

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

BIBB COUNTY SCHOOL DISTRICT,
Petitioner,

v.

█, **BY AND THROUGH** █
Respondent.

Docket No.: 2228821
2228821-OSAH-DOE-IEE-11-Beaudrot

Agency Reference No.: 2228821

FINAL DECISION

I. INTRODUCTION

In this matter, █, acting by and through his mother █ and father █ (█ and his parents being sometimes referred to collectively as the “Family”), seeks to establish that the Bibb County School District (the “District”) failed to provide █ with a Free Appropriate Public Education (“FAPE”).

This case is not a typical case under the Individuals with Disabilities Education Act (“IDEA”), however. █’s case is ultimately predicated upon an alleged incident of abuse of █ by one or more of █’s teachers and alleged failures of the District to respond appropriately to that alleged incident. As will be seen, the evidence in this matter simply does not support the conclusion that █ was the object of an incident of abuse.

By agreement and with consent of the parties, in order to accommodate witness availability and other scheduling considerations, the hearing in this matter was held as a hybrid hearing using video conference technology on August 29, 30, 31 and September 28, 2022.

Following the conclusion of testimony on September 28, 2022, each party was directed to submit and file proposed Findings of Fact and Conclusions of Law no later than 4:00 p.m. on Friday, November 4, 2022. Each party was also to submit such party’s Proposed Findings of Fact

and Conclusions of Law, not to exceed ten (10) pages in length, no later than 4:00 p.m. on Friday, November 4, 2022. Finally, each party was also authorized to file a Response to the opposing party's Proposed Findings of Fact and Conclusions of Law not later than November 17, 2022. At this point, the record closed.¹

II. FINDINGS OF FACT

1. Background Information

1. ■■■ is the son of ■■■ (mother) and ■■■ (father).
2. ■■■ was a ■■■ student at ■■■ in the Bibb County School District during the 2021-2022 school year. (Testimony of ■■■, Tr. 580:14-16; Testimony of ■■■, Tr. 414:18-22).
3. ■■■ is the only school in Bibb County that provides services to ■■■. The ■■■ program is only for students with special education needs. (Testimony of J. Donnelly, Tr. 415:3-10).
4. ■■■ attended ■■■ for ten (10) days – six days during the First Semester (12/2/21, 12/3/21, 12/9/21, 12/10/21, 12/16/21, 12/17/21) and four days during the Second Semester (1/13/22, 1/14/22, 1/20/22, and 1/21/22). (Joint Pre-Hearing Filing, August 8, 2022, p. 10; Testimony of ■■■, Tr. 76:11-12; Testimony of ■■■, Tr. 503:4-6; J-

¹ The Court regrets to report that ■■■'s counsel did not comply with the Court's order as to submissions and prior rulings in this matter. To the contrary, ■■■'s submissions were not timely, did not follow the schedule outlined in this Court's order, and continued to assert matters previously disposed of.

First, ■■■ filed his brief late, without permission from the Court. The Court's order specified that "failure of a party to submit and file a document on or before the relevant deadlines specified in this Order will result in such submission not being considered or made a part of the record in this matter." Post-Hearing Order, 2. ■■■ filed his brief at 9:27 p.m. on November 4, 2022, which is approximately four hours after the Court-imposed deadline of 4:00 p.m. *Id.* at 1; Respondent's Post-Hearing Brief, 1. Second, Respondent failed to submit Findings of Fact and Conclusions of Law as ordered by the Court. Post-Hearing Order, 1. Unlike the brief or memorandum of law, which the Court ordered was permitted but not required, the Proposed Findings of Fact and Conclusions of Law were required by this Court. *Id.* Respondent did not comply with those orders, nor did Respondent make any effort to show cause for that failure to comply.

23:2).

5. [REDACTED] attended [REDACTED] [REDACTED] per week, [REDACTED]. (Testimony of [REDACTED], Tr. 415:16-18; Testimony of [REDACTED], Tr. 502:23-25; Testimony of [REDACTED], Tr. 542:1-3).
6. [REDACTED] began attending [REDACTED] for a [REDACTED] on [REDACTED] and [REDACTED] on August 9, 2021. (Testimony of [REDACTED], Tr. 46:22-47:6; 47:13-15; 76:21-23; J-26:1).
7. [REDACTED] struggles with changes in his routine. (Testimony of [REDACTED], Tr. 99:12-15; J-26:5; 77:9-11).
8. [REDACTED] had trouble transitioning to [REDACTED], and [REDACTED] reported her concerns to Atrium Health on September 8, 2021, which was nearly three months prior to [REDACTED] beginning [REDACTED] in December 2021. (Testimony of [REDACTED], Tr. 77:13-18; 80:6-18; J- 69:5).
9. [REDACTED] also reported during a November 10, 2021, appointment at Atrium Health Navicent Physician Group - Right Track Pediatric OT that she had concerns with the following: [REDACTED] listening to his teachers at school, [REDACTED] listening to his parents, his well-being at [REDACTED], and his expressing he did not like attending [REDACTED]. (Testimony of [REDACTED], Tr. 81:13-17; J-69:10).
10. Further, on November 23, 2021, [REDACTED] reported to Atrium Health Navicent Beverly Knight Olson Children's Hospital that [REDACTED] was experiencing hallucination (J-69:12-13). This report was made approximately one week before [REDACTED] started at [REDACTED] on December 2, 2021. (J-23:2).

B. Initial Evaluation Process

11. In August 2021, [REDACTED] was referred for an initial evaluation with the District by his mother, [REDACTED], and his pediatrician, Dr. [REDACTED] [REDACTED] (Testimony of [REDACTED], Tr. 416:7-9; Testimony of [REDACTED], Tr. 707:12-16; J-5:1; J-26:1).
12. On August 16, 2021, [REDACTED] completed the standard intake paperwork required by the District. (Testimony of [REDACTED], Tr. 43:4-10; Testimony of [REDACTED], Tr. 703:1-704:4; J-26).
13. The information provided by [REDACTED] was extensive in nature and more thorough than what parents typically provide. (Testimony of [REDACTED], Tr. 704:15-20). [REDACTED] reported [REDACTED] has always struggled with sleeping and has difficulty adjusting to changes in his routine, and they noted multiple behavioral concerns, including anger, aggression, unusual fears, and frequent tantrums. (J-26).
14. On September 29, 2021, an evaluation of [REDACTED] was performed by Brooke Widner, Ed. S., School Psychologist;² Mary Grace Garner, M.Ed. CCC-SLP, Speech/Language Pathologist; Cristy Hiller, Physical Therapist; and Mary Barth, OTR/L, Occupational Therapist. (Testimony of B. Widner, Tr. 706:5-8).
15. The evaluation was conducted using an arena-style process, which is where all the providers evaluate the student as the student completes various assessments during one scheduled session. (Testimony of B. Widner, Tr. 706:12-17).
16. The arena-style process is an appropriate means of evaluation for a [REDACTED]-year old child and is the primary evaluation technique used by the District for children between [REDACTED] and [REDACTED] years of age. (Testimony of R. Montgomery, Tr. 206:25-207:4; Testimony of B.

²Ms. Widner was identified as an expert in the field of school psychology at the hearing held on September 28, 2022. (Testimony of B. Widner, Tr. 702:6-15).

Widner, Tr. 706:12- 17).

17. A typical arena-style evaluation for a [REDACTED] takes about an hour to an hour and a half. (Testimony of B. Widner, Tr. 706:18-22).
 18. During the evaluation, [REDACTED] was engaged with the various activities presented. (Testimony of B. Widner, Tr. 706:23-707:3).
 19. [REDACTED]'s father attended the evaluation, and the family left happy with how the evaluation went. (Testimony of [REDACTED], Tr. 44:3-9; Testimony of B. Widner, Tr. 711:11-12).
 20. The evaluation consisted of the following tests and/or procedures:
 - a. Parent Interview
 - b. Review of Background Information provided by Respondent on 8/16/21
 - c. Review of Records
 - d. Student Observation
 - e. Psychoeducational Evaluation
 - i. Developmental Profile, Fourth Edition (DP-4)
 - ii. Developmental Assessment of Young Children, Second Edition (DAYC- 2)
 - iii. Bracken Basic Concept Scale, Third Edition: Receptive (BBCS:3-R)
 - iv. Vineland Adaptive Behavior Scales, Third Edition (Vineland-3)
 - v. Behavior Assessment System for Children, Third Edition (BASC-3)
 - f. Speech/Language Evaluation
 - i. Informal Language Sample and Observation
 - ii. Preschool Language Scale-5
 - iii. Developmental Assessment for Young Children, Second Edition
 - iv. Developmental Profile, Fourth Edition
 - g. Occupational Therapy Evaluation
 - i. Review of Private Occupational Therapy Records
 - ii. Fine Motor Assessment
 - iii. Parent Interview
 - h. Physical Therapy Evaluation
 - i. Functional Gross Motor Checklist for School
 - ii. Physical Assessment
 - iii. Parent Interview
- (J-5:1).
21. Dr. Robert W. Montgomery, a licensed clinical psychologist and a board-certified behavioral analyst at the doctoral level, also testified on behalf of the District at the hearing.

(Testimony of R. Montgomery, Tr. 200:24:201:1).

22. Dr. Montgomery was offered by the District as an expert in the field of child psychology, autism, and behavioral analysis. (Testimony of R. Montgomery, Tr. 205:22- 206:7).
23. Dr. Montgomery testified as to the evaluations completed by the District during the initial evaluation meeting, stating generally that the “devices chosen are good solid choices... Most of them are ones that I use.” (Testimony of R. Montgomery, Tr. 207:10-12).
24. The assessments administered by the District were broad in nature with redundancy built in to ensure a comprehensive [REDACTED] evaluation. (Testimony of R. Montgomery, Tr. 241:9-17).
25. The Developmental Profile, Fourth Edition (hereinafter “DP-4”) provides information regarding a child’s abilities in five areas: Cognition, Communication, Motor Skills, Adaptive Behavior, and Social-Emotional. (Testimony of R. Montgomery, Tr. 207:20-208:11; J-5:3-4).
26. The DP-4 was administered during the intake process and prior to the arena-style observation. (Testimony of B. Widner, Tr. 712:14-17; J-5:3). The results of this testing served as a baseline for the team as they began the comprehensive assessment and helped identify areas where additional testing may be needed. (Testimony of B. Widner, Tr. 712:21-25).
27. [REDACTED]’s scores on the DP-4 were all in the low average and in the borderline range, which is still average for a child [REDACTED]’s age. (Testimony of R. Montgomery, Tr. 208:14-209:2; J-5:4). The scores received by [REDACTED] on the DP-4 indicated he may have a developmental delay. (Testimony of B. Widner, Tr. 713:4-9).
28. [REDACTED] also scored in the typical range on the Developmental Assessment of Young Children

(hereinafter “DAYC-2”), a test that complements the DP-4. (Testimony of R. Montgomery, Tr. 209:9-19; Testimony of B. Widner, Tr. 713:23-25; J-5:4).

29. The DAYC-2 is a semi-structured evaluation that evaluates the cognitive and intellectual abilities of a child. (Testimony of B. Widner, Tr. 713:20-21). This assessment is used for redundancy purposes, as schools require two scores indicating the same thing for eligibility purposes. (Testimony of R. Montgomery; Tr. 209:9-11). This portion of the assessment involves direct examination of the child and a parent interview. (Testimony of B. Widner, Tr. 713:22-23).
30. █████ scores on the DAYC-2 in combination with the DP-4 were below average. (Testimony of B. Widner, Tr. 713:25-714:2). However, █████ performed well on the DAYC-2, which indicated he had cognitive potential and was capable of learning. (Testimony of B. Widner, Tr. 713:25-714:4; J-5:5).
31. █████ underwent the Bracken Basic Concept Scale, Third Edition, which evaluates school readiness and cognitive and language development. (Testimony of R. Montgomery, Tr. 209:20-210:2; J-5:4-5). █████ score in this evaluation indicated typical performance. (Testimony of R. Montgomery, Tr. 210:16-18; Testimony of B. Widner, Tr. 714:18-21; J-5:5).
32. █████ also underwent the Preschool Language Scales Fifth Edition, which evaluates the language the student understands when spoken to and the student’s ability to use language when speaking. (Testimony of R. Montgomery, Tr. 211:2-4; Testimony of B. Widner, Tr. 715:11-13; J-5:5). The results from this test indicate that █████ has normal language skills, with no significant difference between his speaking and listening score. (Testimony of R. Montgomery, Tr. 211:11-12; Testimony of B. Widner, Tr. 715:17-18; J-5:5).

33. During the evaluation, [REDACTED] was [REDACTED] old and used both phrases and complete sentences in a spontaneous manner. (Testimony of R. Montgomery, Tr. 212:5-23; 213:13-18; J-5:5-6). This ability to use these phrases and complete sentences in a spontaneous manner is uncommon for children with autism and children of such a young age. (Testimony of R. Montgomery, Tr. 213:9-22).
34. [REDACTED] also underwent an Occupational Therapy Assessment. (J-5:6). This assessment revealed that [REDACTED] had an emerging right dominant and functional grasp, but it was noted that [REDACTED] had issues with attention to task, needed redirection, and had sensory processing difficulties. (Testimony of B. Widner, Tr. 716:14-24; J-5:6).
35. The Vineland Adaptive Behavior Skills, Third Edition (hereinafter “Vineland”) was also administered during the arena-style evaluation. (J-5:7). This assessment determines a person’s ability to demonstrate real world skills and social skills and is an appropriate test for anyone, birth through 90 years old. (Testimony of R. Montgomery, Tr. 214:15-17; Testimony of B. Widner, Tr. 723:1-6).
36. The Vineland was completed by [REDACTED] mother and his teacher, [REDACTED], from [REDACTED] [REDACTED] program, and it is in the form of a questionnaire. (Testimony of B. Widner, Tr. 718:7-11; J-5:9).
37. The scores on the Vineland were in the low average to borderline range. (Testimony of R. Montgomery, Tr. 215:4-7; J-5:9-10). These scores are lower than what would be expected given the spoken language skills of [REDACTED] (Testimony of R. Montgomery, Tr. 215:1-12). The score for the social skills portion of the assessment was below average for his age, indicating he had some weaknesses when interacting with others and engaging in group activities. (Testimony of B. Widner, Tr. 718:14-17). [REDACTED] adaptive skills score on the

Vineland was also below average for his age and an area of weakness for him. (Testimony of B. Widner, Tr. 723:6-12).

