be provided to ██████ at Boulder Creek Academy and determined that the reasons for the placement are not educational in nature. The School District has not seen sufficient support for the contention that ██████.]’s social, emotional, and medical needs are so intertwined that it is not realistically possible to provide him with a FAPE according to the 2017 Amended IEP at Kell High School.

(Ex. R-30, p. 523.) Furthermore, the District contended that the GNETS program at HAVEN could accommodate many of ██████’s needs. (Ex. R-30, p. 524.) The District acknowledged that “on multiple occasions” the parents had “deemed the option of sending [█████.] to a GNETS program as ‘insulting.’” (Ex. R-30, p. 524.) The PWN continued:

Nevertheless, should the IEP Team determine that [█████] requires a therapeutic

setting[,] the GNETS program can provide a smaller classroom setting, structured environment, slower pace of learning, and limited homework in an educational program that is supportive and collaborative and incorporates therapy throughout the school day.

(Ex. R-30, p. 524.)

17. September 22, 2017-May 16, 2018 – Enrollment at Boulder Creek

86.

█. began attending Boulder Creek on September 22, 2017, four days prior to issuance of the District’s PWN. (T. 120; Ex. P-3, p. 798.) During her hearing testimony, Ms. Woodfin provided an overview of the school: Boulder Creek is a fully accredited²⁷ therapeutic school with licensed counselors and licensed therapists at the master’s degree level. (T. 56-57, 58-59, 63; Ex. P-3, p. 813.) It is a relationship-based school that applies individual, group, and family counseling. Boulder Creek also provides milieu counseling, which helps provide consistency in structure for a child with OCD. (T. 56-57, 59-60, 63.) Boulder Creek also utilizes CBT and dialectical behavioral therapy (“DBT”).²⁸ (T. 62-65.) To resolve social conflicts among its students, Boulder Creek uses “restorative circles,” in which two children with conflicts are brought to a circle with other children, and they are encouraged to talk about their issues. (T. 67-68, 159.) Classes size are also small. (T. 58.) Overall, the school provides consistency 24 hours a day, seven days a week, with the residential, teaching, and therapeutic staff all following the same programs. (T. 56-57, 60; Ex. P-3, pp. 814, 821-822.)

87.

█ started in the academy’s “Orientation and Farm Phase,” which does not include a full

²⁷ According to the school’s brochure, it is a private special education program approved by the Idaho Department of Education; is accredited with the Northwest Accreditation Commission and the Student & Exchange Visitor Program; and is affiliated with the National Association of Schools and Programs. (Ex. P-2, p. 813.)

²⁸ DBT focuses on maintaining a person’s reactions to the reasoning part of the brain, as opposed to the emotional part. (T. 65.)

academic schedule. This phase offers two farm classes, Foundations of English, and an elective academic course. (Ex. P-3, p. 809.) According to Ms. Woodfin, this phase is used to assess the student for appropriate academic courses and therapy services. (T. 118.) █████ ultimately engaged in DBT psychology and “Theory and Practice of Life Skills,” a program that teaches organizational skills, work initiation, accomplishing tasks, budgeting, and finances, which Ms. Woodfin testified were critical for █████. due to his poor executive functioning skills. (T. 74-76; Ex. P-3, p. 797.) █████s parents also had conferences at least weekly with █████ counselors via Skype to discuss their son’s progress. (T. 191.)

88.

█████. eventually moved out of the “Orientation and Farm Phase” in April 2018, and entered the “Challenge Phase,” which added more academics programs. (T. 66, 121, 190-191; Ex. P-3, p. 800.) In his eight months at Boulder Creek, █████. earned 6.25 credits: 1 credit in English 10 (in which he scored a B); 1 credit in U.S. History B (in which he scored a C); 2 credits in P.E.; 2 credits in Theory & Practice of Life Skills; and 0.25 credit in Psychology-DBT.²⁹ (Ex. P-3, p. 797.) According to Ms. Woodfin, █████. was ready to be placed in a less restrictive educational environment toward the end of his time at Boulder Creek, and that █████. was hoping to go to Middlebridge. (T. 69, 79.)

89.

Unfortunately, █████. was discharged from Boulder Creek on May 16, 2018 following eight days in which he acted out, damaged property, and did not follow staff direction. (T. 65, 79, 81; Ex. P-3, pp. 799-800.) The hearing record shows █████ overturned a port-a-potty and threw rocks through a window prior to his discharge—behavior which █████ had never displayed while he

²⁹ Geometry B was listed on █████ transcript from Boulder Creek, but he did not receive a credit. (Ex. P-3, p. 797.)

attended public school within the District, although he had previously damaged property at home. (T. 79, 130-31, 570-71, 927.) Boulder Creek noted in its discharge summary that ██████ behavior in the final days “was a significant deviation from [his] previous behaviors and abilities.” (Ex. P-3, p. 800.) The summary further stated that ██████ “requires a residential placement in a facility that can provide [him] with a higher level of care and support than Boulder Creek Academy is currently able to provide.” (Ex. P-3, p. 800.) At the hearing, Ms. Woodfin testified that ██████’s behavior at the time stemmed from his anxiety to depart Boulder Creek for another school: “[H]e was getting obsessive . . . compulsive I should say . . . about going back to [Middlebridge].” (T. 79.)

90.

No employee from Boulder Creek testified at the hearing about ██████, the programs offered by the school, or his academic or social performance.

18. May 2018 – Evaluation at University of Utah

91.

Upon his discharge from Boulder Creek, ██████ was referred to the Kootenai Behavioral Health’s Youth acute Mental Health program in Coeur d’Alene, Idaho, for “stabilization and assessment.” (Ex. P-3, p. 800; T. 576.) He stayed at Kootenai for one week while he awaited room at the University of Utah’s Neuropsychiatric Institute, where ██████. would be assessed to ensure he was not a harm to himself or others, to review his medication, and to address issues that may have led to his outburst at Boulder Creek. (T. 576-577; Ex. R-55, p. 861.)

92.

Upon arriving at the University of Utah on May 23, 2018, ██████. underwent a battery of evaluations to measure his intellectual and executive functioning, as well as his emotional, behavioral, and personality functioning. (T. 576; Ex. R-55, pp. 858-861.) In her Summary of

Neuropsychological Evaluation Results, Amanda H. Stoekel, Ph.D.,³⁰ wrote the following comments under the heading “Emotional, Behavioral, and Personality Functioning”:

The frequency and severity obsessions and compulsions [REDACTED] endorsed exceeded the threshold for meeting criteria for OCD and were within the Severe Range. Although [REDACTED] endorsed a high degree of distress related to current OCD symptoms on the [Child Yale-Brown Obsessive Compulsive Scale], the treatment team has not observed such symptoms to greatly interfere with his overall functioning while in the [university’s] Program. Rather, a pattern of engaging in inappropriate interactions with peers, such as bullying and teasing others, which is conceptualized as not being attributable to OCD, has been identified as the primary issue affecting his disability to function effectively in various aspects of his life.

(Ex. R-55, p. 861.)

93.

[REDACTED] left the University of Utah after seven weeks of residential treatment and evaluation.

(Ex. J-31, 8/29/2020 Recording, 00:27:45 to 00:28:30.) [REDACTED] parents reached out again to the District regarding his IEP. (T. 167.)

C. 2018 IEP

1. August 29, 2018 – IEP Meeting

94.

On August 29, 2018, [REDACTED]’s IEP team reconvened for its first meeting since September 20, 2017. (Ex. J-29, p. 465; Ex. J-31, 8/29/2018 Recording.) In attendance were [REDACTED]’s parents; Mr. Anderson; and Ms. Browne.³¹ (Ex. J-31, 8/29/2018 Recording, 00:00:01 to 00:01:00.) [REDACTED]’s final 2017 IEP in the District was reviewed, and the District’s team members noted that it did not sound as if a lot had changed or that [REDACTED]. had moved beyond where he had been a year ago. (*Id.* 00:37:45 to 00:39:15.) Indeed, the resulting IEP is nearly identical to the one from the previous year with

³⁰ Dr. Stoekel did not testify at the hearing.

³¹ Also in attendance were a speech pathologist; a special education teacher; a school counselor; and an SSA. (Ex. J-31, 8/29/2018 Recording, 00:00:01 to 00:01:00.)

regard to goals and objectives, supportive aids, speech and language therapy, and counseling services. (Ex. J-31, 8/29/2018 Recording, 01:05:15 to 01:15:45; compare Ex. J-29 with Ex. J-27.) It was also noted that █████ was still classified as a sophomore following his return from Boulder Creek. (Ex. J-31, 8/29/2018 Recording, 00:15:15 to 00:17:00.) For this reason, the team discussed at great length what classes █████ needed to graduate. (Id. 01:16:30 to 01:27:00.) Ultimately, the District offered the following schedule, and again recommended that Kell was the appropriate placement:

- English in a general-education setting with support services;
- Social Studies in a small-group, special-education setting;
- An elective in the general education setting; and
- Social Skills in a small-group, special-education setting.

(T. 1175-1176; Ex. J-29, p. 509.) Compared to the 2017 IEP, Social Studies was added, and English was no longer included for Grade Point Recovery, which were changes meant to address concerns about █████ not achieving his core academic courses. (T. 1028; Ex. J-27, pp. 459-460; Ex. J-29, p. 509.) Study Skills was removed entirely from the IEP. (Ex. J-27, pp. 459-460; Ex. J-29, p. 509.)

95.

The parents ultimately stated their continued disagreement with the Kell placement. (Ex. J-31, 8/29/2018 Recording, 01:05:45 to 01:16:45.) The team then briefly discussed the options of the District’s online school, which the District’s team members rejected because █████ “needs to do a semester first” at the regular high school. (Id. 00:02:15 to 00:15:30.) As they had done during previous IEP meetings, the District team members suggested services be provided by H.A.V.E.N. and argued that changes—presumably positive—had recently been made to that program. █████

parents repeated their objections to H.A.V.E.N., as the students there were lower-functioning than ■■■. (Id. 00:35:30 to 00:37:00; 01:01:15 to 01:05:00.)

96.

Throughout the meeting, the parents repeated their objections to a number of provisions in the IEP, including the proposed use of a Pathways RBT engaging in ABA with ■■■. (Ex. J-31, 8/29/2018 Recording, 00:21:15 to 00:23:00; 00:39:15 to 00:43:00.) They also stated that their experts had recommended residential placement for ■■■, and they gave notice at the meeting that they were seeking private placement at the District’s expense. (Id. 00:19:00 to 00:20:00; 00:56:45 to 00:58:00.) ■■■ father told the team that the family did not want to see “another experiment” conducted on their son at the District’s schools. (Id. 00:45:30 to 00:48:30.) He also said they felt “compelled to move forward” since ■■■ would soon be 18, and that they were “considering options—everything” at that time. (Id. 00:23:00 to 00:24:45; 00:55:30 to 00:57:00.) Nonetheless, the parents offered to provide the IEP team both a report from ■■■ therapist at Boulder Creek and the final report from the University of Utah. (Ex. J-31, 8/29/2018 Recording, 00:26:15 to 00:27:15; 00:54:45 to 00:55:45.)

2. September 2018 – Applying for Greenwood & PWN

97.

■■■ parents rejected the proposed 2018 IEP. Two days after the IEP meeting, on September 3, 2018, they signed an enrollment agreement for ■■■ to attend Greenwood School in Putney, Vermont (“Greenwood”). (T. 469, 470; Ex. J-30, pp. 576-578.) Ms. Woodfin had identified Greenwood as an appropriate placement for ■■■ after consulting with the head of Middlebridge, whose school no longer had an available space for him. (T. 79-80, 81-82.)

On September 21, 2018, the District sent █████ parents another PWN regarding their decision to privately place █████. (T. 283; Ex. R-31, pp. 526-528.) In this letter, the District reviewed, *inter alia*, the most recent IEP and concluded that it offered █████. FAPE in the least restrictive environment:

The District considered [█████]'s current functioning, supportive aids and services, goals and objective, previous IEPs, and information provided by Boulder Creek Academy. The District considered serving █████.] in a general education setting with direct services, and small group special education setting. . . . The District is able to meet █████]'s needs as it pertains to his IEP as discussed in the annual IEP meeting.

(Ex. R-31, p. 527-528.)

3. *Fall 2018-Spring 2019 – Enrollment in Greenwood*

█████ began attending Greenwood in September 2018 as an 11th-grader. (T. p. 481; Ex. J-30, p. 512.) Greenwood is an independent boarding and day school for boys in grades 6 through 12. (T. 469, 470.) The student body ranges from 50 to 60 students, with academic class sizes of three to five students. (T. 470, 477 493.) The school specializes in teaching students with social-emotional challenges, executive functioning issues, ADHD, and attention deficit disorder, among other disabilities. (T. 469.) The school does not offer a teacher specifically for OCD students, but faculty members have backgrounds in managing the disability. (T. 514, 1167.) Greenwood is accredited by the New England Association of Schools and Colleges; the National Association of Independent Schools; the Vermont Department of Education; and Landmark College, the latter accreditation dealing specifically with executive function. (T. 473.)

