

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

█, BY AND THROUGH █ AND █  
Petitioners,  
  
v.  
  
COBB COUNTY SCHOOL DISTRICT,  
Respondent.

Docket No.: 2203340  
2203340-OSAH-DOE-SE-33-Woodard

Agency Reference No.: 2203340



**FINAL DECISION**

This matter concerns the Due Process Complaint filed by Petitioners █, a student, and █ her mother, against the Cobb County School District. An evidentiary hearing was held before Patrick Woodard, Administrative Law Judge with the Office of State Administrative Hearings, State of Georgia, on September 12-16, 2022, in Atlanta. Petitioners were represented by Chris Vance, Attorney at Law, Atlanta. Respondent Cobb County School District (hereafter “the District”) was represented by MaryGrace Kittrell and Reagan Sauls, Attorneys at Law, Parker, Poe, Adams & Bernstein, LLP, Atlanta. By order, the deadline for issuance of this Final Decision was extended through May 10, 2023, as authorized by Ga. Comp. R. & Regs. 616-1-2-.27.

For the reasons set forth below, Petitioners’ Due Process Complaint is **DISMISSED**.

**Contents**

I. Findings of Fact..... 4

    A. Introduction and Background..... 4

        i. ██████ During the 2019-2020 Academic Year..... 4

        ii. Medical Evaluations: Summer 2020..... 6

        iii. March 2020 through August 2020: Communications between ██████ and the District ..... 6

        iv. August Parent Referral Meeting ..... 10

    B. The 2020-2021 School Year..... 12

        i. August 504 Meeting..... 12

        ii. ██████’s academic functioning during the 2020-2021 school year..... 14

        iii. ██████ Evaluation..... 17

        iv. Services at ██████..... 19

        v. The District’s Evaluation of ██████..... 20

        vi. October 504 Meeting ..... 25

        vii. Dr. Sean Hirt’s Evaluation..... 27

        viii. Attempts to Schedule Special Education Eligibility Meeting..... 29

        ix. ██████ is Placed on “Z-Status”..... 30

        x. Eligibility Meeting..... 31

        xi. The District’s Speech and Occupational Therapy Evaluations..... 37

        xii. The Key Autism Report ..... 41

        xiii. Neuropsychological Evaluation ..... 42

        xiv. Attempts to Schedule IEP Meeting..... 43

        xv. 2021 IEP Meetings..... 44

        xvi. The District’s Attempts to Provide Services to ██████..... 49

    C. March 2021 to Present: ██████’s Functioning and Services ..... 50



## I. FINDINGS OF FACT

All Findings of Fact are based solely on a preponderance of the evidence produced at the Due Process Hearing, as required by Ga. Comp. R. & Regs. 616-1-2-.21(2). All admissible evidence was considered by the Court, although not all facts presented by the parties is repeated herein.

### A. Introduction and Background

#### i. ██████████ *During the 2019-2020 Academic Year*

##### 1.

At the time of the hearing, ██████████ was ██████████ years old. Tr. 40. She resides with her family, including her mother, ██████████ and her siblings, in Cobb County. Tr. 40. During the 2019-2020 school year, ██████████ was in the ██████████ grade at ██████████ Middle School in the District. Tr. 40-41. ██████████ described her daughter as “a very sweet girl” who was “very intelligent.” Tr. 41. She enjoyed playing the ██████████ and ██████████. Tr. 41. Standardized testing conducted in the Fall of 2019 indicated that ██████████ had a “high average” overall cognitive ability. P-5. In school, she generally received As and Bs. Tr. 41. However, ██████████ was also “very shy” and had “very few friends.” Tr. 41. She had a 504 plan in place since at least ██████████ to receive accommodations for her ADHD. Tr. 53-54, 1162; P-1, R-11.

##### 2.

During ██████████ grade, ██████████ became very unhappy because she was being bullied at school. Tr. 41-42. She often came home crying and started to intentionally miss the morning school bus. Tr. 42, 45-46. After she missed the bus for the third time, ██████████ took ██████████ to her pediatrician on March 12, 2020. P-3, R-28. Tr. 46. The pediatrician, Dr. Daniel Saade, provided diagnoses of “██████████” and “██████████.” P-3, R-28. Dr. Saade prescribed her 50

milligrams of Zoloft and 50 milligrams of Seroquel.<sup>1</sup> Tr. 46-47; P-3, R-28. According to [REDACTED] he also recommended that [REDACTED] take 14 days off of school beginning the following school day. Tr. 50. [REDACTED] says she sent the paperwork for a medical absence to [REDACTED] the school counselor and 504 coordinator, and to the individual in charge of attendance. Tr. 50-51.

3.

[REDACTED] reported that “within minutes” of taking the new medication [REDACTED] began having a negative reaction. Tr. 47. She “seemed very confused,” spoke in a “robotic voice,” and didn’t know who she was. Tr. 47. When [REDACTED] called the pediatrician to tell him what was happening, he advised her to continue giving [REDACTED] the medication. Tr. 47. [REDACTED] continued to deteriorate—she was incontinent, and could not eat, speak, write, or bathe herself Tr. 48-49, 54. She also tried to elope from her house a few times. Tr. 55. After approximately a week, [REDACTED] brought her to the ER, where she was advised to discontinue the medication. Tr. 49.<sup>2</sup> However, [REDACTED] says that [REDACTED] did not improve after stopping the medication. On or about April 19, 2020, [REDACTED] eloped from her home and ran into the street, and [REDACTED] called 911. Tr. 55. [REDACTED] was taken to the ER, where she was placed on a “1013” psychiatric hold and taken to [REDACTED] [REDACTED], a psychiatric facility. R-30, P-3; Tr. 55.

4.

Early in the morning following [REDACTED]’s admission to [REDACTED], [REDACTED] received a call from [REDACTED] saying she should “come quick.” Tr. 56. When she arrived, she found [REDACTED] bleeding from the

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<sup>1</sup> At the time, [REDACTED] was already taking 30 milligrams of Vyvanse for ADHD, 2 milligrams of Klonopin for sleep, and Albuterol and Arnuity Ellipta for asthma. Tr. 47.

<sup>2</sup> The exact timeline is unclear. In an email sent on March 27, 2020, [REDACTED] stated that she was told to stop giving [REDACTED] the medications on March 21, 2020. Ex. P-33 (p. 369). However, medical records show [REDACTED] took [REDACTED] to the emergency room on April 9, 2020, where her doctor observed that her “mentation appears normal,” and that there were no neurological concerns. P-3. The records from that visit state that [REDACTED] should continue taking those medications. P-3 (p. 42).

head. Tr. 56. [REDACTED] was told that [REDACTED] was attacked by her older, bigger roommate. Tr. 56. [REDACTED] says [REDACTED]'s functioning was worse after that assault. Tr. 57.

*ii. Medical Evaluations: Summer 2020*

5.

The medical records that [REDACTED] later sent the District indicated the following:

- On July 1, 2020, [REDACTED] saw Dr. Monideep Dutt at Children's Healthcare of Atlanta's Pediatric Neurology Center. Dr. Dutt ordered an MRI, an EEG, and bloodwork to rule out autoimmune encephalopathy. P-3 (pp. 53-53).
- On July 17, 2020, Dr. Louise Wise, a psychiatrist-mental health nurse practitioner at Potter's Behavioral Clinic, listed the following diagnoses for [REDACTED]: major depressive disorder, recurrent, severe with psychotic symptoms<sup>3</sup>; attention-deficit hyperactivity disorder, predominantly inattentive type; social phobia, generalized; post-traumatic stress disorder, acute; and selective mutism. P-3 (p. 51).
- On July 24, 2020, [REDACTED] saw Baruch Goldberg, MD, a Rheumatologist at CHOA's Center for Advanced Pediatrics, who ordered more lab work. P-3 (p. 58).

*iii. March 2020 through August 2020: Communications between [REDACTED] and the District*

6.

Due to the COVID-19 pandemic, the District moved to virtual learning for all students on March 13, 2020. Tr. 1568. On March 27, 2020, [REDACTED] sent Ms. [REDACTED] the following email:

Hi Ms. [REDACTED]

Recall, [REDACTED] was given 14 days off school from March 13<sup>th</sup> by her Psychiatrist, Psychologist, and Pediatrician as she struggles to return to her usual self. Unfortunately, the medication given to her by her Pediatrician to help her recover put her in worse state

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<sup>3</sup> [REDACTED] testified that the diagnosis of recurrent psychotic symptoms was erroneous. Tr. 1086-87. Subsequent records from the Potter's Clinic did not list that diagnosis. Tr. 1087.

than she was before she even began taking this new medication. Over the week since the medication, she stopped speaking, eating, stopped moving around, has been incoherent, etc. On Sat, March 21<sup>st</sup>, we were asked by medical professionals to STOP the medications immediately. We are now waiting and praying for the medications to completely leave her system so that she can regain normal functions again. Please kindly inform all her teachers that she had an initial 14 days from March 13<sup>th</sup> to enable Doctors to assess her condition. Judging from her present condition, it is now looking more likely that she may be put in the homebound program unless we receive a miracle soon because I don't see how she can function at school at the moment if school opens. Right now, we have been trying to get her to perform very basic functions which she struggles with. (For, example, shower, going to the bathroom, feeding, dressing, fed herself, etc.). I will continue to update you and hopefully you will update all her teachers at once so I don't have to email them individually. The COVID-19 situation has also made everything including mobility to and from hospitals challenging. Thank you. We are staying well. I do hope you are staying well too.

Hope I have not overwhelmed you with [REDACTED]'s situation. I tried to put it mildly.

Best Regards,

Dr. [REDACTED]

P-33 (p. 369).

Ms. [REDACTED] responded as follows:

Hi Dr. [REDACTED]

Thanks for your update on [REDACTED]'s condition. I am so sorry she has had such a difficult time but we are hopeful that she gets better soon. As we have previously discussed, due to the immediate school closure due to COVID-19 we were unable to get her forms processed for hospital homebound. I have included our admin team and Sharon Lewis on this email as well as we proceed through school closure and [REDACTED]'s condition. Most importantly, we do not want her to feel that she has to get everything done at once. When possible and when she can, see if you can set up a daily schedule to complete her work and spread it out with breaks in between. I do understand there are days that she may not be able to do this but perhaps she can do as much as she can when she has better days. Please know that we understand and want her to get well. Please keep us up to date on her progress and be sure to keep in contact with her teachers related to assignments. Please recognize that we understand that the first priority is her getting better and understand that we will make collaborative decisions on her education as we go along, even so admit the COVID crisis. I will stay in touch. Be safe.

P-33 (p. 370).

7.

According to [REDACTED] no District employee recommended a new 504 meeting at this point to update [REDACTED]'s 504 plan, recommend an evaluation for her new disabilities, or make any recommendation for educational programming. Tr. 53-54.

8.

[REDACTED] is the director of special education compliance for the District. Tr. 1523-24. In that role, she is responsible for ensuring that the District is compliant with the IDEA and Georgia Rules and Regulations relating to special education. Tr. 1524. She is also the District's 504 coordinator. Tr. 1525. She has been working in compliance for the District for eight years. Tr. 1527. In her position, she attends IEP meetings one to three times a week. Tr. 1547. She also has seven years of experience as a special education teacher. Tr. 1531, 1539-40. [REDACTED] has a bachelor's degree in marketing, a bachelor's add-on in special education, a master's in leadership, and a specialist in educational leadership. [REDACTED] testified as an expert in the areas of assessment, evaluation, placement, and education of students with disabilities; as an expert regarding the district's policies and procedures and relevant aspects of [REDACTED]'s Section 504 and special education programming, including educational services unilaterally obtained by Petitioners, as well as educational services offered by the District; and as an expert in the area of Section 504, including 504 policies and procedures. Tr. 1553.

9.

[REDACTED] explained that the District's impression of [REDACTED]'s email was that that [REDACTED] had suffered some sort of medical event that [REDACTED] believed at the time would be temporary. While [REDACTED] was not functioning the same as before, she was getting treatment to reverse the adverse impact of the medication. Tr. 1523, 1524, 1644. [REDACTED] said that a parent's report of a student's medical event does not automatically mean that a student needs special education services. Tr. 1644. Rather, the question is whether that medical event had an "adverse impact" on the student's ability to function in the

school setting. Tr. 1644. At the time, ██████████ said “there was nothing that raised any flags to the team” that ██████ was in need of additional specialized instruction. Tr. 1644.

10.

██████████ explained that whether the impact of ██████’s medical condition was temporary or permanent (or, rather, short term or long term) would influence the educational supports given as well. Tr. 1566. She explained that if it is a temporary medical condition, a 504 plan would likely be sufficient, because the child would not be expected to require the specialized instruction provided in an IEP. Tr. 1566-67. The District would set up a child with a Section 504 plan and see if they are making progress; only then would IEP eligibility be considered. Tr. 1567.

11.

On July 23, 2020, ██████ contacted Ms. ██████████ to discuss her concerns regarding how ██████ would be able to function during the upcoming school year.<sup>4</sup> Tr. 58, 1082-83. ██████ testified that, by this point, she had made “inquiries” with friends who were knowledgeable about special education, who had told her about direct parent referrals. Tr. 58-59. During an August 3 phone call with Ms. ██████████ ██████ requested a Direct Parent Referral for special education services. Tr. 59. ██████████ stated that she believed it was sometime in July 2020 when ██████ put the District on notice of ██████’s suspected disability. Tr. 1643.

12.

Following ██████’s August 3 phone call with Ms. ██████████ ██████████, a special education service administrator at ██████ Middle School, called ██████ to discuss her concerns. Tr. 1155-56, 1161. ██████████ explained the process involved in a direct parent referral for a special education evaluation,

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<sup>4</sup> This appears to be the first contact ██████ and the District had since approximately April 2, 2020. P-33 (pp. 373-74).

including the timeline, who would be involved, and [REDACTED]'s rights as a parent. Tr. 1162-63. [REDACTED] asked that they circumvent the evaluation eligibility process and immediately begin providing special education services to [REDACTED], but [REDACTED] explained that the District was not legally able to do that. Tr. 1164. Rather, the District must first establish a child's eligibility for special education prior to providing services. Tr. 1200-01.

*iv. August Parent Referral Meeting*

13.

A direct parent referral meeting was held virtually on August 5, 2020. Tr. 1165. The participants included [REDACTED] [REDACTED] Ms. [REDACTED] [REDACTED] the school psychologist; and Dr. Sharon Lewis, who oversees the Hospital Homebound Program. Tr. 1167.

14.

[REDACTED] explained that during a direct parent referral meeting, the District is aiming to work with the concerned parent to establish what areas of eligibility should be explored for their child, based on the information provided. Tr. 1169. The overall purpose is for the school team to establish what is known as the "referral question," which would be the question the school is attempting to answer through an individual special education evaluation. Tr. 1298-99. In particular, the school psychologist might, based on the discussion at the meeting, think about what type of testing instruments should be used with the student. Tr. 1612. According to [REDACTED] the meeting is not required, but she considers it the best practice so that the team can understand the suspected areas of disability. Tr. 1573.

15.

Prior to the meeting, [REDACTED] sent the school team [REDACTED]'s medical records from her psychiatrist, her ER Records, and in-patient hospitalizations. P-33 (p. 375).