38. The Behavior Assessment System for Children, Third Edition (hereinafter “BASC-3”) is a multiple-choice questionnaire that is completed by an individual who is familiar with the student. (Testimony of R. Montgomery, Tr. 215:20-22; J-5:7-9). The BASC-3 was completed by [REDACTED] and Ms. [REDACTED]. (Testimony of B. Widner, Tr. 719:10-13; J-5:9).
39. The BASC-3 is a mental health questionnaire that looks at externalizing problems, internalizing problems, attention related problems, and adaptive skills. (Testimony of B. Widner, Tr. 719:5-9).
40. The BASC-3 questionnaire is approximately 150 questions, and there are four possible answers: never, sometimes, often and almost always. (Testimony of R. Montgomery, Tr. 216:2-4). The questions asked include questions involving clinical categories (attention, hyperactivity, aggression, depression, anxiety, and atypicality) and adaptive skills categories (feeding, clothing, toileting, social skills, and functional communication). (Testimony of R. Montgomery, Tr. 216:8-14; 227:5-7; J-52:3).
41. The results of the BASC-3 were consistent in certain areas with both [REDACTED] and [REDACTED] endorsing similar problems across settings. (Testimony of B. Widner, Tr. 719:17-19; J-5:9). The most prominent area of concern for [REDACTED] was attention problems, including issues with focusing, concentrating, and distractibility. (Testimony of B. Widner, Tr. 719:19-22; J-5:9). Hyperactivity and social skills were also noted as problem areas for [REDACTED] (Testimony of B. Widner, Tr. 719:23-720:4; J-5:9).
42. The BASC-3 provides a score for Atypicality. (J-5:8). Atypicality looks for behaviors that are out of the norm, and for young children it indexes primarily on autism symptoms, since

autism presents with out-of-the-norm behavior. (Testimony of R. Montgomery, Tr. 221:2-8).

43. The BASC-3 has validity measures to determine whether the individual completing the survey is being forthright. (Testimony of R. Montgomery, Tr. 217:22-218:3; J-52:3).

44. The F-index is one of the validity measures and determines whether the answers provided are prone to exaggeration or whether someone is rating the child in an overly negative fashion. (Testimony of R. Montgomery, Tr. 224:24-225:5; Testimony of B. Widner, Tr. 720:12-13; J-52:5). The F-Index is usually associated with intentional manipulation by the responding party. (Testimony of R. Montgomery, Tr. 231:21-22).

45. The F-Index indicated [REDACTED] answers to the questionnaire were invalid and that “caution should be used when interpreting BASC-3 scale scores.” (Testimony of R. Montgomery, Tr. 229:19-21; 230:7-19; 238:9-15; J-52:3 & 5; J-5:9).

46. The Response Pattern Index is another validity measure, and it measures whether the individual being surveyed is randomly selecting answers. (Testimony of R. Montgomery, Tr. 231:24-232:2).

47. The Consistency Index determines whether a responder is answering the same question the same way when it is asked a second time. (Testimony of R. Montgomery, Tr. 232:7-9; J-52:5).

48. [REDACTED] behavior scores for atypicality, which is indicative of autism, from [REDACTED] and [REDACTED] were in the nonsignificant range. (Testimony of R. Montgomery, Tr. 221:16-18).

49. The Consistency Index came back showing extreme caution, which means [REDACTED] frequently provided different answers to similar questions. (Testimony of R. Montgomery, Tr. 230:2-5; J-52:3 & 5).

50. Based on the District's overall evaluation of [REDACTED] the District concluded [REDACTED] had developmental delays in his social and emotional skills and his adaptive behavior skills. (Testimony of R. Montgomery, Tr. 242:13-19; Testimony of B. Widner, Tr. 723:22-24; J-5:10). For example, [REDACTED] was not engaging in interactive games or interactive play without prompting or supervision, and he had overall attention-related problems such as hyperactivity and impulsivity. (Testimony of B. Widner, Tr. 723:24-724:5; J-5:10).

51. During the evaluation process, Ms. Widner engaged in email correspondence with [REDACTED] (J-48). These communications were positive, and it was clear [REDACTED] was engaged in the process. (Testimony of B. Widner, Tr. 724:25-725:4).

C. Initial Eligibility and IEP Meetings

52. Brooke Widner received progress notes from Dr. [REDACTED] via an email from [REDACTED] (Testimony of B. Widner, Tr. 709:25-710:1; J-46 & 47). Ms. Widner received these progress notes after the completion of the District's evaluation but prior to the eligibility meeting. (Testimony of B. Widner, Tr. 709:20-710:1; J-46 & 47).

53. Ms. Widner reviewed the progress notes upon their receipt and prior to the eligibility meeting. (Testimony of B. Widner, Tr. 710:6-9). Based on her review of Dr. [REDACTED]'s progress notes, Ms. Widner identified many consistencies with what she found during the District's evaluation. (Testimony of B. Widner, Tr. 710:17-22).

54. The District did not have the final report from Dr. [REDACTED] prior to the eligibility meeting. (Testimony of B. Widner, Tr. 711:1-3).

55. On November 17, 2021, an initial eligibility meeting was held to determine if [REDACTED] was eligible for special education services. (Testimony of [REDACTED], Tr. 44:11-15; J-16).

56. [REDACTED] parents were both present at the November 17, 2021 eligibility meeting. (Testimony

of [REDACTED], Tr. 44:11-15).

57. [REDACTED] was deemed eligible by the team for special education under the category of Significant Developmental Delay (hereinafter “SDD”) (Testimony of [REDACTED], Tr. 45:11-13; Testimony of J. Donnelly, Tr. 417:3-5; 417:22-25; Testimony of B. Widner, Tr. 726:19-21; J- 16:16).
58. SDD is an eligibility category that covers ages 3 to 8 years old and is self-terminating, meaning that a student cannot be classified under this category permanently. (Testimony of R. Montgomery, Tr. 243:10-13; Testimony of J. Donnelly, Tr. 482:23-24).
59. SDD covers developmental delays, and this eligibility category is used to either obtain more information on a child in order to re-evaluate their classification in the future or allow the child to benefit from treatment and graduate out of special education. (Testimony of R. Montgomery, Tr. 244:1-4; Testimony of B. Widner, Tr. 727:1-8; Testimony of J. Donnelly, Tr. 418:8-17).
60. A child falls under the category of SDD when the child is one-and-a-half standard deviations below the norm in one or more areas or two standard deviations below the norm in one area. (Testimony of J. Donnelly, Tr. 180:11-14). The areas considered include adaptive, cognition, social emotional, motor, and speech language. (Testimony of J. Donnelly, Tr. 180:14-16).
61. [REDACTED] scored significantly below the norm in the categories of social emotional and adaptive behavior. (Testimony of R. Montgomery, Tr. 242:13-19; Testimony of B. Widner, Tr. 726:21-23).
62. It was the consensus of the team to place [REDACTED] in the eligibility category of SDD, and this eligibility category was appropriate based on the results of the testing administered by the

District and reported in the September 29, 2021 Psychological Evaluation Report. (Testimony of R. Montgomery, Tr. 242:14-15; Testimony of B. Widner, Tr. 727:13-728:5; J-5).

63. After establishing the eligibility category that was appropriate for [REDACTED] the Individualized Education Program (hereinafter “IEP”) team created an IEP for [REDACTED] (Testimony of B. Widner, Tr. 728:12-20; J-17). A child’s IEP services and supports are directly related to what their needs are and are not based on what diagnoses or eligibility category they are placed in. (Testimony of B. Widner, 738:21-23).
64. At the November 17, 2021 meeting, the District explained to the family the varying levels of learning environments [REDACTED] could be placed in, from the least restrictive to the most restrictive learning environments. (Testimony of [REDACTED], Tr. 45:25-46:11; Testimony of B. Widner, Tr. 731:7-732:2).
65. The IEP team, including [REDACTED] parents, worked in a collaborative manner to determine the best services for [REDACTED] (Testimony of B. Widner, Tr. 729:3-6).
66. The IEP team established two goals for [REDACTED] to master, including one for daily living and one to help address social and emotional delays. (Testimony of B. Widner, Tr. 729:11-18; Testimony of J. Donnelly, Tr. 419:13-17; Testimony of [REDACTED], Tr. 542:18-21; J-17:9).
67. The daily living goal focused on following two-step directions to complete a task. (Testimony of B. Widner, Tr. 729:11-14; Testimony of [REDACTED], Tr. 542:22-25; J-17:9).
68. The social and emotional goal required [REDACTED] to participate in turn-taking exchanges with an adult and with reduced verbal prompting. (Testimony of B. Widner, Tr. 729:17-20; J-17:9). Adult interaction is typical for goals of three-year-old children because if the child is not engaging in the activity appropriately with the adult, the adult can adjust the activity

- to prompt the child's potential growth. (Testimony of B. Widner, Tr. 729:21-730:6).
69. The team also included several accommodations for [REDACTED], including visual supports (visual cue cards, social stories, and timers), close proximity to the teacher, verbal warning for transitions, and scheduled sensory breaks. (Testimony of B. Widner, Tr. 730:12-20; Testimony of J. Donnelly, Tr. 421:3-422:8; J-17:13).
70. No testing accommodations were provided to [REDACTED] as there are no formal classroom assessments at the preschool level. (Testimony of J. Donnelly, Tr. 420:16-24; Testimony of [REDACTED], Tr. 508:20-24; J-17:13) Instead, data is collected through observation. (Testimony of J. Donnelly, Tr. 420:22-24).
71. No feeding plan or dietary goals were included in [REDACTED] IEP, as feeding plans are created for students that struggle with the fine motor aspect of feeding and the District did not receive information from any doctor indicating a feeding plan was necessary for [REDACTED] (Testimony of J. Donnelly, Tr. 423:4-19).
72. The team considered various combinations of placements for [REDACTED] to determine how to best suit his needs, but ultimately the team determined it would be most appropriate for [REDACTED] to attend [REDACTED] for two days per week, Thursday and Friday. (Testimony of [REDACTED], Tr. 45:24-46:14; Testimony of B. Widner, Tr. 732:5-15;734:11-19; 734:20-23).
73. During the IEP meeting, the family expressed their desire to have [REDACTED] in a more traditional school environment that would provide him with structure and support. (Testimony of B. Widner, Tr. 732:21-23). Therefore, it was their preference that [REDACTED] be enrolled at [REDACTED]. (Testimony of B. Widner, Tr. 732:16-21).
74. At the November 17, 2021 meeting, Respondent raised no concerns with the September 2021 evaluation, [REDACTED] goals, [REDACTED] accommodations, [REDACTED] services, [REDACTED] eligibility

category, or his placement. (Testimony of [REDACTED], Tr. 44:7-8; Testimony of B. Widner, Tr. 725:20-726:4; 735:16-20).

D. Dr. [REDACTED]'s Evaluation

75. Around the time the District evaluated [REDACTED], Respondent sought a private evaluation from Dr. [REDACTED],³ a psychologist, for autism and ADHD. (Testimony of R. Montgomery, Tr. 247:2-3; J-46).

76. On September 2, 2021, Dr. [REDACTED] had an initial appointment with [REDACTED] (J-46). This appointment was to gather basic intake information regarding [REDACTED], such as how old he was, what parental concerns there were, his living circumstances, and his medical information. (Testimony of R. Montgomery, Tr. 247:7-10; J-46).

77. During the September 2, 2021 appointment, [REDACTED] indicated to Dr. [REDACTED] that prior to the COVID-19 sequestration, [REDACTED] appeared calm, but now he was not, which is normal, as many preschoolers are showing signs of less socialization, more stranger anxiety, decreasing peer social skills, and difficulty transitioning after COVID-19 sequestration. (Testimony of R. Montgomery, Tr. 247:16-248:7; J-46:1).

78. COVID-19 has further complicated making accurate autism diagnoses because providers must distinguish whether the child is less social because the child has been isolated or if it is an organic component of who the child is. (Testimony of R. Montgomery, Tr. 248:17-249:7).

79. On October 14, 2021, Dr. [REDACTED] administered several tests on [REDACTED] in a 54-minute session. (Testimony of R. Montgomery, Tr. 249:13-16; J-47). Among other things, Dr. [REDACTED]

³ Dr. [REDACTED] is a licensed psychologist with the [REDACTED] Physicians Group.

indicated in his progress notes that [REDACTED] displayed a very pronounced vocabulary, making him seem more intelligent than he is, and that he played with toys appropriately but went through them quite quickly. (J-47). [REDACTED] was also able to respond to his name being called. (Testimony of R. Montgomery, Tr. 250:4-5).

80. Dr. [REDACTED] administered the Autism Diagnostic Observation Scale (hereinafter “ADOS- 2”), and [REDACTED] completed the BASC-3, the Childhood Autism Rating Scale Second Edition (hereinafter “CARS-2”), the Childhood Autism Rating Scale – Second Edition- Questionnaire for Parents/Caregivers (hereinafter “CARS2-QPC”), the Social Responsiveness Scale (hereinafter “SRS-2”) and the Vineland-3 at the October 14, 2021 session. (Testimony of R. Montgomery, Tr. 250:10-12; J-47; J-11).