Unlike Boulder Creek, Greenwood is not a therapeutic school: Rather, it is a traditional

school that provides a college preparatory curriculum along with additional educational and social supports. (T. 82, 473, 481-482.) Each student at Greenwood is provided a detailed individualized learning plan, which is similar to an IEP in the public-school sector. (T. 464-65, 474-475, 515, 523-524.) In addition to academics, Greenwood offers counseling, speech and occupational therapy, targeted cognitive intervention, executive functioning instruction, and social emotional learning. (T. 470-71, 482.) These therapies and support services are part of a holistic program that are embedded in all aspects of student life. (T. 476, 477, 480, 485.) Faculty and staff members are also incorporated into the entire the school day, from academic classes to residential life, so they can share information and concerns about each student with one another. (T. 477, 495.) Social emotional learning, in which students are instructed on reading social cues, interacting with adults, and creating positive relationships, also occur throughout the day, as well as in small-group classes or one-on-one settings. (T. 470, 475, 480.) Greenwood provides a highly structured schedule for its students from morning to evening. Students also meet each day with their faculty advisor for 30 minutes and attend community meetings twice a week. (T. 470-471.) Community service, internships, and assigned tasks around the school round-out the student’s lessons in citizenship. (T. 471-472, 479, 480.)

101.

█. took the following courses during the 2018-2019 school year at Greenwood: Integrated Math 5; ELA—Responses to Change; General Music; music, STEAM;³² Woodshop; Modern European History; West River Watershed; College and Career Planning, and Health/Social Pragmatics. (T. 78, 94, 283-284.) He ended his 11th-grade year with a GPA of 3.87, and he currently is on track to graduate high school with plans for college. (T. 78, 85, 282,

³² “STEAM” stands for science, technology, engineering, art, and math. (T. 82.)

489; 493, 497; Ex. J-30, p. 511.) ■■■. also participated in occupational therapy and social emotional learning at Greenwood. (T. 284, 522.) He is assisted at any time with redirecting his behavior when needed but does not have an adult accompany him throughout the school day. (T. 95, 486.)

102.

■■■ was the captain of Greenwood's basketball team, played soccer, and participated in music programs. (T. 84, 94, 178-179, 497-498.) He received an award from Greenwood for showing leadership potential and was invited to leadership training in the summer of 2019. (T. 35, 84, 143, 482, 487, 519-520.) Starting his senior year at Greenwood, ■■■ began serving as a school ambassador, giving tour guides and welcoming families to the campus. (T. 84, 178, 491-92; Ex. P-4, pp. 835-836.) He is also interning as a support person at a local public elementary school. (T. 492.) By all accounts, ■■■ has become more socially engaged, has developed friendships with the other students, and has a much more positive attitude. (T. 86, 179, 490, 526.)

103.

Intermixed with these positive developments are a series of behavioral incidents that occurred during the 2018-2019 school year. (Ex. J-30, pp. 589-613.) These incidents ranged from fairly minor disruptions and verbal exchanges (Ex. J-30, pp. 590, 594); to upsetting classmates with sexually crass statements (pp. 593-594); to picking up a boy and slamming him down (pp. 611-613); to assisting in holding down a boy and then grabbing the boy's arm and moving it along his pelvic region (pp. 590-91, 602-03.) ■■■. was placed from time to time on dorm restriction and was also barred from going on a trip to Six Flags because he "struggled with redirection." (T. 513, 586; Ex. J-30, p. 611.)

104.

On two occasions, ██████ was twice sent home from Greenwood during the 2018-2019 year for what the school calls “resets,” following behavior that was “not conducive to the climate and culture” of the school. (Ex. J-30, pp. 589, 592; T. 483-84.) According to Anne Swayze, who was previously assistant head of Greenwood School, ██████. returned from both resets ready to continue making progress in all areas. (T. 463, 483-484.) Upon his return from the fall reset, for example, Greenwood staff reported ██████ exhibiting “stellar behavior” and being “so productive he’s starting to pull away from his classmates.” (Ex. J-30, p. 591.) However, ██████. was again sent home for a weeklong reset in the spring, following an interaction where he refused to stop a certain behavior and was unable to redirect his emotions and anger. In ██████ Greenwood records, the spring incident was also described as ██████. being “suspended.” (Ex. J-30, p. 589.) However, Ms. Swayze testified credibly that the meaning of “suspension” was not intended as a disciplinary matter, but rather as a “reset.” (T. 496.) Thus, the term “suspended” appears to be Greenwood’s term of art for a stoppage of a student’s academic and social programs, rather than discipline or punishment. (T. 500; Ex. J-30, p. 589.)

105.

██████. was attending Greenwood for the 2019-2020 school year during the week the Due Process hearing was held, and he did not attend or otherwise participate in the proceedings before the undersigned ALJ. The hearing was convened less than two weeks after the start of school, so little evidence was available regarding ██████’s academic or social progress during the current school year. (T. 530; see generally Ex. J-30.)

D. Hearing Testimony

I. [REDACTED]

106.

[REDACTED] father, testified that he and his wife had complied with every request from the District during the IEP process, whether it was signing release forms, submitting documents, attending meetings, or bringing in experts. (T. 212, 226, 297.) He also stated they had remained open to looking at and considering any District placement recommendation, such as HAVEN or Kell. (T. 186, 236-237, 297; see also T. 753.) However, the District never provided him or his wife with information about other schools as possibilities for placement. (T. 250.)

107.

[REDACTED] further testified that the 2017 IEP inappropriately placed [REDACTED] back in the Study Skills program because the previous Study Skills class had not helped him at all. (T. 233.) He also asserted that the Social Skills class was not appropriate, because it was his understanding that the students in that class were cognitively impaired and thus lower functioning than [REDACTED]. (T. 234.)

[REDACTED] further testified that the use of a timer in class, as described in the PSP, would “mortify” [REDACTED] by singling him out and exacerbating his anxiety. (T. 274-275.) Although Mr. [REDACTED] conceded a timer had been used by Mr. Price during tutoring sessions at home as a way to manage [REDACTED]’s OCD by timing math problems, he believed it was more acceptable in the privacy of the home rather than in a public-school classroom. (T. 275.) Additionally, Mr. [REDACTED] stated his objection to the District’s plan to use Pathways as the BCBA for [REDACTED], he and his wife had already paid Pathways for 28 sessions of behavioral services. (T. 299, 301.) Mr. [REDACTED] testified

³³ [REDACTED]’s mother, [REDACTED] did not testify at the hearing. On cross-examination, Mr. [REDACTED] frequently deferred to his wife’s knowledge and experience regarding [REDACTED], including his daily routines, school interactions, test scores, childhood experiences, and even medications. (T. 535, 536, 546, 557, 561, 581.)

that █████ made no academic progress with Pathways as he and the BCBA could not progress past the relationship-building stage. (T. 300.)

108.

Mr. █████ testified that during █████ had few to no friends while enrolled at Pope. (T. 179, 631-633.) █████ self-esteem and confidence also became so low while attending Pope that his feelings of isolation increased. (T. 169.) As Mr. █████ recounted, “. . . I think █████.] had such a negative experience that . . . he has said it’s not something with which he wants to be confronted with. It brings back—his exact words were, it brings back really bad memories.” (T. 180.)

109.

Regarding █████ proposed placement at Kell High School recommended in the 2017 and 2018 IEPs, Mr. █████ testified that he was unaware of any student or teacher. at Kell who was hostile to █████. He asserted, however, that “if █████ is not willing to go [to Kell, then], I am not going to force that.” (T. 303, 305-308.) Mr. █████ explained why he supported █████’s decision:

What I hate is the—right or wrong, the inference though with his experience in Pope, I doubt he’ll ever want to live in Georgia again. I—I think we could have earned another taxpayer. But that’s the impact so when you say, █████]’s never been to Kell, his experience with Pope was so traumatic it impacted, rightfully or wrongfully, but [*sic*] Kell is part of the Cobb County School District system and he didn’t see Kell being any different than Pope.

(T. 308.)

110.

Mr. █████ testified that he visited schools in North Carolina and the Salt Lake City area before the family decided █████ would attend Boulder Creek in 2017. (T. 185-186.) Mr. █████ testified that since attending Boulder Creek and Greenwood, █████. was no longer depressed. (T. 188.) █████. can now initiate his work without prompts and can complete assignments on his own. He has benefited from round-the-clock adult interventions as well as educational programming on

social interactions. (T. 263, 286.)

2. Christine Woodfin³⁴

111.

Ms. Woodfin is a certified educational planner³⁵ with 23 years' experience. (T. 18, 20, 21.) She has served "close to a thousand clients" and conducted more than 1,000 campus visits. (T. 24.) Although she has never worked within a public-school system, she has helped identify placements in public schools for her client students returning from a therapeutic school environment. (T. 108-109.) Ms. Woodfin also is a psychological counselor licensed in Texas, which allows her to give diagnoses and review evaluations. (T. 18, 23, 24, 30.) However, she does not practice in Georgia, nor has she actively practiced as a psychological counselor since her initial training in the early 1990s. (T. 18, 28-29.) Ms. Woodfin maintains memberships in several professional organizations, including the Independent Educational Consultants Association, for which she previously served on its Board of Directors. (T. 20-21, 25-26.)

112.

Ms. Woodfin testified that she has visited █████ repeatedly over the past few years and has kept up with his school placements. (T. 35.) During her first meeting with █████ in 2017, she found him to be so anxious and depressed that she "was surprised that [he] was not self-harming and suicidal." (T. 34, 38, 54.) His issues—particularly the rigidity and repeat questioning—were very evident. (T. 41.) In Ms. Woodfin's opinion, █████ needed "a lot of different modalities of therapy," including therapy in social skills. (T. 65-66.) She also testified that HHB was "really unsuccessful"

³⁴ At the hearing, Ms. Woodfin qualified as an expert in educational planning and placement, as well as licensed psychological counseling. (T. 27-28, 32.)

³⁵ At a minimum, certification requires at least seven years' practice, a master's degree in education or counseling, passing an examination, and the completion of 75 hours of continuing education every five years. (T. 19-20.)

in providing educational benefit to █████ because he became so depressed and isolated. (T. 48, 72, 151, 152.) Although Ms. Woodfin did not necessarily think █████ was “school-phobic,” she concluded that the District had provided a “hostile environment” for █████., and that █████. “had PTSD from school.” (T. 56, 62.) However, she has never formally diagnosed him with post-traumatic stress disorder. (T. 142.) In Ms. Woodfin’s opinion, had █████. continued at a school within the District, “he would have been suicidal.” (T. 67.)

113.

Ms. Woodfin testified that during her consulting work for █████ and his parents, she could find no therapeutic schools located in Georgia for high school males. (T. 116.) She did consider one therapeutic school in North Carolina, but ultimately passed because it was more vocationally oriented and had a slightly older student population. (T. 116.) Ms. Woodfin eventually found several out-of-state school options that she shared with █████’s parents, including Boulder Creek. (T. 54-55.)

114.

Ms. Woodfin described █████ progress at Boulder Creek as “two steps forward, one step back.” (T. 69.) She also noted that he accrued more academic hours while at Boulder Creek which ultimately enabled him to move to school with a less restrictive environment. (T. 69.) Ms. Woodfin found that █████ has made “amazing progress” during his time at Greenwood and is no longer depressed. (T. 83, 86, 158.) Ms. Woodfin, however, did not attend any meetings held by █████’s IEP team, nor did she ever visit Kell. (T. 60-61, 103, 107-108, 142, 152, 162.) Nonetheless, she testified at the hearing that the proposed IEPs’ plan to have an RBT assigned to █████. would have increased his anxiety and self-consciousness. (T. 89-90.)

3. *Dr. Peter Lake*³⁶

115.

Dr. Lake has been practicing child psychiatry for 28 years. (T. 362-363.) He attended medical school at the University of Iowa, followed by a four-year psychiatry general residency at Vanderbilt University. (T. 352.) He has worked for Rogers Memorial Hospital since 1994 and has served the majority of that time as the campus's medical director. (T. 353.) For the last four years, however, he has served solely as the medical director of Roger's adolescent center for OCD and anxiety. (T. 353.) Dr. Lake has significant and regular experience consulting on patients' educational plans and is well versed in special education law and the IEP process. (T. 353, 356, 382.) He also has attended numerous IEP meetings on behalf of his patients. (T. 356.) Dr. Lake is a member of the American Academy of Child and Adolescent Psychiatry and has been a volunteer clinical faculty member at the Medical College of Wisconsin and the University of Wisconsin in Madison. (T. 354, 355.)

116.

Dr. Lake testified that upon ██████ return to Rogers in June 2017, he had regressed so severely from his previous stay that he needed a therapeutic school for the coming fall. (T. 385, 446-447.) Dr. Lake attributed ██████'s condition to his lack of success at home and at school, and he also found ██████ to be fearful of the District in particular, and of public school in general. (T. 379, 387, 450.)

117.

According to Dr. Lake, large public high schools place children with ██████ disabilities at

³⁶ At the hearing, Dr. Lake qualified as an expert in child and adolescent psychiatry specializing in OCD, anxiety, and depression disorders, as well as autism spectrum disorders. (T. 356-357.) He further qualified as an expert in school and educational consultation and planning for children with disabilities. (T. 356-357.)

a significant disadvantage, in that the “realities of their hallways, lunchrooms, and common meeting areas” will create risks for a child with severe anxiety. (T. 378.) In contrast, therapeutic schools would have an entire staff who have knowledge and experience with students’ conditions such as anxiety and ADHD, and as well as overall education and treatment plans for such conditions. (T. 369.) He further testified that while █████ presented a “rather straightforward” case for his practice, the case was “probably a very rare situation in many regards for many school districts.” (T. 358; see also T. 376-377, 381-382, 390-391.) For instance, █████ often needed “on-the-spot” intervention, in which he was pulled aside and coached in a way that would position him to have success. (T. 375, 442-443.) At Rogers, these interventions were done by special education teachers, experiential therapists, a master’s-level therapist, or “bachelor’s prepared residential counselors” who are supervised by staff at the Ph.D. level. (T. 375, 395.)