16.

During the meeting, [REDACTED] shared her concerns about [REDACTED] Tr. 1169, 1301. Specifically, she said that [REDACTED] had stopped speaking, eating, or writing, and “couldn’t do much.” Tr. 1803. Her fine motor skills were affected. Tr. 1803. She explained that [REDACTED]’s previous sensory sensitivities had become more pronounced. Tr. 1804. [REDACTED] testified that she could not recall [REDACTED] discussing [REDACTED]’s loss of motor skills. Tr. 1450. Rather, [REDACTED] says she primarily recalls discussion surrounding the selective mutism diagnosis. Tr. 1450. The school team determined that, given [REDACTED]’s dramatic change in functioning, her existing 504 plan would need to be updated. Tr. 1303.

17.

Following the meeting, Ms. [REDACTED] and [REDACTED] emailed [REDACTED] a Parental Consent for Evaluation Form, as well as an authorization to release confidential information, which allows the District to communicate with [REDACTED]’s outside providers. [REDACTED] signed and returned those documents that same day. P-2 (p. 32-33), R-75; Tr. 59-60, 1168. In the same email, [REDACTED] attached [REDACTED]’s medical records, including those from her pediatrician, psychiatrist, ER visits, and [REDACTED] P-33 (p. 375). She stated that she “look[ed] forward to discussions on how we can update [REDACTED]’s existing 504 plan to include her [REDACTED] (MDD) and severe [REDACTED] disorder in the interim before the online classes resume.” P-33 (p. 375).

18.

Once she had received [REDACTED]’s medical records, [REDACTED] reviewed them with Ms. [REDACTED] Tr. 1166. According to [REDACTED] they determined based on their review of those records that [REDACTED] had received diagnoses of [REDACTED] [REDACTED] and [REDACTED]. Tr. 1096, 1170-71. They concluded that [REDACTED]’s issues were likely “emotionally based.” Tr. 1171. [REDACTED] says she was not informed or included in the discussion regarding this conclusion at the meeting. Tr. 1803.

19.

According to [REDACTED] a [REDACTED] is given when someone still has the ability to [REDACTED], typically following a traumatic event. Often the person is communicating with people they are close to, such as family and close friends, but not to others. It is an exclusionary factor for several special education eligibility categories, meaning that a child with that diagnosis cannot be found eligible for special education under certain categories. Tr. 1577.

20.

At no point prior to, during, or in the follow up conversations surrounding the direct parent referral meeting was autism raised as an area of concern. Tr. 1096, 1171, 1302. None of the medical records provided to the team as part of the process referenced autism. Tr. 1171-72.

**B. The 2020-2021 School Year**

*i. August 504 Meeting*

21.

A 504 meeting was held on August 12, 2020. Tr. 1256. [REDACTED] claimed that the District team told her that the 504 meeting would need to happen prior to evaluating [REDACTED] for special education services. Tr. 870. She stated that she “kept asking” the District when [REDACTED]’s evaluation would happen but was told that 504 updates needed to be completed first. Tr. 872.

22.

Prior to the meeting, [REDACTED] emailed the school team and stated that, pending the special education evaluation process, she wanted [REDACTED] to be enrolled in “all regular/on-level 8<sup>th</sup>-grade classes with significantly reduced workload and an amended 504 plan with better accommodations to support her,” and that “the homebound service could then come in the backend to further support her online at this point.” R-76.

23.

Attendees at this 504 meeting were [REDACTED] [REDACTED] Ms. [REDACTED] several of [REDACTED]'s assigned teachers for the 2020-2021 school year; [REDACTED] the District's central office administrator, and [REDACTED], the assistant vice principal. Tr. 1255, 1256; P-1 (p. 24), R-13.

24.

At the meeting, Ms. [REDACTED] recommended that [REDACTED] explore hospital homebound (HHB) services for [REDACTED] Tr. 1258. Hospital homebound is generally recommended when a student is not able to access regular school services for medical reasons. Tr. 1704-05. Ms. [REDACTED] suggested HHB services could help alleviate [REDACTED]'s anxiety about being on camera during virtual classes. Tr. 1258. Because of the COVID pandemic, all students were virtual at the start of the 2020-2021 school year. Tr. 1257. According to [REDACTED]'s social studies teacher, [REDACTED] [REDACTED] did not consider that option because she "wanted her daughter to have as close to a normal experience in the school setting." Tr. 1258-59. [REDACTED] testified that [REDACTED] was not offered any home-based services at this meeting. Tr. 872.

25.

During the meeting, it was agreed that [REDACTED] would not be required to have her camera on when she participated in classes via Zoom. Tr. 1257. Additionally, she would not be put on the spot to answer questions verbally; instead, communications would happen through Zoom's online chat function, which would allow [REDACTED] to communicate privately with the teacher in writing. Tr. 1257.

26.

The updated 504 plan listed [REDACTED]'s "Qualifying Impairments" as ADHD; major depression disorder with psychotic episode; PTSD; social phobia, generalized; selective mutism, active; patient/family safety crisis plan. P-1 (p. 23). The impact of [REDACTED]'s impairment was described as follows:

“[REDACTED]’s inability to focus impacts basic daily functioning. [REDACTED].]’s experiences unpredictable moods and depression which impacts her learning.” P-1 (p. 23).

27.

The 504 plan allowed [REDACTED] the following educational accommodations: “50% extended time on assignments, camera off during virtual instruction, student can use chat during class to ask and answer questions due to social anxiety during camera. Reduction in items assessed and assigned however this will depend upon the standard itself. A reduction cannot take place if it negates the standard and doesn’t allow for demonstration of full mastery. No video-taped assignments.”. P-1 (p. 24), R-13. [REDACTED] says that [REDACTED] was not offered any home-based services in the new 504 plan, such as a tutor or BCBA. Tr. 872.

28.

The team agreed to reconvene later to review how the updated plan was working for [REDACTED] but did not agree upon a specific timeframe for another meeting. Tr. 1259-1260.

*ii. [REDACTED]’s academic functioning during the 2020-2021 school year*

29.

[REDACTED] testified that she would log into [REDACTED]’s virtual classes each day and, as she explained, “capture a few information screens” and try to find “creative ways” to teach information to [REDACTED] Tr. 876-78, 1816. Once she had obtained materials to use with [REDACTED] she would log out of class. Tr. 877. She testified that [REDACTED] “could not sit through any of the classes.” Tr. 1123.

30.

[REDACTED] says that, initially, she tried to help [REDACTED] complete assignments. [REDACTED]’s siblings would sit with her and read questions to her (because [REDACTED] “couldn’t read”). Tr. 1123-24. Based on [REDACTED]’s “eye movement,” they would write the answer down. Tr. 1124. [REDACTED] says she only had [REDACTED] complete “one or

two” assignments this way, once it became clear that [REDACTED] was incapable of completing the work. Tr. 1125.

31.

Standardized testing conducted online in August 2020 showed [REDACTED] performing at grade level in reading and math. Tr. 1639-40. [REDACTED] testified that [REDACTED] had completed these assignments through “eye gaze and just point[ing].” Tr. 1125.

32.

Throughout the early part of the school year, [REDACTED] would email [REDACTED]’s teachers her completed assignments, as well as ask questions about her schoolwork. P-33 (pp. 378, 382).

33.

On September 2, 2020, [REDACTED] told [REDACTED] that [REDACTED] was “not capable of working independently at this time.” P-33 (pp. 379-80).

34.

[REDACTED] was [REDACTED]’s eighth grade social studies teacher during the 2020-2021 school year, as well as her homeroom teacher. Tr. 1253, 1255, 1287. [REDACTED] testified that [REDACTED] never appeared on camera during class, nor did she ever speak. Tr. 1260. She also did not ask or answer questions using the online chat function. Tr. 1260. She never completed a class assignment. Tr. 1263. However, [REDACTED] was under the impression that [REDACTED] was attempting to complete some work. Tr. 1263.

35.

██████████ testified that she was aware that ██████ would sit next to ██████ when ██████ was logged into her class. Tr. 1261. ██████████ e said there was “a time or two” where ██████ asked a question on the Zoom call about an assignment or other work that needed to be completed. Tr. 1262.

36.

On September 10, 2020, ██████████ emailed ██████ to inform her that ██████ had not taken the Unit 1 social studies test. R-91. ██████ responded the same day explaining that ██████ was not able to log on to class “due to her current mental health issues.” ██████ explained that ██████ “has managed to attempt past assignments after [██████████] creatively sought ways to teach her the content . . . but the volume of assignments and frequency has proved to be too much work for her to handle.” ██████ mentioned that she had spoken with Ms. ██████████ the school psychologist, the day prior, and that evaluations were being set up for next week. R-91. While Ms. Rausch reopened the testing period for ██████ ██████ confirmed that ██████ would not be able to complete the assessment. Tr. 1269; R-92.

37.

██████████ said there were multiple instances where ██████ requested extra time for ██████ to complete an assignment, and for reduced or modified assignments. Tr. 1264. ██████████ said she generally agreed to these accommodations because she wanted to help ██████ “in whatever way I could.” Tr. 1272. However, she noted that some teachers were uncomfortable with providing accommodations that were “not necessarily coming through the 504 plan but coming through parent request.” Tr. 1272. For instance, she said that several teachers were not comfortable with sending ██████ copies of tests. Tr. 1272. ██████████ and Dr. Alvin Thomas, the school principal, agreed to allow ██████ to come to the school building and “sign out” any hard copies of tests and quizzes. P-33 (p. 394). ██████ was frustrated with this, however, because she found driving to and from the school frequently difficult while also

taking care of [REDACTED] P-33 (p. 384). [REDACTED] said that eventually communications from [REDACTED] to parents became less “collegial” and that the decision was made for communications to be made between [REDACTED] and the counselor/administrator, rather than directly to teachers. Tr. 1273.

38.

On September 3, 2020, [REDACTED] wrote to [REDACTED] complaining that, despite what had been outlined in [REDACTED]’s August 504 plan, [REDACTED] was receiving “the exact same classwork, assignments, and assessments as every other student in her class,” rather than modified or reduced ones. P-33 (pp. 385-86).

39.

[REDACTED] testified that the District was not certain how long [REDACTED] went without accessing her education. Although teachers received completed assignments, they were not sure which were completed by [REDACTED] and which were completed by [REDACTED] Tr. 1699.

*iii. [REDACTED] Evaluation*

40.

On September 9, 2020, [REDACTED] went through speech and occupational therapy evaluations at [REDACTED] Therapy Services. Tr. 888; P-4 (p. 60).

41.

During [REDACTED]’s speech evaluation the evaluator administered the Oral and Written Language Scales – Second Edition (OWLS-II). However, according to the report, [REDACTED] was “unable to attend and participate in any of the testing items. The only responses were non-verbal by shaking her head or glaring at the environment.” P-4 (p. 61). The report’s summary stated that “[r]esults of the OWLS-II reveal that [REDACTED] a severe receptive-expressive language disorder. Receptively, [REDACTED] did not respond to questions

asked nor did she identify any pictures or express any responses to test items.” P-4 (p. 62). It included a plan with the goal for ██████ to “increase her receptive-expressive language skills,” and recommended 30 minutes of therapy two times a week for six months. P-4 (p. 62).

42.

During ██████’s occupational therapy evaluation, the evaluator administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2). The results showed that her fine motor precision and fine motor integration skills fell in the age equivalent of four years, and that her fine motor control fell within less than 1%, or “Well-Below Average.” In the summary, the evaluator indicated that ██████ picked up a pencil, but did not write anything, nor did she speak or make any eye contact with the therapist. While the report gave a summary of ██████’s gross motor skills—indicating “very weak trunk, poor balance, delayed motor planning, poor coordination, poor bilateral coordination—it was not clear whether these conclusions were based on the results of the assessment, informal observation, or parent report. P-4 (p. 65).

43.

The occupational therapy evaluator proposed the following three-month goals:

1. ██████ will engage in a 4-station sensory motor obstacle course with good attention span for 10 minutes without aversion 4/5 sessions.
2. ██████ will engage in an age-appropriate task for 5 minutes with no more than 2 verbal prompts to stay on task.
3. ██████ will button/unbutton large buttons with minimal assistance for 3/4 trials.
4. ██████ will perform a simple [sic] IADLs such as wiping down surfaces or vacuuming 4/5 sessions with minimal verbal prompting.
5. ██████ will understand and demonstrate rules for a simple, turn taking game to address cognitive and motivation deficits.

P-4 (p. 65).

44.

█████ emailed the ██████ report to Ms. ██████ on September 22, 2020, shortly after receiving it. Tr. 888; P-33 (p. 398). Later the same day, ██████ emailed Ms. ██████ to clarify that ██████’s

initial diagnosis of selective mutism had been replaced by the diagnosis of receptive-expressive language disorder and that [REDACTED]'s psychiatrist and neurologist had been notified. P-33 (p. 399); Tr. 891.

*iv. Services at [REDACTED]*

45.

[REDACTED] received speech therapy and occupational therapy at [REDACTED] from approximately September 2020 to September 2021. Tr. 893. [REDACTED] received 30 minutes of speech therapy and one hour of occupational therapy per session. P-22 (p. 207-38). [REDACTED] explained that [REDACTED] had staffing issues, and as a result [REDACTED] ultimately saw three different speech therapists and three different occupational therapists.<sup>5</sup> Tr. 893. [REDACTED] believed this inconsistency in staffing confused [REDACTED] Tr. 893. [REDACTED] reported that the commute from her home to [REDACTED] was around an hour. Tr. 887. [REDACTED] indicated that eventually the long commute and inconsistency became too much for [REDACTED] and [REDACTED] started looking for in home services. She stated that she still had not found an in-home occupational therapist that accepted Medicaid. Tr. 893.

46.

The record shows that [REDACTED] provided [REDACTED] approximately 11 sessions of speech therapy between September 26, 2020, and January 23, 2021; 8 sessions of occupational therapy between October 2, 2020, and January 23, 2021; and one session of physical therapy on January 16, 2021. P-22 (pp. 206-39).

47.

The speech therapy records indicate that [REDACTED] demonstrated minimal to no participation in therapy, other than occasional nods and smiles. P-22 (pp. 206-39). On December 16, 2020, [REDACTED] was

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<sup>5</sup> The therapy records indicate that [REDACTED] saw three speech therapists and two occupational therapists. P-22 (p. 207-38).

observed to have “attend to hand over hand cause an effect on the ipad.” P-22 (p. 229). On January 16, 2021, she “participated much better in the session that previously,” successfully following “verbal directions to touch pictures on the ipad.” P-22 (p. 232). However, by her session the next week, on January 23, she was again not engaging in the session other than occasional “yes or no” nods. P-22 (p. 237).

48.

Similarly, ██████’s occupational therapists struggled to get her to participate in activities, although she would occasionally tolerate time on a “vibration machine” a swing, and a climbing gym. P-22 (pp. 210-39). She did start to show “great improvement” in her last two sessions on January 16 and 23, 2021 as she was able to follow simple, one-step instructions, complete simple puzzles, stack blocks, put pegs in a peg board, and place straws in a small opening. She also danced when the therapist played violin music. However, the report noted that she was performing tasks at a three-year-old level. P-22 (pp. 238-39).

v. *The District’s Evaluation of* ██████

49.

