# FILED OFFICE OF ADMINISTRATIVE HEARINGS 02/25/2025 8:00 AM

#### STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE OFFICE OF ADMINISTRATIVE HEARINGS 24 EDC 01288, 24 EDC 01674

by and through his parent Petitioner,	
v.	FINAL DECISION
Discovery Charter School Respondent.	

**THIS MATTER** came on for hearing before the Honorable Karlene S. Turrentine, Administrative Law Judge, on September 10-13, 2024, and September 16, 2024, at the Durham County Courthouse in Durham County, North Carolina and, on September 30, 2024, and October 2, 2024, at the North Carolina Office of Administrative Hearings in Wake County, North Carolina.

#### **APPEARANCES**

For Petitioner: Crystal Grant, Esq. and,

William Knight, Certified Student Attorney

Duke University School of Law's Children's Law Clinic

**Attorneys for Petitioners** 

For Respondent: Donna R. Rascoe, Esq.

Cranfill Sumner, LLP Attorneys for Respondent

#### WITNESSES

Expert Witness (Speech-Language Pathologist)

Expert Witness (Speech-Language Pathologist)

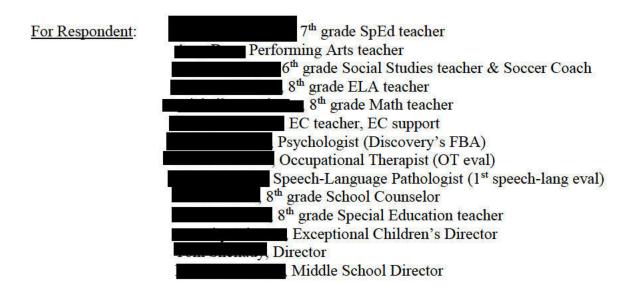
Expert Witness (Speech-Language Pathologist)

Expert Witness (Speech-Language Pathologist)

grade science teacher

Dr. Pediatrician

Petitioner-Mom



## **EXHIBITS**

## For Petitioner:

EXHIBIT NO.	PETITIONER'S ADMITTED EXHIBITS		
1	CV of		
2	Email exchange dated January 13-17, 2023		
4	Psychological Report		
5	Psychological Report Addendum		
8	Section 504 Plan		
9	CV of Dr. I		
10	Functional Behavior Assessment dated May 13, 2024		
11	CV of		
12	Brief Dynamic Assessment of Language dated June 20, 2024		
13	Children's Communication Checklist-2		
14	Written Expression Sample		
15	CV of ]		
16	Report #1 from		
17	Report #2 from		
18	Report #3 from		
19	Dr. ! letter to Discovery dated September 24, 2021		
20	Dr. or letter to Discovery dated March 3, 2023		
22	Duke Medical Records for (pp.1-41)		
23	Email from Ms. dated December 6, 2022		
24	Email from Ms. dated January 31, 2023		
25	Email from Ms. Lated February 1, 2023		

26	Email from Ms. dated March 22, 2023		
27	Email From I to Mom and dated January 30, 2024		
29	Email From Mom to dated March 14, 2024		
30	Email From to Mom dated March 22, 2024		
31	Email From 1 Mom dated April 5-10, 2024		
32	Email From Mom to dated April 25, 2024		
36	2022-2023 Slack Behavior Channel		
37	Discipline Report dated September 7, 2023		
38	Discipline Report dated January 30, 2024		
40	Discipline Report dated April 4, 2024		
42	Discipline Report dated April 23, 2024		
44	May 2024 Notice of Long-Term Suspension and/or Exclusion		
45	Discovery Charter School Handbook, pgs. 29-30		
47	Email re FBA and MDR dated May 14, 2024		
48	Email re March 15, 2024 IEP meeting dated March 8-10, 2024		
50	Deposition of Ms. pgs. 40-50 and oath		
51	End of Grade Results 2023-2024		
53	Response to Informal Requests for Admissions and Supplemental Responses, paragraphs: 4, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 40, 41, 42, 43, 44, 46, 47, 49, 53, 54, 55, 56, 58, 60.		

# For Respondent:

EXHIBIT NO.	RESPONDENT'S ADMITTED EXHIBITS		
1.	Discovery Charter School Academic Calendars (2021-2024)		
2.	September 3, 2021 Email Thread re Facebook Parent Group		
3.	March 1, 2022 Section 504 Plan		
5.	June 15, 2022 6 <sup>th</sup> Grade Report Card		
8.	November 30, 2022 Speech-Language Evaluation by		
9.	November 30, 2022 Email Thread re Checking In		
10.	December 6, 2022 Email from the Suspension		
11.	December 19, 2022 Occupational Therapy Evaluation by		
14.	January 31, 2023 Email from least re Checking in		
16.	February 13, 2023 Email from re Suspension		
18.	March 16, 2023 Email from re Incident		
19.	March 22, 2023 Email Thread re Incident		
20.	April 3, 2023 Email Thread re Lunch Incident		

21.	May 22, 2023 Email Thread re Check In		
22.	May 24, 2023 Email Thread re Incident		
23.	May 24, 2023 Occupational Therapy Notes by A		
24.	June 14, 2023 7th Grade Report Card		
25.	2023-2024 I Class Schedule		
26.	September 7, 2023 Discipline Report		
27.	October 30, 2023 Email thread re Soccer Team Incident		
29.	November 2, 2023 Occupational Therapy Evaluation by		
30.	November 14, 2023 Email thread re Incident in Math Class		
31.	January 30, 2024 Discipline Report		
32.	February 20, 2024 Email thread between Mom and		
33.	February 22, 2024 Occupational Therapy Notes by A		
34.	March 4, 2024 Discipline Report		
35.	March 5, 2024 Email thread re Bus Incident		
36.	March 14, 2024 Email from to Mom		
37.	March 18, 2024 Email thread between land Mom		
38.	March 22, 2024 Email thread re Another Incident with classmate		
39.	April 4, 2024 Email from to Mom		
40.	April 4, 2024 Discipline Report		
41.	April 5, 2024 Discipline Report		
42.	April 5, 2024 Emails in follow-up to Discipline Reports		
44.	May 9, 2024 Email from to Mom		
46.	May 22, 2024 Occupational Therapy Summary by		
47.	Discovery Charter School Three Strike Talley Sheets		
48.	June 14, 2024 8th Grade Report Card		
49.	EOG Results Summary		
50.	IXL Diagnostics Summary		
52.	Discovery Charter School Character Strong Curriculum		
54.	December 1, 2021 Email from re Incident		
56.	Duke Medical Records for (pp.1-60)		
57.	Excerpts from Deposition of Mom		
58.	CCC-2 Journal Article, pages 1-6 and 17		

# Joint:

EXHIBIT NO.	JOINT EXHIBITS ADMITTED BY STIPULATION
1.	October 12, 2022 Special Education Referral
2.	October 12, 2022 Consent for Evaluation

2	O-4-1 12 2022 Drive Weitten Nation - Tritial Defenda			
3.	October 12, 2022 Prior Written Notice – Initial Referral			
4.	February 9, 2023 Eligibility Determination			
5.	February 9, 2023 Prior Written Notice – Eligibility			
6.	March 9, 2023 Consent for Services			
7.	March 9, 2023 Initial IEP (03/10/2023-03/09/2024)			
8.	March 9, 2023 Prior Written Notice – Initial IEP			
9.	March 24, 2023 IEP Progress Report (for IEP 03/10/2023 to 03/09/2024) Reporting Period 3			
10.	May 31, 2023 IEP Progress Report (for IEP 03/10/2023 to 03/09/2024) Reporting Period 4			
11.	September 18, 2023 Reevaluation Report			
12.	September 18, 2023 Consent for Reevaluation			
13.	September 18, 2023 Prior Written Notice – Parent Request FBA			
14.	October 10, 2023 Functional Behavioral Assessment - Team Interview Data			
15.	October 10, 2023 Prior Written Notice – FBA Initial Meeting			
16.	December 6, 2023 Functional Behavioral Assessment – Data Summary			
17.	December 6, 2023 Eligibility Determination – Reevaluation			
18.	December 6, 2023 Prior Written Notice – FBA and OT Reevaluation			
19.	October 31, 2023 IEP Progress Report (for IEP 03/10/2023 to 03/09/2024) Reporting Period 1			
20.	January 3, 2024 IEP Addendum (01/03/2024 – 03/09/2024)			
21.	January 3, 2024 Prior Written Notice – Review/Revise IEP			
22.	IEP Progress Report (for IEP 03/10/2023 to 03/09/2024) Reporting Period 2			
23.	March 5, 2024 IEP Annual Review (03/08/2024 – 03/07/2025)			
24.	March 5, 2024 Prior Written Notice – Review/Revise IEP			
25.	IEP Progress Report (for IEP 03/08/2024 to 03/07/2025) Reporting Period 3			
26.	April 29, 2024 Manifestation Determination Review (04/04/2024 incident)			
27.	April 29, 2024 Prior Written Notice – MDR			
28.	IEP Progress Report (for IEP 03/08/2024 to 03/07/2025) Reporting Period 4			
29.	DPI Considerations for Specially Designed Instruction, revised August 2019			

#### OTHER DOCUMENTS

Transcript Volumes 1 through 7 were received and have been retained in the official record of this case.

## ISSUES<sup>1</sup>

The Parties identified the issues for hearing as follows:

- 1. Whether Res ondent-Discovery Charter School (hereinafter, "Respondent" or "Discovery") denied a free, appropriate public education ("FAPE") by failing to appropriately address his needs during the period of April 4, 2023 to July 26, 2024.
- 2. Whether Respondent failed to implement Individualized Education Program ("IEP") with fidelity during the period of April 4, 2023 to July 26, 2024.
- 3. Whether Respondent incorrectly failed to find that behavior was a manifestation of his disabilities during the Manifestation Determination Review ("MDR") meeting held on April 29, 2024.

### **BURDEN OF PROOF**

Petitioner bears the burden of proof in North Carolina. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). "The administrative law judge shall decide [each contested] 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). "Courts give educators "deference . . .based on the application of expertise and the exercise of judgment by school authorities." *Endrew F. ex. rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017). "By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement," and a "reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Id.* 

However, the Tribunal is not bound by Discovery's interpretation of the law and how it was applied in providing a FAPE. "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority...." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412, 144 S. Ct. 2244, 2273 (2024). Nevertheless, North Carolina

<sup>&</sup>lt;sup>1</sup> These issues are pulled directly from the stipulated Final Pretrial Order filed September 10, 2024.

<sup>&</sup>lt;sup>2</sup> From here on throughout this Final Decision, for anonymity and ease of reading, Petitioner shall be referred to as "Mom".

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.G.S. § 115C-44(b)(emphasis added).

Petitioners have the burden of proof on their filed motions, and the Respondent has the burden of proof on its filed motions.

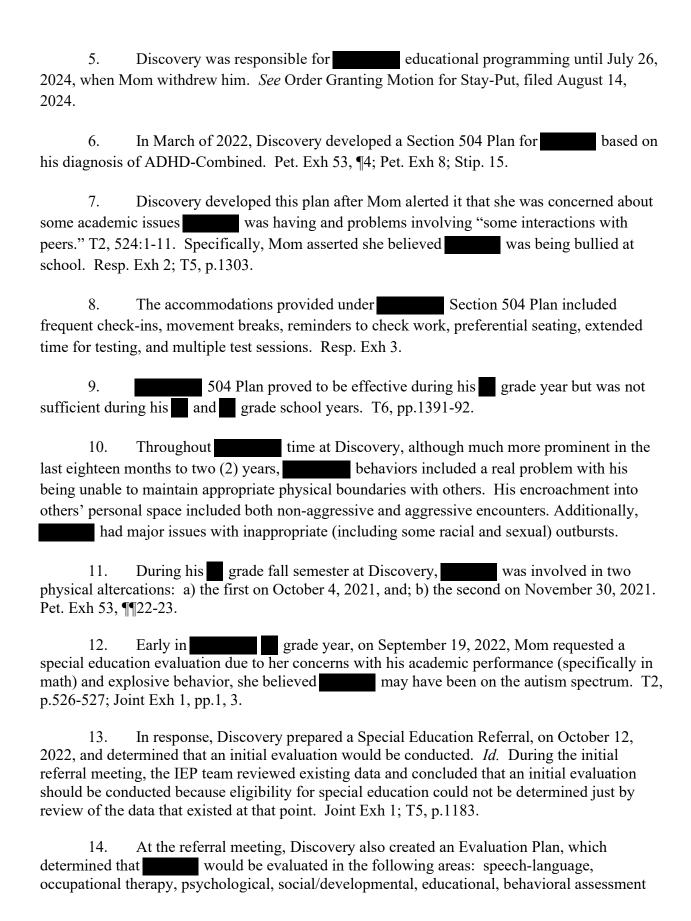
BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the documents and exhibits received and admitted into evidence, the stipulations of the Parties, arguments of counsel, and the careful review of the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and assessed the credibility of each witness by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudices the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Thus, pursuant to N.C.G.S. § 150B-33(b)(10) and N.C.G.S. § 150B-34(a), Undersigned hereby makes the following:

### **FINDINGS OF FACT**

<u>Unless specifically contradicted, this Order incorporates and reaffirms all Findings</u> of Fact and Conclusions of Law contained in previous Orders entered in this litigation.

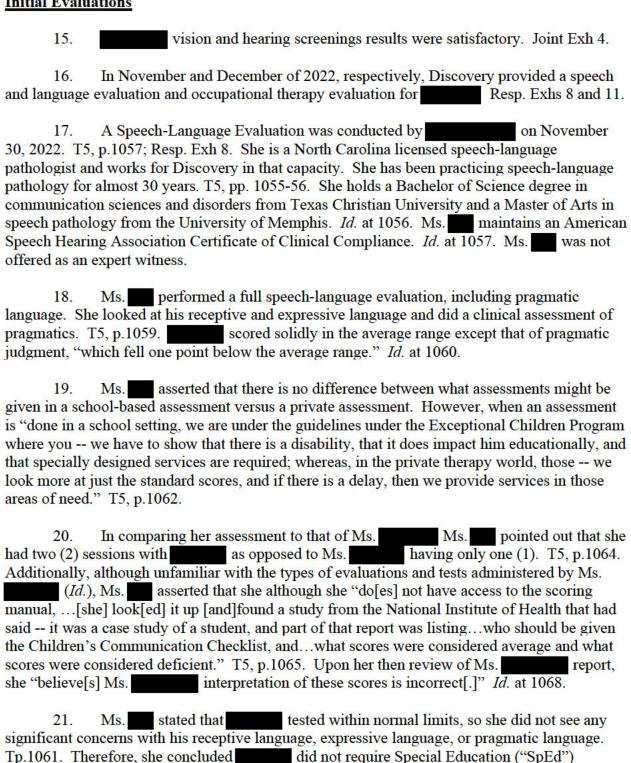
#### **Background Information**

- 1. Discovery is a public charter school located in Durham, North Carolina, serving grades 6-11 (T5 p.1283), with some 400 students enrolled. T6 p. 366:8-9. It is a STEAM school focusing on science, technology, engineering, arts, and mathematics. T5 p.1282.
- 2. The State Board of Education has approved Discovery's charter subject to adherence to all requirements set forth in the provisions of its charter and in the Charter School Act. (*Id.* at 1285) All representations and conditions contained in the School's application, including its instruction model, are binding on the School. (*Id.*)
- 3. At the time the Petitions were filed, was years old. He had been enrolled in Discovery as a student beginning in the fall of the academic year and continued to be enrolled there for three (3) years through the end of the grades). Stip. 11, 13-14.
- 4. is a "child with a disability" as defined by the IDEA, having a diagnosis of Oppositional Defiance Disorder ("ODD"] and Attention Deficit Hyperactivity Disorder-Combined Type ("ADHD"). Stip. 12; Joint Exh, p.7. He has also been diagnosed with anxiety and depression. Pet. Exh 22, p.4

