BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], BY AND THROUGH [redacted]; AND [redacted], **Petitioner,** **v.** **COFFEE COUNTY SCHOOL DISTRICT,** **Respondent.**	**Docket No.: 2030095** **2030095-OSAH-DOE-SE-34-Barnes** **Agency Reference No.: 2030095**

FINAL DECISION

I. INTRODUCTION

[redacted], by and through his father, [redacted] ("Petitioner" or "Father"), filed a due process complaint. On April 15, 2020, Petitioners filed a due process hearing request alleging violations of IDEA due to (1) evaluation and (2) a Free Appropriate Public Education ("FAPE"). A virtual hearing was set for the mutually agreed upon dates of October 25-29, 2021. Petitioners [redacted] and [redacted] (Father) were represented by Julia H. Sullivan, Esq. Respondent Coffee County School District ("Respondent", the "District", or "Coffee District") was represented by Beth Morris, Esq. and Reagan Sauls, Esq. The record was left open for the submission of written closing arguments, the production and release of the official court transcript, followed by additional submissions by the parties. After reviewing the arguments of both parties and considering all evidence and pleadings, the Court finds as follows:

II. FINDINGS OF FACT

The following witnesses testified at the hearing:

- [redacted], Pediatric Psychologist

- [redacted], Pediatric Speech Therapist
- Petitioner [redacted] (Father)
- [redacted], Speech Language Pathologist
- [redacted], Occupational Therapy Assistant, Coffee County Schools
- [redacted], Former Coffee County School District Self-Contained Classroom Teacher
- [redacted], Special Education Teacher, [redacted] County School District
- [redacted], IEP Coordinator, Coffee County School District
- [redacted], Board Certified Behavior Analyst
- Dianne Carver, Speech Language Pathologist, Coffee County School District
- Brooke Morgan, Behavior Specialist
- Rebecca Toth, Social Worker, Coffee County School District
- Dr. Dana Vickers, Special Services Director, Coffee County School District
- Dr. Tonya Johnson, Director of Special Education, Coffee County School District
- Dr. Cecil Baker Wright, IV, BCBA-D

1.

Petitioner, [redacted], is [redacted]-years old. He currently resides in [redacted] with his father, [redacted] (Father), and stepmother. He was enrolled in the Coffee County School District from November [redacted] to April [redacted]. He attended [redacted] School for [redacted] and [redacted] grades. Prior to [redacted] School, he attended [redacted] School. [redacted]

[redacted]

2.

Prior to moving to [redacted], [redacted] lived with his mother and stepfather in [redacted], Georgia. His maternal grandparents also lived in [redacted] and were involved in [redacted]s life and day-to-day care. Tr. 277. From September [redacted], [redacted] and his mother lived with [redacted] maternal grandparents. While [redacted] resided with his mother, he received services under the Individuals with Disabilities Education Act ("IDEA") for the categories of Autism and Speech Language Impairment from the District. Complaint, p. 3; Ex. R-2, CCSD 0013. For his [redacted]-grade school year in 2017-2018, Ms. [redacted] taught [redacted] in a classroom developed and programmed for students on the autism spectrum. Tr. 881. During the 2018-2019 academic year, [redacted] received instruction from [redacted] at [redacted]. Tr. 679.

3.

[redacted] is presently enrolled in the [redacted] County School District [redacted] in [redacted]. As a student with a disability, he continues to receive services pursuant to the IDEA in the [redacted]. Complaint, p. 3. In addition to the services he receives through the [redacted], he also receives private speech-language pathology services and private Applied Behavior Analysis (ABA) services. Tr. 318.

4.

[redacted]'s mother was the enrolling parent in the District during the relevant time period and was entitled to make education decisions about [redacted] per the divorce decree. Ex. R-17, p. 1; Tr. 706. [redacted]'s stepfather was listed as a contact for the school in addition to [redacted] (Father). Ex. R-17, p. 1. Petitioner's mother and father participated in the IEP meetings that occurred

during the relevant timeframe. Ex. R-2, 13. Additionally, all progress reports were provided by the Coffee District to [redacted]'s mother, which she signed and returned.[1] Ex. R-3. At times, [redacted] (Father) also received progress reports, and received updates on progress through the IEP meetings and through teacher communications. Tr. 206, 329, 347, 374, 947. Both parents had access to the online portal to access grades and both parents could communicate with teachers to share and receive educational updates about [redacted]., which both parents did. Tr. 206, 947. For the March 2018 IEP meeting, [redacted]'s mother was provided notice of the IEP meeting, signing that [redacted] (Father) and [redacted]'s stepfather would attend the IEP meeting. R-2, CCSD0012. [redacted]'s mother and stepfather indicated they were pleased with [redacted]'s progress so far. They did not raise any concerns regarding his education program. Ex. R-2, CCSD0017.

5.

[redacted]'s mother received parental rights and understood them, as indicated by her signature on the IEP. Ex. R-2, CCSD0025. During that meeting the IEP team, with the agreement of [redacted]'s mother, determined that [redacted] did not require an extended school year. Ex. R-2, CCSD0028. [redacted] (Father) attended the meeting via telephone. Ex. R-2, CCSD0029. He did not express any concerns during that meeting. Ex. R-2. After [redacted] (Father) left the call, [redacted]'s mother and stepfather discussed their custody concerns with the IEP team. Tr. 947. Ms. [redacted] testified that she felt that they were trying to pull her into a custody dispute. Tr. 947.

6.

In seventh grade, [redacted] received instruction in the autism classroom from Ms. [redacted], who communicated with both his mother and [redacted] (Father) on a regular basis. Tr. 694, 703-

[1] [redacted]. (Father) testified that the [redacted] District does not currently invite [redacted]'s mother to IEP meetings. Tr. 304, 843-44.

