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STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 EDC 01759

Student, by parent or guardian, Father and Mother, Petitioner, v. Onslow County Schools Board Of Education, Respondent.	

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REDACTED FINAL DECISION

25 EDC 01759

Originally Issued January 27, 2026

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THIS MATTER was heard before the undersigned Honorable Stacey Bice Bawtinhimer, Administrative Law Judge Presiding, on September 2 (statute of limitations hearing), and 8 through 11 (evidentiary hearing), 2025, at the Onslow County Government Center in Jacksonville, North Carolina.

APPEARANCES

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ISSUES

The Final Prehearing Order for the Statute of Limitations Hearing filed on September 2, 2025, contained four (4) issues for hearing. The Final Prehearing Order for the FAPE Hearing filed on September 9, 2025, contained seventeen (17) issues. The following are the remaining issues combined from both Final Prehearing Orders for determination in this Final Decision:

Statute of Limitation Issues

1. Whether Petitioners knew or should have known by May 9, 2024 of Respondent's final decisions such that, absent an exception, the statute of limitations bars any of Petitioners' claims for the 2020-2021, 2021-2022, 2022-2023, and/or 2023-2024 school years.

2. If the statute of limitations is applicable, whether any exception tolls the deadline for filing any of Petitioners' claims prior to May 9, 2024.

Appropriateness of IEPs Issues

If the statute of limitations does not bar all or some of Petitioners' claims prior to May 9, 2024, whether any of the following Individualized Education Programs (IEPs) offered Student a free appropriate public education (FAPE) in his least restrictive environment (LRE).

IEPs Prior To May 9, 2024

2020-2021 School Year

3. Whether the January 8, 2021 IEP; May 11, 2021 IEP; and June 3, 2021 IEP developed during the 2020-2021 school year, offered Student a FAPE in his LRE.

2021-2022 School Year

4. Whether the November 30, 2021 IEP; March 15, 2022 IEP; and May 12, 2022 IEP developed during the 2021-2022 school year, offered Student a FAPE in his LRE.

2022-2023 School Year

5. Whether the October 10, 2022 IEP and November 18, 2022 IEP developed during the 2022-2023 school year, offered Student a FAPE in his LRE.

2023-2024 School Year

6. Whether the November 20, 2023 IEP developed during the 2023-2024 school year, offered Student a FAPE in his LRE.

IEPs After May 9, 2024

2024-2025 School Year

7. Whether the September 12, 2024 IEP; November 13, 2024 IEP; and April 22, 2025 IEP developed during the 2024-2025 school year, offered Student a FAPE in his LRE.

Implementation Issue

8. Whether Respondent implemented Student's IEPs as written.

Extended School Year (ESY) Issue

9. Whether Student needed Extended School Year (ESY) services to receive a FAPE.

Parental Participation Issue

10. Whether Respondent impeded Student's Parents' participation in the development of Student's IEPs.

Assessments (FBA & AAC), Identification Category, and Cognitive Evaluation Issues

11. Whether Respondent should have conducted a Functional Behavior Assessment (FBA); timely conducted an Assistive and Augmentative Communication (AAC-AT) Device Assessment.

12. Whether Respondent appropriately determined Student's disabling category and appropriately evaluated Student's cognitive ability.

Claims Dismissed Pursuant to Rule 41(b), N.C. Gen. Stat. § 1A-1

These claims were dismissed after Petitioners' case in chief pursuant to Rule 41(b), N.C. Gen. Stat. § 1A-1:

All claims pertaining to the appropriateness of the IEP goals and service delivery of speech language services, occupational services, and physical therapy services were **DISMISSED WITH PREJUDICE**.

