



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 EDC 08781

<p>█ by and through her parent █ Petitioner,</p> <p>v.</p> <p>Wake County Board of Education Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER was heard before the undersigned Administrative Law Judge Stacey B. Bawtinheimer presiding, on the following dates: March 19–23 and 26, 2018, at the Office of Administrative Hearings in Raleigh, North Carolina.

After considering a trial on the merits held on the above-mentioned dates, arguments from counsel for both parties, all documents in support of or in opposition to the parties’ motions, all documents in the record including the Proposed Decisions, as well as all stipulations, admissions, and exhibits, the Undersigned concludes that the Wake County Public School System Board of Education (“Respondent” or “WCPSS”) did not deny █ a free and appropriate public education.

APPEARANCES

- For Petitioners:** Stacey Gahagan
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- For Respondent:** Stephen G. Rawson
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SUMMARY OF DECISION

█████ is a bright, humorous young woman. Her goal is to attend ██████ University, a goal that seemed unlikely in ██████ prior to her enrollment in ██████ Academy for ██████ (“█████ Academy”), a private therapeutic boarding school. At that time, ██████’s emotional dysfunction, anxiety, autism, social skill deficits, obsessive compulsive disorder, and phobias (e.g., fear of fruit), contributed to her inability to function academically in a regular middle school placement. The question before the Undersigned is, as of May 19, 2017, could ██████ be provided a free and appropriate public education in a public high school setting?

Concerns began before ██████’s eighth grade school year, but for purposes of this case, the end of her ninth-grade year is the relevant time period. Prior to that, and approximately mid-way through ██████’s eighth grade school year, ██████ concerned for her daughter’s mental health and dissatisfied with Wake County Schools’ educational program, enrolled ██████ in a private therapeutic boarding school. She remained there for 16 months. By all accounts, ██████ progressed remarkably well in regards to her social and emotional deficits which, in turn, allowed her to function academically.

In February 2017, Wake County Schools (“WCPSS”) and ██████ began discussion about her reentry into the public school setting. An IEP meeting was initially scheduled for April 27, 2017, then rescheduled to May 19, 2017.

Both during and prior to the development of the May 2017 IEP, the Parties were engaged in litigating another due process petition. That contested case was settled. All claims prior to May 1, 2017 were released by Petitioners, including issues pertaining to the therapeutic private school placement. Even though that first case was resolved, the backlash affected this case. Communications between WCPSS staff and ██████ were stifled. During the drafting of the IEP, ██████ did not allow school staff to communicate directly with the private therapeutic school staff. In retrospect, information obtained about ██████’s academic performance at the private program proved incomplete.

Based on information from ██████ Academy, observations of the private program, and communications with ██████ on May 19, 2017, the IEP Team adopted essentially the same educational plan developed in January 2017 by ██████ Academy. Petitioner ██████ admitted that the private plan was appropriate. The Petitioners’ expert, while noting that the May 2017 IEP could have been more specific, conceded that the IEP broadly “hit the mark.” Since there was no evidence that the goals had been completely mastered, using a similar plan was a reasonable transition to the public school setting.

At the IEP meeting, ██████ objected to the lack of math and reading goals and wanted the accommodation added for a capped class size. Had WCPSS completed the SLD worksheets, ██████ may have understood that simply being diagnosed with the DSM-V criterium for learning disabled in math calculation and reading accuracy was insufficient to obtain specialized instruction. ██████ would have to *need* specialized instruction for the team to develop IEP goals in math and reading. At that time, the IEP team determined that ██████ did not need special education in math and reading,

she only needed academic support. To their credit, WCPSS did offer to conduct math and reading assessments at the beginning of the school year, which █████ rejected.

Despite the IEP's appropriateness, █████ refused to believe that WCPSS could implement the May 2017 IEP as written. Subsequently, █████ rejected the May 2017 IEP and enrolled █████ in another private school.

Understandably, █████ wanted a nurturing environment for her daughter as she transitioned from the intensive therapeutic private placement to the next educational setting. █████ however, disagreed with the IEP and, based on her testimony and actions with respect to the IEP meeting, █████ wanted a school with small class size and compassionate teachers that could help █████ with this transition and insulate █████ from the ridicule of her peers. She basically wanted another safe "bubble" environment as provided by the therapeutic private placement but with more emphasis on academics.

Based upon her disagreement to the proposed IEP, █████ chose to enroll █████ in a second private school, █████ Academy ("█████"). This school was small, had nurturing staff, and was more focused on academics. █████ conducted academic assessments at the beginning of the school year, an option denied to WCPSS. Notably, █████ did not have the wraparound services █████ insisted were so important for █████'s academic achievement, but it was a safe "bubble" for her transition educational placement.

Although Petitioners may have preferred a nurturing, small class size environment, public schools' mandate is to educate students. The IDEA requires an appropriate public education in light of the student's unique circumstances, it does not include provisions for a nurturing environment. This is not to say that public school teachers lack compassion in their instruction to students, it is only to recognize that a "warm and fuzzy" environment is not a statutory requirement or guideline for the Undersigned's consideration.

Despite the above findings, Respondent is not completely exonerated. WCPSS did make some procedural violations in this case, and the IEP could have been more specific. More importantly, WCPSS could have done more to address █████'s fears regarding this significant transition in █████'s education. Although not legally required, a formal transition plan may have helped.

The primary judicable issue is whether █████ needed a cap on the number of students in her general education classes. Petitioners' expert could not opine as to the appropriate class size. Petitioners' independent evaluator refused to answer questions about the class size cap. Although █████ may have ultimately been proven to be justified in her concerns regarding WCPSS' capacity to implement the May 2017 IEP in a public high school, her assumptions were premature. Implementation is not before this Tribunal.

As a parent, █████'s decision concerning the right "fit" for █████'s transition was understandable. However, the Undersigned is bound by the requirements of federal law, State law, and jurisprudence. These requirements do not provide for the "best" fit, they only allow for what is appropriate in light of █████'s unique circumstances to enable her to achieve academically.

Respondent made reasonable and cogent explanations for the actions of the IEP Team. Petitioners bore the burden in this case. Based primarily on their own witnesses, Petitioners did not prove by a preponderance of evidence that [REDACTED] required a class size cap to succeed academically, or that WCPSS denied [REDACTED] a free and appropriate public education. Judgment is rendered for the Respondent on all claims.

WITNESSES

For Petitioners: Petitioner [REDACTED] Mother of [REDACTED]
[REDACTED] Ph.D., Independent Evaluating Psychologist
[REDACTED] Therapist at [REDACTED] Academy for [REDACTED]
[REDACTED] Teacher and Administrator at [REDACTED] Academy
[REDACTED] Ed.D., BCBA, Expert Witness

For Respondent: [REDACTED] Ph.D., WCPSS Psychologist, Expert Witness
[REDACTED] WCPSS Autism Support Program Lead
[REDACTED] WCPSS Occupational Therapist
[REDACTED] former WCPSS Autism Support Program teacher
[REDACTED] Ph.D., Expert Witness

EXHIBITS

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the “Bates stamped” numbers.

Stipulated Exhibits: 1-28 (hereinafter “Stip. Ex. 1,” “Stip. Ex. 2,” etc.).

Petitioners’ Exhibits: 1-10, 13, 15 & 17 (both for historical purposes only), 20, 21, 22 (p. 167-170), 23-25, 27-30, 32, 33, 36, 38, 39, & 43 (hereinafter “Pet. Ex. 1,” “Pet. Ex. 2,” etc.).

Respondent’s Exhibits: 5, 6 (p. 147), 15, 16, 18, 20 (hereinafter “Resp. Ex. 1,” “Resp. Ex. 6, p. 147,” etc.).

Offer of Proof: Petitioners’ Exhibit 16.

The exhibits have been retained as part of the official record of this contested case.

Other Documents

Transcript volumes 1 through 6 were received and have been retained in the official record of this case.

Any documents produced by the parties in discovery, including, but no limited to, IEPs, email correspondence, data sheets, and meeting notes, are self-authenticated. Stip. 91.

All pleadings filed with the Office of Administrative Hearings on the matter associated with Docket No. 17 EDC 08781 are self-authenticated. Stip. 92.

The North Carolina Department of Instruction's *Policies Governing Services for Children with Disabilities* is self-authenticated. Stip. 93.

ISSUES

The parties identified the issues for hearing in the Pre-Trial Order. The Parties also stipulated that *all* claims, including, but not limited to, any reimbursement for the private school placement at ██████ Academy prior to May 1, 2017 had been settled and released. Stip. 8. Based on this Stipulation, this Tribunal lacks subject matter jurisdiction over any subsequent claims prior to May 1, 2017, including any compensatory education claims for math and reading remediation, which may have been raised in the prior contested case.

At the close of Petitioners' case-in-chief, Respondent moved pursuant to Rule 41(b) for dismissal of the case. In a written order following Respondent's motion for dismissal under Rule 41(b), the Undersigned dismissed all issues except those specifically articulated as remaining. The dismissed issues included the following: the need for math and/or reading goals; related services, including direct occupational therapy, family and/or individual counseling, and parent training; the appropriateness of all supplementary aids and services with the exception of the accommodation of a class size cap for general education classes; the provision of extended school year services; conducting a Functional Behavioral Assessment or developing a Behavioral Intervention Plan; failure to fully evaluate; SLD eligibility category determination; parental participation except with respect to placement; and, any procedural claims other than predetermination of placement.

The Undersigned defined the remaining issues for hearing were as follows:

- a. Whether the May 19, 2017 IEP was substantively appropriate for ██████ based on the present levels of academic and functional performance, the functional and academic goals, exclusion of the accommodation of a cap on the number of students in the regular education classes, the service delivery in the IEP, and the exclusion of a transition plan to support ██████'s transition from a private therapeutic boarding school to a public high school;
- b. Whether Respondent violated the procedural requirements of the IDEA by predetermining ██████'s placement in the resource setting; and
- c. If Respondent denied ██████ a free and appropriate public education, whether the unilateral private placement selected by the parent, ██████ Academy, was appropriate, and whether the equities favored private tuition and transportation reimbursement to Petitioners.

BURDEN OF PROOF

Petitioners acknowledged, in the Prehearing Order entered on March 19, 2018 that they have the burden of proof in this contested case. The standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. § 150B-34(a). North Carolina provides that actions of local boards of education are presumed to be correct and “the burden of proof shall be on the complaining party to show the contrary.” N.C. Gen. Stat. § 115C-44(b). The Petitioners, being the complaining party, have the burden of proof to show by a preponderance of evidence that Respondent did not provide [REDACTED] with the opportunity for a free appropriate public education.

FINDINGS OF FACTS

Stipulations of Fact

At the start of the hearing in this matter, the parties agreed to Jurisdictional, Party, and Legal Stipulations and Factual Stipulations in a proposed Pretrial Order, which was approved and filed in the Office of Administrative Hearings on March 19, 2018. Stipulations are referenced as “Stip. 1,” “Stip. 2,” “Stip. 3,” etc. The phrase: “It is stipulated that ...” has been removed from each Stipulation. To the extent that Stipulations are not specifically stated herein, the Stipulations of Fact in the Order on Pre-Trial Conference are incorporated fully herein by reference.

Prior Orders

Unless specifically contradicted herein, this Order incorporates and reaffirms all findings of fact and conclusions of law contained in previous Orders entered in this litigation.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for determining credibility, including, but not limited to, the demeanor of the witnesses, any interests, bias, or prejudice the witnesses may have, the opportunity of the witnesses to see, hear, know, and remember the facts or occurrences about which the witnesses testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with other believable evidence in the case and prior actions, including, but not limited to, verbal statements at IEP meetings, IEP meeting minutes, IEP documents, DEC 5/Prior Written Notices, and all other competent and admissible evidence.

Based upon the stipulations of record and the preponderance of admissible evidence, the Undersigned finds as follows:

Procedural Background

1. On December 29, 2017, [REDACTED] and [REDACTED] filed a Petition (17 EDC 8781) against the Wake County Board of Education (“Respondent,” “Wake County Schools,” or “WCPSS”) alleging violations of the Individuals with Disabilities in Education Improvement Act (“IDEA”).

2. On February 12, 2018, the matter was reassigned to the Honorable Stacey B. Bawtinheimer by Chief Administrative Judge Julian Mann, III.

3. This is the third due process petition filed by the Petitioners against Wake County Schools. The prior petitions are case file numbers 17 EDC 0953 filed February 9, 2017 (“Petition 1”) and 17 EDC 3383 filed May 19, 2017 (“Petition 2”).

4. With respect to any prior substantive and/or procedural violations arising prior to May 1, 2017 with prior contested cases, the Parties stipulated to the settlement and release of all claims preceding May 1, 2017. Stip. 8. The Parties also stipulated that Petitioners were not seeking reimbursement of [REDACTED] Academy in the current case. Stip. 17. Therefore, all claims arising prior to May 1, 2017 had been released by a prior settlement agreement and are outside the jurisdiction of this Tribunal. Stip. 8.

5. On July 13, 2018, the Parties were invited to submit written arguments about the Official Notice of the comprehensive release language found in the Settlement Agreement or the modification of Stipulation 8 with respect to that release. *See* Order for Discretionary Supplemental Written Argument or Modified Stipulation 8. No other provisions of the Settlement Agreement were relevant to this case or inquired about by the Undersigned.

6. The Petitioners objected to this request as improper and, while the Respondent asked for Official Notice of that comprehensive release language, it will not be cited in this matter. However, the Undersigned does interpret the Parties’ release stipulation as a comprehensive release such that any and all claims prior to May 1, 2017 that the Petitioners “knew or should have known about” have been released, including any compensatory education claims for reading and math.

7. The hearing in this matter began on March 19, 2018, and ended on March 26, 2018, encompassing six (6) days of hearing.

WITNESSES

PETITIONERS’ WITNESSES:

Expert Witness

8. Petitioners called one expert witness, [REDACTED] [REDACTED] E.D., BCBA.

Dr. [REDACTED] [REDACTED] was received as an expert in inclusive practices for students with autism spectrum disorder; positive behavior intervention supports for students with disabilities; applied behavior analysis; functional behavior assessments and

behavior intervention plans; co-teaching; IEP development; progress monitoring; multi-tiered system of support for students with disabilities; and evidence-based practices for students with autism spectrum disorder. Tr. vol. 3, p. 454:4-15.

Fact Witnesses

9. Petitioners called four fact witnesses:
 - a. Dr. [REDACTED] who conducted an independent psychological educational evaluation of [REDACTED] in June 2016;
 - b. [REDACTED] [REDACTED] [REDACTED]s therapist at [REDACTED] Academy for [REDACTED] (“[REDACTED] Academy” or “[REDACTED]”
 - c. [REDACTED] [REDACTED] an administrator and [REDACTED]s English teacher at [REDACTED] Academy; and,
 - d. Petitioner [REDACTED] the mother of [REDACTED]

RESPONDENT’S WITNESSES:

Expert Witnesses

10. Respondent called two expert witnesses, [REDACTED] [REDACTED] Ph.D. and [REDACTED] [REDACTED] Ph.D.
 - a. Dr. [REDACTED] [REDACTED] was received as an expert in special education math instruction in kindergarten through twelfth grade, and academic support in math for mainstream special education students in kindergarten through the twelfth grade. Tr. vol. 6, p. 1120:14-19.
 - b. Dr. [REDACTED] [REDACTED] was received as an expert in educational planning for students with autism. Tr. vol. 4, p. 751:5-8. Dr. [REDACTED] also served as a fact witness, based on her involvement in [REDACTED]s educational programming and participation in the May 19 IEP meeting.

¹ Dr. [REDACTED] was referred to as “Dr. [REDACTED] throughout the Parties’ Stipulations of Fact and the Transcripts.

² [REDACTED] Academy for [REDACTED] is referenced as [REDACTED] Academy or [REDACTED] in the educational records and exhibits. For purposes of this decision, it will be referred to as [REDACTED] Academy.

Fact Witnesses

11. Respondent called three additional fact witnesses:
 - a. [REDACTED] [REDACTED] an autism specialist who was involved in the development of [REDACTED]'s educational programming and a participant in the May 19 IEP;
 - b. [REDACTED] [REDACTED] an occupational therapist who participated in the May 19 IEP meeting; and,
 - c. [REDACTED] [REDACTED] a former autism support program teacher at [REDACTED] High School.

CREDIBILITY OF WITNESSES

PETITIONERS' WITNESSES

[REDACTED] [REDACTED] **Ed. D., BCBA**

12. Dr. [REDACTED] is an assistant professor of special education at Winthrop University in South Carolina (Tr. vol. 3, p. 444:17-22) and holds a doctorate in special education, with a focus on inclusion and evidence-based practices for students with Autism Spectrum Disorder and other disabilities. Pet. Ex. 39; Tr. vol. 3, p. 444:11-16. The Undersigned found Dr. [REDACTED] generally very knowledgeable in her areas of expertise. Dr. [REDACTED] also had specific knowledge about [REDACTED] from review of her records, observing [REDACTED] at [REDACTED] Academy, and discussing [REDACTED] with staff at [REDACTED] Academy and [REDACTED] Academy.

13. However, Dr. [REDACTED] credibility in this hearing was diminished by several aspects of her testimony. First, Dr. [REDACTED] repeatedly applied assumptions and perceptions that she had about public schools in general to this specific IEP without any personal knowledge or experience with the high school or IEP team members in question. *See, e.g.*, Tr. vol.3, p. 530:9-12 (testimony that “we don’t have structures like [reduced student-teacher ratio and positive relationships] in place in a lot of public schools”). Dr. [REDACTED] also was not familiar with WCPSS’ Autism Support Program, but still opined that the academic supports provided through that program were inappropriate.

14. Second, Dr. [REDACTED] opined that the entirety of the proposed IEP was inappropriate and would acknowledge only two appropriate supports: preferential seating and extended time. Tr. vol. 3, pp. 608:5-609:3. When questioned by the Undersigned, Dr. [REDACTED] admitted that the IEP was “broadly” appropriate. Tr. vol. 3, p. 606:18023. Given the rarity that any IEP would be faulty in all aspects, and the fact that, on its face, the proposed IEP in this case has numerous reasonable and appropriate components beyond the accommodations of preferential seating and extended time, this calls into question Dr. [REDACTED] objectivity as an expert witness evaluating a special education program. Moreover, her testimony appeared contradictory because the IEP was essentially the same educational plan provided by [REDACTED] Academy, which Dr. [REDACTED] opined was appropriate.