Ms. ██████ the school psychologist, evaluated ██████ on September 16, 2020. P-5. The only information from outside the District that was available to Ms. ██████ was the report from Potter’s Behavioral Clinic, which only listed ██████’s current diagnoses. Tr. 1312. ██████ stated that given the complexity of ██████’s situation, she consulted with her supervisor about which assessment instruments would accurately capture the concerns that the District’s team and ██████ had about ██████ Tr. 1315. ██████ had shared her concerns regarding ██████’s willingness to participate in assessments, but Ms. ██████ was hopeful that she would participate with her evaluation. Tr. 1315. Nevertheless, she primarily planned to conduct nonverbal assessments based on ██████’s communication issues. Tr. 1315.

50.

█ told Ms. █ that she had explained to █ that she would be entering the school building to work with the evaluator. P-5 (p. 70). Ms. █ testified that she had thought through where was the best location to evaluate █. She wanted to have her tested in a room as close as possible to the entrance to the school building, so that she would not have to travel throughout the building. Tr. 1306-07. Ms. █ and █ had discussed having the evaluation at a picnic table outside the school, but it was raining that day. Tr. 1309. █ was told that, due to COVID protocols, she could not enter the building with █. Tr. 906.

51.

█ and █ arrived at the testing location on September 16, 2020, and walked to the front of the school building for █'s health and temperature screening as required by COVID-19 guidelines. P-5 (p. 70). When her temperature was taken, █ flinched and returned to her mother's car. P-5 (p. 70); Tr. 906-07, 1810. Ms. █ walked to the car and spent some time speaking to █ through the car window, explaining the purpose of the testing and that her mother would remain at the testing site. P-5 (p. 70); Tr. 1308. Ms. █ noted that █ made little eye contact and did not acknowledge attempts at conversation. P-5; Tr. 1312. When █ was handed a pencil, she held it briefly and then dropped it. P-5; Tr. 908. Ms. █ spent around 10 to 15 minutes interacting through the open car window with █. Tr. 909, 1811.

52.

█ told Ms. █ that █ struggled to remain on task and it often took her an entire day to complete just one academic task, even with █ providing a significant amount of support. P-5 (p. 70).

53.

Ms. [REDACTED] provided [REDACTED] with a series of rating scales to complete at home. P-5. [REDACTED] returned the completed scores to Ms. [REDACTED] on September 23, 2020. On that day, [REDACTED] remained in the car while Ms. [REDACTED] spoke outside the car with [REDACTED] P-5 (p. 70).

54.

[REDACTED]'s social and emotional functioning was measured through the Conners Comprehensive Behavior Rating Scales (Conners CBRS) – Parent Form, an assessment tool used to obtain a parent's observations about his or her child's behavior. [REDACTED]'s ratings indicating that [REDACTED] experienced significant levels of emotional stress, including anticipatory anxiety, social withdrawal, and issues with focus. P-5 (p. 71). [REDACTED] also completed the Rating Scale of Impairment (RSI) to measure functional impairments. The scores indicated that [REDACTED] experienced "Considerable Impairment" in the areas of "School/Work," "Social," and "Domestic;" "Moderate Impairment" in "Family;" and "No Impairment" in "Mobility" and "Self-Care." [REDACTED]'s answers on the RSI indicated that [REDACTED] "has difficulties initiating and persevering on academic tasks," and "does not join in group or social activities and is often unable to speak in front of others." P-5 (p. 72).

55.

Ms. [REDACTED] also provided [REDACTED] with rating scales and the Sentence Completion Test (SCT), an open-ended writing task, both of which [REDACTED] was to complete. When [REDACTED] returned the rating scales and SCT, she told Ms. [REDACTED] that [REDACTED] had taken an entire week to complete two rating scales and the SCT and required "significant adult support." According to the report, [REDACTED] told Ms. [REDACTED] that she "had to read each item on the rating scales to [REDACTED] frequently redirect [REDACTED]'s attention, and have [REDACTED] point to her answer." On the SCT, [REDACTED] would read each sentence starter to [REDACTED] and [REDACTED] would type her response. [REDACTED] was unable to number her responses herself or adjust the spacing and

alignment of what she wrote. Given the deviations from the intended use of the SCT, the scores were not reported. P-5 (p. 73).

56.

Ms. ██████████ did not give any adaptive assessments to ██████████ instead relying on the ██████████ ██████████ report. Tr. 1319. She stated that an adaptive assessment probably would not have changed her evaluation, because the team already knew that ██████████ was struggling with functioning in a number of areas of daily life. Tr. 1319.

57.

Ms. ██████████ decided to consult with ██████████ one of ██████████'s medical providers, in order to understand what was happening with ██████████ from a medical perspective. Tr. 1319-20. She testified that “[i]n the 16 years I have done this job, I haven’t encountered another child who’s experienced this severity of loss of functioning outside of something like a traumatic brain injury or stroke.” Tr. 1320. According to Ms. ██████████ ██████████ explained to her that there was no organic or medical reason for ██████████'s loss of functioning—her understanding at the time was that it was psychiatric in nature. Tr. 1325.

58.

██████████ overall conclusion was that ██████████ should be considered for Special Education eligibility in the area of Emotional and Behavioral Disorder (EBD), based on the following characteristics:

- an inability to build or maintain satisfactory interpersonal relationships,

- an inability to learn, which cannot be adequately explained by intellectual or health factors, a consistent or chronic inappropriate type of behavior or feelings under normal conditions, and
- a displayed pervasive mood of unhappiness or depression.

She further stated that “eligibility is a team decision made by the Special Education Eligibility Team, and all relevant information about [REDACTED] should be considered when making eligibility decisions.” P-5 (p. 73).

59.

Ms. [REDACTED] made several recommendations, including allowing [REDACTED] to type, write, or otherwise indicate her response when she is not comfortable speaking; structuring [REDACTED]’s classroom environment to maximize routine and consistency, and giving [REDACTED] forewarning when her routine changes; noting that it was “critical for adults to develop a trusting relationship” with [REDACTED] and not drawing excessive attention to [REDACTED] in school. She noted that the focus should be on “reducing [REDACTED]’s anxiety and helping her feel more secure.” P-5, (p. 74).

60.

Ms. [REDACTED] testified that, at the time she did her evaluation, there were no other assessments she felt needed to be completed, such as speech or occupational, because of [REDACTED]’s inability to give a response to any of the assessments she used. Tr. 1334.

61.

Although Ms. [REDACTED] often uses rating scales completed by teachers as part of an evaluation, she chose not to do so in [REDACTED]’s case. Tr. 1339-40. Her rationale was that those scales are intended to provide information about a student no more than around four to six weeks prior to the

evaluation, while at that time, no teacher had interacted with [REDACTED] in several months. Tr. 1340. However, she also stated that the school team did collect that information “anecdotally.” Tr. 1340.

62.

Ms. [REDACTED] completed her report on October 20, 2020. P-5 (p. 74); R-109. She testified that she completed an evaluation of [REDACTED] within the 60-day timeline. Tr. 1302. [REDACTED] testified that Georgia Department of Education rules require that the evaluation be completed, and the report written up, within the 60 calendar days of the day that consent is given for the District to conduct an initial evaluation—in this case, August 5, 2020. Tr. 1580, 1644. However, she testified that days where students are out of school on break for five or more days, such as fall break, do not count towards the deadline. Tr. 1579-80. [REDACTED] said that, based on those calculations, the evaluation needed to be completed by October 22, 2020. Tr. 1647.

**vi. October 504 Meeting**

63.

Another 504 meeting occurred on October 12, 2020. Tr. 872, 1275. [REDACTED] attended with [REDACTED] a parent advocate. P-1 (p. 28). At that meeting, the team agreed to allow [REDACTED] more extended time and reduced assignment lengths. Tr. 1275; P-1 (p. 29), R-16. The team discussed the results of the [REDACTED] evaluation, which showed [REDACTED] functioning at a pre-kindergarten level. P-1 (p. 29).

64.

The team revised [REDACTED]’s educational accommodations as follows:

- Shortened and reduced standards-based assignments (teacher will meet [REDACTED] at her current level until further information is collected and evaluated)
- 100% extended time on all test and assignments

- **Student does not need to complete CTLS assignments<sup>6</sup>. However, mom will still need to log in for attendance purposed [sic] until further eligibility is determined** (emphasis added)
- Based upon [REDACTED]'s current learning ability, teachers will continue to use standard base curriculum utilizing visual pictures, aids and prompts with limited response to help support learning. (Two options will be provided).
- Per parent request the Hospital Homebound application was sent for the parents to complete and return.
- In the interim the School Psychologist will work with the SSA to complete state eligibility process.
- Once application is complete and reviewed, then an eligibility meeting will be scheduled by the CCSD Hospital Homebound.

P-1 (p. 30). [REDACTED] testified that at this point, she and the District team were all in agreement that [REDACTED] was not capable of completing assignments. Tr. 876-77.

65.

[REDACTED] testified that she had emphasized in both this and the earlier 504 meeting that she wanted [REDACTED] to be exposed to academic material. Tr. 1813. She said [REDACTED]'s doctors had told her that it was “good to keep massaging her brain.” Tr. 1813.

66.

In an email following the 504 meeting, [REDACTED] withdrew her authorization for the District to communicate with Potter’s Behavioral Clinic. P-33, p. 423. She explained that if the District needed to speak with one of [REDACTED]'s providers, she wanted to be part of those conversations.<sup>7</sup> P-33, p. 423.

67.

On October 12, 2020, after the 504 meeting, Ms. [REDACTED] sent [REDACTED] the hospital homebound paperwork. A board-certified psychiatrist who is currently treating the conditions [REDACTED] is diagnosed with was required to fill out the paperwork. P-6 (p. 109). [REDACTED] had [REDACTED]'s pediatrician, Dr. Erika Van Putten,

<sup>6</sup> CTLS refers to the District’s virtual learning platform. Tr. 876.

<sup>7</sup> According to [REDACTED] Ms. [REDACTED] had stated that [REDACTED] was recommending that [REDACTED] be placed at a school that, according to [REDACTED] was intended for children with significant behavioral issues. Tr. 929. [REDACTED] says she confirmed with [REDACTED] that she had not in fact said that to Ms. [REDACTED] Tr. 931. Ms. [REDACTED] denies that she discussed such a school with [REDACTED] or [REDACTED] Tr. 1323-24.

complete the forms, and █████ returned them to the District on November 13, 2020. P-6 (p. 109). Ms. █████ emailed █████ explaining that the application was denied because when hospital homebound services are requested due to a mental health condition, a psychiatrist currently treating the student must fill out the forms. P-33 (p. 436); Tr. 901. There is no indication that █████ resubmitted the hospital homebound forms.

*vii. Dr. Sean Hirt's Evaluation*

68.

On October 26, 2020, █████ was evaluated by Dr. Sean Hirt, a psychologist, at West Georgia Psychological Services. P-8 (p. 115). As in █████'s other evaluations, █████ did not participate. P-8 (p. 118). Dr. Hirt observed that it was difficult to tell whether █████ did not respond to his questions or instructions because she misunderstood, was unwilling to participate, or both. P-8 (p. 118). Dr. Hirt attempted to administer several direct psychological assessments, but none of them could be completed because █████ would not engage. P-8. However, Dr. Hirt did administer some assessments that █████ completed. █████'s report of █████'s adaptive functioning, as measured by the Adaptive Behavior Assessment System – Third Edition (ABAS-III) indicated that █████'s adaptive functioning fell within the extremely low range across all areas. P-8 (p. 120). █████'s responses on the Achenbach Behavior Scales indicated that █████ received clinically significant scores on the Anxious/Depressed, Withdrawn/Depressed, Social Problems, and Attention Problems scales. P-8 (p. 121). Dr. Hirt also provided one of █████'s teachers, Dr. █████ with the Achenbach Behavior Scales Teacher Report Form, but it had not been completed by the time Dr. Hirt finished his report on November 17. P-8 (pp. 121, 134).

69.

█████ completed the Childhood Autism Rating Scale – 2nd Edition (CARS 2). Dr. Hirt wrote that the CARS was also completed based on observations during testing. The results indicated that █████ had severe autistic traits, although it was not entirely clear which conclusions were based on direct observation and which were based on parent report. P-8 (p. 124). █████ also completed the Gilliam Asperger’s Disorder Scale, which indicated a “High/Probable” likelihood of autism. P-8 (p. 124). Finally, █████ completed the Sensory Profile, Second Edition (SP-2), which indicated that █████ was both highly sensitive to and bothered by sensory input. P-8 (pp. 126-27).

70.

In his summary, Dr. Hirt noted that █████’s report indicated that █████ had previously exhibited some traits common to individuals, particularly females, on the autism spectrum. █████ reported █████ had “always been shy, struggled socially, tended to perseverate on certain topics (e.g., violin, coding), and experienced difficulties with sensory integration.” P-8 (p. 129). However, Dr. Hirt noted that it was difficult to say with certainty whether █████’s difficulties were due to autism, “given the reported stark differences in her presentation following the introduction of a new medication, as well as a traumatic event she experienced.” P-8 (p. 129). Dr. Hirt therefore concluded that only a rule-out for an autism spectrum disorder could be given, but that “[f]urther monitoring and assessment are highly recommended.” Finally, he made a provisional diagnosis of “Unspecified Trauma and Related Stressor Disorder.” P-8 (p. 129).

71.

Dr. Hirt provided a series of recommendations. Regarding accommodations and supports in the school setting, he suggested that █████ would benefit from “school services designed to assist children with sensory issues;” that “[s]peech and language services are greatly needed;” “[o]ccupational therapy

would also be beneficial;” and that █████ “will function best in an environment with consistent routines, structure, and reinforcement. The use of methods to maintain consistency between the home and school environment is necessary.” P-8 (pp. 129-30).

72.

█████ emailed a copy of Dr. Hirt’s report to █████ on November 20, 2020. R-114.

**viii. *Attempts to Schedule Special Education Eligibility Meeting***

73.

On October 15, 2020, █████ and █████ agreed to set up an initial eligibility meeting for October 23, 2020. Tr. 1174; P-33 (p. 411). However, on October 22, █████ emailed █████ to cancel the meeting “[d]ue to unforeseen circumstances.” Tr. 1175; R-109. At the hearing, █████ testified that she had to cancel the meeting because of a medical emergency relating to her cancer treatment. Tr. 986. While █████ indicated in the email that she would let █████ know when she would be available to reschedule, she never followed up. Tr. 1176; R-109.

74.

█████ followed up with █████ on October 28, and on November 4 █████ informed her that she would be in touch with █████ “next week” to update her on the “multiple medical appointments” that █████ was currently attending. Tr. 1177; R-110. █████ says she does not recall if █████ reached out to her as she said she would. Tr. 1177-78.

75.

On November 20, 2020, █████ emailed █████ to provide her availability for an eligibility meeting. Tr. 1178; R-114. █████ and █████ agreed to schedule the meeting for December 7, 2020. Tr. 1182; R-114.

76.