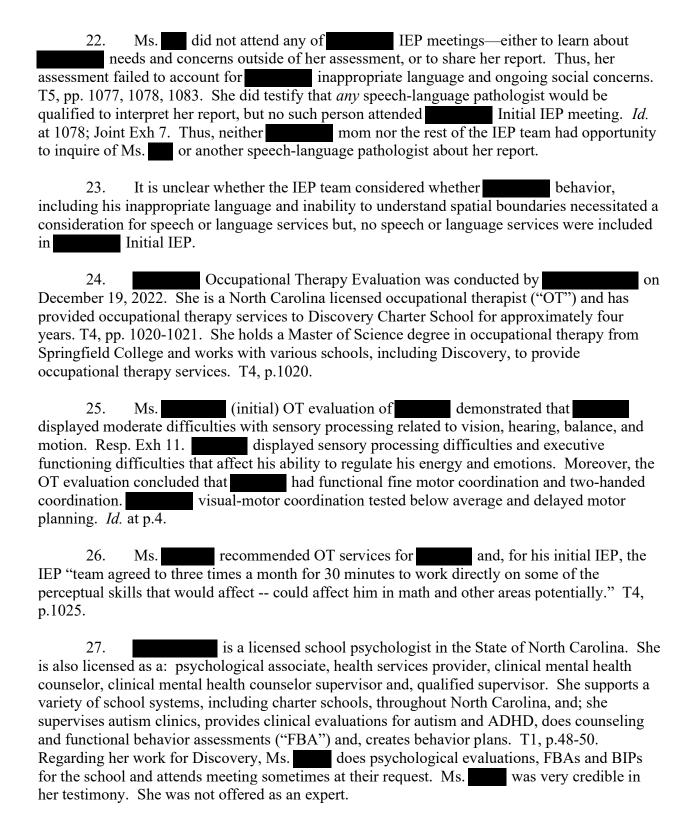


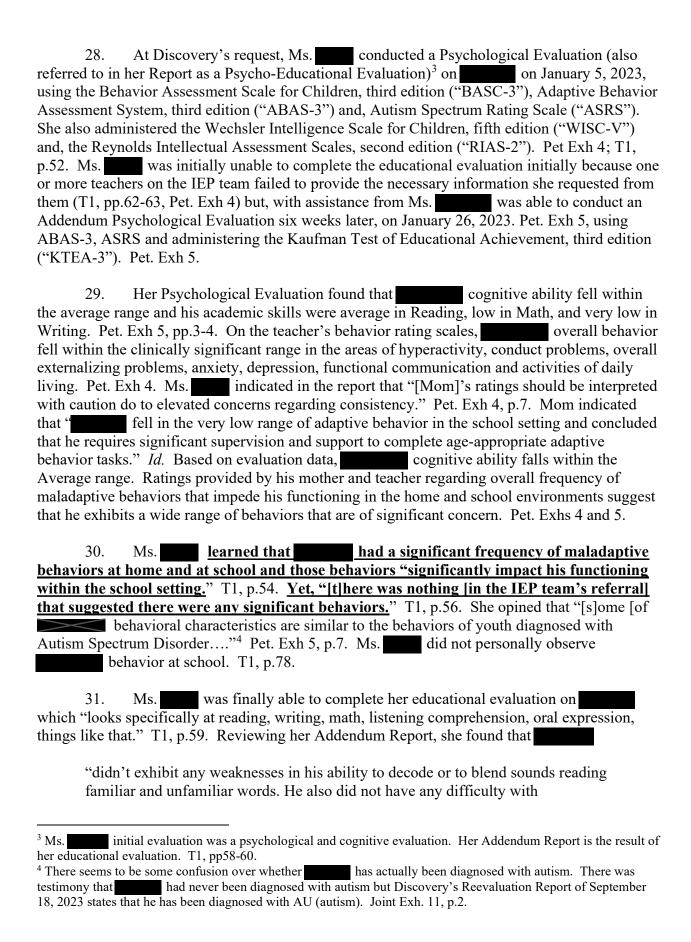
as related to autism spectrum disorder, sensory processing, and adaptive behavior. Joint Ex. 2; Stip. 17.

# **Initial Evaluations**



services in the area of speech or language. *Id.*; Resp. Exh 8.





demonstrating an understanding for what he's read. The next area that was assessed was math, and his overall math score fell at a 76, which is lower...basic computation skills he struggles with, so age-appropriate computations. In the area of written language, he fell within the very low ranges. ... He has skill deficits in some math skills, so [needs] additional instruction in time, money, fractions, and measurement."

T1, pp.60, 61, 66.

32. Ms. made several recommendations in her Report to address academics and behavior for Pet. Exh 4, p.11; Pet. Exh 5, p.7. Her first recommendation reads:

"The information reported herein should be considered as representing a part of the IEP Team's efforts to collect and evaluate all relevant data regarding this student. Test scores alone should not be used to determine eligibility for special programs without considering all other information required by state or federal regulations. The IEP Team has final responsibility for making determinations."

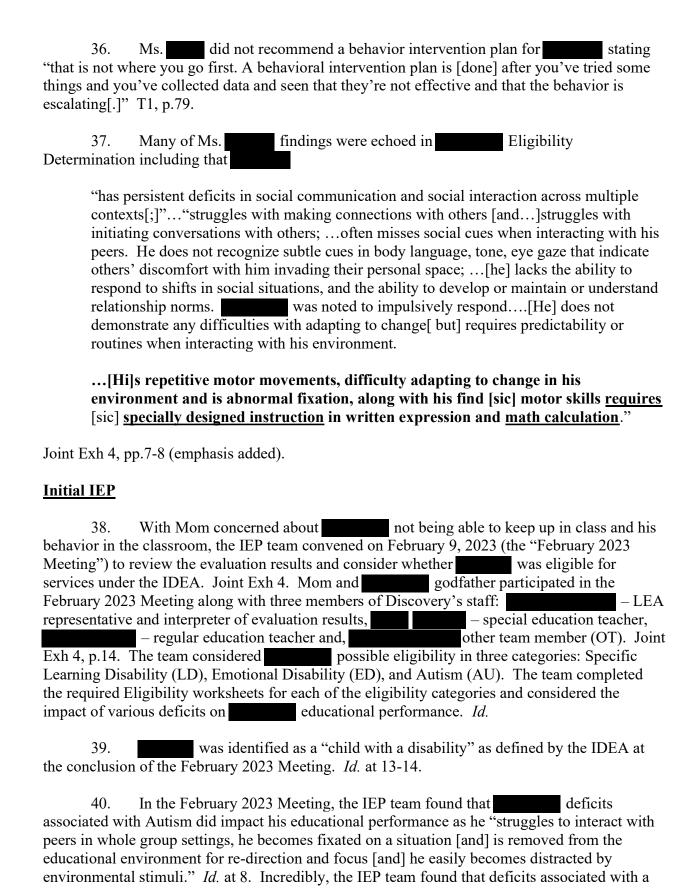
Id.

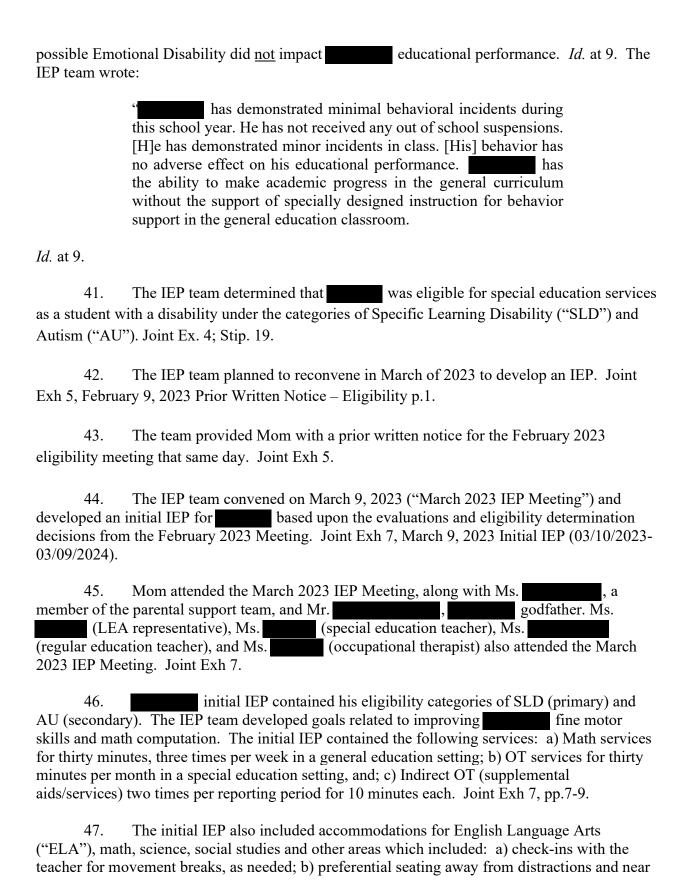
33. Nevertheless, the psychological evaluation reveals that scores on "Hyperactivity, Anxiety, and Conduct Problems fall in the clinically significant range and probably should be considered among the first behavioral issues to resolve." Pet. Ex. 4, p.12. Under each of these categories, the report lists behaviors with which had skill deficits, including "interrupting others, acting without thinking, not waiting for turn, making decisions, lying, and breaking rules." *Id.*<sup>5</sup>

34. Bec	cause the ratings were so high or	n the behavior rating scale," Ms. knew
that "there had to b	be something going on." Transcr	ript Vol 1 57:11-14. Thus, she included
recommendations	at the end of her initial report to	target "social skills" she believed were
appropriate for the	IEP team to include in	IEP. Her recommendations included
addressing	"hyperactivity, interrupting	others, having poor self-control, acting
without thinking, a	and not waiting for turn, anxiety,	, worrying about what others think, worrying
about tasks, worry	ing about things[in general], being	ing nervous and making decisions, and [other]
conduct problems[	like] lying and breaking rules."	' T1, 58.

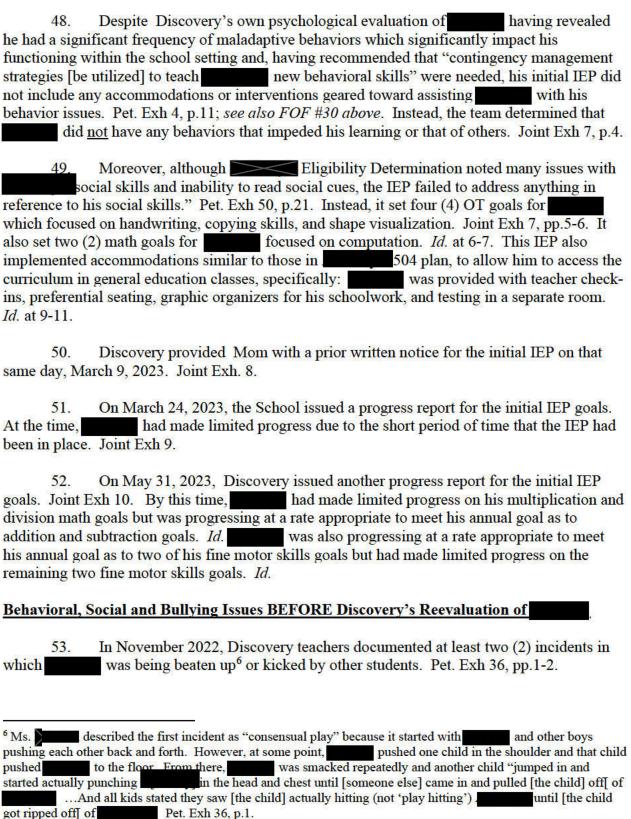
35.	The psychological	ogical evaluation conc	cluded that	experienced some
weakness in	processing spec	ed, that he had a signi	ficant frequency of	of maladaptive behaviors that
impact his fu	nctioning with	in the home setting. T	71, pp. 53-54. Bas	sed upon rating scales, Ms.
reporte	ed that	exhibited a high free	quency of maladap	ptive behaviors at school, and
that he needs	a significant a	mount of supervision	and support to co	mplete adaptive behavior
skills while i	n the home sett	ing. <i>Id.</i> at 54-55.		

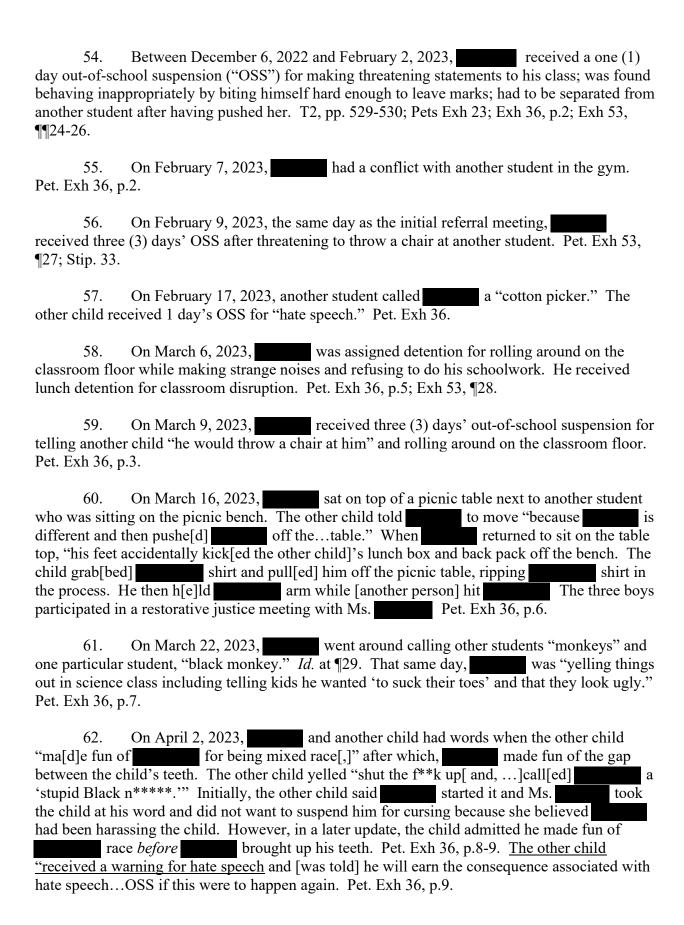
<sup>&</sup>lt;sup>5</sup> The first three of these were listed under Hyperactivity, making decisions was placed under Anxiety, and the last two were listed under Conduct Problems. Pet. Exh 4, p.12.