15. Third, although IEP implementation is not an issue in this case, Dr. [REDACTED] repeatedly surmised that the District would not, and could not, implement the IEP at issue. *See, e.g.,* Tr. vol. 3, p. 518:23-519:1 (testimony that the collaboration and embedded support present at [REDACTED] Academy would not happen at [REDACTED] High School. and thus. would “set[] her up for failure”). Dr. [REDACTED] expectation that the District would fail to implement the IEP is substantively irrelevant and limits the credibility of her testimony as to the appropriateness of the plan as written.

[REDACTED] Ph.D. (aka Dr. [REDACTED] Independent Evaluator

16. Dr. [REDACTED] is a clinical psychologist currently employed by Create, Inc. She holds a doctorate in clinical psychology. Pet. Ex. 38. Though much of Dr. [REDACTED] work has focused on child maltreatment and family-child relationships (Tr. vol. 2, p. 261:1-8) Dr. [REDACTED] has 10 years of experience with assessment and treatment of children. Tr. vol. 2, p. 231:16-19. Dr. [REDACTED] completed a comprehensive independent evaluation of [REDACTED] shortly after her enrollment at [REDACTED] Academy.

17. The Undersigned finds Dr. [REDACTED] evaluation report, and her testimony regarding the evaluation process and the report, to be comprehensive and credible.

18. Of concern, however, was that Dr. [REDACTED] has never worked in a public school setting. Tr. vol. 2, pp. 263:21-264:1. Moreover, on cross-examination, Dr. [REDACTED] repeatedly refused to answer questions that were appropriate subjects for questioning by the Respondent’s counsel. Tr. vol. 2, pp. 288:20-289:6. Her excuse was that she was acting as a “fact” witness, not as an “expert” witness. She continued to do so even after being warned by the Undersigned on several occasions. Tr. vol. 2, pp. 293:2-14; 295:10-22.

19. Dr. [REDACTED] refused to answer Respondent’s questions about whether a class size cap was necessary for [REDACTED] to achieve academically, which was a primary issue in this case. This evasiveness and unwillingness to answer questions central to Petitioners’ case implied that her expert opinion, if given, would not have been favorable to Petitioners. As the only independent evaluator of [REDACTED] in this case, Dr. [REDACTED] lay testimony, albeit reluctantly given on this issue, was given weight by the Undersigned.

[REDACTED] s Therapist at [REDACTED] Academy

20. [REDACTED] is a therapist with a master’s degree in clinical mental health counseling. Tr. vol. 2, p. 122:3-8. She was very knowledgeable about [REDACTED] and [REDACTED] Academy, and the Undersigned found her testimony in those areas credible. However, Ms. [REDACTED] has almost no experience with public schools and repeatedly made unjustified assumptions about public school programming and services that limit her credibility in evaluating [REDACTED] s programmatic needs as she transitioned out of [REDACTED] Academy. Tr. vol. 2, pp. 140:19-141:3, 146:19-147:9. In addition, Ms. [REDACTED] was unable to offer specifics regarding certain opinions she offered (Tr. vol. 2, p. 135:19-22) (asked how much academic support [REDACTED] needed at [REDACTED] Academy, Ms. [REDACTED] responded that she “can’t answer that in a measurable kind of way I guess”)), which limited the weight the Undersigned could give to her opinions.

██████████ ██████████ WCPSS Senior Administrator for Autism and Extended Content Standards

25. ██████████ ██████████ is a North Carolina-licensed teacher with nearly 20 years of experience serving WCPSS students. For the last four years, Ms. ██████████ has served as the District's Senior Administrator for Autism and Extended Content Standards. Resp. Ex. 18. Ms. ██████████ has developed and presented training to teachers on social skills instruction, interventions and support for students with high-functioning autism for more than ten years. *Id.* Particularly pertinent to this case, Ms. ██████████ has extensive experience helping students on the autism spectrum transition from residential facilities to WCPSS. Tr. vol.5, p. 949:2-11.

26. While Ms. ██████████ was not accepted as an expert witness, pursuant to N.C.G.S. § 150B-34(a), the Undersigned acknowledges her specialized expertise in working with students diagnosed with autism spectrum disorder and afforded her testimony substantial deference. In addition, the Undersigned found Ms. ██████████ to be a credible witness throughout her testimony, in part, because Ms. ██████████ was willing to acknowledge when the IEP or WCPSS processes could have been better. Tr. vol. 5, p. 1015:20-23.

██████████ ██████████ Ph.D., Expert Witness

27. Dr. ██████████ has a master's degree in special education and a doctorate in curriculum and instruction with a focus on mathematics instruction. She holds state licensure in special education with a certification in middle school mathematics (grades 6-9). She is National Board Certified in special education (K-12). She taught special education for ten years at the high school level, including four years in a Curriculum Assistance classroom. She has also trained teachers at all grade levels, published high school curricula, and serves as a consultant to the North Carolina Department of Public Instruction. Tr. vol. 6, pp. 1106:6-1120:13. The Undersigned found Dr. ██████████ to be a knowledgeable and credible witness.

██████████ ██████████ WCPSS Special Education Teacher, Autism Support Program at High School

28. ██████████ ██████████ is a North Carolina-licensed and Nationally Board Certified occupational therapist with nearly 20 years of experience serving public school students. Tr. vol. 5, pp. 1036:12-1038:4. Ms. ██████████ has served as an occupational therapist for WCPSS for more than 10 years. Tr. vol. 5, p. 1036:1-3. For seven years, Ms. ██████████ served as the lead occupational therapist for the District, during which time she provided support for all occupational therapists in the District and consulted on IEP development for students in grades kindergarten through twelve. Tr. vol. 5, pp. 1038:13-1039:7. Ms. ██████████ has experience providing sensory support for high school students and for students transitioning from a private school to the public-school setting. Tr. vol. 5, p. 1039:13-19. The Undersigned acknowledges Ms. ██████████ expertise identifying and addressing students' sensory needs, found her to be a credible witness, and affords her testimony substantial deference pursuant to § 150B-34(a).

██████████ Special Education Teacher AU Support Program at ██████████ High School

29. ██████████ was a special education teacher in the district's Autism Support Program at ██████████ High School from approximately spring 2015 until October 2017. Tr. vol. 6, pp. 1072:21- 1073:2. In this capacity, Ms. ██████████ served as a special education case manager and Curriculum Assistance classroom teacher for students in the Autism Support Program. Tr. vol. 6, p. 1074:15-19. Prior to her time as an Autism Support Program teacher, Ms. ██████████ served as an in-class resource teacher for several years, in both Wake County and Charleston, South Carolina. Tr. vol. 6, p. 1073:9-18. Ms. ██████████ holds teaching licenses in special education, general curriculum, and adapted curriculum. Tr. vol. 6, pp. 1073:24-1074:2. Based on Ms. ██████████ experience serving as an IEP team member, case manager, and teacher for students with high-functioning autism, the Undersigned found her to be a credible witness, and affords her testimony substantial deference pursuant to N.C.G.S. § 150B-34(a).

██████████ S BACKGROUND

30. Petitioner ██████████'s date of birth is ██████████, and her mother is ██████████

31. ██████████ was ██████████ years old at the time of the filing of this Petition (Stip. 9) and ██████████ years old when the contested IEP was developed.

32. ██████████ is a "child with a disability" as that phrase is defined in IDEA (Stip. 10) and has been determined eligible for services under the IDEA. Stip. 13.

33. Based on the DSM-V criterium, ██████████ has been diagnosed with Autism Spectrum Disorder ("ASD" without impairment in intellect or language), Unspecified Anxiety Disorder, ADHD (primarily inattentive presentation), Specific Learning Disorder with impairment in math calculation; Specific Learning Disorder with Impairment in reading accuracy; and Developmental Coordination Disorder (Dysgraphia). Stip. Ex. 14; Stip. 47.

34. ██████████ and, her mother, ██████████ are domiciled within the boundaries of the Wake County Public School System ("WCPSS" or "Wake County Schools"). Stips. 11 & 12.

35. Respondent, Wake County Public School System Board of Education, is a local education agency receiving monies pursuant to the IDEA and responsible for providing ██████████ a free and appropriate public education. Stip. 5.

36. ██████████ was enrolled in the WCPSS from ██████████ of her ██████████-grade year, when ██████████'s parents withdrew her from WCPSS and unilaterally enrolled her in ██████████ Academy. Stip. 14.

37. [REDACTED] attended the following schools as indicated by school year:

2007-2013	Elementary School	[REDACTED] Elementary School
2013-2014	Sixth Grade	[REDACTED] Middle School
2014-2015	Seventh Grade	[REDACTED] Middle School
2015-2016	Eighth Grade	[REDACTED] Middle School (until March [REDACTED]) Academy for [REDACTED] (from March [REDACTED])
2016-2017	Ninth Grade	[REDACTED] Academy for [REDACTED]
2017-2018	Ninth Grade	[REDACTED] Academy

Stip. 15.

[REDACTED] Academy for [REDACTED]

38. From March 20 [REDACTED] to July [REDACTED] 20 [REDACTED] [REDACTED] attended [REDACTED] Academy. Stips. 15 & 16.

39. [REDACTED] Academy is a therapeutic boarding school. Tr. p. 123:8-9 (T. of [REDACTED])

40. [REDACTED] Academy’s “first priority [is] stabilization, ... emotional regulation, addressing mental health needs of their population, and then academics kind of fall under that or within that...”. Tr. vol. 2, p. 540:24-25 (T. of [REDACTED])

41. Students attend academic classes, participate in individual and family therapy, and typically stay between 10 and 16 months. Tr. vol. 2, p. 123:9-12. The average class size at [REDACTED] Academy is six to eight students (Tr. vol. 2, p. 123:19-21) but students participate in classes with as many as twelve to twenty students. Tr. vol. 2, pp. 150:16-17;758:23-759:1.

42. The Master Treatment Plan developed at [REDACTED] Academy noted that the reason for [REDACTED]’s admission was:

Therapist suggested that our daughter needed a more intensive treatment...IEP is useless at school...Improve academics and social skills. Needs to be able to handle college track classes in High School...No social skills what so ever and lack of motivation academically. Also contentious relationships within the family.

Stip. Ex. 17, p. 127.

43. Petitioner [REDACTED] described [REDACTED]’s program at [REDACTED] Academy as one where teachers used a “hands-on instructional” approach, had a strong relationship with students, were familiar with [REDACTED]’s needs, and could “deal with any coping strategies and things like that that she might need to maintain low anxiety levels.” Tr. vol. 1, p. 45:2-12. Notably, [REDACTED] reported class sizes of only 4-5 students (Tr. vol. 1, p. 45:1-2) which is inconsistent with [REDACTED]’s testimony regarding class sizes.

44. [REDACTED] Academy (“[REDACTED]” is the name of the educational program offered at [REDACTED] Academy.

45. [REDACTED] received academic instruction three (3) hours daily, four (4) days a week at [REDACTED] Tr. vol. 5, p. 844:3-9.

46. [REDACTED]’s last day at [REDACTED] Academy was July 28, 20[REDACTED]. Stip. 16.

47. Petitioners are not seeking tuition reimbursement for [REDACTED] Academy in this matter. Stip. 17.

48. In June [REDACTED], after three months of [REDACTED]’s attendance at [REDACTED] Academy, Dr. [REDACTED] of the Center for Research, Assessment, and Treatment Efficacy (“Create”) conducted an independent comprehensive Psycho-Educational Evaluation (“June 2016 Evaluation”) of [REDACTED] Stip. 28; Stip. Ex. 14.

June 2016 Independent Psychological Educational Evaluation

49. The evaluation was requested by “[REDACTED]’s parents, therapist, and Educational Consultant [Dr. [REDACTED] to examine cognitive/intellectual functioning, attentional functioning, and academic skills; and to assess social, emotional, and behavioral functioning. They requested diagnostic clarification and recommendations for educational planning.” Stip. Ex. 14, p. 87.

50. The purpose of the June 2016 Evaluation was to assist with educational programming and to develop a Treatment Plan for [REDACTED] at [REDACTED] Academy. The Individual Academic Plan (“IAP”) developed by [REDACTED] Academy on January 6, 2017 was based primarily on this evaluation with some additional input from the treatment team. The subsequent Individual Educational Plan (“IEP”) developed by the IEP Team on May 19, 2017 also relied heavily on this evaluation and the resulting IAP developed by [REDACTED] Academy.

51. Although Dr. [REDACTED] had conducted many psycho-educational evaluations, she has never worked in a school setting. Tr. vol. 2, pp. 263:21-264:1. As part of her evaluation, Dr. [REDACTED] did not observe [REDACTED] in an academic setting or in a setting with her peers as part of her evaluation. Tr. vol. 2, pp. 264:15-23; 265:2-3.

52. Dr. [REDACTED] did review three prior psychological reports of [REDACTED] including a 2016 report conducted by WCPSS, but did not review any other educational records from WCPSS. Tr. vol. 2, p. 266:10-19.

53. Dr. [REDACTED] based her evaluation, in part, on several assessments of [REDACTED] and information obtained from the following individuals: [REDACTED]’s therapist at [REDACTED] Academy; [REDACTED]’s parents; [REDACTED] the Director of Learning at [REDACTED] Academy; and [REDACTED] an educational consultant hired by [REDACTED]’s parents. Tr. vol.2, pp. 265:5-266:3.

54. Dr. [REDACTED] evaluation was comprehensive. She conducted twenty (20) assessments: WISC-V; D-KEFS Color-Word Inference Test; Trailmaking Test; Rey-Osterrieth Complex Figure Test; Grooved Pegboard Test; CTOPP-2; WJ-IV; Gray Oral Reading Test, Fifth Edition (GORT-5); Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A); Million Adolescent Clinical Inventory (MACI); Sentence Completion Test; Achenbach Youth Self-Report (AYSR); Achenbach Child Behavior Checklist (ACBC); Revised Child Anxiety and Depression Scale (RCADS); Vanderbilt ADHD Diagnostic Parent Rating Scale (VADPRS); Behavior Rating Inventory of Executive Function (BRIEF); Children’s Yale-Brown Obsessive Compulsive Scale (CY-BOCS); ADOS-2; SRS-2; Australian Scale for Asperger’s Disorder; Autism Diagnostic Observation Schedule – Second Edition (ADOS-2) – Module 4. Stip. 29.

55. Numerous test scores were reported in the Stipulated Facts which are not relevant to the remaining issues; therefore, they will not be reviewed herein. *See* Stips. 30-36.

56. Of relevance is that [REDACTED] has an average full-scale IQ standard score of 100; all of her academic scores were average except for oral reading accuracy (WJ-V Standard Score (“SS”) of 84); math calculation skills (WJ-V Math Calculation subtest SS 70; Math Facts Fluency SS 90; Math Composite SS 80); and phonological memory (CTOPP-2 standard score of 76). Stips. 30, 33, & 35.

57. Dr. [REDACTED] noted [REDACTED]’s “reading accuracy scores . . . are significantly below expectations based on her intellectual abilities,” and determined [REDACTED] “continues to meet criteria for a Specific Learning Disability in Reading.” Stip. 37.

58. In the area of math, Dr. [REDACTED] concluded “[REDACTED]’s current weaknesses in math calculation qualify her for diagnosis of Specific Learning Disability in Mathematics.” Stip. 38.

59. In the area of writing, Dr. [REDACTED] concluded [REDACTED]’s “poor performance on measures of visual-motor integration and fine-motor skills suggests a motor-executive type of writing problem (dysgraphia).” Stip. 39.

60. Also of relevance in Dr. [REDACTED] testing was that both [REDACTED] and her parents endorsed clinical elevations with regard to Internalizing Problems, Total Problems, Withdrawn/Depressed problems, Social Problems, and Attention Problems. Stips. 41 & 42.

61. Dr. [REDACTED] concluded that [REDACTED]’s results on the BRIEF “suggest clinically significant executive functioning weaknesses for [REDACTED] in the areas of behavioral regulation and metacognition.” Stip. 43.

62. Similar to WCPSS’s January 2016 ADOS-2 evaluation, on the June 2016 ADOS-2, [REDACTED]’s score “fell within the range of scores associated with mild autism spectrum disorder.” Stips. 23, 24, 26, & 44.

63. On the SRS-2, both [REDACTED]'s parents and teacher identified [REDACTED] to be within the severe range for social emotional deficits, which Dr. [REDACTED] found “indicat[ed] deficiencies in reciprocal social behavior that are clinically significant and lead to severe interference with everyday social interactions.” Stip. 45.

64. Dr. [REDACTED] concluded: “[REDACTED]'s presentation and psychosocial history [,] including difficulty with social and emotional reciprocity, poor coordination of verbal and nonverbal communication, longstanding difficulty developing peer relationships, and poor interpersonal skills, in combination with patterns of rigid and repetitive behavior are [,] suggestive of an Autism Spectrum Disorder (ASD).” Stip. 46.

65. Based on DSM-5 diagnostic criterium, Dr. [REDACTED] diagnosed [REDACTED] with: Autism Spectrum Disorder (“ASD”); Unspecified Anxiety Disorder; ADHD, Primarily Inattentive Presentation; Specific Learning Disorder with impairment in math; Specific Learning Disorder with impairment in reading; and Developmental Coordination Disorder (Dysgraphia). Stip. Ex. 14, p. 109; Stip. 47.

66. Dr. [REDACTED] made the following recommendations for [REDACTED]'s short-term and long-term development: participation in a coping or social skills group for bright children with ASD; frequent breaks and exposure to “real-life settings” to develop social skills; preferential seating near the teacher and away from distractions; frequent breaks built into her routine; study and organizational skills; written notice of transitions or changes to routines; a copy of peer or teacher notes; use of a home-school notebook or agenda; extended time for assignments, modifications to workload, and instruction on using these supports; interventions to improve her organization in writing; and use of assistive technology for writing. Stip. Ex. 14, pp. 110-14; Tr. vol. 2, pp. 252:5-254:11; 237:3-15.

67. Dr. [REDACTED] opined that [REDACTED]'s autism spectrum disorder affected her learning by causing her difficulty in initiating and engaging in conversations with others, understanding others’ intentions and perspectives, and problem-solving in a classroom environment. Tr. vol. 2, pp. 256:10-258:1.

68. To target [REDACTED]'s social skills deficits, Dr. [REDACTED] specifically recommended that [REDACTED] would benefit from the use of social stories, social scripting, behavioral rehearsal, corrective feedback, and modeling. Stip. Ex. 14, p. 111.

