BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] by and through his parents, [redacted] and [redacted] [redacted] and [redacted]	:	
Petitioners,	:	**Docket No.:**
	:	**OSAH-DOE-SE-[redacted]-67-Miller**
v.	:	15-300851
GWINNETT COUNTY SCHOOL DISTRICT,	:	
Respondent.	:	

FINAL DECISION
ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DETERMINATION

I. SUMMARY OF PROCEEDINGS

[redacted] is a student with a disability who is eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On October 20, 2014, the Petitioners, [redacted] and his parents, [redacted] and [redacted] filed a due process hearing request ("Complaint") against the Respondent, the Gwinnett County School District ("District"). Following two amendments to the Complaint and a prehearing conference to clarify the issues presented, the Petitioners' claims against the District may be summarized as follows:[1] (1) the District's implementation of home-based services for [redacted] in May 2013 was improper; (2) the District failed to provide [redacted] with appropriate psychological support during the 2013-14 school year; (3) the District failed to implement [redacted]s IEP in accordance with IDEA during the 2013-

[1] Due to the incoherent, "shotgun" nature of their pleadings, the Petitioners were twice ordered to amend their Complaint to meet the requirements of 20 U.S.C. §§ 1415(b)(6)(B) and (b)(7)(A). A prehearing conference took place on January 8, 2015, after the Petitioners had amended their Complaint for the second time. During the prehearing conference, because the Petitioners' amendments had done little to clarify the allegations, an extended discussion took place regarding the specific claims they intended to raise against the District. Following that discussion, the Petitioners agreed that the claims litigated in the due process hearing would be limited to the four claims summarized herein.

14 school year; and (4) the District failed to address [redacted]s school aversion in an appropriate manner during the two years that preceded the filing of their Complaint.

On January 30, 2015, the District moved for summary determination in its favor, arguing that the undisputed material facts show that the District is entitled to judgment as a matter of law. In support of its Motion, the District filed a Statement of Undisputed Material Facts, which included sworn affidavits and authenticated exhibits, as required by the Administrative Rules of Procedure. Ga. Comp. R. & Regs. 616-1-2-.15(1). The Petitioners responded to the District's Motion on February 23, 2015, and the District replied on March 2, 2015.

The Petitioners' Response, however, failed to comply with the Administrative Rules of Procedure[2] and was insufficient to show the existence of a genuine issue of material fact for determination at an evidentiary hearing. Accordingly, by Order dated March 19, 2015, the Petitioners were ordered to supplement their response to comply with the rules on or before March 25, 2015. This deadline was extended, at the Petitioners' request and over the District's objection, to March 30, 2015. Despite the extension, the Petitioners failed to file a timely supplemental response,[3] and their late filing is therefore stricken from the record.

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[2] Specifically, the Petitioners failed to include "a short and concise statement of each of the facts as to which the party opposing summary determination contends there exists a genuine issue for determination," as required by Ga. Comp. R. & Regs. 616-1-2-.15(2); failed to submit sworn affidavits in opposition to the District's Motion, as required by Ga. Comp. R. & Regs. 616-1-2-.15(4); and failed to submit sworn or certified copies of the exhibits to which they made reference, as required by Ga. Comp. R. & Reg. 616-1-2-.15(4).

[3] The Petitioners did not request a further extension of the deadline. Instead, on March 31, 2015, they filed, by e-mail attachment, two parental affidavits and their Amended Response to [Respondent's] Statement of Material Facts in Support of [Respondent's] Motion for Summary Determination ("Amended Response"). The March 31 filing did not include any of the fifty exhibits cited in their Amended Response. A full day later, on April 1, 2015, the Petitioners mailed the originals of their March 31 filing, together with the referenced exhibits. Under the Administrative Rules of Procedure, documents may be filed in person or by mail, fax, or e-mail attachment. However, "[a] document is deemed filed on the date it is received by the Clerk, or on the official postmarked date on which the document was mailed, properly addressed with postage prepaid, whichever date comes first." Ga. Comp. R. & Regs. 616-1-2-.04(1). Thus, both the Petitioners' March 31 e-mailed filing and their April 1 mailed filing were untimely.