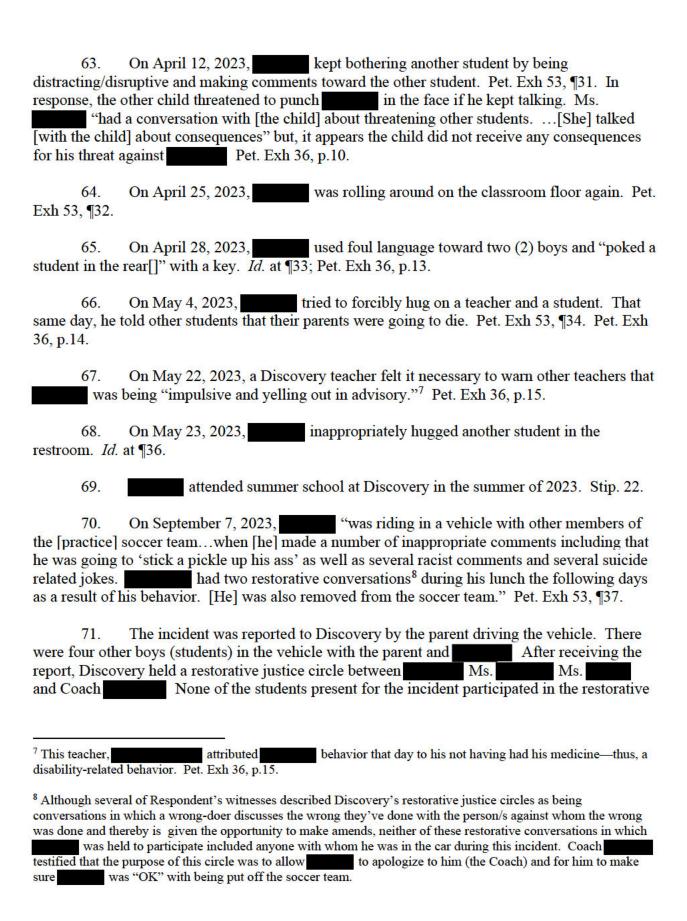


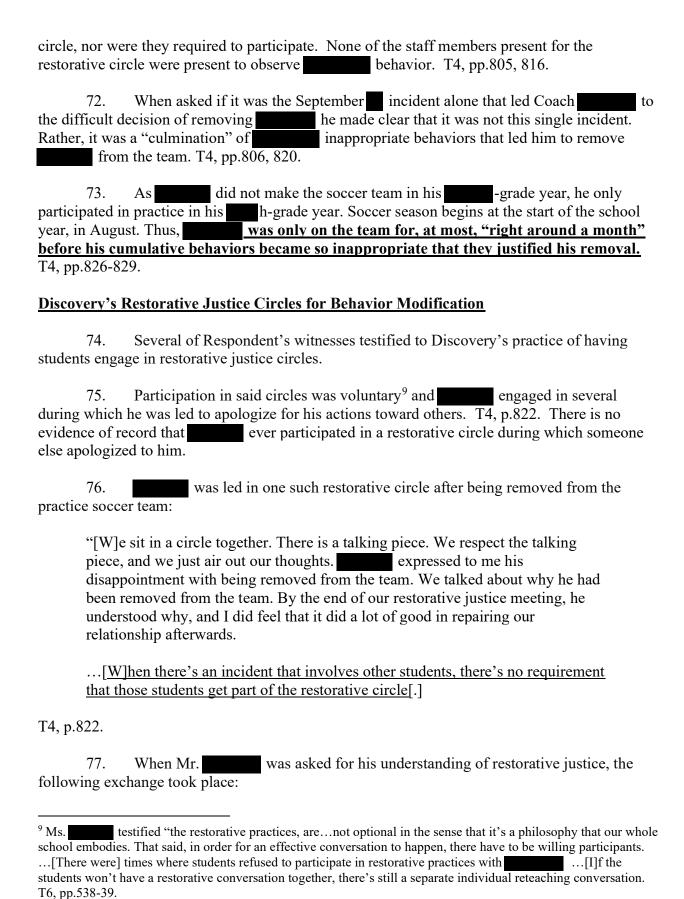


the teacher; c) use of graphic organizers; and, d) small group testing—no more than ten students. *Id.* at 9-10.









To repair behaviors.

**THE COURT:** With the person against whom the behaviors are directed or just with strangers?

With the person being involved.

**THE COURT:** So how could you have a restorative justice circle with nobody there except for the child who made the comment? Who is he being restored to? What is that?

It was more restoring our relationship because it had been damaged at the time given my dismissal of him from the team.

.

**THE COURT:** Okay, I understood you to say that the idea of restorative justice is to restore the person who has done the wrong to the person to whom they've done the wrong, is that correct?

The Witness: And to restore the relationship between teachers and students. ... And coaches and students.

**THE COURT:** And...in this particular instance, I heard you say was in a car with four other students and a parent driving, is that right?

The Witness: Correct.

**THE COURT:** The parent driving, is she one of the teachers?

The Witness: He is not[. ...N]o, Your Honor.

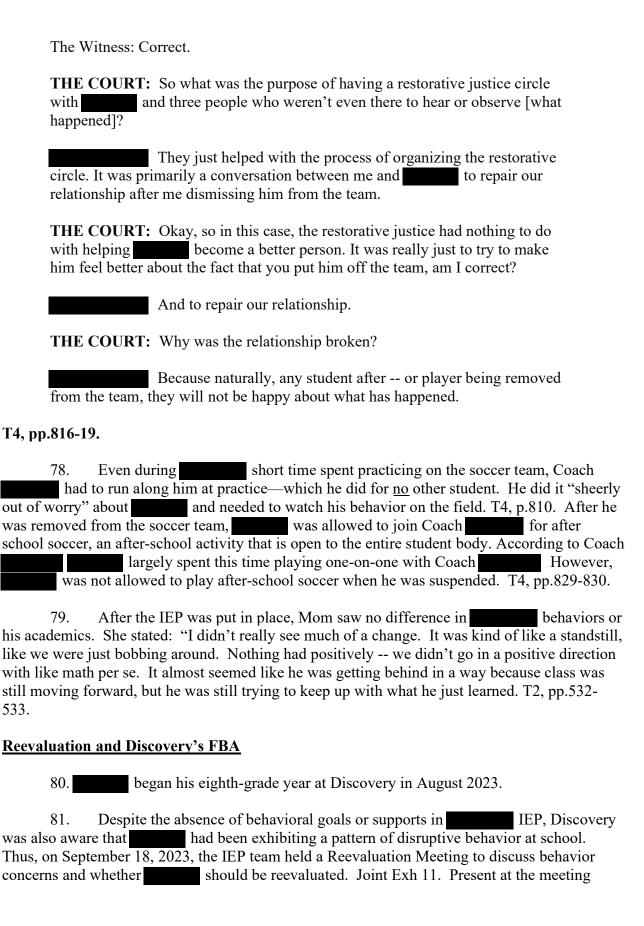
**THE COURT:** Okay, so correct me if I'm wrong, but I heard you say that none of the four students were [sic] in this restorative circle, is that correct?

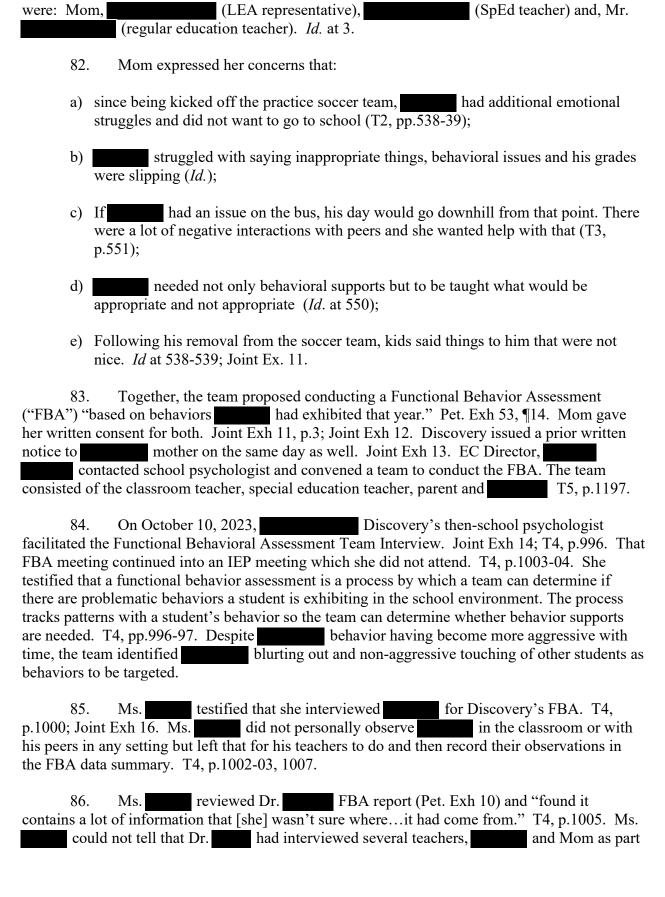
The Witness: Yes, sir, Your Honor.

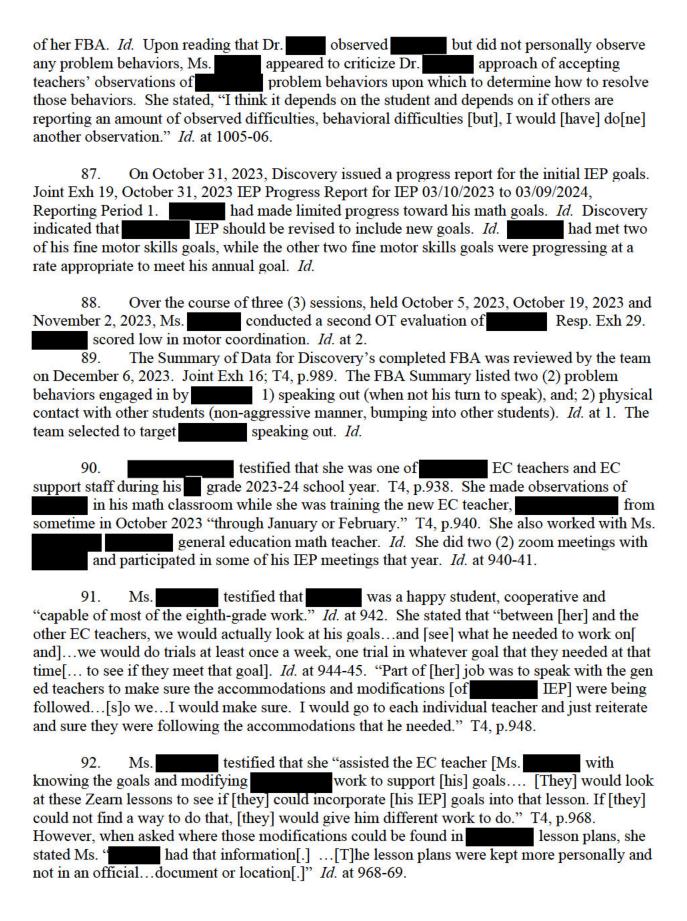
**THE COURT:** And the parent that was driving was not in the circle, am I correct?

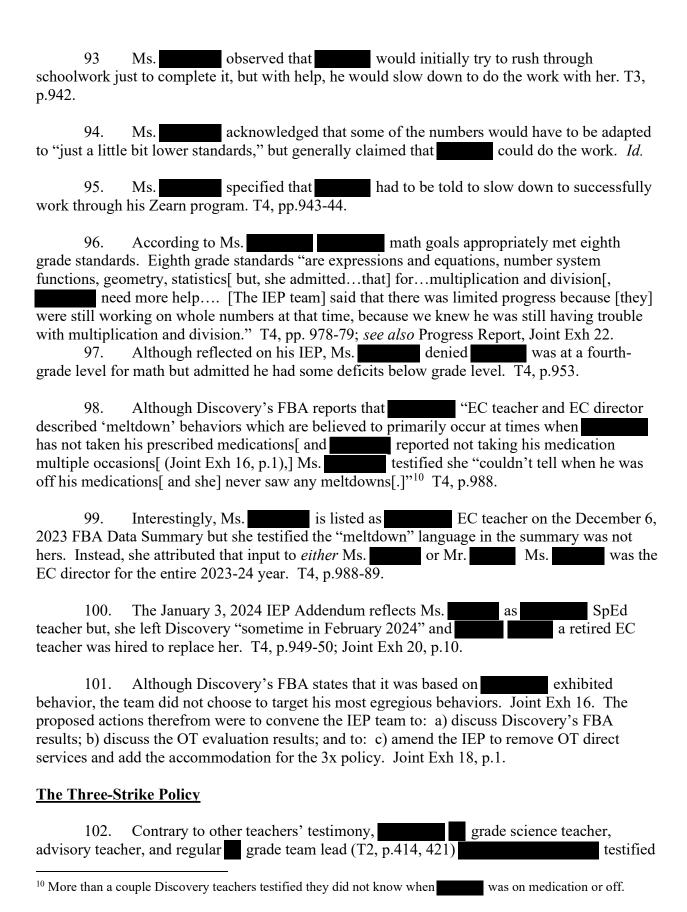
The Witness: Yes, Your Honor.

THE COURT: And you and Ms. and Ms....[ You all were not [present] in the car, am I correct?









that she could recognize when a had taken his medication and when he had not. He has good and bad days:

"Good days are, he comes in and he sits down, and he does what he is asked to do. You know, we don't have any interruptions or outbursts. He doesn't have any interactions -- negative interactions with other students. That's a good day.

...Bad days normally entail him not being on his medication. You can really tell, and it's lots of outbursts, being out of his seat, some kind of form of physical touch with another student, not participating, like zero, like 'I'm not doing work. I'm not doing anything', so."

T2, p.410.

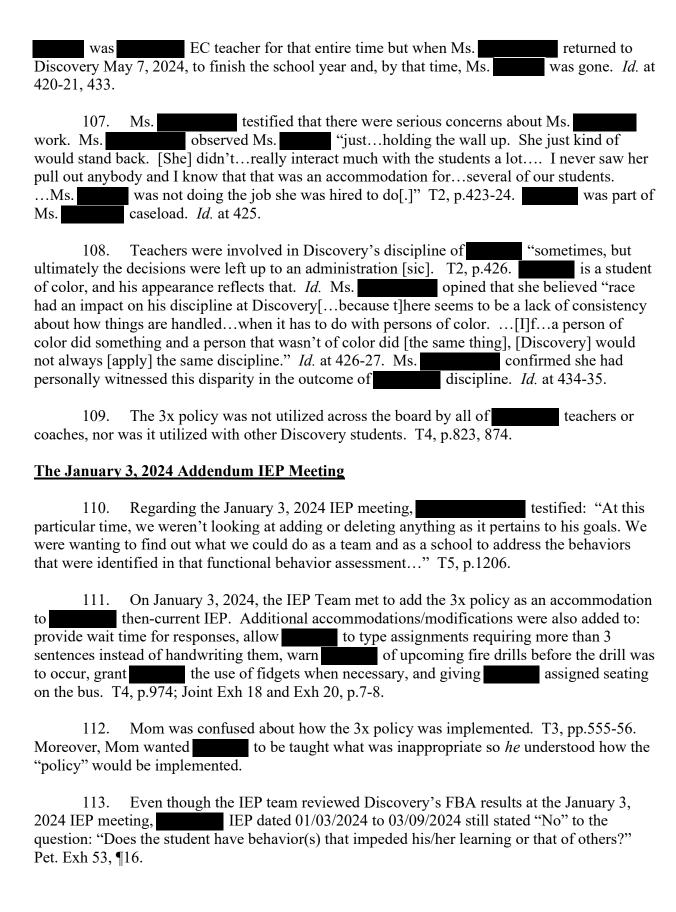
- 103. To get attention, would "make a joke out loud, fall out of his chair, comment on something that someone else is talking about." *Id.* at 411.
- 104. To manage erratic behavior on bad days, Ms. instituted a three-strike ("3x") rule. She testified:

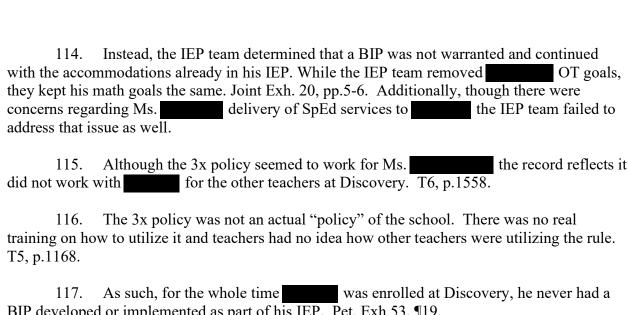
"I don't 100% recall calling it 3-strikes. I might have said that, but we more or so had like that in my classroom, like, 'hey, if I have to talk to you X amount of times [3 times], then we're going to have to have a private conversation, or there are going to be some consequences that follow it.' So that's kind of how things worked in my class, like I would tell him, you know, 'hey, refocus, recall,' and if it got to a point, then, you know, 'I need you to come sit next to me. We're going to do this work, you know, together,' or, 'hey, do you [need to] take the time to step out?' So I think out of all the time that I've had in my class, I really only had to put him out like -- put him out, put him out like, 'I'm done,' one time. But outside of that, he has used the fish bowl, or we have used the fish 'bowl, kind of to give him a reset space, and then he'd come back, or he would sit directly beside me. We would complete the work, and then I would say, you know, 'are we ready to go back to our seat?'"