69. Based on her review of Dr. [REDACTED] report, Dr. [REDACTED] concluded that [REDACTED] had strengths in general academic functioning, “but major deficits in organization, being able to complete multi-step tasks, being able to use social skills to interact with teachers and peers, and to be able to attend to tasks and complete tasks on time.” Tr. vol. 3, p. 475:2-7.

**Individualized Academic Plan (“IAP”)
Developed on January 6, 2017 at ██████ Academy**

70. On January 5, 2017, using the June 2016 Psycho-Educational Evaluation and staff input, ██████ staff developed an Individualized Academic Program (“IAP”) to address ██████’s academics, peer interactions, self-regulation, and organizational skills. Stip. Ex. 18, p. 139.

71. During approximately 12 months of ██████’s enrollment, Ms. ██████ provided ██████ with individual, group, and family therapy sessions for approximately three to four hours a week. Tr. vol. 2, p.124:4-11. Ms. ██████ testified that ██████’s learning disabilities and “cognitive rigidity” were her greatest challenge, as they caused her difficulty in connecting with peers “on a social-emotional level” and in accepting others’ perspectives. Tr. vol. 2, pp. 125:25-126:9.

72. The Present Level in the IAP stated:

[█████] has made great strides with the supports in place and is displaying a more engaged and positive attitude across the board. She still exhibits struggles with peer relationships at times and turning completed assignments in on time. However, great progress has been made in these areas. [█████] is maintaining her own organization system that she developed with the [O]ccupational Therapist and showing more and more flexibility and acceptance. She is on par for her grade level expectations in all areas with the exception of turning assignments in on time.

Stip. 61.

73. The IAP included three goals targeting ██████’s peer interactions, use of emotional regulation skills in class, and use of an academic planner and study skills to submit assignments on time. Stip. Ex. 18, p. 138-139. The three functional goals were:

Goal 1: [█████] will practice positive peer interaction with peers during project collaboration 4/4 times.

Measurable Goal: Using group collaboration assignments, [█████] will work on her social/peer interactions and reading social cues and communication skills 3/4, 2/4 times.

Goal 2: [█████] will practice sensory regulation strategies to support her focus, attention, and flexibility in class 4/4 times.

Measurable Goal: Using various emotionally-based regulation coping skills and Occupational Therapy sensory strategies, [█████] will manage sensory awareness to stay in class regulated 3/4, 2/4 times.

Goal 3: [█████] will use academic planner and study skills to practice organization and turning work in on time at school 4/4 times.

Measurable Goal: By using her organizational tools, [REDACTED] will use her academic planner and turn work in on time 3/4, 2/4 times.

Stip. Ex. 139.

74. Despite [REDACTED]'s academic deficits diagnosed in the June 2016 Evaluation, the IAP did not have any specific academic goals in reading, writing, or math. Tr. vol. 2, p. 156:15-22; Stip. Ex. 18. The IAP did have functional goals which provided academic supports for these subjects.

75. Petitioners did not provide any evidence that [REDACTED] had any specific academic goals during her enrollment at [REDACTED] Academy.

76. [REDACTED] received academic supports at [REDACTED] Academy, including check-ins with teachers as needed, extra time to complete certain assignments and assessments, and frequent breaks (including taking space away from the classroom). Tr. vol. 2, pp. 135:23-136:15.

77. [REDACTED] admitted that the IAP was appropriate. Tr. vol. 1, pp. 69:13-70:1 (T. of [REDACTED]). Although Petitioners contended that the IAP was appropriate, the Petitioners contested the appropriateness of the May 2017 IEP, which was basically the same plan, without the wrap-around services and small class size.

78. Petitioners conceded that they offered no evidence that [REDACTED] had mastered any of the IAP goals either as of May 19, 2017 or when she left the [REDACTED] program on July 28, 2017. Stip. 16.

79. During her enrollment at [REDACTED] Academy, [REDACTED] made significant progress in her emotional regulation, organization skills, peer/teacher relationships, and executive functioning. Stip. Ex. 18, p. 136 (“[REDACTED] has made great strides with the supports in place and is displaying a more engaged and positive attitude across the Board,” and has made “great progress” in peer relationships and submitting assignments on time). Her grades also improved over the course of the year, so that by her third quarter, she was earning grades of A and B in all of her classes with a 3.72 GPA. Stip. Ex. 19, p. 140; *see also*, Stips. 48, 49, & 50.

80. The IAP stated that [REDACTED] could be successful in a larger classroom setting with structured supports that targeted her flexibility and emotional regulation, such as mindfulness of sensory stimulation and regulation breaks throughout the day. Stip. Ex. 18, p. 136.

81. In anticipation of [REDACTED]'s transition to another school setting, [REDACTED] Academy's Academic Director of Learning Support, drafted a written summary of [REDACTED]'s present levels of performance and recommendations for her next educational setting. Stip. Ex. 22.

82. Ms. ██████ noted that despite ██████'s significant progress at ██████ Academy, she continued to struggle with “inflexible thinking” and “executive functioning skills,” which manifested as problems with task completion and time management, resistance to others’ suggested interventions, and disconnecting from others. Stip. Ex. 22, p. 155. Ms. ██████’s recommendations did not include any reference to math or reading deficits.

83. Ms. ██████ did recommend several interventions, including multi-modal instruction-based classrooms, a small classroom setting, and executive functioning support (specifically use of a planner and help scheduling and prioritizing tasks). Stip. Ex. 22, p. 155.

84. Ms. ██████ said ██████ would “*benefit*” from a smaller classroom and would be “*best served*” in a small school that supported and challenged her, but also noted that ██████ “*benefits* from being exposed to a variety of different personalities and points of view.” Stip. Ex. 22, p. 154 (emphasis added). Ms. ██████ did not give any indication in her written recommendation that ██████ was incapable of learning in a typically sized classroom or that she needed academic remediation.

Preparation for Transition Back to WCPSS

85. In anticipation of ██████'s completion of the ██████ Academy program, ██████ and WCPSS scheduled an IEP meeting in April 2017 to develop a new IEP. This meeting was rescheduled for May 19, 2017.

86. In March 2017, on separate dates, Dr. ██████ and three WCPSS staff members – ██████, ██████, Dr. ██████, ██████, and ██████, a senior administrator for WCPSS Special Education Services – visited ██████ Academy to obtain information about the program and observe ██████ in that setting. Stip. 51; Tr. vol. 4, p. 757:13-22; Tr. vol. 5, p. 949:5-11.

87. Prior to visiting ██████ Academy, both Ms. ██████ and Dr. ██████ reviewed and met to discuss records provided by ██████ Academy, including Dr. ██████'s psychological evaluation and a Treatment Plan governing ██████'s services at ██████ Academy. Tr. vol. 5, p. 950:5-10. Dr. ██████ reviewed more than 2,500 pages of records provided by ██████ Academy. Tr. vol. 4, p. 755:15-24.

88. Dr. ██████ observed ██████ in several settings at ██████ Academy, including a PE class, math, history and social studies classes, and during a school-wide break. Tr. vol. 4, p. 757:13-16. Dr. ██████ also spoke “extensively” with ██████ regarding the program and supports provided to ██████ during her enrollment at ██████ Academy. Tr. vol. 4, p. 757:18-22; *see generally*, Resp. Ex. 5, pp. 142-145.

89. Dr. ██████ observed that ██████ was “more regulated” than she expected based on the records she had reviewed. Tr. vol. 4, p. 758:19-22. Dr. ██████ testified that in an unstructured PE class of approximately twenty students, ██████ was “less social” than other students, but she was “fully present” and “didn’t need any supports to participate.” Tr. vol. 4, p. 759:7-13.

90. Dr. [REDACTED] also observed [REDACTED] interacting with her peers in academic settings. In particular, Dr. [REDACTED] noted an interaction in which [REDACTED] was telling her peer how to complete a math problem, and the peer expressed resistance to [REDACTED]'s help. *See* Tr. vol. 4, p. 760:18-24. After which, Dr. [REDACTED] observed that [REDACTED] immediately corrected herself. Tr. vol. 4, p. 760:24-25.

91. Neither Ms. [REDACTED] nor Dr. [REDACTED] observed anything about [REDACTED] Academy's program, or about [REDACTED]'s response to instruction in that program, that indicated she could not learn in a typically sized general education classroom with appropriate supports. Tr. vol. 5, p. 952:7-11 (T. of [REDACTED] Tr. vol. 4, pp. 799:25-800:8 (T. of Dr. [REDACTED]

92. When she first arrived at [REDACTED] Academy, [REDACTED] struggled with emotional regulation, executive functioning, and academic engagement, but as of March 2017, those issues were being addressed through "appropriate supports," and [REDACTED] was "responding well" to those interventions and supports. Tr. vol. 3, p. 468:15-22.

93. The specific supports were primarily for: emotional regulation, sensory integration dysfunction, executive functioning issues, social/emotional issues, and peers/teachers' interactions. Tr. vol. 3, p. 469:24-470:5.

94. After their visit to [REDACTED] Academy, Ms. [REDACTED] and Dr. [REDACTED] met with two special education teachers – [REDACTED] and [REDACTED] - at [REDACTED] High School to develop a draft IEP ahead of the meeting. Tr. vol. 5, p. 954:6-21.

95. Based on her domicile, [REDACTED] High School was [REDACTED]'s base school assignment. Stip. 55. [REDACTED] was, at the time, an autism support teacher in the Autism Support Program, and [REDACTED] is the school's special education department chair. Tr. vol. 5, p. 954:7-13.

96. This team of educators discussed the information obtained from the visit to [REDACTED] Academy, Dr. [REDACTED] evaluation, and records provided by [REDACTED] Academy in developing the draft IEP. Tr. vol. 5, pp. 954:14-955:3. The IAP provided by [REDACTED] Academy, dated January 6, 2017, was particularly valuable in this process. Tr. vol. 5, pp. 955:12-956:11. Among other things, that document identified the importance of social and emotional goals, the need for support with social cues and peer/teacher relationship building, structure and predictability, as well as "time by herself" and self-regulation breaks. Stip. Ex. 18, p. 136-37.

97. The initial IEP draft was based primarily on information from [REDACTED]'s then-current placement, [REDACTED] Academy, including the IAP that governed her progress while enrolled there. Tr. vol. 5, pp. 955:12-956:11.

98. Ms. [REDACTED] noted that the IAP proved successful for [REDACTED] and contained "the most critical information" regarding [REDACTED]'s transition back from [REDACTED] Academy. Tr. vol. 5, p. 955:12-25.

99. [REDACTED] had known about the IAP and interventions implemented by staff at [REDACTED] Academy and had supported the IAP's goals while [REDACTED] was at [REDACTED] Academy. Tr. p. 374:17-375:3.

100. The Undersigned finds that the IAP constituted an appropriate starting point for the Respondent's development of an IEP for [REDACTED] as it reflected the most updated information regarding [REDACTED] needs, specific goals, and success with a variety of instructional strategies and interventions.

101. Respondent provided Petitioner [REDACTED] and [REDACTED] Academy with the draft IEP on April 19, 2017, and invited [REDACTED] to provide feedback in advance of the IEP meeting. Stip. 52; Tr. vol. 2, pp. 385:23-386:3.

102. [REDACTED] expressed interest in [REDACTED] Academy providing input in the draft and indicated without elaboration that the draft did not address some of [REDACTED]'s needs. Pet. Ex. 23. This was the extent of [REDACTED]'s feedback on the draft IEP prior to the May 19 meeting. Tr. vol. 2, pp. 387:8-388:1.

103. In preparation for the meeting, Dr. [REDACTED] emailed and called [REDACTED] Academy, but Ms. [REDACTED] would not speak with her about [REDACTED] until the IEP meeting. Ms. [REDACTED] was supposed to would call in to participate. Tr. vol. 5, pp. 842:16-24; 872:13-872:25; Stip. Ex. 4, p. 35.

104. Dr. [REDACTED] opined at several points during her testimony that Respondent had not tried hard enough to obtain information about [REDACTED]'s progress and needs from [REDACTED] Academy. Tr. vol. 3, pp. 507:11-14; 508:6-9.

105. The Undersigned finds that the Respondent's efforts to obtain information from [REDACTED] Academy – which included a campus visit by three staff members, review of voluminous records (2,500+) from [REDACTED] Academy, multiple requests by phone and email for additional information, the provision of a draft IEP to the parents and [REDACTED] Academy with a request for feedback, and enlistment of [REDACTED] as a participant in the IEP meeting – were extensive and made in good faith.

[REDACTED]'s CIRCUMSTANCES AND UNIQUE NEEDS

As Reported in June 2016 Independent Evaluation

106. Based on the June 2016 Evaluation, [REDACTED]'s DSM-5 diagnoses were Autism Spectrum Disorder, Unspecified Anxiety Disorder; ADHD, Primarily Inattentive Presentation; Specific Learning Disorder with impairment in math (calculation); Specific Learning Disorder with impairment in reading (accuracy); and Developmental Coordination Disorder (Dysgraphia). Stip. Ex. 14, p. 109; Stip. 47.

³ [REDACTED] announced at the beginning of the IEP meeting that she only had 30 minutes to participate in the meeting. No explanation was provided as to why Ms. [REDACTED] could not attend the entire IEP meeting.

107. ██████'s strengths included that she loved to read, was very caring, had a sense of humor, and was tenaciousness. *See, e.g.*, Tr. vol. 1, p. 125:16-17 (T. of ██████ Stip. Ex. 14, p. 90).

108. ██████ had an average intelligence with the following standard scores (“SS”): full scale 100, verbal comprehension 111, visual-spatial 100, fluid reasoning 100, working memory 103, auditory working memory 97, and processing speed 89.

109. ██████'s social/emotional challenges include her cognitive rigidity, sensory integration difficulties, inappropriate behavior, slow processing speed, organization of visual information, executive functioning deficits, anxiety, and lack of confidence. *See* Tr. vol. 2, p. 324:4-23 (T. of ██████ Tr. vol. 1, p. 125:19-22 (T. of ██████ Tr. vol. 1, p. 236:1-15 (T. of ██████ (describing the impact of her low processing speed on her learning, including that it impacts her ability “to do academic skills automatically and with fluency . . . [and] engage in tasks quickly”); Tr. vol. 1, pp. 238:6–239:3 (T. of ██████ (describing the impact of ██████'s deficiencies in organizing visual information, including difficulty organizing “any kind of nonverbal information” like math).

110. At that time, ██████'s autism, rigidity of thinking, organizational deficits, low average processing speed, executive functioning, and behavioral problems significantly impacted her academic achievement.

111. Although she met the DSM-5 standard for specific learning disabled based on the subtest scores in math calculation (WJ- IV subtest SS 70) and reading accuracy (GORT-5 subtest SS 7), overall her reading abilities fell well within the average range. Her calculation deficit from a SS of 101 in 2012 to a SS 70 in 2016 could be due to inconsistent effort, inadequate instruction, or inconsistent participation. Tr. vol. 1, p. 275:9-24 (T. of ██████ ██████'s calculation deficit could be accommodated by the use of a calculator which all middle and high school students have access. Tr. vol. 5, p. 87:15-21 (T. of ██████

112. Overall, ██████ had average academic capabilities and appeared to only need academic support. Tr. vol. 2, p. 290:3-6 (T. of ██████

As of Reported in March 29, 2017 Observation of Dr. ██████

113. Dr. ██████ observed ██████ at ██████ Academy on March 29, 2017. Pet. Ex. 43. WCPSS' staff also observed ██████ in March 2017.

114. The IEP team was not provided copies of Dr. ██████ notes⁴ from her observation of ██████ at ██████ Academy on March 29, 2017, and these notes would have been helpful to the team. *See* Pet. Ex. 43; Tr. vol. 3, pp. 463:17-467:11.

⁴ Dr. ██████ observation notes were exchanged, approximately one year later on March 5, 2018, in response to Respondent's discovery requests.

115. Dr. [REDACTED] notes corroborated WCPSS staff observations regarding [REDACTED]'s academic abilities. According to her notes: [REDACTED] "appeared to be the highest performing student in her group" when she was doing an Algebra I worksheet; she "stayed focused on her work throughout the class period; she was able to filter out the talking and off-task behaviors of other students." Pet. Ex. 43, p. 297.

116. In addition, Dr. [REDACTED] noted significant progress in emotional regulation, since [REDACTED]'s admission in March 2016 to the March 2017 observation date. [REDACTED] progressed from significantly from:

being noncompliance and meltdowns that consisted of shouting out, crying, throwing herself on the floor, and some mild aggression. The meltdowns occurred when she was frustrated with academic demands, annoyed by other students [,] off task behavior in the classroom, when she was asked to do things she didn't want to do, when she wasn't permitted to follow through with her OCD behaviors, and when her phobia of fruit was confronted. She was very rigid and did not adapt well at all to change. She had very bad personal hygiene (was not brushing her teeth, showering, brushing her teeth [sic], or wearing clean clothes). When she first arrived, the family visits were quite negative and could be explosive.

Pet. Ex. 43, p. 298.

117. Dr. [REDACTED] favorably reported that [REDACTED]

is compliance and no longer has meltdowns. She requires only universal supports to meet academic and behavioral expectations and some targeted supports for executive functioning and sensory and emotional regulation. She can effectively communicate [sic] and negotiate to get her needs met. She has developed positive relationships with peers and the staff and displays a great deal of happiness throughout the day. She is earning all A's and B's, consistently completes her classwork and homework, asks for extensions for due dates as needs [sic] so she can turn in quality work, and she has developed coping strategies to help her focus, attend, organize and plan, and regulate her emotions. She developed her own organizational system for her academic assignments...is independent with maintaining personal hygiene, her on-site family visits are positive and she transitions well when going home for a visit and returning to school. Her OCD behaviors that were a big issue in the public school (refusal to sit near others, desired [sic] to move furniture around) are no longer issues at [REDACTED] Academy. She sits near people eating fruit and has gone apple picking with her mom as part of a required therapeutic homework assignment during a home visit. [Pet. Ex. 43, p. 298]. [REDACTED] was taught that she cannot control the behavior of others, but she can choose coping strategies to help her deal with situations that make her uncomfortable, anxious, frustrated, or dysregulated.

Pet. Ex. 43, p. 299.

118. According to Dr. [REDACTED] when she observed [REDACTED]'s math and English classes, "[REDACTED] was actively engaged in academic and nonacademic activities, seemed to be doing very well." Tr. vol. 3, pp. 467:18-468:1-5 (T. of [REDACTED]). After her March 2017 observation, Dr. [REDACTED] did not recommend that the IAP be amended to include academic goals in math, reading, or writing.