81. Dr. [REDACTED] also administered the Wechsler Preschool and Primary Scale of Intelligence– Fourth Edition (hereinafter “WPPSI-IV”) at a November 11, 2021 session. (J-11:2). The WPPSI-IV is a measure of the child’s ability obtained through direct observation. (Testimony of R. Montgomery, Tr. 251:13-18). The assessment evaluates verbal ability (spoken language, speaking and listening) and visual-spatial ability (puzzles, blocks, etc.). (Testimony of R. Montgomery, Tr. 254:23-255:2). This assessment is a “widely used measure of cognitive aptitude or learning potential in children ages [REDACTED] and therefore was appropriate for [REDACTED], who was just turning [REDACTED] at the time of this assessment. (Testimony of R. Montgomery, Tr. 254:20-22; J-11:2).

82. [REDACTED] scored a 109 on the verbal comprehension portion of the WPPSI-IV, which indicates he surpassed almost three-quarters of his peers in verbal skills. (Testimony of R. Montgomery, Tr. 255:6-9; J-11:2). Additionally, this score was higher than the one previously reported by the BCSD speech evaluation. (Testimony of R. Montgomery, Tr.

255:10-11).

83. [REDACTED] scored an 80 on the visual-spatial portion of the WPPSI-IV, which is in the low-average or below-average range. (Testimony of R. Montgomery, Tr. 255:12-13; J-11:2). However, without insight from the evaluator who observed [REDACTED], it is difficult to decipher whether this low score is a result of [REDACTED] having difficulty with the problem presented or with his fine motor skills. (Testimony of R. Montgomery, Tr. 255:14-16.)
84. The ADOS-2 is an observation scale, and the ADOS-2 and Autism Diagnostic Interview Revised (ADIR) in combination are thought of as the gold standard in diagnosing autism. (Testimony of R. Montgomery, Tr. 204:3-6; 251:20-23; 264:15-21). There are five modules for the ADOS-2, and the first one is the toddler module, which is appropriate for children up to [REDACTED] old. (Testimony of R. Montgomery, Tr. 258:19-21). [REDACTED] was [REDACTED] old at the time of this evaluation. (Testimony of R. Montgomery, Tr. 258:21-22). Therefore, the first module was inappropriate. (Testimony of R. Montgomery, Tr. 258:22).
85. Module 1 is for children that have no language skills or are limited to single words. (Testimony of R. Montgomery, Tr. 258:23-24). Module 2 is for children who can utilize phrase speech. (Testimony of R. Montgomery, Tr. 258:24-25). Module 3 is for children that can utilize sentences regularly, and Module 4 is for older children who have sophisticated social skills. (Testimony of R. Montgomery, Tr. 258:25-259:4).
86. [REDACTED] was using phrases and sentences at the time of his evaluation with Dr. [REDACTED], and therefore Module 2 was the appropriate module under the ADOS-2. (Testimony of R. Montgomery, Tr. 260:25-261:4; 285:8-9; J-5:5-6; J-11:2).
87. Dr. [REDACTED] reported in his Developmental Evaluation that he administered Module 2 of the ADOS-2. (Testimony of R. Montgomery, Tr. 260:13-14; J-11:2).

88. Although [REDACTED] claims to have used Module 2 in his evaluation of [REDACTED], it is evident from the questions he reported asking [REDACTED] in his Developmental Evaluation report that he used Module 1, which was not an appropriate module for [REDACTED] (Testimony of R. Montgomery, Tr. 261:16-24; 270:8-271:23; 285:6-11; J-11:3-4). Therefore, the diagnosis of autism on page 4 of Dr. [REDACTED]'s Developmental Evaluation should be disregarded. (Testimony of R. Montgomery, Tr. 266:16-17).
89. The Autism Diagnostic Interview Revised (hereinafter "ADIR") is an interview conducted with the primary caregiver of the child who is being evaluated to determine the functioning abilities of the child over the last few months. (Testimony of R. Montgomery, Tr. 265:2-3, 265:6-8). The ADOS-2 is an observation of the child in a semi-structured environment by a professional evaluator. (Testimony of R. Montgomery, Tr. 265:11-16). These two evaluations are co-normed and, therefore, are meant to be done together. (Testimony of R. Montgomery, Tr. 265:3-5).
90. In his Developmental Evaluation Report, Dr. [REDACTED] did not indicate that he conducted the ADIR. (Testimony of R. Montgomery, Tr. 266:2-3).
91. A diagnosis of autism should specify the level of impairment on a scale from 1 to 3 for certain areas, including "social communication" and "restrictive and repetitive." (Testimony of R. Montgomery, Tr. 272:22-25, 293:11-295:3). A child who is classified as level 1 requires minimal support, a level 2 child requires support, and a level 3 child requires substantial or very substantial support. (Testimony of R. Montgomery, Tr. 273:16-18).
92. Although Dr. [REDACTED] indicated [REDACTED] was considered at level 1, no details were included to identify which categories the level pertained to. (Testimony of R. Montgomery, Tr. 293:8-

18; 294:24-295:3). The distinction in the level of autism helps educators and providers tailor services for that specific child. (Testimony of R. Montgomery, Tr. 273:7-10; 273:18-23; 293:24-294:6; 294:17-21).

93. Dr. [REDACTED] also administered the BASC-3 but failed to reference validity measures and failed to provide what the scores were in any of the categories. (Testimony of R. Montgomery, Tr. 274:2-7.) Instead, Dr. [REDACTED] only reported the scores that were classified as clinically significant. (Testimony of R. Montgomery, Tr. 274:7-8.)

94. Atypicality on the BASC-3 is what indexes autism. (Testimony of R. Montgomery, Tr. 274:19-20.)

95. Under the BASC-3 section of Dr. [REDACTED]'s report, there is no reference to an atypicality score for [REDACTED] (Testimony of R. Montgomery, Tr. 274:17-19).

96. The BASC-3 scores as reported by Dr. [REDACTED] indicate hyperactivity and attention problems. (Testimony of R. Montgomery, Tr. 274:23-275:2). These categories in combination form the core of ADHD. (Testimony of R. Montgomery, Tr. 274:23-24; J-11:4).

97. The CARS-2 is based on the general impressions of the clinician deduced from their incidental or direct interactions with the child, the child's medical records, and any input received from the child's parents. (Testimony of R. Montgomery, Tr. 252:5-9).

98. The CARS2-QPC is a questionnaire given to the caretaker or parent of a child. (Testimony of R. Montgomery, Tr. 252:10-12, 277:11-14). [REDACTED] completed the parent checklist and "described him as displaying all symptoms of an ASD [autism-spectrum disorder], mostly of severe intensity." (J-11:4).

99. The results of the CARS-2 and the CARS2-QPC are supposed to be considered together in making the diagnosis of autism. (Testimony of R. Montgomery, Tr. 280:5-8; 285:12-15; J-

11).

100. Dr. [REDACTED] did not report the numerical scores and percentiles associated with the CARS-2. Therefore, it cannot be determined whether the statement in Dr. [REDACTED]'s report that "the overall profile was highly suggestive of ASD" is based on both the CARS-2 and the CARS2-QPC, as it should be, or if it is based solely on the CARS2-QPC. (Testimony of R. Montgomery, Tr. 277:9-278:23; 285:12-15; J-11:4-5).

101. The Social Responsiveness Scale (SRS-2) is a parent questionnaire that evaluates a child's strengths and weaknesses in different areas that may indicate a social deficit related to autism. (Testimony of R. Montgomery, Tr. 252:18-23; J-11:5).

102. In the Developmental Evaluation Report, Dr. [REDACTED] indicated that based on the administration of the SRS-2, "[REDACTED] displays clinically significant problems (mild to severe weaknesses) in: Social Awareness, Social Cognition, Social Communication, and Repetitive or Restrictive Behaviors." (J-11:5).

103. Dr. [REDACTED] presented no scores for the SRS-2 to support his conclusion that [REDACTED] displays clinically significant behaviors, and one cannot decipher from the results what the individual scores were for the categories of social awareness, social cognition, social communication, and repetitive or restricted behaviors. (Testimony of R. Montgomery; Tr. 285:16-22).

104. Based on [REDACTED] responses, Dr. [REDACTED] found [REDACTED] scores on the Vineland-3 were moderately low for communication, daily living skills, socialization, and adaptive motor skills. (J-11:5).

105. The adaptive behavior composite score on the Vineland-3 is a composite score composed of the scores received for communication, daily living skills, socialization, and

adaptive motor skills. (Testimony of R. Montgomery, Tr. 283:23-25; J-11:5).

106. In Dr. [REDACTED]'s report, the adaptive behavior composite score was moderately low. (J-11:5).
107. Dr. [REDACTED] reported that [REDACTED] scored highest in daily living scores, followed by motor skills, socialization, and communication. (Testimony of R. Montgomery, Tr. 284:4-7; J-11:5). None of the scores presented in the disabled range. (Testimony of R. Montgomery, Tr. 284:9).
108. Out of the assessments Dr. [REDACTED] administered, the CARS-2, the SRS-2, the ADOS-2, and the BASC all evaluate and detect autism. (Testimony of R. Montgomery, Tr. 284:12-285:2). However, none of these tests were reported by Dr. [REDACTED] in the standard format, and therefore, the results of those tests are not reliable. (Testimony of R. Montgomery, Tr. 285:3- 5; 287:6-9).
109. In the Summary and Conclusions Section of Dr. [REDACTED]' Developmental Evaluation Report, Dr. [REDACTED] states that [REDACTED] "displays socialization and communication weaknesses along with stereotyped or repetitive behaviors associated with an autism-spectrum disorder (ASD)." (J-11:5). However, on the Wechsler IQ Scale, [REDACTED] scores regarding verbal comprehension were average to above average. (Testimony of R. Montgomery, Tr. 286:12-14).
110. Dr. [REDACTED] also reported in the Developmental Evaluation Report that [REDACTED] has sensory challenges. (J-11:5-6). However, none of the testing done or the scores included in the report indicate this. (Testimony of R. Montgomery, Tr. 287:11-14).
111. Dr. [REDACTED] also indicated in his conclusion that [REDACTED] showed limited social reciprocity during the evaluation. (J-11:6). However, there are many circumstances that could have

contributed to his limited social reciprocity including, but not limited to, the “novelty of the adult, the fact that the adult’s male and the primary caregiver’s female, [and] COVID intervening.” (Testimony of R. Montgomery, Tr. 287:15-19). Dr. █████ failed to acknowledge these alternative explanations. (Testimony of R. Montgomery, Tr. 287:21-22).

112. Dr. █████ continued the summary and conclusions section of his Developmental Evaluation Report by stating that “the overall pattern of weaknesses and excesses is commonly seen in autism-spectrum disorders and patterns were confirmed by the ADOS-2 and ASD specific rating scales.” (J-11:6). However, Dr. █████’s administration of the ADOS-2 and the corresponding results were inaccurate because the wrong module was utilized. (Testimony of R. Montgomery, Tr. 287:22-288:2).

113. Dr. █████ diagnosed █████ with Autism-Spectrum Disorder, Level 1, Requiring Support, with accompanying language impairment and with Attention-Deficit/Hyperactivity Disorder, Combined Presentation. (J-11:6).⁴

114. No evidence was provided by Dr. █████ to support his assertion that █████ had accompanying language impairments. (Testimony of R. Montgomery, Tr. 290:1-291:2; J-11:2).

115. When crafting an autism diagnosis, a practitioner, such as Dr. █████, must make a conscious decision of whether it is with or without a language impairment. (Testimony of R. Montgomery, Tr. 292:17-293:1). Here, Dr. █████ indicated that █████ had a language impairment despite his determination that █████ was using phrases and occasional sentences

⁴ Autism is defined as a neurodevelopmental disorder which manifests through dysfunctional social skills, behaviors, and communication. (Testimony of R. Montgomery, Tr. 367:12-15).

during his evaluation. (Testimony of R. Montgomery, Tr. 292:17-293:1; J-11:2, 6).

116. Further, Dr. [REDACTED] did not include sufficient information with [REDACTED] Autism diagnosis that would address the level of services needed or address whether [REDACTED] was “with or without intellectual impairments.” (Testimony of R. Montgomery, Tr. 293:5-12). The scaled score is helpful to educators reading the evaluation and trying to address a student’s needs. (Testimony of Dr. Montgomery, Tr. 293:24-294:21).

117. The evidence gathered from the testing conducted by Dr. [REDACTED] supports the diagnosis of Attention-Deficit/Hyperactivity Disorder, Combined Presentation. (Testimony of R. Montgomery, Tr. 295:6-16).

118. On December 1, 2021, Respondent sent the District Dr. [REDACTED]’ final report via email. (Testimony of B. Widner, Tr. 737:2; J-49).

119. Ms. Widner reviewed the evaluation by Dr. [REDACTED] upon receipt. (Testimony of B. Widner, Tr. 737:14-16). It did not change her professional opinion of what services of support the District needed to provide to [REDACTED] to give him a free appropriate public education (hereinafter “FAPE”) or change her opinion regarding his eligibility classification of SDD. (Testimony of B. Widner, Tr. 737:14-25).

120. Evidence was presented at the hearing of the supports implemented by the

District that were consistent with Dr. [REDACTED]’ recommendations:

- a. An IEP was developed with the support of [REDACTED] family on November 17, 2021. (Testimony of [REDACTED], Tr. 44:11-15; Testimony of B. Widner, Tr. 726:5-11; 729:3- 6; J-17).
- b. While [REDACTED] was at [REDACTED] Academy, his teachers and the staff indicated he was a leader and that he interacted appropriately with the other students.

