

STATE OF NORTH CAROLINA
COUNTY OF UNION

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 EDC 03002

<p>█ by and through her parents █ and █ Petitioner,</p> <p>v.</p> <p>Union County School District Board of Education Respondent.</p>	<p>FINAL EXPEDITED DECISION</p>
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THIS MATTER came before the undersigned Administrative Law Judge David F. Sutton presiding, on the following dates: August 28-30, 2023 at the Union County Courthouse in Monroe, North Carolina.

After considering a trial on the merits held on the above-mentioned dates, arguments from all parties, all documents in support of or in opposition to the parties' motions, and all documents in the record including the Proposed Decisions, as well as all exhibits, the Undersigned concludes that the Petitioners failed to meet their burden.

APPEARANCES

For Petitioners: Pro Se
For Respondent: Cynthia S. Lopez
Campbell Shatley, PLLC
674 Merrimon Ave., Suite 210
Asheville, NC 28804

WITNESSES

For Petitioners:

- █ Mother of █
- Emily Campbell, Instructional Support Specialist, UCPS
- Kelly Ginsberg, Teacher, Kensington Elementary School, UCPS
- Terry Vaughn, Principal, Kensington Elementary School, UCPS
- Rebekah Barnes, Educational Consultant, Clover, S.C. (testified via WebEx)
- █ Father of █
- Xin Lui, Teacher, UCPS
- Erica Sipe, Teacher, UCPS
- Dr. Laura Beachum, Director of Exceptional Children's Program, UCPS

For Respondent:

- Amy Young, Teacher, UCPS (testified out of order)

EXHIBITS

The following exhibits were received into evidence during the course of the hearing:

- Stipulated Exhibits: P4a & b, P5, P6, P20, P25, P34, P35 (pp. BOARD043-049 & 065-066), P37, P38, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R14, R15, R16, R19, R20, R21, R24, R25, R26.
- Petitioners' Non-stipulated Exhibits: P13, P18, P19 (recording of 6/12/23 resolution meeting), P21 (Videos A & B), P35 (Staley correspondence).
- The Petitioners made an Offer of Proof of the following exhibits: P9, P15, P16, P19 (recording of 05/12/23 and 05/26/23 IEP meetings)

TRANSCRIPTS

Because of the expedited nature of the hearing and decision, transcripts were not available at the time of the preparation of the Proposed Final Decisions or the issuance of the Final Decision.

ISSUES

According to the Order on Final Pre-Hearing Conference entered on August 25, 2023, the issues for expedited hearing, as identified by the undersigned are as follows:

- a) Was [REDACTED]'s change of placement in October 2022 and/or January 2023 the result of a violation of the code of student conduct? 34 CFR § 300.530
- b) Since [REDACTED] had not yet been determined eligible for special education and related services in October 2022 or January 2023, was she entitled to the protections set forth in 34 CFR § 300.530? 34 CFR § 300.534
- c) If [REDACTED] is entitled to the protections of 34 CFR § 300.530, did the Respondent violate the IDEA when it failed to conduct a manifestation determination review with 10 school days of the changes in placement in October 2022 and/or January 2023? 34 CFR § 300.530(e)
- d) Was [REDACTED]'s behavior resulting in her change of placement in October 2022 and/or January 2023 a manifestation of her disability? 34 CFR § 300.530(e)
- e) If Petitioners can meet their burden of proof to show by a preponderance of the evidence that issues 1-4 can be answered in the affirmative, what corrective action may be ordered by the Undersigned? 34 CFR § 300.532(b)(2)

RELEVANT PROCEDURAL BACKGROUND

1. On June 5, 2023, Respondent received a copy of the Expedited Due Process Complaint and Hearing Request (hereinafter "Petition") alleging violations of the Individuals with Disabilities Education Act ("IDEA").

2. On June 12, 2023, a resolution meeting was held. Petitioners did not sign the Resolution Results Form.

3. On June 26, 2023, the Petition was filed with the North Carolina Office of Administrative Hearings ("OAH").

4. On June 27, 2023, Respondent filed a Motion to Dismiss and Response to Petition.

5. On June 27, 2023, Respondent served informal discovery requests upon Petitioners.

6. On June 28, 2023, the Honorable Administrative Law Judge Selina Malherbe ("ALJ Malherbe") issued an Order Setting Hearing and General Pre-Hearing Order on Manifestation. The Order set the hearing in this matter to begin the week of August 28, 2023.

7. On June 29, 2023, Respondent served notices to take the depositions of Petitioners and [REDACTED]

8. On July 5, 2023, ALJ Malherbe issued an Order Granting Respondent's Motion to Dismiss in Part. Specifically, the Order dismissed claims related to Petitioners' request to amend education records and Petitioners' request for monetary damages.

9. On July 5, 2023, Petitioners filed a Motion for Clarification and Reconsideration requesting a hearing date within "20 days of June 26."