119. As of the March 2017, teachers shared their observation that many of [REDACTED]'s issues, i.e., emotional regulation, executive functioning, and academic engagement, had been addressed, and she was responding well to their intervention and support. Tr. vol. 3, pp. 468:13-22; 469:16-23 (T. of [REDACTED]).

120. As early as March 29, 2017, [REDACTED] appeared stabilized and ready to transition out to a lesser restrictive environment. [REDACTED] was already thinking about transition based on her admission that, in February 2017, she had consulted with her private Educational Consultant and psychologist, Dr. [REDACTED] about findings an alternative placement for [REDACTED]. Tr. vol. 2, p. 379:14-20 (T. of [REDACTED]). Dr. [REDACTED] only assists with private school placements. Tr. vol. 2, p. 380. Dr. [REDACTED] assisted with [REDACTED]'s placement at [REDACTED] Academy (Tr. vol. 2, p. 378:13-15) and had ongoing discussions with Petitioners, and [REDACTED] Academy staff about [REDACTED]'s current status at [REDACTED] Academy. Tr. vol. 2, p. 379:21-24. Dr. [REDACTED] participated every six to eight weeks in [REDACTED]'s weekly phone calls with [REDACTED] to discuss [REDACTED]'s status. Tr. vol. 2, pp. 379:21-380:2.

As of the May 19, 2017 IEP Meeting

121. As an expert in IEP development, Dr. [REDACTED] agreed that the IEP team is charged with making decisions based on the information that is available to it at that time. Tr. vol. 3, p. 478:14-17.

122. The Undersigned must also evaluate the appropriateness of the May 2017 IEP prospectively based on the information available to the IEP Team at the time of its drafting.

123. Dr. [REDACTED] admitted, based upon a review of [REDACTED]'s academic update notes (Stip. Ex. 23) over the fourteen (14) months that [REDACTED] attended [REDACTED] Academy, prior to the May [REDACTED] 2017 IEP meeting, that [REDACTED] went from "just meeting expectations" academically to grades "on par" with her ability (Tr. vol. 3, p. 557:4-25); and with academic supports for organization and focus, [REDACTED]'s grades improved. Tr. vol. 3, pp. 560:4-559:12 (T. of [REDACTED]).

124. At the time of the May [REDACTED] 2017 IEP meeting, [REDACTED] presented as a very different student then when she was first enrolled in [REDACTED] Academy fourteen (14) months previously.

125. While in the therapeutic private placement, [REDACTED] needed intensive treatment to improve her social skills, emotional regulation, academic motivation, and contentious family relationship. She had no social skills and lacked motivation academically. Tr. vol. 1, p. 152:10-14 (T. of [REDACTED]).

126. Based on the available information and representations by [REDACTED] and [REDACTED] Academy staff, the IEP Team reasonably concluded that [REDACTED] had made excellent progress while attending [REDACTED] Academy. Although [REDACTED] still had not mastered all of her social/emotional goals, she no longer needed the intensive, wrap-around therapeutic support or small class size instruction provided by [REDACTED] Academy. She had also made “good progress” academically and was making “A’s” and “B’s” in all her academic classes, and which was “on par” with her abilities.

Failure to Conduct Further Assessments

127. Despite current information provided directly from [REDACTED] Academy regarding [REDACTED]’s academic and functional progress, Dr. [REDACTED] criticized the IEP team for not gathering additional assessment information from [REDACTED] Academy prior to the development of the IEP. Tr. vol. 3, pp. 497:2-499:3.

128. WCPSS had solicited more information from [REDACTED] Academy prior to the May IEP meeting. [REDACTED] [REDACTED] [REDACTED] had contacted Ms. [REDACTED] three times by telephone and was told by Ms. [REDACTED] that “she would not speak to [her] over the phone, that she would just give information in the IEP meeting.” Tr. vol. 5, p. 842:16-24. WCPSS’ efforts to obtain updated information were thwarted by [REDACTED] who admitted that she would not let Ms. [REDACTED] talk to WCPSS staff without her being present. Tr. vol. 2, p. 388:12-23.

129. Ms. [REDACTED] did not report to the IEP team that [REDACTED] had identified needs in math and writing at [REDACTED] Academy; nor did she report this in her academic recommendation for transition out of the [REDACTED] program. Stip. Ex. 22; Tr. vol. 5, p. 876:12-15 (T. of [REDACTED])

130. Dr. [REDACTED] observations were conducted on March 29, 2017. Although her observation notes were not made available by Petitioner to the IEP team, her notes corroborated that [REDACTED] was performing well academically and emotionally. *See* Pet. Ex. 43, pp. 297-298.

131. All of the assessment information provided by [REDACTED] Academy indicated that [REDACTED] was “on par” with her academics, making A’s and B’s. Director Ms. [REDACTED] even said at the IEP meeting that [REDACTED] did not need academic goals.

132. [REDACTED] Academy’s Treatment Plan also corroborated [REDACTED]’s academic progress:

Academic updates reported passing all of her classes ... still on the borderline of failing a few due to late assignments or incomplete assignment. [Note dated 10/25/2016; Stip. Ex. 23, p. 157]; “reached a resting point with school and is just meeting expectations...[s]till struggled to turn completed work in on time but this seems related more to investment than Executive Functioning. Using organizational system very well. Smiling more at school these days!” (Note dated 11/08/16; Stip. Ex. 23, p. 158); “keeping up with the assignments better and definitely taking a more proactive approach to school” [Note dated 12/06/16; Stip. Ex. 23, p. 164]; “[d]oing great! Attitude is very positive, and she was really excited with the fact that she got A’s and B’s on her progress report” [Note dated 12/20/16; Stip. Ex. 23, p. 167]; “[a]ttitude continues to remain positive and grades are on par with ability”

[Note dated 01/31/16; Stip. Ex. 23, p. 170]; [n]o complaints from academic doing well” [Note dated 02/07/17; Stip. Ex. 23, p. 173]; No update on grades or any concerns listed [Note 02/21/17; Stip. Ex. 23, p. 176].

Stip. Ex. 23, pp. 157, 158, 164, 167, 170, 173 & 176.

133. The academic plan provided by ██████ Academy was the most current information the IEP team had regarding ██████ and had been successful for the few months it had been in place. Tr. vol. 5, p. 955:12-19 (T. of ██████)

134. The plan was the most critical information in planning for ██████’s transition. Tr. vol. 5, pp. 955:21-956:4 (T. of ██████). Once ██████ started school, quickly as possible, WCPSS planned to assess and evaluate to see what goals or interventions needed adjustment. Tr. vol. 5, p. 956:4-5. WCPSS treated ██████’s transfer from ██████ Academy as an “in-state transfer.” Tr. vol. 5, pp. 955:25-956:6; *see also*, Pet. Ex. 21, p. 164.

135. The IEP team decided that it would be in ██████’s best interest to start with a plan that was working and had been successful, especially since ██████ had not reached mastery on the goals. Tr. vol. 5, p. 956:9-11 (T. of ██████)

DEVELOPMENT OF IEP

136. It is uncontested that the draft IEP’s present level and the IEP academic/functional goals were virtually the same as those in the IAP from ██████ Academy.

137. The Undersigned asked whether ██████ had mastered any of the goals within the IAP from ██████ Academy. Petitioners admitted that they did not offer any evidence about ██████’s mastery of any the IAP goals. Tr. vol. 4, pp. 1017:5-1018:21.

138. In anticipation of ██████ enrolling in WCPSS for the 2017-2018 school year, an IEP was developed on May 19, 2017 (“May 2017 IEP”). The May 2017 IEP incorporated essentially the same goals as the ██████ IAP, as well as, many of its academic supports. *Compare* Stip. Ex. 18, p. 139 (IAP) *with* Stip. Ex. 2 (IEP).

139. A Reevaluation and Annual Review IEP Meeting was held on May 19, 2017. WCPSS provided a draft IEP to ██████ which was also shared with ██████ Academy, one month prior on April 19, 2017. Stip. 52.

140. The IEP Team accepted the private independent evaluation conducted by Dr. ██████ and used the information from her evaluation to complete the sections of: educational evaluation, psychological evaluation, behavioral assessment related to Autism Spectrum Disorder, and other portions of the Summary of Evaluation/Eligibility Worksheet – Autism and the Summary of Evaluation/Eligibility Worksheet – Other Health Impairment. Stip. 53.

141. Participants in the IEP meeting included [REDACTED] former special education teacher and parent advocate [REDACTED], WCPSS senior administrator [REDACTED], WCPSS autism specialist [REDACTED], WCPSS psychologist Dr. [REDACTED], WCPSS lead occupational therapist [REDACTED], [REDACTED] High School special education teacher [REDACTED], [REDACTED] High School regular education teacher [REDACTED], [REDACTED] Academy academic director [REDACTED] and WCPSS attorney Maura O’Keefe. Stip. 56.

142. [REDACTED], WCPSS School Psychologist, completed a summary of evaluation results and provided recommendations for the IEP Team. Stip. 27.

143. The Reevaluation (“DEC 7”) dated May 19, 2017, reported the IEP Team did not require any additional data to determine continued eligibility for special education and related services, present levels of academic achievement, or whether any additions or modifications to [REDACTED]’s special education and/or related services were needed to meet measurable annual goals and participate in the general curriculum. Stip. 57.

144. The IEP team considered [REDACTED]’s eligibility for services in two categories, Autism (“AU”) as primary and Other Health Impairment (“OHI”) as secondary. Stip. 58.

145. The IEP team did not consider eligibility in the categories of Specific Learning Disabled (“SLD”) in math calculation or reading accuracy. Although this procedural violation was dismissed by the Rule 41(b) decision for lack of evidence of educational harm, completion of the eligibility worksheets in these categories may have helped [REDACTED] understand that a diagnosis of learning disabled in math calculation and reading accuracy alone is not sufficient for edibility for special education. In addition to being diagnosed with a disability, the student must also *need* specialized instruction. IDEA, 20 U.S.C. § 1401(3)(i) & (ii).

146. As of May 19, 2017, the IEP team had no information to support that, in addition to academic supports, [REDACTED] needed special education in math and reading. Only later, based on [REDACTED] pre-assessments, did it first become evident that [REDACTED] was a grade level behind in academics.

147. Prior to that, all other information provided by Petitioners and [REDACTED] Academy indicated that [REDACTED] had made both social/emotional and academic progress. When, in truth, [REDACTED]’s academics were ancillary to [REDACTED] Academy’s primary goal for [REDACTED]’s emotional regulation and stabilization. *See also, infra*, discussion regarding math and reading goals.

148. The Undersigned finds it difficult to believe that [REDACTED] was unaware of [REDACTED]’s academic deficit prior to the May 2017 IEP meeting, especially since: [REDACTED] consulted weekly with [REDACTED] Academy staff; her expert witness observed [REDACTED] in March 2017; and her educational consultant (also a psychologist) was actively involved since [REDACTED]’s initial placement at [REDACTED] Academy.

MAY 19, 2017 IEP

Present Levels of Academic and Functional Performance

149. The May 2017 IEP reported the same Present Level of Academic and Functional Performance (“Present Level”) in the area of Social/Emotional Skills and Organizational/Study Skills for [REDACTED] as was in the IAP:

Current level of performance provided by [REDACTED] Academy (therapeutic, small group setting): [REDACTED] has made great strides with the supports in place and is displaying a more engaged and positive attitude across the board. She still exhibits struggles with peer relationships at times and turning completed assignments in on time. However, great progress has been made in these areas. [REDACTED] is maintaining her own organization system that she developed with the [O]ccupational Therapist and showing more and more flexibility and acceptance. She is on par for her grade level expectations in all areas with the exception of turning assignments in on time.

Stip. 61.

150. The Present Level for written expression for [REDACTED] was:

Written expression is an area of need for [REDACTED]. She has difficulty getting her thoughts out on paper. She is able to speak about a topic in greater detail than provide written output. She needs prompting to write in complete sentences and use appropriate conventions.

Stip. 62.

Functional and Academic Goals

151. The May 2017 IEP included the following four functional goals in the area of Social/Emotional Skills and Organizational/Study Skills which were based on [REDACTED] Academy’s IAP:

- a. Given direct instruction and practice, during group interaction [REDACTED] will demonstrate positive peer interaction such as, conversational exchanges, repairing conversations, and project collaboration in 3/4 times.
- b. When presented with a distraction or an unexpected event, (task that she perceives as overwhelming, unexpected student behavior, negative interaction with a peer or adult) [REDACTED] will use pretaught emotional regulation strategies to support her focus, attention and flexibility in class 3/4 times.

- c. [REDACTED] will use her self-selected organizational system, check-ins with teacher, and study skills to turn work in on time at school 3 out of 4 times per class.
- d. Given direct instruction and visual supports, [REDACTED] will identify a variety of emotions and nonverbal and other social cues in peers, staff, and literature in 3 out of 4 events.

Stip. 63.

152. Petitioners' expert testified on direct examination that the IEP was completely inappropriate yet, when queried by the administrative law judge, vacillated in her opinion.

153. Petitioners' expert witness, Dr. [REDACTED] was asked by the Undersigned:

Q. Was there anything in the May 19, 2017 IEP that you thought was appropriate?

A. Honestly, I think that the goals they had there are getting to appropriateness if they could have done one of two things, either make them more specific or break them down into benchmarks. So, I don't think they're off the mark in the –in the broad stroke of what they were trying to address.

Tr. vol. 3, p. 608:12-17.

Lack of Math and Reading Goals

154. The IEP included a new goal for written expression: “[REDACTED] will demonstrate appropriate written conventions (using complete sentences, punctuation) with no more than 2 verbal teacher prompts in 3 out of 4 trials.” Stip. 64.

155. The issue pertaining to the math and reading goals was also dismissed because Petitioner failed to establish that [REDACTED] required specialized instruction in either area. At the IEP meeting, Petitioner [REDACTED] requested the IEP Team add academic goals in math and reading for [REDACTED] Stip. 72.

156. Based on the June 2016 Evaluation and representations of Petitioners and [REDACTED] Academy, the IEP Team determined that [REDACTED] did not require math or reading goals and refused this request. Stip. 73; Stip. Ex. 5 (“Prior Written Notice”).

157. While at [REDACTED] Academy, [REDACTED]'s math grades ranged from C- to A-, while all her other grades were A's and B's. Stips. 48, 49 & 50; Stip. Ex. 5. [REDACTED] reported that [REDACTED] was “at or above grade level in academics.” Stip. Ex. 8, p. 57. She was, however, heavily dependent on a calculation to solve math problems. Stip. Ex. 8, p. 57.

158. Based on the June 2016 Evaluation, [REDACTED] had average math and reading scores overall. Her math calculation subtest score was the only discrepant academic area, but that could be accommodated by a calculator. “With the exception of turning assignments in on time,” [REDACTED] was “on par for her grade level expectations in all areas.” Stip. Ex. 18, p. 136.

159. Petitioners were aware of the June 2016 Evaluation results prior to May 1, 2017. If compensatory math education was owed to [REDACTED] then those claims arose before May 1, 2017. Acknowledging these claims, prior to settlement of Petition 1, could have potentially diminished the appropriateness of the [REDACTED] Academy program. Even so, Petitioners cannot do an “end run” around the release of these claims by now demanding math or reading remediation.

SERVICE DELIVERY

160. The IEP included the following specially designed instruction and related services:

<i>Special Education</i>	<i>Sessions</i>	<i>Session Length</i>	<i>Location</i>
Social/Emotional Skills	5x/week	30 minutes	Special Education
Writing	5x/week	15 minutes	Special Education
Organizational/Study Skills	5x/week	45 minutes	Special Education
Occupational Therapy – RSSD	4x/reporting period	00 minutes	Regular Education

Stip. 66.

161. In the draft IEP, the IEP Team had proposed providing [REDACTED] with daily instruction in social/emotional skills (60 minutes) and organizational/study skills (30 minutes), both in the special education classroom. Stip. Ex. 1, p. 13. As proposed, this would be delivered via a Curriculum Assistance class that would include twelve (12) or fewer students. Tr. vol. 5, p. 976:4-8.

162. After discussing [REDACTED]’s present levels and needs, modifying and adding to the draft IEP goals, and finalizing accommodations, the IEP Team agreed upon the following service delivery: 30 minutes of social/emotional skills, 45 minutes of organizational/study skills, and 15 minutes of writing. These services were to be delivered in a pull-out setting in the Curriculum Assistance class. Stip. Ex. 2, p. 13-14.

163. It should be noted that Petitioners presented no evidence contesting the service delivery *times* selected by the team, only the location of services. Therefore, the Undersigned finds the service delivery times uncontested and appropriate.

164. The IEP Team considered the following alternative educational placements: Regular – 80% or more of the day with nondisabled peers or Resource – 40% - 79% of the day with nondisabled peers. Stip. 67.

165. Ms. [REDACTED] testified that based on [REDACTED]'s needs as captured by Dr. [REDACTED] [REDACTED] Academy, and team members who had observed [REDACTED] at [REDACTED] Academy, the special education classroom, rather than the general education setting, was the most appropriate setting for service delivery. Tr. vol. 5, pp. 981:25-982:11; 982:24-984:25.

166. [REDACTED] was ultimately placed in the Resource educational placement (Stip. 68), because “[REDACTED] will be removed from her non-disabled peers to receive small group support in organizational skills, writing, and social skills based on her documented needs.” Stip. 69.

167. The IEP Team perceived that [REDACTED] needed direct instruction in all three areas, and if this was provided in the general education classroom, [REDACTED] would be confronted with the challenge of absorbing direct instruction on distinct content per her IEP at the same time as academic instruction in a core content area. Tr. vol. 5, pp. 983:24-983:6 (T. of [REDACTED]). This would prove a daunting task for [REDACTED] and would require her to constantly shift her attention from one task to another, something with which [REDACTED] already struggled. Tr. vol. 5, p. 983:18-23 (T. of [REDACTED]) noting that [REDACTED] would struggle with shifting her attention from instruction on social skills and academics, simultaneously.).

168. Direct instruction is critical for students with social skills deficits similar to [REDACTED]'s, including the opportunity for modeling and role-playing. Tr. vol. 4, p. 765:12-44. Both Dr. [REDACTED] and Ms. [REDACTED] noted that students who have mastered a social skill can receive support in the general education setting, but that where a child has greater needs and would benefit from more intensive supports, direct instruction in a separate setting would be more appropriate and effective. Tr. vol. 4, pp. 768:14-769:7; Tr. vol. 5, pp. 984:19-985:1.

