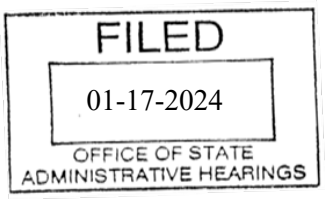
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], Jr. by and through [redacted].; and [redacted].;	:	
	:	
Petitioners,	:	**Docket No. 2414331**
	:	**2414331-OSAH-DOE-SE-144-Kennedy**
v.	:	
	:	
UNION COUNTY SCHOOL DISTRICT,	:	
	:	
Respondent.	:	



FINAL DECISION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

[redacted] by and through his mother [redacted]., (Petitioners) filed a Due Process Hearing Request Form (Complaint) with the Georgia Department of Education on October 27, 2023, pursuant to the Individual with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. §§ 1400 to 1482, and its implementing regulations, 34 C.F.R. Part 300. The Complaint indicates that the issue to be addressed is "Educational Placement" (instructional setting in which the child receives special education and related services).

In their Complaint, Petitioners allege that Respondent has violated provisions related to enrollment and Least Restrictive Environment (LRE) under Georgia Department of Education Rule 160-4-7-.07, as well as the LRE provisions found at 34 C.F.R. § 300.116. Specifically, Petitioners assert that the Respondent violated Petitioners rights by refusing to enroll [redacted] at [redacted] School, and thus denying him the right to attend the school closest to his home and the school he would attend if he were not disabled. Petitioners further assert that the Respondent violated [redacted] right to meaningful participation in the determination of her son's educational placement as provided for in 34 C.F.R. § 300.116. Finally, Petitioners assert that the Respondent violated the LRE provisions under the IDEA by failing to consider any potential harmful effect on

[redacted] or the quality of services he needs by assigning him to [redacted] School [redacted] that requires an over [redacted] bus ride to attend.

A hearing was held on December 11, 2023.[1] [redacted] represented herself and [redacted] Elizabeth Kinsinger, Esq. represented the Respondent. Also present on Respondent's behalf was Christal Chastain, Special Education Director for Union County School District. At the conclusion of the hearing, the undersigned requested that the parties submit Proposed Findings of Fact and Conclusions of Law by December 27, 2023. Petitioners requested an extension of time to file their submission, which was granted.[2] The record closed on January 2, 2024, with the submission of Petitioners' Proposed Findings of Fact and Conclusions of Law.

After careful consideration of all the evidence, the Court concludes that Petitioners failed to meet their burden of proof. As set forth below, the Court concludes that [redacted] most recent IEP developed on September [redacted], in [redacted] County School District included meaningful participation by [redacted] and offered [redacted] a Free Appropriate Public Education (FAPE). The Court further concludes that the Respondent's determination that the educational placement detailed in the most recent IEP could only be implemented at [redacted] School [redacted] did not violate the IDEA's LRE provisions. Accordingly, Petitioners' request for relief is **DENIED.** Nevertheless, the Court encourages the parties to convene an IEP meeting to determine whether [redacted] needs could be met through only accommodations and services

[1] On December 2, 2023, Petitioners filed a Motion/Request for "Stay Put" Order requesting that the Court order the Respondent to immediately enroll and permit [redacted] 'attendance at [redacted], along with any accommodations that may be necessary while he adjusts to having his routine disrupted for two months." On December 7, the Respondent filed its Response. On December 10, Petitioners filed their Answer to the Respondent's Response. Prior to the commencement of the hearing, the Court reviewed Petitioners Answer, along with having previously reviewed the Motion and Response, and issued an oral ruling denying Petitioners' Motion. The law requires that the Respondent allow [redacted] to be enrolled in the public school system and the Respondent did offer enrollment in their school district at the elementary school they determined could provide comparable services to those detailed in [redacted] most recent IEP. 34 C.F.R. § 300.518. The Court further concluded that Stay Put did not require that the Respondent enroll [redacted] at the school closest to his home but, rather, that the Respondent maintain the educational setting provided for in [redacted] most recent IEP.

[2] This resulted in the undersigned granting a one-week extension to issue the decision. *See* 34 C.F.R. § 300.515(c).

in the general education classroom that are currently available at [redacted] School and to address parental concerns regarding the negative impact or potential harm of the lengthy bus ride that is required for [redacted] to attend [redacted] School [redacted] while noting that [redacted] is not entitled to attend [redacted] if the IEP team determines that his needs and/or educational placement cannot be met there as set forth below.[3] *See generally* McLaughlin v. Holt Pub. Sch. Bd., 320 F.3d 663 (6th Cir. 2003) (IDEA provides that a child should be educated in the neighborhood school except when the goals of the child's IEP plan require a special education placement not available at that school). The Court further notes that Respondent is only required to be receptive of Petitioners' position and actually take Petitioners' concerns into consideration but are not required to adopt Petitioners' position if it is contrary to being able to provide [redacted] educational benefit. *See generally* White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003) (the right to provide meaningful input does not create a right to dictate the outcome). Additionally, the parties would need to discuss whether [redacted] wants to remain in the [redacted] program and, if so, whether [redacted], could provide [redacted] services.

II. FINDINGS OF FACT

1.

[redacted]. is a [redacted]-year-old boy who started [redacted] grade during the Fall 2023 semester enrolled in the [redacted] School District. (Joint Exhibit 1 at p. 2 of 191)[4]

[3] A school district is required to have an open mind and be receptive of a parent's concerns. White v. Ascension Parish Sch. Bd., 343 F.3d 373 (2003) (Absent any evidence of bad faith exclusion of the parents or refusal to listen to or consider the parents input, the school district has met the IDEA requirements with respect to parental input). So, for example, it may be that the IEP team determines that the Social Skills class that is in [redacted] current IEP is not necessary for him to achieve educational benefit and may determine that it should not be included in the IEP.

[4] Citations are to the Joint Exhibit filed with the Court on December 4, 2023, that totals 191 pages with cover sheets included.

2.

[redacted] is considered a [redacted] student because he is both eligible for the [redacted] Program and has also been found eligible to receive special education and related services under the IDEA. (Testimony of Christal Chastain, Respondent's Special Education Director; Testimony of [redacted]; Joint Exhibit 1 at pp. 2-28 of 191)

3.

On September 29, 2023, [redacted]'s family moved from [redacted] to [redacted]. [redacted] specifically decided to move to the [redacted] within [redacted], in part, because she believed that the local school, [redacted], being smaller in size and serving multiple grades at a single school, would benefit [redacted] (Testimony of [redacted])[5]

4.