T2, p.415.

implemented it in her classrooms before. She started using it with worked for her, responded to it in her classroom. *Id.* at 416. She "remember[ed being] in an IEP meeting. We were talking. I voiced that this is what works in my classroom...and [the team discussed it and decided] this is something [they all] should try. ...[A]fter...that, ...we had a team meeting to figure out what would constitute a strike. ...I don't remember all of them[but,] I do know that outbursts and touching were strikes...." *Id.* at 416-17.

106. Ms. taught taught from the beginning of school in August 2023 until February 29, 2024, when she had to leave Discovery for personal reasons. T2, p.421. Ms.





# BIP developed or implemented as part of his IEP. Pet. Exh 53, ¶19.

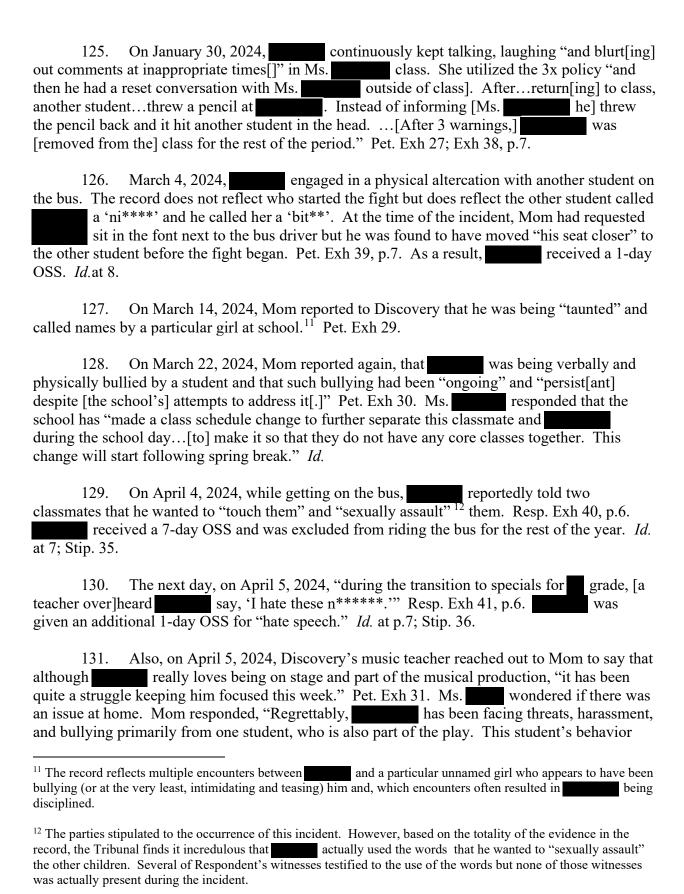
Likewise, while enrolled at Discovery, never had IEP goals targeting 118. behavior or socio-emotional concerns. Id.

# The March 5, 2024 Annual IEP meeting

- On March 5, 2024, an annual IEP meeting was held. Mom asserted that 119. desperately needed social and behavioral goals to address inappropriate behavior. The team did not address those concerns because they ran out of time but, it was agreed the team would reconvene on March 15, 2024. Mom was tasked with coming up with the behavioral goals in the meantime. T3, pp.578-80; Joint Exhs 23 & 24.
- 120. Mom wanted a third-party to help look into behavioral issues and goals that would help T3, pp.580-581.
- EC Director testified at deposition that "a case manager reached out to contact the mother to meet, and that the mother refused to meet." Pet. Exh 50, p.45; T5, pp.1260-61. At trial, she testified that "the administration informed us that the parent had cancelled the meeting from March 15<sup>th</sup> and would reach out to us to reschedule that meeting[]" but no one ever did. T5, pp.1259-60.
- The record reflects that Petitioners' counsel had requested Respondent's initial counsel to allow the March 15th meeting to be rescheduled as soon as possible following receipt of the results of Dr. independent FBA. T3, pp.581-83; Pet. Exh 48.
  - The IEP team never reconvened. T3, p.583. 123.

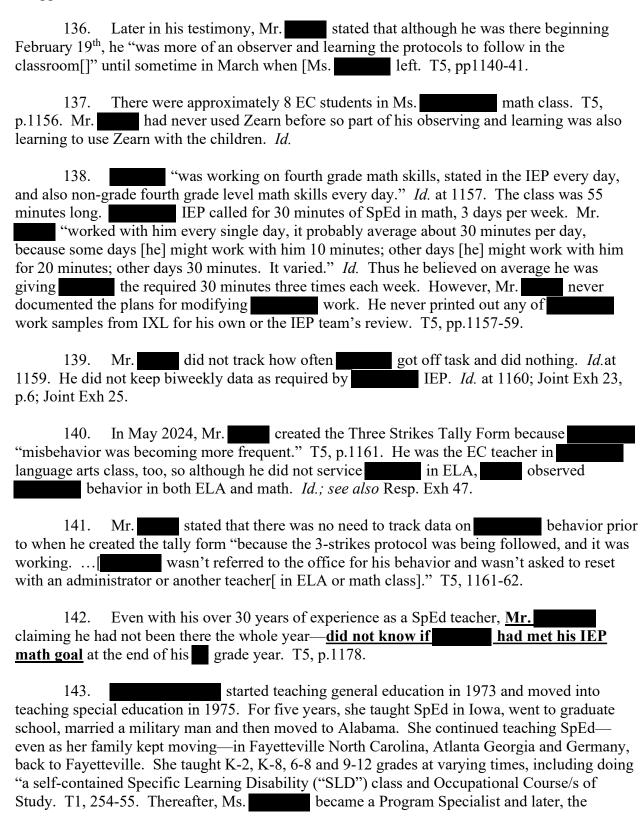
#### Behavioral, Social and Bullying Issues AFTER Discovery's Reevaluation & FBA

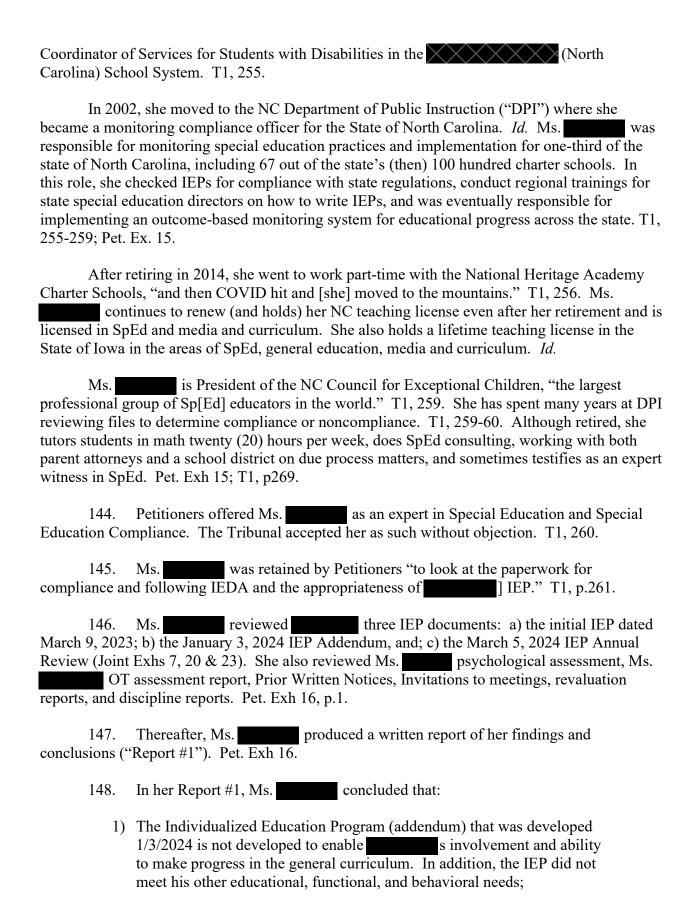
124. On October 19, 2023, had a verbal altercation with another student. Pet. Exh 53, ¶39.

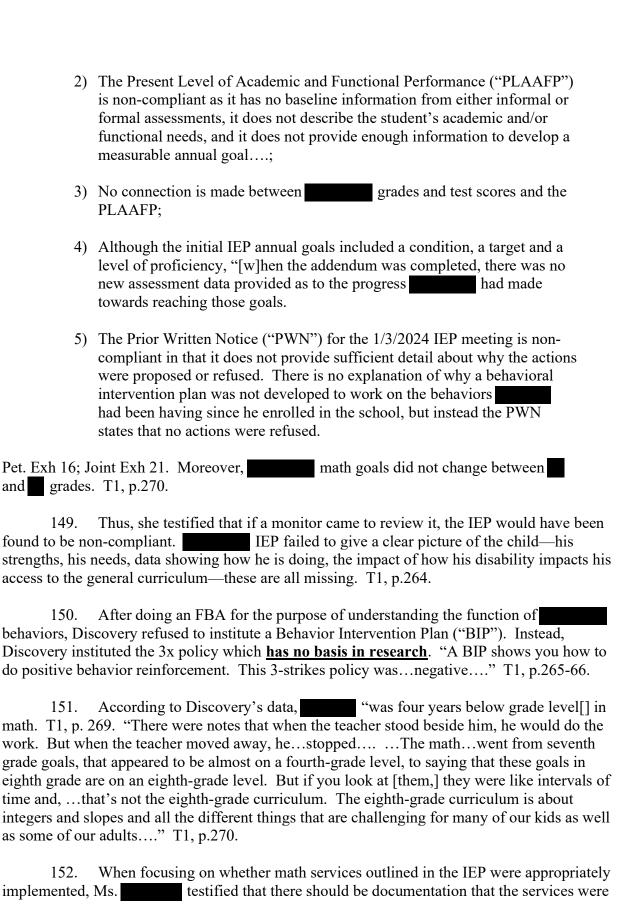


towards [him] has been extremely hostile, leading to a spill-over effect on him." <i>Id.</i> In addition, because was suspended for eight (8) days, he was not allowed to continue in practices for the musical play. <i>Id.</i>
132. On April 23, 2024,
"roamed around the classroom bumping into other students, making inappropriate dancing gestures in others' personal space, and making inappropriate statements. There were at least 11 instances of bumping into other students and making gestures in other students' immediate space. [He] would walk up to students and 'shoulder bump them' while appearing to try to 'walk straight through' classmates while pushing them out of the way with his body statements and making an 'L' on his forehead directly in front of others [He] also made statements such as 'you look like a Black island boy,' called a classmate 'special' (as in 'special needs'), called a classmate a pedophile, made fun of classmates' hair, and made fund of classmates' foreheads."
Pet. Exh 42, p.7.
133. As a result of April 23, 2024 behavior, Discovery gave a 5-day OSS for the "harassment" of other students and aa 5-day OSS for "hate speech" for a total of 10 days OSS to be served from April 25, 2024 through May 8, 2024. <i>Id.</i> at 6, 8.
134. From May 21, 2024 through May 28, 2024, Discovery teachers kept 3x tallies on Pet. Exh 43; Resp Exh 47. Therein, is recorded several classes in which blurted out in class being disruptive. Additionally, is heard to: a) yell out, "What's a dike?" in the middle of ELA class; b) say the "n" word loudly in Math class. <i>Id</i> .
<u>Math</u>
135. came out of retirement to be an grade EC teacher at Discovery. T5, p.1126. He had been an EC teacher for over 30 years prior to that. He testified he was EC teacher from February 19, 2024 – June 7, 2024, in Ms. math class. <i>Id.</i> at 1127-29. Mr. testified that
"IEP stated he received services in math. I was in the math class five days a week when I was at school. I was there for the entire class period. I would work with him on his math lessons, usually with Zearn or IXL (computer programs). I would ask him if he needed help. Quite often he would say that he did not need any assistance. Many times I would sit down next to him and say show me that you're working, how to work these problems. Most often he would be able to work them with no problem.  Sometimes he would have to go back and rework the problems because Zearnthe program itself kicks you backif you're unable to answer the questions correctly."

T5, pp.1128-29.





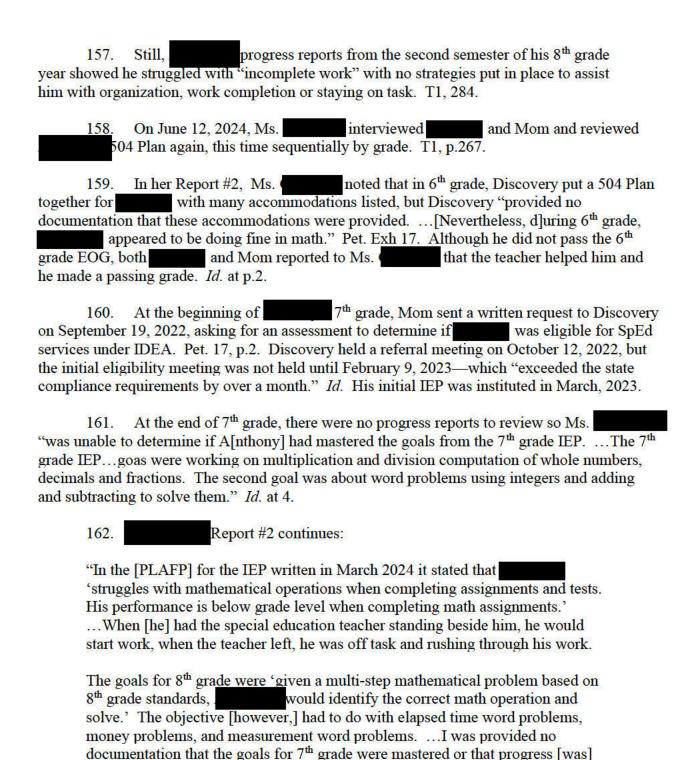


actually delivered...logs, student work samples, informal assessments. "When you're doing progress monitoring, you should be keeping records along the way of the nine weeks before you fill out the progress report. And by doing that, ...when you go to the next IEP, you're able to show the members of the team the progress the student has made, instead of just saying...you made progress." T1, p.276. Discovery did not have the documentation to show progress or lack thereof.

- 153. IEP Progress Report for 2023-24 Reporting Period 3 reflects: "According to IXL data, is currently working on an approximate 4<sup>th</sup> grade math level. ...The majority of the time in math class, [he] declines assistance. Joint Exh 25.
- when he said 'no'—which happened frequently—does not meet the definition of specially designed instruction. T1, 277-78. "Specially designed instruction is not just giving help for accommodations. It's [time] spent meeting the unique needs. And in this child's case, he had some significant deficits in math, and <u>just asking [him]</u>, 'do you need help?', is not explicit direct [specially designed] instruction." *Id.* at 278.
- 155. Although IXL may be used to collect biweekly data for progress monitoring, it is not usually used that way. Yet, even after additional records were requested from Discovery, Discovery could produce no biweekly data of progress and, Ms. saw none. T1, pp.283, 285.
- objectives, Discovery listed status as "Limited progress due to extra time needed...Limited progress due to revisions of IEP needed [(Joint Exh 22)] and Limited progress due to incomplete work. Joint Exh 25. Moreover, objectives in his final IEP (for 3/8/24 to 3/7/25) completely changed from numerical problems to word problems. Joint Exh 23, p.6; Exh 25, p.1; T1, p.279-80. "So if he was having limited progress and the goals needed to be changed, I would assume they've been changed in line with something to do with the topic that those goals were written on[but,]" that is not what happened. *Id.* She went on to state:

"These are completely different goals than what was there previously. So one of the things that I like to see is some documentation somewhere that the goals either had been mastered, or . . . when given a multi-step mathematical problem based on eighth grade standards, he'll identify correct mathematical operation to solve each problem, and then limited progress due to incomplete work, limited progress due to incomplete work, limited progress due to incomplete work, limited progress for all of this. They talk about the objectives had to do with last word problems, time word problems, money word problems, and then measurement word problems. So they shift[] -- gears were shifted in the IEP to different skills."