704, 705, 708; Ex. R-10. Prior the February 22, 2019 IEP meeting, Ms. [redacted] provided both parents a draft of [redacted]'s proposed IEP for the upcoming year. Tr. 721. Both parents provided feedback; however, Petitioner's mother indicated she did not want [redacted]'s (Father) suggestions included in the IEP. Tr. 721; Ex. R-38. Ms. [redacted] testified that she provided the notice of the IEP meeting to both parents. Tr. 726. Both parents agreed they wanted [redacted] evaluated, to which the District agreed. Tr. 724; Ex. R-38 CCSD0406-409. Both parents attended the February 2019 IEP meeting, with [redacted] (Father) attending in person. Ex. R-13, CCSD0071. Ms. [redacted] testified that neither parent raised any concerns at the IEP meeting regarding the IEP or the process. Tr. 729, 771; Ex. R-13, CCSD0075. Both parents indicated they were pleased with [redacted]'s progress. Tr. 730. Neither parent requested extended school year services at the February 2019 IEP meeting. Tr. 772. [redacted] (Father) acknowledged he did not inform the IEP team that he had any concerns during the relevant time period. Tr. 361, 368. He testified that [redacted] "was making progress until he was withdrawn." Tr. 368.

7.

Neither parent provided notice they were unhappy with the input they received during the IEP process. Tr. 722. Ms. [redacted] testified she never denied Petitioner's father the ability to participate in [redacted]'s education and attempted to communicate with him on her concerns. Tr. 194-195, 708. Petitioner's father admitted that he had the same access to the online information that all parents had to monitor grades and attendance. Tr. 206, 947.

> Q: During the 2017-2018 school year, did you have access to the parent portal?
> A: Yes.
> Q: And the 2018-2019 school year, did you have access to the parent portal?
> A: Yes.
> Q: And this parent portal gives you access to information and the ability to communicate with teachers; correct?
> A: Yes.
> Q: In addition to the abil -- and separate from that, you're also able to e-mail

teachers; correct?
A: Yes.
Q: And during –
A: Which I have done, yes, absolutely.

Tr. 323-324.

8.

[redacted] (Father) testified that the Coffee District provided him with a draft IEP prior to the IEP meeting, and he had the opportunity to participate in discussions regarding [redacted]'s progress and goals. Tr. 374.

Q: And -- and you were part of these discussions; correct?
A: Yes.
Q: And your ex-wife was part of these discussions; correct?
A: Yes. That was -- yes.
Q: And the teachers were part of these discussions and the related service providers were
part of these discussions; correct?
A: Yes.
Q: Those were all of the voices that we heard during the IEP meeting; right?
A: Yes.

Tr. 374.

9.

[redacted] (Father) acknowledged that he was not barred from communicating with Ms. [redacted]s teacher.

Q: Okay. So, you were still able to communicate with Ms. [redacted]; correct?
A: Yes. Yes. I was expecting -- so there – I think in -- in more of these e-mails, there was some things. I was expecting some homework for [redacted] to deliver for my weekend with [redacted]
Q: So, is it still your testimony that you were unable to communicate with Ms. [redacted]?
A: Not at -- not at this point, no.

Tr. 347.

10.

There was no evidence provided that the District did not allow [redacted]'s parents to

participate in the educational programing for [redacted]. Tr. 329.

> Q: Is it your contention that that denied you participation?
> A: No. No, absolutely not.

Tr. 329.

Educational Programming at the District

Autism Classroom

11.

[redacted] received services from the Coffee District during the relevant time period in the autism classroom,[2] which was specially designed for those students that have autism and needs related to that disability. Tr. 881. Services included specialized instruction such as research-based methodologies, strategies, and curriculum. Tr. 1098-99. Ms. Brooke Morgan, the District's behavior specialist, testified as to the particular researched based curriculum that is used in the autism classroom in which [redacted] received services. Tr. 1098-99. She also testified that she regularly provided training and support in the autism classroom. Tr. 1090-91, 1094. One of the programs used is called TeachTown, which is a computer-based learning program involving teacher assistance. TeachTown is research-based and uses discrete trials and errorless teaching as instructional tools. Tr. 1098. The modified research-based curriculum used in the autism class is called Unique Learning,[3] which incorporates state requirements. Tr. 1099. In addition to these programs, the Assessment of Basic Language and Learning Skills. ("ABLLS"), and the Assessment of Functional Living Skills ("AFLS") were also used in the classroom. Tr. 1100. However, teachers were also using methodologies that have been proven to work with students with autism including, discrete trial training,

[2] The [redacted] District classroom in which [redacted] received services at the time of this hearing, is similar to that in the Coffee District.
[3] The [redacted] School District uses Unique Learning as well. Tr. 788.

errorless learning, task analysis to teach skills, visual learning, the picture exchange communication system ("PECS"), and "so many things that were implemented that were evidence- based and research-based practices." Tr. 1100.

12.

In addition to having these research-based programs and a District behavioral specialist, the District had a board-certified behavior analyst at the doctoral level, an expert in the field, support the autism classroom[4] and help train staff. Tr. 1305. Dr. Baker Wright worked with the District in creating an appropriate educational program and classroom for students like [redacted].[5] Tr. 1311-13. He provided class level and individual student supports, when deemed appropriate. Tr. 1314-15. He testified about his knowledge of Petitioner and the support he gave [redacted]'s classroom teachers and paraprofessionals.

> A: [redacted] was a student in one of the classrooms I first started working with and probably that classroom that I was mentioning earlier that I spent the most amount of time in. So, I met him several years ago when he was at [redacted]. And he was there for a few years when -- when I was working closely with them and then into the [redacted]. He was also part of a class that was -- that -- that I was -- I was working with directly.
> Q: During that time that -- have you provided support to [redacted]'s teachers?
> A: Yes. In both of those -- in both of those places.
> Q: I'm sorry. Just to reiterate, when you say both of those places, which places do you mean?
> A: [redacted].
> Q: [redacted]?
> A: Correct.