Upon moving to [redacted] [redacted] began the school enrollment process with the intention of [redacted] attending [redacted], which is located approximately [redacted] miles from Petitioners home. (Testimony of [redacted]; Joint Exhibit 2 at p. 31 of 191)

5.

As part of the Respondent's school enrollment process, Respondent requested a copy of [redacted] most recent Individualized Education Plan (IEP), which [redacted] provided as requested. (Testimony of [redacted]; Complaint at p. 5)

[5] *See also* Petitioners November 19, 2023, filing, *Response to Motion to Dismiss for Failure to State a Claim*, in which Petitioners state that the family chose to move to the [redacted] community for the benefits the small school environment and small community would have on [redacted] ability to focus, reduce external stressors, and the family's well-being while eliminating many of the triggers typically present in larger schools and communities.

6.

[redacted] most recent IEP was developed on [redacted], and was subsequently amended on [redacted] The purpose of the amendment meeting held on [redacted], was "to discuss re-evaluation determination, [redacted] and address parent concerns." The IEP was developed by [redacted] IEP team in the [redacted] School District. The IEP team members in attendance at the [redacted] amendment meeting included [redacted]; [redacted] who served as the Local Education Agency Representative; [redacted], Special Education Teacher; [redacted], General Education Teacher; [redacted] School Administrator; and [redacted], Team Member. [redacted] was an active and meaningful participant in the meetings and agreed with the IEPs at the time they were developed. (Testimony of Chastain; Testimony of [redacted]; Joint Exhibit 1 at pp. 2-28 of 191)

7.

According to the [redacted] amended IEP, [redacted] most recent eligibility date was [redacted] 2021. His primary exceptionality is Emotional/Behavioral Disorder (EBD) with a secondary exceptionality of Other Health Impairment. His underlying diagnoses are Attention Deficit/Hyperactivity Disorder (ADHD) and [redacted]. These diagnoses result in a need for increased movement and issues with social/emotional regulation. (Testimony of [redacted].; Joint Exhibit 1 at pp. 2, 6, 10 of 191)

8.

The [redacted] amended IEP contains each of the components required by the IDEA including: (1) a statement of the child's present levels of academic and functional performance; (2) a statement of measurable annual goals; (3) a description of how the child's

progress will be measured and reported; (4) a statement of the special education and related services and supplementary aids and services to be provided or available to the child and a statement of the program modifications or supports for school personnel that will be provided to the child; (5) an explanation of the extent, if any, to which the child will not participate with nondisabled children; (6) a statement of any individual appropriate accommodations; (7) the projected date for the beginning of the services and the anticipated frequency, location, and duration of the services.[6] (Joint Exhibit 1 at pp. 2-16)

9.

The [redacted] amended IEP added a rationale for Instruction/Related Services Outside of the General Education Classroom through a social skills segment 45 minutes per day four (4) times a week that would be provided via small group discussion by a special education staff member. The [redacted] amended IEP also modified [redacted] Instruction/Related Services in the General Education Classroom. Specifically, [redacted] supportive instruction for ELA and Math segments was reduced from five (5) times per week to four (4) times per week for adaptive behavior to be provided by a special education staff member. The reduction was to minimize transitions during the day that [redacted] participates in [redacted] because too many transitions can be frustrating for [redacted] The special education staff member in [redacted] School District who served in the role of supportive instructor was [redacted] The supportive instruction she provided was solely related to behavior and not education. She assisted [redacted] by taking him out of the classroom when he needed a break. (Testimony of Chastain; Joint Exhibit 1 at pp. 2, 4, 7, 14, 15 of 191)

[6] 20 U.S.C. § 1414(d)(1)(A)(i); Ga. Comp. R. & Regs. 160-4-7-.06.

10.

According to the [redacted] amended IEP, meeting minutes, [redacted] proposed adding a social skills segment to [redacted] day. However, the social skills class had already been discussed previously during the [redacted] Annual Review IEP meeting when [redacted] told the IEP Team that she was interested in [redacted] attending the social skills class again. The [redacted] IEP meeting notes indicate that [redacted] stated she [redacted] (Testimony of Chastain; Joint Exhibit 1 at pp. 4, 6, 10, 18, 22 of 191)

11.

According to the [redacted], amended IEP, through the social skills class [redacted] has an opportunity to explore abstract thinking, and practice coping strategies for frustration in small group settings. (Joint Exhibit 1 at p. 4 of 191).

12.

The [redacted], IEP meeting minutes state that [redacted] has behavioral concerns related to ADHD and [redacted] that are being addressed through instructional accommodations and one objective[7] without the need for a behavior intervention plan (BIP). Additionally, he has [redacted] so the

[7] [redacted] Measurable Annual Goal is to [redacted] His objective is to [redacted] (Joint Exhibit 1 at pp. 11, 23 of 191)

team agreed he will have a designated spot to use as a calm down spot, separate from the classroom [redacted] (Testimony of Chastain; Joint Exhibit 1 at pp. 6, 10, 13, 18, 22 of 191)

13.

The Instructional Accommodations listed in the most recent IEP include,

(Joint Exhibit 1 at pp. 11, 24 of 191)

14.

The [redacted], IEP provides that all support will be in the general education setting. (Joint Exhibit 1 at p. 27 of 191) However, the [redacted] amended IEP states that [redacted] (Testimony of Chastain; Joint Exhibit 1 at pp. 14-15 of 191)

15.

The most recent IEP states that supplementary aids and services are not needed, nor are supports for school personnel. (Joint Exhibit 1 at pp. 6, 11, 12 of 191)

16.

There was no dispute as to the appropriateness of the goals and objectives noted. (Testimony of [redacted]; Joint Exhibit 1 at pp. 2-16)

17.

[redacted]. Upon reviewing [redacted] initial enrollment documentation, including his most recent IEP, Respondent notified Petitioners on October 5, 2023, that [redacted] would be assigned to [redacted] School [redacted], which is located approximately [redacted] from Petitioners home. The assignment was decided by Ms. Chastain[8] without holding an IEP meeting and without consulting with [redacted] family. Ms. Chastain reached her determination based on consideration that [redacted] School does not have the necessary resources at the elementary school level to meet the provisions of [redacted] most recent IEP, nor does [redacted] School have the resources necessary in the elementary school level to meet his [redacted] eligibility while [redacted] School [redacted] does have the necessary resources for both. Respondent's notice advised Petitioners that [redacted] could enroll in the Union County Public School System but that he would be expected to attend [redacted] School [redacted]. Petitioners have declined to accept enrollment at the [redacted] School [redacted] based on a belief that [redacted]. is entitled to attend the school located closest to his home and out of

[8] Ms. Chastain testified that after Petitioners challenged the assignment by filing a Complaint, she consulted the principal of [redacted] School; the principal and assistant principal of [redacted] School [redacted]; Respondent's Assistant Superintendent who is also the former Special Education Director for Union County School District; and [redacted] Special Education Teacher for [redacted] School District. After speaking with these individuals, and considering the concerns raised by Petitioners, Ms. Chastain maintained that the services [redacted] most recent IEP provides can only be met at [redacted] School [redacted]. (Testimony of Chastain)

concern that the travel required to attend [redacted] School [redacted] may be detrimental for [redacted] both personally and educationally. (Testimony of Chastain; Testimony of [redacted].; Joint Exhibit 2 at pp. 31-41 of 191)

18.