118.

While Dr. Lake believed a therapeutic school was appropriate in the fall of 2017, he also testified that █████ OCD was intertwined with his own feelings of success, and thus could become “profoundly impairing” if he does not feel as if he is functioning normally in both an academic and social setting. (T. 369, 373-373.) For this reason, Dr. Lake did not recommend homebound studies or isolated special education rooms for █████. He concluded that having █████ in the classroom as much as possible was best, to allow for more opportunities for positive reinforcement. (T. 369-370, 378-79.) Dr. Lake also noted that █████, who was “college-eligible,” needed to be placed with students who had a similar IQ level as him, or otherwise his OCD would become even worse. (T. 372.)

119.

According to Dr. Lake, his experience with the District during the development of the 2017

IEP was not collegial. (T. 364.) He testified that the District never suggested any schools that he or the family could consider, other than public schools or programs within the District, nor did the school offer to send him any documentation to review. (T. 448.) Dr. Lake conceded, however, that he has never visited Pope or Kell. (T. 409-410.)

120.

Dr. Lake testified that the assignment of an RBT to assist ██████. as recommended in the 2018 IEP would have made his OCD and suppression worse, as it would intensify “his core obsession of there’s something wrong with me, I’m different.” (T. 393.) Dr. Lake said any person serving as ██████’s RBT (or, as a paraprofessional) “would have to be an extremely skilled and well-educated person with extensive experience doing exactly what ██████ needed on a regular basis of part of their regular job, day in and day out.” (T. 394.) A person trained only in the basics of ADA, according to Dr. Lake, would not be able to meet ██████’s needs: Without “a more comprehensive substantive plan for ██████’s overall development,” an RBT would not make sense. (T. 394-395, 450.) As for the proposed curriculum, Dr. Lake said the plan would “backfire” because it did not provide the “mainstream social and academic process that was the key to ██████’s] OCD being lower and a key to his depression not getting higher.” (T. 396-398.) Overall, the IEP “had a low, low probability of offering any success and a . . . big probability of making his situation worse.” (T. 394.) Regarding the proposed 2018 IEP, Dr. Lake testified that the curriculum would have been “a potentially even bigger error,” based on the progression ██████ had made while attending Boulder Creek. (T. 398-399.)

121.

Dr. Lake testified that he has not seen ██████ since the latter left Rogers in late 2017. (T. 419.) As for ██████’s ultimate enrollment at Boulder Creek, Dr. Lake stated that he found it to be

an appropriate placement, though he conceded he relied on Ms. Woodfin for “up-to-date details on the status of the program.” (T. 397.) When asked about the reduced academic load at Boulder Creek, Dr. Lake stated that such could have been extremely beneficial for ██████ as he worked to assimilate. (T. 416-417.) Overall, Dr. Lake testified that, after his time at Boulder Creek, ██████ was able to “very successfully” transition to a regular boarding school with special education support. (T. 423.)

122.

When asked at the hearing about ██████ escalating behavior issues during his last few days at Boulder Creek, Dr. Lake testified that any isolated “snapshot” of behavior is not indicative of ██████ overall progress, and that ██████ could have a day like that anytime between now and when he’s 40 years old.” (T. 420-421, 423.) According to Dr. Lake, ██████ oppositional behaviors are his defenses against low self-esteem, depression, and trauma from his previous school placement. (T. 427.) Such defense mechanisms and other disruptive behavior are not unusual for “all American boys,” particularly those with a combination of ADHD, OCD, and autism. (T. 364.) He added that ██████ “was ready for a change of placement to a . . . less restrictive environment, which is probably why he had a behavior problem near the end at Boulder Creek.” (T. 424-425.) He stated, however, that he could not recall reviewing the University of Utah’s report prepared following ██████ leaving Boulder Creek. (T. 425.)

123.

When asked about ██████’s reports of behavioral misconduct at Greenwood, Dr. Lake testified that such functioning “perfectly describe[ed] why we recommend these types of boarding schools,” and why ██████ required both social-interaction interventions and a residential program offering that support. (T. 430-36, 443.) He also stated that he had experienced similar moments

with ██████ “daily,” and behavioral issues do not in any way discount the progress ██████. had made. (T. 442-443.)³⁷

4. *Anne Swayze*³⁸

124.

Anne Swayze has served as the interim head of school at Greenwood for the three months prior to the due process hearing. (T. 463.) She previously served as assistant head of school for the 2018-2019 school year. (T. 463.) In that role, she worked with teachers to create individual programs with students as well as academic schedules. (T. 464.) Ms. Swayze has a Bachelor of Science from Indiana University and a Bachelor of Educational Leadership from the University of Colorado in Boulder. (T. 465.) She more than 30 years’ experience at independent schools in various roles, from teacher to residential-life staff to administrator. (T. 463-464.) However, she has never worked in a public-school setting. (T. 468.) As a teacher, Ms. Swayze has personally taught students with learning challenges or disabilities for 25 years. (T. 465-466.) She also has worked with children who have both OCD and ADHD a total of 30 times in her career. (T. 467-468.)

125.

Ms. Swayze testified that she came into contact with ██████. through her role as assistant head of school. (T. 481.) She described ██████ progress at ██████. as “nothing short of positive.” (T. 482, 488.) ██████. has made progress “tenfold” in all areas, including academics, social, and emotional matters. (T. 482-484, 494, 497.) According to Ms. Swayze ██████ also is continuing to work on

³⁷ Dr. Lake testified that the instance of inappropriately touching someone did not sound like an improvement for ██████ though he qualified this remark by stating such behavior is “very typical for ADHD.” (T. 441.)

³⁸ At the hearing, Ms. Swayze qualified as an expert in education and the education of students with disabilities, including the preparation, oversight, and support of individualized learning plans for students. (T. 466, 468-469.)

reducing his compulsion to repeat questions, and that he has acknowledged his need to work on it. (T. 486.) Ms. Swayze acknowledged that ██████ had challenges when he first started Greenwood, and that he “definitely pushed back” to test the limits upon his arrival. (T. 483, 498.) However, she stated that new students tended to act this way, as they “try to identify what their place is at school.” (T. 483, 528.) She also testified that students’ behavior at Greenwood is viewed on a continuum, and that staff make efforts to have interventions that will redirect ██████’s energy and help him understand why his behavior is inappropriate. (T. 507, 525.) As for “resets,” Ms. Swayze testified that they are “not uncommon.”

5. *Stephanie Smith*³⁹

126.

Stephanie Smith is the special education supervisor for the District, a position she has held for four years. (T. 635-636; Ex. R-309, p. 2332.) Ms. Smith provides daily supports for students with disabilities. (T. 636, 639-640.) She also helps develop FBAs and BIPs for the District, and she works frequently with IEP teams to develop ways to address students’ behavioral needs. (T. 637-638, 652-653, 655, 659.) While she is not a BCBA and RBT herself, the BCBA for the district works directly under her. (T. 653.) She attends about 150 to 200 IEP meetings a year, and she has either written or helped develop more than 100 FBAs in her career. (T. 660, 654.) Ms. Smith has a bachelor’s degree in early childhood education and a master’s degree in educational leadership. (T. 637; Ex. R-309, p. 2332.) She also is certified in educational leadership, elementary education, and special education adaptive curriculum for pre-K through 12th grade.

³⁹ Ms. Smith qualified as an expert in the following areas: provisions of services to students with disabilities; special education programming; development and implementation of IEPs; serving students with behavioral needs within the District; applied behavior analysis; and education planning for students with emotional behavioral disorders. (T. 664.) She also qualified as an expert in FBAs and the implementation of BIPs, to the extent she acts in a supervisory role. (T. 665.)

(T. 637, 643; Ex. R-309, pp. 2332, 2334.)

127.

Ms. Smith came to be involved with ██████ in her role as a special education supervisor, and by attending several of his IEP meetings in 2017. (T. 664-665; see also Ex. J-21, p. 341.) She has never personally met ██████.⁴⁰ (T. 714-715.) Ms. Smith testified that she recommended an FBA⁴¹ during one IEP because some of ██████'s behaviors hinted at “escape avoidance,” which was “maintaining the behavior that starts from OCD.” (T. 674-675.) Ms. Smith conceded, however, that she is not an expert in OCD, nor could she provide a definition of the disorder. (T. 716, 719-721.) Ms. Smith further stated that while the parents never gave consent for an FBA, the IEP team did not push to get consent, nor did she believe ██████ immediately needed an FBA given the supports provided in the PSP. (T. 674-675, 740, 742.)

128.

As for ██████'s PSP, Ms. Smith testified that its listed provisions were all things frequently done for students in the District. (T. 696.) She also stated that while the IEP team drafted the PSP, she collaborated outside the meeting with an independent BCBA to complete the protocols. (T. 749-750; 766; see also Ex. J-31, 825/2017 Recording, 01:35:00 to 01:40:00.) Ms. Smith further testified that the Thought Challenge Worksheet was specifically included in the PSP (as the Thought Challenge “Process”) because it had been “highly recommended” from ██████ outside therapists. (T. 748-749; see also Ex. J-25, p. 404.) She found the premise behind the worksheet

⁴⁰ Ms. Smith testified that she was incorrectly listed as the “general education teacher” on ██████'s June 2017 IEP report, when in fact she has never taught ██████ (T. 726-727; see also Ex. J-21, p. 341.)

⁴¹ According to Ms. Smith, an FBA looks at the function of a student's behavior. (T. 649.) There are four functions: self-reinforcing, escape, maintaining, and attention. (T. 649.) Data is collected, called antecedent behavioral context data (“ABC data”), to see what happens right before the behavior, as well as what stops the behavior. (T. 649-650.) The data is then analyzed and reviewed along with observations, parent inventories, and student surveys, to put in place strategies that teach students an appropriate replacement behavior. (T. 650.)

to be “similar to social mapping,” a strategy already used within the District. (T. 736, 748.) Social mapping helps “students with pragmatic needs to focus on expected, unexpected behaviors and allows them become of aware of that behavior and talk through it. (T. 734, 746-747.)

129.

Ms. Smith testified that the District had taken care to select an appropriate BCBA-supervised RBT to work with ■■■, and considered factors such as the RBT’s age, gender, and familiarity with autism. (T. 707.) The District also planned to have the RBT “blend in the classroom” by (A) giving him a badge and lanyard; and (B) having the RBT work “with anyone”—such as by redirecting off-task students—to avoid singling out ■■■. (T. 706-708.) As Ms. Smith described, the ideal candidate would have “a student teacher look.” (T. 707.)

130.

Ms. Smith contended that the IEP team discussed “collaborating with prevention intervention which is in our district” as well as working with “outside provider therapists.” (T. 719.) She admitted, however, that she did not consult with a psychiatrist, nor did the team bring in licensed counselors to review Dr. Lake’s recommendations. (T. 754, 754-755.) Rather, Ms. Smith said the team researched on its own from a special-education setting and consulted with BCBAAs. (T. 755.)⁴²

⁴² As Petitioner noted in his post-hearing brief, Ms. Smith made several inaccurate or inconsistent statements in her testimony. Notably, Ms. Smith testified that she only came to one IEP meeting after the May and June 2017 meetings, but IEP documents indicate she attended three more meetings. (T. 732; compare with Ex. P-2, p. 368; Ex. J-24, p. 402; Ex. J-26, p. 407; Ex. J-31, all recordings.) Ms. Smith also testified that she did not know Pathways had been used previously by the parents and had been unsuccessful, and she would not have used Pathways for the RBT had she known this fact. (T. 787, 788.) The recordings contradict this, as she was present during meetings when the past use of Pathways was discussed. (See, e.g., Ex. J-31, 9/5/2017 Recording, 01:30:00 and 02:42:50 to 02:46:00.)

6. *Andrea Jenkins-Mann*⁴³

131.

Andrea Jenkins-Mann was an assistant principal at Pope from 2015 to 2017. (T. 823; Ex. R-305, p. 2310.) She is now the principal at the District's McCleskey Middle School. (T. 822; Ex. R-305, p. 2310.) As assistant principal at Pope, Dr. Jenkins-Mann was responsible for student scheduling, and handled disciplinary matters. (T. 823-824, 836-837.) Dr. Jenkins-Mann has a bachelor's degree in secondary English education; a master's degree in educational administration; an education specialist degree in curriculum instruction; and a doctorate in curriculum and instruction (instructional leadership). (T. 824; Ex. R-305, p. 2309.) She is certified in educational leadership and is certified to teach grades 6 through 12 in Georgia. (Ex. R-305, p. 2310; T. 832-33.) She is not certified in special education, nor has she taught special education classes. (T. 836, 839.) Rather, her primary contact with special education has been limited to scheduling and educational planning, though she has participated in IEP team meetings. (T. 835-836, 837, 838-39.) She does not have expertise in treating OCD or anxiety. (T. 894.)

132.