10. On July 5, 2023, Respondent filed a Response to Petitioners' Motion for Clarification and Reconsideration arguing that Petitioners were not entitled to an expedited due process hearing in this matter.

11. On July 6, 2023, ALJ Malherbe issued an Order denying Petitioners' request to modify the hearing date and ruling that Petitioners were not entitled to an expedited hearing.

12. On July 6, 2023, Petitioners filed "Objection to June 28, 29th and July 6th Orders, Motion to Review by Chief ALJ, Motion to Amend/Rescind." Respondent filed a Response to these pleadings on July 17, 2023.

13. On July 11, 2023, Respondent filed a Motion to Compel Petitioners to appear for depositions.

14. On July 20, 2023, Petitioners filed a Response to Motion to Compel Deposition arguing that depositions and discovery are not allowed pursuant to federal law and regulations governing due process proceedings.

15. On July 21, 2023, Respondent filed a Motion to Compel Responses to Discovery Requests.

16. On July 27, 2023, following a teleconference hearing, ALJ Malherbe issued an Order compelling Petitioners to respond to discovery requests and to appear for depositions on or before August 4, 2023. The July 27, 2023 Order also advised that the Petitioners' non-attorney advocate would not be able to speak on their behalf at the hearing.

17. On July 29, 2023, Petitioners filed Objections and Motion for Reconsideration regarding ALJ Malherbe's July 27, 2023 Order.

18. On August 1, 2023, Respondent filed a Motion to Continue Hearing to the week of October 9, 2023.

19. On August 4, 2023, Petitioners filed a Motion to Recuse stating that "ALJ Malherbe has an alarming and concerning record for rulings in favor of the school districts in Due Process Hearing Procedures."

20. On August 7, 2023, Petitioners' Motion to Recuse was granted and this matter was reassigned to the Honorable Administrative Law Judge David F. Sutton ("ALJ Sutton").

21. On August 7, 2023, Respondent filed a Motion for Reconsideration regarding the Petitioners' Motion to Recuse because Respondent was not given an opportunity to respond to the Motion.

22. On August 9, 2023, the Motion for Reconsideration was denied.

23. On August 11, 2023, ALJ Sutton issued several orders including: a) Order Rescinding Prior Inconsistent Orders; b) Order Bifurcating Due Process Hearing into MDR Claims Requiring Expedited Hearing and Non-MDR Claims to be Continued for Hearing; c) Notice of Expedited Hearing and Prehearing Order setting the expedited hearing for the week of August 28, 2023; and d) Order Regarding the Role of Non-Attorney Advocate.

24. On August 14, 2023, Respondent filed a Motion for Reconsideration of the Court's Order Regarding an Expedited Hearing.

25. On August 15, 2023, an Order Denying Respondent's Motion for Reconsideration of the Court's Order Regarding an Expedited Hearing was issued.

26. On August 15, 2023, Respondent filed a Motion for Summary Judgment and Memorandum of Law in Support regarding the issues for hearing on August 28, 2023.

27. On August 18, 2023, Petitioners filed Motions/Response/Objection to Respondent's Motion for Summary Judgment.

28. On August 18, 2023, a hearing on Respondent's Motion for Summary Judgment was held via WebEx.

29. On August 18, 2023, Respondent filed a Motion in Limine and a Motion for Sanctions.

30. On August 21, 2023, Petitioners filed a Motion in Limine/Motion for Sanctions/Motion to Compel.

31. On August 21, 2023, the Parties separately filed Proposed Orders on Pre-Hearing Conference.

32. On August 22, 2023, ALJ Sutton issued an Order Denying Respondent's Motion for Summary Judgment.

33. On August 23, 2023, Petitioners filed Responses to Respondent's Motion in Limine and Motion for Sanctions.

34. On August 24, 2023, Respondent filed a Response to Petitioners' Motion in Limine/Motion for Sanctions/Motion to Compel.

35. On August 25, 2023, ALJ Sutton issued an Order Denying Respondent's Motion for Sanctions.

36. On August 25, 2023, ALJ Sutton issued an Order Granting, in part, and Denying in part, Respondent's Motion in Limine as follows:

- a. Respondent's Motion in Limine number 1 to exclude evidence or argument from Petitioners regarding alleged violations of the IDEA that occurred prior to June 26, 2022, is GRANTED, to the extent that such evidence and argument shall be excluded from the expedited hearing scheduled to begin on August 28, 2023. However, the Undersigned will receive evidence of matters occurring prior to June 26, 2022, for the purpose of providing historical background and to the extent that such evidence may demonstrate a "basis of knowledge" as the same is contemplated at 34 CFR § 300.534(b).
- b. Respondent's Motion in Limine number 2 to exclude all evidence not disclosed to Respondent by August 4, 2023, is DENIED. See Order Denying Motion for Sanctions entered contemporaneous herewith.
- c. Respondent's Motion in Limine number 3 to exclude all evidence and argument related to the appropriateness of prospective private school placement at Melmark Carolinas is DENIED in as much as such evidence may be relevant if the

Undersigned must make a determination regarding an "appropriate interim alternative educational setting" as the same is contemplated at 34 CFR § 300.532(b)(2)(ii).

