

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

█, BY AND THROUGH █; AND

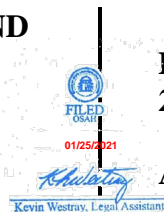
█,

Petitioner,

v.

**BUTTS COUNTY SCHOOL DISTRICT,**

**Respondent.**



**Docket No.: 2010941**

**2010941-OSAH-DOE-SE-18-Schroer**

**Agency Reference No.: 2010941**

**ORDER FOR COMPENSATORY EDUCATION**

A hearing on the matter of remedy in this case was held on November 30, 2020, at the Office of State Administrative Hearings. Petitioners █ and his guardian, █ were represented by Eugene Choi, Esq., and Taylor Loynd, Esq. The Butts County School District (the “District”) was represented by Megan Murren Rittle, Esq., and Matthew Collum, Esq. The record remained open until December 23, 2020, to allow the parties to file post-hearing briefs. After careful consideration of the evidence of record and the arguments of the parties, Petitioners’ request for relief is **GRANTED IN PART**, with certain modifications, as discussed herein.

**I. RELEVANT PROCEDURAL HISTORY**

The hearing in this matter was held on November 4-5, 2019. Following the submission of post-hearing briefs, the Final Decision was issued on January 14, 2020. The Court concluded that Petitioner █ was eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. §§ 1400 to 1482. In addition, the Court ordered the District to fund an independent Functional Behavioral Assessment (“FBA”).<sup>1</sup> The

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<sup>1</sup> The Final Decision also ordered further assessment to resolve the question of a possible impairment in math. In a Joint Status Report filed on July 15, 2020, the parties represented to the Court that Petitioners instead would rely on prior evaluations and available data.

hearing record thereafter was reopened for the limited purpose of receiving the assessment results and for the parties to present any relevant additional evidence regarding the appropriate educational setting, whether a District school or a private school.<sup>2</sup> On January 31, 2020, following a telephone conference with the parties, the Court issued a Post-Hearing Scheduling Order, which reflected that the parties anticipated completion of the FBA in mid-March 2020 by Michael Mueller, Ph.D., BCBA-D, of Southern Behavioral Group (“SBG”). An evidentiary hearing, if needed, was tentatively scheduled for March 23, 2020.

A swift resolution and implementation of the remedy, however, would soon be upended by the global COVID-19 pandemic. In mid-March of 2020, Governor Kemp declared a Public Health Emergency, and all public schools were closed. In Status Reports dated April 6, May 15, July 15, and September 1, 2020, the parties continued to apprise the Court of their progress in completing the FBA and seeking an appropriate placement for ■■■■■. In response to the parties’ request on September 1 for an evidentiary hearing, the Court scheduled the same to be held October 16, 2020. On October 7, 2020, Petitioners moved to continue the hearing to allow for additional time for completion of the FBA; the District, however, opposed the completion of the FBA in ■■■■■ home rather than the school. Following a telephone conference with the parties, the Court granted the motion to continue, set the evidentiary hearing for November 30, 2020, a date mutually agreeable to the parties, and held as follows:

Having considered the parties’ positions on the usefulness of completing the FBA in the home as opposed to the school, their understanding of the caveats related thereto as explained to them by Dr. Mueller, the uncertainty surrounding when ■■■■■ will return to in-person learning, the need to finalize the behavioral goals and interventions for ■■■■■, and other concerns discussed with the parties during the teleconference, the Court concludes that it is appropriate

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<sup>2</sup> Because ■■■■■. was unable to find a suitable private school in the ensuing months, the Petitioners revised their request for relief and instead presented evidence on November 30, 2020, to support a program designed to be administered in a District setting. (Testimony of ■■■■■., Transcript [hereinafter, “T.”] 154-56.)

to proceed with the FBA in the home setting so that the results of such evaluation can be available for the remedies hearing currently set for November 30, 2020.

## II. HEARING ON REMEDY

### A. Background

1.

█. is a fifteen-year-old student in the ninth grade. Because of █ concerns related to COVID-19, █. currently is enrolled in the District’s virtual learning platform and thus attending high school remotely, rather than in person.<sup>3</sup> (Testimony of █., T. 156; Ex. P-33.)

2.