As noted above, Dr. Jenkins-Mann was in frequent contact with █████ during his ninth-grade year at Pope. (See Part A.4, supra.) She agreed that █████'s 2.083 GPA and low ranking in his tenth-grade year were not commensurate with his ability, as shown by his testing data. (T. 914.) She also agreed that having an adult with █████ all day in school was embarrassing to █████ (T. 904.)

133.

As part of her scheduling role, Dr. Jenkins-Mann has worked with students transferring

⁴³ At the hearing, Dr. Jenkins-Mann qualified as an expert in the following areas: school administration; educational planning; instruction; and curriculum. (T. 832, 839, 841-842.) Her expertise is limited to the extent that covers ancillary administrative services provided to special education, as opposed to all facets of special education. (T. 841-842.)

from out-of-state placements and interprets the curricula data from their previous schools. (T. 826.) She would examine the former schools' transcripts to see whether the credits would fit into Georgia's requirements for graduation. (T. 826, 859.) When Dr. Jenkins-Mann evaluated [REDACTED] credits from Boulder Creek, she determined that the 6.25 credits would only translate to 2 credits in the District. (T. 859-863, 944-945; Ex. R-64; see also Ex. P-3, p. 797, 812.) As for Greenwood, while [REDACTED] earned A's and A-minuses, Dr. Jenkins-Mann found fault with many of those grades being based, in large part, on engagement, participation, classwork, homework, and/or behavior. (T. 874-877; see also Ex. J-30, p. 520.) In contrast, she testified that testing is the "most effective way" to see whether a student had mastered a skill, which is why grades within the District are based on 70% for "summative formative assessments," 20% from a "standardized test, Milestones, or a final exam"; and only 10% from classwork, participation, and/or homework. (T. 875-876.) Dr. Jenkins-Mann further testified that at the course description provided by Greenwood for its Integrated Math course taken by [REDACTED] indicated that not all concepts were introduced, and some of the concepts were below grade level.⁴⁴ (T. 877-78.) However, Dr. Jenkins-Mann is not familiar with Greenwood's curriculum, apart from reading the course descriptions. (See T. 890.)

7. *Margaret Ann Lytle-Griffin*⁴⁵

134.

Margaret Ann Lytle-Griffin is the autism coordinator for Kell. (T. 996.) Her job entails working with students with autism on general-education academics, social skills, and behavioral strategies. (T. 996.) She also has taught children with OCD. (T. 1002.) Ms. Lytle-Griffin started

⁴⁴ Specifically, Dr. Jenkins-Mann noted that using a "pictorial model . . . to translate word problems into algebraic expressions" is done in "upper elementary school.;" linear functions are done in sixth grade; and slope intercept is done in seventh grade. (Ex. J-30, p. 521; T. 877-78.)

⁴⁵ Ms. Lytle-Griffin qualified as an expert in the following areas: teaching special education students in general; and teaching students diagnosed with the eligibility categories of AU and OHI in the public K-12 setting. (T. 1002, 1007.)

teaching with the District in 2004, beginning at the HAVEN Academy. (T. 1000; Ex. R-304, p. 2305.) She has a bachelor's degree in communications and became certified to teach in Georgia in 2007 through the Georgia Teachers Alternative Program. (T. 998, 1002, 1003; Ex. R-304, pp. 2305, 2307.) She also was certified as a support special education teacher for students K through 12 in a general education setting.⁴⁶ (T. 998-999, 1004; Ex. R-304, p. 2305.)

135.

Ms. Lytle-Griffin testified that she had never met █████ but was assigned to be his case manager if he enrolled at Kell. (T. 1008.) She stated that the goal of █████'s IEPs was to "transition him in" without a "heavy load of core academics," because it would help to "reduce . . . anxiety" and "build relationships and trust." (T. 1015, 1018.) Ms. Lytle-Griffin stated that she had implemented objectives like those found in █████'s IEP for other students, and that Ms. Schoenike's recommendations for ADHD, OCD/anxiety, and autism spectrum disorder were even done on a "regular basis." (T. 1010, 1024.) She acknowledged however, that putting an adult with █████ was a trigger to his anxiety and OCD. (T. 1041.) She also agreed to that █████ had made progress in his private placements. (T. 1044.)

8. *Denise Pennington*⁴⁷

136.

Denise Pennington is a speech language pathologist diagnostician with the District. (T. 956; Ex. R-308, p. 2323.) She conducts evaluations and consultations, and also provides daily

⁴⁶ Ms. Lytle-Griffin explained that she would co-teach an academic class with a teacher certified to teach that academic content. (T. 1006.) Her role would be ensuring the special education student received the content and had appropriate accommodations in line with his IEP. (T. 1006-1007.)

⁴⁷ Ms. Pennington qualified as an expert in the following areas: speech language pathology; identification, evaluation, placement, and services for students with speech language disorders; and provision of speech language programming to students with disabilities. She is also qualified as an expert in the following areas, to the extent they are anchored in speech language pathology: evaluating students with disabilities; program development for students with disabilities; and preparation and implementation of IEP goals and objectives. (T. 963-966.)

support for students. (T. 956.) Ms. Pennington has worked in speech language pathology for more than 35 years, with the last 16 in the District. (See Ex. R-308.) She also engaged in private practice for 14 years. (T. 957.) Ms. Pennington has a bachelor's degree in general studies with a concentration in speech and hearing from the University of Louisiana Lafayette. (T. 957-958.) She has a master's degree from Louisiana State University. (T. 958.) Ms. Pennington is a licensed speech language pathologist in Georgia and has a speech language certificate from Georgia. (T. 958, 987; Ex. R-308, pp. 2331)

137.

Ms. Pennington testified that she has worked with OHI students before, as well as students with anxiety, OCD, and autism. (T. 958-959.) Had █████ returned to the District, she would have worked with him in a group setting to discuss such things as body language and facial expressions. (T. 980-981.) Other tools she planned to use with █████. included role-playing different social scenarios and watching videos. (T. 977-978, 980-981, 989.) Ms. Pennington testified that █████. also needed work on direct instruction, perspective taking, maintaining and keeping friends, reciprocal conversation skills, social interactions, and using humor. (T. 988-991.) Through these goals and objectives, she would have been trying to improve █████'s ability to perspective-take, as well as █████. "know[ing] what to say, what to do and if there was a breakdown, how to repair it." (T. 983.) CBT would not be included. (T. 987.) Ms. Pennington testified that she believed █████ would benefit from such services. (T. 983.)

9. *Dr. Vicki Bunke*⁴⁸

138.

Dr. Vicki Bunke has been a school psychologist for the District since 1998. (T. 1047.) Her primary responsibility is to conduct psycho-educational evaluations for students referred to special education. (T. 1048, 1050.) As a school psychologist, Dr. Bunke has evaluated and consulted for students with autism, anxiety, OCD and ADHD. (T. 1050-1052.) She also participates in IEP meetings multiple days a week and assists with developing goals and objectives for IEPs. (T. 1053, 1092.) Dr. Bunke has a bachelor's degree in psychology from the University of North Florida; a master's degree in clinical psychology from Mississippi State University; and a Ph.D. in school psychology from the University of Georgia. (T. 1048; Ex. R-313, p. 2347.) She is licensed to practice psychology in the State of Georgia, and she has a Georgia educator certificate. (Ex. R-313, pp. 2347, 2352.) Dr. Bunke also has engaged in private practice since 2009. (Ex. R-313, p. 2347.)

139.

Dr. Bunke testified that she was not part of [REDACTED] IEP team, and apart from reviewing his IEP in 2017, she was not involved in any IEP meetings. (T. 1108-1109.) However, she asserted that the final IEP for 2017 was "very comprehensive" and "incorporated to a large extent" her recommendations for [REDACTED] (T. 1075.) She also stated that the District already provides daily accommodations for students with autism, OCD, anxiety, and ADHD. (T. 1076.) On cross-examination, Dr. Bunke stated that she had not consulted with any of [REDACTED] medical doctors, including Dr. Lake or Dr. Chilakamarri. (T. 1091, 1102.) She also did not consult with the

⁴⁸ At the hearing, Dr. Bunke qualified as an expert in the following areas: psychology; evaluation of students with disabilities; and identification, evaluation, eligibility, and placement of, and services for, students with autism, anxiety, ADHD, and OCD. (T. 1059, 1064.)

University of Utah regarding ██████ treatment after he left Boulder Creek. (T. 1091.) There is evidence that Dr. Bunke has seen ██████. in person since his evaluation in 2014.⁴⁹

10. Jessica Coleman⁵⁰

140.

Jessica Coleman has been the director of special education compliance with the District since November 2018.⁵¹ She previously served as assistant director for four years. (T. 1114-1115; Ex. R-314, p. 2353.) Ms. Coleman develops procedures and practices for special education; implements and oversees IEPs; and observes students. (T. 1116, 1129.) Ms. Coleman has been in the special education field since 2004, exclusively in the District. (T. 1139.) She worked as a special-needs preschool teacher for three years before switching to a self-contained autism preschool class for two years, and then served as an autism trainer for elementary, middle, and high schools. (T. 1139, 1142, 1150; Ex. R.-314, p. 2353.) She also has experience teaching students with ADHD, executive functioning difficulties, and OCD. (T. 1127, 1149.) Ms. Coleman has a bachelor's degree in marketing from Kennesaw State University; a bachelor's degree "add-on" for special education from the University of Georgia following completion of a two-year program; a master's degree in leadership from Kennesaw State University; and a Specialist in Educational Leadership from Berry College. (T. 1120, 1140-1141; Ex. R-314, p.

⁴⁹ Dr. Bunke's role as school psychologist does not entail keeping ongoing therapeutic relationships with students diagnosed with OCD, autism, depression, or anxiety. (T. 1095.)

⁵⁰ Ms. Coleman qualified as an expert in the following areas: developing and implementing IEPs for students under the categories of ADHD executive function functioning deficits and autism; eligibility determination and redetermination for special education students ages 3-22 enrolled in public school; development and implementation of IEPs generally; programming within the District related to special education; and developing and implementing behavior interventions and services for special education students ages 3-22 enrolled in public school. She also qualified as an expert in the following categories, though with less gravitas: therapeutic and residential placements for special education students ages 3-22 enrolled in public schools; and services provided to special education students ages 3-22 enrolled in public school with the disability of OCD. (T. 1138-1139; 1150-1151.)

⁵¹ At the hearing, Ms. Coleman clarified that her CV incorrectly stated she assumed the director position in 2019. (T. 1119; Ex. R-314, p. 2353.)

■

2353.) Ms. Coleman is certified by the state of Georgia in educational leadership, Tier II. (T. 1122; Ex. R-314, p. 2354.) She is also certified to teach special education in a consultative manner for grades preschool through 12. (T. 1121-1122; Ex. R-314, p. 2354.)

141.

Ms. Coleman testified that she became familiar with [REDACTED] through reviewing his records, attending IEP meetings, and communicating with the former attorney for [REDACTED] parents. (T. 1152.) She has never met [REDACTED] in person. (T. 1152-1153, 1189.) In support of the IEPs recommending [REDACTED] placement at Kell, Ms. Coleman asserted that Kell offered “academic rigor” and was the least restrictive option for [REDACTED] because it offers services in a general education setting with nondisabled peers. (T. 1162, 1168.) She also stated that an RBT and BCBA were appropriate to address [REDACTED] specific behaviors, and that the IEPs incorporated recommendations from Dr. Lake and Rogers, including the Thought Challenge Process. (T. 1158, 1184, 1209.)

142.

One of Ms. Coleman’s responsibilities is to research residential placements. (T. 1132.) She testified that the District first looks at a student’s deficits and needs, and “then we research what is out there.” (T. 1195.) The District also collaborates with nearby school districts to see what therapeutic boarding schools they have considered, and also considers information furnished by the parents. (T. 1195.) When considering therapeutic schools, Ms. Coleman testified that the District looks at curriculum, the grading system, the student’s academic and social behavioral needs, and the school’s environment. (T. 1135, 1136.) The District closely reviews the academic rigor of the proposed residential placement to determine how much weight to give the transfer credits and to evaluate the student’s course load when they return to a District school. (T. 1136.) Ms. Coleman testified that the District “certainly has researched many . . . residential placements.”

(T. 1145.) She also noted that therapeutic schools exist in Georgia, though they admittedly are “limited.” (T. 1134.) Ms. Coleman testified that residential placements have happened in the District “probably 50 to 100” times over the past several years. (T. 1135.) Of the 15,000 special education students in the District, only three were in residential placement at the time of the hearing.⁵² (T. 1147.)

143.

Ms. Coleman further testified that the District fully considered the parents’ recommended placement for Boulder Creek, by reviewing a packet of information and consulting with a Boulder Creek staff member. (T. 1159.)⁵³ Ms. Coleman acknowledged that the Boulder Creek administrator sent “red line clarifications” following her conversation with Mr. Benson, as well as additional information. (T. 1196-1197.) Ms. Coleman stated that District’s IEP team members compared its services to Boulder Creek and concluded that the District could offer “the same social emotional piece, for social emotional learning,” as well as “a mainstream, . . . general education setting.” (T. 1160.) She further stated the following: “Unlike Boulder Creek which is for students . . . with disabilities, there are nondisabled peers in our general education setting which would be a mainstream setting with intensive supports through a registered behavior technician, as well as oversight through a BCBA.” (T. 1160.) Ms. Coleman asserted that she had difficulty understanding what Boulder Creek could offer that was different from the District’s offer. (T. 1160-1161.)