37. On August 25, 2023, ALJ Sutton issued an Order Denying Petitioners' Motion in Limine/Motion for Sanctions/Motion to Compel.

38. On August 25, 2023, ALJ Sutton issued an Order on Final Pre-Hearing Conference.

39. On August 25, 2023, ALJ Sutton issued an Order Denying Petitioners' Motions for Reconsideration Of: 1- 07/05/23 Order Granting Motion to Dismiss in Part; and 2- 08/11/23 Order Regarding the Role of Non-Attorney Advocate.

40. On August 28, 2023, at the start of the hearing in this matter, the Parties stipulated to certain exhibits as identified in this Final Decision. The Parties did not stipulate to any facts.

41. During the hearing of this matter, Petitioners moved to introduce exhibits that had not been exchanged at least five (5) days prior to the beginning of the hearing pursuant to 34 CFR § 300.512. Specifically, Petitioners moved for the introduction of Exhibits 36, 37, and 38. Respondent stipulated to the admissibility of Exhibits 37 and 38. Petitioners' motion as to Exhibits 37 and 38 was granted.

42. During the hearing of this matter, Respondent moved to introduce an exhibit that had not been exchanged at least five (5) days prior to the beginning of the hearing pursuant to 34 CFR § 300.512. Specifically, Respondent moved for the introduction of Exhibit 30, ██████'s IEP. Petitioners objected to the introduction of Exhibit 30 and Respondent's motion was denied.

43. On August 30, 2023, at the close of the Petitioners' evidence, the Respondent made a Motion for Involuntary Dismissal pursuant to Rule 41(b) of the NC Rules of Civil Procedure. Following oral argument by the Parties, ALJ Sutton denied the motion.

44. On August 30, 2023, the hearing in this matter ended.

45. On September 5, 2023, ALJ Sutton issued a Post Expedited Hearing Order requiring the Parties to file admitted exhibits and a Proposed Final Decision on or before September 7, 2023.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the exhibits received and admitted into evidence, and the entire record of 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 meetings as documented in the admitted exhibits, meeting minutes, meeting documents, correspondence, and all other competent and admissible evidence.

Unless specifically contradicted, this Decision incorporates and reaffirms all Orders entered in this matter either orally at the hearing or in written format.

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

Credibility of Witnesses

The Undersigned determined the credibility of the witnesses in this case based on any inconsistencies in the record and the witnesses' testimony as well as the Undersigned's observations of each witness's demeanor, voice inflection, tone, hesitation in responding to questions, facial features, and body language. Even though the Final Decision may incorporate language from the Parties' respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that the Parties and their counsel and advocates also heard and/or observed each witness testify.

- **Petitioners █████ and █████'s Parents**

Petitioner █████ earned a █████ degree in █████ University and a █████ in █████ is a Board-Certified █████ Petitioner █████ was a █████ for █████ years and worked as a █████ Stip. Ex. P34 (Resume of █████ of Mother. █████ is familiar with the rights of students with disabilities. T. of Mother. █████ did not have experience with students with Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections ("PANDAS"). T. of Mother.

The undersigned found the Petitioners to be credible; however, as █████'s parents, they have an explicit and implicit bias for the best interests of █████ Inconsistencies were noted in the Petitioners' testimony when compared to the documentary and other evidence presented.

- **Emily Campbell, Instructional Support Specialist, UCPS**

Ms. Campbell holds a bachelor's degree in elementary education and a master's in reading from Appalachian State University. Ms. Campbell has served as an Instructional Support Specialist for UCPS for five (5) years. In the role of Instructional Support Specialist, Ms. Campbell is involved in writing curriculum, conducting assessments, and supporting teachers. Ms. Campbell served as the homebound teacher for █████ from October 2022-December 2022. In January of 2023, Ms. Campbell provided after-school tutoring to █████ T. of Campbell.

The undersigned found Ms. Campbell to be credible and found her testimony to be consistent with the documentary and other evidence presented.

- **Kelly Ginsberg, Teacher, Kensington Elementary School, UCPS**

Ms. Ginsberg holds a bachelor's degree in elementary education with a minor in Spanish from Appalachian State University. Ms. Ginsberg has served as a third-grade teacher at [REDACTED] School ([REDACTED] since August of 2019. Ms. Ginsberg was the Teacher of the Year at [REDACTED] in the 2022-2023 school year. Ms. Ginsberg served as [REDACTED]'s [REDACTED] grade teacher in the 2022-2023 school year. T. of Ginsberg.

The undersigned found Ms. Ginsberg to be credible and found her testimony to be consistent with the documentary and other evidence presented.