T1, 281-282.

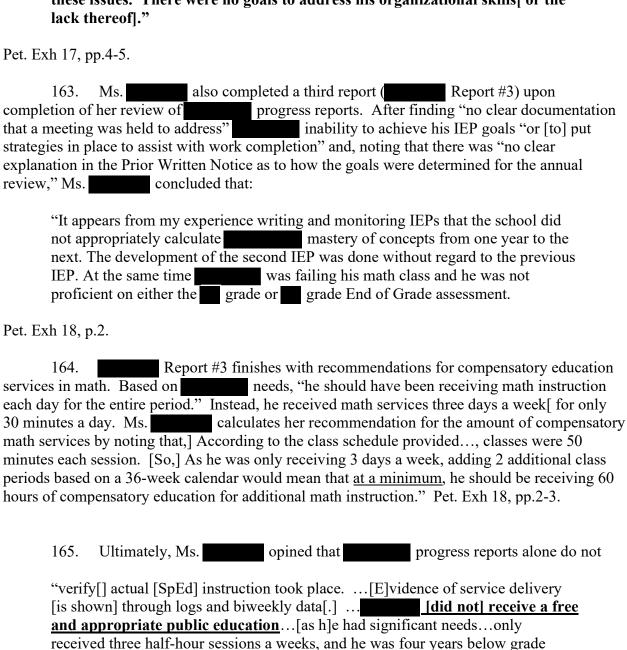


There are comments about lack of focus and organization and how they affect his grades and work production, however, there are no goals to address these issues. There are some accommodations that were listed in each of the IEPs, but...the[y were not] effective strategies. ...

made. In the present level[,] it states that [he] is below grade level and then the

goal states that he would be given 8th grade level math problems.

There is documentation throughout his paperwork that has problems focusing and does better when he is getting 1-1 attention. One of the considerations for eligibility was serious emotional disability. The behavioral/emotional evaluation ratings fell in the clinically significant range for areas of hyperactivity, aggression and overall externalizing problems. Although this information was available, and the school had conducted a F[BA,] there were no goals on his IEP to address his behaviors that were interfering with his learning nor was a behavior plan developed to address these issues. There were no goals to address his organizational skills or the



level in math according to [Discovery's own] data. ...[There were eight (8) SpEd

students in the 55-minute general education class.] So that is not enough time to remediate the skills that he does not have that he missed out or even direct him to the new instruction that's being presented. So you've got two things going on here. You've got what is he still lagging in, and they're still moving forward.

T2, pp.294-96.

further opined at trial that she recommended 60 hours of 166. compensatory education in math—one-on one- tutoring and instruction. T2, pp.300-01.

### **Speech Language IEE**

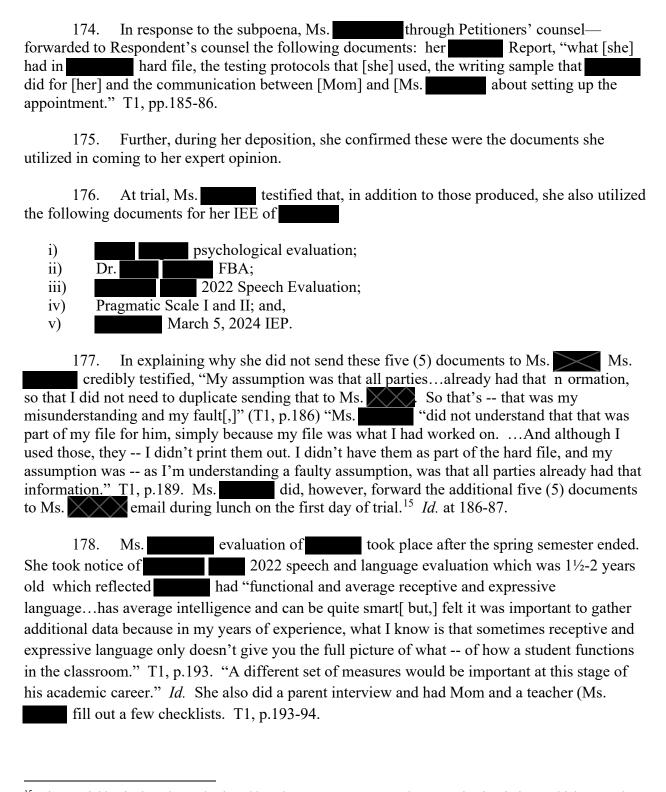
167. received her bachelor's degree from George Washington University in 1991 and a Master of Science in communication sciences and disorders from the Massachusetts General Hospital Institute of Health Professions in 1998. T1, p.175. She is a licensed Speech and language pathologist in both North Carolina and the State of Massachusetts, a member of the American Speech Language Hearing Association and, "recently...joined the New Zealand Speech Therapy Association." T1, pp.176, 178. Her training and work involve understanding and knowing how to remediate difficulties in the area of listening, speaking, reading, and writing. She has had extensive training and worked extensively with students having a comorbid<sup>13</sup> presentation of autism with attention issues and mental health issues[ and, ...]the comorbidity of a communication disorder or communication impairment plus mental health challenges and difficulties with their attention." T1, pp.181-82.

In 2007, Ms. began working at Duke University Medical Center's 168. Department of Speech Pathology and Audiology as a Clinical Coordinator. From 2008-2015, she was a Senior Clinician in this department where she performed feeding and speech-language evaluations, evaluated and treated children who have Autism Spectrum Disorders, Apraxia of Speech, Expressive Language Disorder, TBI, and Articulation/Phonological Disorders, and created a dynamic informal assessment protocol to evaluate and treat social communication in pediatric patients with high functioning autism, pragmatic language difficulties and TBI. T1, pp.175, 77-78; Pet. Exh 11. She left Duke in 2012 to co-found Rubycube, a company that has brought to market three (3) applications that assist individuals with social learning challenges in achieving social-emotional goals. Since 2015, she has been the Clinical Director of Rubycube Social, a private speech pathology practice, where she has provided cognitive and communication therapy services to individuals of all ages in the setting of group and individual treatment sessions, consulted with educators on strategies for integrating social-emotional learning into the curriculum, and performed comprehensive Independent Educational Evaluations for students in contract with east coast school districts, which include recommendations for receptive and expressive language, pragmatic language, executive function, verbal reasoning, and written expression. Pet. Exh 15.

defined comorbid to mean "children who have communication disorder or delay with comorbid ADHD and mental health issues." T1, p.182.

Her work has been in public and private schools, hospital settings (both inpatient and outpatient), and in private practice and outpatient clinics. *Id.* at 176-177. In school settings, she provides staff training, direct services, helps other student clinicians, consults with staff, conducts Independent Educational Evaluations ("IEE"), and assists with developing IEPs dependent upon what each school requests of her. *Id.* Ms. has also won grants for her work. In her current position, she works "with school districts as conducting independent educational evaluations for students in contract with East Coast school districts, which include recommendations for receptive and expressive language. She is "trained to recognize when there is either a delay or a disorder in spoken communication, and then we are also trained to make recommendations about treatment and how to go about treating and supporting these students in their functional environments." T1, p.179. Petitioners offered Ms. as an expert in the areas of: pediatric speech pathology, speech-language deficits and disorders, pragmatic language disorders, speech language assessment of children, speech-language assessment of children with autism, ADHD and mental health disorders, development of speech-language goals and related service plans, development of goals for written language and related service plans for IEPs and the Curriculum of Social Thinking. The Tribunal accepted her as such without objection. was hired to do a comprehensive Independent Educational 171. Ms. Evaluation ("IEE") of \_\_\_\_ "to provide information to [\_\_\_\_ and his Mom] about [his] area of disability following evidence-based practices...." T1, p.185. She met \_\_\_ in person, interviewed him, and administered several evaluations. As a result, on June 20, 2024, she produced her Brief Dynamic Assessment of Language ("Report") on combination of informal dynamic tasks and standardized tasks" meant to give evaluators an idea of "how a student responds under a variety of different conditions." T1, p.191. Her Report is designed to provide information about how (and how 172. uses language, including "information about a [hi]s receptive and appropriately) expressive language, [hi]s pragmatic language, [his] social communication, as well as narrative language." *Id.* at 191-92. She also evaluated "expression[]" (*Id.* at 192) opining that since was a rising ninth grader, entering a was a rising ninth grader, entering an environment where he would be expected to "demonstrate [his] knowledge in writing" and "demonstrate [his] organization skills and [his] ability to plan and think ahead," it was important to assess both of these areas as well. This way, she could have insight into both "what he understands and what he can say verbally, getting a sense of how he uses language to interact with the functional tasks of an eighth grader." Id. On August 2, 2024, Respondent served a Subpoena on Ms. she produce, in pertinent part, the "complete file related to your work [in this matter] including records reviewed, any observations or evaluations conducted and any reports you have prepared." Exh 3, attached to Motion in Limine.

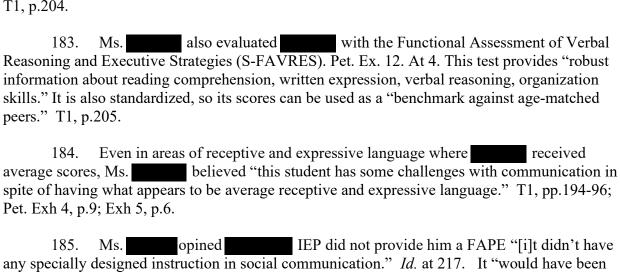
on the basis that her response to Respondent's subpoena requesting her complete file failed to include certain documents used in her consideration and evaluation of The Tribunal addresses this under the section of this Final Decision labeled Motion in Limine and in its Conclusions of Law thereafter.



<sup>15</sup> Prior to trial beginning, the Undersigned heard arguments on Respondent's Motion in Limine—which was only filed that same morning. During counsel arguments, Petitioners' counsel asserted that Respondent had at no time inquired whether Ms. had utilized an IEP for her report—even though Ms. kept referring to an IEP in her deposition. Until the morning of the trial, Petitioners had no understanding Respondent was seeking to argue had failed to disclose her use of the IEP for her report. T1, p.22, 27-29.

below average in the adaptive skill area of communication (Pet. Exh 5, p.6), she opined that "this student has some challenges with communication in spite of having what appears to be average receptive and expressive language. So his total approach to communication there is something – there's more to see there and more to learn." T1, p.195-96.
180. The results of the parent-teacher responses on the Children's Communication Checklist revealed
"that evaluation of him, and that he had well, for – let's see, the teacher results, the social interaction difference score, which helps us understand if the student's communication features are consistent with autism. [And,] Ms. the way she filled out the checklist rendered a score that is consistent with autism. The way Mom filled out the checklist, it was just overall poor communication, not necessarily consistent with autism. However, in both cases he had very far below average scores. I'm talking below the 10 <sup>th</sup> percentile.
What was significant to me, particularly in the in how the teacher filled out this checklist, is how impaired he was in nonverbal communication and social relations and in initiation. That tells us that his pragmatic language is quite impaired in the classroom setting, not knowing when to initiate, not knowing how to initiate, not knowing how to fluidly join group discussions, not knowing how to read somebody's nonverbal cues or many people's nonverbal cues in when you're sharing space with other people, so that was quite significant."
T1., pp.199-200.
181. When asked how these behaviors might show up in the classroom in a person with these impairments, Ms. described regularly observed behaviors, saying it looks like "a person calling out when it's not their turn, using inappropriate language that's not appropriate to the context. It might look like somebody not respecting somebody's personal space." T1, p.201.
182. Ms. used the CUBED-3 assessment to inquire into narrative language (storytelling abilities) and found that an arrative language skills were deficient:
" has scattered abilities with – he's quite a fluent reader, andhe does a fairly good job of using some complex vocabulary in his in his retelling[and although h]e did include characters, problem plan, an attempt, and an ending, but no feeling response and no resolution. So that's important because how we tell stories is also also gives us insight into how we have conversations. And so arrative complexity is not what we would hope for an eighth grader, rising ninth grader."

T1, p.204.



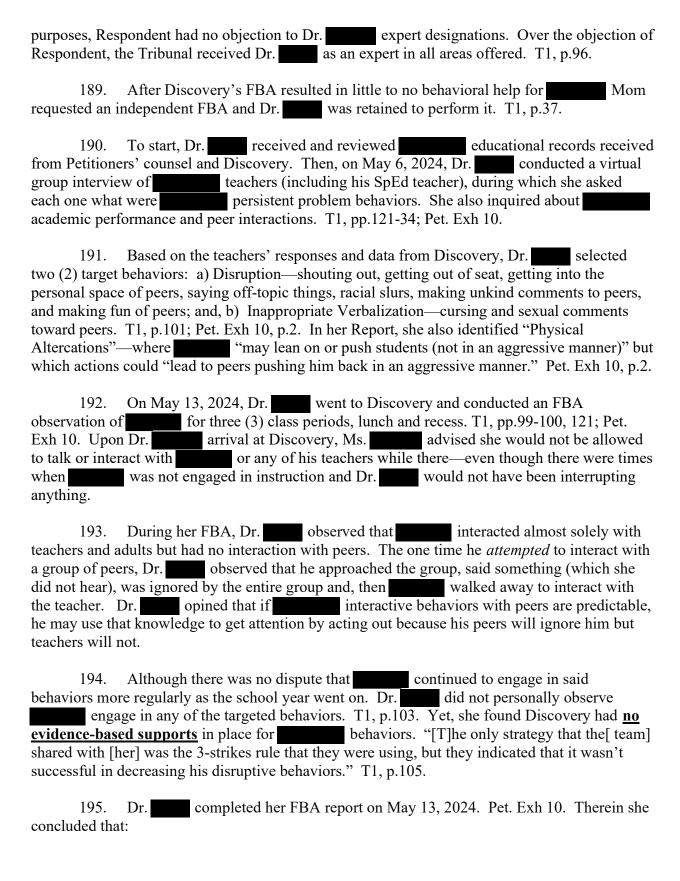
consultative basis, somebody with training in these kinds of communication deficits." Id. Thus, regarding compensatory education, Ms. receive 36 hours "in the areas of executive function and social communication." T1, p.218. She "should have opined believed that this amount of instruction was appropriate because

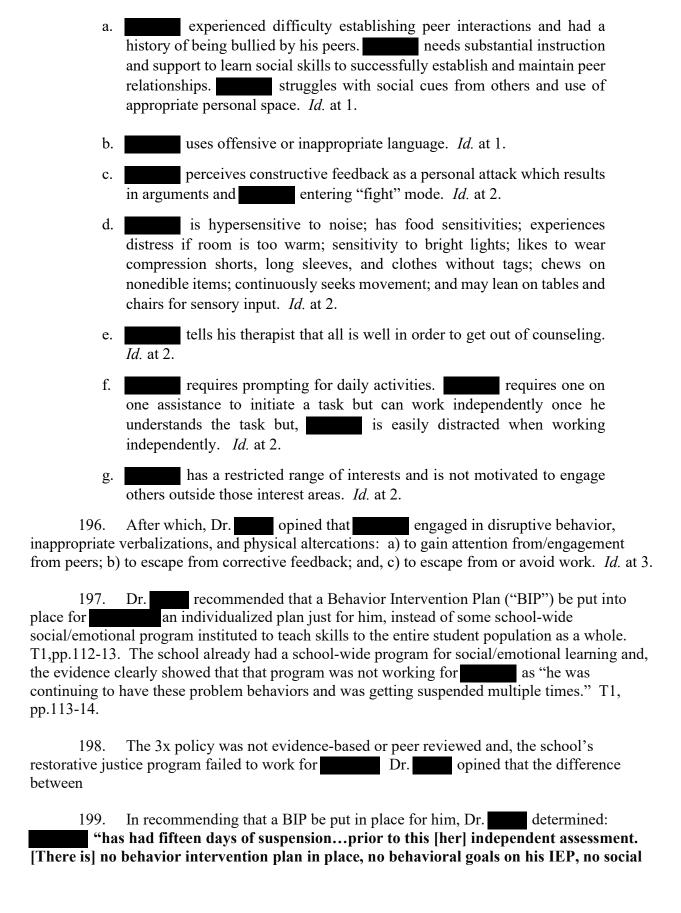
more appropriate to have a communication professional involved in his case even if only on a

had that at least as part of his eighth-grade year if not before." T1, pp.219-20. The hourly rate for such instruction is between \$100 and \$150 per hour. Id.