After consideration of the parties' arguments and for the reasons stated below, the District's Motion for Summary Determination is **GRANTED**.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Rule 15 of the Administrative Rules of Procedure ("A.R.P."), which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Envtl. Prot. Div., Dep't of Natrual Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6–7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421, 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304–05 (2006) (noting summary determination is "similar to summary judgment" and elaborating that an administrative law judge "is not require to hold a hearing" on issues properly resolved by summary determination).

Further, pursuant to A.R.P. Rule 15:

> When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3); see Lockhart v. Dir. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

III. UNDISPUTED MATERIAL FACTS

Pursuant to A.R.P. Rule 15(1), a motion for summary determination must include "a short and concise statement of each of the material facts as to which the moving party contends there is no genuine issue for determination." Ga. Comp. R. & Regs. 616-1-2-.15(1). Similarly, a response to a statement of undisputed material facts must contain "a short and concise statement of each of the material facts as to which the party opposing summary determination contends there exists a genuine issue for determination." Ga. Comp. R. & Regs. 616-1-2-.15(2). In this case, because the Petitioners have offered only unsupported denials of the District's proposed facts, they have not demonstrated, by affidavit or other probative evidence, that a genuine issue of material fact exists. Ga. Comp. R. & Regs. 616-1-2-.15(3); Ellis v. England, 432 F.3d 1321, 1325–26 (11th Cir. 2005). Consequently, the Court has accepted the District's proposed undisputed facts in their entirety, as follows:

1.

[redacted] is a former student of the Gwinnett County School District who graduated with a college preparatory high school diploma in May 2014. While enrolled in the District, [redacted] was eligible for special education services pursuant to IDEA. (Affidavit of Tom Owen ["Att. A"], ¶ 10; Affidavit of Lee Augmon ["Att. B"], ¶¶ 7, 15.)

2.

[redacted] has a diagnosis of Asperger's Syndrome, a pervasive developmental disorder at the high end of the Autism Spectrum. In September 2012, his junior year, [redacted] transferred from his home school, [redacted] High School, to his parents' preferred school location, [redacted] High School. (Att. A, ¶ 5, Att. B, ¶¶ 5, 7.)

3.

On September 7, 2012, the IEP team amended [redacted]s IEP to include the District's payment for nine sessions of counseling with Dr. [redacted], a private psychologist, to assist [redacted] with the transition to his new school. The counseling sessions occurred between August 31, 2012, and October 26, 2012. (Att. A, ¶¶ 5, 6; Exhibit A1.)

4.

Thereafter, Dr. [redacted] shared his recommendations for working with [redacted] at a meeting with school personnel on October 23, 2012. The IEP team subsequently incorporated many of Dr. [redacted] suggestions into [redacted]s IEP, including maintaining close communication with [redacted]s parents, checking in with [redacted] about stress, offering to engage with [redacted] about his wants, and identifying trusted adults in the school building for [redacted] (Att. A, ¶ 6; Att. B, ¶ 4; Exhibits A2, A3.)

5.

[redacted] ended the first semester of the 2012-13 school year, his junior year, ending the semester with an 85% GPA. He struggled with completing assignments during the second semester of his junior year. This was a consistent pattern for [redacted] throughout high school. Consequently, the IEP team frequently met to review and develop interventions and support for [redacted] The District also agreed to pay for six more counseling sessions with Dr. [redacted] from April 6, 2013, to May 25, 2013. (Att. A, ¶ 7; Att. B, ¶¶ 5, 15.)

6.