169. Because of [REDACTED]'s specific needs, the efficacy of the specialized instruction [REDACTED] required would be significantly reduced by delivery in the general education setting. Tr. vol. 4, pp. 802:15-803:22; Tr. vol. 5, pp. 982:12-984:18.

170. The Undersigned finds Respondent's explanation of the IEP Team's justification for providing [REDACTED]'s specialized instruction in a pull-out setting credible and appropriate in light of [REDACTED]'s unique needs.

171. Further, provision of direct instruction in a pull-out setting, such as a Curriculum Assistance class, aligns with the recommendations of some of Petitioners' own witnesses.

- a. Dr. [REDACTED] recommended that “[REDACTED] be taught social skills in a separate class noted – or a separate group noted for social skills development, but that she also be given frequent practice and exposure opportunities in a real life setting.” Tr. vol. 2, p. 308:19-25.
- b. Ms. [REDACTED] provided comparable social-emotional instruction to the instruction described by Respondent's witnesses for [REDACTED] in a separate setting at [REDACTED] Academy and credited it for [REDACTED]'s success in academic settings. Tr. vol. 2, p. 178:1-17 (“[Ms. [REDACTED]] would process in individual therapy the goings-on in the classroom and do social skills role plays as well as

implement intervention strategies that she could utilize in the classroom to help her.”).

172. Respondent’s expert, Dr. ██████ lauded additional benefits of the Curriculum Assistance class for a student like ██████ noting that this class would provide ██████ with a teacher who is “immediately [her] ally” and advocate, a safe space to address social-emotional needs, and time to focus on her organizational skills and homework completion, which have presented problems for ██████ in the past. Tr. vol. 6, pp. 1135:20-1138:20.

173. Petitioner’s expert, Dr. ██████ opined at the hearing that the team’s determination that instruction would be delivered in the special education classroom rendered the IEP inappropriate. Tr. vol. 3, p. 524:21-22. At no time during the IEP meeting did ██████ or her parent advocate indicate that the service delivery in the pull-out setting was inappropriate for ██████ Tr. vol. 5, p. 987:8-10.

174. At the end of the IEP meeting, ██████ rejected the IEP because she did not believe the goals would be implemented, as that had been her prior experience. Tr. vol. 2, p. 429:13-22 (██████ testified that she “was not comfortable with the goals that were set because I didn’t – I was not comfortable that they were going to be able to actually execute and support what was put in there.”); Stip. Ex. 4, p. 41; Tr. vol. 2, p. 430:7-11; Tr. vol. 5, pp. 986:24-987:7 (██████ testifying that ██████ simply said she didn’t think the IEP could be implemented, wasn’t strong enough, and did not cite any specific problem with the IEP). ██████ did not, however, cite any specific problem with the goals, present levels, accommodations, or service delivery in the IEP. *Id.*

175. Ms. ██████ testified that ██████’s rejection of the IEP was abrupt and unexpected based on their collaboration through the five-hour meeting. “I was very surprised because I thought we had had really good, open IEP meeting where everybody had contributed and everybody had been a part of it.” Tr. vol. 5, p. 986:15-18. Specifically, Ms. ██████ recalled that Ms. ██████ had a “completely shocked” facial expression when ██████ rejected the IEP. Tr. vol. 5, p. 986:14-15.

176. The Undersigned finds that Petitioners failed to offer sufficient evidence to support their claim that ██████’s service delivery was inappropriate.

177. More importantly, from a programming standpoint, the Undersigned finds that the proposal for service delivery in a pull-out setting was aligned with recommendations from Dr. ██████ consistent with ██████’s desire for a smaller setting, and an opportunity for ██████ to develop a strong relationship with a teacher, and appropriate in light of ██████’s unique learning needs and her pending return from a residential placement. It is clear from the record that ██████’s needs were not generally academic in nature, but rather related to removing social, emotional, and organizational barriers to her academic performance.

178. It must also be noted that ██████ was preparing to return from an extremely restrictive placement to a traditional high school. It is apparent from the records and testimony that the IEP team viewed the minimal removal to the Curriculum Assistance class as a way to maximize ██████’s overall inclusion in the general education classroom.

179. The weight of the evidence supports a finding that [REDACTED] would not have benefitted from intensive social/emotional skills and organizational skills instruction embedded in the general education setting. Therefore, that specialized instruction in a more restrictive setting for a small portion of [REDACTED]'s day was appropriate.

PLACEMENT DETERMINATION

180. As noted above, the Undersigned finds that the placement decision reached by the team was appropriate. As a related procedural issue, however, Petitioners have alleged that the IEP team predetermined [REDACTED]'s educational placement. Predetermination of placement is the only procedural claim that survived the 41(b) Order.

181. The Undersigned further notes that arguments against the provision of special education services in the Curriculum Assistance classroom did not appear to arise until well into the hearing itself, and that this Petition was not presented as an “inclusion case.” Tr. vol. 4, pp. 814:4-817:6.

182. The initial draft IEP provided to the parents and [REDACTED] Academy included a proposal for sixty (60) minutes per day of specialized instruction in social/emotional skills and thirty (30) minutes per day of specialized instruction in organizational skills. The proposed location for both areas of service delivery was the special education classroom. Stip. Ex. 1, p. 13.

183. In the email providing the draft to the parent, [REDACTED] [REDACTED] specifically stated that “this is a draft and we are happy to consider other options.” Pet. Ex. 22, p. 167.

184. As reflected in earlier findings, in the month between receiving the draft IEP and the May 19 IEP meeting, neither [REDACTED] nor [REDACTED] Academy provided any specific feedback on the draft. No objection to the service delivery proposal was raised before or at the IEP meeting.

185. During the IEP meeting, the team discussed the service delivery proposal. Stip. Ex. 4, p. 40. Based on the discussions earlier in the meeting regarding [REDACTED]'s needs, the team decided to modify the service delivery time for social/emotional skills to thirty (30) minutes per day and to increase the organization skills to forty-five (45) minutes per day. Stip. Ex. 2, p. 28-29. In light of the added goal in writing, the team added fifteen (15) minutes of service delivery in writing. Stip. Ex. 2, p. 28-29. Given that the service delivery times changed substantially during the meeting, including introduction of an entirely new area of instruction based on parent request, there can be no credible claim of predetermination on the service delivery times.

186. There is no evidence that anyone at the meeting suggested that it would be more appropriate to provide [REDACTED]'s specialized instruction in the general education setting. At the hearing, team members offered cogent and responsive explanations for why they proposed pull-out services, both in terms of the benefits of the special education classroom and the harms of trying to deliver [REDACTED]'s specialized instruction in the general education classroom. Tr. vol. 4, pp. 801:10-802:8, 802:15-803:10, 803:15-22 (T. of [REDACTED]) Tr. vol. 5, pp. 982:24-984:18 (T. of [REDACTED])

187. In fact, ██████'s repeated reference to smaller settings and ██████ Academy's recommendation for smaller classes, as well as ██████'s statement in the meeting that ██████ would not want to look different among her peers—which would be an inevitable result of embedding intensive social skills instruction in a general education classroom—bolstered the team's proposal for specialized instruction in the pull-out setting.

188. School staff clearly understood that a general education placement was the default placement and offered appropriate reasoning for departing from that. Tr. vol. 4, p. 804:7-17 (T. of ██████ Tr. vol. 5, p. 981:12-20 (T. of ██████ Further, social skills instruction is, when appropriate, offered in a general education classroom. Tr. vol. 5, pp. 984:19-985:2.

189. On multiple occasions during the meeting, ██████ or her advocate inquired as to how the IEP team was taking into account ██████ Academy's recommendation of smaller classes. Each time, team members explained their awareness of the issue and discussed ways that they proposed in which the Autism Support Program would address those needs, and how the proposed Curriculum Assistance class would meet those needs and allow her to access typically sized general education classes. Stip. Ex. 4, p. 38-40. At no point did the team refuse to address any concerns raised in the meeting. Tr. vol. 4, p. 793:14-18.

190. At no point during the meeting did ██████ request that ██████'s service delivery be provided entirely in the general education setting. Tr. vol. 4, p. 804:18-23; Tr. vol. 5, p. 987:8-10. Based on the minutes of the meeting, ██████'s only objection related to service delivery was that she perceived that the IEP goals would *only* be worked on in the Curriculum Assistance class. Stip. Ex. 4, p. 41.

191. Similarly, based on the documentation of the meeting and testimony from numerous witnesses, it appears that ██████'s primary objection to the IEP was not the use of a Curriculum Assistance class to provide a smaller environment, but rather the fact that the *rest of* ██████'s classes would not be as small. Stip. Ex. 4, pp. 40-41. The issue of general education class size is not one of placement but of supplementary aids and services, which is addressed *infra* in the next section.

192. Testimony regarding the team's reaction to ██████'s eventual rejection of the IEP supports a finding that the team genuinely believed ██████ was in agreement with the proposal for service delivery. Tr. vol. 5, p. 987:14-17.

193. To the extent that ██████'s testimony regarding the discussion at the IEP meeting is in direct opposition to that presented by Ms. ██████ and Dr. ██████ the Undersigned credits Ms. ██████ and Dr. ██████ version of the meeting. While ██████ testified at the hearing that she requested all special education services be provided in the general education classroom, there is no other supporting evidence regarding such a request at the IEP meeting, and it is contradicted by credible testimony from other witnesses, as well as documents in the record.

194. The record is clear that [REDACTED] had the opportunity to ask questions and raise objections throughout the IEP meeting, and that the team provided cogent and responsive explanations and clarifications. While the final IEP reflects the same educational placement as the draft—though significantly different service delivery—the weight of the evidence supports a finding that there was robust discussion at the meeting regarding how [REDACTED]’s services would be delivered, and that [REDACTED] participated extensively in the discussion.

195. Finally, the Undersigned notes that, when a parent has a month to review a draft IEP and participates in a five- or six-hour IEP meeting without making her objection to the proposed program clear, Petitioner has not established that the team predetermined the result. An IEP team cannot credibly be accused of refusing to consider other options when other options are not proposed.

SUPPLEMENTAL AIDES AND ACCOMMODATIONS

196. The May 2017 IEP included the following supplemental aids, supports, modifications, and accommodations to be utilized during [REDACTED]’s academic classes:

<i>Class/Activity</i>	<i>Accommodation</i>	<i>Implementation Specification</i>
Assemblies	Preferential seating	[REDACTED] should be seated close to teacher in a place where external distractions and social distractions are minimized
	Other	-break card (take space)
Academic Classes: English Foreign Language Math Social Studies	Modified assignments	Case Manager, student, and classroom teacher can work together to modify assignments (classwork and homework) as needed
	Preferential seating	[REDACTED] should be seated close to teacher in a place where external distractions and social distractions are minimized
	Scheduled Time – Extended Time – Other	time and a half for tests, quizzes, or lengthy assignments as needed
	Testing in a Separate Room – Small Group	15 students or less
	Other	-copy of teacher notes -break card (take space)

Stip. 65.

197. Writing also included the same accommodations, except for access to computer instead of “copy of teacher notes,” and the addition of graphic organizers, as needed, to organize thoughts. Stip. 65.

198. Since she was merely a “fact witness,” Dr. ██████████ did not formally review the IEP (Tr. vol. 2, p. 292:1-3) or the IAP (Tr. vol. 2, p. 310:16-18). When asked to review the accommodations on the May IEP to see if they were consistent with her recommendations, Dr. ██████████ albeit reluctantly and over multiple objections from Petitioners’ counsel, responded that they were. Tr. vol. 2, pp. 295:5-299:2 *comparing* Stip. Ex. 2, pp. 23-25.

199. Dr. ██████████ reviewed and agreed with Dr. ██████████ June 2016 evaluation and recommendations. Tr. vol. 3, pp. 473:25-475:17. Inexplicably, while Dr. ██████████ opined that ██████████ does not offer the same level of support that ██████████ Academy did, Dr. ██████████ considered the level of support offered by WCPSS to be inappropriate while it was more extensive. Tr. vol. 3, p. 603:12-15.

200. The May 2017 IEP’s academic accommodations, absent therapeutic supports, were consistent with the accommodations provided by ██████████ Academy. Yet, even though ██████████ Academy provided fewer accommodations than the proffered IEP, Dr. ██████████ opined that ██████████ Academy was appropriate.

201. The Undersigned finds that the Respondent provided a cogent and reasonable rationale for the proposed supplemental aides and accommodations, and that their inclusion in the May 2017 IEP were appropriate and sufficient for ██████████’s academic support.

ABSENCE OF CLASS SIZE ACCOMMODATION

202. The only accommodation ██████████ requested that the team did not agree upon – and the only accommodation at issue in the present matter following the Rule 41(b) Order - is the accommodation of small class size. Tr. vol. 2, p. 424:10-13; Stip. Ex. 4, p. 40.

203. Though the remainder of the supplementary aids and services are no longer at issue at this point in the hearing, the Undersigned finds that many of the accommodations and modifications provided or suggested aligned closely with recommendations from Dr. ██████████ and from ██████████ Academy.

204. It should be noted at the outset that there was significant ambiguity in the record about what, precisely, Petitioners were interested in with regard to this accommodation. In some documents and testimony, it appears the request was for a smaller sized *school*. Stip. Ex. 4, p. 38 (“[██████████] asked how this will take place in a large school.”) (“[██████████] expressed great concern that the large school setting is not going to work for [██████████]

205. In others, the request appears to have been for fewer students in ██████████’s classes. “[██████████] and Ms. ██████████ inquired how [██████████]’s need for a small class size is going to be addressed.” Stip. Ex. 4, p. 40. Dr. ██████████ opines that ██████████’s request was not for a small high school, but instead was about “what supports was she going to have in whatever school she was placed in so she wouldn’t succumb to the challenges that she would face in a really large setting.” Tr. vol. 3, pp. 527:19-528:2.

206. At the center of the argument, however, appears to be a recognition that ■■■ did well at ■■■ Academy, in large part, because the smaller setting allowed for her to develop relationships with peers and adults and receive significant individualized attention. ■■■ stating that “[t]he biggest thing with [■■■] is if she can have that small instruction and that relationship with the teacher she does a lot better.” Tr. vol. 1, p. 92:17-19.

207. Because school assignment is not an IEP team decision, and in light of Petitioners’ arguments toward the end of the hearing, the Undersigned interprets the request to be one for fewer students in ■■■s classes. Further, pursuant to the language in the Rule 41(b) order defining the remaining issues in the case, and based upon the fact that a small class size accommodation would only have meaning if it specified a maximum size for classes, the Undersigned interprets the request to be for a capped class size.

208. No member of the IEP team – including ■■■ and her advocate - ever suggested there be any specific cap set on the number of students in any of ■■■s classes. Stip. Ex. 4, p. 34-41; Tr. vol. 5, p. 977:3-7 (T. of ■■■). Instead, the discussion at the IEP meeting centered around how WCPSS would address ■■■ Academy’s recommendation for a smaller setting.

209. During the meeting, both ■■■ and her parent advocate expressed concern about the size of ■■■s base school and classes that ■■■ would attend upon returning from ■■■ Academy. They highlighted ■■■ Academy’s recommendation of a smaller setting. Stip. Ex. 4, p. 40; Tr. vol. 4, p. 799:13-16.

210. However, the ■■■ Academy staff actually recommended that the “*best possible environment*,” that “[■■■] *benefits from a smaller classroom*,” she is “*best served in a small school*.” Stip. Ex. 22, p. 154 (emphasis added). They did not say that she could *only* be served by a capped class size or in a small school.

211. Although Dr. ■■■ has never observed ■■■ in a classroom with more than six students (Tr. vol. 3, p. 548:10-16), she asserted that there was evidence that ■■■ did not succeed when she was not in a setting like ■■■ Academy. Tr. vol. 3, p. 528:11-13. Yet, Dr. ■■■ did not cite any evidence that it was the class size in particular that prompted ■■■s difficulties during her 8th grade year in WCPSS, nor is there any evidence in the record as to ■■■s class size or relationship with teachers during her prior enrollment at WCPSS. Further, Dr. ■■■ attributed ■■■s previous struggles when enrolled in WCPSS to “many factors, not just class size,” such as adequate supports. Tr. vol. 3, pp. 592:24-593:3; 528:8-12.

212. There is insufficient evidence that ■■■s success was solely linked to the size of her classes at ■■■ Academy. As noted by Dr. ■■■ “just because [■■■] did well in that smaller setting doesn’t mean that she’s only going to do well in a smaller setting.” Tr. vol. 4, p. 769:22-24.

213. According to both Dr. ■■■ and Ms. ■■■ there was no evidence indicating that ■■■ could not succeed in a larger classroom with supports. Tr. vol. 4, pp. 799:25-800:4. Further, there was no evidence before the team that a class of one particular size would be too large for ■■■ to succeed. Tr. vol. 4, p. 800:5-8.

214. Petitioners' own witness, Dr. [REDACTED] specifically testified that "*she's not incapable of learning in a larger classroom environment.*" Tr. vol. 2, p. 288:1-2 (emphasis added). This is consistent with her 2016 Evaluation in which she wrote that [REDACTED] "will likely respond *optimally* in a smaller classroom," not that she *needed* a small classroom. Stip. Ex. 14, p. 112 (emphasis added).

215. Nonetheless, the IEP Team factored the recommendation for small class size into their development of the IEP. WCPSS staff explained their proposal that [REDACTED] would receive her specialized instruction in a smaller setting during her Curriculum Assistance class, among 12 or fewer students, and that she would have access to that small setting at any time during the day that she may need it via the break-card accommodation. Stip. Ex. 4, p. 40 (noting that Curriculum Assistance would provide smaller setting). Ms. [REDACTED] explained the autism supports, and that [REDACTED] "would have access to that autism support teacher at any time during the day in that classroom if she needed – if she needed some time to emotionally regulate or she was becoming overwhelmed by some instruction that was going on and needed [] somebody to process through it with her." Tr. vol. 5, pp. 976:4-8, 17-22; 980:16-25.

216. The Autism Support Program at [REDACTED] High School – through which the team was proposing [REDACTED] would receive her services – is "specifically designed to take a large setting and make it feel small for kids who have a difficult time or may have a difficult time in the big setting," as it "allows them to come back any time during the day [to the C.A. classroom] to access a smaller setting for whatever it is that they need." Tr. vol. 5, p. 977:9-18. In addition, the team envisioned that the Curriculum Assistance setting would also benefit [REDACTED] by helping her develop a strong relationship with a particular teacher, an issue that Petitioners repeatedly cited as crucial for [REDACTED]'s success. Tr. vol. 1, p. 92:17-19.