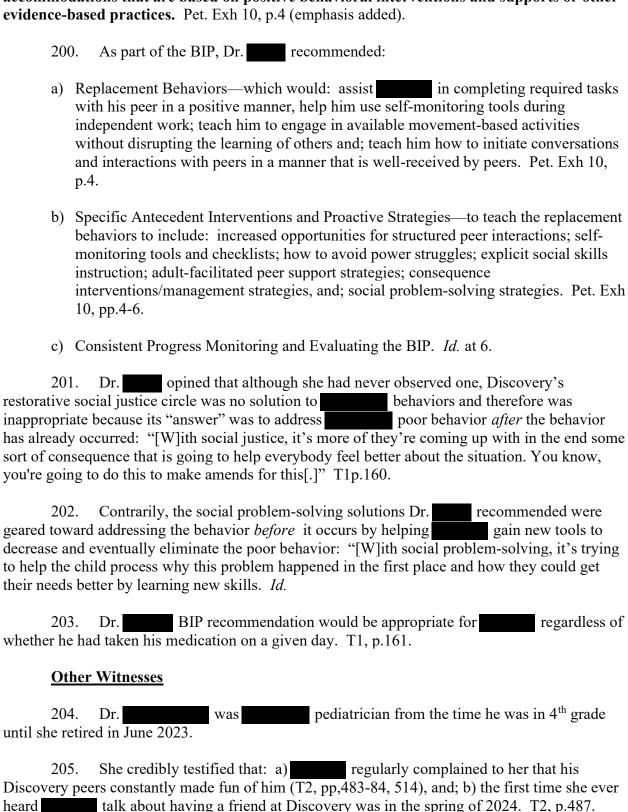
# **Independent Functional Behavior Assessment ("FBA")**

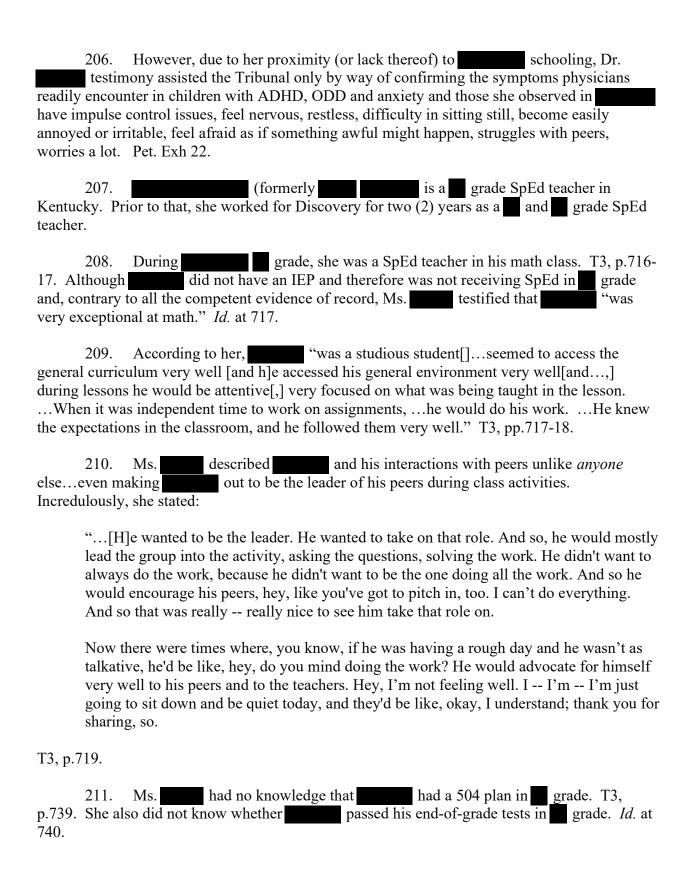
- holds bachelors, masters and doctorate degrees in Special Education and is board certified by the Behavior Analyst Certification Board ("BCBA"). T1, p.87. She began her career as a general education classroom teacher and special education teacher, then worked as an early intervention provider for infants and toddlers with developmental disabilities She also worked for the Center for Autism and Related Disabilities at the University of Florida and was a professor for 12 years at Winthrop University. As a professor, she "taught courses related to assessment in special education, methods of teaching individuals with disabilities, applied behavior analysis and positive behavioral interactions and supports, characteristics of disabilities, so different disabilities characteristics courses...at [both] the undergraduate and graduate level[s]." T1, p.88. Dr. has published approximately 20 peer-reviewed journal articles on related subjects. T1, p.89. Currently, she consults in school districts across the State of North Carolina and also works as a behavior analyst for Applied Behavior Analysis, conducting three to four functional behavior assessments ("FBA") each month and regularly doing IEP consultations. T1, pp.87, 91-92.
- Petitioners offered Dr. as an expert in the areas of functional behavior assessment, behavior supports for students with disabilities, interpretation of educational evaluations and assessments for instructional purposes, evidence-based practices and supports for students with ADHD and autism, and IEP consultation. With the exception of being an expert in the area of interpretation of educational evaluations and assessments for instructional

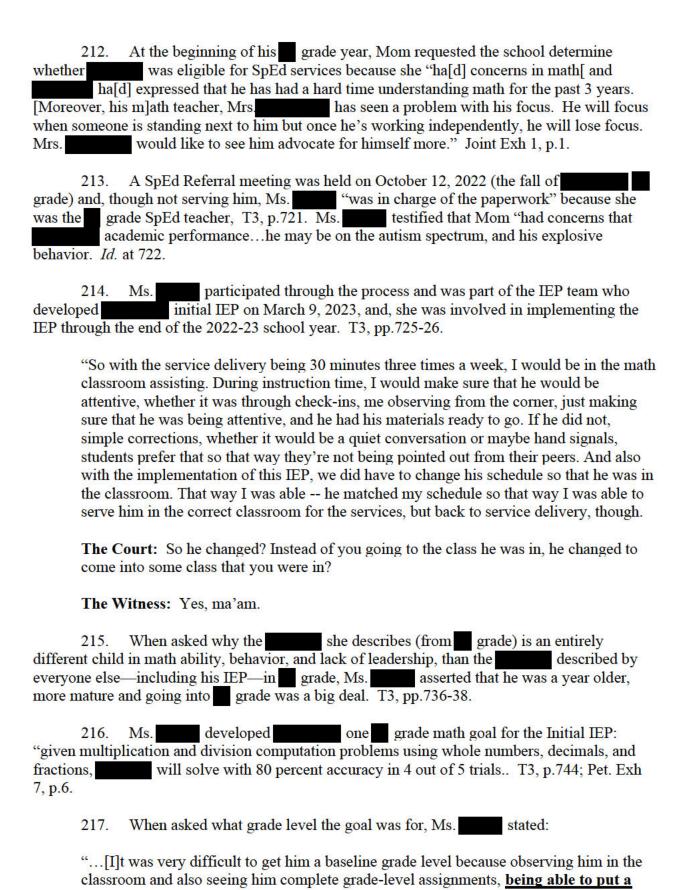


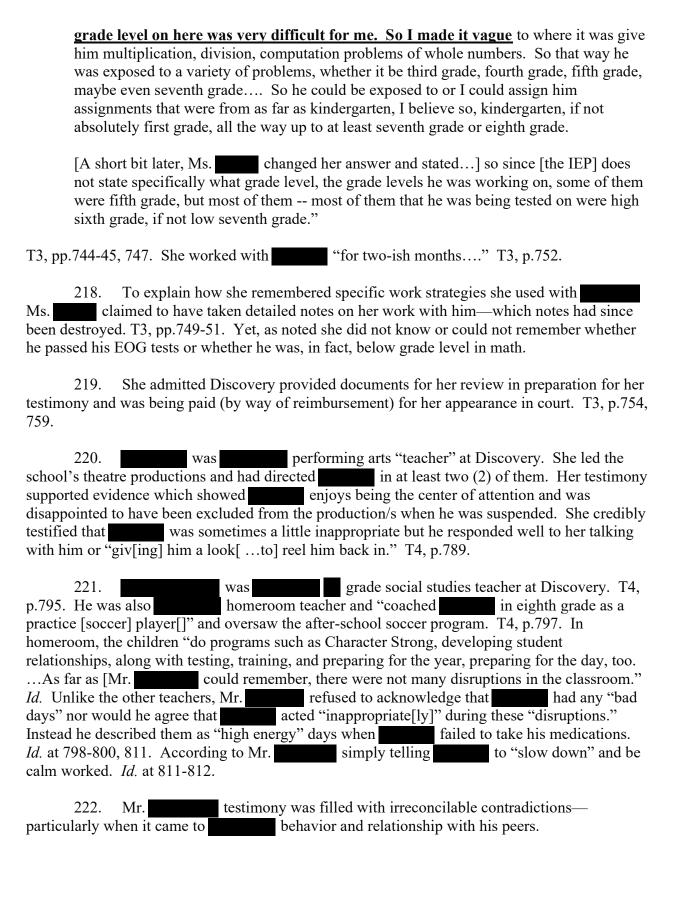


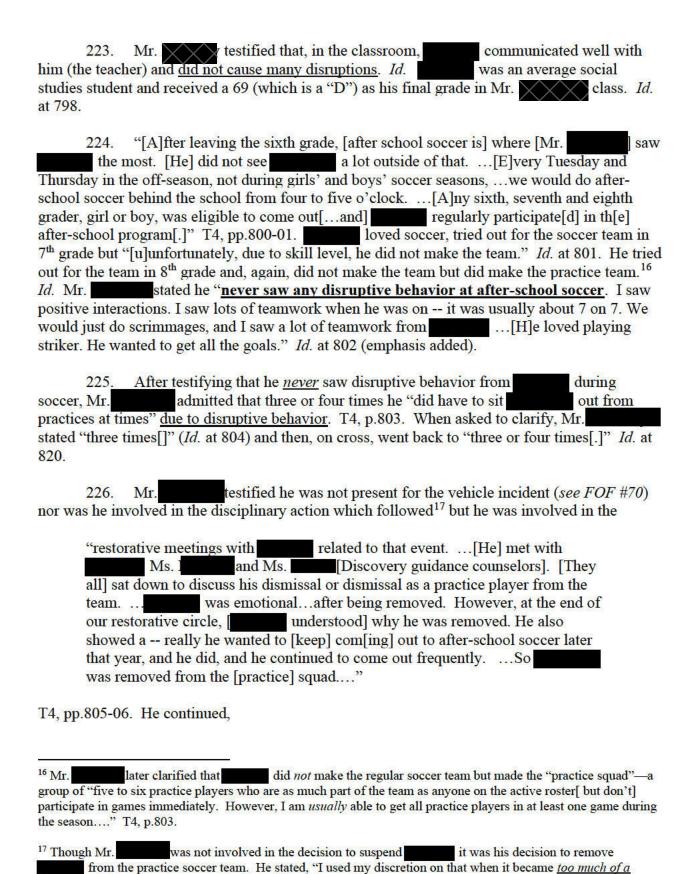
goals on his IEP even after autism was added as a secondary eligibility category, and no accommodations that are based on positive behavioral interventions and supports or other evidence-based practices. Pet. Exh 10, p.4 (emphasis added).