As set forth in the Findings of Fact of the Final Decision,<sup>4</sup> █. has been diagnosed with and is being treated for Attention Deficit Hyperactivity Disorder (“ADHD”) and Disruptive Mood Dysregulation Disorder (DMDD).<sup>5</sup> █. has attended District schools since kindergarten, and it was during his kindergarten year that he began exhibiting behavior problems. In 2016, when █ was in the fifth grade, his behaviors escalated and became more aggressive. In February of 2017, █’s behaviors intensified to the point where school officials informed █. that █. should attend school only until noon each day. Notwithstanding such significant behavior issues and the resulting shortening of █ instructional day, the District held its first IDEA eligibility meeting in April 2017, and determined that █. was not eligible for special education. In December of 2017, when

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<sup>3</sup> Notwithstanding █ concerns regarding COVID-19, she does not object to █. receiving in-school instruction as detailed in the plan for compensatory education discussed in sections B and D herein. (Testimony of █., T. 156.)

<sup>4</sup> The Final Decision in its entirety is incorporated herein by reference.

<sup>5</sup> According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-5”), DMDD is characterized in part by “[s]evere recurrent temper outbursts manifested verbally (e.g., verbal rages) and/or behaviorally (e.g., physical aggression toward people or property) that are grossly out of proportion in intensity or duration to the situation or provocation,” and “[t]he mood between temper outbursts is persistently irritable or angry most of the day.” (Final Decision ¶ 11.)

█. was in the sixth grade, he was suspended for aggressive behavior, and in January of 2018, he began attending the District’s alternative school, New Beginnings Academy, where he subsequently spent all of seventh grade. In April of 2019, after a second eligibility meeting, the District again determined that █. was not to be eligible for special education. █ returned to his zoned school, Henderson Middle School, for eighth grade in August of 2019, but soon after was expelled through January of 2020. A third eligibility meeting in September 2019 resulted in another determination that he was not eligible for special education. Significantly, as █ behavioral problems intensified over the years, his standardized test scores trended downward. (Final Decision ¶¶ 1, 3-8, 13, 18, 21, 24, 26.)

**B. The Independent FBA and Recommendations by SBG**

3.

As explained by Dr. Mueller, FBAs “are attempts to determine what reinforces a given behavior. This is accomplished through various methods of information gathering and data collection that include interviews with staff, various direct behavioral observation techniques, and hypothesis testing (functional analysis).” For █., the purpose of the FBA conducted by SBG was “to evaluate problem behaviors that have resulted in disciplinary actions.” The goal of the interviews is to figure out “what is occurring before the behavior [the antecedents] and what is occurring after the behavior [the consequences].” Interviews can reveal patterns to behaviors, as can observations. Observations are narrative descriptions by the evaluator that “detail everything that’s going on in the environment.” For example, in a classroom setting, observations would include how many peers are present, the ratio of teachers or staff to students, and every interaction staff or peers have with the student who is being assessed. The information collected via interviews and observations is used to form a hypothesis as to what is reinforcing the behavior. The hypothesis

is then tested; the testing of the hypothesis is the functional analysis. For example, if an antecedent of the student's behavior is being told "no," a therapist might devise a test that involves placing things the student likes to do around a room, and then interrupting the student at fixed intervals of time to say he cannot do the particular thing he has chosen and must do something else. (Testimony of Dr. Mueller, T. 16-21, 36; Ex. P-33.)

4.

SBG started the FBA process with two days of in-school observations of ■■■ at Henderson Middle School, on March 3 and March 10, 2020. As previously noted, public schools closed in mid-March. Thereafter, ■■■ began virtual learning at his home, the setting where he remained as of the date of the November 30 hearing, over six months later. Having had only two days of in-school observations, SBG was unable to finalize the functional analysis (or hypothesis testing) of ■■■'s in-school behavior. Although they can identify antecedents and consequences relating to in-school behavior, and they have developed hypotheses, they are only able to provide tentative conclusions. In October and November 2020, SBG continued the FBA process in ■■■'s home over a period of six days, with the intent "to approach the in-home FBA as closely as possible to a 'school-FBA in the home,'" and to that end, they endeavored to make the home environment "more structured and a closer approximation to the school environment," with "a schedule, an expectation of a starting time for his education, frequent task demands, and a plan to alternate working with breaks." Dr. Mueller candidly explained that at this point in time, the conclusions in the FBA represent their "best guess." Ultimately, despite the unusual circumstances of the FBA, Dr. Mueller is confident that the data and observations in his report will be usable in the school setting; moreover, he has built flexibility into his recommendations so that when they are implemented in a school setting, staff will be able to make adjustments as needed. (Testimony of Dr. Mueller, T.