█████ testified that she was never informed that the District had legally-imposed deadlines by which it had to schedule the eligibility meeting. Tr. 987. She said that every time she cancelled or rescheduled the meeting, there was never any sense of urgency or an explanation that there were deadlines to meet. Tr. 987. She said it was not until January 2021, after she had retained legal counsel, that she began hearing about those deadlines. Tr. 959.

77.

On December 3, 2020, ██████ sent ██████ a “draft report” for the eligibility meeting. P-33 (pp. 449-50), R-115. ██████ testified that, prior to eligibility meetings, the District creates a draft based on the evaluation results it has at the time. Tr. 1183. The draft is reviewed during the meeting to make sure it is accurate. Tr. 1183.

78.

█████ responded on December 4 and explained to ██████ that the team would need to go over the draft to make some “necessary changes,” because “[t]he majority of [the information in the report is] either inaccurate or outdated.” In the same email, ██████ attached a letter from Dr. Hirt, December 4, 2020, stating that “based on new information that I am waiting to formally receive” he would soon be formally diagnosis ██████ with “High Functioning Autism.” P-9 (p. 135), R-116, P-33 (p. 449).

*ix. ██████ is Placed on “Z-Status”*

79.

█████ testified that sometime in the Fall of 2020, ██████ sent her two truancy letters. Tr. 882. This confused ██████ as she had been logging on daily as was provided in ██████’s 504 plan. Tr. 882. She emailed ██████ to ask about his letters, but claims to have not gotten a response. Tr. 882. After

calling the District's tech support desk she was able to have the erroneous absences removed from [REDACTED]'s records. Tr. 883.

80.

On December 4, 2020, [REDACTED] tried to log on to [REDACTED]'s virtual classes as usual, but she was denied access. Tr. 878. She called the school and eventually was able to speak with the assistance principal, Aurelia [REDACTED] who told her that [REDACTED] had been placed on "Z Status" as recommended by Dr. [REDACTED] [REDACTED] the school's 504 coordinator, meaning she was no longer enrolled at [REDACTED] Middle School. Tr. 878-79; P-10 (p. 136), P-33 (p. 457).

81.

[REDACTED] testified that [REDACTED] had been placed on Z Status because she had not been accessing services during the school year. Tr. 1655. She explained that Z status is used to remove a child from enrollment in a particular school but maintain enrollment with the District so that they can be evaluated and placed in an appropriate program. Tr. 1655-56. [REDACTED] stated the change to Z status did not impact [REDACTED]'s ability to receive special education services. Tr. 1660. [REDACTED] conceded, however, that [REDACTED]'s 504 plan allowed that she was not required to complete class assignments. Tr. 1763. [REDACTED] stated that she explained the purpose of Z status to [REDACTED] Tr. 1414. However, [REDACTED] did not know whether [REDACTED] was informed prior to the change in enrollment status. Tr. 1438.

**x. Eligibility Meeting**

82.

An eligibility meeting for [REDACTED] took place on December 7, 2020. P-11 (p. 137); Tr. 1187. Meeting participants included Ms. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. P-14 (p. 175); Tr. 1187, 1275.

83.

Based on the information from Dr. Hirt, the team discussed ██████'s potential eligibility for Special Education services under the autism category. Tr. 1188. ██████ stated that the team “wanted to establish an understanding with the requirements . . . for an autism eligibility,” including “what evaluations are required.” Tr. 1188-89. The team explained to ██████ that, because of state regulations, they needed a communication evaluation in order to determine whether ██████ qualified for that eligibility category. Tr. 1189, 1190.

84.

The team was not able to finish the eligibility meeting process and make an eligibility determination during the December 7 meeting. Tr. 1187-88. The team agreed to reconvene on December 15, 2020. Tr. 1190.

85.

On December 7, after the meeting, ██████ sent ██████ a document from ██████ explaining that ██████'s diagnosis of selective mutism had been changed to receptive-expressive language disorder, also noting that she had been diagnosed with autism spectrum disorder. R-119, P-33 (p. 456).

86.

On December 14, 2020, ██████ sent ██████ the addendum to Dr. Hirt's prior psychological report. P-12, R-121, P-33 (pp. 461-62). That addendum, dated December 13, 2020, included a formal diagnosis of autism. P-12 (p. 139), R-121; Tr. 1195. Dr. Hirt finalized the diagnosis based on information from ██████'s seventh-grade technology connections teacher Dr. ██████ who ██████ also knew from her “girls who code” club. P-12, p. 140, Tr. 919. ██████ reported that ██████ knew ██████ “very, very well.” Tr. 919. According to the report, ██████ stated that “[██████] often times would whisper when responding to questions. She would never give eye contact whenever we communicated.

Whenever she came to the club meets, she would sit in the same computer space, and would never mingle with the other girls in the club.” Dr. Hirt also noted that [REDACTED] had learned from her extended family that [REDACTED] had five cousins with autism. P-12 (p. 140). [REDACTED] says this was the first time she was provided with an official autism diagnosis for [REDACTED] Tr. 1195.

87.

The eligibility team reconvened as planned on December 15, 2020. Tr. 1196. [REDACTED], the education advocate, was not present at this meeting. Tr. 1199. Ultimately, the team found [REDACTED] eligible for special education services under the categories of Other Health Impaired and Emotional Behavior Disorder. Tr. 1196.

88.

Ms. [REDACTED] testified that the state rules and regulations for special education have various criteria related to eligibility categories, and that those determine whether a child meets those criteria. Tr. 1329-30. She explained that other health impairment requires that a “child have a medical condition that is impacting them educationally.” Tr. 1330.

89.

A special education eligibility report was completed following the December 15 meeting. P-14. The report listed the following medical diagnoses: major depressive disorder, recurrent, severe without psychotic symptoms; attention-deficit hyperactivity disorder, predominantly inattentive type; post-traumatic stress disorder, acute; autistic disorder; catatonic autism; severe receptive-expressive language disorder; high functioning autism; provisional unspecified trauma and related stressor disorder; unspecified anxiety disorder; and cognitive and behavioral changes. P-14 (p. 149). In response to the question “Does the child have motor/coordination/mobility needs” the report answered “no.” P-14 (p. 149).

90.

The report gave a summary of [REDACTED]'s sudden change in functioning in March 2020. P-14 (p. 150). Regarding her then-current functioning, it reported that [REDACTED] was “completely nonverbal” and was “fully dependent on her mother for self-care and feeding needs.” P-14 (p. 150). Her teachers were not able to report on her current academic functioning because she had not produced enough work for them to assess it accurately. P-14 (p. 154).

91.

The report contained summaries of the District’s psychoeducational evaluation report; the [REDACTED] [REDACTED] report; Dr. Popoola’s medical evaluation report; Dr. Van Putten’s records; Dr. Hirt’s report; and a report by Dr. Laura Wright, a psychologist. P-14 (p. 158). It further stated that [REDACTED] had “muttered a word or two in August 2020 for a few days” but that soon “faded away.” P-14 (p. 150). Similarly, it stated that [REDACTED] “began to show signs of some independence with personal/self-care around August-September 2020. However, that is no longer the case. Her mother must assist her with very basic personal needs including grooming and dressing. She is 100% non-verbal. She has been unable to speak to family and others since March 2020.” P-14 (p. 156-57).

92.

The report listed [REDACTED]'s current treatments and therapies as speech therapy twice a week, occupational therapy twice a week, physical therapy twice a week, and play therapy twice a week. P-14 (p. 172).

93.

Under a “Summary of Considerations,” the report indicated the following areas of concern: intellectual functioning, psychological processing, motor, medical, academics, communication

language, adaptive, and social/emotional. The box for “Sensory processing” was not checked. P-14 (p. 174).

94.

The team concluded that [REDACTED] met the criteria for special education eligibility in the categories of “Other Health Impairment” and in “Emotional Behavior Disorder.” P-14 (p. 175). Those determinations were explained as follows:

[REDACTED] is a virtual student who is demonstrating significant levels of emotional distress in the home setting. [REDACTED] is depressed, experiences anxiety and worries often. She has difficulties initiating and persevering on academic tasks, struggles with sustaining attention to tasks and is often restless. [REDACTED] is non-verbal and unresponsive and shows little to no response when others attempt to interact with her. As a result, she is unable to participate in educational activities. These behaviors are all consistent with [REDACTED]’s medical diagnoses (Major depressive Disorder, ADHD, Catatonic Autism) and appear to be impacting her ability to access the curriculum and meet grade level standards. Therefore, the consensus of the committee is that Oliva meets criteria for Special Education eligibility in the Other Health Impairment category.

[REDACTED] is having significant difficulty with emotionality. Behavioral rating scales indicated clinically significant concerns related to Emotional Distress, Worry, Social Problems and Separation Fears. These feelings/ behaviors negatively impact [REDACTED]’s peer and adult relationships and adversely impact her educational performance. [REDACTED] displays an inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers. In her current depressed/ catatonic state she is unable to interact with or respond to others. [REDACTED] demonstrates consistent or chronic inappropriate feelings under normal conditions. [REDACTED] experiences extreme separation anxiety when apart from her mother. [REDACTED] also displays a pervasive mood of unhappiness or depression. [REDACTED] is catatonic and is unable to participate in events and activities that she once enjoyed. [REDACTED] has displayed these feelings/behaviors for sufficient duration, frequency, and intensity to warrant special intervention. Subsequent to a review of the aforementioned information, the consensus of the team is that [REDACTED] also meets criteria for special education eligibility in the category of Emotional Behavior Disorder.

Parent and Teacher ratings suggest that [REDACTED] is demonstrating many behaviors consistent with her diagnosis of Autism. However, the committee did not come to a final decision regarding eligibility in this category because a comprehensive speech evaluation has not been completed. The team agreed to reevaluate when the required components for eligibility are available. The committee agreed to note [REDACTED]’s position that the team has enough information to finalize consideration for eligibility.

P-14 (p. 174-75).

95.

█████ disagreed with the team’s determination that █████ was not eligible for services under the autism category. Tr. 1199, 1333. According to █████ the District team members explained to █████ that they could not make that eligibility determination at that time. Tr. 1199. Ms. █████ testified at the hearing that eligibility for autism requires, among other things, a showing of a developmental delay. Tr. 1333. None of the information the school team had received at that point indicated any delays in █████’s early development. Tr. 1333, 1673. █████ testified that the category under which a student is found eligible for special education services does not affect the services to which they are entitled. Tr. 1208. She stated that she had explained this to █████ “multiple times.” Tr. 1208. However, by the end of the meeting, █████ says “there was a consensus” and that █████ agreed to those eligibility categories. Tr. 1199. Still, the team agreed to eventually conduct a communication evaluation, a cognitive assessment, and an occupational therapy evaluation, so that █████ could potentially qualify for autism eligibility. Tr. 1200, 1203, 1204, 1233, 1334.

96.

Following the meeting, █████ sent █████ a consent for evaluation form to sign, which would have given the District permission to conduct a communication evaluation for █████ Tr. 1200, 1203, 1333. █████ provided consent to evaluate, as well as consent to initiate services under the identified eligibility categories. Tr. 1204; P-16, P-17. The District also sent █████ a copy of the eligibility report, but █████ continued to express disagreement with the eligibility determination. Tr. 1204.

97.

On December 15, 2020, █████ submitted a request for an independent educational evaluation. P-15 (p. 177). █████ explained her concern that the nature and environment of the evaluation by the school psychologist was inappropriate given █████’s current limitations, noting that the test was “attempted

through my car window while I was holding up an umbrella over the evaluators head.” P-15 (p. 177). She requested that an IEE be conducted by “a subject matter expert specializing in using alternative means of accurately estimating intellectual functioning and communication abilities for a person with severe cognitive changes.” P-15 (p. 177). The District agreed to the IEE, but the evaluator [REDACTED] selected failed to provide the proper paperwork. Tr. 1722; P-33 (p. 538).

*xi. The District’s Speech and Occupational Therapy Evaluations*

98.

[REDACTED] is a speech language diagnostician for the Cobb County School District, a position she has held since 2008. Tr. 1350-51. She has a Bachelor’s degree in communication sciences and disorders and a Master’s in communication sciences and is pursuing a specialist certificate in special education. Tr. 1359-60. She typically completes about 50 evaluations a year and estimates that in the course of her time working for Cobb County she has completed hundreds of evaluations. Tr. 1353 [REDACTED] [REDACTED] was tendered as an expert in evaluating students for speech and communication impairments for the school district, assistive technology evaluations in the educational setting, eligibility for speech language services under the IDEA and interpreting speech language evaluations and assessments. Tr. 1361, 1363.

99.

Prior to their evaluations, [REDACTED] sent a copy of [REDACTED]’s progress notes from [REDACTED] to [REDACTED] [REDACTED] and to [REDACTED] an occupational therapist for the District who intended to conduct [REDACTED]’s occupational therapy evaluation. These notes covered the period between September 2020 and January 2021. P-33 (pp. 501-02); Tr. 1373.

100.

██████████ first attempted to complete a speech evaluation on February 9, 2021. She went to ██████'s home with ██████. Tr. 1373; P-24. Prior to the evaluation, ██████ had reviewed the evaluation report and speech therapy notes from ██████ Dr. Hirt's psychological evaluation, and all other documents the District had about ██████ Tr. 1374. When ██████ arrived, ██████ was in her bed and ██████ sat in ██████'s bedroom with them. Tr. 1374, 1495 ██████ had brought a craft activity and shared it with ██████ but after only about 10 minutes ██████ fell asleep. Tr. 1374-75, 1495. They then proceeded with the parent interview portion of the evaluation and spoke at length with ██████ about ██████'s history and current functioning. Tr. 1375.

101.

Because ██████ wasn't able to perform a direct assessment of ██████ during her first visit, she returned to the home on March 1, 2021 to continue the assessment. Tr. 1375; P-25. ██████ struggled to get ██████ to stay in the living room as ██████ went upstairs to her bedroom several times. P-25. ██████ in fact locked ██████'s bedroom door from the outside so that she could not go back in while Ms. Knauf was there. P-25. ██████ presented ██████ with an augmentative communication device. ██████ pressed several buttons, but pressed none of the buttons requested by ██████. P-25. ██████ presented some pictures to ██████ but she did not point to any of the pictures as requested. P-25. As happened during the previous home visit, ██████ fell asleep after several minutes, at which point the session ended. P-25. Because ██████ did not participate in any of the exercises, ██████ did not assign standard scores for them. Nevertheless, ██████ concluded that ██████ had a functional communication disorder. P-25; Tr. 1378. ██████ emailed her report to ██████ and offered to review it with her, but did not get a response. Tr. 1379.

102.

██████████ also reviewed the results of some of ██████'s private evaluations. For the ██████████ evaluation, she noted that ██████ had not participated in the testing at all, but the assessments had still been assigned standard scores. ██████████ thought this was unusual. Tr. 1379. The evaluator was also only able to assess voice and fluency only through parent report. Tr. 1380. The evaluator did not assess articulation because ██████ did not verbalize. Tr. 1379-80.

103.