Tr. 1317.

13.

This support ranged from training on programs to modeling teaching strategies to

[4] The [redacted] District does not allow BCBAs to provide services in the school setting. Tr. 1031-33.
[5] Ms. [redacted], the BCBA from [redacted] who provides private services, agreed that the ABLLS is appropriate for [redacted] Tr. 993-94. She uses ABLLS in her private practice as well. Tr. 998, 1028.

providing instruction on the assessment piece of the ABLLS and AFLS. Tr. 1318. Dr. Wright described the ABLLS as an assessment and a curriculum guide and when it would be appropriate to use it for a particular student. Tr. 1324.

> A: It identifies very specific skills and it – it differentiates very closely -- or it -- it separates these skills into -- into very small chunks. And so it's important with someone like [redacted] or other individuals with autism, they may have skill areas that are scattered where they -- they're not -- all of their developmental skills are not sort of coming along together. It also helps teachers or behavior analysts look at: We have this skill at this level, what is the next appropriate step? And so that adjusts our path of instruction to be able to get to that level of skill. So it helps us to really clearly define the steps that we need to take with each individual child.

Tr. 1326. "So it helps you to look sort of across the entire student and say what's going to be the most effective thing to teach him, to help him be a more independent communicator or a more independent learner." Tr. 1325.

14.

ABLLS shows and marks progress students are making on certain skills over time. Tr.1326. "That's one of the benefits here of looking at this particular grid, is that you're able to see progress over time, not only in the development within a skill area but also -- you know, let's just say receptive language, for example." Tr. 1326. Dr. Wright testified that [redacted] made progress. Ex. R-36. "You can see that red and then the green and then the yellow. So, he's progressing in his skill area of receptive language, but he's also developing skills elsewhere that didn't exist in that first assessment, like labeling[6] or spontaneous vocalizations." Tr. 1326-27. Dr. Wright also described his progress in reading and math. Tr. 1327. The AFLS, which was used with [redacted] during the relevant time period, is an extension of the ABLLS, but for when there are noticed gaps functional living skills. Tr. 1330-31. This assessment and guide for instruction for functional skills development so they can function more happily and

[6] [redacted]'s speech language therapist agreed that labeling is an appropriate skill area to address for [redacted] Tr. 177.

independently. Tr. 1331-32. Dr. Wright testified that this would have been an appropriate part of [redacted]'s middle school educational programing.[7] Tr. 1332.

2017-2018

15.

In March of 2018, the IEP Team met to determine and develop an appropriate education program for [redacted] The IEP Team determined that [redacted] would receive services in the self-contained autism classroom, speech services, occupational therapy ("OT"), adaptive physical education ("P.E."), paraprofessional support in the general educations setting, and special transportation. R- 2, CCSD0023. They reviewed progress the [redacted] made on the goals for the previous years, which included additional progress through the ABLLS assessment. Ex. R-2, CCSD0014-15. The IEP team discussed the progress made in adaptive P.E., occupational therapy, and speech. Ex. R-2, CCSD0015. The Team discussed his present levels of performance, including his use of the PECS, which assists non-verbal students with functional communication. Ex. R-2, CCSD0015-17. During that meeting, Dr. Gail Burch, the speech language pathologist working with [redacted], discussed his progress on his speech goals. Tr. 369-70. She also discussed that [redacted] was able to vocalize four-word phrases, but not consistently. Ex. R-2, CCSD0016. She indicated that [redacted] still required work with labeling, vocal imitation and receptive language. Ex. R-2, CCSD0016.

16.

Dr. Burch discussed the goals she wanted to continue to work on with [redacted] for the

[7] Ms. [redacted], the BCBA from [redacted] who provides private services, agreed that the ABLLS is appropriate for [redacted] Tr. 993-94. She uses ABLLS in her private practice as well. Tr. 998, 1028.

following year with the Team. These goals included utilizing the PECS communication system as a form of assistive technology. Tr. 1051. Dianne Carver, a speech language pathologist, who has been trained in assistive technology supported [redacted]'s IEP team to determine what was the appropriate assistive technology for him. Tr. 1054. She testified that the determination of what is appropriate for a student with communication needs is not one formal assessment or evaluation[8], but an overall drilling down on the student's needs. Tr. 1054. She testified that PECS was appropriate for [redacted] [9] Tr. 1060. [redacted] (Father) agreed that low-tech assistive technology was appropriate. Tr. 308.

> So that is why I would see PECS as being an appropriate form of AT for him because the speech therapist has noted the lack of functional communication. And PECS is a -- like I've said before, it's a research-based program that gives our students a way to communicate functionally and to be able to tell us.

Tr. 1060.

17.

Weighing his needs, the IEP Team determined that [redacted] continued to need thirty minutes of speech services twice a week to address speech deficits. Ex. R-2, CCSD0023.[10] The IEP Team also discussed his continued needs for OT for thirty minutes, once a week. Ex. R-2, CCSD0023. They developed three IEP goals to address [redacted]'s deficits regarding motor skills. Ex. R-2, CCSD0019. Based on the progress and performance of [redacted], the IEP team developed an IEP with fourteen goals that is sought to focus on for the next year. R-2, CCSD0018-20. He would remain in the autism classroom with individualized instruction

[8] The [redacted] District did not conduct an assistive technology evaluation for [redacted] Tr. 307. It has recommended that he continue to use low tech forms of assistive technology. Tr. 308.

[9] Petitioner's private speech pathologist testified that PECS is appropriate as a starting point for students who need help to communicate functionally. Tr. 167.

[10] This is compared to the services [redacted] currently receives in the [redacted] District. "Changes to services for speech and language decreased from a 60-minute-per-week to a 30-minutes- per-week to address his functional communication needs." Tr. 787. Petitioner's father agreed the [redacted] was making progress with the services provided by [redacted] District, which is less than what the District provided. Tr. 307.

with additional services provided throughout the day. R-2, CCSD0023-24.