(Testimony of [REDACTED], Tr. 513:20-514:8; Testimony of P. Smith, 538:24-25; 539:15-540:2; 541:16-21; Testimony of A. Harriger, Tr. 583:20-584:7).

- c. Ms. [REDACTED] implemented the Social-Emotional Early Development (“SEED”) program in her classroom, which teaches children about self-regulation, play, and problem-solving through role- playing and modeling. (Testimony of A. Harriger, Tr. 581:14-19).
- d. One of the accommodations in [REDACTED] November 17, 2021 IEP was visual supports, which include visual cue cards, social stories, timers, first-then statements, and verbal warnings for transitions. (J-17:13). The use of these methods allowed [REDACTED] teachers at [REDACTED] to convey information in different ways.
- e. Ms. [REDACTED] utilized visual schedules, social stories, and visual timers in her classroom while [REDACTED] was enrolled at [REDACTED] Academy. (Testimony of [REDACTED], Tr. 503:16-20: 509:2-12; Testimony of [REDACTED], Tr. 544:21-545:23; J- 17:13).
- f. Each day before entering the classroom, each student, including [REDACTED], had to indicate how they were feeling by pointing to an emoji and requesting how they wanted to be greeted that morning. (Testimony of [REDACTED], Tr. 540:5-16). Then after all the students transitioned into the classroom, Ms. [REDACTED] asked each student to again express how they were feeling and identify their feelings by pointing to an emotion on a chart located in the

⁵ [REDACTED] was assigned to Ms. [REDACTED]’s classroom at [REDACTED] during the 2021-2022 school year. (Testimony of [REDACTED], Tr. 502:14-16).

classroom) (Testimony of ██████, Tr. 540:19-541:15).

- g. To help eliminate anxiety and resulting frustration, Ms. ██████ and Ms. ██████ used visual schedules, verbal cues, visual timers, and music to help facilitate transitions. (Testimony of ██████, Tr. 503:16-20: 509:2-12; Testimony of ██████, Tr. 544:21-545:16; 545:25-546:3).
- h. Ms. ██████ and Ms. ██████ implemented multi-sensory teaching using MetaPlay, which is a “curriculum that systematically teaches the development of imagination and social interaction through play therapy.” (Testimony of ██████, Tr. 581:9- 12).
- i. The classroom had an interactive touch screen, which allowed for multi-sensory learning as students could reinforce their understanding of the lessons and complement their varying learning styles. (Testimony of ██████, Tr. 582:9- 23; Testimony of ██████, Tr. 507:14-508:10; Testimony of ██████, Tr. 547:18-548:2).
- j. In the data collected by the staff at ██████, there was no indication that ██████ was learning at a slower rate than expected. Instead, the data indicated that ██████ was progressing in the goals set out in his November 17, 2022 IEP. (Testimony of ██████, Tr. 544:12-14; Testimony of ██████, Tr. 506:11- 507:9; J-30 & 32).
- k. In his classroom at ██████, there was a set routine that was followed during the day, which the students could follow along with using the classroom visual schedule and their own individual visual schedules.

⁶ ██████ was the paraprofessional assigned to ██████ classroom during the 2021-2022 school year. (Testimony of ██████, Tr. 502:17-20).

(Testimony of [REDACTED]; 503:16-20; Testimony of [REDACTED], Tr. 545:1-8).

121. Under federal law, special education administrators are obligated to consider the reports of private practitioners when creating a plan of action, but they are not required to implement the practitioner's recommendations. (Testimony of R. Montgomery, Tr. 297:3-9; Testimony of J. Donnelly, Tr. 182:20-183:2).

122. After receiving a copy of Dr. [REDACTED]'s report on December 1, 2021, Ms. Widner and Ms. [REDACTED], the lead special education teacher at [REDACTED], decided to move forward with getting [REDACTED] started at [REDACTED], allowing the teachers to become familiar with him and letting him settle in before having another IEP meeting or conducting an additional assessment. (Testimony of B. Widner, Tr. 738:24-739:14).

123. Respondent did not have Dr. [REDACTED] testify at the due process hearing, and no corroborating evidence was presented that shows that Dr. [REDACTED]'s evaluation was credible or reliable.

E. Classroom Setting at [REDACTED] Academy

124. Ms. [REDACTED] was [REDACTED] teacher at [REDACTED] and Ms. [REDACTED] [REDACTED] was the paraprofessional in the classroom. (Testimony of [REDACTED], Tr. 502:14-20; Testimony of A. Harriger, Tr. 584:10-14).

125. Ms. [REDACTED] and Ms. [REDACTED] were familiar with [REDACTED] IEP and knew what his goals and accommodations were and implemented various activities to further his goals. (Testimony of [REDACTED], Tr. 505:2-506:10; Testimony of [REDACTED], Tr. 542:6-544:11; J-17).

126. Ms. [REDACTED] collected data and monitored the progress [REDACTED] made toward achieving his goals as set out in the IEP. (Testimony of [REDACTED], Tr. 506:11-507:6; J-30 & 32). From

the data, it was evident that [REDACTED] was progressing in his goals. (Testimony of [REDACTED], Tr. 507:5-9; Testimony of [REDACTED], Tr. 544:12-14).

127. Ms. [REDACTED] taught using MetaPlay, which is a research-based curriculum that systematically teaches the development of imagination and social interaction through play therapy. (Testimony of A. Harriger, Tr. 581:9-12; Testimony of [REDACTED], Tr. 512:5-11). This form of teaching was developed for students with autism, intellectual disability, and social-emotional problems. (Testimony of [REDACTED], Tr. 581:12-14).

128. Ms. [REDACTED] also implemented the SEEDs program, which is a social-emotional early development system that teaches kids about self-regulation, learning to play, and problem solving through role play and modeling. (Testimony of [REDACTED], Tr. 581:14-19).

129. One of the instructional accommodations in [REDACTED] IEP was visual supports, which was offered in Ms. [REDACTED]'s classroom through the use of visual schedules, social stories, and visual timers. (Testimony of [REDACTED], Tr. 503:16-20; 509:2-12; Testimony of [REDACTED], Tr. 544:21-545:23; J-17:13).

130. Additionally, Ms. [REDACTED] implemented the accommodation requiring that [REDACTED] be in close proximity to the teacher to secure attention and ensure safety by allowing [REDACTED] to use a sensory chair and sit next to her or Ms. [REDACTED] during large or small group instruction. (Testimony of [REDACTED], Tr. 509:13-19; Testimony of [REDACTED], Tr. 546:5-13; J-17:13).

131. Verbal warnings for transitions was also an accommodation and was provided through a combination of Ms. [REDACTED] referencing the visual schedules to verbally communicate the next activity and through playing music. (Testimony of [REDACTED], 509:20-510:6; Testimony of [REDACTED], Tr. 545:25-546:3; J-17:13).

132. Lastly, scheduled sensory breaks were included in [REDACTED] IEP as an accommodation,

and Ms. [REDACTED] fulfilled it by providing [REDACTED] with 15-20 minute breaks around 11:00 a.m. (Testimony of [REDACTED], Tr. 510:8-11; J-17:13).

133. [REDACTED] also had sensory items available to students, including calm-down areas, sensory fidgets, interactive books, sensory bears, weighted blankets, crash pits, swings, miniature trampolines, various grips, and puzzles. (Testimony of [REDACTED], Tr. 510:7-25; Testimony of J. Donnelly, Tr. 422:9-15; Testimony of [REDACTED], Tr. 546:14-17).

134. [REDACTED] classroom also had a Clear Touch Computer or interactive screen that allowed the students to interact with the lessons being taught. (Testimony of J. Donnelly, Tr. 190:24- 191:7; Testimony of [REDACTED], Tr. 507:11-508:7; Testimony of [REDACTED], Tr. 547:18-22; Testimony of [REDACTED], Tr. 582:6-583:1).

135. During [REDACTED] time at [REDACTED], Ms. [REDACTED] communicated with [REDACTED] via a communication sheet that was sent home daily; the Remind App, which is a platform the school uses to communicate with parents; and by phone conference. (Testimony of [REDACTED], Tr. 512:12-24; J-31).

136. [REDACTED] was typically in a classroom with four other students, some of whom were verbal and some of whom were non- verbal. (Testimony of J. Donnelly, Tr. 423:20-25; Testimony of [REDACTED], Tr. 583:11-19).

137. [REDACTED] was a leader in the classroom and effectively interacted with his classmates. (Testimony of [REDACTED], Tr. 513:20-514:8; Testimony of [REDACTED] Tr. 538:24-25; 539:15- 540:2; 541:16-21; Testimony of [REDACTED], Tr. 583:20-584:7).

F. [REDACTED] Attended [REDACTED] for a Total of Ten Days.

138. [REDACTED] attended [REDACTED] for ten days - six days during the First Semester (12/2/21, 12/3/21, 12/9/21, 12/10/21, 12/16/21, 12/17/21) and four days during the Second

Semester (1/13/22, 1/14/22, 1/20/22, and 1/21/22). (Joint Pre-Hearing Filing, August 8, 2022, p. 10; Testimony of [REDACTED], Tr. 76:11-12; Testimony of [REDACTED], Tr. 503:4-6; J-23:2, ¶ 8).

139. The District's Winter Holiday Break during the 2021-2022 school year was December 20, 2021, through January 6, 2022. (Testimony of J. Donnelly, Tr. 426:2-5; J-34).

140. [REDACTED] family had a trip scheduled to [REDACTED], and [REDACTED] returned from the Winter Holiday Break on January 13, 2022, after the rest of his classmates. (Testimony of [REDACTED], Tr. 100:9-16; Testimony of J. Donnelly, Tr. 426:6-10; J-34). This resulted in [REDACTED] having a 27-day break.

141. During the Second Semester of the 2021-2022 school year, [REDACTED] attended [REDACTED] [REDACTED] for four days: January 13, 14, 20, and 21, 2022. (J-23:2).

142. Upon return to school, [REDACTED] had to transition from the maximally entertaining, positive environment of family vacation to the school environment, which is academic, age-appropriate, and learning focused. (Testimony of R. Montgomery, Tr. 340:12-18).

143. According to [REDACTED] mother, [REDACTED] came home on January 13, 2022, upset, and on January 14, 2022, [REDACTED] did not want to return to school. (Testimony of [REDACTED], Tr. 54:18-55:11; 55:22-56:2).

144. [REDACTED] mother indicated the family had a few "really fun weeks" during holiday break and initially attributed [REDACTED] unwillingness to go to school to this. (Testimony of [REDACTED], Tr. 55:12-21).

145. On January 14, 2022, [REDACTED] class and another classroom combined because Ms. [REDACTED] was absent and a substitute did not pick up the assignment. (Testimony of [REDACTED], Tr. 634:20-24; Testimony of [REDACTED], Tr. 516:11-21; Testimony of [REDACTED], Tr. 550:17-

19).

146. [REDACTED] claims she witnessed bruises on [REDACTED] arm in the shape of fingerprints on the night of January 14, 2022. (Testimony of [REDACTED], Tr. 62:13-20; 103:5-9). [REDACTED] provided no photographic evidence of the alleged bruising, and the District's investigation found that no one from the District saw any bruising on [REDACTED] (Testimony of [REDACTED], Tr. 103:11-13; Testimony of [REDACTED], Tr. 650:11-16). These alleged bruises were said to be to [REDACTED] upper arm, but no video evidence was presented showing contact that would result in a bruise to the upper arm. (Testimony of [REDACTED] Tr. 650:21-651:1).

147. Over the next few days, [REDACTED] indicated to [REDACTED] that he did not want to return to [REDACTED] because "it takes too long, it's not fun" and because "no one talks to him or plays with him." (Testimony of [REDACTED], Tr. 56:12-19).

148. On January 20, 2022, at her request, [REDACTED] had a phone conference with Ms. [REDACTED] and Ms. [REDACTED] the lead special education teacher at [REDACTED]. (Testimony of [REDACTED] Tr. 104:3-7; Testimony of [REDACTED], Tr. 519:14-23; J-24: Exhibit 35).

149. [REDACTED] requested the phone conference because she had concerns regarding [REDACTED] behavior, Pre-K for the next year, and toileting. (Testimony of [REDACTED], Tr. 519:18-23; J- 24: Exhibit 35).

150. [REDACTED] responded that after that conference, "We got off the phone call feeling very happy with our decision to place him there [REDACTED] and were looking forward to signing him up for [REDACTED] and moving forward with a more stable routine..." (Testimony of [REDACTED], Tr. 107:11-18; J-24: Exhibit 30).

151. [REDACTED] did not mention the bruising she claimed to have discovered on [REDACTED] on January 14, 2022, [REDACTED] having nightmares, or any concerns of abuse during the phone call with Ms.

██████████. (Testimony of ██████████, Tr. 104:3-13; Testimony of ██████████, Tr. 521:3-12; J-24:35).

152. On January 21, 2022, Ms. ██████████ was required to attend a collaborative leadership meeting, and Ms. ██████████ was left with the class. (Testimony of ██████████, Tr. 516:22-517:11; Testimony of ██████████, Tr. 550:20-22).

153. Prior to Ms. ██████████ leaving for her meeting, Ms. ██████████ and Ms. ██████████ were informed that a child in ██████████ class had come in contact with a relative who tested positive for COVID-19 and that the child had to leave school as a result. (Testimony of ██████████, Tr. 553:9- 17).

154. Due to the protocols in place at the time, Ms. ██████████ and Ms. ██████████ were required to sanitize the toys in the classroom to the best of their ability and then allow the custodial staff to sanitize them further after school. (Testimony of ██████████, Tr. 553:19-554:1; 564:3-8; Testimony of ██████████, Tr. 602:11-15). The students were told they could not play with the toys because the toys were “dirty,” but each child was given clean toys to play with. (Testimony of ██████████, Tr. 554:2-7).