The [redacted] School [redacted] bus picks up at [redacted] and drops off at [redacted] for a 1[redacted] ride in the morning. The bus loads at [redacted] and drops off at [redacted] for a [redacted] ride in the afternoon. If [redacted] were able to attend [redacted], the bus would pick up at [redacted] and drop off at [redacted] for a [redacted] ride in the morning and would load at [redacted] and drop off at [redacted] for a [redacted] ride in the afternoon. Thus, to attend [redacted] School [redacted] [redacted] bus ride travel time is more than doubled. Additionally, Respondent does not currently have a bus monitor available to ride the bus with the students being transported from the [redacted] to [redacted] School [redacted], but the Respondent is seeking to hire one. (Testimony of Chastain; Joint Exhibit 12)

19.

As noted above, Respondent assigned [redacted] to [redacted] School [redacted] based on a determination that [redacted] "does not have the programs needed to serve him" for either his [redacted] services nor the special education and related services detailed in [redacted] most recent IEP.[9] (Testimony of Chastain; Joint Exhibit 2 at pp. 31, 36-37, 40 of 191)

[9] Ga. R. & Regs. 160-4-7-.06(15) provides that if a child with a disability transfers to a new Local Educational Agency (LEA) in the same school year within Georgia, the new LEA (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous LEA), until the new LEA either: (a) adopts the child's IEP from the previous LEA; or (b) develops, adopts, and implements a new IEP.

20.

[redacted] is a small school that serves [redacted] All classes are in [redacted] There are [redacted] teachers for the [redacted] and [redacted] ([redacted] for the [redacted] Students in [redacted] (Testimony of Chastain)

21.

[redacted] School does not have a [redacted] available for the elementary school grade levels, while [redacted] School [redacted] does. (Testimony of Chastain)

22.

[redacted] School does not have a [redacted] for the [redacted] school grade levels, while [redacted] School [redacted] does. (Testimony of Chastain)

23.

[redacted] does not have a [redacted] for the [redacted] school grade levels. (Testimony of Chastain)

24.

Upon being advised that the Respondent did not believe [redacted] could be served at [redacted] School, [redacted] requested an opportunity to meet with the staff at the [redacted] School [redacted] in the [redacted] and special education programs to better understand what was being offered. [redacted] further explained that in "an effort to make the best placement for [redacted] [she felt] like it is important for him to feel empowered in choosing the direction of his education so he is on board and motivated to make the most out of every opportunity" and that there were

"other factors at play in [her] decision making outside of just 'services offered'" because "[c]hildren are not concerned with boxes checked but rather [she believes] the experience as a whole will have a greater impact on his success or failure." Ms. Chastain replied asking if Monday, October 9, would work and advising [redacted] that she had a right to withdraw consent for special education and [redacted] services, and further advising that she had received [redacted] special education records and would be reviewing them. (Testimony of Chastain; Testimony of [redacted]; Joint Exhibit 1 at p. 30 of 191).

25.

Petitioners toured the [redacted] School [redacted] on October 9, 2023, but "did not find anything that changed [their] mind about [redacted] being a better fit" for [redacted] (Testimony of [redacted]; See Complaint p. 5)

26.

On October 27, 2023, Petitioners filed a Due Process Hearing Request (Complaint) with the Georgia Department of Education. In their Complaint, Petitioners assert the following violations:

- Respondent violated Georgia Rules and Regulations 160-4-7.07 Least Restrictive Environment and 34 C.F.R. § 300.116 by:
    - not allowing [redacted] to be enrolled at the school that is "as close as possible to [his] home";
    - not allowing [redacted] to be "educated in the school that he . . . would attend if nondisabled"; and
    - failing to consider "any potential harmful effect on [redacted] or on the quality of services that he . . . needs."

- Respondent violated 34 C.F.R. § 300.116 by failing to provide [redacted] with a meaningful opportunity to participate in the determination of [redacted] educational placement.

(Complaint at p. 5)

27.

According to the Complaint, [redacted] "has always been taught by a regular education teacher at his previous school" and "never need[ed] anything more than accommodations" such that he should be able to be served at [redacted] School. (Testimony of [redacted]; Complaint at p. 5)

28.

In their Complaint, Petitioners also assert that the "nature of [redacted] disability makes the additional distance and extended bus ride required to attend [redacted] School [redacted] harmful and creates an unnecessary danger and risk of triggering a behavioral problem that could have a potentially negative effect on the entire school day. (Testimony of [redacted]; Testimony of [redacted]; Complaint at p. 5)

29.

Additionally, in the Complaint Petitioners state that [redacted] pediatrician and psychiatrist both believe that [redacted] does "not have needs that couldn't be met in a regular education classroom with minimal accommodations." (Complaint at p. 5) However, neither [redacted] pediatrician nor his psychiatrist testified at the hearing on December 11, 2023.

30.

Although in their Complaint Petitioners assert that [redacted] does not require services to be provided by a special education teacher, they provided insufficient evidence, through documentation or testimony, of a proposed IEP that would provide [redacted] a FAPE without providing the services that are listed in his most recent IEP that includes Instruction/Related

Services Outside of the General Education Classroom in the form of small group instruction (Social Skills) 45 minutes a day/4 days per week, and Adaptive Behavior Support in ELA and Math in General Education Classroom provided by a Special Education Staff member. (Testimony of [redacted]; Complaint at p. 5; Joint Exhibit 1 at pp. 14-15)

31.

During the pendency of this hearing, Petitioners refused to enroll [redacted] in [redacted] School [redacted], and Respondent refused to allow [redacted] to be enrolled in [redacted] School. Thus, [redacted] has not attended school since on or about September 29, 2023, when Petitioners moved to Union County. (Testimony of [redacted], Testimony of Chastain; Joint Exhibit 2 at pp. 31-41 of 191)

32.