24-25, 101, 106, 109, 122; Ex. P-33.)

5.

Dr. Mueller presented nine recommendations, eight of which address how to educate ■■■. and implement behavioral support in a school setting.<sup>6</sup> These eight recommendations, which are numbered 2 through 9 in the SBG FBA (Ex. P-33), are summarized as follows,<sup>7</sup> for reference:

- 2) ■■■. should be taught in a restricted setting, in a room by himself with three staff, at least one of whom is a BCBA, for an amount of time that depends on his ability to meet behavioral benchmarks that allow greater access to more typical school systems, peers, and additional freedoms.
- 3) Academic testing or Curriculum Based Assessment should be used to determine proper placement.
- 4) If behavioral concerns persist or new behaviors develop, functional analyses should be conducted so that behavioral supports can be modified as needed.
- 5) Social skills training should be provided by a BCBA when the time is right for ■■■ to be around peers.
- 6) If Edgenuity is to be used as the system for instruction, a staff person should be side-by-side with ■■■ for assistance and to answer questions.
- 7) Note-taking exercises should be introduced.
- 8) Any preferred items available should be turned over to staff prior to the start of instruction and can be returned after the lesson, during a break, or at the end of the day, depending on circumstances.
- 9) Positive reinforcement should be used throughout the day for appropriate behaviors.

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<sup>6</sup> Recommendation 1 relates to psychiatric medication management, psychotherapeutic treatment, and facial expression therapy. (Ex. P-33.) Although Petitioners' post-hearing brief includes a stray reference on page 24 to "compensatory education for ■■■ with psychological counseling in school," Petitioners did not provide any detailed information related to psychological counseling or this recommendation in the record, and the Court concludes that it is proper for the IEP team to consider and decide whether psychological counseling and the other services in Recommendation 1 are appropriate related services for ■■■.

<sup>7</sup> The SBG FBA provides many more details and practical instructions beyond the summary provided here.

As outlined in the Background section above, and more fully addressed in the Final Decision, ■■■'s years-long history of behavioral issues is intertwined with his lack of educational progress. He will be unable to achieve educational progress unless and until the behavioral issues are addressed. The plan that Dr. Mueller has devised for ■■■. is necessarily intense in its initial phase, in no small part because of ■■■.'s age, size, and potential for aggression. Dr. Mueller recommends that ■■■. be removed from peer attention and taught in a "totally restricted setting," alone with three staff, at least one of whom is a board-certified behavioral analyst ("BCBA") who will be present for the entirety of a six-hour day. He estimates that this phase would last 6-12 months, though it could be longer. It is anticipated that ■■■'s behaviors will escalate at the beginning of the process; Dr. Mueller explained that traditional disciplinary responses, such as removing ■■■. from the educational setting, would be counterproductive because the opportunity for ■■■. to learn alternative skills and means of coping would be lost. As ■■■. demonstrates the ability to meet behavioral benchmarks, his educational setting will include "greater access to more typical school systems, peers, and additional freedoms." Three staff will be reduced to two (including a BCBA), which eventually will be reduced to one BCBA, and additional changes, as described in Dr. Mueller's report, will be implemented when they are appropriate. Thus, the BCBA would be involved for the duration of the process. Collection of data during the process will be "vital" and should be done by the BCBA for consistency and accuracy. In addition, a BCBA would be able to oversee and implement the procedures correctly. Dr. Mueller testified that the hourly rate for a BCBA is \$150. Dr. Mueller's report proposes a comprehensive plan encompassing behavior, social skills, and academic concerns, including the skill of note-taking; it provides a practical template for discipline strategies and the structure of ■■■.'s school day. The goal is to

enable [REDACTED]. to attend class and work with peers in a small group setting. (Testimony of Dr. Mueller, T. 53-54, 58, 63-64, 77-79, 83-88; Ex. P-33.)

7.

Dr. Sara Deckelbaum is an expert in psychoeducational evaluations and clinical psychology. She has evaluated [REDACTED], and she testified at both the November 2019 hearing and the November 2020 remedies hearing. Dr. Deckelbaum reviewed the SBG FBA and supports its recommendations. Noting that her 2019 evaluation of [REDACTED] occurred when he was in the alternative school setting, she explained that, based on new information in the SBG FBA, she agrees that being in a classroom with peers poses a significant challenge for [REDACTED]. at this time. Dr. Deckelbaum further agrees that the intensive first phase recommended by SBG, in which [REDACTED] is alone with three staff, is a necessary intervention given the severity of his behavior at this time. (Testimony of Dr. Deckelbaum, T. 132, 139-51.)