155. When Ms. ██████████ left for her meeting, ██████████ attempted to play with a puzzle that was amongst the toys set aside to be sanitized. (Testimony of ██████████, Tr. 554:8-9). To prevent ██████████ from playing with the puzzle, Ms. ██████████ redirected ██████████ by guiding him with a touch on the arm and verbal direction. (Testimony of ██████████, Tr. 554:8-15; Exhibit R-8). ██████████ became upset and refused to allow Ms. ██████████ to aid him in changing his pull-up. (Testimony of ██████████, Tr. 554:16-18).

G. Investigations and Review of the Respondent’s Allegations of Child Abuse

156. There were multiple reviews and investigation of Respondent’s allegations of abuse:

- a. The Court's selection of Attorney Nicole Hull, who reviewed 32 hours of unredacted video and who provided a report as to her conclusions;
- b. The District's investigation; and
- c. The Bibb County Sheriff's Office investigation.

(Second Prehearing Order, August 17, 2022; Log of Confidential Review, August 25, 2022; Amended Log of Confidential Review, August 26, 2022; J-23, J-24, and Testimony of [REDACTED], Tr. 653-683.)

a. Ms. Hull's Review of Video

157. On August 17, 2022, this Court ordered the parties to select an independent, qualified individual to review the unredacted footage requested by the family. (Second Prehearing Order, August 17, 2022, p.2).
158. Attorney Nicole Hull, who served as the mediator at the facilitated IEP meeting, was selected by the District and approved by the Court as the independent party to review the footage. (Second Prehearing Order, August 17, 2022, p. 2). Respondent did not select an independent, qualified person to view the unredacted video.
159. On August 25, 2022, Ms. Hull submitted a Log of Confidential Videos to this Court, indicating she reviewed the footage submitted from January 13, 2022, January 14, 2022, January 20, 2022, and January 21, 2022.
160. From her review, Ms. Hull indicated there was "Nothing remarkable signaling the depiction, omissions or events affecting or regarding [REDACTED] which could constitute abuse, neglect or which otherwise could have caused or contributed to [REDACTED] becoming fearful, being traumatized or exhibiting symptoms of Post-Traumatic Stress Disorder." (Log of Confidential Videos, August 25, 2022).
161. In her August 25, 2022 Log of Confidential Videos, Ms. Hull indicated to the Court

that she was unable to review any footage from January 21, 2022 from approximately 11:20:45 a.m. to 11:44:58 a.m. because it was not provided to her. However, after the District provided this portion of the footage to Ms. Hull, she filed an Amended Log of Confidential Videos on August 26, 2022, stating there was no evidence of abuse.

b. The District's Investigation

162. On January 21, 2022, at 7:20 p.m., [REDACTED] emailed Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED], alleging that [REDACTED] was harmed by his paraprofessional, [REDACTED]. (Testimony of [REDACTED], Tr. 59:24-25; 61:16-22; 110:13-18; Testimony of [REDACTED], Tr. 587:3-5; J-24, Exhibit 1).
163. [REDACTED] alleged [REDACTED] was yelled at by Ms. [REDACTED] when trying to play with puzzles and that Ms. [REDACTED] “popped him on the potty when he had an accident.” (Testimony of J. Donnelly, Tr. 426:18-25; Testimony of [REDACTED], Tr. 550:13-14; Testimony of [REDACTED], Tr. 586:21-23; J- 24:1).
164. This email was then forwarded to Ms. [REDACTED], Director of [REDACTED]. (Testimony of [REDACTED], Tr. 587:7-9; J-24:1). Ms. [REDACTED] attempted to call [REDACTED] immediately, but the call went to voicemail, so she emailed [REDACTED] the same night at 9:15 p.m. (Testimony of [REDACTED], Tr. 110:19-21; Testimony of [REDACTED], Tr. 587:12-18; Testimony of J. Donnelly, Tr. 427:1-5; J-24, Exhibit 2).
165. In a response email to Ms. [REDACTED], [REDACTED] indicated she was a victim of childhood trauma, she was a [REDACTED], that her biggest fear in life was the safety and well-being of her kids, and that she was “in overdrive” and “on high alert” about potential dangers to her kids. (Testimony of [REDACTED], Tr. 111:6-19; J-24:3).

166. [REDACTED] claims she was unaware there was another teacher besides Ms. [REDACTED] in [REDACTED] classroom. (Testimony of [REDACTED], Tr. 59:25-60:5; 60:9-11; Testimony of [REDACTED], Tr. 633:22- 24; J-24:1). However, during the previous Christmas season, [REDACTED] indicated she bought [REDACTED] teacher a present and had to go buy another one because she realized there was another teacher in the classroom. (Testimony of [REDACTED], Tr. 633:24-634:3). Further, in a daily communication log sent home with [REDACTED] on December 16, 2021, Ms. [REDACTED] thanked [REDACTED] for her Christmas gift and wrote, “We also have Ms. [REDACTED] in the room.” (J-37). [REDACTED] sent the daily communication log back and indicated at the top that the family was not aware there were two teachers and that she would send a gift for Ms. [REDACTED] the next day. (J-37). As such, [REDACTED] testimony she was unaware of a second teacher was not accurate.

167. Written statements from Ms. [REDACTED] and Ms. [REDACTED] were obtained and preserved, as well as video footage from the classroom.⁶ (Testimony of [REDACTED], Tr. 622:5-8; Testimony of [REDACTED], Tr. 521:13-23; Testimony of [REDACTED] Tr. 555:18-25; Testimony of [REDACTED], Tr. 588:23-589:1; Testimony of J. Donnelly, Tr. 429:14-17; J-24:32; J-24:33).

168. Video footage of 8-hour days from approximately 70 different camera angles was obtained for January 13, 14, 21, and 22, 2022. (Testimony of E. Aaron, Tr. 622:25-623:11).⁷

169. On January 24, 2022, Mr. Edwin Aaron, Executor Director of Personnel with the Bibb County School District, was informed by Ms. [REDACTED] of the allegations made by the

⁷ Ms. [REDACTED] and Ms. [REDACTED] were first interviewed by Ms. [REDACTED] on January 24, 2022 and were asked to provide a written statement of the events. (Testimony of [REDACTED], Tr. 588:11-589:1). Ms. [REDACTED] and Ms. [REDACTED] were then interviewed a second time on February 23, 2022 by Mr. Aaron, and he required them to review their previous statements, ensure no changes needed to be made, and had both teachers re-execute their former statements. (Testimony of E. Aaron, Tr. 624:15-625:6; J-24:32 & 33).

family. (Testimony of E. Aaron, Tr. 618:16-19; 621:3-5; Testimony of [REDACTED], Tr. 589:2-9).

170. Mr. Aaron is responsible for investigating all complaints involving district employees, and as such, he investigated this matter and prepared a report. (Testimony of E. Aaron, Tr. 621:1-10; J-23).

171. Ms. [REDACTED] and Ms. [REDACTED] were interviewed by both Ms. [REDACTED] and Mr. Aaron. (Testimony of [REDACTED], Tr. 555:12-17; 556:10-15; Testimony of [REDACTED], Tr. 588:9-18).

172. Ms. [REDACTED] spoke with [REDACTED] over the phone on January 24, 2022, to let her know that the allegations were being investigated and that she had spoken with the teachers. (Testimony of [REDACTED], Tr. 591:21-592:1).

173. During the phone call, Ms. [REDACTED] expressed to [REDACTED] that she was confused as to why [REDACTED] would say that Ms. [REDACTED] was the one who did it because Ms. [REDACTED] was the one who primarily changed [REDACTED] (Testimony of [REDACTED], Tr. 592:1-3). After Ms. [REDACTED] brought this to [REDACTED] attention, [REDACTED] indicated that over the weekend, [REDACTED] told the same story but changed the name of the teacher from Ms. [REDACTED] to Ms. [REDACTED] (Testimony of [REDACTED], Tr. 592:4-16).

174. On the night of January 24, 2022, [REDACTED] parents emailed Ms. [REDACTED] indicating that [REDACTED] would not be returning to school until the matter had been exhaustively reviewed. (Testimony of [REDACTED], Tr. 122:13-17; 123:8-12; Testimony of [REDACTED], Tr. 591:11-16; J-24:5).

175. On or about January 25, 2022, Ms. Jennifer Donnelly, the Executive Director of the Program for Exceptional Children in Bibb County, was notified of the allegations made by

the Respondents.⁸ (Testimony of J. Donnelly, Tr. 179:20-23; 183:8-10; 427:6-9).

176. Ms. Donnelly called [REDACTED] because [REDACTED] asked to review the video footage preserved by the District. (Testimony of J. Donnelly, Tr. 427:10-19).⁹ [REDACTED] initially requested to view four full days of video footage. (Testimony of J. Donnelly, Tr. 428:11-16).

177. After this request, the family decided not to let [REDACTED] return to school until they were permitted to watch the unredacted videos. (Testimony of [REDACTED], Tr. 122:22-123:23).

178. The video footage was reviewed either in whole or in part by the following individuals: Ms. [REDACTED]; Ms. Donnelly, Executive Director of the Special Education Program for the District; Corey Goble, the District's Chief Investigator, who serves as a liaison between the District and local law enforcement; Edwin Aaron, Executive Director of Personnel; Andrew De Gannes, assistant to Edwin Aaron; and Lieutenant Tania Clausen from the Crimes Against Children Unit of the Bibb County Sheriff's Office. (Testimony of E. Aaron, Tr. 623:12-21; 626:6-13; 627:4-11; Testimony of T. Clausen, Tr. 654:1-10; Testimony of [REDACTED], Tr. 589:22-590:9; Testimony of J. Donnelly, Tr. 430:1- 11).

179. Ms. [REDACTED] Ms. Donnelly, and Mr. De Gannes are all MindSet-trained. (Testimony of E. Aaron, Tr. 647:14-21). MindSet is a de-escalation behavior training. (Testimony of J. Donnelly, Tr. 412:10-11).

180. On January 27, 2022, the District's Assistant Superintendent of Student Affairs, Mr. Jamie Cassady, sent a standard letter to the family. (J-24:17). This letter is sent to every

⁸ At the hearing, Ms. Donnelly was qualified as an expert in the field of special education and the placement of special education students. (Testimony of J. Donnelly, Tr. 413:18-24).

⁹ On January 24, 2022, [REDACTED] emailed Ms. [REDACTED] and indicated a desire to see the video footage preserved by the District. (J-24:5).

family when an investigation is opened regarding an allegation of an employee causing any type of distress or harm to a student and offers the family counseling resources. (Testimony of E. Aaron, Tr. 627:22-25; J-24:17).

181. The letter is not intended as an indication or admission of liability on behalf of the District. It is merely a form letter sent following any allegation of harm to a student. (Testimony of E. Aaron, Tr. 628:5-8; J-24:17).

c. The Bibb County Sheriff's Office's Investigation

182. Mr. Corey Goble, the District's Chief Investigator, contacted Lieutenant Tania Clausen, who is assigned to the Crimes Against Children Unit for the Bibb County Sheriff's Office ("BCSO"), regarding the complaint of abuse made by [REDACTED] (Testimony of E. Aaron, Tr. 628:15-18; Testimony of T. Clausen, Tr. 654:15-25).

183. [REDACTED] also contacted Lieutenant Clausen and provided her with specific dates of concern, and in response Lieutenant Clausen viewed the video footage from the dates and times specified by [REDACTED] (Testimony of T. Clausen, Tr. 655:14-656:4; Testimony of [REDACTED], Tr. 130:7- 21). Lieutenant Clausen testified that from her review of the videos, she saw no reasonable cause to believe that abuse occurred. (Testimony of T. Clausen, Tr. 656:5-12.)

184. The District attempted to schedule the interviews of [REDACTED] parents for February 8, 2022, but the family informed the District on the day of the meeting that their counsel would be in attendance. (Testimony of E. Aaron, Tr. 628:21-25). As a result, the District had to reschedule the meeting so it could have its counsel present. (Testimony of E. Aaron, Tr. 628:25-629:5).

185. The District met with the family regarding the allegations on February 14, 2022. (Testimony of E. Aaron, Tr. 629:7-11; Testimony of [REDACTED], Tr. 129:10-14). Present at the

meeting were [REDACTED], [REDACTED], Mr. Goble, Lieutenant Clausen, Ed Aaron, Ms. [REDACTED], and counsel for both parties. (Testimony of [REDACTED], Tr. 129:15-21).

186. At the meeting, [REDACTED] indicated she viewed Lieutenant Clausen as a capable investigator and that she would defer to Lieutenant Clausen's findings. (Testimony of E. Aaron, Tr. 629:21- 24; Testimony of T. Clausen, Tr. 658:23-659:1).

187. Instead, upon Lieutenant Clausen's finding no evidence of any wrongdoing on the part of either teacher, [REDACTED] refused to accept the findings. (Testimony of E. Aaron, Tr. 630:3-7; Testimony of T. Clausen, Tr. 659:1-9; Testimony of [REDACTED], Tr. 131:24-132:2).

188. Mr. Goble also reported at the meeting that he did not witness any wrongdoing on the part of the employees in his viewing of the footage. (Testimony of E. Aaron, Tr. 630:8-11). [REDACTED] did not accept these findings either and indicated she would only be satisfied if she was able to review the footage herself. (Testimony of E. Aaron, Tr. 630:12-21).