- **Terry Vaughn, Principal, Kensington Elementary School, UCPS**

Mr. Vaughn earned a bachelor's degree in math from Eureka College. He earned a master's degree in educational leadership from Western Illinois University and an education specialist degree from Appalachian State University. Mr. Vaughn is licensed by the NC Department of Public Instruction as a School Administrator and Superintendent. Mr. Vaughn has been the principal of [REDACTED] since 2019. In his role as principal at [REDACTED] Mr. Vaughn oversees the maintenance of student records, and in the 2022-2023 school year served as the [REDACTED] Section 504 Coordinator. He became aware of [REDACTED] when she returned to [REDACTED] in late November of 2021 following her brief enrollment in a private school, and he attended Section 504 meetings. T. of Vaughn.

The undersigned found Mr. Vaughn to be credible and found his testimony to be consistent with the documentary and other evidence presented.

- **Rebekah Barnes, Educational Consultant, Clover, S.C.**

Ms. Barnes holds a bachelor's degree in Comprehensive Textiles and Apparel from Western Kentucky University and is currently in law school at Faulkner University in Alabama. Ms. Barnes expects to earn her law degree in May of 2026. Ms. Barnes has most recently been employed as a paralegal and a Quality Assurance Performance Facilitator for Arise.com, a utilities contractor. Ms. Barnes has been an Educational Consultant to families of children with disabilities since 2017 and works with approximately 30-40 families each year. Ms. Barnes has not been employed as a special educator, [REDACTED] [REDACTED] Ms. Barnes has worked with approximately five (5) families of children with PANDAS. Ms. Barnes testified that her knowledge of [REDACTED] primarily was based upon conversations with the Petitioners' advocate, [REDACTED]. Stip. Ex. 34 (Resume of Barnes); T. of Barnes.

The undersigned found that Ms. Barnes did not meet the qualifications as an expert witness. Because of Ms. Barnes' limited knowledge of [REDACTED] her testimony will be given the appropriate weight.

- **Xin Lui, Teacher, UCPS**

Ms. Lui holds a master's degree in math and teaches math in the Mandarin Immersion Program at [REDACTED]. Ms. Lui served as a math homebound teacher for [REDACTED] in the summer of 2023. Ms. Lui had thirteen (13) sessions with [REDACTED] that each lasted for approximately 30 minutes to one (1) hour. T. of Lui.

The undersigned found Ms. Lui to be credible and found her testimony to be consistent with the documentary and other evidence presented.

- **Erica Sipe, Teacher, UCPS**

Ms. Sipe earned bachelor's and master's degrees in elementary education from Appalachian State University. She has been a teacher for thirteen (13) years. Ms. Sipe served as a homebound teacher for [REDACTED] in the summer of 2023. Ms. Sipe has received training and holds certification in CPI Nonviolent Crisis Intervention, which allows her to restrain a child when appropriate. Non-Stip. P13; T. of Sipe.

The undersigned found Ms. Sipe to be credible and found her testimony to be consistent with the documentary and other evidence presented.

- **Dr. Laura Beachum, Director of Exceptional Children's Program, UCPS**

Dr. Beachum earned her bachelor's degree from the University of North Carolina at Wilmington, a Master of Education from Regent University, an advanced degree in School Administration from George Washington University, and an educational specialist degree and a Doctorate in Educational Leadership from Wingate University. Dr. Beachum has experience as a special education teacher, a school administrator, and working with students with behavioral issues. Dr. Beachum is currently licensed by the NC Department of Public Instruction as an Exceptional Children ("EC") teacher, an administrator, and a superintendent. Dr. Beachum has reviewed the special education records of [REDACTED] and attended an IEP meeting on May 26, 2023.

The undersigned found Dr. Beachum credible and found her knowledgeable about various placements for students with disabilities.

- **Amy Young, Teacher, Kensington Elementary School, UCPS**

Ms. Young holds a bachelor's degree in general education and has been employed by UCPS for ten (10) years in the capacity of substitute teacher and instructional assistant. Ms. Young began an elementary teaching position in UCPS in August of 2023. Ms. Young was the teacher/instructional assistant in [REDACTED]'s classroom in the 202[REDACTED]-202[REDACTED] school year.

The undersigned found Ms. Young to be credible and found her testimony to be consistent with the documentary and other evidence presented.