██████████ said at the time she did not believe she needed to complete an assistive technology or augmentative communication evaluation. Tr. 1383. She said that would have been an “ongoing process” once ██████ was accessing materials, but ██████ was not accessing anything—she would not even point to the pictures that ██████████ presented to her. Tr. 1383. Based on that, ██████████ did not believe she would not have had the skills she needed to access augmentative communication. Tr. 1383.

104.

██████████ is the supervisor of related services for Cobb County. Related services include occupational therapy, physical therapy, and special education nurses. Tr. 1480. She has held that role since 2012. Tr. 1480-81. She holds a Bachelor’s degree in occupational therapy, an MBA, and a doctorate in occupational therapy. Tr. 1485. She has been working as an occupational therapist since 1996. Tr. 1483-86. She estimated that she has conducted at least 100 occupational therapy evaluations over the course of her career. Tr. 1485. She was tendered as an expert in the provision of school-based occupational therapy services. Tr. 1488.

105.

██████████ testified about the procedures and results of ██████████ occupational therapy evaluations. ██████████ explained that the occupational therapy evaluation for ██████ was not typical.

Tr. 1496. She explained that the standard way therapists measure skills in this area, such as muscle strength, is for the child to do specific exercises at the therapist's direction, and [REDACTED] was not able to do that. Tr. 1496. According to [REDACTED] was able to observe that [REDACTED]'s motor skills were "grossly intact" but could not give full testing of that area. Tr. 1496. For fine motor skills, [REDACTED] did have [REDACTED] successfully complete a preschool-level puzzle. Tr. 1497. [REDACTED] was not able to assess [REDACTED]'s personal care skills directly, as is typical, so in this case she relied on the parent's report. Tr. 1497-97. [REDACTED] added that while she had seen students lose personal care skills that they had a year prior, it would typically follow a traumatic brain injury or a neurological event. Tr. 1498. Dr. [REDACTED] noted that [REDACTED] could not assess [REDACTED]'s handwriting skills because she did not engage in any writing activities. Tr. 1498-99. Parent report indicated that [REDACTED] was experiencing significant sensory processing issues, including extreme sensitivity to light, sound, and touch. Tr. 1499, P-24. Ms. [REDACTED] recommendations in the report included the following:

- Exposure to a variety of fine motor activities and incorporating previous interests whenever possible
- Visual schedules and supports to attempt to increase independence in activities of daily living
- Investigate alternative activities using fine motor approach to re-introduction of handwriting such as a Lite Brite, sand tray, gel-filled bags for tracing, punch trays with stylus, iPad apps, etc.
- Monitor and address sensory processing needs

P-24.

106.

[REDACTED] agreed with the conclusions/recommendations in [REDACTED] report and stated that there was no other occupational therapy assessment she would have conducted that was not done. Tr. 1499-1500. [REDACTED] further noted that the results from the private OT evaluation at [REDACTED] were similar to the ones found by [REDACTED]. Tr. 1502. As in [REDACTED] evaluation, the [REDACTED] evaluator was not able to get [REDACTED] to participate, but [REDACTED] succeeded in getting [REDACTED] to do

some therapeutic activities. Therefore, the District’s occupational therapy report may have contained more information in the [REDACTED] report. Tr. 1502.

107.

[REDACTED] also noted that in the [REDACTED] results, the therapist administered the Fine Motor precision and fine motor integration tests and assigned them scores. Tr. 1502-03; P-24. However, the same evaluator noted that [REDACTED] picked up a pencil but never wrote anything. P-24; Tr. 1503. [REDACTED] stated that she would not have assigned a standard score for those assessments, given that [REDACTED] did not actually attempt them. Tr. 1503. [REDACTED] also noted that for some measured skills, including neuromuscular skills and self-care skills, it was not clear whether the evaluator was measuring from direct observation or from a parent report. Tr. 1504.

108.

[REDACTED] felt it was odd for the evaluator to recommend that [REDACTED] be able to participate in a 10-minute “sensory motor obstacle course” within a three-month period. Tr. 1505; P-24. First, there was no other description of [REDACTED]’s sensory processing issues in the report. Moreover, [REDACTED] thought it was unrealistic to expect a child who was not making eye contact, speaking, or following directions to complete such a task within a three-month period. Tr. 1505. [REDACTED] also observed that the listed goals would have been more appropriate for a preschool age child or a child with developmental delays. Tr. 1506. P-24.

***xii. The Key Autism Report***

109.

On January 18, 2021, a report was completed by Key Autism Services following an initial assessment of [REDACTED]’s functional living skills. P-21 (p. 185). According to the report, [REDACTED] was referred to Key Autism by [REDACTED] P-21 (p. 185). The report identified 46 different goals for [REDACTED] covering

several broad areas, including self-care; expressive language; labeling, describing, and summarizing; group/peer play; attending; imitation; matching; receptive language; identification; among other “custom” goals. P-21 (pp. 189-201). Overall, the report recommended 25 hours of direct behavioral therapy a week. P-21 (p. 203). ██████ testified that she received the Key Autism Report. Tr. 1457.

*xiii. Neuropsychological Evaluation*

110.

Dr. Kim Ono is a board-certified pediatric neuropsychologist at Children’s Healthcare of Atlanta, as well as an adjunct professor at Emory University. Tr. 438-39. She has eight years of experience as a neuropsychologist. Tr. 439. She testified as an expert in psychological and neuropsychological evaluation of children with disabilities, as well as educational planning and the provision of necessary programming and services to such children. Tr. 449.

111.

█████ brought ██████ for an evaluation by ██████ on February 11, 2021. P-23 (p. 240). According to Dr. Ono’s report, ██████ said that ██████ had made slow improvement—she was eating independently again with a fork and spoon, could use her iPad, had decreased abnormal movements and behaviors, and occasionally responded to commands and questions—mostly through nonverbal communication (eye contact, nodding) but sometimes with one or two words, such as “stop.” P-23 (p. 240).

112.

█████ administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3), a parent-report questionnaire, which showed that all of ██████’s general adaptive skills were well below age expectancy (below a five-year-old’s). P-23 (p. 243-44). ██████ herself was not able to complete any direct test measures, so Dr. Ono’s evaluation was based on observation and parent report. P-23 (p. 243). Ultimately, ██████ confirmed ██████’s already-existing diagnoses of encephalopathy, ADHD, autism

spectrum disorder, post-traumatic stress disorder, and anxiety disorder. P-23 (p. 245). While ██████ said she did not specifically assess all of those things, they were consistent with how ██████ was presenting when she saw her and found no reason to dispute them. Tr. 455. ██████ recommended that ██████ receive services through an IEP under the categories of Autism and Other Health Impairment. P-23 (p. 245). ██████ did not recommend a specific amount of services in her report. However, at the hearing, she testified that she agreed with the 25-hour a week recommendation from the Key Autism report, while acknowledging that ██████ might need to gradually build up to that number of hours. Tr. 523-24.

113.

It is unclear when ██████ provided Dr. Ono's report to the District; however, the report was referenced in Ms. Knauf's speech evaluation report, which was produced on March 12, 2021. P-25 (pp. 258, 261).

*xiv. Attempts to Schedule IEP Meeting*

114.

On December 18, 2020, ██████ emailed ██████ expressing her frustration that speech and occupational evaluations had not occurred for ██████ within the 60-day window. R-130, P-33 (p. 469-70). ██████ responded explaining that staff would be in touch regarding those assessments and added that the 60-day timeline is applicable only to initial evaluations, which ██████ repeated in her testimony. R-130, P-33 (p. 473); Tr. 1210. ██████ responded to Ms. Ford's emails contending that OT and speech evaluations were never conducted in the first place, and thus these should not be considered reevaluations. R-130; P-33 (p. 473).

115.

█████ contacted ██████ on January 6, 2021, to explain ongoing efforts to have hearing, vision, and cognitive assessments performed for ██████ ██████ stated that these should be done prior to writing an

IEP. Tr. 1211; R-131. However, ██████ testified that the District continued trying to schedule the IEP meeting regardless, because it had already established eligibility for ██████ and it had an obligation under the IDEA to develop a plan for her. Tr. 1216.

116.

An IEP meeting was scheduled for January 21, 2021. P-19 (p. 182). On January 13, ██████ emailed ██████ a draft IEP in anticipation of the IEP meeting. She emphasized that it was a draft and that final decisions would be made as a team at the meeting. P-33 (p. 481); Tr. 1216-17. On January 21, the day of the IEP Meeting, ██████ emailed ██████ saying that ██████'s eligibility must be redone and alleging that it did not comply with the IDEA. R-140. ██████ said that she believes the district attempted to convene an IEP meeting as quickly as possible. Tr. 1422.

*xv. 2021 IEP Meetings*

117.

An initial IEP meeting was held on January 21, 2021. Tr. 1207-08, 1221. ██████ did not attend; instead, ██████ was accompanied by an attorney, Jean Estes. Tr. 1222. ██████ ██████ ██████ and ██████ were also at the meeting. P-27 (p. 265). ██████ said that the meeting was “very adversarial from the start.” Tr. 1222. She testified that ██████ and ██████ were “very aggressive” and “combative,” and that she had to ask ██████ to be respectful. Tr. 1223.

118.

██████ says that ██████ wanted to address eligibility again at that meeting, even though eligibility had already been established for ██████ Tr. 1223. ██████ emphasized to her that the team had what they needed to develop and IEP for ██████ Tr. 1223. ██████ said that “[w]e stated that multiple times.” Tr. 1223-24. She said that after an hour “we had to just stop” and let the teachers leave. Tr. 1224. That was

because the team could not move the conversation from eligibility to developing an IEP. ██████ said it was “the most disheartening meeting I’ve ever participated in in my career in Cobb County.” Tr. 1224.

119.

On January 28, 2021, ██████ contacted ██████ about scheduling the rest of the IEP meeting. Tr. 1225. She proposed three dates—February 4, 22, or 23. P-33 (p. 497). ██████ responded that “we must have an accurate Eligibility for Special Education. . . before we can develop an IEP.” P-33 (p. 499). ██████ responded that because ██████ had already been found eligible for special education services, the District had an obligation to move forward with developing an IEP. P-33 (p. 502). To address ██████’s concerns about eligibility, she stated that “the District has granted an IEE as well as agreed upon conducting additional evaluations as part of a re-evaluation and will reconvene to consider the new information as it relates to eligibility.” P-33 (p. 502). ██████ again proposed three dates for a meeting—February 22, February 23, or March 16. P-33 (pp. 502-03). After ██████ did not respond, ██████ emailed her on March 8 saying that the team intended to meet on March 16 to develop an IEP for ██████ P-33 (p. 438). ██████ responded the following day, reiterating her stance that ██████’s eligibility needed to be redone before proceeding with an IEP, and stating that she was available to meet on March 18 or 19 to discuss eligibility. P-33 (p. 539).

120.

On or around February 22, 2021, ██████ filed a formal complaint against the District. P-33 (pp. 518-34); Tr. 1694. ██████ testified that the only people who were aware of that complaint were herself, the assistant director of the compliance, Ms. Coleman’s secretary, and possibly ██████ Tr. 1695. ██████ testified that the District did not retaliate against ██████ as a result of the complaint. Tr. 1695.

121.

Despite ██████'s disagreement, the District decided to proceed with the IEP meeting on March 16, 2021. ██████ notified ██████ that the meeting would go forward, explaining the District's obligation to develop an IEP within "a specified timeframe." Tr. 1227, 1228; R-157, P-26 (p. 262), P-33 (pp. 542-43). ██████ testified that since the District had identified ██████ as a student with a disability it was required to provide a plan for her "at a timeframe that is appropriate" and noted that "some time had been delayed" already. Tr. 1227, 1228. Neither ██████ nor Ms. Estes (or any other representative) attended the March 16 meeting. Tr. 1228. As a result of that meeting, the school team drafted an IEP for ██████ P-27.

122.

The March 2021 IEP described the impact ██████'s disability had on her ability to progress in the general education curriculum as follows:

██████ is currently non-verbal and unresponsive and shows little to no response when others attempt to interact with her. As a result, she is unable to participate in educational activities. These behaviors appear to be consistent with ██████'s medical diagnoses (Major Depressive Disorder, ADHD, Catatonic Autism) and appear to be impacting her ability to access the curriculum and meet grade-level standards.

██████ displays an inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers. In her current depressed/ catatonic state, she is unable to interact with or respond to others. ██████ demonstrates consistent or chronic inappropriate feelings under normal conditions. These feelings/behaviors also negatively impact ██████'s peer and adult relationships and adversely impact her educational performance.

P27 (p. 267).

123.

The IEP identified three annual goals for ██████

- When being instructed by a school staff member, ██████ will remain within the appropriate range of the staff member throughout the completion of the instructional task with visual/verbal prompts a target of 4 out of 5 opportunities.

- When provided a prompt or directive by a school staff member through modeling, picture, or verbally, [REDACTED] will respond by eye gaze or motor movement (such as a nod, hand raise, etc) in 2 out of 5 trials.
- When provided with an instructional task and visual/verbal supports, [REDACTED] will increase her engagement in the academic task by engaging with the instructional materials in 2 out of 4 trials.

P-27 (p. 269-70).

124.

The IEP team determined that an appropriate weekly duration of services for [REDACTED] would be 120 minutes per week of homebased instruction. Tr. 1233; P-27. [REDACTED] explained that the team came to that decision based on the prior difficulty with evaluating [REDACTED] and the limited engagement [REDACTED] displayed. Tr. 1233. [REDACTED] said that the team wanted to start with that amount of time to “build her capacity” to be “engaged in the learning environment.” She said the plan was to “come back in a few weeks” once rapport was established with a home-based teacher and revise the IEP based on how [REDACTED] responded. She emphasized that they did not want to “overwhelm” [REDACTED] given how long it had been since she had been in a school environment.” Tr. 1234. The IEP itself described the decision to limit initial instruction to 120 minutes a week as follows:

The team discussed that [REDACTED] has not engaged in her educational setting for over a year, other than some isolated instances remotely. However, during those times the camera was frequently off, and [REDACTED] did not respond to bids for adult interactions. At this time the team agreed to 2 hours a week of homebased instruction. The team also discussed that they would re-access [REDACTED]’s needs in this area as soon as needed once instruction began and [REDACTED] was consistently receiving services....the team recommended to meet again prior to the start of the 2021-2022 school year to review data and [REDACTED]’s progress on IEP goals in order to determine next steps such as potential changes to time of HHB, changes in services, or other needs that may arise.

P-27 (p. 278).

125.

Under the “Assistive Technology” section, the team noted that “[a] request for an AT evaluation was indicated in the 1/21/21 meeting. However, at this time the team agrees that until [REDACTED] is

participating in an educational setting, identification of Assistive Technology needs can not be determined. Once [REDACTED] is accessing her educational setting, AT needs can be explored and trialed, and next steps determined based on [REDACTED]s response/need.” P-27 (p. 274).

126.

The IEP states that [REDACTED] does not have any communication needs, explaining that “[a]n Evaluation is currently in process in the area of Speech and Language.” P-27 (p. 273). The team also noted that occupational therapy evaluations were ongoing. P-27 (p. 274). While it noted that a request for a physical therapy evaluation was made at the January 21 meeting, as well as via email on March 9 because of “toe walking” and a poor gait, the team concluded that based on observations from [REDACTED]s September psychological evaluation that she was able to physically move from the car to the school building, “there does not appear to be a significant impact in the area of gross motor skills that would impede [REDACTED]s educational needs and the team agrees that an evaluation is not required.” P-27 (p. 274).