The interventions the IEP team incorporated into [redacted]s programming included directing teachers to contact administrator L[redacted] A[redacted] directly if [redacted] was not present in class, rather than follow the typical protocol of notifying the attendance office; frequent communication with

[redacted]s parents; use of an affective skills class and/or a study skills class, depending on [redacted]s performance; use of the "Plan Do Review"; developing goals and objectives addressing [redacted]s work completion and class attendance; allowing extra time for [redacted] to complete assignments; and directing teachers to submit discipline referrals directly to Ms. A[redacted], rather than following the usual protocol, so that Ms. A[redacted] could work to apply purposeful consequences that were quickly communicated to the parents. (Att. B, ¶ 5; Affidavit of K[redacted] D[redacted] ["Att. D"], ¶ 8; Exhibit D2.)

7.

During the last few weeks of his junior year, [redacted] stopped attending school on a regular basis. The IEP team convened on May 3, 2013, to review [redacted]s IEP and discuss ways to support him. The members of the IEP team included L[redacted]A[redacted], who served as the local educational agency representative knowledgeable about the general education curriculum and the availability of the District's resources. (Att. B, ¶¶ 6, 7; Exhibit B1.)

8.

At the May 3, 2013 meeting, [redacted]s parents requested private placement at public expense. The IEP team considered [redacted]s parents' request for private placement at public expense, but some members of the IEP team expressed concern about [redacted] completing his remaining assignments, passing his classes, and receiving all of his credits to complete the last few weeks of the 2012-13 school year. After discussion, the consensus of the IEP team recommended that [redacted] receive home-based instruction for the remaining few weeks of the semester, approximately 13 school days, so that [redacted] could recover all of his credits. (Att. B, ¶¶ 6, 7; Exhibit B1.)

9.

The IEP team amended [redacted]s IEP on May 3, 2013, to reflect the recommendation that [redacted] receive five hours per week of home-based instruction for the remaining days of the school year. [redacted] and [redacted] refused to sign the IEP and were provided with prior written notice regarding the IEP team's recommendation of home-based instruction and the team's rejection of private placement at public expense. (Att. B, ¶¶ 7, 8; Exhibits B1, B2.)

10.

The Petitioners did not file a due process hearing request to contest the implementation of the May 3, 2013 IEP, and the home-based services were implemented. (Att. B, ¶ 9.)

11.

[redacted]s home-based services were reviewed at the IEP meeting on May 21, 2013. By the end of the school year, [redacted]s assignments were turned in and he passed all of his classes, as well as passing all required end of course tests. [redacted] ended the spring semester with a 75% GPA. (Att. B, ¶ 9; Exhibit B3.)

12.

The Petitioners met with K[redacted] D[redacted], [redacted]s case manager, and Ms. A[redacted] on August 6, 2013, prior to the start of the school year, to discuss [redacted]s reentry to school following his receipt of home-based services for the final 13 days of the 2012-13 school year. The matters discussed at the meeting included the services [redacted] needed in order to be successful; the process he could follow when anxious; the communication system teachers were to follow if [redacted] was absent; and how discipline would be addressed. It was determined that an affective skills class would be appropriate to address [redacted]s needs, including his anxiety. (Att. B., ¶ 10; Att. D, ¶ 6; Exhibit B4.)

13.

[redacted] returned to Peachtree Ridge High School for the 2013-14 school year, his senior year. The IEP team met again on September 20, 2013, to review [redacted]s progress and return to school. D[redacted] G[redacted], a counselor at [redacted], attended the meeting and discussed the remaining credits that [redacted] needed to obtain during his senior year as well as college resources. It was decided that [redacted] could have an opportunity to improve his GPA by completing the remaining missed assignments from the spring semester and submitting them for grading, whereby his course grade could be changed. [redacted]s parents expressed appreciation to Ms. A[redacted] for the relationship she had established with [redacted] and requested that she continue to handle any issues that arose with [redacted] [redacted]s parents indicated to the IEP team that they respected Ms. A[redacted] and that she took their concerns seriously. (Att. B, ¶ 11; Exhibit B5.)

14.