18.

Ms. [redacted] testified that [redacted] made progress during the 2017-2018 school year based on the services provided in the IEP. Tr. 947.

2018-2019

19.

Prior to the February 22, 2019 IEP meeting, Ms. [redacted] provided both parents a draft of [redacted]'s proposed IEP for the upcoming year. Tr. 348, 721. During the school year, the Team began using the AFLS to address [redacted]'s deficits in regard to his functional skills. Ex. R-13, CCSD0073. Dr. [redacted], Petitioner's expert, testified regarding the importance of teaching functioning skills. Tr. 42. Ms. Morgan, the District's behavior specialist, also testified that the District taught functional living skills and utilized the AFLS, in order to assist students with transition into adulthood and training independence. Tr. 1097. [redacted]'s current BCBA in [redacted] also agreed that functional living skills are necessary for him. Tr. 1028-1029. While going over the IEP, the Team discussed [redacted]'s current functioning abilities based on the reports from Mr. [redacted] and Mr. [redacted] in adaptive P.E., Ms. [redacted] in O.T., Dr. Burch in speech, and Ms. [redacted] in the classroom setting. Ex. R-13, CCSD0073. When explaining [redacted]'s performance in speech, Dr. Burch discussed the use of the Core Board[11] and asked for pictures from [redacted] (Father) to include in this instruction. Tr. 369-370. Dr. Carver testified that the Core Board was appropriate for [redacted] Tr. 1067.

20.

During [redacted]'s seventh grade school year, Ms. [redacted] used several instructional

[11] The Core board was also used by the [redacted] School District. Tr. 823.

methods. Tr. 679-80. She utilized the Unique Learning curriculum, a modified curriculum based on Georgia standards, to address reading, math, science, and social studies. Tr. 679-80. Ms. [redacted] also worked with [redacted] on basic living skills, also called functional living skills. Tr. 679-680. She used TouchMath to instruct [redacted] in math, which is a program for students with deficits. Tr. 681. Ms. [redacted] also implemented TeachTown for specifically working on language skills, which he worked on every day that he attended school. Tr. 682.

21.

A typical day for [redacted] would start with Ms. [redacted] going over the days, week, month, and weather, using that to instruct writing skills. Tr. 683-84. After the morning work, the class was divided into stations where Ms. [redacted] and her paraprofessional would work with the students in different areas of math, reading, and comprehension. Tr. 683-684. Students also worked on self- help skills such as toileting, cleaning themselves, and changing themselves. They worked on asking for the things that [redacted] wanted, cleaning up breakfast, and washing those dishes whenever they got finished with meals. Tr. 683-84. The classroom was equipped with a washing machine and a dryer where students would wash laundry. Tr. 684. The class would wash clothes after they went swimming, which they would then fold and sort.[12] Tr. 684. Ms. [redacted] also worked on cooking activities and gardening in a greenhouse at the school. Tr. 684.

22.

Ms. [redacted] incorporated sensory integration therapy into the classroom. Tr. 685. This included music that corresponded to lights, bubbles, going outside to toss the ball, fidget toys and manipulatives. Tr. 685. Ms. [redacted] agreed that [redacted] made progress while he was in her

[12] Students in [redacted]'s classroom in [redacted] District also do laundry as part of their instruction. Tr. 831.

class, even with the limited instruction time. Tr. 688. Ms. [redacted] testified about her concerns with [redacted]'s barriers to learning and making more progress, which was his home environment with his mother. Tr. 693. She testified that [redacted] missed many days of school and, when he did attend, he would "come in some days so tired and sleepy he didn't want to eat breakfast. He just wanted to sleep. And then -- or irritated and upset or just had a lot of anxiety." Tr. 693.

Attendance

23.

[redacted] (Father) testified of his concerns with [redacted]'s attendance during the relevant time period. Tr. 206. He was worried about [redacted]'s home life. Tr. 230. [redacted] (Father) testified that he was concerned that [redacted]'s mother "[redacted]" Tr. 230. Based on [redacted].'s many absences, the School followed Georgia law and proactively addressed [redacted]'s poor attendance. Tr. 704. Ms. [redacted] filed a DFCS report and reported the absences to the social worker. Ex. R-23, Tr. 696, 697, 704. She also contacted [redacted]'s mother and [redacted] (Father) about her concerns. Tr. 693.

24.

Ms. Rebecca Toth is the social worker that addressed the lack of attendance for [redacted] R-16. Following District protocol, after [redacted] missed a certain number of days, a letter was sent home. Ex. R-21. Following up on the letter, Ms. Toth made a home visit to explain the procedure for school attendance protocol. Tr. 1132. Following the initial home visit, [redacted] continued to miss school, so Ms. Toth returned for a second home visit. Tr. 1132.

> I went back again because [redacted] continued to miss days. And when I went back the mom told me she was going to withdraw him to homeschool. And I told her that that was fine, that she could. That was her choice.

Tr. 1132.

25.

[redacted]'s mother did not withdraw him after the home visits, so he continued to accumulate unexcused absences. Tr. 1133. After a third home visit was unsuccessful, Ms. Toth prepared a referral based on the violation of the compulsory attendance law. Tr. 1133; Ex. R- 22.

26.

[redacted]'s mother stopped sending him to school on October 2, 2019 and had thirty days to file her intent to homeschool. Tr. 1181. Petitioner's mother told Ms. Toth she would homeschool [redacted] Tr. 1133. At the time of the referral, [redacted] had missed 27 out of 42 (64%) school days since August. Ex R-22. Dr. Dana Vickers, Director of Special Services for the District, testified that [redacted] (Father) contacted the Superintendent about the attendance issue and Petitioner's mother had not yet enrolled [redacted] in a homeschool program. Tr. 1178. Dr. Vickers testified regarding following up with the Department of Education in Georgia in order to determine if [redacted] had been enrolled. Tr. 1184. Once it was determined that [redacted]'s mother failed to file the intent within the 30-day timeframe, Dr. Vickers forwarded that information to Ms. Toth to file the referral. Tr. 1185-87. [redacted] was re-enrolled in the District on December 3, 2019. Ex. R-8.