### **C. The District's Witnesses**

8.

The District called two witnesses, Mr. Thiago Aleixo, who is the Director of Mainstay Academy, a part of the Georgia Network for Educational and Therapeutic Support (“GNETS”), and Ms. Lenora Clarkson, the Director of Student Services for the District. Mr. Aleixo described in general the services provided by the GNETS program. He noted that the services he described would not be provided by a BCBA because Mainstay does not have a BCBA on staff. Mr. Aleixo has never met [REDACTED]. or [REDACTED], attended a meeting about [REDACTED] or spoken to any of [REDACTED] teachers, nor did he review any of [REDACTED]’s psychological evaluations or the SBG FBA. Ms. Clarkson proposed that appropriate compensatory education for [REDACTED] would consist of someone, likely a teacher, working with him on social skills and making up missed academic assignments for two hours per



week after school for two years. As for Ms. Clarkson’s rationale that this activity for two hours per week for two years is appropriate compensatory education, she stated, “I was trying to come up with something that I thought he would actually participate in.” The Court has considered this largely unsupported testimony and concludes that it is entitled to little weight. Like the District’s approach to ■■■’s educational needs throughout this case, the recommendations of the District’s witnesses do not appear to be based on “scientifically based instructional practices,” but rather by what is most expedient and least costly to the District.<sup>8</sup> (Testimony of Mr. Aleixo, T. 187-89, 190, 193, 197, 200; Testimony of Ms. Clarkson, T. 210, 231-33.)

#### **D. Legal Standard and Conclusions of the Court**

9.

The IDEA allows an administrative law judge to fashion an appropriate remedy, and compensatory education is an available option to make up for denial of a free and appropriate public education. See Florence Cty. Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 16 (1993) (explaining that the court enjoys “broad discretion” in crafting IDEA relief, which depends upon “equitable considerations”); Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (11th Cir. 2008) (same); Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 527 (D.C. Cir. 2005) (an inquiry into compensatory relief must be “qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student”). Compensatory education is not to be “predetermined

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<sup>8</sup> In the reauthorization of IDEA in 2004, Congress found that “[a]lmost 30 years of research and experience has demonstrated that education of children with disabilities can be made more effective by ... (E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible....” 20 U.S.C. § 1400(c)(5). Consistent with these findings, IDEA requires that a disabled child’s educational program include individualized special education and related services that are based on peer-reviewed research to the extent practicable. See 34 C.F.R. § 300.320(4). The District’s witnesses did not provide any research-based authority to support their opinions about what services would be appropriate to compensate ■■■. for the District’s steadfast refusal to find him eligible for special education or provide him with services designed to enable him to make educational progress. The Court therefore gives little weight to their testimony on the issue of appropriate compensatory education in this case.

by a cookie-cutter formula,” but instead should be “an informed and reasonable exercise of discretion regarding what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failure.” Reid, 401 F.3d at 527. See also G v. Fort Bragg Dependent Sch., 343 F.3d 295, 309 (4th Cir. 2003) (“Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.”). Compensatory education implicates equitable considerations, and therefore the court may consider the parties’ conduct. See id. at 524.

10.

The Court has given careful consideration to all of the evidence in this case as well as the length of time during which the District, having failed to determine that ■■■ was eligible as a child with a disability, denied him an appropriate IEP to address his needs for special education. Moreover, the Court is persuaded by Dr. Mueller’s expertise and experience, even though SBG faced certain constraints due to the pandemic, and his recommendations were supported by Dr. Deckelbaum. Finally, as noted above, the District did not provide any reliable evidence of alternative relief that would reasonably compensate ■■■. for the District’s denial of FAPE. In the end, the Court is left with only one appropriate program that offers “specially designed instruction, at no cost to parents or guardian, to meet the *unique* needs of” ■■■ v. Oak Ridge School Bd., 744 F.2d 514, 516 (6<sup>th</sup> Cir. 1984) (citing former 20 U.S.C § 1401(16)) (current version at 20 U.S.C § 1401(29)) (emphasis in original).<sup>9</sup>