At the September 20, 2013 IEP meeting, the Petitioners also requested that the District pay for more private counseling by Dr. [redacted] The IEP team examined the data over school years in an effort to determine if [redacted]s visits with Dr. [redacted] decreased the number of [redacted]s absences. The IEP team could find no evidence that visits with Dr. [redacted] decreased the number of [redacted]s absences. In fact, [redacted]s absences occurred at the same frequency as his visits with Dr. [redacted] The consensus of the IEP team determined that private counseling by Dr. [redacted] was not a successful intervention in reducing school avoidance and that private counseling was therefore not necessary. The Petitioners were provided with prior written notice regarding their request for private counseling. (Att. A, ¶ 8; Att. B, ¶¶ 11, 12; Exhibits B5, B6.)

15.

Since private counseling was determined to be an ineffective intervention in reducing school avoidance, the IEP team reviewed and incorporated scaffolded interventions in the school

setting for [redacted] to address his anxiety and school aversion. Evidence-based, scaffolded interventions are frequently used for students who exhibit school refusal or aversion and who try to escape when they feel pressure or anxiety. (Att. A, ¶ 9.)

16.

The IEP team reviewed and implemented multiple evidence-based interventions to support [redacted] during the 2012-13 and 2013-14 school years. These interventions included: the "Plan Do Review"; affective skills and study skills classes at school; regular communication by school personnel with [redacted]s parents; and a network of layered support of identified, trusted school personnel with whom [redacted] could check-in for support when he felt anxious, frustrated, or angry, and who would frequently check-in with [redacted] These individuals included L[redacted] A[redacted], K[redacted] D[redacted], D[redacted] G[redacted], and K[redacted] S[redacted]. [redacted] accessed these supports at times on his own, and at other times, when initiated by the adults. (Att. A, ¶ 9.)

17.

[redacted] developed a particularly close relationship with Ms. G[redacted]. Ms. G[redacted] provided [redacted] multiple forms of support including participating in IEP meetings; identifying courses that [redacted] needed for graduation; providing the Petitioners with college resources; discussing post-graduate opportunities for him; and following up frequently with the Petitioners and [redacted]s teachers regarding outstanding assignments and [redacted]s performance. [redacted] appeared comfortable with utilizing Ms. G[redacted] as a form of support, and they often discussed his plan for remaining in school, his post high school goals and plans, and matters occurring at home which caused him anxiety. [redacted] and Ms. G[redacted] developed a plan to help him not leave school, and during his senior year, he appeared confident and optimistic in his meetings with her. More than once,

[redacted]s parents expressed their thanks and appreciation for Ms. G[redacted]'s support. (Affidavit of D[redacted] G[redacted] ["Att. C"], ¶¶ 4-9; Exhibits C1, C2, C3, C4.)

18.

[redacted] also utilized support provided by Ms. D[redacted], who was another identified staff member that [redacted] could meet with when he had anxiety or concerns. Ms. D[redacted] assisted [redacted] with organization and submission of assignments, and, like Ms. G[redacted], regularly communicated with the Petitioners and [redacted]s teachers regarding [redacted]s assignments. [redacted] appeared comfortable with Ms. D[redacted] as well, and discussed his concerns with her, including issues occurring at home which caused him stress. (Att. D, ¶¶ 5, 7, 8, 9; Exhibits D1, D2, D3.)

19.

[redacted]s IEP team met on or near December 7, 2013,[4] to review [redacted]s grades and missing assignments. [redacted] passed all of his courses during the fall semester, earning grades ranging from a 78% to 87%. (Att. B, ¶ 13; Exhibit B7.)

20.

[redacted]s IEP team reconvened again on January 16, 2014, for [redacted]s annual IEP meeting. The Petitioners agreed with the team's suggested goal of addressing work completion and turning in assignments, and they did not have any additional recommendations for goals and objectives. The team developed accommodations for [redacted] including an accommodation requiring teachers to contact Ms. A[redacted] immediately if [redacted] was absent from class. The IEP team added a study skills class to support [redacted] during the second semester. Though [redacted] and [redacted] expressed that there was "very little to disagree with" regarding the way the IEP was written, they declined to sign the IEP. (Att. B, ¶ 14; Exhibit B8.)