27.

Ms. [redacted] testified that she kept Petitioner's father up to date to on her concerns. Tr. 704. For the 2018-2019 school year, [redacted] only attended school in the District for five months and in those months, he missed a substantial amount of those available days. Ex. R-8. Dr.

[redacted], Petitioner's expert, testified that consistency is particularly important for progress with students like [redacted] Tr. 79.

Evaluation

28.

[redacted] (Father) alleged that the District should have evaluated [redacted] However, the testimony indicates that both parents agreed they wanted [redacted] evaluated, to which the District agreed. Tr. 724; R-38 CCSD0406-409.

> Q: And she does not -- based on this e-mail exchange, does she object to the reevaluation?
> A: No.
> Q: Okay. And she also doesn't delay the IEP meeting because of the reevaluation request; correct?
> A: No.
> Q: So everything moves forward given the request; correct?
> A: Correct. And at that point in time, I didn't know what a reevaluation actually was. Like, I didn't know, like, how long it takes and what all was involved at that particular time. So --
> Q: Right. And she does --
> A: That -- that's why my question about the absences causing a delay with the IEP meeting. Because I -- I didn't know if it was just a day, two days, or -- or things like that. So ...
> Q: Sure. Sure. And she does everything she can to answer your questions; right? A: She did, yes.

Tr. 353.

29.

There was no testimony that [redacted] (Father) requested an evaluation that was denied. Tr. 1280. Dr. Tonya Johnson, Director of Special Education, testified there was not a legal requirement for a re-evaluation during the relevant time period. Tr. 1280. Dr. Johnson, an expert in school psychology, testified that based on her review of the evaluation conducted after [redacted] left the District his educational planning would not have changed. Tr. 1282. Petitioner's expert testified that her review of the evaluation from the District in 2014 and from

[redacted] County were consistent. Tr. 80.

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 *et seq.*; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 *et seq.*; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. Ch. 160-4-7 ("Ga. DOE Rules").

2.

This Court's review is limited to the issues raised by Petitioners in their due process hearing request. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

3.

Petitioners bear the burden of proof in this matter. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ga. DOE Rule 160-4-7-.12(3)(l); Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

4.

Under IDEA, students with disabilities have the right to a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. DOE Rule 160-4-7-.01(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 (11th Cir. 2007) (quoting 20 U.S.C. § 1400(d)(1)(A)). The IDEA requires school

districts to provide an eligible student with FAPE in the least restrictive environment ("LRE"). 20 U.S.C. § 1412; 34 C.F.R. §§ 300.17, 300.114-300.118.

5.

The United States Supreme Court developed a two-part inquiry to determine whether a school district has provided 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.*, 483 F.3d at 1153 (citing *JSK v. Hendry County Sch. Bd.*, 941 F.2d 1563, 1572-73 (11th Cir. 1991)); *see Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1280 (2008).

6.

Regarding the first inquiry, the Eleventh Circuit has held that "violation of any of the procedures of the IDEA is not a per se violation of the Act." *Weiss v. Sch. Bd.,* 141 F.3d 990, 996 (11th Cir. 1998). Therefore, not all procedural breaches are IDEA violations. Indeed, FAPE is only denied if the procedural inadequacy (1) impeded the child's right to FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or (3) caused a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a).

7.

Under *Rowley*, a student with a disability "is only entitled to *some* educational benefit; the benefit need not be maximized to be adequate." *Devine v. Indian River County Sch. Bd.*, 249 F.3d 1289, 1292 (11th Cir. 2001) (emphasis added); *Loren F. v. Atlanta Indep. Sch. Sys.*,

349 F.3d 1309, 1312 (11th Cir. 2003) (ruling FAPE "need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from instruction."); *see Rowley*, 458 U.S. at 197 n.21. The U.S. Supreme Court reconsidered the application of this standard in *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1* and reiterated that school districts must offer FAPE to students who are deemed "disabled" under IDEA and that this shall entail "an educational program reasonably calculated to enable a child to make progress in light of the child's circumstances." 137 S. Ct. 988, 999 (2017).

8.

Moreover, the Eleventh Circuit has held that an "appropriate education" under IDEA "means 'making measurable and adequate gains *in the classroom*.'" *L.G. ex. rel. B.G. v. Sch. Bd. of Palm Beach County*, 255 Fed. Appx. 360 (11th Cir. 2007) (quoting *JSK*, 941 F.2d at 1573 (emphasis added)). The Eleventh Circuit "has specifically held that generalization across settings is not required to show an educational benefit. 'If "meaningful gains" across settings means more than making measurable and adequate gains in the classroom, they are not required by IDEA or *Rowley*.'" *Devine*, 249 F.3d at 1293 (quoting *JSK*, 941 F.2d at 1573); *see also M.W. v. Clarke County Sch. Dist.*, 2008 U.S. Dist. LEXIS 75278 (M.D. Ga. 2008) (finding parent training and home behavioral plan only required as "related services" under IDEA to the extent necessary to allow the child to progress *in the classroom*) (emphasis in original). In order to satisfy its duty to provide FAPE to a disabled child, a school district must provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *WC v. Cobb Cnty. Sch. Dist.*, 407 F. Supp. 1351, 1359 (N.D. Ga. 2005).

9.