⁵² Ms. Coleman stated that students were at Devereux, a psychiatric residential treatment facility that is “typically for students that are coming through the Department of Justice System, the Juvenile Justice.” (T. 1143, 1144.)

⁵³ Ms. Coleman testified that the District initially did not have consent to speak with Boulder Creek about [REDACTED], specifically, so the first call was restricted to general information. (T. 1204.) Ms. Coleman stated that following that conversation, the parents offered verbal consent for the District to get specific information. (T. 1204.)

144.

Moreover, Ms. Coleman testified that ██████. did not appear to make academic progress while at Boulder Creek, “[b]ecause he was not able to move about the courses . . . and pass the courses . . . to move from grade level to grade level.” (T. 1164-1165.) She testified that based on her review of documents from Greenwood, she did not believe that school provided a “full courseload of academics for a student with ██████’s ability or his level in high school.” (T. 1168.) She concluded that Greenwood’s curriculum was “much less rigorous,” and that wrapping behavior into his academic grade did not show he had gained knowledge of the course. (T. 1171-172.) Ms. Coleman conceded that she has never spoken with the director of either Boulder Creek or Greenwood. (T. 1204.)

E. Repayment Relief

145.

In his Complaint, ██████ sought reimbursement for expenses incurred during his placement at Boulder Creek; his two years at Greenwood; related travel costs to both schools; and tutoring services.⁵⁴ (Case file, OSAH Form 1, Complaint, p. 14.) At the hearing, ██████ father testified that the reimbursed funds would go toward ██████’s post-secondary education. (T. 166.)

146.

At the hearing, ██████. presented the following evidence showing a grand total of \$301,350.00 in sought reimbursement:

- The cost of attending Boulder Creek from September 2017 to May 2018 (for one-time admission fee and monthly tuition) totals \$84,958.90. (Ex. P-5, pp. 954-963.)⁵⁵

⁵⁴ The complaint also referenced reimbursement for psychological services. (Case file, OSAH Form 1, Complaint, p. 14.) However, ██████ father testified that he did not include those expenses in the provided documentation, as he is trying to limit ██████’s request for relief to only educational costs. (T. 245, 246.)

⁵⁵ The summary page lists \$84,959.00, but the providing documentation shows a ten-cent difference. (Compare Ex. P-5, p. 949 with Ex. P-5, pp. 954-963.) The invoices for Boulder Creek also listed other expenses that Petitioner

- The cost of attending Greenwood for the 2018-2019 school year (for tuition) totals \$79,900.00. (Ex. P-5, p. 1002.)
- The cost of attending Greenwood for the 2019-2020 school year (for tuition, prepaid) totals \$ 83,000.00. (Ex. P-5, p. 1019.)
- The evidence presented for travel costs breaks down as follows:
 - To and from Boulder Creek for the 2017-2018 school year totals \$18,666.89 (See Ex. P-5, p. 949.)
 - To and from Greenwood for the 2018-2019 school year totals \$13,311.75. (See Ex. P-5, p. 949.)
 - To and from Greenwood for the 2019-2020 totals \$9,017.70. (See Ex. P-5, p. 949.)
 - The travel costs listed above cover █████'s personal travel any time he moved between the school and home. Additionally, the costs cover travel expenses for his mother, father, and sister whenever they visited the school. (T. 246-247; Ex. P-5, pp. 1024-1222.)
 - The travel costs listed above include the cost for airline tickets; airline baggage fees; lodging for █████'s family members; vehicle rentals; fuel; parking; meals; and shipping costs. (T. 254-255; Ex. P-5, pp. 949-952.)
 - █████ father also testified at the hearing that Boulder Creek and Greenwood required parent involvement in educational and therapeutic activities and meetings, thus necessitating █████s parents to make regular trips to the out-of-state schools. Boulder Creek also requires mandatory two-day parent workshops, which were scheduled twice a year in calendar year 2017. (T. 246-247; Ex. P-3, p. 827.) █████'s father also testified that Boulder Creek is in an isolated location in Idaho; to get there from Georgia, █████ flies to Seattle, Washington, and then drives 2 ½ hours, which was a full day of travel. (T. 184.)
- The costs for the educational consultant, Christie Woodfin, which total \$9,345.00. (Ex. P-5, pp. 1227-1233.)
- Tutoring expenses accrued during █████.'s HHB study from April through May 2017, which total \$3,150.00. (Ex. P-5, pp. 1222-1226.)

III. CONCLUSIONS OF LAW

1.

This case is governed by the enabling act for IDEA found at 20 U.S.C. § 1400, et seq.; its

did not identify or explain for reimbursement purposes, including charges for a “Dr. Unis.” (See Ex. P-5, pp. 954-963.)

implementing federal regulations, 34 C.F.R. § 300.01, et seq.; and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01, et seq. Procedures for the conduct of the administrative hearing are found in the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-1 et seq., and the rules of the Office of State Administrative Hearings found at Ga. Comp. R. & Regs. 616-1-1 et seq.

2.

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 complaint. 20 U.S.C. § 1415(b)(6)(A); Schaffer v. Weast, 546 U.S. 49, 67 (2005). The “[IDEA] ‘creates a presumption in favor of the education placement established by a child’s IEP.’” Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1291-1292 (11th Cir. 2001); see also Schaffer, 546 U.S. at 62; 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, █████ bears the burden of persuasion and must produce sufficient evidence to support the allegations raised in the Complaint. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3.

Claims brought under IDEA are subject to a two-year statute of limitations. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2). Here, because █████’s Complaint was filed on March 13, 2019, only IDEA violations occurring between March 13, 2017, and March 13, 2019, are at issue in this proceeding. Id.

4.

This Court’s review is limited to the issues █████ presented in his due process complaint.

20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(3)(j); see also B.P. v. New York City Dep’t of Educ., 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012). A petitioner who files a due process complaint may raise no other issues at the hearing unless the opposing party agrees. See 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

Brief Overview of IDEA

5.

The overriding purpose of IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living” 20 U.S.C. § 1400(d)(1)(A).

6.

IDEA requires school districts to provide a student eligible for student education services with a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”). 20 U.S.C. § 1412(a)(1), (5). The statute offers the following definition of FAPE:

. . . The term “free appropriate public education” means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 614(d) [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9); 34 C.F.R. §§ 300.17, 300.320 to 300.324. Related services include the following:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. § 1401(26)(A).

7.

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 the Hendrick Hudson Cent. Sch. Dist., Westchester Co., et al. v. Rowley, 458 U.S. 176, 189 (1982); see also W.C. v. Cobb Cnty. Sch. Dist., 407 F. Supp. 2d 1351, 1359 (N.D. Ga. 2005). The U.S. Supreme Court in Rowley described 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.

8.

In Rowley, the U.S. Supreme Court developed a two-part test for determining whether FAPE has been provided. Id. at 206. The first inquiry is whether the school district complied with the procedures set forth in IDEA. Id. The second inquiry is whether the IEP developed through these procedures is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-07.

9.

Under the first prong of the Rowley test, a procedural violation is not a *per se* denial of a FAPE. Weiss by and Through Weiss v. School Bd., 141 F.3d 990, 996 (11th Cir. 1998). This Court is authorized to find that [REDACTED] was deprived of FAPE based on a procedural violation “only if the procedural inadequacies

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.”

20 U.S.C. § 1415(f)(3)(E)(ii); see also 34 C.F.R. § 300.513(a)(2).

10.

Important procedural rights for the student and parents include the right to give informed consent, the right to an impartial due-process hearing, and the right to participate in the decision-making process. See 20 U.S.C. § 1415(b), (d), and (f). One example of a procedural right parents have is the right to be members of “any group that makes decisions on the educational placement of their child.” 20 U.S.C. § 1414(e); 34 C.F.R. § 300.322. In Weiss, the Court held that where a family has “full and effective participation in the IEP process,” the purpose of the procedural requirements are not thwarted. Weiss, 141 F.3d at 996.

11.

Regarding the second prong of the Rowley inquiry, the U.S. Supreme Court provided the following clarification in 2017: “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.” Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

This requirement does not require that a child's IEP bring the child to grade-level achievement; if it is not reasonable to expect a child to achieve grade-level advancement, then his IEP need not aim for such. Id. at 1000-01. Nevertheless, "his educational program must be appropriately ambitious in light of his circumstances." Id. at 1000. Importantly, the Court in Andrew F. noted that its lack of clarity in defining what exactly "'appropriate' progress will look like" is not an excuse for reviewing courts "'to substitute their own notions of sound educational policy for those of the school authorities which they review.'" Id. at 1001 (quoting Rowley, 458 U.S. at 206).

12.

Also under the second prong of the Rowley test, a school district is not required to provide an education that will "maximize" a disabled student's potential. Instead, IDEA mandates only "an education that is specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from the instruction." Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 n.1 (11th Cir. 2003) (quotation and citations omitted); see also JSK v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1573 (11th Cir. 1991); Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 655 (11th Cir. 1990). However, as Andrew F. made clear, this standard is "more demanding than the 'merely more than *de minimis*' test." Andrew F., 137 S. Ct. at 1000.

13.

Furthermore, IDEA does not require a school district to "guarantee a particular outcome." W.C., 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 the courts should pay 'great deference' to the educators who developed the IEP." Id. (citing JSK 941 F.2d at 1573. Furthermore, less weight may be given to experts' opinions if the experts "based their determination on limited observations of [the child] and on the word of [the child's] parents" and

“neither witness consulted [the child’s] teachers nor requested documentation underlying the IEP.”

Devine, 249 F.3d at 1292-93.

· **Denial of FAPE**

14.

In the instant matter, Petitioner [REDACTED] has alleged that the District failed to provide [REDACTED] with FAPE by committing procedural violations as well as by denying FAPE on substantive grounds.

Specifically, [REDACTED] asserts that:

- The District failed to consider residential placement for [REDACTED] starting from his return from Rogers in early 2017, and instead predetermined [REDACTED]’s placement within the District;
- The District placed [REDACTED] in HHB in the spring of 2017, which ultimately led to a deterioration of his condition;
- The District’s IEPs in 2017 and 2018 were not reasonably calculated to result in meaningful benefit;
- The IEPs failed to acknowledge [REDACTED]’s past experiences of social failure, bullying, and teasing;
- The District declined to use its own experts, or consider outside experts’ input or recommendations, when deciding [REDACTED]’s placement; and
- The District delayed the implementation of a completed IEP, to [REDACTED]’s detriment.

(See Case File, OSAH Form 1, Complaint.) The claims shall be addressed below.⁵⁶

⁵⁶ Petitioner offered arguments for three other claims at various stages in the proceeding. As these claims fall outside the scope of the Complaint, and as Respondent never acquiesced to their inclusion, this Court shall not address them here. See 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d). The three claims are as follows:

- At the top of the Complaint form, Petitioner checked off the box marked “Evaluation (process of assessment testing the child)” to indicate the reason for requesting a due process hearing. (Case File, OSAH Form 1, Complaint, p. 2). The undersigned later noted, in the introduction of a prior order, that the Complaint challenged [REDACTED]’s “evaluation.” (Case File, Order, filed Aug. 16, 2019.) However, upon further examination, Petitioner in fact offered no substantive challenge regarding evaluations, nor did Petitioner address this challenge in his post-hearing brief. (See Case File, OSAH Form 1, Complaint; Petitioner’s Post-Hearing Brief, filed Dec. 13, 2019.)
- Petitioner’s post-hearing brief asserts that the District “never identified [REDACTED] as a child with emotional disability.” (Case File, Petitioner’s Post-Hearing Brief, p. 6, filed Dec. 13, 2019.) Although evidence

A. The District failed to consider residential placement for █████ and predetermined █████ placement in the District.

15.

█████ asserts the District predetermined that he would remain in a District placement and not be moved to a residential school, regardless of the recommendations or other input provided by the parents and their experts. The District, in turn, argues that █████'s parents had the opportunity to air their concerns and views during multiple IEP meetings, and that the District reviewed both Dr. Lake's recommendations and information about Boulder Creek before developing their placement offering at Kell High School.

1. Placement Overview

16.

Before addressing the question of predetermination, placement in general should first be reviewed. IDEA contemplates a continuum of educational placements to meet the needs of children with disabilities in the least restrictive environment possible. Depending on the nature and severity of their disability, a child may be instructed in the following educational placements:

- the general education classroom with age-appropriate, non-disabled peers; or
- outside the general classroom with other individuals or in small groups; or
- at a separate day school or program; or
- through home-based instruction; or
- a residential placement in-state or out-of-state; or
- hospital/homebound instruction.

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

presented at the hearing touched on █████ eligibility assessments, Respondent never implicitly or explicitly consented to the inclusion of this type of claim.

- Petitioner's post-hearing brief mentions—in the proposed Findings of Fact—that the District violated Ga. Comp. R. & Reg. 160-4-2-.31(2)(a)(4) by continuing HHB services without the required medical authorization. (Case File, Petitioner's Post-Hearing Brief, p. 8 n. 5, filed Dec. 13, 2019.) The Complaint, however, does not mention this alleged procedural violation, nor was it raised at any time during the hearing. (Case File, OSAH Form 1, Complaint.)

17.

It is up to the IEP Team to determine the LRE for each student. R.L. v. Miami-Dade Cnty. 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.”) (quotation and citation omitted); see also 34 C.F.R. § 300.116(a).