[4] Although Ms. A[redacted]'s affidavit states the meeting was on December 7, 2013, the supporting exhibit is dated December 6, 2013.

21.

[redacted]s IEP was amended again on May 15, 2014, after the IEP team became aware of [redacted]s incarceration. The team agreed that [redacted] needed two hours per day of direct instruction by a special education teacher for the remainder of the school year, until May 22, 2014. (Att. B, ¶ 14; Exhibit B9.)

22.

While over the years [redacted]s parents as well as some private evaluators frequently expressed their fears that [redacted] would drop out of school and fail to obtain his high school diploma, by the end of the 2013-14 school year, [redacted] had earned sufficient credits and passed all exams required for graduation with a college preparatory diploma. This included passing both sections of the Gwinnett County Gateway, the Georgia High School Graduation Writing Test, and all state of Georgia End-of-Course Tests ("EOCTs"). In fact, in some subject areas, such as economics, [redacted] exceeded expectations on the EOCTs, which are graded by the state. Having earned sufficient credits and having passed all required graduation tests, [redacted] received a college preparatory diploma and graduated with a cumulative GPA of 79.71% (or 2.33) in May 2014. (Att. A, ¶ 10; Att. B, ¶ 15.)

23.

[redacted] appeared to benefit from the supports and accommodations built into [redacted]s IEPs, including the supports from Ms. A[redacted], Ms. G[redacted], and Ms. D[redacted]. (Att. A, ¶ 10; Att. C, ¶ 10; Att. D, ¶ 10.)

IV. ANALYSIS

The undisputed facts in this case demonstrate that the District properly implemented home-based services for [redacted] in May 2013; that it provided [redacted] with appropriate psychological support during the 2013-14 school year; that it implemented [redacted]s IEP in accordance with IDEA during the 2013-14 school year; and that it addressed [redacted]s school aversion in an appropriate manner. Accordingly, the District is entitled to judgment as a matter of law on all four of the Petitioners' claims.

A. Home-Based Services

The Petitioners allege that the IEP team's decision to provide home-based instruction to [redacted] in May 2013 was inappropriate because (1) home-based services did not provide the least restrictive environment; (2) his parents did not consent; (3) his IEP was not amended; and (4) the District failed to develop a reentry plan. However, contrary to the Petitioners' allegations, the undisputed facts show that the District properly implemented home-based services for [redacted] in May 2013. Consequently, summary determination in favor of the District is appropriate as to this claim.

1. Least Restrictive Environment

First, the Petitioners contend that the decision to provide [redacted] with home-based services was improper because it was not the least restrictive placement option. The Court concludes, however, based on the undisputed facts set forth above, that home-based instruction was the least restrictive environment in which [redacted] could receive a free appropriate public education ("FAPE") during the last thirteen days of the 2012-13 school year.

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 further education, employment, and independent living . . . ." 20 U.S.C. § 1400(d)(1)(A). Coupled with this FAPE mandate is a requirement that disabled children be educated in the "least restrictive environment." This means that school districts must ensure that "to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . . ." 20 U.S.C. § 1412(a)(5). However, "[w]here necessary for educational reasons, mainstreaming assumes a subordinate role in formulating an educational program." Carter v. Florence Cnty. Sch. Dist. Four, 950 F.2d 156, 160 (4th Cir. 1991). Home-based instruction is a short-term placement option that a school district must make available, despite its more restrictive nature, as part of the continuum of placement options. Ga. Comp. R. & Regs. 160-4-7-.07(3)(b)(1).