217. At the hearing, Petitioners were unable to offer any consistent testimony about what the parameters of the requested small class size accommodation would be. [REDACTED] at first testified that a class of more than 15 students would be too large for [REDACTED] citing [REDACTED]'s need to form relationships with teachers who understand her needs and noting that [REDACTED] had not experienced that in the past. Tr. vol. 3, p. 424:15-21. [REDACTED] admitted that she did not have any basis for choosing the number 15. Tr. vol. 3, p. 425:1-3. She then declined to specify a class size cap for [REDACTED] noting that identifying a class that's "too big" would "depend[] on the class . . . every class is different." Tr. vol. 3, p. 425:4-7.

218. Ms. [REDACTED] testified that [REDACTED] Academy staff had recommended [REDACTED] attend a similar environment to [REDACTED] Academy – with a "small classroom size, relationship based multimodal teaching" – because [REDACTED] had proven successful at [REDACTED] Academy. Tr. vol. 2, p. 137:20-23. Ms. [REDACTED] indicated that she interpreted the term "large classroom" size as consisting of 12 students, because that was the largest classroom in which [REDACTED] participated at [REDACTED] Academy. Tr. vol. 2, p. 170:10-25. However, asked on cross-examination if a class with 13 students would be inappropriately large for [REDACTED] Ms. [REDACTED] responded: "I can't answer that question. There's a lot more factors besides just simply number of students – the peer culture, the abilities of the teachers. Thirteen, who knows?" Tr. vol. 2, p. 171:16-19.

219. Dr. [REDACTED] acknowledged that the number of students in a school or class does not, alone, dictate a student's experience in a classroom. She testified that classes with as many as 30 students can be made to feel much smaller – as if they contain 12 students – through provision of certain supports. Tr. vol. 3, pp. 521:20-522:2. Dr. [REDACTED] cited several supports that would allow a larger classroom of 30 students to still meet [REDACTED]'s needs, including co-teaching, strategies that build relationships between students and teachers, and using evidence-based practices. Tr. vol. 3, p. 593:19-23. Further, Dr. [REDACTED] testified that general education classrooms that effectively utilize evidence-based practices provide small group instruction for all students, regardless of classroom size. Tr. vol. 3, p. 524:23-25.

220. Ms. [REDACTED] one of [REDACTED]'s teachers at [REDACTED] Academy, moved [REDACTED] from a smaller classroom to one having 16 students, where she was more successful. Tr. vol. 2, pp. 327:14-328:4.

221. The Undersigned finds that Petitioners presented evidence of a correlation between the supports and conditions provided at [REDACTED] Academy – including small class size – and [REDACTED]'s success in the program. Yet, Petitioners did not present any evidence that [REDACTED]'s success was due solely or primarily to the specific accommodation of small class size, or that [REDACTED] could not make progress in a larger class with other types of support in place.

222. In support of their argument that [REDACTED] needed a small class setting, Petitioners elicited periodic testimony as to the alleged inability of a traditional public-school setting to meet [REDACTED]'s needs, especially as to her “need” for small class size. Tr. vol. 2, pp. 140:19-141:3; Tr. vol. 3, pp. 521:4-9; 518:23-519:1. These assumptions about what public schools are able to offer were not based on any evidence with respect to the team or school at issue in this case, and the Undersigned therefore discredits these statements.

223. The inconsistency among even Petitioners' own witnesses on what class size would be appropriate for [REDACTED] makes it impossible for the Undersigned to find that a particular class size cap as an accommodation in the IEP was necessary for [REDACTED] to make progress given her unique circumstances.

224. Petitioners' expert, Dr. [REDACTED] refused to “play a numbers game” and offered no evidence for what the Petitioners contend was the appropriate class size. Tr. vol. 3, p. 593:18-23 (T. of [REDACTED]).

225. With the appropriate amount of supports in place, Dr. [REDACTED] didn't “think that we couldn't do this in a class of 30...,” but she didn't feel confident based on the IEP. Tr. vol. 3, pp. 593:13-594:4 (T. of [REDACTED]).

226. Dr. [REDACTED] never observed [REDACTED] in an academic class larger than 6 students, never observed instruction at any Wake County high school, never observed an Autism support program at [REDACTED] High School, and never evaluated [REDACTED]. Tr. vol. 3, pp. 548:10-549:3. Due to these shortcomings in her testimony, the Undersigned gave it little weight with respect to the class size cap issue.

227. Despite opining that the lack of a class size cap was inappropriate, Dr. ██████ admitted that she was not privy to the conversation at the IEP meeting about how the Curriculum Assistance class would connect to general education, but she “would have loved to be there to hear that.” Tr. vol. 3, p. 591:22-25.

228. Further, witnesses for Respondent credibly articulated concerns that limiting ██████ to a small setting she may not need could cause more harm her in the future. Dr. ██████ described a class size cap as something that would disable, rather than help, ██████ particularly in light of her postsecondary plans to attend an elite, four-year university. Tr. vol. 4, pp. 769:25-770:3.

229. To the extent that Petitioners attempt to support the class size cap from a sensory perspective (Tr. vol. 2, p. 138:20-23; ██████ stating that “[t]he more people in a small room, the more difficulty [██████] is going to have in regulating her physical and emotional states”), or a student-teacher relationship perspective (Tr. vol. 2, p. 139:3-8; ██████ stating that a small class size would mean a teacher who could provide social/emotional growth, more attention to relationship building, and making ██████ feel “more supported”), such arguments fail in light of the evidence.

230. Though Petitioners presented evidence and testimony as to ██████’s sensory issues at ██████ Academy, Petitioners did not establish – in either the May 19 IEP meeting or in this hearing – that ██████’s sensory issues would prevent her from participating in a typically sized classroom. Tr. vol. 5, p. 1051:8-14; *see also* Stip. Ex. 16 (reflects that ██████ had met nine of the eleven occupational therapy goals in place at ██████ Academy as of the May 19 IEP meeting, and that ██████ met the remaining two goals prior to her discharge from ██████ Academy in July 2017). Notably, ██████ participates without issue in an assembly every morning at ██████ Academy, alongside more than 100 other students, in a single room illuminated by fluorescent lights. Tr. vol. 5, p. 988:3-13.

231. ██████’s main recommendation for her sensory needs was to “face her chair away from” the other students. Tr. vol. 2, p. 328: 5-16.

232. Further, the May 19 IEP included occupational therapy support services that specifically targeted ██████’s sensory needs. Stip. Ex. 3, p. 34. The IEP provided ██████ with occupational therapy through a related services support description, specifying the “sensory” strategies cited by ██████ earlier in the IEP meeting. Stip. Ex. 3, p. 34. In the general classroom, the OT could help WCPSS staff implement the same sensory supports that have been beneficial for ██████ at ██████ which were: 1. eliminating bright lighting; 2. eliminating extraneous and loud noise; 3. having additional space between ██████ and her peers; and, 4. short breaks from work to read when ██████ is feeling overwhelmed. Stip. Ex. 4, p. 36.

233. WCPSS’ occupational therapist ██████ ██████ who participated in the IEP meeting, testified that these supports would help ██████ maintain and control her anxiety level so she could successfully participate in a larger general education classroom. Tr. vol. 5, pp. 1049:20-1050:3. The Undersigned finds that ██████’s sensory needs were appropriately contemplated by the IEP team and addressed by the IEP to promote her success in typically sized classrooms.

234. █████ herself, did not know the appropriate class size cap. When asked if 20+ kids or 15+ kids were “too hard” for her, █████ responded that █████ “needs to be in a class where she is going to form a relationship with the teacher and they can understand her and her need. And she has not experienced that previously.” Tr. vol. 2, p. 424:14-21. Without elaboration, █████ did say that a Curriculum Assistance class was “not the right environment.” Tr. vol. 2, p. 425:19-23.

235. On June 14, 2017, █████ applied for a transfer for █████ from her base school, █████ High School, to █████ High School. Stip. Ex. 24. █████ stated in her request that she believed █████ would provide “options for [█████’s] education that might be more fitting.” *Id.* Finally, █████’s own actions after the IEP meeting undercut Petitioners’ representation at hearing that they considered a small class size cap critical for █████ █████ did not mention class size or school size in her transfer request.

236. On cross-examination, █████ acknowledged that she was aware that █████ is actually larger than █████ High School in terms of total school enrollment, and that the student-teacher ratio is marginally smaller (by only one student). Tr. vol. 2, pp. 383:22-384:3. █████ admitted that class size for █████ at █████ could be the same as at █████ Tr. vol. 2, p. 384:6.

237. The Undersigned finds that the weight of the evidence supports the Board’s position that █████ did not require a class size cap as an accommodation in her IEP. There are different ways to support needs like █████’s, and the supports described in the IEP – including access to a smaller classroom via the Curriculum Assistance class and break card system, intensive social and emotional skills instruction, preferential seating, the related services support description, etc. – were sufficient to meet █████’s needs related to sensory issues, relationship-building, anxiety, and social skills.

█████’s Concerns About █████’s “Relationships With Teachers”

238. █████ emphasized the “remarkable relationship” █████ had with her teachers. Tr. vol. 2, p. 364:16-27. At █████ Academy, █████ was “very comfortable” and “very anxiety free, “because, according to █████ she was “very close with the teachers....had a very tight relationship with them.....” Tr. vol. 2, p. 211:16-23. The “biggest thing for █████ is if she can have that small institution and that relationship with the teacher she does a lot better in putting forth her efforts.” Tr. vol. 1 p. 92:17-19. Like █████ Academy, █████ focuses very heavily on teacher-student relationship. “Tr. vol. 3, p. 541:15-21 (T. of █████)

239. Without explanation, █████ testified that the Curriculum Assistance was “not the right environment.” Tr. vol. 12, p. 425:19-23.

240. According to █████ █████ needs to be in a class where she’s going to form a relationship with the teacher, and they can understand her and her needs. Tr. vol. 2, p. 424:14-21.

241. Petitioners' expert opined that [REDACTED] was appropriate because it focused "very heavily on teacher-student relationships." Tr. vol. 3, p. 541:15-21 (T. of [REDACTED] "Most important" for [REDACTED] was a classroom environment that was "welcoming and supportive and encouraging." Tr. vol. 3, p. 606:1-7.

242. [REDACTED] Academy was a "bubble" that provided universal support to all of its students. Tr. vol. 5, p. 845:19-24 (T. of [REDACTED]

Autism Support Program in Curriculum Assistance Classroom

243. The AU support program is "specifically designed to take a large setting and make it feel small for kids who have a difficult time or may have a difficult time in the big setting, so it allows them to come back at any time during the day to access a smaller setting for whatever it is that they need." Tr. vol. 5, p. 977:12-18. This was explained several times to [REDACTED] at the IEP meeting. The AU support program supports kids with AU in the general education class.

244. According to Ms. [REDACTED] [REDACTED]'s main objections to the IEP were that it couldn't be implemented and wasn't strong enough. Tr. vol. 5, pp. 986:6-987:3. Ms. [REDACTED] was confident that this IEP could be implemented in WCPSS, and that it would be effective for [REDACTED] Tr. vol. 5, pp. 985:22-986:5.

245. [REDACTED] [REDACTED] the AU Program Support teacher at [REDACTED] attempted to explain to [REDACTED] how the AU Curriculum Assistance class worked and to alleviate [REDACTED]'s fears about class size in the general education setting. Tr. vol. 4, pp. 804:24-805:5.

246. Ms. [REDACTED] described the Curriculum Assistance classroom as a "safe place" for students to access any time of the day as needed. Tr. vol. 6, p. 1083:4-13, 17-18 (T. of [REDACTED] The AU support staff are in constant contact with all the general education teachers about their students. Tr. vol. 6, pp. 1083:19-1084:15 (T. of [REDACTED]

247. The AU teacher also would observe ("drop-in" or "check-in") the students during their time in the general education classroom. In addition, she would do "walk-bys" outside so the students would know she was there in classes where the students might have more difficulty, as well as "fly-by" as students were going from one class to another. Tr. vol. 4, p. 1081:4-19 (T. of [REDACTED]

248. The Curriculum Assistance class was provided for her social instruction, written instruction, organization, and study skills. But also, "[REDACTED] would have access to that small setting anytime she needed throughout the day for emotional regulation[,] for feedback, for maybe talking through something that she wasn't understanding." Tr. vol. 5, p. 1004:14-24 (T. of [REDACTED]

249. Dr. [REDACTED] [REDACTED] described the Curriculum Assistance class as "this fabulous little safe space where you have an ally; you know, your teacher is immediately your ally. You have a place to get your bearings about you, you know, safe space to sit and be calm if you need to be calm." Tr. vol. 6, pp. 1135:20-1136:4 (T. of [REDACTED]

250. Even after ██████ rejected the IEP, Ms. ██████ met with ██████ in June 2017 to show her and explain again to her what the AU program was like. Tr. vol. 6, pp. 1088:16-1089:23 (T. of ██████)

TRANSITION PLAN

251. Petitioners contend that the May 19 IEP should have included a transition plan.

252. The parties offered competing testimony as to whether ██████ was in need of a transition plan. Dr. ██████ testified that it would be “important” to include a transition plan in the IEP, and that such a plan should describe how the student would develop relationships, be integrated into the new learning environment, and note supports that were in place in the previous environment. Tr. vol. 3, pp. 494:22-495:13. Ms. ██████ testified that based on ██████’s progress and performance at ██████ Academy, ██████ did not need a transition plan implemented during the summer. Tr. vol. 5, p. 884:3-10.

253. Dr. ██████ further opined that as part of a transition plan, ██████ should, at a minimum, “get comfortable” with the school environment and the professionals there, and that professionals should get to know ██████ better and the supports that she would need. Tr. vol. 3, p. 496:16-19.

254. In fact, WCPSS did provide opportunities for ██████ to tour and visit several potential school assignments for ██████ (Stip. Ex. 4, p. 40-41), and facilitated a meeting with Ms. ██████ at ██████ Elementary School so that ██████ could learn more about the program at ██████’s base school. *See* Tr. vol. 2, p. 426:18; Tr. vol. 6, pp. 1088:16-1089:3.

255. ██████ spoke with Ms. ██████ and obtained information about the program and instruction ██████ would receive. Tr. vol. 2, pp. 425:16-426:6. Ms. ██████ confirmed that it was a regular practice for her to provide a tour or information session for students and parents in the Autism Support Program. Tr. vol. 6, p. 1089:4-8. During such sessions, Ms. ██████ typically described and showed the layout of the school, brought parents and students to the Curriculum Assistance classroom, and discussed how students would have access to that “safe space” throughout the day, in addition to any scheduled time in the Curriculum Assistance class. Tr. vol. 6, p. 1089:9-20.

256. Witnesses for Respondent testified that ██████’s transition from ██████ Academy to WCPSS was at the forefront of team members’ minds in the development of ██████’s IEP. Tr. vol. 5, p. 883:12-21 (██████ testifying that “[w]e were very thoughtful in the process of how is this child going to come from a therapeutic boarding school into a large high school.”); Tr. vol. 4, pp. 775:22-776:25 (testimony by ██████ that team discussed an admittedly “big transition” from ██████ Academy to a WCPSS high school and identified supports to aid that transition); Tr. vol. 5, p. 985:1-3 (██████ testifying that “this was going to be a big transition...I think in a transition she needed more support than [services in a general education would provide]”). One specific accommodation recommended by the team to support the transition – an escort during transitions among classes – was rejected by ██████ at the meeting. Tr. vol. 4, p. 776:10-23; Tr. vol. 5, p. 985:13-21.

257. In addition, the IEP was developed three months prior to ■■■■■'s expected enrollment in August 2017 (Tr. vol. 2, p. 385:13-22), and the team indicated that another meeting could be held prior to her return. Stip. Ex. 4, pp. 40-41.

258. The Undersigned notes that ■■■■■'s integration into the school environment and prior supports were adequately addressed and described within the IEP itself, and that some of the factors Dr. ■■■■■ attributed to a "transition plan," such as creating relationships with teachers, are basic pedagogical strategies routinely implemented by teachers.

259. The weight of the evidence supports the Board's position that a separate written transition plan was not necessary for ■■■■■ to be successful given the instruction and supports present in the IEP as written. In addition, the Undersigned finds that the IEP team contemplated and appropriately considered ■■■■■'s transition from the therapeutic private school setting to the public school setting in its development of the goals, supports, and services in the IEP. Further, the Board made appropriate efforts to provide ■■■■■ with additional information about the Autism Support Program beyond that provided during the IEP meeting.

260. Accommodations such as preferential setting and extra time were all appropriate but not "comprehensive enough" for ■■■■■ to be successful. Tr. vol. 3, p. 606:18-23.

Petitioners' Rejection of IEP

261. ■■■■■ rejected the IEP at the end of the May 19th IEP meeting. Stip. 75.

262. ■■■■■ rejected the IEP not only because her concerns about the class size, but mainly because she "didn't trust that Wake County would provide these services to her child." Tr. vol. 4, p. 805:15-21.

263. After ■■■■■ rejected the IEP, ■■■■■ through her advocate, asked about a private school setting. The team explained that the IEP could be implemented in a WCPSS school. Stip. 76.

264. ■■■■■'s primary objection to the goals was that she was "not comfortable with the goals that were set because I didn't – I was not comfortable that they were going to be able to actually execute and support what was put in there." Tr. vol. 2, p. 429:17-22. Moreover, even though WCPSS had not been given an opportunity to implement the goals, ■■■■■ speculated that the goals would not be implemented. Tr. vol. 2, p. 430:7-14.

Petitioners' Transfer Request

265. The IEP Team also refused ■■■■■'s request that ■■■■■ be assigned to a small high school. Stip. 74.

266. ■■■■■ was informed at the IEP meeting that school assignment to a particular school within WCPSS was not an IEP team decision. Stip. 77.

267. [REDACTED] was advised that she could request a transfer through the Office of Student Assignment and the “team [would] communicate the parent’s request to the Office of Student Assignment.” Stip. 78.

268. On June 14, 2017, [REDACTED] submitted a transfer request from [REDACTED]’s base school of [REDACTED] High School to [REDACTED] High School. The stated reason for the transfer was: “Looking to transfer to a school program, a magnet school like [REDACTED] High where the options for her education needs might be more fitting.” Stip. 79.