[redacted] refused to enroll [redacted] in [redacted] School's [redacted] in part, because she believes that the Respondent's insistence that he attend that school is a violation of their rights under the IDEA and Georgia Department of Education rules, and because of her concerns regarding the harmful effects she believes the long bus ride will have on [redacted], and the family. [redacted] testified regarding her concern for the collateral hardships their family would experience if [redacted] were forced to attend [redacted] School [redacted]. For example, [redacted] testified that the distance alone would limit their ability to participate in extracurricular activities because it would cost at least [redacted] for the family to drive to [redacted] She further testified that the family is uncomfortable in [redacted] and never travels there unless they need to. [redacted] also explained that morning and evenings are already a struggle due to the nature of [redacted]'s disability. She also believes that it would cause an increase in tardies and absenteeism because he is likely to miss the bus, in part, because of how early [redacted] would need

to wake up to take the bus. Finally, she testified about how successful management of [redacted] centers around eliminating triggers and that her opposition to Respondent's determination that to provide comparable services to the ones detailed in his most recent IEP he would need to attend [redacted] School's [redacted] is based upon a belief that it is likely to exacerbate the symptoms of his disability. She strongly believes that no amount of services or support is likely to render a positive outcome for [redacted] when the environment and circumstances they are provided in subject him to constant additional stresses of a long bus ride and being at a school he does not want to attend. (Testimony of [redacted])

33.

[redacted] testified that nothing would make him want to go to [redacted] School [redacted] He wants to go to [redacted] School because it is closer to home and he considers home to be his safe spot. He also testified that he does not like being the last one to get off the bus like he did in [redacted] grade when he lived in [redacted] County. It made him feel sad and angry to be on the bus for so long and when he is angry it is more difficult to complete schoolwork, and if he is unhappy, he tends to lose his temper more easily. [redacted] also testified that he likes his parents to be able to come to school events because it makes him feel supported and if they could not attend, he would feel alone. [redacted] testified it would be more difficult to attend school events if [redacted] attended [redacted] School's [redacted] because of the distance. (Testimony of [redacted]; Testimony of [redacted])

34.

On October 30, 2023, Respondent provided Petitioners Prior Written Notice (PWN) regarding Respondent's determination to assign [redacted] to [redacted] School [redacted]. In the PWN, Respondent indicates it considered the following in deciding to

assign [redacted] to the [redacted]: Current IEP from previous school, psychological report, services and supports required by the student, and input from the parent.[10] In its PWN, Respondent also admits that the IEP team has not met regarding [redacted] because "the enrollment process has not been completed" since the school district was waiting for a second proof of residency to complete enrollment. Although his enrollment had not been completed, Respondent had been willing to provisionally enroll [redacted] in Union County's Public School System at the [redacted] School [redacted].[11] (Testimony of Chastain; Joint Exhibit 2 at pp. 31-41 of 191)

35.

On or around November 9, November 16, and November 21, Respondent emailed Petitioners regarding scheduling a Transfer IEP meeting to review the IEP with [redacted]'s teachers and to develop his [redacted] eligibility. Respondent offered to meet face-to-face, virtually, or over the phone. In each email, Respondent notified Petitioner that the transfer IEP meeting was not required to take place before [redacted] began school and that Respondent was "ready for him to start at [redacted] School." After receiving no response, Respondent sent an invitation and copy of parental rights to Petitioners on November 27 for an IEP meeting to be held on December 1, which was subsequently rescheduled to December 6. (Testimony of Chastain; Joint Exhibit 2 pp. 47-48, 50-65 at 191)

[10] Although Ms. Chastain had not received parental input by October 5, 2023, when Respondent made the initial determination to assign [redacted] to [redacted] School [redacted], Ms. Chastain had spoken with [redacted] and considered her input regarding her concerns about the bus ride by the time the PWN was issued on October 30. (Testimony of Chastain; Joint Exhibit 1 at p. 40 of 191)

[11] Once a child is enrolled in a school district, the child is eligible to attend the assigned school. Ga. Comp. R. & Regs. 160-5-1-.28(1)(j). Other than students specifically exempted by rule or by law, a student shall be enrolled on a provisional basis and allowed to attend an LEA for 30 calendar days while awaiting evidence of age, residence, or other local requirements. Ga. Comp. R. & Regs. 160-5-1-.28(c)(1).

36.

It is unknown what was discussed at the transfer IEP meeting as minimal evidence was presented regarding this post Complaint IEP meeting. Thus, it is unknown whether the parties have fully discussed [redacted]'s concerns regarding the lengthy bus ride or whether [redacted] can receive educational benefit and have his needs met at [redacted] School based on an amended IEP that relies on the resources currently available there. The testimony regarding the meeting primarily addressed a brief discussion held that included Respondent's staff indicating it would be difficult to provide a calm down spot outside the classroom at [redacted] School. (Testimony of [redacted]

37.

Although it is unknown what was discussed at the post Complaint IEP transfer meeting, it is known that the parties were unable to reach a mutually agreeable resolution. Petitioners maintain that the lengthy bus ride is likely to cause [redacted] harm because of the time and distance and that Respondent should serve him at [redacted] School while Respondent maintains that it can only provide the services that are detailed in his most recent IEP at [redacted] School [redacted]. (Testimony of Chastain; Testimony of [redacted]; Joint Exhibit 2 at pp. 40-41; Complaint at p. 5)

38.

Ms. Chastain does not believe that the proposed bus ride would impact [redacted] ability to access his education. Ms. Chastain testified if [redacted] has a need for increased movement he may not be allowed to stand on the bus for safety reasons, but he could be given fidget toys or other opportunities to move without having to stand up. Moreover, Ms. Chastain believes that [redacted] has misconstrued the concept of LRE because LRE also includes attending the school closest

to the child's home where services are available, not just the neighborhood school. (Testimony of Chastain; Joint Exhibit 1 at p. 6 of 191; Joint Exhibit 2 at pp. 36-37)

39.

Respondent offered for Petitioners to consider a 504 plan instead of an IEP under the IDEA, or the option of withdrawing their consent for [redacted] and special education services for [redacted] to be able to attend [redacted] School since if [redacted] did not need to receive the [redacted] or special education services that are not currently available at [redacted] School for the elementary school grade levels he most likely could attend [redacted] School. [redacted] found this suggestion to be highly improper and a violation of Petitioners rights because it would remove the protections that the IDEA affords [redacted] should he act out in school. (Testimony of Chastain; Testimony of [redacted]; Joint Exhibit 2 at pp. 30, 42-44)

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) (20 U.S.C. §§ 1400-1482), 34 C.F.R. Part 300, and Ga. Comp. R. & Regs. 160-4-7-.01 to -.21 (DOE Rules).