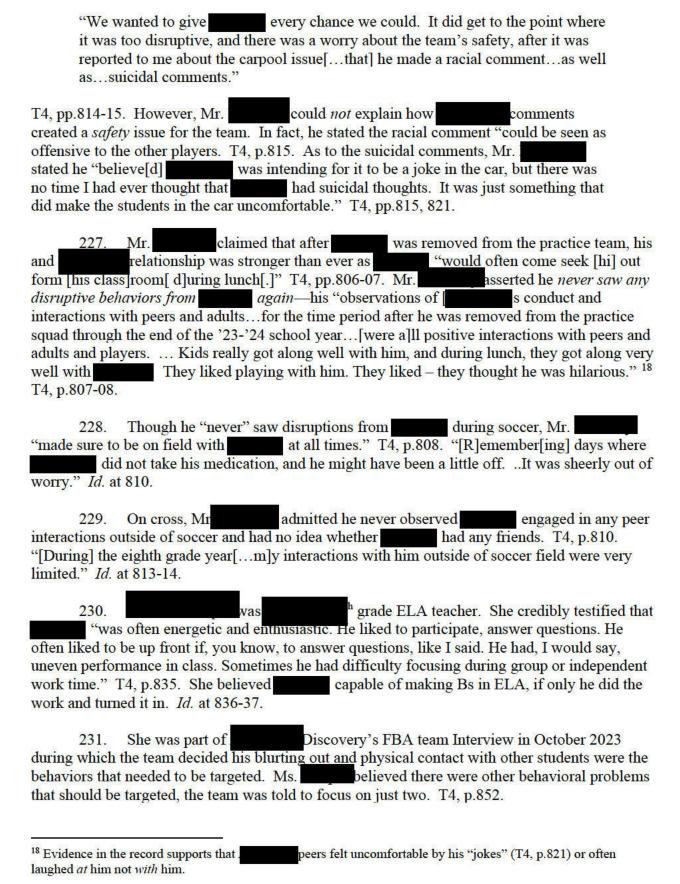


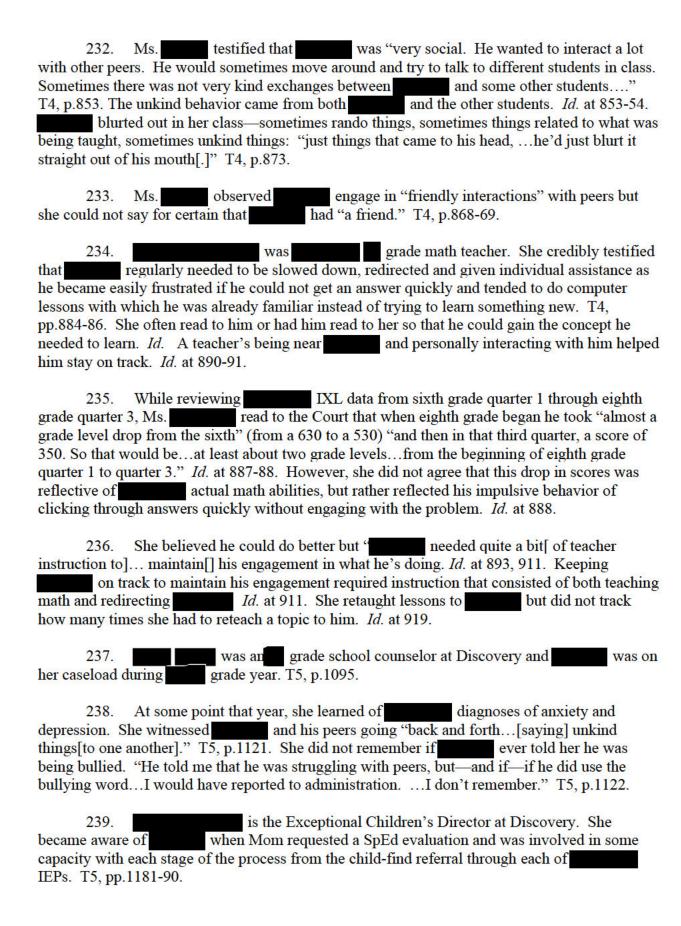


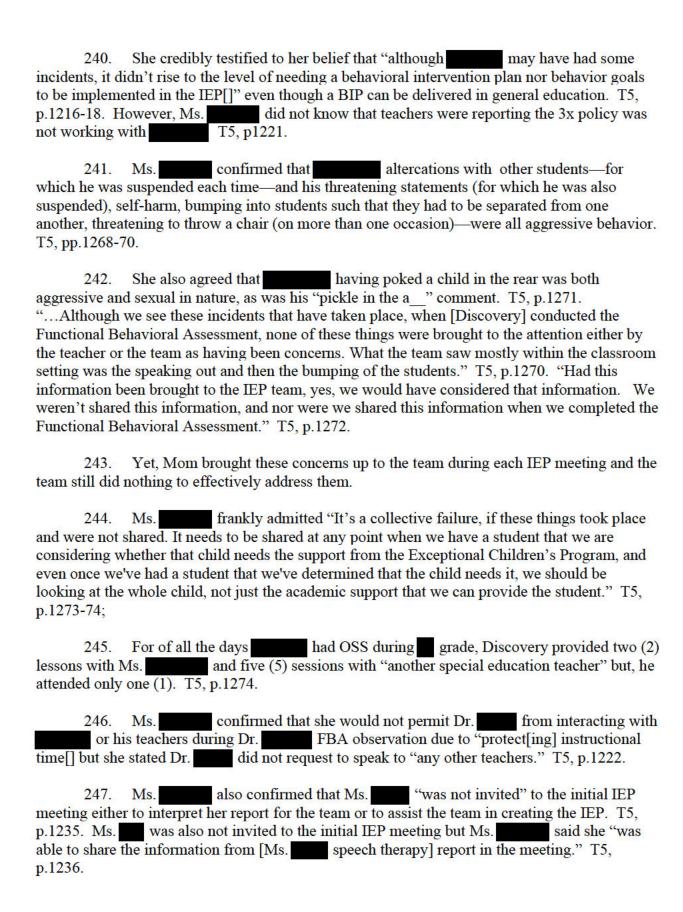


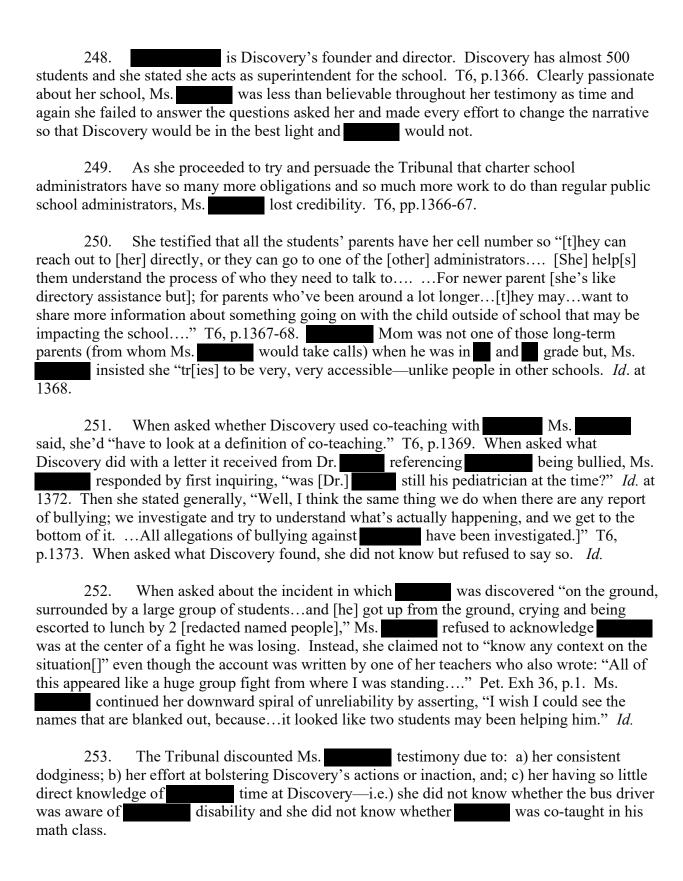


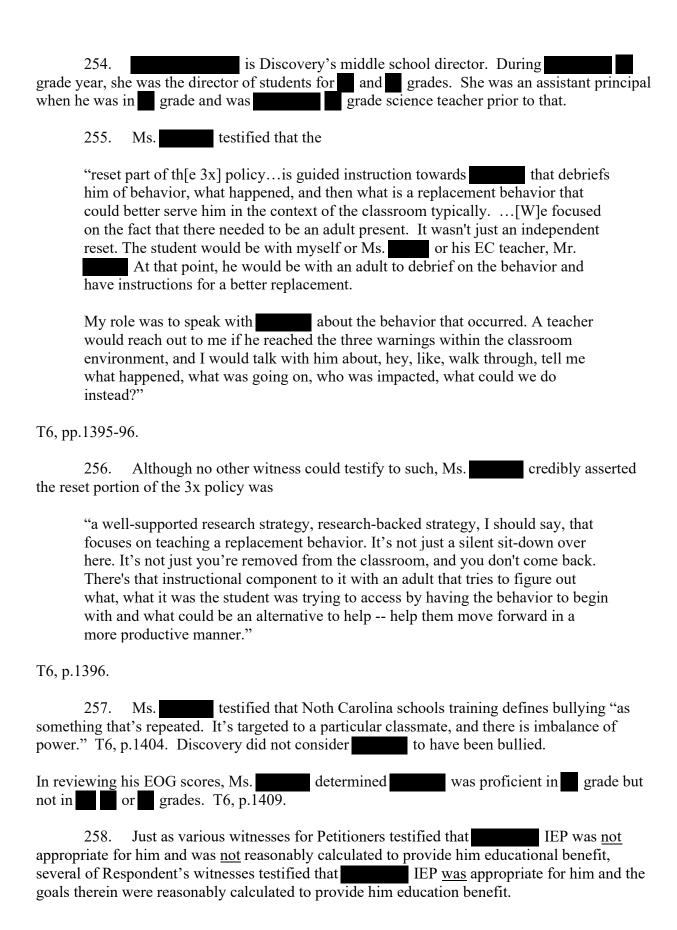
disruptive behavior on the team...[and] could [not] be rectified...." T4, pp.812-13.











259. Respondent offered no expert witnesses.

## **Relevant Procedural History**

260. This contested	case began with Petitioners' fi	irst Petition (OAH Docket No. 24
EDC 1288), filed April 5, 2024	4, in which Petitioners assert t	that they are petitioning for relief
from actions by Respondent w	hich caused the minor child,	to be deprived of a Free
Appropriate Public Education	("FAPE"), specifically by:	

- a) failing to provide an IEP reasonably calculated to enable him to make progress appropriate in light of his circumstances and, failing to implement with fidelity;
- b) failing to implement his IEP services consistently (with fidelity); and,
- c) failing to appropriately respond to his educational needs related to bullying by peers and, failing to include behavioral and socio-emotional goals and supports in his IEP.

Petition, pp.51, 60, 62.

261.	Subsequently, on May 2, 2024, Petitioners filed a second Petition for Contested
Case ("MDR ]	Petition") (OAH Docket No. 24 EDC 1674) regarding a Manifestation
Determination	Review ("MDR") in which Petitioners asserted that Respondent deprived
of a	FAPE by:

- a) failing to consider all relevant information at a MDR held April 17 and April 28, 2024, regarding behaviors exhibited by the child;
- b) failing to find that behaviors in school are a manifestation of his disability;
- c) failing to amend IEP to address disability-related behavior and his needs.

MDR Petition, p.1, 8-9.

- 262. Both cases were assigned to the Undersigned and, an expedited hearing was set for the MDR case to be heard on May 31, 2024. *See* Notice of Expedited Hearing and Pretrial Scheduling Order, filed May 8, 2024, p.1.
- 263. Pursuant to the Expedited Scheduling Order, the Undersigned held a pre-trial conference with counsel on Friday, May 10, 2024 during which Petitioner's counsel advised that Mom had requested a behavioral assessment ("BA") of three (3) months prior and, the BA was now scheduled to be done on Monday, May 13, 2024 but, because of the Discovery determining that behavior was not a manifestation of his disability, the Discovery had suspended him for 10 days and he would not be in school to have the assessment. Moreover,

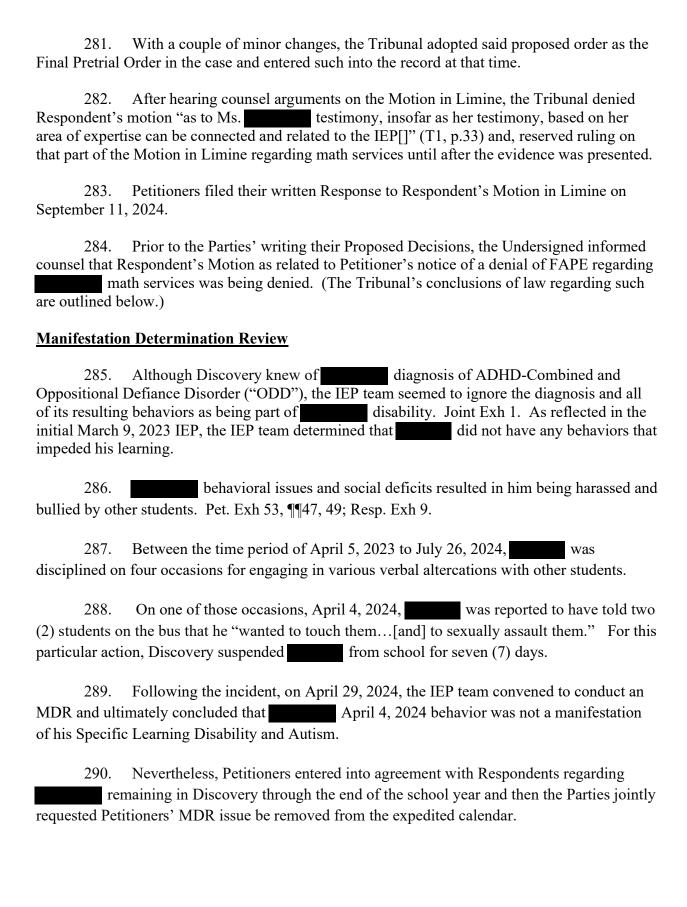
there were just two (2) weeks left in the school year prior to end of grade exams. *See* Stay Put Order, *FOFs#* 2 and 4.

- 264. Following the arguments of both parties' counsel, the Undersigned verbally ordered that be allowed back in school on Monday, May 13, 2024, throughout the week and for as long as it took for the BA to be completed. Although Respondent's counsel disagreed with the Tribunal's decision, he agreed that he would advise his client to follow the oral order of the Tribunal, which Respondent did. In agreeing to allow back into school immediately, the parties' counsel asserted that there was no longer need for an expedited hearing.
- 265. On May 14, 2024, following the Discovery's recommendation for exclusion from the school, Petitioner filed a Motion to Invoke Stay Put in the matter of 24 EDC 1674.
- 266. Later that same day, Respondent's counsel filed a Notice of Settlement in which he advised "[t]he parties have agreed to a settlement of all matters between them. The agreement is subject to the approval of the Discovery Charter Board, which is anticipated by May 21st, if not sooner. Once that happens, the Petitioner will filed [sic] dismissals in both contested cases." Notice of Settlement, p.1. Pursuant to that Notice of Settlement, Petitioner's Second Petition—which, as filed, required an expedited hearing thereof—was removed from the expedited hearing calendar.
- 267. On May 22, 2024, a Notice of Appearance of new counsel for Respondent was filed and Respondent's former counsel filed a Motion to Withdraw as Counsel of Record for Respondent.
- 268. Confused as to Respondent's need for new counsel, the Undersigned held another pretrial conference with all counsel of record on May 23, 2024, via Webex, and was notified that the Discovery's Board rejected the negotiated settlement reached between the parties. Following the conference, the Undersigned issued an Order Allowing the Withdrawal of Respondent's (initial) Counsel.
- 269. At this point, there were just two (2) weeks remaining in the 2023-2024 school year. Resp. Exh 1, p.3.
- 270. On May 24, 2024, the parties filed a Joint Status Report and Motion to Consolidate the cases and cancel the MDR hearing scheduled for May 31, 2024. *Id.* at p.2.
- 271. The parties' final pre-trial conference in the MDR matter of 24 EDC 1674 was scheduled for May 28, 2024. During that pre-trial conference with counsel, the parties agreed that the issue of stay put would resolve Petitioners' main concern asserted in the 24 EDC 1288 MDR Petition—whether the child would be allowed to remain in Respondent's Discovery.
- 272. Thereafter, the Tribunal issued an Order for Respondent to Respond to Petitioners' Motion along with a Notice of Hearing on the motion and, on June 7, 2024, Respondent filed its Response to the Motion for Stay Put.

- 273. On May 31, 2025, the Parties filed a Joint Motion to Consolidate Cases and Continue Hearing. Therein the Tribunal was advised that the Parties reached agreement on the issue of the minor child's placement through the end of the 2023-24 school year, thus an expedited manifestation determination hearing is no longer necessary, and; the Parties' two (2) cases (24 EDC 01288 and 24 EDC 01674) should be consolidated.
- 274. On June 13, 2024, an Order Consolidating the two cases was issued by OAH Chief Donald van der Vaart and, the Undersigned issued a Notice of Hearing on the Stay Put Motion (by agreement of counsel).
- 275. The Undersigned heard Petitioner's Motion to Stay Put on June 13, 2024 at the Office of Administrative Hearings, Raleigh, Wake County, North Carolina.
- 276. On August 14, 2024, the Tribunal granted Petitioners' Motion for Stay Put concluding that the State's grant of a right to exclude a child from a charter school following violation of the student code of contact was preempted by the IDEA's procedural mandate that during the pendency of an administrative, disciplinary, or due process complaint, the student is entitled to "stay put" in his educational placement as defined. 20 U.S.C. § 1415(j); *See also* Stay Put Order ¶¶8-9 for end of stay put.
- 277. On August 19, 2025, Petitioners filed a Motion for Partial Summary Judgment on issues of Respondent having failed to provide the child a FAPE, and; Respondent filed a Motion to Dismiss Petitioners' Section 504 claims being brought pursuant to the Rehabilitation Act of 1973, as amended, under 29 U.S.C. §§ 701 et seq. Both motions were heard by the Undersigned on August 27, 2025.
- 278. On August 30, 2025, the Tribunal issued an Order Denying Petitioners' Motion for Partial Summary Judgment but Granting without prejudice Respondent's Motion to Dismiss the 504 claims.
- 279. On September 10, 2024, about an hour before the trial on the merits was to begin, Respondent filed a Motion in Limine requesting the Tribunal

"exclude any testimony regarding the alleged failure to provide Petitioner appropriate math services as the Petition for a Contested Case Hearing in this matter does not include math services as one of the alleged denials of FAPE, and; exclude certain testimony from Petitioner's witness regarding the alleged failure to develop or implement appropriate IEPs or to provide the appropriate special education, related services, supplementary aides, services, accommodations, modifications and evaluations based on Petitioner's individualized needs...."