269. The transfer request was denied. [REDACTED] did not appeal the denial. Stip. 80.

270. This Tribunal lacks subject matter jurisdiction on school transfer issues.

APPROPRIATENESS OF [REDACTED] ACADEMY PLACEMENT

Enrollment at [REDACTED] Academy

271. On May 2, 2017, before the May 19th IEP meeting, [REDACTED] signed a contract with her educational consultant, Dr. [REDACTED] for him to locate a private school program for [REDACTED]’s transition from [REDACTED] Academy. Tr. vol. 2, pp. 381:12-382:12.

272. [REDACTED] blamed the delay of the IEP scheduling for her decision to hire Dr. [REDACTED] and denied that she had already decided to place [REDACTED] in a private program before the IEP meeting. Tr. vol. 2, pp. 381:20-382:9.

273. The enrollment paperwork for [REDACTED] to attend [REDACTED] Academy was dated July 2, 2017. Stip. 81.

274. The contract for [REDACTED] Academy allows for [REDACTED] to receive a refund for any prepaid tuition, less the non-refundable New Student Enrollment Fee (\$800), if [REDACTED] left [REDACTED] Academy for any reason prior to December 31, 2017. Stip. 82.

275. On July 6, 2017, Petitioner [REDACTED] emailed the principal of [REDACTED] High School, [REDACTED] and stated that she had rejected the IEP developed at the May 19, 2017 meeting, haven given as her reasons for the decision, the IEP Team refused to consider her input and developed an inappropriate IEP for [REDACTED]. Since there was no appropriate program in place for [REDACTED] she was going to enroll [REDACTED] in private school and seek reimbursement from WCPSS. Stip. 83.

276. Mr. [REDACTED] did not respond to Petitioner [REDACTED]’s email because he thought the IEP was appropriate, nor did he forward the email on to WCPSS administration. Stip. 84.

277. Since May 19, 2017, WCPSS has not attempted, nor has [REDACTED] requested, that WCPSS convene an IEP Meeting. Stip. 85.

278. The WCPSS assigned [REDACTED] to [REDACTED] High School for the 2017-2018 school year. Stip. 86.

279. ██████ began attending ██████ Academy on August 24, 2017. Stip. 88.

280. ██████ Academy is located at ██████, Durham, North Carolina 27707. Stip. 89.

281. ██████ was enrolled in ██████ Academy on July 3, ██████. Pet. Ex. 1; Tr. vol. 2, p. 193:12-14. Notably, her enrollment date (July 3, 2017) precedes the date on which she notified WCPSS that she intended to withdraw ██████ and place her in a private school at public expense (July 6, 2017). Stip. Ex. 25. ██████ did, however, reject the IEP at the May meeting. Stip. Ex. 4, p. 41. But it was her advocate, Ms. ██████ that asked “what about a private school setting?” Stip. Ex. 4, p. 41.

282. ██████ primary focus was “flip-flopped” from ██████ Academy’s focus on stabilization, emotional regulation, and mental health needs. Tr. vol 2, p. 540:24-25 (T. of ██████ Pet. Ex. 43, p. 296.

283. ██████ focused on a “rigorous academic curriculum with the supports related to social and emotional development integrated within the context of their academic instruction.” Tr. vol. 3, p. 541:4-9 (T, of ██████ Pet. Ex. 43, p. 296.

284. Upon assessment at ██████ the “school team discovered early on that ██████ was performing below grade level in math and had significant challenges with written expression [s]he requires support to make sure her assignments are written properly in her agenda...and needs support with breaking multi-step tasks down into sequential steps, maintaining her focus and attention, and attending to all detail of given assignment.” Pet. Ex. 43, p. 295.

285. ██████’s academics had regressed to the point that she was “below grade level in most of her subjects. She was put in ninth grade instead of tenth and there [were] a few gaps that [were] not being filled in.” Tr. vol. 2, p. 327:1-10 (T. of ██████ This was inconsistent with the academic reports from ██████ Academy which reported she was on grade level in all subjects.

286. ██████ testified as to the educational program at ██████ Academy and her experience working with ██████

a. ██████ Academy has 136 students ranging in age from kindergarten to 12th grade. Tr. vol. 2, p. 316:8-14.

b. The average class size is approximately 9-10 students per class. *Id.*

c. ██████ provides individualized instructions for students based on information obtained during the “pre-assessment period,” held during the first month of the school year and develop individual plans for students that are implemented in late September/early October. Tr. vol. 2, pp. 316:17-318:14.

287. ████████ teachers do not generally hold teaching licenses and none are certified in special education. *See* Tr. vol. 2, p. 350:17-22. There is no special education classroom at ████████ Tr. vol. 2, p. 339:6-8.

288. Both Dr. ████████ and Ms. ████████ visited ████████ Academy, toured the school, and spoke with Ms. ████████ about the educational program. Tr. vol. 5, p. 987:15-23.

289. ████████ Academy does not offer direct and systematic social instruction, but rather provides incidental teaching after ████████ presents difficulty with her social skills. Tr. vol. 5, p. 988:18-23 (T. of ████████ Even Dr. ████████ described ████████ “social thinking approach” to social skills as one in which ████████’s issues and maladaptive behaviors are addressed after they happen. Tr. vol. 3, pp. 544:22-24; Tr. p. 546:3-6, 14-17.

290. Ms. ████████ and Dr. ████████ descriptions are consistent with Ms. ████████ testimony. Ms. ████████ stated that “a couple teachers” at ████████ are trained in Michelle Garcia Winner’s social thinking curriculum. Tr. vol. 2, p. 318:17-20. This curriculum is implemented only in response to social struggles and misbehavior, not in anticipation of social struggles. Tr. vol. 2, pp. 318:24-319:6 (noting that when students do something unexpected, they receive a notice that requires them to reflect on their behavior and how it impacted others); 320:6-321:6 (describing process of student reflection on misbehavior); 351:7-20 (confirming that staff apply the Garcia Winner method after incidents arise); 354:5-9 (“[I]t’s true that a lot of our instruction is based on what students present to us as needing, and in that sense it’s not preemptive because it’s something – sometimes it has to be presented to us first before we can address it.”).

291. According to Ms. ████████ the school helps students control their impulses to avoid repeating misbehavior by becoming familiar with individual students. Tr. vol. 2, pp. 353:20-22 (stating that faculty knew to “keep an eye” on ████████ and another new student); 354:8-9 (“[W]e try to anticipate because we are such a small school”). She did not describe any prospective or proactive methods by which teachers prime students to process social-emotional challenges. Tr. vol. 2, pp. 354:25-355:3 (indicating that exposure to modeling of social skills occurs only by happenstance, as a student happens upon the interaction of other students).

292. This approach does not appropriately target ████████’s social-emotional needs or help her develop the skills and strategies she needs to interact appropriately with others. Tr. vol. 5, pp. 964:23-965:8 (██████████ noting that “[y]ou can’t teach someone to calm down when they’re already upset,” and thus, ████████ would need to determine ahead of time to identify and develop strategies they can access once they become anxious); 988:18-19 (“They’re not addressing her social skills specifically.”); Tr. vol. 4, p. 765:14-22 (██████████ stated that ████████ needs explicit modeling of social skills because “picking up sort of incidental learning about social relationships she’s not necessarily going to get.”).

293. Dr. █████ opined that █████ was an appropriate transition for █████ to be able to move towards a more academically rigorous program based on her intellectual capabilities, but still receive those integrate supports related to all of her identified needs.” Tr. vol. 3, p. 541:10-14. She defined these integral supports as “small class size 11 or 12 students, climate of acceptance[,] and they focus much, very heavily on teacher-student relationships.” Tr. vol. 3, p. 541:15-21.

294. █████ however, does not offer the wraparound support that was instrumental to █████s success at █████ Academy, or that Petitioners contend were so necessary for █████s success at Wake County Schools. Tr. vol. 3, p. 603:12-15 (T. of █████

295. According to █████ █████s English teacher and █████ school administrator, reading was █████s main strength (Tr. vol. 2, p. 323:8-14) and her biggest weakness was saying “inappropriate comments out loud. Tr. vol. 2, p. 323:15-21. To stay organized the “biggest thing” we do to help her is to sign a planner every day with a comprehensive list of everything she needs to do and have a conference in October with her mom. Break bigger assignments into smaller chunks. Tr. vol. 3, pp. 324:24-325:21.

296. Ms. █████ described the accommodations provided for █████s anxiety which affect her academics: she takes breaks whenever she needs to (Tr. vol. 2, p.3 25:22-25); retakes tests Tr. vol. 2, p. 326:4-15); and can revise assignments (Tr. vol. 2, p.326:16-21).

297. For her sensory issues, █████ was moved from a louder room to a larger (16 students) but quieter class; the main accommodation for her sensory needs was that her chair faced away from the other students. Tr. vol. 2, p. 328:5-16 (T. of █████

298. Based on Ms. █████ inconsistent testimony as to the capabilities of a public school, the Undersigned finds her credibility as to the appropriateness of █████ Academy for █████s educational placement in lieu of the proposed IEP to be severely limited.

299. The Undersigned finds that Petitioners did not present sufficient evidence to support their assertion that █████ Academy is an appropriate educational placement for █████

300. Further, in light of concerns about the appropriateness of instruction, the lack of appropriately trained and licensed teachers to meet the needs of students with disabilities, and the lack of related services, the Undersigned finds that █████ Academy is not an appropriate educational placement for █████

REASONABLENESS OF PETITIONER █████S ACTIONS

301. █████ testified that she had been receptive to the May 2017 IEP. However, the circumstances surrounding her actions prior to the IEP meeting suggest that she had predetermined to place █████ in a private school before the May 19, 2017 IEP meeting.

302. [REDACTED] had an ongoing relationship with a private educational consultant who had helped select [REDACTED] Academy for [REDACTED]'s initial private school placement. [REDACTED] asked this consultant to start looking for private schools in February 2017 and paid him \$3,200.00 on May 2, 2017, just 17 days before the May 19 IEP meeting.

303. WCPSS is responsible for providing eligible students a free and appropriate public education, but the parents of those students have a responsibility to participate in good faith. When parents have resources available to them that can assist with proposals for IEP goals and revisions to the IEP, but fail to use them constructively for that purpose, it cast doubt on their reasonableness.

304. Dr. [REDACTED] observed the [REDACTED] Academy program in March 2017 and could have made specific recommendations on the IEP draft that Petitioners received one month before the IEP meeting. [REDACTED]'s advocate, [REDACTED], a former special education teacher, could have assisted with specific goal recommendations. Dr. [REDACTED], educational consultant and psychologist, who was extensively involved in [REDACTED]'s education at [REDACTED] Academy, could have assisted Petitioner with proposals for the IEP.

305. [REDACTED] wanted a nurturing environment which emphasized the importance of the student-teacher relationship. [REDACTED] accepted the IAP as appropriate. However, when WCPSS used essentially the same document, she rejected it as inappropriate because it failed to include the same wraparound services as those provided at [REDACTED] Academy. Dr. [REDACTED] admitted that those wraparound services were also not available at [REDACTED].

306. [REDACTED] complained that WCPSS did not listen to her concerns at the IEP meeting.

307. [REDACTED] and her advocate attended the 5½ hour IEP meeting, and neither of them objected to the proposed present levels or goals. They could ask questions, and the IEP team was responsive to their questions. Tr. vol. 4, p. 793: 2-14. If there was a concern, the team addressed it. The IEP team was “not brushing off their concerns.” Tr. vol. 4, p. 793:11-17.

308. Acknowledging that class size in the regular education classes was a big concern for [REDACTED] the IEP team had an “extensive” discussion about class sizes. Tr. vol. 4, p. 799:5-16; 21-24 (T. of [REDACTED]). There was no evidence in Dr. [REDACTED] report or in any other evidence that [REDACTED] could not learn in a larger environment with support. Tr. vol. 4, p. 800:1-8 (T. of [REDACTED]).

309. The IEP Team took [REDACTED]'s concerns seriously and discussed the supports available “to make a bigger environment small” for [REDACTED]. Tr. vol. 4, p. 808:9-17.

310. The IEP Team also had an extensive conversation about the supports and [REDACTED]'s ability to establish a relationship with the Curriculum Assistance teacher. Tr. vol. 4, pp. 804:24-805:5.

311. Ultimately, despite these assurances from the IEP Team, [REDACTED] rejected the IEP, not because it was inappropriate, but rather because she simply “didn’t trust that Wake County would provide these services to her child.” Tr. vol. 4, p. 805:15-21.

Based on the above findings of fact, relevant laws and legal precedent, the Undersigned concludes as follows:

CONCLUSIONS OF LAW

1. To the extent the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be considered without regard to their given labels.

2. This Order incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this litigation.

Jurisdictional and Legal Stipulations

3. The Petitioners, [REDACTED] by and through her parent, [REDACTED] and Respondent, Wake County Public School System Board of Education, are properly before this Tribunal, and this Tribunal has personal jurisdiction over them. Stip. 1.

4. As the party seeking relief, the burden of proof for this action lies with Petitioners. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Stip. 2.

5. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (“FAPE”) pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.* and implementing regulations, 34 C.F.R. Part 300. 20 U.S.C. §1415 and N.C. Gen. Stat. § 115C-109.6(a) control the issues to be reviewed. Stip. 3.

6. The IDEA is the federal statute governing education of students with disabilities. The federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300. Stip. 4.

7. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9. Stip. 6.

8. As the party requesting the hearing, the burden of proof lies with Petitioners and the standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Actions of local boards of education are presumed to be correct; for Petitioners to prevail, their evidence must outweigh the evidence in favor of the Board’s decisions. *See* N.C.G.S. 115C-44(b).

9. The Petitioners, as the party requesting the hearing, may not raise issues at the hearing that were not raised in the due process petition unless the other party agrees otherwise. 20 U.S.C. § 1415(f)(3)(B); NC 1504-1.12(d). Stip. 7.

10. A school district must offer every student with a disability the opportunity for a free appropriate public education (“FAPE”) through an Individualized Education Plan (“IEP”) that meets the requirements of the IDEA and state standards. 20 U.S.C. § 1412(a)(1)(A). 20 U.S.C. § 1401(9).

11. The appropriateness of a student’s educational program is decided on a case-by-case basis, in light of the individualized consideration of the unique needs of the child. *See Hendrick Hudson Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

12. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

IEP Appropriateness

13. For a reviewing court, “the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Andrew F.*, 137 S.C. at 999. Thus, school districts are not charged with providing the best program, but only a program that is designed to provide the child with an opportunity for a free appropriate public education. *Bd. of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S.176, 189-90 (1982).

14. An appropriate IEP must do the following: 1. indicate the student’s current level of academic achievement and functional performance; 2. describe how the child’s disability affects his involvement and progress in the general education curriculum; 3. state annual goals; 4. provide a method for progress monitoring; and 5. identify special education and related services for the student. *Andrew F.*, 137 S.Ct. at 994 (citing 20 U.S.C. § 1414(d)(1)(A)); *M.M. ex rel. D.M. v. Sch. District of Greenville Cnty.*, 303 F.3d 523, 527 (4th Cir. 2002).

15. Once a school has formulated a procedurally proper IEP, a reviewing court should be reluctant to second-guess the judgment of educational professionals, and neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student. *See Rowley*, 458 U.S. at 206-08.

16. Instead,” courts should defer to educators’ determination of IEP appropriateness. *Tice v. Botecourt Cnty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990) (quoting *Rowley*, 458 U.S. at 201).

Present Levels of Academic and Functional Performance

17. Present levels should include “a statement of the child’s present levels of academic achievement and functional performance, including...how the child’s disability affects the child’s involvement in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(a).

18. Courts have repeatedly held that, where the remainder of the IEP is appropriate to address a student’s identified needs, the lack of sufficient detail in a present level is harmless and does not rise to the level of a denial of FAPE. *O’Toole v. Olathe Dist. Schools Unified Sch. Dist. No 233*, 144 F.2d 692, 703-04 (10th Cir. 1998) (finding that inadequate present levels constituted harmless procedural error, largely because “there is no doubt that [student’s] parents and her teachers were fully aware of [student’s] present levels of educational performance and discussed them in detail in formulating her IEPs”); *G.S. v. New York City Dep’t of Educ.*, No. 15-CV-5187 (RA), 2016 WL 5107039, at *7 (S.D.N.Y. Sept. 19, 2016) (inadequate present levels deemed harmless given “fulsome discussion of [the student’s] capabilities” during the IEP meeting and because the shortcomings “neither (1) altered the development of the IEP; nor (2) would affect its future implementation.”).

19. The IDEA does not include a specific requirement for “baseline data.” *Lathrop R-II Sch. Dist. v. Gray* 611 F.3d 419, 424–25 (8th Cir. 2010) (overturning district court’s conclusion “that IEPs must incorporate ‘baseline data’ to establish a starting point for each objective,” noting that the plaintiff had not “cited any case in which any court has read such an implied requirement into the law.”); *see also, Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 612 (6th Cir.2006) (rejecting argument that student was harmed by IEP’s lack of “a baseline to measure [his] future progress” where its short term objectives were “capable of measurement” and the student’s test results demonstrated that he received educational benefit).

Sufficiency of IEP Goals

20. With respect to IEP goals, the IDEA requires that the IEP include:

- (II) a statement of measurable annual goals, including academic and functional goals, designed to—
 - (aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (bb) meet each of the child’s other educational needs that result from the child’s disability.

20 U.S.C. § 1414(d)(1)(a).

21. “The goals must be realistic and attainable, yet more than trivial and de minimis.” *Bd. of Educ. of Cty. of Kanawha v. Michael M.*, 95 F. Supp. 2d 600, 610 (S.D.W.Va. 2000).

Class Size as an IEP Accommodation

22. A parent or private provider’s recommendation that a small class size may help a student with a disability does not render that accommodation necessary for a FAPE. *See Munir v. Pottsville Area Sch. Dist.*, 723 F.3d 423, 434 (3d Cir. 2013) (holding smaller class size was not necessary to ensure student received meaningful educational benefit simply because smaller

classes might have helped student learn more easily); *Dirocco ex re. M.D. v. Board of Educ. of Beacon City School Dist.*, 2013 WL 25959, (S.D.N.Y. Jan. 2, 2013) (“That the size of the integrated classes in which [M.D.] was offered a placement was larger than his parents [and privately hired expert] desired does not mean that the placement was not reasonably calculated to provide educational benefits.”) (quoting *M.V. ex re. S.W. v. N.Y.C. Dep’t of Educ.*, 869 F.Supp.2d 320, 335) (E.D.N.Y. 2012)).