189. When the District attempted to interview [REDACTED] at the February 14, 2022 meeting, she indicated she had logs at home and requested she be permitted to respond to the District's questions in writing after consulting her logs. (Testimony of E. Aaron, Tr. 631:9-13). [REDACTED] later provided the District with those logs, but she never answered the District's questions. (Testimony of E. Aaron, Tr. 631:14-17; J-24:30).

d. Findings of the District and the Bibb County Sheriff's Office

190. After conducting an extensive investigation, including a review of all relevant video footage, the District found no evidence to support the allegations of abuse. (Testimony of [REDACTED], Tr. 522:10-14; Testimony of [REDACTED], Tr. 556:16-20; Testimony of [REDACTED], Tr. 593:9-12; 593:23-24; Testimony of J. Donnelly, Tr. 431:16-19; J-23; Testimony of E. Aaron, Tr. 635:9-16).

191. The District's finding was consistent with Lieutenant Clausen's finding that there was no evidence of abuse. (Testimony of T. Clausen, Tr. 656:9-12, 665:20.)

192. Respondent presented no evidence at the hearing to support the allegations of abuse. Based upon the evidence presented in this hearing, and the Court finds that no abuse occurred.

193. Administrators, teachers, and paraprofessionals are all mandatory reporters and have a duty to report abuse when they have a reasonable cause to believe that it has occurred. Mere allegations do not require a report to be made. (Testimony of J. Donnelly, Tr. 487:21-488:14; Testimony of [REDACTED], Tr. 522:17-523:8; Testimony of [REDACTED], Tr. 594:3-17).

194. The evidence collected and reviewed during the investigation did not warrant putting Ms. [REDACTED] or Ms. [REDACTED] on administrative leave. (Testimony of E. Aaron, Tr. 625:24-626:5; Testimony of [REDACTED], Tr. 556:24-557:1; Testimony of [REDACTED], Tr. 590:22-591:3).

195. On February 22, 2022, [REDACTED] called the Georgia State Patrol ("GSP") School Safety Hotline to report abuse by the staff at [REDACTED]. (Testimony of E. Aaron, Tr. 632:1-10; Testimony of [REDACTED] Tr. 134:1-20; J-65).

196. The email received by the District with the report stated as follows:

The Georgia State Patrol School Safety Hotline (Oper. Blinking 404-624-7772) called in to the Campus Police Dispatch to inform of a report. [REDACTED] (478-731-9596) called to report being [REDACTED], being [REDACTED], and yelled at by the lead teacher [REDACTED]. He also reported [REDACTED] as being present during these incidents. The incidents occurred on 1/13, 1/14, and 1/21 of this year.

(Testimony of E. Aaron, Tr. 632:6-15; J-65:2).

197. The allegations made by [REDACTED] in this report differed from those originally made by

█, as █ had not made allegations of █ being snatched off the potty, made to clean up his urine, or of spanking before her call to GSP. (Testimony of E. Aaron, Tr. 632:24-633:4).

198. Further, the original allegations were made against █ paraprofessional, Ms. █, but in this report on February 22, 2022, █ alleged Ms. █ was responsible for the misconduct. (Testimony of E. Aaron, Tr. 633:5-10).

199. The allegations by █ changed after the District informed her that Ms. █, whom █ originally accused, was absent from work on January 14, 2022, which was the date █ alleged misconduct occurred. (Testimony of E. Aaron, Tr. 633:5-17; Testimony of █, Tr. 550:17-19).

200. Following the February 14, 2022 meeting with the family, the District began reaching out to the family regarding a meeting date to discuss implementing interim services. (Testimony of J. Donnelly, Tr. 433:2-11).

201. Through counsel, Respondent asked to prioritize a meeting to view the redacted video footage instead of an IEP amendment meeting. Respondent's counsel indicated they were free April 12, 19, or 26 and that the parties would "schedul[e] some dates for IEP meeting afterwards." (Petitioner's Second Status Update, Exhibit K:2).

202. It was further acknowledged at the hearing that Respondent reviewed redacted portions of the video footage relevant to the allegations. Respondent was also provided with a redacted version of excerpts from the classroom video footage. (Transcript 183:2-18; R-8; August 8, 2022 Joint Pre-Trial Hearing, p. 4).

H. February 28, 2022 IEP Meeting

203. An IEP amendment meeting was held on February 28, 2022, to discuss interim services

for [REDACTED] (Testimony of J. Donnelly, Tr. 433:25-434:2; Testimony of [REDACTED], Tr. 594:21- 595:4; Petitioner’s Second Status Update, Exhibit B, July 5, 2022).

204. Prior to the February 28, 2022 meeting, the District proposed providing interim services to [REDACTED] at [REDACTED]. (Testimony of J. Donnelly, Tr. 433:12-24).

205. At the meeting, Respondent chose not to have [REDACTED] return to [REDACTED] (Testimony of [REDACTED], Tr. 595:5-7).

206. The previously offered options were denied because [REDACTED] does not allow outside entities to come in, and [REDACTED] chose not to have [REDACTED] attend Head Start. (Testimony of J. Donnelly, Tr. 434:8-12).

207. During the IEP Amendment meeting, the District offered two hours of services at a neutral location such as a library, the central office, a restaurant, or a playground. (Testimony of [REDACTED] Tr. 595:8-12).

208. After the IEP amendment meeting and once a provider was secured, [REDACTED] notified the District that she was not interested at that time in [REDACTED] participating in the services. (Testimony of J. Donnelly, Tr. 434:22-435:15).

209. On May 12, 2022, the District offered [REDACTED] a spot at [REDACTED]. (Testimony of J. Donnelly, Tr. 436:2-9; Petitioner’s Second Status Update, Exhibit C, July 5, 2022).

210. On May 20, 2022, Respondent declined the spot at [REDACTED]. (Testimony of J. Donnelly, Tr. 436:10-12; Petitioner’s Second Status Update, Exhibit D, July 5, 2022). The District continued to hold a spot for [REDACTED] at [REDACTED] despite Respondent’s denial. (Testimony of J. Donnelly, Tr. 436:13-15).

211. On May 24, 2022, Respondent sent the District a request for an independent forensic evaluation. Although Respondent cited 34 C.F.R. § 300.502(b)(4) regarding a request for an independent educational evaluation (IEE), the request states, “The following specific independent evaluations are requested: FORENSIC EVALUATION.” (Due Process Complaint, June 13, 2022, Exhibit A).
212. On May 26, 2022, Counsel for Respondent confirmed through e-mail correspondence that the family was requesting a “forensic evaluation,” not an education- based psychological evaluation. (Due Process Complaint, June 13, 2022, Exhibit B).
213. On June 3, 2022, the District denied the request for a “forensic evaluation.” (Due Process Complaint, June 13, 2022 p. 4). The District provided the family with formal Prior Written Notice regarding the denial of the request for a forensic evaluation. (Due Process Complaint, June 13, 2022, Exhibit C).

I. Facilitated IEP Meeting and Offer of Special Education Services for the 2022-2023 School Year

214. A facilitated IEP meeting was held on August 1 and August 2, 2022. (Pre-Hearing Filing, August 8, 2022, p. 10; Testimony of J. Donnelly, Tr. 437:18-22).
215. ██████ parents, their attorney, and their Special Education Advocate, ██████ ██████, were in attendance at the facilitated IEP meeting. (Testimony of ██████, Tr. 160:24-161:2; J-63, August 1, 2022, p. 2).
216. On August 1, 2022, the parties performed a reevaluation data review, at which time the IEP team considered all data from both the District’s evaluation and from private evaluations, including that of Dr. ██████.¹⁰ (Testimony of B. Widner, Tr. 739:19-740:12;

¹⁰ The team considered the following during their reevaluation data review: Pediatric Speech Therapy Evaluation (conducted on July 21, 2021) (J-9); Pediatric Occupational Therapy Initial Evaluation and Plan of Care (conducted on July 21, 2021) (J-10); Developmental Evaluation (conducted on October 14, 2021 and November 10, 2021) (J-11);

Testimony of J. Donnelly, Tr. 438:13-15; 438:24-439:2; 440:11-14; J-18).

217. [REDACTED] informed the team that [REDACTED] was recently diagnosed with [REDACTED], [REDACTED] and [REDACTED] by Dr. [REDACTED]. (J-63, August 1, 2022, p. 51:20; Testimony of J. Donnelly, Tr. 451:13-452:8).
218. Respondent provided the District with no medical records or other documentation to support these alleged diagnoses. (Testimony of J. Donnelly, Tr. 452:20-23).¹¹
219. A Progress Note dated April 27, 2022, signed by [REDACTED] from [REDACTED], indicates [REDACTED] underwent a private speech/language evaluation after undergoing private speech therapy since his initial evaluation on July 21, 2021. (J-14).
220. During the private speech/language evaluation, the formal standardized testing showed that [REDACTED] receptive/expressive/total language skills and articulation skills were within normal limits. (J-14). As a result, [REDACTED] was formally discharged from speech therapy as long as a caregiver did not have concerns or see signs of regression. (J-14; Testimony of [REDACTED], Tr. 333:5-9).
221. The IEP team agreed that speech services were not needed at this time based on the private evaluation provided by [REDACTED] parents. (Testimony of J. Donnelly, Tr. 456:23-457:1).
222. At the Facilitated IEP meeting, the District agreed to conduct a complete and updated evaluation of [REDACTED] including a psycho-educational evaluation, a speechlanguage evaluation,

Speech and Language Pathology Initial Feeding Evaluation (conducted on May 10, 2022) (J-12); Positive Behavior Support Corporation Behavior Plan (conducted on February 9, 2022- March 2, 2022) (J-13); Speech Language Pathology Re-evaluation (conducted on April 27, 2022) (J-14); Pediatric Physical Therapy Plan of Care (conducted on May 25, 2022) (J-15). These reports were not provided to the District until July 25, 2022. (Testimony of J. Donnelly, Tr. 441:7- 450:24).

¹¹ Respondent agreed to provide these records by Friday, August 5, 2022. However, the District has not received the records. (Testimony of J. Donnelly, Tr. 452:24-453:6).

an occupational therapy evaluation, a physical therapy evaluation, and a functional behavior analysis. (Testimony of J. Donnelly, Tr. 453:9-22; Testimony of B. Widner, Tr. 740:13-23).¹²

223. The previous goals were replaced with two social-emotional goals. (Testimony of J. Donnelly, Tr. 458:2-3; J-18:10).

224. Instead of the goals focusing on two-step directions, turn-taking, and language, the IEP team focused [REDACTED] goals toward attention-based issues. (Testimony of J. Donnelly, Tr. 458:3-8).

225. There was a consensus among the team, including [REDACTED], that these were the appropriate goals for [REDACTED] (Testimony of J. Donnelly, Tr. 458:23-459:3).

226. Under the November 17, 2021 IEP, [REDACTED] was receiving [REDACTED] days of service in a small group setting in a [REDACTED]-old classroom. (Testimony of J. Donnelly, Tr. 461:13-15; J-17:16). Under the new IEP, [REDACTED] was to receive co-teaching services and supportive instruction. The co-teaching services would be five one-hour sessions weekly in a general education classroom with a certified special education teacher, and the supportive instruction would be five one-hour-and-30-minute sessions weekly with a paraprofessional. (Testimony of J. Donnelly, Tr. 461:16-22).

227. The parties agreed to complete the IEP without a facilitator on August 2, 2022, as the parties were able to work amicably on the first day of the meeting. (Testimony of J. Donnelly, Tr. 455:19-456:6).

¹² On September 7, 2022, an Order Staying Comprehensive Evaluations Scheduled to be Performed by the Bibb County School District was entered. Under this Order, the comprehensive evaluations of [REDACTED] agreed to at the August 1, 2022 and August 2, 2022 Facilitated IEP are stayed until the earlier of such time as Respondents re-enroll [REDACTED] as a student in the Bibb County School District or as otherwise ordered by this Court.

228. All parties were agreeable, engaged, and collaborating in a positive manner during the two-day meeting. (Testimony of B. Widner, Tr. 741:10-18; Testimony of [REDACTED], Tr. 688:15- 16).

229. Ms. [REDACTED] agreed with the proposed plan of action developed by the IEP team at the August 1, 2022 and August 2, 2022 Facilitated IEP meeting, stating to [REDACTED]:

But in the meantime, regarding this placement decision, I know you asked for our input so I will say I think it's in line with what you requested. I think it is – or wanting for your child. I think it is appropriate based on the information we have now and knowing the growth he's recently made.... But I absolutely think it's appropriate and would be on board with that....

(J-63, August 2, 2022, p. 74:14-19; 75:1-4).

230. Further, Ms. [REDACTED] stated, “So I think ideally we tentatively start with him hopefully anticipating him to stay the full day, if you're comfortable with that or even if we want to do reduced for the first couple of days, but, you know, starting after lunch or something like that.” (Testimony of [REDACTED], Tr. 166:13-22; J-63, August 2, 2022, p. 83:9-13).

231. Ms. [REDACTED] also stated in the Facilitated IEP meeting that “the team is working collaboratively, you know, in my opinion, for the best interest of the child. You know nobody is being unreasonable.” (Testimony of [REDACTED], Tr. 168:5-7; 168:11; J-63, August 2, 2022, p. 95:10-12).

232. [REDACTED] stated toward the end of the meeting on August 2, 2022 that “this has gone abundantly better than what we had anticipated.” (Testimony of [REDACTED], Tr. 169:13-170:5; J-63, August 2, 2022, p. 101:9-10).

233. At the end of the meeting, a consensus was reached that if [REDACTED] were to attend [REDACTED], he would be placed in a regular education [REDACTED] classroom and would receive special education supports for two and a half hours daily. (Testimony of [REDACTED], Tr. 688:21-24;

Testimony of J. Donnelly, Tr. 466:7-10).