█'s Background – Time Period Prior to June 26, 2022

1. █ began attending █ as a kindergartner in the █ of 20█ T. of Mother.
2. When she was in the first grade in the 2020-2021 school year, █ had a number of surgeries and illnesses and was diagnosed with Pediatric Autoimmune Neuropsychiatric Disorder Associated with Streptococcal Infections ("PANDAS"). T. of Mother.
3. In November of 2020, the █ school nurse recommended a Section 504 Accommodation Plan for █ T. of Mother.
4. █ was found eligible for a 504 Plan on November 19, 2020, because of her diagnosis of PANDAS. The Eligibility Determination states that █ "[w]ill miss class because of doctor visits and medical issues." Stip. Ex. R3, p. 1; T. of Vaughn.
5. █'s 504 Eligibility Determination states that "[p]arents have been provided a copy of the Section 504 meeting documentation and Section 504 Parent/Student Rights." Stip. Ex. R3, p. 2. Parents' rights were attached to meeting invitations and were provided to parents when they received invitations to 504 meetings. T. of Vaughn.
6. At the beginning of second grade, █ attended private school. The private school was unable to accommodate █'s disability. █ returned to █ in late November of 2021. T. of Mother.
7. In the spring semester of 2022, █ was provided with the support of a █ counselor with whom she met on a regular basis throughout the semester. Stip. Ex. R26; T. of Vaughn.
8. In the spring semester of 2022, █ was referred to the Multi-Tier System of Support team ("MTSS"). The MTSS team met every other week to discuss students who needed intervention to be more successful in the school setting. Stip. Ex. R25; T. of Vaughn.
9. Through the MTSS process, █ was placed on a Tier III Intervention Plan for Behavior in March of 2022 to address the skill of "remain[ing] in the classroom throughout the day." Stip. Ex. R25, p. 135.
10. In the spring semester of 2022, █ had multiple tardies and absences for "illness/injury." Stip. Ex. P4a; T. of Vaughn. █'s absences made it difficult to collect data on her behavioral needs. T. of Vaughn.
11. █'s parents requested to be called by the teacher whenever █ had issues at school. █'s parents often chose to pick █ up from school early when she had medical or behavioral issues. Stip. Ex. P4b; T. of Mother; T. of Vaughn.

12. Almost all of [REDACTED]'s absences and tardies were excused because of her medical condition pursuant to her 504 Accommodation Plan. T. of Vaughn.
13. [REDACTED] was never subjected to disciplinary consequences by [REDACTED] for any behaviors that she exhibited in the 2021-2022 school year. T. of Vaughn.

Fall Semester of 2022-2023 School Year – [REDACTED] Grade

14. Principal Terry Vaughn ("Vaughn") requested a meeting with [REDACTED]'s Mother in August of 2022 prior to the beginning of the 2022-2023 school year to discuss Section 504 support available for [REDACTED] in the upcoming school year. Stip. Ex. R16; T. of Vaughn.
15. In response to Vaughn's request for a meeting, [REDACTED]'s Mother stated:

"I think having a meeting before school starts is a great idea. I'm wondering Ms. Moore if you could please send me the [REDACTED] grade schedule even if it may change? I would like to see what the day looks like to identify times of the day that will be hard for [REDACTED]. Also thinking maybe an abbreviated day maybe a better option."

Stip. Ex. R16, p. 59; T. of Mother; T. of Vaughn.
16. A Section 504 meeting occurred on August 26, 2022 which was attended by [REDACTED]'s Mother, Vaughn, Teacher Kelly Ginsberg ("Ginsberg"), and the school nurse. The team agreed to place [REDACTED] on an abbreviated schedule of 7:30-11:30 a.m. Stip. Ex. R4; T. of Mother; T. of Vaughn; T. of Ginsberg.
17. At the meeting on August 26, 2022, the 504 team discussed accommodations to address [REDACTED]'s behaviors. The Mother also updated the team regarding [REDACTED]'s medical condition ("[p]ulled off meds this summer seems to be working much better") and her upcoming medical treatments. Stip. Ex. R4; T. of Vaughn.
18. At the beginning of the 2022-2023 school year, [REDACTED] had difficulty during several occasions with separating from her parents and transitioning into the school building. T. of Mother; T. of Vaughn. [REDACTED] used a side door for [REDACTED] to enter in order to ease her transition into the building. T. of Vaughn.
19. [REDACTED]'s parents opted to pick [REDACTED] up from school early on several occasions in August and September of 2022. [REDACTED]'s parents were never called or required by [REDACTED] to pick [REDACTED] up from school before the end of her abbreviated day in August or September of 2022. Stip. Ex. R21; T. of Vaughn; T. of Ginsberg.
20. In September of 2022, [REDACTED]'s Mother texted Ginsberg and Teacher Assistant Amy Young ("Young") when [REDACTED] had "flares" related to her PANDAS and exhibited odd

behaviors at home. Stip. Ex. R21, p. 71; Stip. Ex. P20 (Ginsberg texts). On September 13, 2022, Young texted Mom to confirm that she observed some of the same behaviors at school. Stip. Ex. R21, p. 71; T. of Young. ██████'s Mother responded to Young's text and stated, "Amy you handled it perfectly! The best thing you can do in those situations is distract her which is easy to do and can totally change the situation." Stip. Ex. P20 (Ginsberg texts); T. of Young.