127.

[REDACTED] testified that she did not believe 120 minutes of instruction per week was an appropriate amount of service for [REDACTED] to make meaningful progress. Tr. 478. She also did not believe that the 3 IEP objectives were designed to allow [REDACTED] to make meaningful progress, noting that she had seen “a lot more goals than that in an IEP.” Tr. 480. [REDACTED] would have recommended that [REDACTED] receive as much occupational and speech therapy as possible, ABA therapy, and some physical therapy. Tr. 478-79. In her own recommendations, [REDACTED] recommended that [REDACTED] receive speech and language therapy due to her “very, very limited speech.” Tr. 471; P-23 (p. 245). She also recommended physical therapy to support her motor functioning, noting that she was still “clumsy” even though she was walking independently, and expressing concern that it might be dangerous if she is not able to properly walk around a classroom. Tr. 472; P-23 (p. 245). [REDACTED] also noted that, contrary to the IEP, [REDACTED] was not

“unable to interact with or respond to others:” ██████ had observed ██████ interacting with her mother and brother. Tr. 477. ██████ also pointed out that ██████ was participating in activities in occupational and speech therapy, such as making block towers at the direction of her therapist. Tr. 477. She also disputed the contention that ██████ had no communication needs. Tr. 480-81.

*xvi. The District’s Attempts to Provide Services to ██████*

128.

████████ testified that, within a week of the March 16 IEP meeting, the home-based instructor assigned to ██████ reached out to ██████ to schedule services. Tr. 1411-12; R-164. ██████ contacted ██████ on April 14, 2021, stating that the home-based teacher had reached out and asking whether ██████ planned to have ██████ access those offered services. She noted that ██████ would need to be reenrolled at Tapp. She explained that if ██████ did not plan to have ██████ access the special education services offered, ██████ would be withdrawn from the District. However, ██████ would be able to enroll ██████ back in the District at any time. P-33 (p. 356), R-164; Tr. 1413. ██████ responded stating she had never withdrawn ██████ from Tapp, explaining that she had “not given consent for [████████] to be withdrawn from special education,” but instead was “simply trying to obtain appropriate special education for her in accord with her unique and individualized needs.” P-33 (p. 356), R-164; Tr. 1413. ██████ reiterated the District’s position that ██████ had been withdrawn because she was not accessing her classes, but was still enrolled in the District for evaluation purposes. R-164; Tr. 1413. ██████ also asked ██████ about dates to schedule a reevaluation meeting, so that ██████’s eligibility category could be changed to autism. R-164; Tr. 1415. ██████ says she does not recall whether ██████ ever responded to that email. Tr. 1415-16. She testified further that ██████ never responded to the district’s efforts to schedule services for ██████ Tr. 1421.

129.

Although [REDACTED] did not confirm her availability or agree to a meeting date, the District moved forward with scheduling a reevaluation. Tr. 1416. On April 27, 2021, [REDACTED] sent [REDACTED] an invitation to that meeting, which was scheduled to occur on May 3, 2021. R-165; Tr. 1417. [REDACTED] responded to the meeting invitation as follows:

This Notice is confusing to me. Why are you trying to convene a meeting for re-evaluation? We will gladly attend an Eligibility meeting, not a re-evaluation meeting as within the past year, [REDACTED] has been evaluated by at least 11 different professionals, including the school district's OT, speech language pathologist, and school psychologist. We have sufficient evaluative information, all of which I've shared with the school district, however, we continue to have an inaccurate Eligibility, and an IEP that does not meet ANY of my child's needs. By the way, your email was sent April 22nd, 2021, and not March 2nd, 2021 as reported in your email above.

R-166; P-33 (p. 558). Based on that email, [REDACTED] assumed that [REDACTED] would not be attending the reevaluation meeting. Tr. 1420. The meeting ultimately did not take place, and the District withdrew [REDACTED] Tr. 1421; R-166, P-33 (p. 558).

130.

According to [REDACTED] [REDACTED] declared her intention to homeschool [REDACTED] in March 2021, and then again for the 2021-2022 school year. Tr. 1721.

**C. March 2021 to Present: [REDACTED]'s Functioning and Services**

***i. Core Therapy Services***

131.

[REDACTED] is a board-certified behavior analyst, licensed marriage and family therapist, and a board-certified music therapist. Tr. 674. She works at [REDACTED] Therapy Services, where she conducts functional behavioral assessments, provides parent training, and supervises other BCBA's. Tr. 675-76. She is also the head of a special education private school called the Loom School, which she started in 2018. Tr. 676. The [REDACTED] School includes some students who have been placed by public school districts,

and the school assists the district with the creation of IEPs. Tr. 678. [REDACTED] has a bachelor's degree in music therapy and a master's degree in marriage and family therapy. Tr. 680, 684. She has been working with children with autism since around 2001. Tr. 684.

132.

[REDACTED] testified as an expert licensed therapist in the areas of music therapy as well as systems theory therapy<sup>8</sup> as the founder and head of a private school for children with autism, as a Board certified behavior analyst (BCBA), as an expert in preparing and implementing IEPs for disabled children as well as developing, providing, overseeing, monitoring, evaluating, and adjusting educational programs including skill acquisition programs for students with disabilities in public schools and in home and in community settings and providing training to other professionals and parents regarding the provision of an appropriate education to disabled children. She was further tendered as an expert in the evaluation of disabled children as a BCBA and licensed therapist and head and founder of the [REDACTED] School for program development and implementation, data collection and analysis and program development and oversight, applied behavioral analysis, discrete trial training and modification of behavior, and Floortime therapy. Tr. 689-90, 693.

133.

On April 12, 2022, [REDACTED] attended Applied Behavior Analysis (ABA) assessment conducted by [REDACTED] at [REDACTED] Therapy Services. P-32 (p. 347). [REDACTED] completed the Social Responsiveness Scale, 2nd Edition (SRS-2), and her responses suggested [REDACTED] was in the severe range, indicating deficiencies that lead to “substantial interference with everyday social interactions.” P-32 (p. 350). Ms. Todd

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<sup>8</sup> Systems theory therapy is more commonly referred to as marriage and family therapy. Tr. 691.

proposed 20 learning goals for [REDACTED] and recommended a total of 36 hours per week of ABA services: 30 hours with a behavior technician, and 6 hours with a BCBA. P-32 (p. 352-54).

134.

[REDACTED] began receiving services from [REDACTED] Therapy around August 2022. Tr. 704. At the time of the hearing in September 2022, [REDACTED]'s therapist was working with her at home from 8:30 to 12:30 p.m. daily, and the plan was to extend the therapy to 8:30-2:30 p.m. Tr. 705, 711. [REDACTED] stated that she would recommend 30 hours of direct services for [REDACTED] Tr. 705-06.

135.

[REDACTED] says that the greatest improvement she observed with [REDACTED] since she started therapy was that she had begun making choices when presented with two options, and that she had also started verbalizing. Tr. 706. However, she noted that [REDACTED] seemed to have a processing issue. For example, if [REDACTED] were asked a question, she might not respond until a few minutes later. Tr. 706. Additionally, as [REDACTED] had obtained an AAC device for [REDACTED] following Dr. Ono's prescription, [REDACTED] testified that [REDACTED] is still getting used to her AAC device. Tr. 706, 768. At the time of the hearing, she was not yet able to have reciprocal conversations while using the device but could use it to communicate her needs. Tr. 709 [REDACTED] added that while [REDACTED]'s sleep schedule had initially been "all over the place," she had gotten to the point that she would be awake at 8:30 and could stay engaged until 12:30. Tr. 726.

136.

[REDACTED] noted that while she had seen other students' IEPs start with a low number of instructional hours, they always had concrete plans to increase those hours over several weeks. Tr. 725. She had never seen an IEP provide for only two hours a week for a year. Tr. 725. She added that the listed goals were inappropriate, because she would want to see [REDACTED] doing more than just nodding or eye gazing within a year. Tr. 727. She also had never seen such a small number of objectives for a child like

█████ Tr. 728. She predicted that the two-hour program would result in ██████'s regression. Tr. 729. She also added that it would be incredibly important for ██████ to have consistency and repetition in her routine. Tr. 730.

137.

██████████ testified that the services provided by ██████ Therapy are based on the assessment of functional living skills (AFLS), which focuses mainly on daily living skills, rather than educational goals. Tr. 1730, 1731.

*ii.* ██████████

138.

██████████ is a speech language pathologist. Tr. 288. She has been practicing speech language pathology for 42 years. Tr. 288. She received an undergraduate degree and a master's degree in communication sciences and speech language therapy from the University of Georgia. Tr. 289. Ms. Cohen has worked primarily as a speech language pathologist in public schools, but now runs her own practice. Tr. 289-90. She estimates that she has conducted at least 100 individual educational evaluations over the course of her career for various school systems, including at least 15 evaluations for the Cobb County School District since 2015. Tr. 297. She is currently seeing three students through her learning center who have been placed there by a public school via an IEP. Tr. 297-98. ██████████ testified as an expert in the areas of speech language pathology: the provision of speech language programming, both with special education and a related service to disabled students; the evaluation of students suspected of disability, specifically those who are suspected to have speech and language based learning needs; the development and provision of educational programs to disabled students; and the preparation and implementation of IEP goals and objectives for disabled students including data collection and progress report preparation, using her education, training, and experience in speech language pathology. Tr. 304.

139.

██████████ observed ██████ on August 25 and September 8, 2022, following ██████'s request that she develop a language-based educational program for ██████ Tr. 316. ██████ also watched some videos of ██████ Tr. 327. She noted that ██████ was speaking in sentences, "albeit the words may not be in the right order." Tr. 328. ██████ also observed moments where ██████ was incapable of speaking, but she opined that this was not "willful" behavior because ██████ would attempt to communicate in other ways, such as through her AAC device or through gestures. Tr. 328. ██████ also observed a processing delay in ██████'s speech. Tr. 329. She concluded that ██████ needed to work on language, semantics, grammar, syntax, and social language. Tr. 332.

#### **D. Relevant History of the Instant IDEA Proceeding**

140.

On or about August 6, 2021, ██████ initiated the instant proceeding by filing a due process complaint. A mediation session was conducted on January 28, 2022, but the Parties did not resolve the matter. In a May 11, 2022 Joint Status Report, the parties requested a four-week stay to allow the parties to reach an interim agreement minimizing the issues before the Court. (Case File, OSAH Form 1; Joint Status Report filed on May 11, 2022).

141.

On June 8, 2022, the parties reported that they had not reached an agreement and wished to schedule a hearing. (Case File, Joint Status Report filed on June 8, 2022).

142.

A hearing was scheduled to begin on August 29, 2022, but was ultimately continued to September 12, 2022. (Case File, Notice of Hearing issued on June 21, 2022; Continuance Order issued on August

30, 2022).

### **E. Other Testimony**

*i.*

143.

██████████ is a board-certified behavior analyst (BCBA). Tr. 543. She was a special education teacher in Georgia from 2012 to 2022. Tr. 543-44. In that role she participated in IEP meetings, and prepared and implemented IEPs. Tr. 45-46. She began working as a BCBA in 2019, first part time while teaching, then pivoting to full-time in 2022. Tr. 622-23. ██████████ testified as an expert in preparing and implementing IEPs for disabled children as well as developing, providing, overseeing, monitoring, evaluating and adjusting educational programs, including skill acquisition programs for students with disabilities and public schools and in home and community settings; as well as providing training to other professionals and parents regarding the provision of an appropriate education for disabled children. ██████████ was also offered as an expert in the evaluation, as a special education teacher and BCBA, of disabled children for program development and implementation, data collection and analysis, and program development and oversight; applied behavior analysis; discrete trial training; and modification of behavior. Tr. 550-51; 557.

144.

██████████ had an initial evaluation with ██████████ in November 2021. Tr. 559, 624. ██████████ did not choose to continue working with her company, so she did not work with ██████████ again. Tr. 623, 627-28.

145.

██████████ reviewed ██████████ psychological report completed in October 2020 and testified that she did not believe her evaluation was comprehensive. Tr. 564-65. She testified that a child

like [REDACTED] who was minimally verbal and who had motor and sensory issues should have received a speech evaluation, as well as an occupational therapy evaluation. Tr. 564-65. She also did not believe that [REDACTED] list of recommendations would have met [REDACTED]'s needs based on the severity of her condition. Tr. 567. For example, she said that the second recommendation—to allow [REDACTED] to “draw, write, or otherwise indicate her response when she is not comfortable speaking”—was not appropriate because a speech evaluation would need to be done to see whether [REDACTED] even had functional communication. Tr. 567-68.

146.

[REDACTED] had never heard of an IEP providing for only two hours a week of services. Tr. 601-02. She also testified that having only three objectives would be inappropriate because it would result in excessive repetition of the same activities. Tr. 598. She testified that the typical range of services she would recommend for ABA therapy would be 10 to 30 hours a week. Tr. 649-650. She maintained that, even if a child had not previously been accessing any services, she would start immediately with 30 hours a week, even if might be easier to start slowly. Tr. 652.

*ii.* [REDACTED]

147.

[REDACTED] is a board-certified behavior analyst. Tr. 72. He holds a master’s degree in behavior analysis and a teacher’s certification. Tr. 73. He currently provides BCBA services on a contractual basis with Counseling Services of Atlanta. Tr. 219. Prior to becoming a BCBA, he worked for around eight years as a special education teacher in the District.<sup>9</sup> Tr. 83-84. He has not worked as a special education teacher in around six years, however, and has not maintained his teaching license. Tr.

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<sup>9</sup> [REDACTED] later testified that, while working for the District, [REDACTED] had briefly changed roles from special education teacher to paraprofessional, before leaving the District in 2010. Tr. 1723-24. [REDACTED] determined that some “personnel issues” had been raised with [REDACTED] prior to his departure, but she did not reveal specifics. Tr. 1725.

89-90, 98. As part of his internship to become a BCBA, he worked at Emory’s Marcus Autism Center in “severe behaviors.” Tr. 83. He testified as an expert licensed professional counselor, special education educator and board-certified behavior analyst. Tr. 86. He was also offered as an expert in providing counseling to children, adults, and families, as well as providing behavioral services, both to reduce maladaptive behaviors and ensure skill acquisition, particularly to children with autism. He was also offered as an expert in teaching children with disabilities, preparing IEPs for those children, and complying with the IDEA as a special education teacher. Tr. 86-87 [REDACTED] was qualified as an expert in providing counseling to children, adults, and families, as well as providing behavioral services, particularly to children with autism. He was also qualified as an expert in teaching children with disabilities, preparing IEPs for those children, and complying with the IDEA as a special education teacher. Tr. 86-87.

148.