23. To prove that a student requires the accommodation of small class size, a plaintiff must show more than a vague recommendation for small class and low student-teacher ratio. *See J.C. v. Katonah-Lewisboro School Dist.*, 690 Fed.Appx. 53, 54-44 (2d Cir. 2017) (affirming district court’s determination that student needed small class as accommodation, based on neuropsychologist’s specific teacher-ratio recommendation and testimony by another neuropsychologist that a classroom larger than twelve students would be too overwhelming for student to learn); *Tamalpais Union High School District v. D.W.*, 271 F.Supp.3d 1152, 1170 (N.D. Cal. 2017) (rejecting parents’ claim that student required classroom with low student-teacher ratio and holding that witness testimony that smaller classes helped student access teacher support did not establish that certain student-teacher ratio was the only method of providing increased teacher support for student). *Gellert v. District of Columbia Public Schools*, 453 F.Supp.2d 18, 25-26 (D.D.C. 2006) (relying heavily on uncontested expert testimony by treating psychologist who observed student in larger classroom settings and testified to student’s significant sensory integration issues, struggle to tune out extraneous noises, difficulty transitioning, and resulting *need* – not preference – for a class of ten or fewer students) (emphasis added).

24. Further, evidence of program accommodations and modifications that affect the alleged impact of a specific classroom size may render a plaintiff’s concerns about classroom size moot. *See Cabouli v. Chappaqua Cent. School Dist.*, 202 Fed. Appx. 519, 522 (2d Cir. 2006) (school staff testimony about resources and accommodations offered by school program “specifically minimized plaintiff’s concerns about class size and student-teacher ratio”).

Transition Plan

25. A “transition plan” is not required in an IEP, except in the specific circumstances related to a student’s preparations for post-secondary life. 34 CFR 300.320 states:

- (b) Transition services. Beginning not later than the first IEP to be in effect **when the child turns 16**, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—
 - (1) **Appropriate measurable postsecondary goals** based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR 300.320 (emphasis added).

26. The regulations further define transition services:
- (a) Transition services means a coordinated set of activities for a child with a disability that—
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability **to facilitate the child's movement from school to post-school activities**, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

[...]

34 CFR 300.43 (emphasis added).

27. “The IDEA only requires a ‘transition plan’ for an impending transition from school to post-school (i.e., adult) activities, not for transfers between schools.” *Robert B. ex rel. Bruce B. v. W. Chester Area Sch. Dist.*, No. CIV.A. 04-CV-2069, 2005 WL 2396968, at *8 (E.D. Pa. Sept. 27, 2005) (citing 34 C.F.R. § 300.29(a)(1)).

28. “[T]here is no requirement in the IDEA for a ‘transition plan’ when a student moves from one school to another.” *E. Z.-L. ex rel. R.L. v. New York City Dep’t of Educ.*, 763 F. Supp. 2d 584, 598 (S.D.N.Y. 2011), *aff’d sub nom., R.E. v. New York City Dep’t of Educ.*, 694 F.3d 167 (2d Cir. 2012). *See also B.B. ex rel. J.B. v. Hawaii, Dep’t of Educ.*, 483 F. Supp. 2d 1042, 1056 (D. Haw. 2006) (“This Court has previously held that while the IDEA requires an IEP to have a statement of needed transition services in some circumstances, the statutory provision of the IDEA specifically addressing transition services does not mandate such services when a transition from private to public school takes place.”).

29. Even when a student’s unique needs suggest that a transition plan should be provided, reviewing tribunals and courts have been reluctant to find a substantive denial of FAPE on that basis. *See Lee’s Summit R-VII School District*, 110 LRP 9423 (Mo. SEA 2010) (“While a plan is technically not mandated under IDEA in these circumstances, we recognize a formal transition plan would have provided a great deal of comfort for the Parents Our job, however, is not to write into IDEA what might be beneficial – that determination is for legislators[.]”); *In re: Student with a Disability*, 110 LRP 49313 (NY SEA 2010) (noting that “although transition services were not identified on the student’s IEP, the hearing record shows that the proposed school would have been responsive in addressing any transition needs related to the student’s enrollment at the public school”).

30. A parent's decision to decline an offered IEP and enroll a child in private school without providing the school system an opportunity to implement its proposed IEP may render the lack of a transition plan moot. *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011).

Predetermination of Placement

31. The IDEA requires that parents have meaningful participation in the development of their child's IEP. Meaningful participation occurs where a parent has the opportunity to ask questions, express their opinions, and explain disagreement with components of the IEP. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) (during the IEP process, parents and staff should have the opportunity to "fully air their respective opinions."); *N.L. ex rel. Mrs. C. v. Knox County Schools*, 315 F.3d 688, 695 (rejecting predetermination claim where student's mother did not participate in pre-meeting among educational experts but had "opportunity to ask questions and voice disagreements at the formal IEP Team meeting").

32. An IEP team's decision not to adopt a parent's particular recommendation does not amount to predetermination. *██████ v. Clifton Bd. of Educ.*, 587 Fed. Appx. 17, *21 (3rd Cir. Oct. 8, 2014) (unpublished) ([A]lthough the plaintiffs posit that the [school officials] might have been more receptive to their concerns about the District's autism program if those concerns had been supported by the [a District consultant's report], the fact that the District's proposed IEP did not adopt plaintiffs' suggestions does not mean that they were deprived of meaningful participation in the decision-making process regarding [the student].").

33. "[S]chool officials must come to the IEP table with an open mind. But this does not mean they should come with a blank mind." *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D.Va. 1992), *aff'd* 39 F.3d 1176 (4th Cir. 1994).

34. Preparation for an IEP meeting does not constitute predetermination. "[S]chool evaluators may prepare reports and come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *M.C.E. v. Bd. of Ed. of Frederick Cnty.*, No. CIV.A. RDB-09-3365, 2011 WL 2709196, at *9 (D. Md. 2011) (unpublished) (quoting *Nack v. Orange City Sch. Dist.*, 454 F.3d 604 (6th Cir. 2006)).

35. Schools should give thought to development of a student's IEP prior to the IEP meeting. "[W]hile a school system must not finalize its placement decision before an IEP meeting, it can, and should, have given some thought to that placement." *Doyle*, 806 F.Supp. at 1262.

Professional Judgment and Deference to Educators

36. The professional judgment of teachers and other school staff is a critical factor in evaluating an IEP. "Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment." *Hartmann v. Loudoun Cnty. Bd. of Ed.*, 118 F.3d 996, 1001. *See also Rowley*, 458 U.S. at 207 (stating that "courts must be careful to avoid imposing their view of preferable educational methods upon the States"). The "IDEA requires great

deference to the views of the school system rather than those of even the most well-meaning parents.” *Lawson*, 354 F.3d at 328.

37. As long as educators “offer a cogent and responsive explanation” for their decisions at some point during the administrative process, deference is due to their professional judgment. See *Andrew F.*, 137 S. Ct. at 1002.

38. In the North Carolina Office of Administrative Hearings, the administrative law judge must decide the case based upon the preponderance of the evidence, giving due regard to the “demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.” N.C.G.S. § 150B-34(a).

Appropriateness of Private School Placement

39. Petitioners are entitled to reimbursement for their private program only if they are able to show both that the public school system’s program denied [REDACTED] a FAPE, and that the private program they chose was appropriate. *School Co. of the Town of Burlington, Mass. v. Dep’t of Educ. of the Commonwealth of Mass.*, 471 U.S. 359, 370 (1985).

40. Although a private school’s program is not scrutinized under the statutory requirements of FAPE, parents seeking reimbursement still must show that the private program provided an education otherwise proper under the IDEA. *Florence Cty. Sch. Dist. Four v. Carter by and through Carter*, 510 U.S. 7, 12-13 (1993). A private program is proper under the IDEA where it is “reasonably calculated to enable the child to receive educational benefits.” *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F. 3d 315, 324 (4th Cir. 2009).

41. Several factors bear on a court’s determination as to appropriateness of a private placement under the IDEA, including whether the private program provides the special education services needed by the student, and whether the student progressed behaviorally and/or educationally in the private program. *Berger v. Medina City Sch. Dist.*, 348 F.3d 512, 523 (6th Cir. 2003) (private placement where student enjoyed smaller class size and higher grades deemed inappropriate because none of the special education services needed were provided); *Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478, 488 (4th Cir. 2011) (private placement deemed appropriate under IDEA where autistic student progressed educationally and behaviorally, was learning more, and was no longer engaging in problematic self-stimulating behaviors that occurred in public school).

42. Further, reviewing courts must also consider the qualifications of teachers at the private placement and pedagogical methods. *W.C. ex rel. Sue C. v. Cobb Cty. School Dist.*, 407 F.Supp.2d 1351, 1363 (N.D.Ga. 2005) (private placement found inappropriate where student’s teachers lacked certification and education methods were untested, unvalidated, and contrary to the program at the student’s home, state-funded school).

43. “[P]rogress does not itself demonstrate that a private placement was appropriate. Indeed, even where there is evidence of success, courts should not disturb a state’s denial of IDEA reimbursement where, as here, the chief benefits of the chosen school are the kind of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not. A unilateral private placement is only appropriate if it provides education instruction specifically designed to meet the unique needs of a handicapped child.” *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 115 (2d Cir. 2007) (quotations marks and citations omitted) (emphasis added); *see also W.C. ex. rel Sue C.*, 407 F. Supp. 2d at 1363 (“Whatever behavioral or educational progress a parent may feel her child is achieving at a private placement, however, is not enough to justify requiring the state to reimburse his tuition.”).

Reasonableness of Parent’s Actions

44. The IDEA provides various scenarios where a reimbursement claim may be reduced or denied. 34 C.F.R. § 300.148(d). First, “[a]t 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 IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense.” 34 C.F.R. § 300.148(d)(1)(i). Second, “[a]t least ten (10) business days . . . prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph d(1)(i) of this section.” 34 C.F.R. § 300.148(d)(1)(ii). Third, where, “prior to the parents’ removal of the child from the public school, the public agency informed the parents . . . of its intent to evaluate the child . . . , but the parents did not make the child available for the evaluation.” 34 C.F.R. § 300.148(d)(2). Finally, a reimbursement claim may be reduced or denied “[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents.” 34 C.F.R. § 300.148(d)(3).

ISSUES FOR DECISION

Issue 1: Whether the May 19, 2017 IEP was substantively appropriate for █████ based on the present levels of academic and functional performance, the functional and academic goals, exclusion of the accommodation of a cap on the number of students in the regular education classes, the service delivery in the IEP, and the exclusion of a transition plan to support █████’s transition from a private therapeutic boarding school to a public high school.

IEP Present Levels and Goals Were Appropriate

45. Based on Findings 1-150, Conclusions 10-19, 36-38, and other evidence in the record, the present levels of performance in the proposed May 2017 IEP were appropriate. While they certainly could have included additional information, they included the statutorily required information, and there was sufficient information to allow for the writing of appropriate IEP goals. The team was entitled to rely on information from the residential placement in which █████ had been served for the prior fourteen months. Further, there was ample opportunity for revision to

the present levels, and neither the parent, her advocate, nor the representative from the residential placement proposed changes or offered additional information.

46. In addition, and in the alternative, any deficiencies in the present level were harmless in light of the appropriateness of the remainder of the IEP, the knowledge of the team that developed the IEP, and the parent's participation in the development of the IEP.

47. Based on Findings 1-159, Conclusions 10-21, 36-38, and other evidence in the record, the goals in the proposed May 2017 IEP were appropriate. There is no question that social skills, emotional regulation, and organizational skills are ██████'s primary deficits. The goals targeted identified areas of need that witnesses for both parties described, and did so in a measurable way that was reasonably calculated to allow ██████ to make progress in light of her circumstances.

Class Size Cap Was Not a Required Accommodation

48. Based on Findings 1-148, 196-237, Conclusions 22-24, 36-38, and other evidence in the record, the team's refusal of a class size cap as an accommodation in the IEP was appropriate. There was insufficient evidence to show that ██████ could not make progress in the general education curriculum without a class size cap, and Petitioners did not offer any consistent evidence of what such a cap might be. Further, the IEP team carefully considered ██████'s and ██████ Academy's input regarding smaller classes and proposed instruction, accommodations, and a service delivery model that addressed ██████'s underlying needs without the need for a class size cap. There is more than one way to address needs like those exhibited by ██████ and the school staff's decision, in light of cogent and responsive explanations thereof, is entitled to deference.

Service Delivery Was Appropriate

49. Based on Findings 1-148, 160-179, Conclusions 11-24, 36-37, and other evidence in the record, the proposed service delivery in the May 2017 IEP was appropriate in both amount and location. The proposed times of service delivery were uncontested and are facially reasonable in light of the evidence. Locating those services in the special education classroom was reasonable in light of the significance of ██████'s deficits in social/emotional and organizational skills, her resistance to supports that made her stick out among her peers as, for example, embedded intensive social skills instruction would, and the importance of providing ██████ a safe space and trusted adult which she could access at need. Particularly, in light of ██████'s return from an extremely restrictive placement, the provision of some specialized instruction in a pull-out setting in order to maximize the time she could successfully participate in the general education classroom was appropriate.

A Transition Plan Was Not Legally Required

50. Based on Conclusions 25-30, 36-38, there is no legal requirement for a transition plan for a student of ██████'s age. Based on Findings 1-148, 251-260, and other evidence in the record, even if such a legal requirement could be implied, the services and supports described in the IEP were sufficient such that a formal transition plan was not required for ██████

51. In addition and in the alternative, in light of the amount of time between the development of the IEP and [REDACTED]'s possible return to WCPSS, there was ample opportunity for the team to discuss any necessary transition supports, and thus, the lack of a transition plan, even if required, must be considered harmless.

The May 2017 IEP Provided [REDACTED] a FAPE

52. Based on the above Findings and Conclusions and other evidence in the record, the Undersigned concludes that the proposed IEP was reasonably calculated to support [REDACTED] making appropriate progress in light of her circumstances, and therefore offered her a free and appropriate public education. Petitioners have failed to meet their evidentiary burden to show otherwise.

Issue 2: Whether Respondent violated the procedural requirement of the IDEA by predetermining [REDACTED]'s placement in the resource setting.

Placement Was Not Predetermined

53. Based on Findings 1-148, 160-195, Conclusions 31-38, and other evidence in the record, Petitioners did not establish by a preponderance of the evidence that [REDACTED]'s placement in the resource setting was predetermined.

54. Moreover, based on the above-referenced Findings of Fact, the weight of the evidence supports the Board's position that [REDACTED] was afforded a myriad of opportunities to provide input and feedback on every aspect of [REDACTED]'s IEP, including the proposed placement in the resource setting.

55. With respect to predetermination, the central issue is whether the team was willing to consider other proposals. In the absence of such proposals being made prior to or during the IEP meeting, an IEP team has no opportunity to show its willingness to consider other proposals, and cannot be faulted for adopting the proposal it initially brought to the table.

Issue 3: If Respondent denied [REDACTED] a free and appropriate public education, whether the unilateral private placement selected by the parent, [REDACTED] Academy, was appropriate and the equities favored private tuition and transportation reimbursement to Petitioners.

56. Because the Undersigned concludes that the Board did not deny [REDACTED] a FAPE, a decision on this issue is not required.

57. Nonetheless, to the extent conclusions on this issue may be necessary to support review of the final decision, the Undersigned will make certain provisional conclusions on this issue.

Private School Program Was Not Appropriate

58. Based on Findings 1-148, 271-300, Conclusions 36-43, and other evidence in the record, the program at ██████ Academy did not support all of ██████'s identified needs. ██████ had substantial identified deficits in social/emotional skills and organizational skills, and ██████ offered no intentional, structured plan or program to support those needs, and lacked appropriately trained and licensed staff to comprehensively address those needs. Nor did Petitioners provide evidence of progress in these areas of needs during ██████'s time at ██████

59. Based on the above Conclusions of Law and related Findings of Fact, Petitioners have not met their burden of establishing that ██████ Academy is an appropriate placement for ██████

Reasonableness of Parent's Actions

60. The Undersigned questions the sufficiency of the Petitioner's notice at the IEP meeting that she intended to place ██████ in a private program and seek reimbursement. Although Petitioner rejected the IEP at the May 2017 IEP Meeting, it was her advocate who raised the question about private schools. Petitioner enrolled ██████ in ██████ before providing written notification to the Principal of ██████ High School of Petitioners' intent to seek tuition reimbursement from the WCPSS.

61. Even if the parent's 10-day notice was sufficient, Petitioner appeared to have predetermined placement in a private program before the May 19, 2017 IEP meeting.

62. In February 2017, Petitioner instructed her educational consultant to begin researching private schools for ██████'s transitional placement.

63. Petitioners are not ultimately responsible for developing an appropriate IEP. The IEP Team and parent(s) are supposed to be equal participants in the development of the IEP.

64. ██████ complained that she was not afforded that opportunity, but ██████'s actions indicate she did not intend to sincerely participate, and instead seemed to have predetermined herself that ██████ would transition to another private school placement.

65. In this case, ██████ had an expert witness, independent evaluator, educational consultant/psychologist, and former special education teacher, as well as other resources at ██████ Academy available to assist with the development of present levels and goals. With these resources at hand, and the draft IEP available a month in advance of the IEP meeting, it seems disingenuous for the Petitioners to claim that ██████ was treated as an equal participant.

66. Based on Findings of Fact 210-270, 301-311 and Conclusion of Law 44, had Petitioners prevailed in their case, the Undersigned would have been inclined to reduce private tuition reimbursement. 34 C.F.R. § 300.148(d)(3).

Other Issues

67. To the extent that this Order does not expressly rule on any other claims raised in the Petition, in the Rule 41(b) Order, or this Final Decision, the Undersigned concludes that Petitioners did not meet their evidentiary burden to establish any right to relief on those claims.

FINAL DECISION

1. Petitioners had the burden of proof on all issues pending in this matter.
2. Petitioners failed to meet their burden to prove that Respondent failed to offer a free appropriate public education through the May 19, 2017 IEP.
3. Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that all of Petitioners' claims are **DISMISSED WITH PREJUDICE**.

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 et seq.) and particularly N.C.G.S. §§ 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

Inquiries regarding further notices, time lines, and other particulars should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED.

This the 31st day of July, 2018.



Stacey Bice Bawtinhimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 31st day of July, 2018.



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