18.

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.” 20 U.S.C. § 1412(a)(5)(A). The goal of this statutory requirement is to “mainstream” children with disabilities in regular education classrooms, to the “maximum extent appropriate,” reserving more restrictive educational placements for children with special needs. Greer v. Rome City Sch Dist., 950 F.2d 688, 695 (11th Cir. 1991), opinion withdrawn, 956 F.3d 1025 (11th Cir. 1992), and opinion reinstated in part, 967 F.2d 470 (11th Cir. 1992). While mainstreaming is not required for each student with a disability, IDEA maintains a strong preference for it. See 20 U.S.C. § 1412(a)(5); see also Beth B. v. Van Clay, 282 F.3d 493, 498 (7th Cir. 2002) (holding that a “district must mainstream [a student]—that is, provide her an education with her nondisabled peers—to the ‘greatest extent appropriate’”) (citing 20 U.S.C. § 1412(a)(5)).

2. *Predetermination Overview*

19.

A school district engages in predetermination “when [it] makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to

fully participate as equal members of the IEP team.” R.L., 757 F.3d at 1188 (citations omitted). In other words, the school district’s team members may not come to the IEP meeting with “closed minds,” already having decided “material aspects of the child’s educational program without parental input.” Nonetheless, pre-formed opinions on placement do not constitute predetermination. Of course, a school district may come to an IEP meeting with ideas about what is appropriate for the student, so long as those pre-formed opinions do not prohibit the parents’ meaningful participation in planning their child’s education. R.L., 757 F. 3d at 1188. “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” Id. Rather, the school district must come to the IEP meeting with an “open mind” and be receptive and responsive to the parents’ position, to the degree that they “might possibly be swayed by the parents’ opinions.” Id. See also Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir. 2004) (holding that, when there is nothing a parent can say to change a school system’s determination of appropriate services, the parents’ “participation was no more than after the fact involvement”). The school district can make this showing by evidence that it was “receptive and responsive at all stages to the parents’ position, even if it was ultimately rejected.” R.L., 757 F.3d at 1188 (quotation and citation omitted) Such responses must be “meaningful” and make it clear that the school district “actually considered the parents’ points.” Id. at 1188-89.

20.

Lastly, the parental right to participate in the development of an appropriate educational program for the child does not mean parents have an absolute right to dictate the outcome of the IEP process. See White v. Ascension Parish Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003) (“The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such.”); Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657 (8th Cir.

1999) (“[T]IDEA does not require school districts simply to accede to parents’ demands without considering any suitable alternatives.”).

3. *Analysis*

21.

There is no dispute that ██████’s parents robustly participated in every IEP meeting from March 2017 through August 2018. In addition, his parents invited Dr. Lake to call in and participate with the IEP team discussions on two separate occasions; provided IEP recommendations from Rogers; gave input on proposed goals and objectives; offered insight into ██████ disability manifestations, such as his repetitive questioning; and detailed ██████’s feelings of isolation and bullying during his time at Pope. The recordings of these meetings also show that the District team members listened to the parents’ concerns and in certain instances incorporated their input into the IEP, such as by increasing HHB instruction hours, adding counseling services to the IEP, and including an additional academic course in the 2018 IEP. Even so, the fact that ██████’s parents actively contributed to certain portions of the proposed IEP does not in itself negate the presence of predetermination as to the question of ██████’s ultimate *placement*. See Deal, 392 F.3d at 858-59 (concluding that, while parents contributed to descriptions of student’s present level of performance and stated goals and objectives, predetermination still occurred because parents could not contribute to decision about one-one-one ABA program).

22.

Having carefully reviewed the recordings of the IEP meetings and reviewing all other evidence, this Court concludes that ██████ ultimate placement in the District was predetermined by District team members, to a degree. Based on the record, the review of the parents’ preferred placement, Boulder Creek, was limited to one abbreviated phone call with the registrar and a

review of provided written materials. The parents' efforts to contribute more information also seemed stymied, as when ██████ mother offered to re-call the registrar at Boulder Creek during one IEP meeting to clarify information about the school's curriculum. See R.L., 757 F.3d at 1188 (school district showing it is "receptive and responsive" to parents' position at all stages); see also D.M. v. Seattle Sch. Dist., No. C15-1390-MAT, 2016 U.S. Dist. LEXIS 122519, at *60 (W.D. Wash. Sep. 9, 2016) (noting that a "give and take" is required when considering placement proposals). Additionally, although Ms. Coleman testified that the District has used several residential schools in the past and collaborates with nearby districts for other placement options, nothing in the record suggests that such research occurred on behalf of ██████ beyond its cursory look at Boulder Creek.

23.

The District contends that it was the parents who had to be reminded repeatedly that all data must first be considered before any placement decision could be made.⁵⁷ See R.L., 757 F.3d at 1177 (placement must be based on IEP). Indeed, the parents made clear their preference for residential placement multiple times during the four IEP meetings leading up to the placement discussion. Yet after listening to more than 24 hours of audio recording from nine IEP meetings, this Court is hard pressed to find much evidence that the District truly was "receptive and responsive" to the parents' position. See id. From March to September 2017, the parents raised the same concerns over and over again about ██████ need for the immersive support and therapy he would get at a therapeutic school. The team also held at least two phone calls with Dr. Lake and devoted most of their questions to getting "strategies" for ██████ all while ignoring the psychiatrist's overall recommendation of a therapeutic school for his fragile patient. In short, for

⁵⁷ (Respondent's Proposed Findings of Fact and Conclusions of Law, pp. 11, 30, filed Dec. 13, 2019.)

all the feedback and psychiatric opinions the parents presented in support of private placement, nothing seemed to sway the District's focus on returning ██████ to District schools. See Deal, 392 F.3d at 858.

24.

Perhaps more telling, the record presents conflicting reasons for the District's rejection of residential placement. In both the 2017 PWN and her hearing testimony, Ms. Coleman contended the District rejected Boulder Creek because District schools could offer ██████ the same social-emotional and other supports, but in a less-restrictive, general-education setting. The PWN also stated that GNETS could have provided ██████ with the therapeutic supports he needed. Yet during both the March 24 and September 5 meetings in 2017, the District's own team members outright *rejected* the GNETS program as a viable option for ██████. Even more significantly, during the placement meeting on September 5, the District characterized ██████'s initial placement at Kell as a transitional period to collect more data about ██████ and his behaviors, with Ms. Coleman stating that she could not yet say that placement should be residential. See R.L., 757 F.3d at 1189 (finding that predetermination occurred in instance when a school's reason for rejecting private placement was "directly contradicted at the [IEP] meeting"). In the same meeting, Ms. Coleman noted that the problem with choosing residential placement at that time was that it "skipp[ed] over the continuum" of placement, presumably meaning that other in-district options should be tried before going outside the District. Hence, even if the District was leaving the door open for future residential placement, its objective for the fall of 2017 was to have ██████ back in its schools to collect data, regardless of what the parents and their experts advocated and recommended. Such an intent constitutes improper predetermination. See M.S. v. L.A. Unified Sch. Dist., 913 F.3d 1119, 1137 (9th Cir. 2019) (determining that predetermination occurs if the school district "steers

the IEP to a predetermined placement”) (citation and quotations omitted); N.L. v. Knox Cnty. Schs., 315 F.3d 688, 693-94 (6th Cir. 2003) (noting that school system representatives should “come to the [IEP] meeting with suggestions and open minds, not a required course of action”).⁵⁸

25.

Accordingly, as the District’s predetermined placement for ██████ in 2017 significantly impeded his opportunity (through his parents) to participate in the IEP process and decisions, this procedural violation denied him FAPE. See 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Rowley, 458 U.S. at 206-07.

B. The District placed ██████ in HHB in the spring of 2017, which ultimately led to a deterioration in his condition.

26.

██████ contends that the decision to place ██████ on continued HHB following his return from Rogers in February 2017 denied him FAPE by leading to a deterioration of his condition, and by providing a flawed curriculum with too much work that could only be completed with the aid of private tutors hired by his parents. Respondent, in turn, argues that HHB was the LRE given the circumstances at the time, and ██████ ultimately succeeded in those courses.

27.

Hospital/homebound services, or HHB, involve academic instruction and other services to students who are confined at home or in a health care facility for periods of time that would prevent normal school attendance. Ga. Comp. R. & Regs. 160-4-2-.31(1)(d). These services are considered “temporary” if needed for more than 10 consecutive school days but fewer than nine

⁵⁸ As for the placement decision in the 2018 IEP, any evidence of predetermination does not rise to the same level as for the 2017 IEP. While the District essentially carried over its proposed IEP from 2017 to 2018, the IEP meeting itself was perfunctory, with neither the parents nor the District engaging in meaningful debate about placement.

weeks. Id. 160-4-2-.31(1)(l). Each week, students on HHB receive a minimum of three hours of instruction by a certified teacher. Id. 160-4-2-.31(4)(a), (c).

28.

As noted *supra*, the IDEA expresses a strong preference for mainstreaming and requires education with nondisabled peers to the maximum extent possible. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2); see also Rowley, 458 U.S. at 202; Greer, 950 F.2d at 695. Therefore, restrictive placements such as homebound services are generally disfavored, and are to be used only as a last resort when other, less restrictive settings have failed. 64 Fed. Reg. 12,638 (Mar. 12, 1999) (“Home instruction is ... the most restrictive type of placement ...”). See also Dep’t of Educ. v. Katherine D., 727 F.2d 809, 818 (9th Cir. 1983) (“Hospitalized and homebound care should be considered to be among the least advantageous educational arrangements [and are] to be utilized only when a more normalized process of education is unsuitable for a student who has severe health restrictions.”). However, having a student remain in homebound services to make up credits before the end of the school year can be appropriate in some instances, if the period of home study is minimal. See, e.g., Gwinnett Co. Sch. Dist. v. Ga. State Educ. Agency, OSAH-DOE-SE-67 (ruling that homebound services were appropriate when a student needed to make up credits with thirteen days left in the school year); cf. D. v. Ambach, 520 F. Supp. 196, 204 (E.D.N.Y. 1981) (acknowledging homebound services may be appropriate due to the difficulty in moving a child to a new school during school year). See also Tindell v. Evansville-Vanderburgh Sch. Corp., 805 F. Supp. 2d 630, 649 (S.D. Ind. 2011) (finding homebound to be “the most appropriate educational situation in light of [the student’s] psychiatric issues,” when uncertainty still existed as to residential placement).

29.

Here, the record shows the IEP team decided to place ██████. in HHB in the spring of 2017 for several reasons: to ease him back into school routines following his hospitalization; to have him complete missing credits; and because ██████ refused to physically return to Pope. By all accounts, this period of HHB was envisioned as temporary. Yet in ██████ specific case, even temporary HHB proved too restrictive. As Dr. Lake explained, a student’s OCD can become “profoundly impairing” if he is isolated from his peers, as he needs to feel he is functioning normally in an academic or social setting. Dr. Lake relayed as much—as well as his disfavor of homebound studies—to the IEP team during its meeting on March 24, 2017, mere minutes before team members began plans for HHB services. The unfortunate result of this isolation, Dr. Lake testified, was an overall decline in ██████ condition that led to re-hospitalization at Rogers.

30.

Admittedly, the District faced limited options with ██████. in March 2017: He was a mentally fragile child who would not willingly return to Pope, who was academically behind his peers, and who had two months or more of the 2017 spring semester still to go. Despite these limitations, the potential for ██████ to suffer mental harm from isolation outweighed any advantages derived from HHB. See 34 C.F.R. 300.116(d) (“In selecting the LRE, consideration is given to any potential harmful effect on the child”) See also Chris D. v. Montgomery Cnty. Bd. of Educ., 743 F. Supp. 1524 (M.D. Ala. 1990) (recognizing full-time residential placement as less restrictive than individual instruction either in the home or a school building, as the student would have the opportunity to interact with other students if placed in a residential setting); Metropolitan Sch. Dist. of Lawrence Twp., 36 IDELR 282 (SEA Ind. 2002) (holding that homebound placement for an autistic student is inappropriate because the student had no contact with other students).

31.

As for the claim that ██████'s HHB assignments and instruction in themselves were insufficient, ██████ has met his burden by a preponderance. The records show that ██████'s parents separately paid for up to 20 additional hours of tutoring each week, in addition to the five or seven instructional hours of HHB contained in the IEP. Discussions during IEP meetings also touched on the workload of assignments, noting that they should be reduced so long as ██████ shows mastery of the concept. These same discussions also brought up that ██████ needed extra time for reassurances, breaks, and to work through things—all telltale signals of his disabilities' manifestations. Even though ██████ passed both HHB courses, the totality of the evidence suggests that he did not do so solely with the services provided by HHB. Instead, with the isolation aggravating his disabilities, ██████ performance suffered to the point of requiring even more one-on-one instruction, guidance, and monitoring.

32.

Accordingly, as ██████ suffered direct harm from HHB as an improper LRE placement, he suffered a denial of FAPE. 20 U.S.C. § 1412(a)(5); Rowley, 458 U.S. at 206-07.

C. **The District's IEPs were not reasonably calculated to result in meaningful benefit.**

33.

The bulk of ██████ claims rest on substantive challenges to the 2017 and 2018 IEPs. The District, in turn, asserts that the IEPs sufficiently provided FAPE, to the extent required in Endrew F.

34.