For decades, the Eleventh Circuit has held that procedural violations of the Act must cause actual educational harm. *Sch. Bd. of Collier County v. K.C.*, 285 F.3d 977 (11th Cir. 2002) (emphasis added); *Weiss v. Sch. Bd. of Hillsborough County*, 141 F.3d 990 (11th Cir. 1998); *Doe v. Alabama Dep't of Educ.*, 915 F.2d 651 (11th Cir. 1990). In *Doe*, the court reasoned that the Supreme Court's emphasis in *Rowley* on a school district's compliance with the procedural mandates of IDEA was to ensure the "full participation of concerned parties throughout the development of the IEP." *Doe*, 915 F.2d at 662 (*quoting Rowley*, 458 U.S. at 205-206). The court then held that the procedural deficiencies in *Doe*, "had no impact on the *Does'* full and effective participation in the IEP process and because the purpose of the procedural requirement was fully realized." The Court further held that there was no violation that warranted relief. *Id*.

10.

The Court later included a requirement of explicit harm in *Weiss*, when it concluded that in order to prove that the student was denied FAPE, the family "must show harm to [the student] as a result of the alleged procedural violations." *Weiss*, 141 F.3d at 996 (explaining that where the family had "full and effective participation in the IEP process" then, "the purpose of the procedural requirements was not thwarted…"). Finally, in *Collier County*, the Court concluded that even a "procedurally flawed" IEP "does not automatically entitle a party to relief," unless it also failed to provide the student with any "educational benefit." *Collier County*, 285 F.3d at 982. In *William V. v. Copperas Cove Indep. Sch. Dist.*, 77 IDELR 92 (5th Cir. 2020) (unpublished), the Court found that even where a school district failed to find a student eligible under SLD, it was a procedural violation that caused no substantive harm

because the student made individual progress from year to year and need not be compared to peers.

11.

Recently, the Eleventh Circuit has held that in order to recover for a procedural error, Petitioner would have to show what 'would have been different but for the procedural violation.' *See Leggett*, 793 F.3d at 68 (emphasis omitted)." *J.N. next friend of M.N. v. Jefferson Cty. Sch. Bd. of Educ.* 12 F.4th 1355, 1376 (11th Cir. 2021). There was no evidence presented that there were procedural violations, only allegations asserted, and even those allegations do not meet the burden that those violations obstructed [redacted]'s right to a free appropriate public education. Moreover, the evidence presented shows that concerned parties could meaningfully participate in the IEP process for [redacted]

Parent Participation

12.

IDEA "guarantee[s] parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig v. Doe*, 484 U.S. 305, 311-12 (1988) (citing 20 U.S.C. § 1415(b)(1)). This guarantee is set out in the federal regulations, entitling parents to meaningfully participate in IEP meetings. 34 C.F.R. § 300.322. However, "[c]ourts are reluctant to interpret the participation requirement too broadly." See, e.g. *Cerra v. Pawling Cent. Sch. Dist*., 427 F.3d 186, 194 (2d Cir. 2005). "We decline to deem "meaningful participation" to require perfect comprehension by parents of all aspects of a student's IEP." *Colonial Sch. Dist. v. G.K., by and through his Parents A.K. and S.K,* 763 F. App'x 192 (3rd Cir. 2019) (finding that the that the school district facilitated parents' participation at every stage of the IEP by listening to and

attempting to address their concerns until parents stopped communicating). [redacted] (Father) admits that he participated in IEP meetings, was provided drafts of IEP meetings, had opportunities to provide input before and during IEP meetings, had the IEP discussed, and was allowed to ask questions during IEP meetings, and was an active participant by his own account. Tr. 329, 347.

13.

In *Loren F. v. Atlanta Indep. Sch. Sys*., 349 F.3d 1309, 1312 (11th Cir. 2003), the Eleventh Circuit clarified that "even where a FAPE is not provided, courts can nevertheless deny reimbursement if a parent's own actions frustrated the school's efforts." In this case, [redacted]'s mother failed to bring [redacted] to school 27 of 42 school days, a 36% attendance rate. Ex. R-22. Additionally, she withdrew [redacted] from school from October through December, inhibiting his access to the educational programs offered. Tr. 1185-87; Ex. R-8.

14.

Under the IDEA, if a judicial decree or order identifies a specific person or people under paragraphs to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or people shall be determined to be the "parent." 34 CFR § 300.30 (b)(2). Under IDEA, [redacted]'s mother was the "parent" per the divorce decree during the relevant time period. Tr. 706.

15.

[redacted] (Father) testified that there was discussion regarding [redacted]'s progress and goals at the IEP meeting and was even provided a draft of the IEP prior to the IEP meeting. Tr. 374. Further, evidence showed that [redacted] (Father) had access to [redacted]'s educational records via the online platform used in the District. [redacted] (Father) testified that he was not barred

from communicating with Ms. [redacted], [redacted].'s teacher and that he continued to communicate with Ms. [redacted], just not on her personal cell phone. The two maintained a close relationship. Tr. 347. The evidence shows that [redacted]'s parents were allowed to participate meaningfully in the educational programing for [redacted] Tr. 329.

16.

Petitioner has the burden of proving that the District failed to allow parent participation and that such failure to participate denied [redacted] FAPE. The evidence indicates that the District made best efforts to include both Petitioner's parents in the educational process and to explain the IEP process. The District made such attempts during the IEP meetings and informal communications, through draft documents, emails, and phone calls. Tr. 694, 703-704, 705, 708; Ex. R-10.

Educational Programming and FAPE

17.

The District has no obligation to include a specific educational methodology into a student's program. Courts have determined that the choice of educational methodology falls within the sole discretion of the district. *See generally, Rowley*, 458 U.S. 176 (1982); *Endrew,* 137 S. Ct. 988 (2017). "*Rowley* and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the statute to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." *Lachman v. Illinois Bd. of Educ*., 852 F.2d 290, 297 (7th Cir. 1988) (citations omitted) (holding that parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of a student with a disability); *see also, M.M. et. al. v. Sch. Bd. Of Miami-Dade Cty,* 437 F.3d

1085 (11th Cir. 2006) (ruling that although the parents argued that auditory-verbal therapy was the best methodology for the student, the district is only required to provide an appropriate methodology). Even if a parent prefers a specific methodology, a district is not obligated to utilize that specific educational program. *Carlson v. San Diego Unified Sch. Dist*., 54 IDELR 213 (9th Cir. 2010, unpublished) (noting that a parent's disagreement with the district's educational methodology was insufficient to establish an IDEA violation).