WITNESSES

For Petitioners:	Kristin Burnette, Ph.D. - Expert Witness, Assistant Professor, Literacy Studies and Special Education, College of Education at East Carolina University
	Kelly Anthony, Ph.D. - Expert Witness, Clinical Psychologist, Private Practice within the Triangle Center for Behavioral Health
	Rebecca Felton, Ph.D. - Expert Witness, Educational Consultant
	Petitioner Mother - Mother of Student
For Respondent:	Katherine "Kate" Aycock, PsyD. - School Psychologist, Onslow County Schools
	Rebecca Warren, M.A., CCC-SLP - Student's 2024-25 Speech Language Pathologist
	Christina Cothran - Student's 2024-25 Special Education Teacher, Summersill Elementary School
	Patricia Williams - Student's 2025-25 General Education Teacher, Summersill Elementary School
	Tim Joines - Principal, Coastal Elementary School (former Principal of Blue Creek Elementary School)

Shanta' Cooks - Principal of Northwoods Park Middle School (former Principal of Blue Creek Elementary School)

Marvina Murphy - Exceptional Children Instructional Assistant, Summersill Elementary School (former Special Education Teacher at Summersill Elementary School)

Misty Williams - Onslow County Director of Exceptional Children

Kimberly Mowell - Lead Exceptional Children's Program Coach, Onslow County Schools

Cheryl Twigger – Principal, Meadow View Elementary School (former Assistant Principal at Blue Creek Elementary School)

EXHIBITS

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the "bate stamped" numbers unless otherwise specified.

Stipulated Exhibits ("Stip. Ex."): the Tribunal admitted into evidence Stipulated Exhibits numbers 1, 3-6, 8, 10-14, 16-19, 21-25, 28-35, 38, 39, 41-45, 47-50, 53-57, 59-63, 70, 71, 73, 75-80, 84, 85, 92-95, 105, 106, 109, 110, 113-115, 118-123, and 133-136.

Petitioners' Exhibits ("Pet. Ex."): Petitioners' Exhibits numbered 2, 8-10, 27, 30, 31, 33, 34, 38, 48, 50, 51, 55, 57, 59, 66, 67, 78, 79, 82, 89, and 126-128 were submitted as evidence in support of Petitioners' case-in-chief.

Respondent's Exhibits ("Resp't Ex."): Respondent's Exhibits numbered 27 (1 for "Statute of Limitations" Hearing), 31, 242, 243, 255, 259, 302, 322, 334, 337, 357 (10 for "Statute of Limitations" Hearing), were submitted as evidence in support of Respondent's case-in-chief.

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

WRITTEN AND ORAL STIPULATED FACTS

Written Stipulations in Prehearing Orders

At the start of the hearing in this matter, the Parties agreed to jurisdiction, party, legal, and factual stipulations in the Proposed Prehearing Orders for the statute of limitations and evidentiary hearing, which were approved and filed in the Office of Administrative Hearings. The stipulations for the Final Prehearing Order for the statute of limitations portion of the hearing filed on September 2, 2025 are referenced as "SOL Stip. 1," "SOL Stip. 2," "SOL Stip. 3," etc.

Stipulations from the evidentiary Proposed Prehearing Order were filed and accepted on September 9, 2025. The evidentiary hearing stipulations" are referred to as "Stip. 1," "Stip. 2," etc. To the extent that the stipulations are not specifically stated herein, the Stipulations of Fact in both Final Prehearing Orders are incorporated fully herein by reference.

Oral Stipulated Fact

During the evidentiary hearing held on September 8, 2025, the Parties made the following oral stipulation: Student made progress through the end of the 2023- 2024 school year. T vol 2 257:11-258:7. *See also*, Petitioners' and Respondent's Notices of Oral Stipulations filed November 13, 2025. There were no other oral stipulations. During the discussion surrounding the Oral Stipulation, Petitioners clarified they did not stipulate that there was no educational harm (T vol 2 258:19) but did not specify what harm did result.

OTHER DOCUMENTS, OFFERS OF PROOF, PROPOSED FINAL DECISIONS

Transcripts

Transcript volumes 1 through 5 (totaling 1101 pages) were received and have been retained in the official record of this case and cited as T vol ___ [page]:[line(s)].

Offers of Proof

In addition, as Offers of Proof Respondent proffered the testimony of two (2) expert witnesses, Tosha Owens, Ph.D. and Rebecca Warren, M.A., CCC-SLP, and Respondent's Exhibits 359 and 363, pages 3389-3398, 3465.