In this case, [redacted]s IEP team properly decided to implement home-based services when he stopped attending classes regularly near the end of the 2012-13 school year. During the IEP meeting on May 3, 2013, the team determined that home-based instruction for the rest of the school year—approximately thirteen days—would enable [redacted] to complete his remaining assignments, pass his classes, and receive all of the credits he had worked for during the school year.[5] Undisputed Material Fact ("UMF") ¶ 8. The team properly denied his parents' request for

[5] [redacted] received an educational benefit from the team's decision to implement home-based services, as evidenced by the fact that he passed all of his classes and mandatory end-of-course tests, resulting in the acquisition of a college preparatory diploma. See Rebecca S. v. Clarke Cnty. Sch. Dist., 22 IDELR 884 (M.D. Ga. 1995); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982) ("The grading and advancement system thus constitutes an important factor in determining educational benefit. Children who graduate from our public school systems are considered . . . to have been 'educated' at least to the grade level they have completed . . . .").

private placement at public expense, recognizing that changing [redacted]s placement at that time would jeopardize his course credits for the semester. Id. Moreover, moving [redacted] to a private school with less than three weeks remaining in the school year would likely have presented a new set of problems. See D. v. Ambach, 520 F. Supp. 196, 204 (E.D.N.Y. 1981) (acknowledging the difficulty in moving child to a new school during school year). Under these circumstances, the District properly implemented home-based services, which was the least restrictive environment in which [redacted] could receive a FAPE during the last few weeks of the 2012-13 school year.

2. Parental Consent

Second, the Petitioners allege that the decision to implement home-based services was inappropriate because [redacted]s parents withheld their consent. Under IDEA, however, parents do not have the power to veto a decision of the IEP team. K.A. v. Fulton Cnty. Sch. Dist., 741 F.3d 1195, 1206 (11th Cir. 2013) (internal citation omitted). While the IEP team must consider parental concerns, the parents are not entitled to the placement of their choice. M.M. v. Sch. Bd., 437 F.3d 1085, 1102 (11th Cir. 2006); see also Heather S. v. Wisconsin, 125 F.3d 1045, 1057 (7th Cir. 1997). Further, parental consent for special education services is only required prior to the initial provision of services; it is not required to develop, review, or revise an IEP. 20 U.S.C. § 1412(a)(1)(D); 34 C.F.R. § 300.300(b); see K.A., 741 F.3d at 1206 ("[W]here Congress knows how to say something but chooses not to, its silence is controlling."). Accordingly, the Petitioners' consent to home-based instruction was not necessary based on the undisputed facts of this case.

3. Amendment of IEP

Third, the Petitioners challenge the implementation of home-based services on the grounds that [redacted]s IEP was not properly amended. However, it is undisputed that [redacted]s IEP was amended on May 3, 2013, to reflect that [redacted] would receive five hours per week of home-based instruction for the remaining days of the school year. UMF ¶ 9. It is further undisputed that [redacted]s parents were also provided with prior written notice regarding the IEP team's recommendation of home-based instruction and its rejection of their request for private placement at public expense. Id. Therefore, based on the undisputed facts set forth herein, the Court concludes that the IEP was properly amended.

4. Reentry Plan

Fourth, the Petitioners argue that home-based instruction was not appropriate because the District did not create a formal reentry plan for [redacted]s return to school in the fall of 2013. Notwithstanding the absence of a written plan, however, it is undisputed that on August 6, 2013, the Petitioners met with members of the IEP team to discuss and develop a plan for [redacted]s reentry to a school-based setting. UMF ¶ 12. At the meeting, they identified ways to support [redacted] in the school setting and determined that he would transition back to school with the addition of an affective skills class to his schedule. Id. His reentry was discussed again during an IEP meeting on September 20, 2013. UMF ¶ 13. The Petitioners have offered no legal authority for their contention that IDEA requires a formal, written reentry plan for a student's return to school following a short period of home-based instruction.[6] On the contrary, a reentry meeting like the one that occurred here was appropriate to provide [redacted] with a FAPE and was in compliance with IDEA. See, e.g., Dep't of Educ., Hawaii, 109 LRP 58199 (Haw. SEA 2009)

[6] 34 C.F.R. § 300.530, which addresses only disciplinary changes of placement, does not apply here.