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<sup>9</sup> In Clevenger, the Sixth Circuit rejected the finding of the district court, which had upheld the school board’s proposed placement of a 19-year-old disabled student with serious behavioral problems in a short-term residential school that did not meet the student’s needs. Id. The School Board had argued that it “need not take into account [the student’s] oppositional behavior and run-away tendencies. According to the Board, all it need do is provide a learning environment that [the student] can take advantage of if he so desires.” Id. The Sixth Circuit held that “[t]he Board’s approach unfortunately ignores both reality and its obligations under the Act. . . . [The student’s] main learning problem is his *inability to cooperate with authority*. Accordingly, the only appropriate placement for [the student] is one which

In reaching its conclusions, the Court has been mindful of IDEA’s strong preference for placing disabled students in the least restrictive environment (“LRE”), and has taken into consideration that the intensity of the initial phase proposed by Dr. Mueller, in which █████ is to be alone with three adults, means that █████ will be fully outside of a mainstreamed classroom. See 20 U.S.C. § 1412(a)(5)(A) (states are to ensure that “[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled”); see also See Ga. Comp. R. & Regs. 160-4-7-.07(1)(a) (same) (citing 34 C.F.R. § 300.114(a)(2)(i)). Nevertheless, the “presumption in favor of mainstreaming must be weighed against the importance of providing an appropriate education to handicapped students,” and “[t]he school must aim to minimize the restrictiveness of the student’s environment while also considering the educational benefits available in that environment, seek[ing] an optimal result across the two requirements.” T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 162 (2d Cir. 2014); cf. Cobb Cty. Sch. Dist. v. A.V., 961 F. Supp. 2d 1252, 1269-70 (N.D. Ga. 2013) (placement in a more restrictive private school setting as a result of a school district’s denial of FAPE need not satisfy the LRE requirement of IDEA). Likewise, the federal and state regulations recognize that in some instances, a more restrictive environment may be appropriate: “Special classes, separate schooling or other removal of children with disabilities from the regular class environment shall occur 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.” Ga. Comp. R. & Regs. 160-4-7-.07(1)(b) (citing 34 C.F.R. § 300.114(a)(2)(ii)). The Court concludes, based on the evidence presented, that Dr. Mueller’s proposal rests on an understanding of █████ behavior and a plan to enable █████ to

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specially takes into account and provides for this lack of cooperation.” Id. (emphasis in original). The Sixth Circuit ordered that the child be placed in a long-term, secure, locked facility, as proposed by the parents. Id.

reintegrate as soon as he is ready.

12.

In addition, the court has taken into account that the process proposed in the SBG FBA will likely result in escalated behaviors, including aggression. Dr. Mueller testified persuasively as to why traditional disciplinary responses, such as removing █████ from the educational setting, would stymie the program that he has devised to address those very behaviors. Federal regulations regarding the discipline of special education students provide some flexibility. For example, “[s]chool personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.” 34 C.F.R. § 300.530(a). It is imperative to distinguish behavior that is a manifestation of a disability from behavior that is not. Certain infractions that may occur on school premises are recognized in the regulations as particularly egregious and labeled “special circumstances” that may be handled without regard to whether the behavior is determined to be a manifestation of the child’s disability: carrying a weapon, knowingly possessing or using illegal drugs, and inflicting serious bodily injury upon another person. 34 C.F.R. § 300.530(g). The Court has reservations regarding Dr. Mueller’s blanket recommendation that █████ “escalations should not be subjected to the school’s disciplinary system or to the police or court systems.” This will be discussed further below.

13.

Finally, the Court has not ignored the potential financial cost<sup>10</sup> of the proposed relief. Cf. Branham v. Gov’t of the Dist. of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005) (listing relevant considerations identified by courts, including private school tuition costs, in the context of

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<sup>10</sup> The District argues in its post-hearing brief that, in addition to monetary cost, the SBG plan carries an “emotional cost” for █████. The Court finds this argument to be disingenuous.

determining whether a particular private placement is appropriate); Clevenger, 744 F.2d at 517 (“Cost can be a legitimate consideration when devising an appropriate program for individual students.”). “Nevertheless, cost considerations are only relevant when choosing between several options, all of which offer an ‘appropriate’ education. When only one is appropriate, then there is no choice.” Clevenger, 744 F.2d at 517. Dr. Mueller testified that the hourly rate of a BCBA is \$150, and the estimated amount of time that the services of a BCBA would be necessary is likely to be six hours per day; in addition, the initial plan requires two other dedicated staff persons. Even as the staff of three may be reduced, the services of a BCBA will be required for the duration. To be sure, this plan will cost “a great deal of money.” Id. The Court concludes, however, that the cost of relief, in this case, is justified and rooted in equity. The cost also is unavoidable because the Court is persuaded, based on the testimony of the District’s witnesses and the stance that the District has taken throughout this case, that the District currently does not have the trained personnel to oversee the delivery of the necessary compensatory relief.