2.

Under the IDEA, states are required to ensure that "[a] free appropriate public education [FAPE] is available to all children with disabilities." 20 U.S.C. § 1412(a)(1)(A). "The purpose of the IDEA generally is 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living . . . .'" C.P. v. Leon County Sch. Bd., 483 F.3d 1151, 1152 (11th Cir. 2007) (*quoting* 20

U.S.C. § 1400(d)(1)(A)). To achieve this goal, a written individualized educational program (IEP) specifically tailored to each disabled student delineates the special education and related services that the student must receive to obtain a FAPE. *See* 20 U.S.C. § 1414(d)(1)(A). The school district must implement the student's IEP in the least restrictive environment possible by educating the student "to the maximum extent appropriate" with non-disabled students. 20 U.S.C. § 1412(a)(5)(A).[12] The IEP Team's goal is for children with disabilities to be educated in regular education settings with supplementary aids and services to the maximum extent possible. The IEP Team should begin by considering how the goals can be met in the regular education setting by determining the education services, related services, supplementary aids and services, and assistive technology that are necessary for the child to stay in the regular education setting and meet the goals of his or her IEP. Additionally, if a disabled student transfers from one Local Educational Agency (LEA) to another in the same school year, the new LEA, in consultation with the parents, must provide a FAPE that includes comparable services to those described in the IEP until such time that the new LEA's IEP team, including the parent, can meet to either adopt the previous LEA's IEP or develop, adopt, and implement its own. 20 U.S.C. § 1414(d)(2)(C)(i)(I); Ga. Comp. R. & Regs. 160-4-7-.06(15).

3.

IDEA enables a parent to bring challenges to the "identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to [the] child" by filing a due process complaint. 20 U.S.C. § 1415(b)(6), (c)(2)(A). On October 27, 2023, Petitioners filed

[12] Georgia Department of Education's Parental Rights Notices regarding Least Restrictive Environment states that a child with a disability has the right to remain with his or her peers without disabilities to the maximum extent appropriate for his or her education. The IEP team determines the setting for special education services and that setting should be the regular classroom with special education and related services unless there is evidence that this environment is not successful even with support and services. (Petitioner's Exhibit 3 p. 83 of 140)

a Special Education Due Process Hearing Request Form (Complaint) asserting issues regarding Educational Placement based on Respondent's assignment of [redacted] to Union County [redacted] rather than the school located closest to his home, that being [redacted] Petitioners argue that Respondent has violated the IDEA by failing to educate [redacted]. in the least restrictive environment asserting that [redacted] is entitled to attend the school closest to his home and the one he would attend if he were not disabled. Petitioners further argue that Respondent violated the IDEA by failing to include [redacted] in the determination of which of Union County's [redacted] schools [redacted] would attend, and by failing to consider any potential harmful effect the bus ride to Union County [redacted] may have on [redacted] personally and educationally.

4.

The Court's review is limited to the issues Petitioners raised in their Complaint because Petitioners are prohibited from raising issues at the due process hearing that were not raised in the Complaint. 20 U.S.C. §1415(f)(3)(B); see 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(j)(3).

5.

Hearings before this administrative court are *de novo* proceedings. Ga. Comp. R. & Regs. 616-1-2-.21(3). Additionally, Petitioners, as the party bringing the complaint and seeking relief, bear the burden of proof as to all issues. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); Ga. Comp. R & Regs. 160-4-7-.12(3)(n). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

6.

The IDEA "creates a presumption in favor of the educational placement established by [a

student's] IEP, and the party attacking its terms should bear the burden of showing why the educational setting established by the IEP is not appropriate." Devine v Indian River Co. Sch. Bd., 249 F.3d 1289 (11th Cir. 2001).

7.

To prevail, Petitioners must show by a preponderance of the evidence that the Respondent failed to offer a FAPE in the Least Restrictive Environment (LRE). Alternatively, Petitioners must show actual harm as a result of a procedural violation. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); Ga. Comp. R & Regs. 160-4-7-.12(3)(n).

8.

The United States Supreme Court developed a two-part inquiry to determine whether a school district has provided a FAPE: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982). "This standard … has become known as the *Rowley* 'basic floor of opportunity' standard." C.P. v. Leon County Sch. Bd., 483 F.3d 1151 at 1153 (11th Cir. 2007), *citing JSK v. Hendry County Sch. Bd.*, 941 F.2d 1563, 1572-73 (11th Cir. 1991). *See also* Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (11th Cir. 2008).

9.

The IDEA requires school districts to develop an IEP for each child with a disability. 20 U.S.C. §§ 1412(a)(4), 1414(d). The IEP team is the group of people who are responsible for developing, reviewing, and revising the IEP. 34 C.F.R. § 300.23. There are five required members of an IEP team, and the School District must ensure that they attend the IEP team meetings unless

they are excused by the parties. 34 C.F.R. § 300.321. Those five individuals are the parent, a special education teacher of the child, a general education teacher of the child, a representative from the school district,[13] and an individual who can interpret results of evaluations. 34 C.F.R. 300.321(a). "At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate," may attend the IEP meeting. 34 C.F.R. 300.321(a)(6). The parents of a child with a disability are necessary participants in the development of the IEP. It is important that parents provide information about their views of the child's progress or lack of progress, as well as express any concerns about the overall educational development of the child. (Petitioner's Exhibit 3 at p. 118 of 140). Parents provide important knowledge about how the child behaves and performs outside the school setting. (Id.)

10.

A "'[v]iolation of any of the procedures of the IDEA is not a per se violation of the Act.'" K.A. v. Fulton County Sch. Dist., 741 F.3d. 1195, 1205 (11th Cir. 2013), *quoting Weiss v. Sch. Bd.*, 141 F.3d 990, 996 (11th Cir. 1998). Under IDEA, to prove a denial of FAPE based on a procedural violation, Petitioners must show that the procedural inadequacies "(i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit." 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(2). In *Weiss*, the Eleventh Circuit held that where a family has "full and effective participation in the IEP process . . . the

[13] The school district representative must be someone who –
(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
(ii) Is knowledgeable about the general education curriculum; and
(iii) Is knowledgeable about the availability of resources of the public agency.
34 C.F.R. § 300.321(a)(4).

purpose of the procedural requirements are not thwarted." 141 F.3d at 996. *See also* K.A. v. Fulton County Sch. Dist., 741 F.3d at 1205 (relief not warranted where no evidence of prejudice to student or parents from defects in notice or delay in furnishing records). However, parent "'[p]articipation must be more than a mere form; it must be meaningful.'" R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1188 (11th Cir. 2014), quoting *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004).