21. On September 22, 2022, ██████ exhibited a number of behaviors at school including failing to follow directions and hitting and kicking Ginsberg and the school counselor. Stip. Ex. R21, pp. 72-73. ██████'s parents were not called to pick up ██████ from school early as a result of her behaviors. *Id.*; T. of Ginsberg.
22. On September 23, 2022, ██████ became upset when she was not allowed to leave school early and she placed her hands on the neck of Young. After she calmed down, ██████ remained at school until the time that her parents had selected that morning for pick up. Stip. Ex. R21, pp. 73-74; T. of Ginsberg.
23. ██████ was not recommended for any disciplinary consequences as a result of her actions on September 22 and 23, 2022. T. of Vaughn; T. of Ginsberg.
24. At the request of Ginsberg and Young, a meeting occurred with the two of them and Vaughn on September 26, 2022, to discuss ██████ T. of Vaughn; T. of Ginsberg; T. of Young. Ginsberg and Young requested discussion of the following issues: 1) ██████'s 504 Plan and the abbreviated day schedule; 2) ██████'s academic goals; 3) ██████'s graded assignments; and 4) the possibility of one-on-one staff support from the county. Stip. Ex. R21, p. 74; T. of Ginsberg; T. of Young.
25. While in the meeting on September 26, 2022, Vaughn texted ██████'s Mother to see if she was available for a phone call. Stip. Ex. P20 (Vaughn's texts); T. of Mother; T. of Vaughn.
26. Vaughn, Ginsberg, and Young credibly testified that during the phone conversation on September 26, 2022, between them and ██████'s Mother, ██████'s Mother suggested placing ██████ on homebound. T. of Vaughn; T. of Ginsberg; T. of Young. ██████'s Mother also discussed that Intravenous Immunoglobulin ("IVIG") medical treatments had been approved for ██████ and would begin soon. T. of Vaughn; T. of Ginsberg; T. of Young.
27. On September 26, 2022, ██████'s Mother completed, signed, and submitted to ██████ paperwork requesting hospital/homebound instruction for ██████ Stip. Ex. R7, p. 20; T. of Mother.
28. The paperwork included a section for completion by a medical provider. On September 26, 2022, ██████'s Mother uploaded the documentation to be completed by ██████'s physician, Dr. ██████ M.D., and sent a message requesting that

he complete the documentation and indicating that school personnel had requested that [REDACTED] go on homebound instruction. Stip. Ex. P25; T. of Mother.

29. In the medical statement completed by Dr. Co [REDACTED], he stated "[h]omebound instruction needed at this time." Stip. Ex. R7, p. 24. Dr. Co [REDACTED] added "[w]e will start IVIG treatment (already approved for this)," and "unable to attend school for now." The duration of the condition or prognosis was stated as "3 months." Stip. Ex. R7, p. 24.
30. The undersigned acknowledges that there is a difference between the testimony of school personnel and the message accompanying the request by [REDACTED] s Mother to Dr. Co [REDACTED] regarding who initiated the discussion of placing [REDACTED] on homebound instruction. This difference can only be resolved by a credibility determination. However, a resolution of this difference in favor of Petitioners would not be evidence that [REDACTED] s change of placement in October 2022 was a measure of discipline resulting from a violation of the code of student conduct, but only evidence that school personnel, and not [REDACTED] s Mother, initiated the idea of placing [REDACTED] on homebound instruction. Additionally, a favorable determination on this issue for Petitioners would not overcome the clear, uncontradicted statement from Dr. Co [REDACTED] that [REDACTED] needed homebound instruction and that she is "unable to attend school for now," and that the duration of her condition or prognosis is "3 months."
31. Vaughn emailed [REDACTED] s Mother a 504 Invitation to Conference for a meeting on September 28, 2022 at 12:30 p.m. to be held via phone to discuss [REDACTED] s Section 504 Plan. The Invitation includes a notice of parents' rights and states, "The law requires that you be kept fully informed concerning decisions about your child and that you be informed of your rights if you disagree with any of these decisions." Stip. Ex. R5; T. of Vaughn. [REDACTED] s Mother received all 504 meeting invitations. T. of Mother.
32. A 504 Accommodation Plan meeting occurred on September 28, 2022. The Plan states, "The whole team agrees that homebound is the best option for [REDACTED] at this time." Stip. Ex. R6. The Plan was signed by [REDACTED] s Mother. *Id.* at p. 19; T. of Mother. [REDACTED] s Mother did not express any disagreement with [REDACTED] s placement on homebound in the Fall of 2022. T. of Mother; T. of Vaughn.
33. At the time homebound was approved, Vaughn believed the school was "problem solving" a student's medical needs. T. of Vaughn.
34. At the time homebound was agreed upon in September of 2022, there was uncertainty regarding how the IVIG treatments would impact [REDACTED] and her ability to attend school. T. of Vaughn.
35. [REDACTED] s Mother was hopeful that [REDACTED] s PANDAS would improve following the IVIG treatments in the Fall of 2022. T. of Mother.