18.

Accordingly, the Supreme Court has instructed federal courts to give deference to educational methodologies selected by professional educators. *Rowley*, 458 U.S. at 206-07, 102 S. Ct. at 3051; *Walker County School District v. Bennett*, 203 F.3d 1293 (11th Cir. 2000). The District in this case selected research-based methodologies and educational programs designed for students with needs like [redacted] Tr. 881. [redacted]'s educational program included specialized instruction that consisted of research- based methodologies, strategies, and curriculum. Tr. 1098-99. Teachers also incorporated methodologies proven to work with students with autism including Discrete Trial, errorless learning, task analysis to teach skills, visuals, PECS, and in addition to "so many things that were implemented that were evidence-based and research-based practices." Tr. 1100. Ms. Morgan, the District's behavior specialist, testified as to the appropriateness of the programing and methodology and also to the fact that she regularly provided additional support to the classroom teachers and students. Tr. 1090-91, 1094, 1098-99. Additionally, Dr. Wright worked with the District to create an educational program and classroom appropriate for [redacted] Tr. 1311-13.

19.

The Court finds that, although Petitioners contend that educational goals were imperfect and did not always track "best practices," such goals tracked [redacted]'s unique needs. Even where

a goal does not contain target achievement levels, it may be measurable. *A.M. v. New York City Dept. of Educ*., 964 F. Supp. 2d 270 (S.D.N.Y. 2013). An IEP, including goals, must be based on a student's unique needs. *See Rowley*, 458 U.S. 176; *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 (U.S. 2017). Here, the goals were based on [redacted]'s unique needs and tied to objective criteria tracked by the ABLLS, which both the District's and Petitioners' experts agreed was an appropriate assessment of [redacted]'s skills. Courts do not require perfection and in fact, only material and substantive failures are actionable. See e.g., *L.J. v. School Bd. of Broward County, Fla,* 927 F.3d 1203 (11th Cir. 2019) (noting that only material implementation failures are actionable under the IDEA).

Re-Evaluation Requirements

20.

Determination for IDEA eligibility is established following an initial comprehensive evaluation. [redacted]'s initial evaluation for services under IDEA was conducted in 2014. Tr. 1282. No issues were raised at trial regarding this evaluation's compliance with IDEA requirements under 34 C.F.R. § 300.304 and any issues raised would have fallen outside IDEA's two-year statute of limitations. 34 C.F.R. § 300.511(e). [redacted] (Father) did not testify that he requested an evaluation that was denied. Tr. 1280. "As a result of [IDEA's design], the remedy for a procedural failing is generally to require that the procedure be followed." *J.N. next friend of M.N.,* 12 F.4th 1355, 1366.

21.

The Petitioners' claim for reimbursement of private evaluations must be denied. [redacted] (Father) requested an evaluation from the District and the District agreed to evaluate. Tr. 724; Ex. R-38 CCSD0406-409. However, [redacted] was withdrawn from the District before the District

could conduct the evaluation. The District is not obligated to pay for a private evaluation because the family chose to withdraw and enroll in another public school district. Evidence showed that the evaluations performed in the [redacted] District yielded results similar to those from the Coffee District. Tr. 1282. Petitioner's expert confirmed that the evaluations of both school districts—the District in 2014 and [redacted] County in 2019—were consistent. Tr. 1280.

22.

Where parents request that a school district consider a private evaluation, the parents must allow a school district to reevaluate the student and not rely solely on a parent's independent evaluations. *M.T.V. v. DeKalb Cnty. Sch. Dist*., 446 F.3d 1153, 1160 (11th Cir. 2006) (recognizing that "every court to consider the IDEA's reevaluation requirements" has so concluded); *K.S. v. DeKalb Cnty. Sch. Dist*., No. 1:05-CV-3251(JTC), 2008 WL 8478768, at * 7 (N.D. Ga. May 28, 2008) (obligation to consent to requests for reevaluation exists even after due process request filed by family). 34 C.F.R. § 300.324(a) (emphasis added).

23.

Based on the evidence presented, Petitioners failed to meet their burden to show there was a legal requirement of an evaluation and that the failure to evaluate resulted in a violation a FAPE. The Petitioners bear the burden to demonstrate that any alleged failure resulted in a denial of FAPE. Compensatory education would not automatically be available, even if a failure to evaluate or failure to identify had occurred. As the Eleventh Circuit analyzed, "This appeal requires us to decide whether compensatory education is an automatic remedy for a child-find violation under the Individuals with Disabilities Education Act. It is not." *J.N. next friend of M.N,* 12 F.4th 1355, 1362.

24.

There was insufficient evidence to support the claim that another evaluation would have changed [redacted]'s educational planning. Additionally, based on the expert testimony of Dr. Johnson, there was not a legal requirement for a re-evaluation during the relevant time period. Tr. 1280. She also testified that based on her review of the evaluation conducted after [redacted] left the District, [redacted]'s educational planning would not have changed. Tr. 1282.

25.

Even if the Court were to find—which it does not—that the District did not offer FAPE to [redacted], Petitioners' remedy is limited to what the District should have provided. Petitioners have failed to show what services the District failed to provide in order to support a finding for compensatory services. In *Thompson v. Board of the Special School District*, the Eighth Circuit held that "if a student changes school districts and does not request a due process hearing, his or her right to challenge prior education services is not preserved." 144 F.3d 574, 579 (8th Cir. 1998). *Thompson* further explains that "subsequent challenges to the student's previous education become moot because the new school district is responsible for providing a due process hearing." *Id*. For courts that follow the reasoning from the Eighth Circuit, petitioners do not have any claims for relief if they attempt to bring forward due process allegations after withdrawing from the district.