11.

In this matter, Petitioners have not asserted any procedural violations regarding the development of the [redacted] IEP and subsequent amended [redacted] IEP as it relates to the composition of the team present at the meeting, or the components included in the IEP, or even [redacted] opportunity for meaningful participation during the two meetings. 20 U.S.C. § 1414; Ga. Comp. R. & Regs. 160-4-7-.06. In fact, [redacted] agreed with the IEPs at the time of its development in [redacted] 2023. [redacted] served as an active and meaningful participant at both IEP meetings. See 34 C.F.R. § 300.116(a) (placement decision to be made by group of persons that includes the parents) and 34 C.F.R. § 300.501(b)(1)(i) (parents of a child with a disability must be afforded an opportunity to participate in meeting with respect to educational placement of the child); See also 20 U.S.C. § 1414(e) and 34 C.F.R. § 300.501(c)(1) (public agency must ensure that a parent of a child with a disability is a member of any group that makes decisions on the educational placement of the parent's child).

12.

Petitioners argue that Respondent violated [redacted] right to meaningful participation in the determination of [redacted] educational placement as provided for in 34 C.F.R. §§ 300.116 and 300.501 because Ms. Chastain made the determination to assign [redacted] to Union County

[redacted] without consulting [redacted] or holding an IEP meeting. However, as noted above, Respondent is required to provide a FAPE, including providing comparable services to those described in the IEP, when a child transfers from one LEA to another within Georgia in the same school year until such time that an IEP meeting can be held to determine whether to adopt the IEP from the previous LEA or whether to develop, adopt, and implement a new IEP. 20 U.S.C. § 1414(d)(2)(C)(i)(I); Ga. Comp. R. & Regs. 160-4-7-.06(15). In this matter, [redacted] was an active and meaningful participant of the IEP team that developed his most recent IEP and then Petitioners moved from one LEA to another within Georgia during the same school year. Once Petitioners moved to Union County, Respondent reasonably determined that the services detailed in [redacted] most recent IEP could only be provided at Union County [redacted] until such time that an IEP meeting could be held to adopt the IEP from [redacted] County or to develop a new one for Union County. Even assuming arguendo that Respondent violated the IDEA and Georgia DOE Rule 160-4-7-.06(15) by not consulting [redacted] prior to making the initial determination to assign [redacted] to Union County [redacted] Petitioners have not met their burden to prove that the procedural violation resulted in a substantive violation. Although Petitioners desire for [redacted] to attend [redacted] School for a variety of reasons including concerns over the potential harmful effect of the long bus ride to Union County [redacted] the evidence shows that [redacted] School cannot provide [redacted] services nor can it provide comparable services to the ones detailed in his most recent IEP. Moreover, concerns regarding the lengthy bus ride could be addressed once the enrollment process was completed and/or once the IEP team met to decide whether to adopt the IEP from the previous LEA or to develop, adopt and implement a new one. Accordingly, the Court concludes that Petitioners did not meet their burden of proof to establish that Respondent

violated the IDEA when it assigned [redacted] to Union County [redacted] based on Respondent's determination that comparable services could not be provided at [redacted] School but could be provided at Union County [redacted]

13.

The second prong of the Rowley analysis requires a determination of whether the IEP is reasonably calculated to enable [redacted] to receive educational benefit in the least restrictive environment. Rowley at 192; JSK at 1572; see 20 U.S.C. § 1412; 34 C.F.R. §§ 300.114-300.118. The IDEA expressly mandates that students eligible for special education services be educated in the least restrictive environment to the maximum extent appropriate. 20 U.S.C. § 1412(5)(B); 34 C.F.R. §§ 300.550-556. And although parents have a right to participate in the development of the IEP and their child's education, no provision of state or federal law gives parents the authority to dictate methodology, location of service, or identity of the personnel to work with their child. Rowley, 458 U.S. at 208; Renner v. Bd. of Educ. of the Pub. Schools of the City of Ann Arbor, 185 F.3d 635 (6th Cir. 1999); Roland M. v. Concord Sch. Comm., 910 F.2d 983 (1st Cir. 1990); Daniel R. R. v. State Bd. of Educ., 874 F.2d 1036 (5th Cir. 1989).

14.

A student's educational placement is determined by the IEP team. R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1177 (11th Cir. 2014); *see* 34 C.F.R. § 300.116(a)(1) (placement decision "[i]s made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options").

15.

Generally speaking, the placement consideration portion of the IEP team meeting is designed to see what level of support the student needs to make appropriate progress and is driven

by the goals and objectives and the amount of support necessary to implement the goals and objectives. In making a placement determination, the IEP team must ensure that the placement is in the LRE. 34 C.F.R. §§ 300.114, 300.116(a)(2). Specifically, the District, through the IEP team, must ensure that "(i) To the maximum extent appropriate, children with disabilities . . . are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ga. Comp. R. & Regs. 160-4-7-.07(1). To meet this requirement, the District must make available a continuum of alternative placements, including regular education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1); Ga. Comp. R. & Regs. 160-4-7-.07(3).

16.

Under IDEA, the term "placement" refers generally to the educational program for the student rather than the physical location where the services will be implemented. 71 Fed. Reg. 46588; White v. Ascension Parish. Sch. Bd., 343 F.3d 373 (5th Cir. 2013) ("educational placement" as used in the IDEA means educational program – not the particular institution where the program is implemented and schools have significant authority to determine the school site for providing IDEA services); D.K. v District of Columbia, 983 F.Supp.2d 138 (DC District Court 2013) (school district's notice of intent to transfer child from Kingsbury to McLean did not violate IDEA because McLean cannot or will not implement the child's IEP and such transfer did not constitute a change in educational placement or a violation of LRE) T.Y. v. NY.Y.C. Dep't of Educ. 584 F.3d 412, 419 (2nd Cir. 2009). However, the student's placement should be "as close as possible to the child's

home" and "[u]nless the IEP . . . requires some other arrangement, the child [should be] educated in the school that he or she would attend if nondisabled." 34 C.F.R. §§ 300.116(b)(3), (c); Ga. R. & Regs. 160-4-7-.07(2)(b)-(c). IDEA "presumes that the first placement option considered for each child with a disability is the regular classroom in the school that the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement." 71 Fed. Reg. 46540, 46588 (Aug. 14, 2006). However, schools are not required to offer every program on every campus. Flour Bluff Independent Sch. Dist. v. Katherine M., 91 F.3d 689 (5th Cir. 1996); Kevin G. v. Cranston School Comm., 130 F.3d 481 (1st Cir. 1997); 71 Fed. Reg. 46588. As noted, IDEA and its implementing federal regulations provide that "[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled," but that does not necessarily require that students' placement locations be at their home schools to satisfy IDEA's LRE requirements. Urban v. Jefferson County Sch. Dist. R-1, 89 F.3d 720, 727 (10th Cir. 1996), (IDEA "does not give [the plaintiff] a right to a placement in a neighborhood school").