14.

Accordingly, after careful deliberation and consideration of the evidence, including the opinions presented by the experts in this case, and with the recognition of the caveats provided by Dr. Mueller, the Court concludes that the SBG plan, with the modifications outlined below, is reasonably designed to elevate ■■■ to the position he would have occupied absent the District’s failure to provide FAPE. Petitioners in their post-hearing brief have requested that the SBG plan be implemented until ■■■ successfully completes the plan, or for two years, whichever occurs first. The Court instead finds that it is appropriate for the participants to implement the plan through the end of the fall semester of 2021, and at that point assess the progress and make any needed changes going forward by convening an IEP meeting, with input from the BCBA and ■■■, as specified

below. It is possible that [REDACTED]. will not have achieved all of the progress necessary for his reintegration at that point. However, by that time, [REDACTED] will have turned sixteen and may be in a position to take on more responsibility for his own education.<sup>11</sup> Additionally, enough time will have elapsed to allow for real progress to be achieved in the initial phase or perhaps beyond. With the guidance of the BCBA, who will tailor the plan as it proceeds, the IEP team will be positioned to determine the appropriate path of [REDACTED] educational program.

15.

Therefore, it is hereby **ORDERED** that the District shall implement Recommendations 2 through 9, as set forth in Exhibit P-33 and with the modifications discussed below, as compensatory education for the denial of FAPE to [REDACTED]

- a) Regarding Recommendation 2(b) and (c), the three staff shall include at least one BCBA to lead the process. The lead BCBA may be affiliated with SBG or may be another qualified BCBA with comparable, reasonable rates, as agreed upon by Petitioner's counsel and the District. The District may propose current District employees to fill the second and third staff positions, but they must meet the qualifications for such positions that are established by the lead BCBA, and they must be willing to participate in ongoing training and to fully comply with [REDACTED] educational program. The District will be responsible for the payment of the three staff members.
- b) Regarding the location discussed in Recommendation 2(b), whether in a room at [REDACTED]'s zoned school or in another suitable location within the District, the District

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<sup>11</sup> The Court observes that age sixteen will likely represent an inflection point for [REDACTED]. Beginning at age sixteen, the IDEA mandates the provision of transition services. 20 U.S.C. §§ 1401(34); 1414(d)(1)(A)(i)(VIII). Additionally, in Georgia, a student is only legally obligated to attend school through age sixteen. O.C.G.A. § 20-2-690.1 (mandatory education for children between ages six and sixteen).

shall notify Petitioners of the proposed available options, and the parties shall agree as to which location is most appropriate.

- c) Recommendation 9(f), which anticipates escalation in [REDACTED] behaviors at certain points in this process, indicates that these “escalations should not be subjected to the school’s disciplinary system or to the police or court systems.” The Court hereby modifies Recommendation 9(f) to specify that circumstances described in 34 C.F.R. § 300.530(g) (carrying a weapon, knowingly possessing or using illegal drugs, and inflicting serious bodily injury upon another person) shall be handled as set forth in that regulation. Other potential infractions, which are to be anticipated as a part of this process, will proceed to the school’s disciplinary system (subject to the requirements of 34 C.F.R. § 300.530) only if the BCBA determines that it is necessary and appropriate.
- d) The plan outlined in Recommendations 2-9, with these modifications, will be implemented no later than February 15, 2021, and will continue throughout the remainder of the current semester and the first semester of the 2021-2022 school year. Before the end of December 2021, the parties shall convene a meeting of the IEP team to discuss progress under this plan and determine next steps, with input from the BCBA and from [REDACTED] himself.
- e) The parties may agree between themselves to further modify this plan, as needed.

Any other requested relief not expressly granted by this Order is hereby **DENIED**, and this matter shall be closed on the Court’s docket.

**SO ORDERED**, this 25th day of January, 2021.

*Kimberly W. Schroer*

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**Kimberly W. Schroer**  
**Administrative Law Judge**