234. The team discussed various ways to help [REDACTED] transition into his classroom at [REDACTED], including allowing him to come after school one day or starting with shortened days. (Testimony of J. Donnelly, Tr. 467:1-3; 467:13-20; Testimony of [REDACTED], Tr. 695:9-17).
235. The parties also agreed that a number of the issues before the Court had been resolved. (Petitioner's Third Status Update, August 3, 2022).
236. Ms. [REDACTED] would have been [REDACTED] [REDACTED] general education teacher at [REDACTED] [REDACTED]. (Testimony of [REDACTED], Tr. 688:8-10).
237. Ms. [REDACTED] has experience with special education students, students with autism, and students with ADHD being in her classroom. (Testimony of [REDACTED], Tr. 686:23-687:6).
238. Ms. [REDACTED] attended the Facilitated IEP meeting held on August 1, 2022 and August 2, 2022. (Testimony of [REDACTED], Tr. 688:4-7).
239. In anticipation of [REDACTED] being enrolled at [REDACTED], Ms. [REDACTED] determined when the special education teacher for [REDACTED] would be able to visit her classroom to work with [REDACTED] labeled items with [REDACTED] name, identified a spot in the classroom for [REDACTED] to sit, and prepared a cubby for his belongings. (Testimony of [REDACTED], Tr. 689:6-22).
240. Ms. [REDACTED] also reviewed [REDACTED] IEP in preparation for his arrival and identified ways she could implement the goals, accommodations, and supports that were set out in the IEP. (Testimony of [REDACTED], Tr. 689:23-691:6; 691:16-693:3).
241. A special education co-teacher would have also been in the classroom alongside Ms. [REDACTED] to help provide services to [REDACTED] (Testimony of [REDACTED], Tr. 693:4-9).
242. The co-teacher would have come into the classroom and worked in a small group setting with several children in the classroom, so as not to single [REDACTED] out from the other

students. (Testimony of [REDACTED], Tr. 693:19-694:2; Testimony of J. Donnelly, Tr. 461:23-462:4).

243. Additionally, a paraprofessional was assigned to be in Ms. [REDACTED]'s classroom all day. (Testimony of [REDACTED], Tr. 694:24-695:1).

244. Ms. [REDACTED] communicates with parents through the Remind App and also requests that parents provide her with their phone numbers in case the Remind App is not working. (Testimony of [REDACTED], Tr. 687:16-688:3; 695:18-24).

245. At no point during the Facilitated IEP Meeting did the Respondent put the District on notice that [REDACTED] may be attending a private Christian school during the 2022-2023 school year. (See J-18).

J. The Family's Allegations Regarding PTSD

246. Respondents, without submitting any medical evidence, indicated at the August 2022 Facilitated IEP meeting that [REDACTED] was diagnosed with [REDACTED] ([REDACTED]) after the alleged January 2022 incident. (Testimony of J. Donnelly, Tr. 452:8; Testimony of [REDACTED], Tr. 39:25-40:2; 150:4-5; J-63, August 1, 2022, p. 51:20-22).

247. No medical evidence was presented to show that [REDACTED] has ever been diagnosed with [REDACTED].

248. [REDACTED] manifests in [REDACTED] children through them acting out, irritability, disturbances in sleep, and being easily startled. (Testimony of R. Montgomery, Tr. 347:12-24).

249. Respondent has not produced evidence that [REDACTED] manifested increased acting out, irritability, disturbances in sleep, or being easily startled after the dates the alleged abuse occurred.

250. However, [REDACTED] showed progress in eliminating behaviors reported by [REDACTED] of [REDACTED], [REDACTED] [REDACTED], and [REDACTED] from March 10, 2022 to May 5, 2022. (Testimony of R. Montgomery, Tr. 349:25-352:2; 352:23-355:3; J-67).

K. Respondents' Decision to Enroll [REDACTED] in a [REDACTED] School

251. Respondent enrolled [REDACTED] at [REDACTED] School (hereinafter "[REDACTED]"), a [REDACTED] school in Macon, Georgia. (Testimony of [REDACTED], Tr. 137:7-10).

252. In a progress note dated May 5, 2022, by Dr. [REDACTED], it is noted that [REDACTED] was on a waitlist for a [REDACTED] school. (Testimony of R. Montgomery, Tr. 355:7-9; J-67:3).

253. Prior to placing [REDACTED] at [REDACTED], [REDACTED] tested at three other schools in July 2022. (Testimony of [REDACTED], Tr. 138:20-139:2).

254. [REDACTED] first tested at [REDACTED] in February 2022. (Testimony of [REDACTED], 142:17-22; J-66). His chronological age at the time was [REDACTED] months. (Testimony of R. Montgomery, Tr. 358:16-17; J-66).

255. During the first [REDACTED] evaluation, it was reported that [REDACTED] had difficulty with eye contact, focus, staying on task, remaining in his chair, listening to the interviewer, following instructions, and engaging in conversation. This is consistent with the previous evaluations conducted. (Testimony of R. Montgomery, Tr. 360:4-15; J-66:2).

256. [REDACTED] did not meet the placement benchmarks needed to attend [REDACTED] based on this first assessment. (Testimony of [REDACTED], Tr. 143:25-144:7).

257. [REDACTED] was tested again by [REDACTED] at the chronological age of [REDACTED] months. (Testimony of [REDACTED], Tr. 145:17-146:3; J-66:3).

258. [REDACTED] showed progress since the first evaluation by [REDACTED] in February 2022. Testimony of R. Montgomery, Tr. 361:17-362:2; J-66:3-4).

259. In the five-month span between the two evaluations, [REDACTED] showed improvement by almost a year or more. (Testimony of R. Montgomery, Tr. 361:21-362:2; 364:2-4).
260. This caliber of improvement over such a short period of time is atypical for a child who has been diagnosed with [REDACTED]. (Testimony of R. Montgomery, Tr. 363:11-16).
261. [REDACTED] began 3K at [REDACTED] on August 17, 2022, and attends 5 days a week for half a day each day. (Testimony of [REDACTED], Tr. 138:2-4; 142:1-8).
262. [REDACTED] does not implement IEPs on its campus, and it does not have an occupational therapist, physical therapist, psychologist, or a behavior specialist on staff. (Testimony of [REDACTED], 148:7-17; Testimony of J. Donnelly, Tr. 473:23-474:10).
263. Respondent presented no evidence at the hearing that it provided the District with notice of Respondent's intent to enroll [REDACTED] in a private Christian school.
264. Further, [REDACTED] does not have access to special education services at [REDACTED] (Testimony of J. Donnelly, Tr. 473:20-22).
265. Because [REDACTED] is a [REDACTED] school, the District is only required to provide equitable services under proportionate share. (Testimony of J. Donnelly, Tr. 468:14-17).
266. Equitable services are not an offer of a FAPE but do provide access to some level of service until the proportionate share funds are expended. (Testimony of J. Donnelly, Tr. 468:20-23).
267. The services currently available to private school students are speech services and virtual one-on-one tutoring during the day. (Testimony of J. Donnelly, Tr. 469:16-20).
268. Respondent provided no evidence of the cost of tuition at [REDACTED].

L. Respondents' Identification of Remaining Issues

269. On August 2, 2022, counsel for Respondent wrote to the District’s counsel, indicating the remaining issues for the Due Process Hearing were the following: “Failure to provide a forensic evaluation (disagree with [REDACTED]); Failure to implement recommendations made by Dr. [REDACTED] that resulted in a failure to provide FAPE; and Failure to provide video footage/educational records in violation of FERPA [The Family Educational Rights and Privacy Act] & GORA [Georgia Open Records Act].” (Petitioner’s Third Status Update, August 3, 2022; Joint Pre-Hearing Filing, August 8, 2022).

270. On August 25, 2022, Respondent filed a Motion to Withdraw Request for Forensic Evaluation. Petitioners submitted a motion for summary judgment on this issue prior to Respondent’s motion to withdraw. In response, prior to the first witness being sworn in, the court granted the Petitioner’s Motion for Summary Determination on the issue of the forensic evaluation. (Tr. 15:17-21).

III. CONCLUSIONS OF LAW

1. Respondents, as the party seeking relief, bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs. 160-4-7-.12(3)(n). The standard of proof is a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

A. FAPE During the 2021-2022 School Year

2. The IDEA defines special education to mean “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including: (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.” 34 C.F.R. § 300.39(a)(1); 20 U.S.C. § 1401(29).

3. The IDEA defines a “free appropriate public education” as special education and related services that:

(1) Are provided at public expense, under public supervision and direction,

and without charge;

- (2) Meet the standards of the state educational agency, including the requirements of this part;
- (3) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
- (4) Are provided in conformity with an individualized education program ["IEP"] that meets the requirements of 34 CFR § 300.320 through 34 CFR § 300.324.

4. A district "must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Andrew F. ex rel. Joseph F. v. Douglas Cty. School Dist. RE-1, 580 U.S. 386, 399 (2017). "The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials." Id. at 387. See also Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley, 458 U.S. 176 (1982).
5. Based on the preponderance of the evidence in the record of this case, the Court concludes that the November 17, 2021 IEP provided [REDACTED] with a FAPE and was reasonably calculated to enable [REDACTED] to make progress appropriate in light of his circumstances. Respondents failed to meet their burden to prove that BCSD failed to provide [REDACTED] with a FAPE in the 10 days that [REDACTED] attended [REDACTED].

B. FAPE Offer for the 2022-2023 School Year

6. Similarly, the August 1, 2022 IEP developed through the Facilitated IEP process would have provided [REDACTED] with a FAPE and was reasonably calculated to enable [REDACTED] to make progress appropriate in light of his circumstances for the 2022-2023 school year. Respondents failed to meet their burden to prove that BCSD did not offer [REDACTED] with a FAPE for the 2022-2023 school year.

C. The September 29, 2021 Evaluation

7. Each District “must conduct a full and individual initial evaluation” before providing special education and related services to a child with a disability. 34 C.F.R. § 300.301(a).
8. An initial evaluation must consist of procedures to: (i) determine if the child is a child with a disability under § 300.8; and (ii) to determine the educational needs of the child. 34 C.F.R. § 300.301(c)(2).
9. 34 C.F.R. § 300.304(b) establishes the following procedures for conducting the evaluation:
 - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - (i) Whether the child is a child with a disability under § 300.8; and
 - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
10. 34 C.F.R. § 300.304(c) establishes other evaluation procedures and requires each public agency to ensure the following:
 1. Assessments and other evaluation materials used to assess a child under this part—
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

- (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
 - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
 - (iv) Are administered by trained and knowledgeable personnel; and
 - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 3. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
 4. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
 5. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
 6. In evaluating each child with a disability under §300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
 7. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

11. As required by 34 C.F.R. § 300.301, a comprehensive initial evaluation of [REDACTED] was conducted

by the District on September 29, 2021.

12. In compliance with 34 C.F.R. § 300.304(b) and (c), [REDACTED] initial evaluation consisted of the following tests and/or procedures:

- a) Parent Interview
- b) Review of Background Information provided by Respondent on 8/16/21;
- c) Review of Records;
- d) Student Observation;
- e) Psychoeducational Evaluation
 - 1. Developmental Profile, Fourth Edition (DP-4)
 - 2. Developmental Assessment of Young Children; Second Edition (DAYC-2)
 - 3. Bracken Basic Concept Scale, Third Edition: Receptive (BBCS:3-R); Vineland Adaptive Behavior Scales—Third Edition (Vineland-3)
 - 4. Behavior Assessment System for Children, Third Edition (BASC-3)
- f) Speech Language Evaluation
 - 1. Informal Language Sample and Observation
 - 2. Preschool Language Scale-5
 - 3. Developmental Assessment for Young Children, Second Edition
 - 4. Developmental Profile, Fourth Edition
- g) Occupational Therapy Evaluation
 - 1. Review of Private Occupational Therapy Records
 - 2. Fine Motor Assessment
 - 3. Parent Interview
- h) Physical Therapy Evaluation
 - 1. Functional Gross Motor Checklist for School
 - 2. Physical Assessment
 - 3. Parent Interview

13. The District performed a methodologically solid, comprehensive evaluation of [REDACTED] as required by the IDEA, and Respondents have produced no evidence to the contrary.

14. Respondents failed to introduce any evidence to support Respondents' allegation that the

initial evaluation conducted by the District was inappropriate or otherwise failed to meet the requirements of C.F.R. § 300.301 or C.F.R. § 300.304.

D. The November 2021 Eligibility Determination

15. Pursuant to C.F.R. § 300.306(a), a group of qualified professionals and the parent of the child determines of whether the child is a child with a disability in accordance with C.F.R. § 300.306(c).
16. C.F.R. § 300.306(c) establishes the guidelines for determination of eligibility and states in relevant part:
 - (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
 - (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with § 300.320 through 300.324.
17. Pursuant to 34 C.F.R. § 300.8(b)(1), a child ages three to nine with a disability includes a child “who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.”
18. On November 17, 2021, an initial eligibility meeting was held to determine if [REDACTED] was eligible

for special education services as required by 34 C.F.R. § 300.306(a). [REDACTED] was deemed eligible under the category of Significant Developmental Delay (“SDD”). In Georgia, SDD is defined as follows:

The term significant developmental delay refers to a delay in a child’s development in adaptive behavior, cognition, communication, motor development or emotional development to the extent that, if not provided with special intervention, the delay may adversely affect a child’s educational performance in age-appropriate activities. The term does not apply to children who are experiencing a slight or temporary lag in one or more areas of development, or a delay which is primarily due to environmental, cultural, or economic disadvantage or lack of experience in age appropriate activities. The SDD eligibility may be used for children from ages three through nine (the end of the school year in which the child turns nine).

Ga. Comp. R. & Regs. 160-4-7-.05, Appendix H.