Proposed Final Decisions, Respondent's Redacted Proposed Final Decision, Supplemental Proposals

Both Parties submitted Proposed Final Decisions and Supplemental Proposals. Respondent's initial Proposed Final Decision improperly included excerpts from its Offers of Proof testimonies and exhibits. Petitioners' objection to the inclusion of these excerpts was sustained on December 2, 2025. As a result, these references were redacted from the Respondent's original Proposed Final Decision. Respondent filed a Redacted Proposed Final Decision on December 15, 2025. The Respondent's Offers of Proof were not considered in this Final Decision but are included in the record for appeal purposes. Per request of the Undersigned, Supplemental Proposals on the issue of remedies were submitted by both Parties on January 12, 2026.

Official Notice

After both Parties were given an opportunity to be heard and over the objection of Petitioners, on January 13, 2026 Official Notice was taken of the following:

1. *Policies Governing Services for Children with Disabilities* (version March 2021); and,

2. *Participation in the North Carolin Alternative Assessment: An NCEXTEND1 User Guide* (February 2024) p 5; https://www.dpi.nc.gov/participation-north-carolina- alternate-assessment-extend-1-user-guide, and https://www.dpi.nc.gov/documents/accountability/policyoperations/tswd/ncextend1-eligibility-criteria.

GLOSSARY OF TERMS

Because special education law is full of acronyms, a glossary of terms is provided to aid in understanding this terminology in this Final Decision.

Glossary of Commonly Used Acronyms and Terms

AAC – Assistive and Augmentative Communication
AT – Assistive Technology
BIP – Behavior Intervention Plan
DIBELS – Dynamic Indicators of Basic Early Literacy Skills
EC – Exceptional Children
ESY – Extended School Year
FAPE – Free Appropriate Public Education
FBA – Functional Behavior Assessment
IDEA – Individuals with Disabilities Education Improvement Act
ID-Mild or IDMI – Intellectual Disability – Mild
ID – Moderate or IDMO – Intellectual Disability – Moderate
IEP – Individualized Education Program
iReady – North Carolina criterion-referenced and normative data on reading and math
KOSHK – Knew or Should Have Known
LRE – Least Restrictive Environment
mClass – North Carolina statewide DIBELS mandated K-3 literacy assessment
NC DPI – North Carolina Department of Public Instruction
OAH – Office of Administrative Hearings
OCS – Onslow County Schools
OHI – Other Health Impaired
PLOP – Present Levels of Performance or Present Levels
PWN – Prior Written Notice
SDI – Specially Designed Instruction
SOL – Statute of Limitations
SPIRE – Specialized Program Individualizing Reading Excellence
SRB – Scientific Research-Based

BURDEN OF PROOF

Petitioners bear the burden of proof in special education cases in North Carolina. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof "lies where it usually falls, upon the party seeking relief." *Schaffer,* 546 U.S. at 57-58. The standard of proof is by a preponderance of the evidence. *Id.*; N.C. Gen. Stat. § 150B-34(a).

Initially, Respondent bears the burden of proof for the affirmative defense of the statute of limitations. *Williams v. Philadelphia Life Ins. Co.*, 212 N.C. 516, 193 S.E. 728, 729 (1937). However, once that burden is met, the burden shifts to the Petitioners to show that the parent was "prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent." N.C. Gen. Stat. § 115C-109.6(c).

Deference to Educators

Due regard in administrative cases is given "to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C. Gen. Stat. § 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*, 580 US. 386, 404 (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*.

Nonetheless, the required deference to the opinions of the professional educators [does not] somehow relieve the hearing officer or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate. That is, the factfinder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate." *Cnty. Sch. Bd. of Henrico Cnty., Virginia v. Z.P. ex rel. R.P.*, 399 F.3d 298, 307–08 (4th Cir. 2005).