“In evaluating the appropriateness of an IEP, the Court must determine the measure and

adequacy of the IEP at the time it was offered to the student and not at some later date.” Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331, 1345 (N.D. Ga. 2007) (citing Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 (3rd Cir. 1995)), aff’d, 518 F.3d 1275 (11th Cir. 2008). An IEP “is a snapshot, not a retrospective. In striving for appropriateness, an IEP must consider what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated. Mandy S. v. Fulton Cnty. Sch. Dist., 205 F. Supp. 2d 1358, 1367 (N.D. Ga. 2000), aff’d without opinion, 273 F.3d 1114 (11th Cir. 2001). Here, as the 2017 and 2018 IEPs were never actually implemented, their sufficiency must be measured as of the time they were developed. S.M. v. Gwinnett Cty. Sch. Dist., No. 1:14-CV-247-MHC, 2015 U.S. Dist. LEXIS 194582, at *14 (N.D. Ga. May 29, 2015), aff’d, 646 F. App’x 763 (11th Cir. 2016).

1. 2017 IEP

35.

In many respects, the proposed IEP for the 2017-2018 school year was an extensive overhaul of [REDACTED] prior plan. The IEP would move [REDACTED] from Pope to Kell, where he would take Study Skills and Social Skills in the special-education setting, and an elective and credit recovery for English in the general-education setting. [REDACTED] would receive one-on-one assistance from an RBT and follow an extensive PSP, which incorporated multiple suggestions from Rogers and the parents for handling behaviors such as [REDACTED] repeated questioning and need for breaks. [REDACTED] would have his case manager to support him, a safe place to go for breaks, and a transition plan for starting his new school.

36.

Despite these provisions, the 2017 IEP fell far short of providing [REDACTED] with meaningful benefit. Dr. Lake credibly testified at the hearing to [REDACTED]’s fragile condition as of September 2017:

His OCD had morphed into a belief that no one liked or understood him, and he also was generally fearful of both the District and public school in general, phobias which Dr. Lake directly attributed to █████ morphed OCD, his other conditions, and his experience at Pope. See 34 C.F.R. § 300.320(a)(2)(i)(B) (IEP’s academic and functional goals should be designed to meet educational needs *resulting from child’s disability*); Ga. Comp. R. & Regs. 160-4-7-.06(1)(b)(2) (same). While the District framed █████’s refusal to return to District schools as a negative attitude that needed to be overcome, the Court is persuaded by Dr. Lake’s opinion that his recalcitrance stemmed from his disabilities.

37.

Dr. Lake also credibly testified that in the fall of 2017, █████. needed a restrictive therapeutic school which would incorporate therapies and counseling that were entirely absent from the 2017 IEP. While that IEP offered new support strategies such as the Thought Challenge Process, the planned interventions lacked the intensity and frequency within a closed environment that █████ required at the time. Given Dr. Lake’s medical and educational-planning credentials, as well as his role as █████ treating psychiatrist during his stays at Rogers, the District’s decision to reject his repeated recommendations is somewhat baffling. See Taylor by Holbrook v. Bd. of Educ., 649 F. Supp. 1253, 1255-58 (N.D.N.Y. 1986) (where school district failed to consider recommendations of persons “most knowledgeable” about the child, including his doctors, the IEP was not reasonably calculated to enable the child to receive education benefits).

38.

Dr. Lake’s assessment of █████ conflicts with the opinions of several District members. Ms. Smith, Ms. Lytle-Griffin, and Ms. Coleman all testified at the hearing that both Kell and the District had the proper resources to support █████ Ms. Coleman, in particular, saw the District’s

curriculum as providing more “academic rigor” than a therapeutic school. Their testimony is less reliable than Dr. Lake on this matter, in large part because none of the three District employees are experts in OCD, and none had even met ██████ in person. Also, while Dr. Bunke, the District psychologist, deemed ██████’s IEP acceptable, it had been three years since she had seen him in person. Dr. Lake, in contrast, has more than two decades of experience treating OCD patients and had directly treated ██████ in the months leading up to September 2017. As noted *supra*, his opinions on ██████ condition were both credible and reliable. And while academic rigor is certainly critical in all education plans, the record belies any claim that the 2017 IEP in fact offered such rigor. ██████ schedule had only one academic course, and that was a credit-recovery program completed in a computer lab. Such a light load does not correspond to the totality of the evidence showing ██████ to be a bright student who has demonstrated academic strengths. Even if the course load had matched his intelligence and academic abilities, it is doubtful ██████ was able to even access education in September 2017, based on Dr. Lake’s assessment.

39.

Accordingly, ██████, by a preponderance of the evidence, has proved that his 2017 IEP constituted a FAPE violation, as it was not reasonably calculated to enable him to make progress appropriate in light of his circumstances. See *Andrew F.*, 137 S. Ct. at 999.

2. 2018 IEP

40.

The 2018 IEP presents a closer question regarding whether or not it provided ██████ with FAPE. By August of that year, ██████ was not in the same fragile state as he was in September 2017 when the previous IEP was prepared. He had progressed to the point where his parents and experts from outside the District could recommend an IEP with a less restrictive environment than Boulder

Creek’s therapeutic environment. Thus, the 2018 proposal—which was nearly identical to the 2017 version, save with a slightly altered class schedule—is arguably more accessible to █. Even so, the 2018 IEP included several features that would hinder █’s progress at best, or directly harm him at worst. As Dr. Lake credibly testified, assigning an RBT to assist █ throughout the day created a high potential to exacerbate █’s conditions, as demonstrated during his prior experience with paraprofessionals. By the District’s account, great efforts were made to position the RBT in a way that would not draw attention in class. Yet even assuming this succeeded, those efforts focused more on what *other students* would think, not what █ would internalize and how he would feel. As Dr. Lake testified, such perceptions are not benign adolescent concerns, but are deeply intertwined with █’s anxiety, OCD, and other conditions.

41.

The supports provided by the 2018 IEP were also insufficient. While the IEP offered counseling, opportunities for █ to take breaks, and an RBT’s on-site support, this Court is not persuaded that such services would meet █’s need for more immediate, “on-the-spot” interventions of varying lengths, as described by Dr. Lake. Although the PSP lays out detailed instructions for all staff members working with █, the realities of a public high school—even a smaller one like Kell with a significant special-education student body—would put █ in regular contact with students and adults who may not be aware or knowledgeable of his conditions. This Court is not convinced that the District, through the IEP, could adequately ensure █’s well-being against such incidences. As for the RBT, Dr. Lake also testified credibly that this technician, trained solely in ABA, would not be able to meet █’s daily mental-health needs. And even seemingly small support tools, such as using a timer, ignored the feedback from █’s parents that its use in a public environment would make █ self-conscious and erode his self-esteem.

42.

In regard to the curriculum proposed in the 2018 IEP, the proffered schedule was identical to the 2017 roster, save for the substitution of Social Studies with Study Skills. In reviewing the proposed 2018 curriculum at the hearing, Dr. Lake testified it would be “a potentially bigger error” than the 2017 curriculum, based on the progress ██████ had made at Boulder Creek. Of particular concern was ██████ inclusion in special-education classes at Kell, as his OCD could become “profoundly impairing” if he does not feel he is functioning normally in both an academic and social setting. Again, the call to place ██████ in a residential setting with the “curb appeal” of a regular high school is not a merely superficial request but would have a direct correlation to ██████ confidence and thus his overall health.

43.

The District argues that its 2018 IEP sufficiently meets ██████ needs, pointing to a host of objectives and other provisions meant to address the social-emotional elements and which were pulled directly from Rogers materials and parental feedback. Indeed, the IEP and the accompanying PSP are highly detailed, and the audio recordings of the meetings are filled with multiple back-and-forth exchanges about crafting appropriate supports. Nonetheless, a preponderance of the evidence shows that, while ██████ requires the feel of a “normal” school, the unique intertwining of his conditions also calls for a more structured environment with immersive aides and supports. See Edmonds Sch. Dist. v. A.T., 299 F. Supp. 3d 1135, 1138-43 (W.D. Wash. 2017) (concluding that placement in a “closed environment” which minimized behavioral impact was appropriate for a student with the “perfect storm” of ADHD and oppositional defiant disorder, even though his disabilities did not necessarily impair his intellect). Without that structure, ██████ would struggle to even access education, much less attain reasonable educational progress. See

Endrew F., 137 S. Ct. at 999 (calling for progress “appropriate in light of the child’s circumstances”). Accordingly, █████ by a preponderance of the evidence, has proved that his August 2018 IEP was not reasonably calculated to confer educational benefits.

D. Remaining Claims

44.

The Court concludes that █████. has failed to meet his burden on the remaining claims. Each claim is briefly addressed below:

1. The IEPs failed to acknowledge █████ past experiences of social failure, bullying, and teasing.

45.

█████. has not proved by a preponderance that the 2017 and 2018 IEPs failed to address matters of bullying, teasing, or other social failures. While the IEPs did not expressly mention bullying or teasing, they did remove █████. from Pope, the setting where such past treatment had reportedly occurred. The PSP also directed staff who worked with █████ to be mindful of drawing attention to █████ when he arrived late for class, and neither the PSP nor the IEP mentioned the threat or possibility of punitive actions for disability-based behaviors. While the true effectiveness of such measures is speculative—as the IEPs remain unimplemented—nothing in the record indicates the District outright ignored concerns of bullying or teasing. See █████ v. Dep’t of Educ., 224 F. Supp. 3d 1071, 1084-85 (H.D. 2016) (noting that, while the IEP failed to present a complete picture of prior bullying, it incorporated a sufficient Crisis Plan to alert school staff to heightened concerns about the student being bullied).⁵⁹

⁵⁹ The Court by no means seeks to minimize the effect of bullying on █████. or any student with special needs. Bullying, in fact, is becoming more and more recognized as source of IDEA violations, and at no time should be condoned, ignored, or excused. See T.K. v. N.Y. City Dep’t of Educ., 810 F.3d 869 (2d Cir. 2016) (recognizing schools’ refusal to discuss bullying during IEP process as an IDEA violation); Shore Reg’l High Sch. Bd. of Educ. v.

2. The District declined to use its own experts, or consider outside experts' input or recommendations, when deciding ██████ placement.

46.

In developing an appropriate IEP for a disabled child, the IEP team includes, “at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.” 20 U.S.C. § 1414(d)(1)(B)(vi); see also 34 C.F.R. § 300.321(a)(6).

47.

Here, the record shows that both the parents and the District included outside experts or those with specialized knowledge during IEP team meetings. For ██████, Dr. Lake called in to at least two of the meetings. For the District, meetings were attended by Ms. Lytle-Griffin as an autism expert; Ms. Pennington as a speech pathologist; and representatives for Pathways, which provides RBTs. The participation of such experts is discretionary for both the parents and the school. See 20 U.S.C. § 1414(d)(1)(B)(vi). In no way would an alleged failure by the District to produce experts at ██████'s IEP meetings constitute a procedural violation. Any refusal of experts' input or recommendations, on the other hand, would lend to more to the appropriateness of the IEP. See Taylor by Holbrook, 649 F. Supp. at 1256-58 . As discussed at length *supra*, the District did fail to consider Dr. Lake's knowledgeable feedback about ██████ needing a boarding-school environment, which supports the Court's conclusion that the District violated FAPE.

P.S., 381 F.3d 194, 200-01 (3d Cir. 2004) (noting that severe and prolonged student-on-student harassment that is ignored by teachers may result in a denial of FAPE). In this case, though, any bullying ██████ suffered while enrolled at the District falls outside the statute of limitations, as he was no longer physically attending the schools by March 2017.

3. ***The District delayed the implementation of a completed IEP, to ██████ detriment.***

48.

Under the IDEA, “[a]t the beginning of each school year, each local educational agency . . . shall have in effect, for each child with a disability in the agency’s jurisdiction, an individualized education program” 20 U.S.C. § 1414(d)(2)(A); see also 34 C.F.R. 300.323(a). A court may require a school district to reimburse the cost of enrolling a student in private placement if the district did not make FAPE available “in a timely manner prior to enrollment” and the private placement is appropriate. 34 C.F.R. § 300.148(c).

49.

For ██████ the 2017 IEP was finalized approximately 60 days after the first day of the District’s school year, while the 2018 IEP was finalized approximately 29 days after the start of the school year. While these delays appear at first consideration to constitute procedural violations, the delays did not impede ██████ right to FAPE, block his parents’ right to participate in the decision-making process, or deprive ██████ of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); see also 34 C.F.R. § 300.513(a)(2). For the 2017 IEP, for example, ██████. was still at Rogers by the start of the school year, and his initial start date of September 11 was four days after he returned from Rogers. See Doe v. Defendant I, 898 F.2d 1186, 1189 n. 1 (6th Cir. 1990) (determining that a parent could not complain the school district failed to complete a timely IEP when non-completion was attributable to the parent’s request that the school allow the student to perform on his own for a while). In regard to the 2018 IEP, while ██████. did go a month without a finalized plan, nothing in the record shows that he suffered a denial of FAPE or experienced some other detrimental effect due to this delay, especially in light of his eventual enrollment in Greenwood the following month.

E. Reimbursement

50.