[REDACTED] and [REDACTED] first met with [REDACTED] in October 2020, when he began providing services to the family on a weekly basis. Tr. 221-22. While the initial meeting was in person, the training he offered was conducted primarily online. Tr. 105-06, 107. Mr. Foley did not provide direct treatment or counseling to [REDACTED] instead, his services involved teaching [REDACTED] and [REDACTED]’s siblings how to use behavioral analysis protocols such as “incidental teaching” to build [REDACTED]’s speaking capacity, functional living skills, and capacity for interacting with other people. Tr. 105-06, 110, 124, 225. Regarding her progress, he recalled that by January 2021, she was able to have interactions with her family members around three times a day, although he speculated that she was interacting more than he was aware of. Tr. 229, 230 [REDACTED] testified that it was extremely important for a child like [REDACTED] to be properly identified as autistic, so that educators can correctly identify what is causing their learning difficulties. Tr. 165. For example, he explained that sensory integration problems are common in autistic children, and that if a

child avoids a task or situation because of sensory issues, it may give the incorrect impression that the child cannot complete the task due to a mental impairment. Tr. 165-66.

149.

██████████ did not think that ██████████ would make progress with only 120 minutes of instruction weekly, as provided for in the District's IEP. Tr. 207. First, he questioned whether an instructor would be able to build rapport with ██████████ during such a short time period or be able to observe for long enough to see whether she was meeting her objectives. Tr. 207-08. He speculated that it would be very frustrating for ██████████ to attempt to learn new tasks when instruction was so infrequent. Tr. 212-13. He said he had never seen an IEP that provided for only 120 minutes of services per week. Tr. 210-11. Based on his experience working with her, Mr. Foley recommended 10 to 20 hours a day of services for ██████████<sup>10</sup> Tr. 209.

*iii.* ██████████

150.

██████████ is the supervisor of psychological services for the District. Tr. 1596. She has a bachelor's degree and a master's degree in school psychology, and has been working as a school psychologist since at least 2003. Tr. 1603. She testified as an expert in school psychology; conducting psychoeducational evaluations; eligibility for special education services under the Georgia state

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<sup>10</sup> Evidently, counsel for Petitioners thought that Mr. Foley misspoke, but his testimony reveals that 10 to 20 hours *per day* was in fact his recommendation:

A: . . . And I would suggest that – I mean, hopefully 10 to 20 hours a day.

Q: All day long?

A: Well, each school day, five days a week.

Q: How many total hours a week, just so we're not – I think we got a little confused there. How many total hours a week would you have suggested for ██████████

A: Oh, well, I guess it would be about 100?

Q: Really?

A: Hours

Q: A week?

A: I mean, if you want a good 20 a day – I mean, given what was going on.

(Tr. 209.)

requirements; and the use and review of medical and private reports to serve students in an educational setting. Tr. 1606, 1610.

151.

██████ testified that she would not have recommended that Ms. ██████ conduct any further assessments following her September 2020 evaluation, because ██████ was not able to participate directly in any assessments at that time. Tr. 1614. She noted that this was consistent across all of ██████'s private evaluations too—most of the conclusions made were based primarily off of information from ██████ Tr. 1616. Because of that, she said it was impossible to truly determine what her cognitive function was. Tr. 1617.

152.

██████ said she would interpret the information from Dr. Hirt's report with caution, given that he was not able to evaluate ██████ without her mother present and was not able to perform any direct assessments due to ██████'s lack of engagement. Tr. 1619-20. She also said it was "atypical" for a teacher report to be completed by a teacher who had not interacted with a student in over six months. Tr. 1626.

## **II. CONCLUSIONS OF LAW**

### **A. Legal Authority for Administrative Due Process Hearings**

1.

This case is governed by the enabling act for IDEA found at 20 U.S.C. § 1400, et seq.; its 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 Cty. 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 Petitioners’ Complaint was filed on August 6, 2021, only IDEA violations occurring on or after August 6, 2019, are at issue in this proceeding. Id.

4.

This Court’s review is limited to the issues Petitioners █████ and █████ presented in their 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). Here, Petitioners did not file an amended Due Process Complaint, and there is no evidence in the record that the District agreed that issues not specifically raised in the original Complaint could be addressed and adjudicated by the

administrative court.

## **B. 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 described FAPE as follows in Rowley:

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 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 ■■■ 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 is 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 Endrew 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.” 249 F.3d at 1292-93.

### **C. Petitioners’ Allegations That District Denied FAPE**

14.

In the instant matter, Petitioners [REDACTED] and [REDACTED] allege that the District failed to provide [REDACTED] with FAPE by committing procedural violations as well as by denying FAPE on substantive grounds. Specifically, they assert that:

- The District failed to comprehensively evaluate ██████ in all areas of suspected need within 60 days of ██████ providing consent for evaluation.
- The District’s determination of ██████’s eligibility for special education is inaccurate, and the District refused to consider information ██████ provided.
- The District’s IEP in March 2021 was not reasonably calculated to result in meaningful benefit.
- The District failed to provide Prior Written Notice of ██████’s placement on Z-status.
- The District refused to provide an Independent Education Evaluation at ██████’s Request.
- The District violated its child find duty by not identifying ██████ as a child with autism earlier in her life.

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

**D. The District did not fail to comprehensively evaluate ██████ in all areas of suspected need within 60 days of ██████ providing written consent for evaluation.**

*i. The Evaluation*

15.

Petitioners argue that the District failed to comprehensively evaluate ██████ in all areas of suspected need in violation of the IDEA. Specifically, they argue that the District’s September 2020 psycho-educational evaluation was deficient because: (1) it relied almost entirely on parent report and review of ██████’s medical records; (2) Ms. ██████ did not seek alternative evaluation methods that may have elicited more participation from ██████ and (3) the District failed to conduct a speech language evaluation, an occupational therapy evaluation, a physical therapy evaluation, an adaptive assessment, or an assistive technology evaluation. The District argues that its chosen evaluation methods were appropriate in light of the information it had at the time, and that, given ██████’s lack of participation, further evaluations would not have provided useful information.

16.

An “evaluation” under the IDEA means “procedures . . . to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.” 34 C.F.R. § 300.15; see also 20 U.S.C. § 1414(a). The child should be evaluated in “all areas of suspected

disability.” 20 U.S.C. § 1414(b)(3)(B). When conducting an evaluation, a school district must use a variety of assessment tools to gather relevant functional, developmental, and academic information that will assist in developing the contents of the student’s IEP. Id. § 300.304(b). A school district also has the obligation to ensure any assessments “[a]re used for the purposes for which the assessment measures are valid and reliable.” Id. § 300.304(c)(1)(iii). The role of an evaluation “is to contribute to the development of a sound IEP.” Harris v. Dist. of Columbia, 561 F. Supp. 2d. 63, 67 (D.D.C. 2008).

17.

As part of the initial evaluation, the District’s IEP team is required to “review existing evaluation data on the child,” including “evaluations and information provided by the parents of the child.” 20 U.S.C. § 1414(c)(1)(A)(i). “[O]n the basis of that review, and input from the child’s parents,” it is then required to identify “what additional data, if any” is necessary to determine whether the child has a disability and what special education services he or she may require. Finally, the District must administer such assessments needed to produce that data. 20 U.S.C. § 1414(c)(1)(B) and (2).

18.

The District is not required to evaluate a child in “every conceivable area in order to comply with the IDEA.” K.I. v. Montgomery Pub. Sch., 805 F. Supp. 2d 1283, 1293 (M.D. Ala. 2011); see M.M. ex. rel. Matthews v. Gov’t of D.C., 607 F. Supp. 2d 168, 173 (D.D.C. 2009) (school district fulfilled its obligation under the IDEA despite deciding not to evaluate a child for ADHD after a psycho-educational evaluation recommended that “[if] her attentional issues persist, once appropriate school interventions have been put in place, then an evaluation by a child psychiatrist or developmental pediatrician is warranted.”).

19.

The circumstances of ██████s September 16, 2020, evaluation by school psychologist ██████

were far from ideal. However, there is little evidence to suggest that further evaluations would have provided more information. Importantly, Ms. [REDACTED] reviewed the [REDACTED] occupational and speech reports as part of her own assessment. Those showed that [REDACTED] was seen “in [the] clinic,” and not presumably, through a car window. Nevertheless, the occupational therapist reported that [REDACTED] “did not speak or make any eye contact with therapist or mom,” and that she “picked up a pencil, but did not write anything.” Meanwhile, the speech therapist stated that [REDACTED] was “unable to attend and participate[] in any of the testing items. The only responses were non-verbal by shaking her head or glaring at the environment.” It was reasonable for Ms. [REDACTED] to read those reports and conclude that attempting a follow-up evaluation would not have been helpful.

20.

Nevertheless, Ms. [REDACTED] attempted to use standard assessment tools in her assessment of [REDACTED]. Because [REDACTED] was unable to participate directly in testing, Ms. [REDACTED] provided standardized indirect assessments for [REDACTED] to complete—the Conners CBRS and the RSI—which were designed to measure [REDACTED]’s functioning in a broad range of areas. She also provided assessments for [REDACTED] to complete at home, although given that [REDACTED] was unable to complete them in line with their intended use, Ms. [REDACTED] did not report those scores. This would seem to comply with the IDEA’s requirements that the District use “a variety of assessment tools” to assess a child that are “administered in accordance with any instructions provided by the producer of such assessments.” 20 U.S.C. § 1414(b)(2) and (3).

21.

[REDACTED] report also carefully documented [REDACTED]’s academic and social history, including her grades and test scores, her prior 504 plans, her issues with bullying during seventh grade, and her decline in functioning following the medication reaction. She also reviewed [REDACTED]’s medical records and documented [REDACTED]’s current diagnoses and medications.

The District presented compelling reasons for declining to conduct the additional assessments Petitioners believe were required. Ms. ██████ testified that an adaptive assessment was unnecessary because ██████ had already told her that ██████ was struggling to function in multiple areas, and therefore an assessment would not have changed her evaluation. Ms. ██████ similarly believed that providing ██████ with speech or occupational therapy evaluations would have been unhelpful because of ██████'s inability to give a response to any of the assessments she had used. Ms. ██████ explained that she did not request a physical therapy evaluation because ██████ had not communicated a concern about ██████'s gross motor skills to the District, ██████ reported that ██████ had “no impairment” in the mobility section of the Rating Scale of Impairment, and Ms. ██████ saw that ██████ was able to run from the school building to her car without issues. Further, Ms. ██████ did not have ██████'s teachers conduct any formal assessments because ██████ had not interacted with any of them in six months, prior to ██████'s change in functioning.

*ii. Timeliness*

Petitioners further argue that ██████'s evaluation was not completed within 60 days of ██████ giving the District consent to evaluate, as required by the IDEA. 20 U.S.C. § 1414(a); 34 C.F.R. § 300.301(c); Ga. Comp. R. & Regs. 160-4-7-.04(1)(b). Under the Georgia regulations, holidays where students do not attend school more than five consecutive days, including the weekends before and after such five-day periods, are not counted toward the 60-day timeline. Ga. Comp. R. & Regs. 160-4-7-.04(1)(b)1.(i). However, any summer vacation period “in which the majority of [the District’s] teachers are not under contract” is counted toward the timeline. Ga. Comp. R. & Regs. 160-4-7-.04(1)(b)1.(ii). It is undisputed that ██████ provided consent to evaluate on August 5, 2020, and that Ms. ██████ completed her report on October 20, 2020. ██████ testified that, based on the Georgia rules, ██████'s evaluation needed

to be completed by October 22, 2020. It is unclear exactly how the District calculated that deadline;<sup>11</sup> nevertheless, Petitioners failed to provide evidence disputing it, and therefore failed to show that the District did not meet the 60-day deadline.

#### **E. The District’s Eligibility Determination complied with the IDEA**

24.

Once the District has completed an initial evaluation, a “group of qualified professionals,” as well as the child’s parent, determines whether the child is a child with a disability. 34 C.F.R. § 300.306(a). In interpreting the collected evaluation data for the purposes of determining eligibility, the District is required to “[d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendation, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior.” 34 C.F.R. § 300.306(c)(i). It must ensure that all of this information is “documented and carefully considered.” If the child is a child with a disability who needs special education and related services, an IEP must be developed. 34 C.F.R. § 300.306(c)(i). *See also* 20 U.S.C. § 1414(b)(4) and (5).

25.

Both the federal and Georgia state regulations define the various conditions a child can have that would qualify him or her as a “child with a disability” who is eligible for special education services under the IDEA. See 34 C.F.R. § 300.8(c); Ga. Comp. R. & Regs. 160-4-7-.05. In this case, the District found that [REDACTED] was a child with a disability eligible for special education services under the categories

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<sup>11</sup> Sixty days after August 5, 2020, would have been October 4, 2020. A weeklong fall break would have only extended the deadline by nine days, to October 13, 2020, assuming that the weekends before and after the break are included. Given that the school year had not started yet on August 5, perhaps the District was excluding those days of summer break from the timeline. There was no evidence presented regarding whether or not the District’s teachers were “under contract” during the period between August 5 and the first day of school, so the record is unclear as to whether that period was properly excluded from the timeline.

of: Emotional Behavior Disorder (EBD), pursuant to the requirements of Ga. Comp. R. & Regs. 160-4-7-.05 (Appendix d) and 34 C.F.R. § 300.8(c)(4)(i), (ii); and Other Health Impairment (OHI) pursuant to the requirements outlined in Ga. Comp. R. & Regs. 160-4-7-.05 (Appendix g) and 34 C.F.R. § 300.8(c)(9).

26.

There is no support for Petitioners' contention that ██████'s eligibility determination was based on inaccurate or outdated information, or that the "IEP/Eligibility team refused to consider all of the information presented to them by [██████] Due Process Hearing Request, Narrative Pg. 25. The District's eligibility report detailed ██████'s current diagnoses, including the recently added expressive-receptive language disorder and autism; documented the history of ██████'s present condition; and summarized the results of every assessment that had been attempted or completed with ██████ both those administered by the District and those administered by private providers. Petitioners' assertion in their Complaint that the District did not consider information gathered after 2019 is simply wrong. Further, the report noted that many of ██████'s behaviors were consistent with her diagnosis of autism but explained that a final decision regarding that eligibility category could not be made without a comprehensive speech evaluation. The report also noted that "the team agreed to reevaluate when the required components for eligibility are available."

27.

Petitioners' claim that ██████'s eligibility is based on inaccurate information stems from a handful of inconsequential errors in the eligibility report. Petitioners assert that the date listed on the report was incorrect; the report misstated the name of the checklist completed by one of ██████'s teachers; the report failed to properly attribute many of the listed assessments to private evaluators; it failed to acknowledge that ██████'s most recent 504 plan allowed her to not complete CTLS assignments; and the report

inaccurately stated that █████ did not have motor or coordination needs. All of these claims are either false<sup>12</sup> or too insignificant to constitute an IDEA violation.

28.

The Georgia state regulations define Autism Spectrum Disorder as follows:

a developmental disability generally evident before age three that adversely affects a child's educational performance and significantly affects developmental rates and sequences, verbal and non-verbal communication and social interaction and participation. Other characteristics often associated with autism spectrum disorder are unusual responses to sensory experiences, engagement in repetitive activities and stereotypical movements and resistance to environmental change or change in daily routines. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in (d). Children with autism spectrum disorder vary widely in their abilities and behavior.

29.