(finding no procedural violation where school held a reentry meeting regarding student's return to school).

B. Psychological Support

The Petitioners allege that the District failed to provide [redacted] with appropriate psychological support during the 2013-14 school year. More specifically, the Petitioners claim that [redacted]s IEP should have included additional psychological counseling by their provider of choice, Dr. [redacted] Under IDEA, psychological counseling is a related service that must be provided when it is necessary for a child with a disability to benefit from special education. See 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.34(a), (c)(10). Here, however, it is undisputed that [redacted]s sessions with Dr. [redacted] did not reduce his absences from school, and the IEP team therefore concluded that private counseling was not a successful intervention. UMF ¶ 14. The Petitioners have come forward with no reliable evidence to suggest that psychological counseling with Dr. [redacted] was necessary for [redacted] to access the "basic floor of opportunity." See Petit v. U.S. Dep't of Educ., 675 F.3d 769, 783 (D.C. Cir. 2012). Instead, the IEP team implemented evidence-based, scaffolded interventions that provided appropriate psychological support to [redacted] UMF ¶ 15-16. Because the undisputed facts show that the District provided [redacted] with appropriate psychological supports, the District is entitled to summary determination as to this claim.

C. IEP Implementation During 2013-14 School Year

The Petitioners' next claim is that the District failed to implement the multiple IEPs developed for [redacted] for the 2013-14 school year.[7] However, the District filed a number of affidavits to support its assertion that [redacted]s 2013-14 IEPs were implemented as written, and the

[7] The IEPs applicable in 2013-14 included an IEP developed on May 3, 2013; an IEP developed on May 21, 2013; an IEP Change Form signed on September 20, 2013; an IEP developed on January 16, 2014; and an IEP Change Form executed on May 15, 2014. UMF ¶ 7-14; 19-21; Exhibits D-B1, D-B3, D-B5, D-B8, D-B9.

Petitioners did not proffer any evidence or affidavits to challenge the District's evidence. It is undisputed, then, that the IEPs were implemented as written.[8] UMF ¶ 16-18, 23. Accordingly, the District is entitled to judgment as a matter of law on the Petitioners' failure to implement claim.

D. School Aversion

The Petitioners' final contention is that the District failed to appropriately address [redacted]s school aversion. This contention is disproven by the undisputed facts, which demonstrate that the IEP team met on multiple occasions to address the issue. UMF ¶¶ 3, 5, 7, 12-13, 19-20. The resulting IEPs contained a myriad of interventions to improve [redacted]s school attendance, including private counseling by Dr. [redacted] during the 2012-13 school year; designation of trusted, on-site personnel who were available to support [redacted] when he felt anxious, frustrated, or angry, and who checked in with him regularly; frequent communication with [redacted]s parents; immediate notification of a designated staff member, Ms. A[redacted], when [redacted] was absent from class; the "Plan Do Review"; and an affective skills class and/or study skills class. UMF ¶¶ 3-6, 14-18. Although the Petitioners may have preferred a different intervention, such as additional private counseling (which was not shown to be effective), there is no evidence that the strategies employed by the IEP team were not appropriate. Indeed, the IEP team's interventions resulted in [redacted] finishing school on time with nearly a "B" average, passing his required end-of-course and graduation tests, and receiving a college preparatory diploma. UMF ¶ 22. The District is therefore entitled to judgment as a matter of law on this claim.

[8] Furthermore, "to prevail on a claim under IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000).

V. DECISION

After careful consideration of the arguments and submissions of the parties and for the reasons stated above, the District's Motion for Summary Determination is **GRANTED**, and judgment is entered in favor of the District as to all of the Petitioners' claims. The case is removed from the hearing calendar for April 21 and 22, 2015.

SO ORDERED, this 17th day of April, 2015.

KRISTIN L. MILLER
Administrative Law Judge