26.

In *Steven H. v. Duval Cnty. Sch. Bd*., No. 3:99-cv-500-J-20TJC, 2001 WL 36341690 (M.D.Fl. May 8, 2001), an Eleventh Circuit district court adopted the Eighth Circuit's position. The court held that the due process "proceeding must be commenced while the student is

attending school in the public school district to ensure that the school district is adequately notified of the alleged problem and given an opportunity to cure it." *Id*. at *3. (emphasis in original). The parents in that case, however, sought reimbursement for private school although they enrolled the student in the new school before starting the administrative procedure. From *Steven H*., district courts in this circuit have determined that reimbursement is not proper relief after the student has withdrawn.

27.

A Georgia Middle District Court decided that some relief should be available to Petitioners in specific instances when a student has withdrawn. In *D.H. v Lowndes*, the district court emphasized the remedial nature of the IDEA. In cases where a student has withdrawn from the district, the student can be "compensated for the lack of educational opportunities." No. 7:11– CV–55, 2011 U.S. Dist. LEXIS 101805, at *8 (M.D.Ga. Sept. 9, 2011). In *D.H. v. Lowndes*, the court limited the relief available to the petitioner to compensatory services and reimbursement.

28.

When due process is filed after a petitioner has already withdrawn from the district, any relief that can be granted must be narrow in scope since the district has no opportunity to revise what it can offer to that petitioner. Therefore, even relying on the standard most friendly to Petitioners, this Court must dismiss claims that go beyond requested relief for compensatory education. A court may reduce a reimbursement award to account for any identifiable services that go above and beyond a district's FAPE obligations. For example, in *L.K. v. New York City Department of Education,* 69 IDELR 90 (2d Cir. 2017, *unpublished)*, because the district had no obligation to generalize the child's skills across settings, it was not obligated to reimburse

the parents for any home- or community-based services that focused on generalization.

29.

Even when a party claims that a failure to evaluate results in a failure to identify a student's disability, the party must identify how this procedural violation resulted in a denial of FAPE in order to be entitled to compensatory services as a remedy. "The decisionmaker must analyze whether compensatory services are necessary, and if so, what they should be. That exercise will always be fact-intensive, and the evidence needed will vary in nature and quantity from case to case. But at least some proof is required above and beyond the incorrect assumption that compensatory relief must be offered in response to a procedural violation." *J.N. v. Jefferson County Board of Education*, 12 F.4th 1355, 1362. Petitioner must take steps to demonstrate the impact that the procedural violation had on the student's education in order to be entitled to a remedy. "So to succeed in her claim, Molly's mother needs to show more than a child-find violation. She needs to show that Molly's education 'would have been different but for the procedural violation.' *See Leggett*, 793 F.3d at 68 (emphasis omitted)." *J.N.,* 12 F.4th 1355, 1376. Here, Petitioner has not met this burden.

30.

Petitioner is requesting compensatory education without showing how [redacted]'s education would have been different but for [redacted]'s excessive absences from school. At the time of the referral, [redacted] had missed 27 out of 42 school days. Ex. R-22. The District agreed that [redacted] would have made more progress if he had attended school regularly as outlined above. The District took the steps in its power to support [redacted]'s school attendance, including a DFCS referral, three social worker visits, notices regarding attendance and a referral to law enforcement. Tr. 696-97, 696, 704, 1132, 1133; Exs. R- 16, R-21, R-22, R-23.

31.

Additionally, Petitioner is receiving very similar educational programming from the [redacted] District, but with fewer services than were offered at the Coffee District. Tr. 307, 823, 852. "Changes to services for speech and language decreased from a 60-minute-per-week to a 30-minutes-per-week to address his functional communication needs." Tr. 787. [redacted] District, where he currently attends, does not allow BCBAs to provide services in the school setting. Tr. 1031-33. [redacted] (Father) agreed that [redacted] was making progress with the services provided by [redacted] District, which is less than what the District provided. Tr. 307. Petitioners did not demonstrate how [redacted]'s educational program would have been different.

32.

Further, Petitioners seek reimbursement for medical evaluations, expenses, and therapy, but have not provided any basis for claiming such relief. The IDEA requires districts to provide students with a free appropriate public education and "related services." 20 U.S.C § 1400(d)(1)(A). Related services have been defined as "transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(A). The code section includes medical services but explains that "such medical services shall be for diagnostic and evaluation purposes only." *Id*.

33.

Claims for relief for medical expenses cannot be provided for under IDEA. It is clearly devised in statute that the only medical service available is for diagnostic and evaluation purposes. Petitioners seek relief for medical expenses and therapy but have not alleged any facts or violations that would suggest that medical expenses and therapy fall within the

statutory purpose of IDEA. In *J.D.P. by Pope v. Cherokee Cty.*, Georgia Sch. Dist., a Georgia district court denied a petitioner's claim for reimbursement for medication and doctor's visits. No. 1:08-CV-165-TCB, 2009 WL 10700207, at *13 (N.D. Ga. Mar. 23, 2009). The court found no authority that mandates a district to pay for medical services beyond an evaluation. *Id.* As a matter of law, this Court cannot provide relief for "medical expenses." In the absence of any facts related to therapy as a required service, this Court is also unable to grant reimbursement for therapy as relief.

IV. DECISION

Respondent Coffee County School District offered Petitioner [redacted] a free appropriate public education under IDEA. Accordingly, Petitioners are not entitled to reimbursement of the costs they seek. Petitioner's request for relief is **DENIED**.

SO ORDERED, this 1st day of June, 2022.

Shakara M. Barnes
Administrative Law Judge

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

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

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.