The rules further provide that the following evaluations and assessments must be used to determine whether a child has autism:

1. Comprehensive psychological evaluation to include a formal assessment of intellectual functioning and an assessment of adaptive behavior.
2. Educational evaluation to include an assessment of educational performance and current functioning levels.
3. Communication evaluation to include assessment of verbal and non-verbal communication, prosody (linguistics including intonation, rhythm and focus in speech), and pragmatic language utilizing both formal and informal measures.
4. Behavioral evaluations to include assessment of social interaction and participation, peer and adult interactions, capacity to relate to others, stereotypical behaviors, resistance to change, atypical responses to sensory stimuli, persistent preoccupation with or attachment to objects and other behaviors often associated with autism spectrum disorder.
5. Developmental history to include developmental differences and delays and age of onset, which is typically before the age of three. A child may be diagnosed as a child with autism spectrum disorder after age three if the characteristics of autism spectrum disorder are met.

Ga. Comp. R. & Regs. 160-4-7-.05 (Appendix a).

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<sup>12</sup> For example, the report clearly indicated the source (whether from a private provider or from the District) of each set of evaluations, and "motor" was checked off as an area where █████'s disability negatively impacts her education.

30.

The federal regulations define autism as follows:

- (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
- (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

34 C.F.R § 300.8(c)(1).

31.

Even though the District did not immediately find [REDACTED] eligible under the autism category as [REDACTED] wanted, this does not mean that the District did not consider that information. The District is required to “[d]raw upon a variety of sources” of information, document that information, and give it appropriate consideration. The District is not required, however, to weigh that information in the way that the parent demands.

32.

Moreover, the IDEA does not require that a child “be classified by their disability,” as long as any child who has a disability listed in 34 C.F.R. § 300.8 is treated as a child with a disability under the IDEA. 34 C.F.R. § 300.111(d). In Fort Osage R-1 Sch. Dist. v. Sims ex rel. B.S., the Eighth Circuit concluded that “the particular disability diagnosis affixed to a child in an IEP will, in many cases, be substantively immaterial because the IEP will be tailored to the child’s specific needs.” 641 F.3d 996, 1004 (8th Cir. 2011). The Court therefore rejected the parents’ contention that without a “proper acknowledgement” of the child’s autism diagnosis, the District could not tailor the child’s educational

program to her unique needs. *Id.* at 1003-04. See also *Dunn-Fischer v. Dist. Sch. Bd.*, 2016 U.S. Dist. LEXIS 172015, at \*37 (M.D. Fla. 2016) (“The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education.”) (quoting *Heather S. v. Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997)).

33.

Admittedly, it is unclear that the District in fact *had* to get additional assessments before finding ██████ eligible under the autism category. The District witnesses stated that they needed to conduct their own assessments of ██████ because none of her private evaluators were able to successfully interact with her or get her to actively participate.<sup>13</sup> However, the language in the Georgia regulations only indicates that certain assessments, such as a communication assessment, must be “used.” They do not lay out the protocol for a child who refuses to engage. Nevertheless, the District provided compelling reasons for not relying on ██████’s private evaluations alone. The evaluations completed by Dr. Hirt and ██████ for example, made their diagnoses while recognizing that it was not apparent whether ██████ would not or could not participate in various testing items.

34.

Moreover, the District, following ██████’s objections, granted her request for an IEE and promptly set up additional evaluations that would enable ██████’s eligibility to be amended. In fact, it was attempting to schedule another evaluation meeting when ██████ withdrew ██████ from the District. Based on the information available at the time, the District recognized ██████’s autism diagnosis and opined that it likely contributed to many of her symptoms. Given that the provision of FAPE is not dependent on a child’s particular eligibility category, Petitioners have failed to prove that ██████’s eligibility category prevented

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<sup>13</sup> This would imply that a child who refuses to participate in any formal evaluation could not be found eligible in the autism category. Neither of the District’s occupational therapy or speech therapy evaluators could engage ██████ either—because ██████ declined to have another eligibility meeting, it is not clear whether the District would have found ██████ eligible under autism based on those evaluations.

her from receiving FAPE.

35.

Petitioners also claim that the eligibility meeting was held more than 60 days after [REDACTED] gave the District consent to evaluate. However, that delay is entirely attributable to the parent. The initial meeting was scheduled for October 23, 2020, but [REDACTED] cancelled. [REDACTED] twice told [REDACTED] that she would soon follow up with her availability, but she ultimately did not do so until November 20, 2020, nearly a month after the initially-scheduled meeting. While [REDACTED] may have had good reasons for the delay, it does not change the fact that the delay was ultimately caused by her, not the District.

**F. The District’s IEP was Reasonably Calculated to Provide Meaningful Benefit**

36.

“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 (3d Cir. 1995)), aff’d, 518 F.3d 1275 (11th Cir. 2008). The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. ex. Rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 403 (2017). That progress must be “more than *de minimis*.” Id. at 388.

37.

An IEP “is a snapshot, not a retrospective. In striving for appropriateness, an IEP must take into account 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 Cty. Sch. Dist., 205 F. Supp. 2d 1358, 1367 (N.D. Ga. 200), aff’d without opinion, 273 F.3d 1114 (11th Cir. 2001). Because the March 2021 IEP was never actually implemented, its sufficiency must be measured as of the time it was 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).

38.

█████'s March 2021 IEP would have provided 120 minutes of weekly instruction with a homebased teacher, without specifying which days and what times this instruction would occur. According to the IEP, the team settled on homebased instruction, rather than a small group setting, because of █████'s "current inability to engage in the learning environment." The team agreed that it "would re-access █████'s needs in this area as soon as needed once instruction began and █████ was consistently receiving services. . . the team recommended to meet again prior to the start of the 2021-2022 school year to review data and █████'s progress on IEP goals in order to determine next steps such as potential changes to time of HHB, changes in services, or other needs that may arise."

39.

The IEP only provided for three annual goals, all of which were centered on getting █████ to engage with her instructor: the first was to have █████ remain "within the appropriate range of the staff member," the second was for █████ to respond "by eye gaze or motor movement (such as a nod, hand raise, etc)" when prompted by her teacher, and the third was to "engage with the instructional materials." The IEP team noted that █████ had thus far displayed "limited to no responsiveness, inability to interact with others, and limited/minimal interactions with her learning environment." The plan was that "[w]hen more data is obtained, it can be determined if the goals are effective or if the next level of behavior support is required." At the hearing, █████ confirmed that the goal was to "not overwhelm" █████ given how long it had been since she had meaningfully accessed her education, and the team planned to "come back in a few weeks" to revise the IEP based on █████'s progress.

40.

The Court concludes that although the three goals stated in the March 2021 IEP are quite limited in scope and might not provide the educational advancement ■■■ wanted, the IEP was reasonably calculated to enable ■■■ to make progress appropriate in light of her circumstances. The record shows that in March 2021, ■■■ was almost completely incapable of engaging in her education. For ■■■ to complete assignments, ■■■ or one of ■■■s siblings would read a question -because ■■■ could not read them herself- and based on ■■■s “eye movement” or where she pointed, someone else would write the answer down. She testified that ■■■ “could not sit through any of the classes” she was enrolled in through the general education curriculum. From roughly September 2020 through September 2021, ■■■ was attending speech therapy for no more than 30 minutes a week, and occupational therapy for no more than an hour a week. She had also attended some physical therapy, but no more than an hour or so a week. The records that the District had from ■■■ show ■■■ making slow progress towards engaging with her therapists. All of the evidence the District had at the time shows that ■■■ had serious difficulty engaging in any structured educational activities, particularly for an extended length of time or with an individual outside her family.

41.

Admittedly, the Court would expect that, after ■■■ developed rapport with her home-based teacher, the proposed IEP could have quickly become inadequate. However, an IEP developed with the intention of being revised later, as ■■■s was, can still provide FAPE. See M.W. v. Clarke Cty. Sch. Dist., 2008 U.S. Dist. LEXIS 75278, at \*11 (M.D. Ga. 2008) (finding that a child received FAPE even where an initial IEP provided that the child’s teacher would conduct a more comprehensive evaluation once the child was in her classroom in order to develop “appropriate, targeted goals,” given that the child had not been able to focus enough in his initial evaluation, and another IEP was not developed for another

two and a half months).

42.

While Petitioners' experts all recommended far more robust plans for ██████ the Court does not find their suggestions more persuasive than the District's witnesses. First of all, ██████ and ██████ conceded that a child like ██████ might need to start off with a lower number of instructional hours before increasing them over time. ██████, on the other hand, would start ██████ with a full 30 hour a week schedule "regardless of whether it might be easier to develop rapport for the child to slowly increase the number of services." Finally, the Court finds that ██████ recommendation of *100 hours* of services per week is not worthy of serious consideration.

43.

The Petitioners' issues regarding the lack of physical therapy or assistive technology services are also without merit. The District provided compelling reasons for declining to perform both an assistive technology evaluation and a physical therapy evaluation. The IEP noted that ██████'s assistive technology needs could not be determined until she was participating in an educational setting. And ██████ noted that ██████ would not even point to a picture when asked to; given her unwillingness to participate, it was unlikely that a full AT evaluation would have provided more helpful information. Regarding a physical therapy evaluation, there is no evidence that ██████ had needs in that area at the time. ██████ evaluation showed that ██████'s motor skills were "grossly intact," and Ms. ██████ noted that ██████ was capable of running to her car during her psychological evaluation. While acknowledging that ██████ had concerns about ██████'s "toe walking," the team concluded that any needs in that area were not significant enough to impede ██████'s educational needs.

44.

Declining ██████'s request does not automatically violate the IDEA. Although parents have the

right to provide meaningful input, a school district's refusal to grant a parent's request does not violate the IDEA because "[t]he right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." White ex re. White v. Ascension Par. Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003); see also B.F. v. Fulton Cty. Sch. Dist., No. CIV 1 :04CV3379-JOF, 2008 WL 4224802, at \*34 (N.D. Ga. Sept. 9, 2008) ("the IDEA is not a guarantee to the parents of the satisfaction of their preferences.").

45.

Moreover, █████ declined an opportunity to remedy those concerns when she refused to attend an evaluation meeting in May 2021. Instead, █████ was adamant that "we have sufficient evaluative information" and that she would only be willing to attend an eligibility meeting to change █████'s eligibility category to autism. This not only contradicts her claim that the District should have provided additional evaluations, but it also shows that █████'s opportunity to participate in decisions about █████'s evaluation and placement was not "significantly impeded." See 20 U.S.C. § 1415(f)(3)(E)(ii)(V).

46.

Finally, as with the eligibility meeting, all delays of the IEP meeting were caused by █████ not the District. The IEP meeting was initially scheduled for January 21, 2021, which, because the winter holiday is not included, would have fallen within 30 days of █████ having been determined eligible for special education on December 15, 2020. See 34 C.F.R. § 300.323(c). That the meeting had to be stopped and rescheduled for March was entirely because of █████'s insistence of returning to the issue of eligibility at the meeting. Moreover, █████ did not respond to offers to hold the second part of the meeting in February 2021.

## G. Other Due Process Claims

### *i. The District's Failure to Provide █████ with Prior Written Notice of █████'s placement in "Z-Status" Does Not Rise to a Substantive Violation of the IDEA.*

47.

A school district must provide written prior notice to parents whenever the district “refuses to initiate or change” a provision related to a child’s FAPE. 20 U.S.C. § 1415(b)(3)(B); 34 C.F.R. § 300.503(a)(2). That notice must include, among other items, “a statement that the parents of a child with a disability have protection under the procedural safeguards of this part [i.e., 20 U.S.C. § 1411 et seq.]”; and a “description of other options considered by the IEP team and why those options were rejected.” 20 U.S.C. § 1415(c)(1)(C), (E); see also 34 C.F.R. § 300.503(b).

48.

The Petitioners proved that the District did not provide Prior Written Notice when it placed █████ in Z-status. While █████ claims that she later explained to █████ that the change in placement was merely for evaluation purposes and would not impact █████'s ability to receive special education services, she was not able to rebut █████'s testimony that none of this was explained to her prior to the change.

49.

However, Petitioners have not shown that this constitutes a substantive denial of FAPE. As █████ noted, █████ had not been meaningfully accessing her classes at this point, and the Court does not see how, given █████'s lack of engagement, the change had a meaningful impact on █████'s education. And given that the change was made just a few days before the first session of █████'s eligibility meeting took place, the Court does not find that the District’s failure to notify █████ impeded her opportunity to participate in the decision-making process regarding █████'s education. See 20 U.S.C. § 1415(f)(3)(E)(ii)(V).

*ii. The District did not Deny [REDACTED] her right to obtain an Independent Educational Evaluation*

50.

Petitioners did not meet their burden of showing that the District impeded their right to have an Independent Educational Evaluation pursuant to 34 C.F.R. § 300.502. To the contrary, it was the evaluator selected by [REDACTED] who did not submit the required paperwork to the District. There is no evidence that [REDACTED] either took steps to have that evaluator submit the paperwork or select a different evaluator.

*iii. Any Child Find Claims are Barred by the Statute of Limitations*

51.

Petitioners allege in their Due Process Complaint that the District violated its child find duty when it failed to identify [REDACTED] as a child with autism “earlier in her life.” Petitioners did not identify—either in the Due Process Complaint or in the evidence presented at the hearing—at what point “earlier in her life” the District should have been put on notice of [REDACTED] disability. Accordingly, the Court finds that this claim is time-barred by the IDEA’s statute of limitations.<sup>14</sup> 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2).<sup>15</sup>

### III. DECISION

Petitioners have not shown by a preponderance of the evidence that the District failed to provide [REDACTED] with a free appropriate public education during the period from August 6, 2019 onward. Therefore, the Petitioners’ claims raised in their Due Process Complaint are **DISMISSED**.

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<sup>14</sup> In their proposed conclusions of law, Petitioners argue that the District’s failure to identify [REDACTED] as a child with a disability in March 2020, when [REDACTED] informed them of her condition, also violated child find. However, because this claim was not alleged in the Due Process Complaint, the Court cannot consider it. 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).

<sup>15</sup> The Court has thoroughly reviewed the entirety of Petitioners’ Due Process Complaint, the voluminous oral and documentary record produced at the hearing, and the summary of facts and law included in the District and Petitioners’ written closing arguments. While either party may believe that an important fact or issue has not been properly addressed, the Court has attempted to provide herein a thorough analysis of the pertinent evidence and law.

SO ORDERED, this 8<sup>th</sup> day of May, 2023.

  
\_\_\_\_\_  
**M. Patrick Woodard**  
**Administrative Law Judge**





## **NOTICE OF FINAL DECISION**

Attached is the Final Decision of the administrative law judge. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

### **Filing a Motion with the Administrative Law Judge**

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

### **Bringing a Civil Action**

A party aggrieved by the Final Decision has the right to bring a civil action in the appropriate court within 90 days from the date of the Final Decision. 34 C.F.R. § 300.516; Ga. Comp. R. & Regs. 160-4-7-.12(3)(u). A copy of the civil action must also be filed with the Georgia Department of Education, Special Education Services and Supports, at 1870 Twin Towers East, 205 Jesse Hill Jr. Drive, Atlanta, Georgia 30334, and the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.

Docket No.: 2203340-OSAH-DOE-SE-33-Woodard