17.

In this matter, the educational placement in [redacted]'s most recent IEP was not available at [redacted] School. Thus, his IEP required another arrangement where the Respondent could provide comparable services detailed in [redacted] most recent IEP until such time that a transfer IEP meeting could be held and the IEP team, including the parent, could determine whether to adopt the IEP developed in [redacted] County, or whether to develop, adopt and implement a new IEP for Union County.

18.

The IDEA provides only that Respondent must implement the IEP ***as close as possible*** to the child's home but not necessarily at the school closest to his home if that school does not have the staff and resources needed to meet the services set out in [redacted] IEP. *See* White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003) (qualifying language of "as possible" is critical, no federal appellate court has recognized the right to a neighborhood school assignment under the IDEA)

19.

In this matter, the evidence shows that [redacted], IEP cannot be implemented at [redacted], the school that is closest to his home. The District does not have special education teachers or small group instruction available at [redacted]. Instead, the closest location where his IEP can be implemented is Union County [redacted]. Further, the District, in accordance with *Kevin G.*, *supra.* is not required to move resources to ensure that [redacted] placement is implemented at [redacted]. These services are available at Union County [redacted]. As such, by selecting Union County [redacted] as the location where [redacted] placement can be implemented, the District did not violate LRE.[14]

20.

Moreover, although "educational placement" primarily focuses on the services offered along the continuum of services, the Court cannot ignore that physical location plays a role given the requirement that the services should be provided at the closest possible location to the student's

[14] This conclusion does not mean that the IEP team should not consider at the next IEP meeting whether it can provide sufficient services at [redacted] to meet his goals and objectives.

home, with emphasis on "possible" indicating that it is not required to be provided at the closest location but at the closest location where it would be possible to implement the IEP. 34 C.F.R. § 300.116(b)(3). As noted by the District of Columbia District Court, "educational placement" in the IDEA means "something more than the actual school attended by the child and something less than the child's ultimate educational goals," and can include both the physical location of educational services and the services required by the IEP. Eley v. District of Columbia, 47 F.Supp.3d 1 (DC District Court 2014) citing *Board of Educ. Of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.,* 103 F.3d 545 (7th Cir. 1996). Nevertheless, proximity to home is only a factor and does not provide a presumption that a child is entitled to attend his or her neighborhood school.[15] *See* Murray v. Montrose County Sch. Dist., 51 F.3d 921, 928-929 (10th Cir. 1995); *See also* Wilson v. Marana Unified Sch. Dist. No. 6 of Pima County, 735 F.2d 1178 (9th Cir.1984) (school district may assign child to school 30 minutes away because teacher certified in child's disability was assigned there, rather than move the service to the neighborhood school). Ultimately, schools have significant authority to determine the school site for providing IDEA services. White v. Ascension Parish School Bd., 343 F.3d 373, 381 (5th Cir. 2003). Thus, a student need not be placed in their neighborhood school to satisfy IDEA's LRE requirement if that student's IEP cannot be implemented at his or her home school.

[15] *See, e.g., McLaughlin v. Holt Public Sch. Bd. of Educ.,* 320 F.3d 663, 672 (6th Cir.2003) (LRE provisions and regulations do not mandate placement in neighborhood school); *Kevin G. by Robert G. v. Cranston Sch. Comm.,* 130 F.3d 481, 482 (1st Cir.1997) ("[W]hile it may be preferable for Kevin G. to attend a school located minutes from his home, placement [where full-time nurse located] satisfies [the IDEA].... The school district has an obligation to provide a school placement which includes a nurse on duty full time, but it is not required to change the district's placement of nurses when, as in this case, care is readily available at another easily accessible school".); *Hudson v. Bloomfield Hills Public Sch.,* 108 F.3d 112 (6th Cir.1997) (IDEA does not require placement in neighborhood school); *Urban v. Jefferson County Sch. Dist. R–1,* 89 F.3d 720, 727 (10th Cir.1996) (IDEA does not give student a right to placement at a neighborhood school).

21.

Thus, it is critical that the IEP mainstream the child to the maximum extent appropriate to then determine the school location where the services can be implemented. The Eleventh Circuit has developed a two-part test for determining compliance with the mainstreaming requirement of the IDEA. "First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily . . . . If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate." S.M. v. Gwinnett Cnty. Sch. Dist., 646 Fed. Appx. 763 (11th Cir. 2016) citing Greer v. Rome City Sch. Dist., 950 F.2d 688 (11th Cir. 1991). In this matter, [redacted]s most recent IEP provides that he be educated in the general education classroom for most of the day, but also provides for a 45-minute segment four times per week in a small group setting for social skills, and supportive instruction in the general education classroom for adaptive behavior. After careful consideration, the Court concludes that [redacted] most recent IEP does place him in the regular classroom "to the maximum extent appropriate" as required by the IDEA. Additionally, although [redacted] current IEP that was developed by his former District provides services that cannot be implemented at [redacted] when the parties conduct their next IEP meeting, a discussion should take place to determine whether [redacted] can be educated solely in the regular education classroom with supplementary aids and services when determining whether to adopt the IEP from the previous LEA or whether to develop, adopt and implement a new one to ensure that he is being educated with children who are nondisabled to the maximum extent appropriate and that any special class or separate schooling or removal from the regular educational environment that the team chooses to include in the IEP is solely due to the nature or severity of his disability and a determination that education in regular

classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ga. Comp. R. & Regs. 160-4-7-.07(1).

22.

In addition to proximity to home and mainstreaming to the maximum extent appropriate, when determining the placement that meets the LRE requirements, the IEP team must also consider "any potential harmful effect on the child or on the quality of the services he or she needs." 34 C.F.R. § 300.116(d); Ga. Comp. R. & Regs. 160-4-7-.07(2)(d).

23.

Petitioners assert that assigning [redacted]. to Union County [redacted] will have a potentially harmful effect on him both personally and educationally because of the distance from his home and the over [redacted] bus drive necessary to get there.

24.