36. School personnel did not require [REDACTED]'s homebound placement in October of 2022. T. of Vaughn; T. of Ginsberg; T. of Young.
37. If [REDACTED] had not been placed on homebound, she would have been able to return to Ms. Ginsberg's classroom at [REDACTED] in September of 2022. T. of Vaughn; T. of Ginsberg.
38. [REDACTED]'s Mother did not file a grievance or request a hearing indicating disagreement with the 504 team's homebound placement in the Fall of 2022. T. of Mother.
39. Prior to her placement on homebound in October of 2022, [REDACTED] was not subjected to any disciplinary consequences or recommendations for discipline as a result of her behaviors. T. of Vaughn; T. of Ginsberg.
40. There was a two-week delay in beginning homebound services for [REDACTED] in the Fall of 2022 because of difficulty locating a homebound teacher. T. of Vaughn. Once homebound services began, UCPS made up the services that had been missed during the two-week delay. Stip. Exs. R14, R15 and R19; T. of Vaughn; T. of Campbell.

Spring Semester of 2022-2023 School Year

41. Prior to [REDACTED]'s return to school in January of 2023, [REDACTED]'s Mother expressed that she wanted a one-hour abbreviated day for [REDACTED] and wanted to continue the services of the homebound teacher, Ms. Campbell. Stip. Ex. R24, p. 105; T. of Campbell.
42. A 504 Invitation to Conference was sent to [REDACTED]'s Mother for a meeting on December 16, 2022 to review [REDACTED]'s 504 Plan. Stip. Ex. R8; T. of Vaughn.
43. At the December 16, 2022 504 meeting, the team, including [REDACTED]'s Mother, agreed that [REDACTED] would attend school on a reduced schedule and that "additional adult support would be provided within the classroom." Stip. Ex. R9; T. of Ginsberg.
44. At the December 16, 2022 504 meeting, the team, including [REDACTED]'s Mother, agreed that [REDACTED]'s daily schedule would be from 8-9 a.m. Stip. Ex. R10; T. of Vaughn; T. of Ginsberg. The team also agreed to continue to provide support to [REDACTED] after school for tutoring. Stip. Ex. R10.
45. [REDACTED] transitioned back to school in January of 2023. [REDACTED] did not exhibit many behavioral problems in January of 2023 but did have difficulty with anxiety. Stip. Ex. R21, pp. 74-78; T. of Ginsberg.
46. In January of 2023, the abbreviated schedule was not being followed, as [REDACTED] would arrive at school late on some occasions and would remain at school past the 9 a.m. schedule. Stip. Ex. R21, pp. 74-78; T. of Ginsberg. The teacher/staff would not know what time [REDACTED] was to be picked up each day. T. of Vaughn; T. of Ginsberg. On January 31, 2023, Vaughn discussed the abbreviated schedule with [REDACTED]'s Mother so that everyone "was on the same page." Stip. Ex. R21, p.77; T. of Vaughn.

47. On February 1, 2023, Ginsberg texted [REDACTED]'s Mother regarding picking [REDACTED] up at the designated, agreed-upon time of 9 a.m., as set forth in her 504 Plan. Stip. Ex. P20 (Ginsberg texts); Stip. Ex. R21, pp. 77-78; T. of Ginsberg. [REDACTED]'s Mother was not asked to pick [REDACTED] up early on February 1, 2023. T. of Vaughn; T. of Ginsberg.
48. On February 1, 2023, [REDACTED]'s Mother was upset that she was asked to pick [REDACTED] up at the designated time and thought [REDACTED] should be allowed to remain at school longer. T. of Mother; T. of Vaughn; T. of Ginsberg.
49. On February 1, 2023 at 9 a.m., [REDACTED]'s Mother texted to Vaughn, "We need to have an emergency 504 meeting. She will not be returning to school, so we need to address increasing homebound." Stip. Ex. P38, p. 4929.
50. Vaughn and Ginsberg were surprised that [REDACTED]'s Mother was upset when asked to pick [REDACTED] up at the designated time on February 1, 2023, since the school was following the 504 Plan that was in place. Stip. Ex. R12; T. of Ginsberg.
51. A 504 meeting occurred on February 3, 2023, in which the team agreed to place [REDACTED] on homebound for "10 hours/week of instruction through the end of the 2022-2023 school year." Stip. Ex. R11.
52. At the February 3, 2023 504 meeting, school personnel proposed options for [REDACTED] in lieu of homebound, such as a different schedule or live virtual lessons to keep [REDACTED] integrated with her class/peers. [REDACTED]'s Mother rejected options other than homebound. Stip. Ex. R12; T. of Vaughn; T. of Ginsberg.
53. Vaughn requested that [REDACTED]'s Mother provide an updated doctor's note to support the homebound placement in February of 2023. [REDACTED]'s mother replied that the doctor's note was "not even a year old" and stated she should not be required to submit an updated doctor's note for homebound services since [REDACTED]'s "prognosis hasn't changed." Stip. Ex. R20, pp. 67-68; T. of Vaughn.