19. Respondents failed to provide any evidence that SDD was an inappropriate eligibility category. Based on the evidence presented at the hearing, [REDACTED] initial evaluation and eligibility under the category of SDD is appropriate. Pursuant to 34 C.F.R. § 300.306(c)(2), after it was determined that [REDACTED] is a child with a disability and needed special education and related services, an IEP that provided [REDACTED] with a FAPE was developed.

D. Proper Consideration of Dr. [REDACTED]’s Report

20. 34 C.F.R. § 300.502(c)(1) provides that, if a parent shares with a public agency an evaluation obtained at private expense, the results of that evaluation “[m]ust be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.” “Notably, there is no provision in the regulations requiring that a school board accept the recommendations of an independent evaluation or that the evaluation be accorded any particular weight.” T.S. v. Ridgefield Bd. of Educ., 808 F. Supp. 926, 931 (D. Conn. 1992), *report adopted Jan. 21, 1993, aff’d sub nom. T.S. v. Bd. of Educ. of Town of Ridgefield*, 10

F. 3d 87 (2d Cir. 1993). Where, as here, “no genuine issue of material fact exists as to whether or not the [IEP team] considered the independent evaluation,” judgment is appropriate. *Id.* at 931.

21. The District considered the evaluation by Dr. [REDACTED] upon receipt in compliance with 34 C.F.R § 300.502(c)(2). Respondents has produced no evidence or argument to the contrary.

E. Prior Written Notice as It Pertains to Dr. [REDACTED]’s Report

22. Pursuant to 34 C.F.R. § 300.503, a District must provide parents with prior written notice whenever it proposes or refuses “to initiate or change the identification, evaluation, or educational placement or provision of FAPE to the child.” The IDEA does not contemplate providing prior written notice under any other circumstances.

23. The District did not change or refuse to change the identification, evaluation or educational placement or provision of a FAPE to [REDACTED] following its receipt of Dr. [REDACTED]’ report, and prior written notice was not required.

F. Family Educational Rights and Privacy Act Claim

24. Pursuant to 34 CFR § 300.511(d), a party may not raise issues at the hearing that were not raised in the Complaint, or in this case the Counter Complaint, unless the other party agrees otherwise. Accordingly, the June 23, 2022 Notice of Filing and Order issued by the Court instructed the parties regarding various hearing procedures, including the fact that the parties “may not raise issues at the hearing that were not raised in the Complaint, unless the [opposing party] agree[s] otherwise. 34 CFR § 300.511(d).” Here, Respondents did not allege a violation of the Family Educational Rights and Privacy Act (“FERPA”) in the Counter Complaint. Respondents have not requested to raise matters not raised in the Counter Complaint, nor has Petitioner agreed to allow them to be raised. Thus, Respondent has waived any claims related

to FERPA.

25. Even if Respondents had not waived any FERPA claims by failing to raise them in the Counter Complaint, those claims would be subject to dismissal because FERPA does not confer a private right of action. “FERPA expressly authorizes the Secretary of Education—and only the Secretary—to take ‘appropriate actions’ to enforce its provisions.” Frazier v. Fairhaven Sch. Comm., 276 F.3d 52, 67 (1st Cir. 2002).¹³
26. Based upon the above findings of Fact and Conclusions of Law, Respondent’s FERPA claims are dismissed.

H. Georgia Open Records Act Claim

27. As noted above, pursuant to 34 C.F.R § 300.511(d) and this Court’s order, a party may not raise issues at the hearing that were not raised in the complaint, or in this case the Counter Complaint, unless the other party agrees otherwise. Here, Respondent did not allege a violation of the Georgia Open Records Act (“GORA”) in the Counter Complaint.
28. Even if Respondent had not waived any GORA claims by failing to raise them in the Counter Complaint, those claims would be subject to dismissal because this Court does not have subject matter jurisdiction to grant relief under GORA. In this regard, O.C.G.A. § 50-18-73 provides that “[t]he superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public.”
29. Based upon the above findings of Fact and Conclusions of Law, Respondent’s GORA claims are dismissed.

¹³ Moreover, even if the Respondents had a private right of action for a FERPA claim, such would be outside the jurisdiction of this tribunal. The jurisdiction of the Office of State Administrative Hearings (“OSAH”) is limited to that conferred by the Georgia Administrative Procedures Act or other specific state or federal statutes and rules. See O.C.G.A. §§ 50-13-13, 50-13-40(a).

I. Mandatory Reporter Claims

30. Again, pursuant to 34 C.F.R. § 300.511(d) and this Court’s order, a party may not raise issues at the hearing that were not raised in the complaint, or in this case the Counter Complaint, unless the other party agrees otherwise. Here, Respondent did not allege a violation of the Mandatory Reporter Statute, O.C.G.A § 19-7-5, in the Counter Complaint. Respondent has not requested to raise matters not raised in the Counter Complaint, nor has Petitioner agreed to allow them to be raised. Accordingly, Respondent has waived any claim under the Mandatory Reporter Statute.
31. Even if Respondent had not waived all claims under the Mandatory Reporter Statute by failing to raise them in the Counter Complaint, those claims are subject to dismissal for the independent reason that the Mandatory Reporter Statute does not create a private cause of action. The Mandatory Reporter Statute, O.C.G.A. § 19-7-5, “does not create a private civil cause of action against those professionals who violate the reporting requirement; rather, those who violate the requirement are subject only to criminal liability. Thus, O.C.G.A. § 19-7-5 cannot provide a basis for civil liability ... based on our established case law.” Reece v. Turner, 284 Ga. App. 282, 286-87 (2007).
32. Based upon the above Findings of Fact and Conclusions of Law, Respondent’s claims under the Mandatory Reporter Statute are dismissed.

J. Request for Reimbursement for All Private Services Provided to [REDACTED]

33. Respondent has failed to provide evidence to support the relief requested. “[A party’s] failure to identify any expenses is important because any claim for damages must be supported by evidence which demonstrates the value of the program provided to the student, and the cost of such program.” S.S. by & through A.S. v. Cobb Cnty. Sch. Dist., 2021 WL 3037416, at *2

(N.D. Ga. Jan. 12, 2021) (quotation marks and citations omitted).

34. Respondent offered no evidence of the services they provided to ■■■■, the cost of those services, or the need for those services and therefore did not meet the burden required to secure their requested relief. Respondent's request for "private compensatory services to be funded by the District" in the future and for two years of speech and language therapy fails because no evidence was provided demonstrating the "value" of these services. *Id.* Rather, ■■■■ was released from private speech therapy after his private speech language pathologist determined he no longer needed speech services. Additionally, no evidence was provided to support the request for two years of Applied Behavioral Analysis Therapy. For those reasons, Respondent is not entitled to private services at public expense.

K. Request for Injunction Ordering the District to Develop an Appropriate IEP

35. In Respondent's Counter Complaint, Respondent requests that the Court "Order BCSS to ensure the development and implementation of an appropriate [IEP] for ■■■■ within thirty days of the date of the hearing on this matter." (Counter Complaint at 11). The Court ordered a Facilitated IEP meeting, and that meeting was held on August 1 and 2, 2022. At the August 2022 Facilitated IEP meeting, the family's advocate, Ms. ■■■■ agreed the IEP developed was appropriate and that ■■■■ would need to be observed under the IEP to determine whether further adjustments needed to be made. Respondents failed to identify any problems with the 2022-2023 IEP. In light of the facilitated IEP meeting, Respondent's request for a new IEP is moot.

L. Request for Reimbursement for Tuition at ■■■■ School

36. A district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made

a FAPE available to the child and the parents elected to place the child in a private school or facility. 34 CFR §300.148(a). To obtain reimbursement, Respondents must show that “the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.” 34 C.F.R. § 300.148(c). Challenges to a district’s proposed placement that are based on mere speculation that the placement will not implement the child’s IEP are not sufficient to support a tuition reimbursement award. B.P. and S.H. v. New York City Dep’t of Educ., 634 Fed. Appx. 845, 847- 48 (2d Cir. 2015); M.O. and G.O. v. New York City Dep’t of Educ., 793 F.3d 236, 243-244 (2d Cir. 2015). Further, to obtain reimbursement for a private placement, the IDEA requires that parents provide the district with notice of their intent to place the child in private school. See Ms. M. v. Portland Sch. Comm., 360 F.3d 267, 268 (1st Cir. 2004).

37. Reimbursement can be reduced or denied if: 1) at the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the team that they were rejecting the district’s proposed placement, including stating their concerns and their intent to enroll their child in a private school at public expense; or 2) at least 10 business days prior to the removal of the child from the public school, the parents did not give written notice to the district of the decision to unilaterally place the child in a private program at public expense. 34 CFR § 300.148 (d)(1).
38. “[A] unilateral private placement does not satisfy the IDEA unless it, at a minimum, it provides some element of special education services in which the public-school placement was deficient; for example, specific special-education programs, speech or language therapy courses, or pre-tutoring services.” L.H. v. Hamilton Cnty. Dep’t of Educ., 900 F.3d 779, 791 (6th Cir. 2018) (citation and quotation marks omitted). When parents enroll their child in a

private school because they believe the educational program proposed by the school district does not provide a FAPE, the district may be obligated to reimburse them for the costs of the placement. In order to obtain private placement reimbursement, a court or hearing officer must find that: 1) the public agency had not made a FAPE available to the child in a timely manner prior to that enrollment; and 2) the private placement is appropriate. 34 CFR 300.148(c); see also Florence Cnty. Sch. Dist. Four v. Carter, 20 IDELR 532 (U.S. 1993).

39. Respondents did not provide the District with notice prior to or during the August 2022 Facilitated IEP that they were enrolling [REDACTED] in private school nor did [REDACTED] parents provide notice prior to his placement at [REDACTED]. Therefore, pursuant to 34 C.F.R. § 300.148(d), the Court finds reimbursement is denied. Respondent did not prove the District failed to provide [REDACTED] with a FAPE in accordance with 34 C.F.R. §300.17, and Respondent is not entitled to reimbursement for tuition at [REDACTED]. Petitioner provided a FAPE to [REDACTED] through an appropriate IEP and placement. No evidence was provided by Respondent to the contrary and therefore, Respondent failed to meet his burden.

M. Request for Reimbursement for Tuition at [REDACTED] School

40. “No parentally placed private-school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” 34 CFR § 300.137(a). The IDEA requires that districts allow parentally placed private school students to participate equitably in IDEA programs and that districts spend a proportionate share of funding on parentally placed private school students. 34 CFR § 300.132.
41. “In calculating the proportionate amount of Federal funds to be provided for parentally- placed private school children with disabilities, the LEA, after timely and meaningful consultation

with representatives of private-schools under § 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in [the district’s jurisdiction].” 34 CFR 300.133(b). While [REDACTED] is enrolled in [REDACTED] school, the District is only required to comply with the obligations under the IDEA set forth at 34 CFR § 300.132 through 34 CFR § 300.139.

N. Request for an Injunction Against Retaliatory Conduct and Any Relief Available Under 504 and the ADA

42. Respondents have never alleged, nor provided any evidence, demonstrating the District retaliated against Respondent and therefore Respondents have failed to meet the burden of showing they are entitled to an injunction. Respondents raise no Section 504 or ADA claims, not did Respondent adduce any evidence that would support such claims. Accordingly, Respondent is not entitled to any relief under Section 504 or the ADA. Additionally, The Office of State Administrative Hearings lacks jurisdiction to hear Section 504 or Americans with Disabilities Act claims. See Atlanta Independent School System v. S.F., 2010 U.S. Dist. LEXIS 141552, *21–22 n.4 (N.D. Ga. Feb. 22, 2010) (“There is nothing in the Georgia Administrative Code section applicable to IDEA dispute resolution that suggests that the impartial due process hearing is an appropriate venue for raising non-IDEA claims.”).

O. Request for Attorney’s Fees

43. The IDEA allows a federal district court to grant reasonable attorney’s fees to a prevailing party in a FAPE dispute. 34 C.F.R. § 300.517(a). Respondent is not a prevailing party in this matter pursuant to 34 C.F.R. § 300.517(a). Respondent is not entitled to an award of attorney’s fees.

IV. CONCLUDING OBSERVATIONS

1. IDEA cases are emotional. There are few situations that provoke greater anxiety for parents than the education that their children receive. This case is even more emotional than most

as it turns on the issue of whether [REDACTED] was the subject of abuse.

2. The Court is persuaded that [REDACTED] genuinely believes that [REDACTED] has been subjected to abuse while in the care of the District. This is perhaps understandable given that [REDACTED] is [REDACTED] mother and given [REDACTED] prior training in the area as a [REDACTED]. When viewed objectively in the cold light of day, however, the evidence simply does not support that belief.

3. The Court is also troubled by the fixation of [REDACTED] and counsel for the family on the issue of the video recordings. Huge amounts of time and energy have been devoted to reviewing the video recordings. There is simply nothing on the video recordings, including the video of the alleged event which the undersigned has personally reviewed in its unredacted format, to support the conclusion that [REDACTED] was abused. It is time to let that issue go and move on.


4. Finally, the Court must note that it is displeased and frustrated with the conduct of counsel for [REDACTED] in handling of this matter. The flagrant and repeated disregard of the Court's orders is troubling.

5. The Court applauds [REDACTED] dedication to protecting the interests of [REDACTED]. But the Court must also note that [REDACTED] high emotional investment in this matter has caused her at times to engage in questionable and inappropriate behavior, and to make unwise decisions in the presentation of her case. The Court urges the Family to move on.

V. DECISION

The Family has not shown by a preponderance of the evidence that the District failed to provide [REDACTED] with a free appropriate public education during the period in issue. Nor has the family shown a basis for any of the other claims asserted. Therefore, all claims asserted by [REDACTED] in this matter are **DISMISSED**.

SO ORDERED, this 3rd day of January, 2023.



Charles R. Beaudrot
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.