280. Also, before the trial began, the Parties offered their Joint Proposed Order on the Final Pre-Trial Conference for the Tribunal's consideration.



#### **Parties' Stipulations**

291. Just prior to trial, the Parties submitted a joint proposed final pretrial order containing all of their agreed-upon (jurisdictional, party, legal and factual) stipulations which was approved (with minor changes) and filed as the Tribunal's Final Pretrial Order, on September 10, 2024, and is hereby fully incorporated herein by reference.

BASED ON the foregoing Findings of Fact, the Undersigned makes the following

### **CONCLUSIONS OF LAW**

- 1. The Parties are properly before the Office of Administrative Hearings (OAH") in that the OAH has personal and subject matter jurisdiction over this contested case, OAH is the proper venue for this matter and, the parties received proper notice of the hearing in this matter.
- 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 the 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). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).
- 3. This Order incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this litigation.
- 4. As the party seeking relief, Petitioners bear the burden of proof in this action. *Schaffer ex. Rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); Stip. 3.

#### Free Appropriate Public Education ("FAPE")

- 5. The IDEA requires that "[a] free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." 20 U.S.C. § 1412(a); 34 C.F.R. § 300.101(a).
- 6. FAPE "means special education or related services" that are provided at the public expense, conforms to the state educational agency's standards, and "[a]re provided in conformity with an individualized education program. *Id.* at § 300.17.
  - 7. Whether a school district has provided a student with FAPE depends on
    - a) whether the IEP has been "formulated in accordance with the requirements of the [IDEA]"; and,

- b) whether the individualized instruction in the IEP is "reasonably calculated to enable the child to receive educational benefits." *Bd. of Ed. v. Rowley*, 458 U.S. 176, 207-8 (1982).
- 8. A "FAPE comprises 'special education and related services'- both 'instruction' tailored to meet a child's 'unique needs' and sufficient 'supportive services' to permit the child to benefit from that instruction." *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 748-49, 197 L.Ed. 2d 46 (2017) (quoting 20 U.S.C. §§ 1401(9),(26),(29)).
- 9. A hearing officer may find a denial of FAPE where the public agency's procedural inadequacies: (1) impeded the child's right to a free appropriate public education; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the child; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); see also N.C. Gen. Stat. § 115C-109.8(a).
- 10. The IDEA spells out particular requirements for the content of all IEPs. The IEP must include "A statement of measurable annual goals, including academic and functional goals designed to . . . [m]eet 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. 34 C.F.R. . § 300.320(a)(2), (a)(2)(i). These goals must also "meet each of the child's other educational needs that result from the child's disability." *Id.* at § 300.320(a)(2)(ii). There must be a description of how "the child's progress toward meeting the annual . . . will be measured." *Id.* at § 300.320(a)(3).

#### 11. An IEP must include:

- "A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other non-academic activities; and
  - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

*Id.* at § 300.320(a)(4).

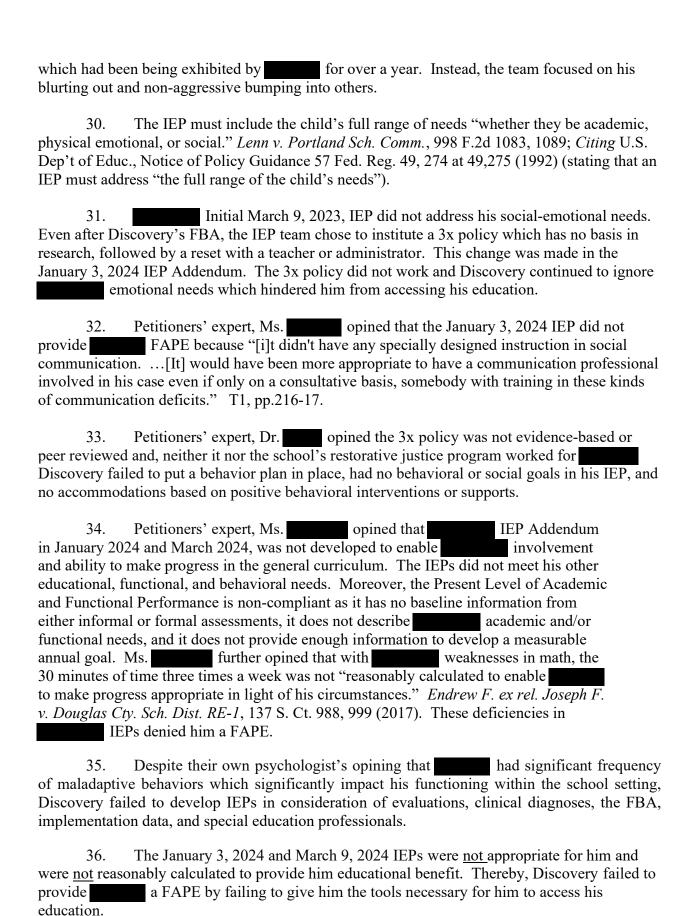
12. In developing the IEP, the IEP Team must consider "the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the ...most

recent evaluation of the child; and the academic developmental and functional needs of the child." 20 U.S.C. § 1414(d)(3)(A).

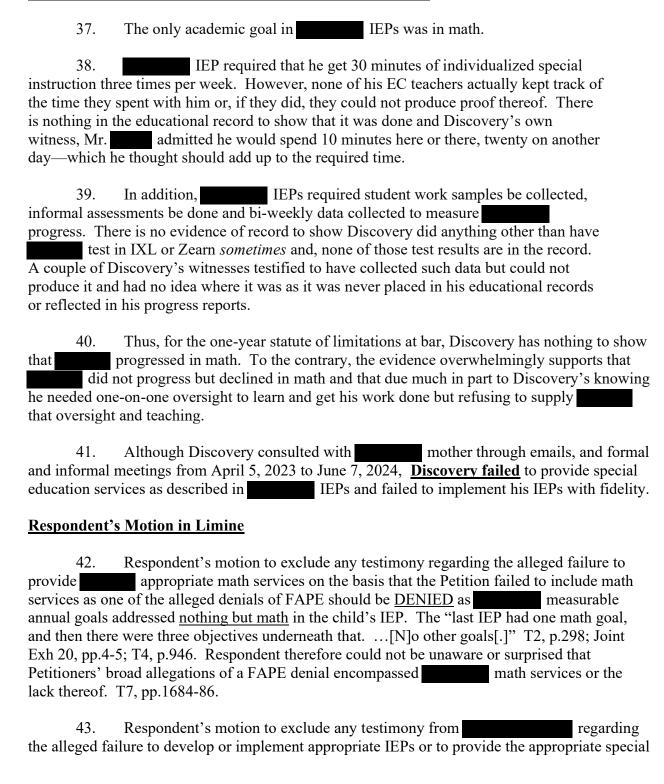
- 13. The formal requirements of FAPE require that all of a child's special needs must be addressed in the educational plan. *Town of Burlington v. Dep't of Educ. For Com. Of Mass.*, 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984), aff'd sub nom. *Sch. Comm. of Town of Burlington, Mass. V. Dep't of Educ. of Mass.*, 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).
- 15. Charter schools must make exceptions to their methodologies when necessary to implement the IDEA and provide a student with FAPE. *Dehesa School District and Community Montessori Charter School*, 69 IDELR 230 (2017).
- 16. Respondent is a local education agency ("LEA") receiving funds pursuant to the IDEA and is responsible for ensuring that the requirements of the *North Carolina Policies Governing Services for Children with Disabilities* are met for children with disabilities who attend its school. N.C.G.S. § 115C-106.3(11); NC 1500-2.24(b); NC 1502-10(b).
- 17. Children with disabilities who attend public charter schools, and their parents, retain all rights under the IDEA and *North Carolina Policies Governing Services for Children with Disabilities*. 34 C.F.R. 300.209(a); NC 1502-10(a).
- 18. An LEA is required to provide a disabled student with educational instruction that is uniquely designed to meet the student's needs through an IEP that is reasonably calculated to enable him to receive educational benefit. *See e.g. Hendrick Hudson Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982); *MS ex rel. Simchick v. Fairfax County Sch. Bd.*, 553 F.3d 315, 319 (4<sup>th</sup> Cir. 2009).
- 19. School districts are not charged with providing the best program. Rather, they must provide a program that is designed to provide the child with an opportunity for a free appropriate public education. *Rowley*, 458 U.S. at 189-90. The public school district satisfies this test if it provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990) (quoting *Rowley*, 458 U.S. at 203).
- 20. While the IDEA requires an LEA to provide specialized instruction and related services "sufficient to confer some educational benefit upon the handicapped child," the IDEA does not require "the furnishing of every special services necessary to maximize each handicapped child's potential." *Hartmann v. Loudown County Bd. of Educ.*, 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1997) (quoting *Rowley*, 458 U.S. at 199-200).
- 21. "Loss of the services of a particular provider, of a particular educational environment, of a number and/or quality of therapy hours, of a particular form of mainstreaming or educational programming, or of ESY may be regrettable, but the IDEA does not demand that any particular set or level of services be maintained for a student merely because they were previously provided to that student. Rather, the IDEA demands only that the services provided

constitute 'meaningful educational benefit.' "Wagner v. Bd. of Ed. Of Montgomery County, MD, 340 F. Supp.2d 603, 616 (D. Md. 2004) (citing Rowley, 458 U.S. at 192).

- 22. A court's role in reviewing the administrative proceeding concerning IDEA "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities they review." *Rowley*, 458 U.S. at 206; *accord Hartmann*, 118 F.3d at 999. The Supreme Court has directed that "courts must be careful to avoid imposing their view of preferable educational methods upon the States." *Rowley*, 458 U.S. at 207. Courts must defer to educators' decisions as long as an IEP provides the child "the basic floor of opportunity that access to special education and related services provides." *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990) (citation omitted; quoting *Rowley*, 458 U.S. at 201).
- 23. However, when a school district fails to offer "cogent and responsive explanation" it is not entitled to deference. *Gaston v. Dist. Of Columbia*, 2019 U.S. Dist. LEXIS 130566 at \*25-26 (D.C. August 5, 2019).
- 24. North Carolina law provides that "[a]ny party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination." N.C.G.S. § 115C-109.6(a).
- 25. The petition filed under N.C.G.S. § 115C-109.6(a) must allege a violation that occurred not more than one year before the date the parent or the LEA knew or reasonably should have known about the alleged action that forms the basis of the due process petition. N.C.G.S. § 115C-109.6(b); NC 1504-1.8(a)(2).
- 26. Discovery Charter School from August through May and was entitled to receive a FAPE during the time of his attendance at Discovery Charter School. and his parents were entitled to all rights under the North Carolina Policies Governing Services for Children with Disabilities for the period of attendance at Discovery Charter School.
- 27. Petitioners are only able to assert rights under the IDEA for the time period that was attending Discovery Charter School. Stay-Put Order, §8. Thus, any claim for denial of FAPE in this action is limited to the time period between April was attending the School. *Id*.
- 28. It took five (5) months, from October 12, 2022's SpEd Referral meeting to the March 9, 2023, Initial IEP meeting to get an IEP in place to serve Discovery was on notice of that he had behavioral issues prior to instituting the IEP but attempted to manage behavior through his 504 Plan accommodations.
- 29. Despite Mom's repeated requests for help and intervention, another seven (7) months passed (to October 10, 2023) before Discovery decided to do a Functional Behavioral Assessment and, when it did, it failed to consider *any* of the aggressive or sexual behaviors



## **Implementation of the January 2024 and March 2024 IEPs**



education, related services, supplementary aides, services, accommodations, modifications and evaluations based on Petitioner's individualized needs where:

- a. Ms. has been designated as an expert in the area of speech-language pathology;
- b. Ms. relied upon an evaluation conducted on June 20, 2024, *after* was no longer attending Discovery Charter School;
- c. Ms. responded to an August 8, 2024 subpoena for her "complete file related to your work on the above referenced special education due process matter including records reviewed, any observations or evaluations conducted and any reports you have prepared." Ms. responded to her deposition subpoena through Petitioner's counsel.
- d. Ms. testified at deposition that Exhibit 4 from her deposition did indeed reflect documents responsive to the subpoena. (Deposition, pp. 48-50). Ms. testified that the only additional documents in her file were testing protocols.

This second part of Respondent's Motion in Limine should also be DENIED.

## Petitioners' Claim Regarding Manifestation Determination Review ("MDR")

44. Petitioners' MDR claim is MOOT as Petitioners waived their right to argue Respondent's failure relative to the MDR when: a) they reached agreement with Respondent that would be allowed to remain in Respondent-Discovery through the end of the 202 school year; b) requested the matter be removed from the expedited calendar; c) Mom voluntarily chose to remove from Respondent-Discovery thereafter; and, d) Petitioners admitted the Tribunal's Order Granting Petitioners' Motion for Stay Put resolved the MDR issue.

## **FINAL DECISION**

BASED ON the foregoing Findings of Fact and Conclusions of Law,

#### IT IS ORDERED, ADJUDGED AND DECREED that:

- 1. Respondent's Motion in Limine is hereby **DENIED**.
- 2. Petitioners' MDR petition is hereby **DISMISSED WITH PREJUDICE** as Petitioners have waived their right to argue that issue.
- 3. Petitioners are the prevailing party with regard to the January 3, 2024 and March 9, 2024 IEPs appropriateness and failure to implement with integrity.

- 4. For the denial of FAPE due to the inappropriate January 3, 2024 and March 9, 2024 IEPs, Petitioners are entitled to compensatory related services and travel costs therewith associated.
- 5. Respondent is **ORDERED** to provide compensatory educational (math) services from a private provider or providers of Petitioners' choice for the period of March 3, 2025 through August 31, 2026, based on the services and recommendations outlined in Reports #1, 2, and 3 (Pet. Exhs 16, 17, and 18).
- 6. Respondent is further **ORDERED** to provide behavioral/socio-emotional and/or executive functioning services from a private provider or providers of Petitioners' choice for the period of March 3, 2025 through August 31, 2026, based on the services and recommendations outlined in Dr. FBA, dated May 13, 2024 (Pet. Exh 10).
- 7. Respondent shall pay to Petitioner-Mom any travel costs necessary for to obtain the compensatory services outlined herein, at the rate of \$.70/mile.
- 8. The cost to Respondent for compensatory related services and necessary travel combined **shall not exceed twenty thousand dollars (\$20,000.00)**. Invoices for services and receipts for travel shall be paid by Respondent within twenty-one (21) days of receipt by Respondent.
  - 9. Petitioners are entitled to attorneys' fees.

#### **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 Final Decision of the Administrative Law Judge may appeal the decision by commencing a civil action either: a) In State Superior Court within thirty (30) days after receipt of notice of this decision, pursuant to N.C. Gen. Stat. § 115C-109.6, or; b) In federal District Court within ninety (90) days after receipt of notice of this decision, pursuant to 20 U.S.C. § 1415.

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 filed with the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the Official Record.

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

# **SO ORDERED.** This the 25th day of February, 2025.

Hon. Karlene S. Turrentine 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 N.C. Admin. Code 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 which will subsequently place the foregoing document into an official depository of the United States Postal Service.

Crystal Grant
Duke Law School
crystal.grant@law.duke.edu
Attorney For Petitioner

William Knight
Duke Children's Law Clinic
PO Box 90360
Durham NC 27708
Certified Student Attorney

Donna Rascoe Cranfill Sumner LLP drascoe@cshlaw.com Attorney For Respondent

Teresa Silver King NC Department of Public Instruction due\_process@dpi.nc.gov Affiliated Agency

This the 25th day of February, 2025.

Chesseley A Robinson III
Chesseley A Robinson

Law Clerk

N. C. Office of Administrative Hearings

1711 New Hope Church Road Raleigh, NC 27609-6285

Phone: 984-236-1850