The majority of courts have held that placement refers to the educational program, not the particular school or building where the services will be provided. *See* Veazey v. Ascension Parish Sch. Bd., 121 Fed. Appx. 552, 553 (2005), *citing White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir. 2003); Hill v. School Bd. for Pinellas County, 954 F. Supp. 251, 253-54 (M.D. Fla. 1997), *aff'd*, 137 F.3d 1355 (11th Cir. 1998); A.W. v. Fairfax County Sch. Bd., 372 F.3d 674, 681-83 (4th Cir. 2004); White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003); Board of Educ. v. Illinois State Bd. of Educ., 103 F.3d 545, 549 (7th Cir. 1996) (explaining that the meaning of "educational placement" refers to general educational placement, not to the specific school location); Sherri A.D. v. Kirby, 975 F.2d 193, 206 (5th Cir. 1992) ("educational placement" not a place, but a program of services); Tilton v. Jefferson County Bd. of Educ., 705 F.2d 800, 804 (6th Cir. 1983) (transfer from one school to another with comparable program not a change in

educational placement); N.D. v. Hawaii Dep't of Educ., 600 F.3d 1104, 1115-16 (9th Cir. 2010) (discussing the various circuits' interpretation of the meaning of "current educational placement" and holding that "educational placement" means the general educational program of the student). Nevertheless, as noted above, school location should be discussed to address concerns regarding potential harmful effects because the school itself could have a harmful effect. *See* R.L. v Miami-Dade Cnty. Sch. Bd., 757 F.3d at 1190-91 (parents entitled to reimbursement because the proposed IEP failed to offer a FAPE based on the negative impact the large school would have on student's anxiety and ability to benefit from his education).

25.

Under the IDEA, a parent is entitled to be a participant in meetings to determine educational placement, but a parent is not entitled to dictate the physical location (i.e. the school building) where an IEP's educational placement will be implemented. D.K. v. Dist. of Columbia, 983 F. Supp.2d 138 (D. Ct. D.C. 2013) (parents preference that child remain at current school and child's fear of leaving social relationships were not controlling, in part because current school was unwilling and/or unable to implement child's IEP); James v. Dist. of Columbia, 949 F. Supp.2d 134, 138 (D. Ct. D.C. 2013) (while the IDEA requires a student's parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not "explicitly require parental participation in site selection.") quoting *White*, 343 F.3d at 379; Lachman v. Illinois State Bd. of Education, 852 F.2d 290 (7th Cir. 1988) ("parents, no matter how well-motivated, do not have a right under the EAHCA[16] to compel a school district to provide a specific program or employ a specific methodology in providing for the education" a disabled child).

[16] The Education for All Handicapped Children Act of 1975 was the precursor for the IDEA.

26.

In their Complaint and at the hearing, Petitioner's claimed that the required bus ride to be able to attend Union County [redacted] is excessive and harmful to [redacted]

27.

Transportation is deemed a related service under IDEA and its implementing federal regulations. 34 C.F.R. §300.34. The related service of special education transportation includes "transportation to and from school and between schools" as well as "travel in and around school buildings" and "specialized equipment (such as special or adapted buses, lifts, and ramps) if required to provide special transportation for a child with a disability." 34 C.F.R. §300.34(c)(16). With respect to length of bus trips to and from school, neither IDEA or its federal implementing regulations, nor the Georgia Department of Education rules, set any specific limitations with respect to the maximum amount of travel time for a special education student. As such, this Court must rely upon interpretive case law in which to make such a decision.

28.

When addressing this issue, administrative law judges and district court judges generally, have found that a bus ride that does not exceed one-and-a-half hours in each direction is acceptable. Ramona Unified School District/Santee Sch. Dist., 27 IDELR 747 (CSEA 1997); Bonadonna v. Cooperman, 557 IDELR 178 (EHLR 557:178) (D.N.J. 1985); Covington Community Sch. Corp., 18 IDELR 180 (SEA IN 1991); Kanawho Cnty. (WV) Pub. Sch. 16 IDELR 450 (16 EHLR 450) (OCR 1987); Palm Beach Cnty. (FL) Sch. Dist., 31 IDELR 37 (OCR 1998). Importantly, a district court in Pennsylvania held that a bus trip for a special education student that lasted three hours in duration roundtrip was appropriate. Tyler W., et al. v. Upper Perkiomen Sch. Dist., 963 F. Supp.

2d 427, 431, 437 (E.D. Pa. 2013). In doing so, that court analyzed whether there was evidence linking the bus ride to a denial of FAPE or an adverse effect on the student's education. *Id.* at 437. Indeed, when assessing the appropriateness of bus routes regarding special education transportation, the relevant inquiry seems to be whether a student is denied FAPE. *See,* Brett K., et al. v. Momence Cmty. Unit Sch. Dist. No. 1, No. 06 C 3353, 2007 U.S. Dist. LEXIS 23880 (N.D. Ill., Mar. 30, 2007) (bus ride that takes over an hour to closest available appropriate placement located 50 miles from home found acceptable where court found there was no evidence that the long bus ride directly adversely impacted his educational opportunities).

29.

Based on the evidence presented, the undersigned concludes that there was insufficient evidence to prove that the duration of the bus ride would amount to a denial of a FAPE. [redacted] testified as to her concerns, but presented insufficient evidence that the time and distance will potentially have a harmful effect on [redacted] ability to access his education.

30.

Finally, Petitioners seek compensatory services for the time that [redacted] has not attended school since moving to Union County and beginning the enrollment process. [redacted] chose to keep [redacted] out of school rather than sending him to Union County [redacted] as the District had offered. While [redacted] asserts that she did not send [redacted] to Union County [redacted] because she believed he would suffer harm from the lengthy bus ride as a result, there is insufficient evidence in the record that attending Union County [redacted] would have resulted in harm to [redacted] or would have denied him a FAPE Accordingly, because [redacted] chose to keep [redacted] home from school despite the Respondent's offer to educate him and implement his most recent IEP at the school that had

the resources available to provide comparable services described in the IEP until such time that the Respondent's IEP team, including [redacted] could decide whether to adopt the IEP from [redacted] County or develop, adopt and implement a new one, the undersigned concludes that Petitioners are not entitled to compensatory education for the time he has missed school.

IV. DECISION

For the reasons stated above, the Court finds that Petitioners did not meet their burden and are not entitled to relief under the Due Process Hearing Request filed October 27, 2023.

SO ORDERED, this 17th day of January, 2024.

Ana Kennedy

Ana Kennedy
Administrative Law Judge

NOTICE OF FINAL DECISION

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

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Bringing a Civil Action

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