CONCLUSIONS OF LAW

BASED UPON the foregoing Findings of Fact, relevant laws, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

1. This Order incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this litigation.
2. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. The Court “need not make a finding as to every fact which arises from the evidence; rather the court need only find those facts which are material to the resolution of the dispute.” *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611,612, aff’d, 335 N.C. 234, 436 S.E.2d 588 (1993) (citing *Green v. Green*, 54 N.C. App. 571, 284 S.E.2d 171 (1981)).
4. All Parties are properly before the Court, and the Court has personal jurisdiction over them.
5. All Parties have been correctly designated and were properly noticed of the hearing and venue was proper.
6. Respondent UCPS is a local education agency (LEA) receiving funds pursuant to IDEA and is the LEA responsible for providing educational services in Union County, North Carolina.

General Legal Framework

7. The Office of Administrative Hearings has jurisdiction to consider this matter pursuant to Chapters 115C, Article 9, as well as 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
8. The Office of Administrative Hearings does not have jurisdiction over any other original action, including but not limited to, jurisdiction over any claims brought pursuant to Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, codified at 29 U.S.C. § 701 *et seq.*
9. The IDEA is a federal statute governing education of students with disabilities. The federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300.
10. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9.
11. In any action brought against a local board of education, the action "shall be 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).
12. 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); N.C. Gen. Stat. § 150B-34(a).
13. 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); N.C. Gen. Stat. § 115C-109.6(b).

14. The trier of fact has sole judgment of the credibility of witnesses and weight to be given to the testimony and whether it is consistent with other believable evidence that has been presented in this case. *In re Gleisner*, 141 NC. App. 475, 480, 539 S.E.2D. 362, 365 (2000) ("It is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given their testimony.")

Disciplinary Procedures

15. IDEA provides procedural safeguards for students in the context of disciplinary procedures when there is a decision to change the placement of a "child with a disability because of a violation of the code of student conduct. . . ." 34 C.F.R. § 300.530 (h).
16. IDEA does not define "discipline." The US Department of Education, Office of Special Education and Rehabilitative Services, has stated that "'discipline' is intended to mean the consequences a school imposes on a child who violates a school's code of conduct or rules as determined by school personnel." *See* Question B-1, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 19, 2022.
17. If a student suffers a change in placement for a disciplinary reason, then the school must conduct a manifestation determination review ("MDR"). *M.N. v. Rolla Pub. Sch. Dist.* 31, 2012 U.S. Dist. LEXIS 78548, *10. A change in placement for any reason other than disciplinary reasons does not "constitute a disciplinary change in placement" for the purposes of 34 C.F.R. § 300.530(e). *Id.* at *15-16. ("Because [the parent] fails to show that a shortened day of school was a form of discipline, these actions . . . do not constitute a disciplinary change of placement.").
18. "It is clear under the IDEA that the decision to change the child's placement must be made by the school district in order to trigger the requirement of a manifestation determination." *M.N.* at *14-15 (holding parent "was not 'forced' to withdraw her child" from school when "she had other procedural avenues available to dispute the District's threatened change of placement.")
19. If the parent of a child with a disability and the LEA agree to a specific change in the current educational placement of the child, then it is not considered a removal under the discipline provisions. *See* Question C-5, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, July 19, 2022.

BASED UPON the foregoing, the Undersigned makes the following:

DECISION

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Petitioners did not meet their burden of proof on the initial threshold issue - [REDACTED]'s changes of placement in October of 2022 and January of 2023 were not measures of discipline resulting from a violation of the code of student conduct pursuant to 34 CFR §300. 530, but rather the result of agreed upon 504 Accommodation Plans.
2. UCPS was not required to hold a manifestation determination review ("MDR") within ten (10) school days of the changes in placement in October 2022 or January 2023 pursuant to 34 CFR § 300.530(e), because the changes of placement were not the result of discipline due to a violation of the code of student conduct.
3. Since Petitioners did not meet their burden of proof on the issues above, it is not necessary to address the issue of corrective action pursuant to 34 CFR § 300.532(b)(2).
4. Since Petitioners did not satisfy their burden of proof as set forth above, a decision regarding UCPS's "basis of knowledge" pursuant to 34 CFR § 300.534 is not required, and neither is a decision regarding the nature of [REDACTED]'s conduct pursuant to 34 CFR § 300.530(e).
5. Respondent is the prevailing party on all the issues identified for expedited hearing.

Therefore, the relief requested in the Petition for Contested Case Hearing arising from Petitioners claims that UCPS was required to hold a MDR for [REDACTED] within 10 days of the changes of placement in October 2022 and January 2023, is hereby DENIED.

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.

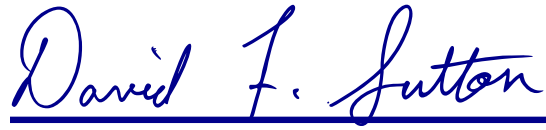
Any party aggrieved by the findings and decision of a hearing officer may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

Unless appealed to State or federal court, the State Board shall enforce the final decision of the Administrative Law Judge.

IT IS SO ORDERED.

This the 14th day of September, 2023.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

David F Sutton
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.

[Redacted]

Parent

[Redacted]

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This the 14th day of September, 2023.

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