This Court may award appropriate equitable relief when there has been an actionable violation of IDEA. See Cobb Cnty. Sch. Dist. v. A.V., 961 F. Supp. 2d 1252, 1271 (N.D. Ga. 2013). Courts have interpreted this as “broad discretion” to “fashion discretionary equitable relief.” Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 15-16 (1993) (quotations and citations omitted); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1285 (11th Cir. 2008) (quoting Sch. Comm. of the Town of Burlington, Mass., et al. v. Dep’t of Educ. of Mass., 471 U.S. 359, 374 (1985)). The two primary remedies available under IDEA are reimbursement for costs of private placement and compensatory education. R.L., 757 F.3d at 1178.

51.

It is well recognized that IDEA does not guarantee reimbursement for private placement to parents who unilaterally move their child to a private placement after disagreeing with the IEP offered by a public school. Such a unilateral move is “taken at [the parents’] own financial risk.” Florence Cnty., 510 U.S. at 15. Nonetheless, a court may award a disabled student the cost of placement in a private educational program if the court concludes that

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

20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(a), (c). See also R.L., 757 F.3d at 1181; M.M. v. Sch. Bd., 437 F.3d 1085, 1096-99 (11th Cir. 2006); W.C., 407 F. Supp. 2d at 1362. ■■■■■ bears the burden of proof showing that private placement is appropriate. See W.C., 407 F. Supp. 2d at 1362.

A private placement is proper under IDEA if the education provided in the private placement is reasonably calculated to enable the child to receive educational benefits. Florence Cnty., 510 U.S. at 11. Further, the private placement identified by a petitioner in a due process complaint does not have to meet all of IDEA's requirements, including LRE; however, a court may consider whether the private placement does not comply with the LRE. W.C., 407 F. Supp. 2d at 1363; see also A.V., 961 F. Supp. 2d at 1269-70; W. Windsor-Plainsboro Reg'l Sch. Dist., Bd. of Educ. v. M.F. ex rel. A.F., No.: 09-cv-4326, 2011 U.S. Dist. LEXIS 21827, at *12 (D.N.J. Mar. 4, 2011) (“[T]he standard a [private] placement must meet in order to be ‘proper’ is less strict than the standard used to evaluate whether a school district’s IEP and placement is appropriate.”). Courts may also consider the extent to which the child makes progress at the private placement, but the fact that a student makes more progress or is happier does not automatically indicate that private placement is either appropriate or that the school’s IEP was inappropriate. O’Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 708 (10th Cir. 1998).

Further, even if the parents establish that the school district failed to provide their child with FAPE and the alternative private-school placement chosen by the parent was appropriate, the reimbursement award may be denied or reduced based on equitable factors, such as the parents’ insufficient notice of private placement or unreasonable actions taken by the parents. 20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Blount Cnty. Bd. of Ed. v. Bowens, 762 F.3d 1242, 1247 (11th Cir. 2014) (holding that “reimbursement is discretionary, and a court may still deny some—or all—reimbursement based on equitable considerations”).

54.

In this case, the Court finds the District has violated IDEA. The analysis first turns to whether the private placements were appropriate.

1. Whether Boulder Creek was an appropriate placement

55.

The District argues that Boulder Creek was not an appropriate placement for █████ because (a) █████ failed to provide any witnesses with first-hand knowledge about the academy; and (b) the little evidence that was provided indicated that █████ made little academic progress and struggled behaviorally in his final days there. The Court disagrees with the District’s characterization of █████’s evidence regarding Boulder Creek. It is true that no witnesses from Boulder Creek’s faculty were called to testify during the four-day due process hearing. However, Ms. Woodfin, █████’s education consultant, had researched the academy as part of her work for █████ and testified credibly about its programs and focus. Supplementing Ms. Woodfin’s testimony was a copy of █████’s discharge summary from Boulder Creek, a transcript, and a brochure describing the programs. Taken together, █████ met his burden by a preponderance. See A.V., 961 F. Supp. 2d at 1270-71 (stating that, while the loss of the private school’s records “does give the Court pause” when deciding whether the school offered proper placement, further testimony from a knowledgeable source—here, the school’s headmistress—proved sufficient).⁶⁰

56.

As for █████’s academic progress, the District highlights the fact that █████ credits at

⁶⁰ The District relied on a 23-year-old decision from a New York review officer to support its contention that Petitioner needed to supply witnesses from Boulder Creek. See Bd. of Educ. of the South Glen Falls Cent. Sch. Dist., 27 LRP 4751 (NY SEA 1997) (reimbursement not appropriate when student’s at-home tutors did not testify at hearing and instead provided short statements of students’ progress). The case here can be distinguished, as Petitioner provided both records from Boulder Creek and credible testimony from Ms. Woodfin.

Boulder Creek only translated to 2 credits in the District, meaning he would remain a Sophomore had he returned to a District high school. The District also notes that ██████. did not advance out of the academics-light orientation phase until eight months into his year. Based on these facts alone, though, the Court is not convinced that Boulder Creek was inappropriate for ██████. As a therapeutic school, Boulder Creek placed an emphasis on therapy and counseling during the first phase, which was necessary for ██████ given his fragile mental state as of the fall of 2017. Moreover, while grade advancement is certainly part of a student's educational progress, strict adherence is not the full focus of such cases; rather, ██████. enrolled at Boulder Creek to become able to learn again. See W.C., 407 F. Supp. 2d at 1363. As for the behavioral incidents, the Court finds persuasive Dr. Lake's and Ms. Woodfin's characterizations that these were isolated instances triggered by ██████'s anxiety to leave Boulder Creek. Their opinions are supported by Boulder Creek's discharge report, which states that the behavior was a "departure" from ██████'s previous conduct. Overall, ██████ discharge summary and transcript indicate he became more available to learn during his eight months at Boulder Creek, to the point where he was ready for placement in a less-restricted environment. Accordingly, ██████. has met his burden of proving Boulder Creek was an appropriate placement.

2. *Whether Greenwood is an appropriate placement*

57.

The District argues that Greenwood is not an appropriate placement for ██████. because (a) ██████ academic grades were weighted too heavily by behavioral measures; (b) the courses were not academically rigorous; and (c) instances of behavioral misconduct showed an overall lack of improvement. Again, the Court does not agree with the District's assessments of Greenwood. While the District points to differences between Greenwood's grading system and

courses and its own academic program, such difference, considered alone, do not suggest █████ is incapable of receiving educational benefits there. See W.C., 407 F. Supp. 2d at 1363. Greenwood is an accredited college-prep school, which signifies that its grading system has passed muster by accreditation services for post-secondary institutions. The scholastic records provided by Greenwood shows █████'s grades and work are rated exceptionally well, and he is again eager to learn. Regarding his behavior record, the Court agrees that several of the instances show █████ in a bad light. The reports that he picked-up a boy and slammed him down on the ground, as well as grabbing the boy's arm and moving it along his pelvic region, are particularly concerning. Yet the Court declines to have these instances denigrate the entirety of █████'s time at Greenwood. Given the totality of his experience at the school, and the credible testimony of the school's interim head, it is clear that █████'s behavior is actually on the upswing, and that Greenwood has provided enough educational benefit so as to be an appropriate placement.

3. *Whether █████'s parents acted unreasonably*

58.

The District argues that █████'s parents should have reimbursement withheld because they predetermined █████'s private placement as early as March 2017. Courts have found that parents acted unreasonably when they did not adequately consider a District's recommended placement, thus barring reimbursement. See Rockwell Indep. Sch. Dist. v. M.C., 816 F.3d 329, 341 (5th Cir. 2016) (determining that parents are not entitled to reimbursement when they would not consider any of the school's alternative proposals unless the school approved their proposal to continue private placement). Here, the record shows that █████'s parents anticipated private placement as far back as March 2017 when they hired Ms. Woodfin as an education consultant. They shared their private-placement search the next month with Dr. Feroletto. The record also shows that █████

interviewed at private placements after he left Rogers in February 2017, and later again when he left Boulder Creek in 2018. Both times, the parents presumably were still engaged with the District in the IEP and placement process. Granted, the parents never tried to hide the fact that they were searching for a private-placement option, and whenever asked by the District about the family's intentions regarding █████ education, they confirmed that they still wanted to see what the District could offer. Yet the circumstantial evidence strongly suggests that █████ and his family were far more invested in a private-placement option than in thoroughly evaluating the placement and services the District was willing to provide. For this reason, the parents acted unreasonably, and reimbursement of the Greenwood and Boulder Creek tuitions shall each be reduced by 25%.

59.

The District also argues that the parents acted unreasonably by refusing to consent to an FBA. However, the Court does not find this behavior unreasonable given the overall context of facts. As Ms. Smith herself testified, neither she nor the District pushed for the parents' consent, as it was instead decided an FBA was not needed at that point in time. The audio recording of the meeting on May 7, 2017, corroborates Ms. Smith's testimony.

4. Other reimbursement matters⁶¹

60.

The Court declines to reimburse the full cost of private tutors during the HHB period from April to June 2017. While █████'s declining conditions demanded more one-on-one attention, █████ parents—despite hearing the same warnings from Dr. Lake about isolation as the rest of the IEP team—readily agreed to the placement without objection on March 24, 2017. The parents first raised concerns about HHB to the IEP team on June 2, 2017, which was at the tail end of HHB

⁶¹ While Petitioner cited psychological services as an area for reimbursement in his Complaint, he did not present any evidence supporting such reimbursement at the hearing.

for [REDACTED]. Accordingly, as the parents did not raise an objection to HHB at the outset, the Court will only order the District to pay half of the total tutoring costs.

61.

The Court is not inclined to reimburse all travel expenses incurred by [REDACTED] and his family, except those expenses directly related to his education. Section 300.104 of Title 34 of the Code of Federal Regulations, states as follows: “If 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 parents of the child.” This provision supports reimbursement of tuition and room and board. It does not support reimbursement for the travel of a parent or family. See Drew P. v. Clarke Cnty. School Dist., 877 F.2d 927, 929, 932 (11th Cir. 1989) (affirming the district court’s award of reimbursement, which included tuition, school fees, and uniform fees of the residential treatment facilities in Tokyo and Boston, but excluded costs for the family’s travel and lodging). Based on this understanding, [REDACTED] airfare and rental car to and from the schools for the start and end of the school years is inherently “necessary” for his special education needs, as the private placements were at schools in Idaho and Vermont. Travel costs for the parents—even those for “mandatory” trainings—would not qualify under this rubric. The following expenses qualify for reimbursement:

- [REDACTED]’s airfare and rental car/fuel for his arrival at Boulder Creek at the start of the school, which totals \$421.89.⁶²
- [REDACTED]’s airfare to Greenwood—for the start of the 2017-2018 and 2018-2019 school years, and the airfare for his return home at the end of both school years—which totals \$1,419.00.⁶³

⁶² This total encompasses \$308.80 for the plane ticket; \$90.51 for the rental car; and \$22.59 for fuel, all for [REDACTED]’s travel to Boulder Creek in September 2017. (See Ex. P-5, pp. 997, 1198-1199.) The Court could not identify any documents in the 285 pages of travel records submitted by Petitioner reflecting costs for his departure from Boulder Creek, at which point he went to Kootenai.

⁶³ For the 2018-2019 school year, \$501.20 was paid for the plane ticket to Greenwood and \$208.30 for the plane ticket from Greenwood, for a total of \$709.50. As the 2019-2020 school year had just started at the time of the hearing,

Lastly, none of the costs for the educational consultant, Ms. Woodfin, are subject to reimbursement. As an initial matter, █████. did not list this type of expense in his original Complaint. Even if he had, the Court fails to see how her services qualify as “developmental, corrective, and other supportive services” to help █████. access special education. 20 U.S.C. § 1401(26)(A). The examples listed in the IDEA definition of “supportive services”—such as therapies, social work services, and counseling—are attuned toward facilitating the child’s day-to-day performance, and not identifying appropriate placement. See Edison v. Douberly, 604 F.3d 1307, 1309 (11th Cir. 2010) (applying the statutory-construction canon of *noscitur a sociis*, whereby “a word is known by the company it keeps”) (quotation and citation omitted). Furthermore, █████ has not presented any legal authority supporting reimbursement in such an instance, nor has this Court found any statute, regulation, rule, or case law to that effect.⁶⁴ Cf. Arlington Cent. Sch. Dist. v. Murphy, 548 U.S. 291, 300 (2006) (holding that “the terms of the IDEA overwhelmingly support the conclusion that prevailing parents may not recover the costs of experts or consultants” for IDEA proceedings).

IV. ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner’s request for relief under IDEA is hereby **GRANTED**. █████. is entitled to reimbursement, in the amount of \$189,310.06, which breaks down as follows:

- Boulder Creek attendance for 2017-2018: \$63,719.17⁶⁵
- Greenwood attendance for 2018-2019 and 2019-2020: \$122,175.00⁶⁶
- Travel related to Boulder Creek: \$421.89
- Travel related to Greenwood: \$1,419.00

there were no records of █████’s travel for that year. Using the previous year’s total as a reasonable approximation for 2019-2020 travel, this Court determines that \$709.50 is appropriate to cover those costs.

⁶⁵ Reflecting \$84,958.90 minus a 25% reduction.

⁶⁶ Reflecting the combined total of \$79,900 for 2018-2019 and \$83,000.00 for 2019-2020, minus a 25% reduction.

- Tutoring during Spring 2017 homebound studies: \$1,575.00.⁶⁷

SO ORDERED, this 11th day of March, 2020.



M. Patrick Woodard
Administrative Law Judge



⁶⁷ Reflecting half of the total \$3,150.00 in tutoring costs.