"If the law were that a court must defer to the opinion of those who spend the most time with the student, and presumably know him best, then there would be no place for experts. Moreover, parents could never prevail because the student's teacher will always spend more time with the student or know the student better than the parents' hired experts. On the other hand, the parents spend more time with the student and know the student better than any teacher. Taking [this] argument to this ultimate end, the district court would actually defer to the student's parents, who surely know the student best, regardless of any expertise." *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779, 794 (6th Cir. 2018).

When school employees are unable to offer a "cogent and responsive explanation for their decisions," or the evidence presented does not support their decisions, they are not entitled to deference. *Smith v. Dist. of Columbia*, 2018 WL 4680208, *7 (D.D.C. Sept. 28, 2018) (finding

"DCPS failed to offer the 'cogent and responsive explanation for its placement decision' that would entitle it to deference); *accord Z.B. v. Dist. of Columbia*, 888 F.3d 515, 526 (D.C. Cir. 2018) (noting the absence of evidence "on what grounds DCPS may have reasonably concluded that the IEP was tailored to Z.B.'s needs at that time").

The Undersigned afforded appropriate deference to Respondent's school witnesses regarding educational decisions for Student where they "demonstrated knowledge and expertise." Such as the experience and knowledge of Onslow County School's Speech Pathologist Rebecca Warren, M.A., CCC-SLP. While she was not accepted as an expert witness as explained below, since August 2018 she had been the school's Augmentative and Alternative Communication Consultant and demonstrated specialized knowledge with respect to developing Student's language skills. Resp't Ex. 337 p 2251; T vol 4 861: 10-23. However, little deference was afforded to Respondent's witnesses who were not involved in the development of Student's IEPs, were not responsible for implementing Student's IEPs, or where the documentary evidence did not support their testimony.

EVIDENTIARY ISSUES DURING HEARING

Disclosure of Experts – Motion *in Limine*

1. On the first day of hearing in the matter, Petitioners' counsel made a Motion *in Limine* objecting to the admission of Respondent's expert witnesses due to Respondent's failure to disclose their experts in response to Petitioners' discovery requests and failure to disclose their experts in compliance with the Undersigned's August 18, 2025 Order that "final witness lists for the September 8, 2025, hearing will be exchanged on or before August 29, 2025." T vol 2 239:4-251:4 (argument on Motion *in Limine*.)

2. Petitioners sent Respondent a First Set of Interrogatories and First Request for Production of Documents on May 22, 2025. Motion Ex. A. Petitioners' first interrogatory requested Respondent "identify all expert witnesses who may testify on behalf of Respondent who are not current employees of Respondent" as well as requests for additional information about each expert, discoverable under N.C. R. Civ. P. 26(b)(4). Motion Ex. A p 7. Petitioners' twelfth (12th) request for production of documents requested Respondent provide "curricula vita, resumes, or other documentation for each individual identified in the prior request that may support a designation as expert witness." Motion Ex. B p 8.

3. On June 9, 2025, Respondent provided its first responses objecting to both Petitioners' interrogatories and document production requests related to expert witnesses stating it would "provide information regarding expert witnesses consistent with prehearing deadlines set by the [OAH]." Motion Exs. C p 2 & D p 5.

4. Prior to the Hearing, Respondent provided one (1) supplement to Petitioner's interrogatories and ten (10) supplements to the document requests on the following dates: July 21, 2025, July 31, 2025, August 4, 2025, August 6, 2025, August 20, 2025, August 22, 2205, August 28, 2025, August 29, 2025, September 6, 2025, and September 7, 2025, the day before the evidentiary hearing was scheduled to start. Respondent never identified any expert witnesses or

provided any documentation related to expert witnesses in any of its multiple discovery supplements. Motion Ex. E p 2 (Respondent's only supplement to interrogatories); Motion Ex. F at 5 (Respondent's tenth production of documents); T vol 2 240:11-20 (argument on Motion *in Limine* including dates of document production).

5. On August 22, 2025, the Parties exchanged witness lists for the hearing on the statute of limitations issue. Respondent's witness list identified no expert witnesses, and Respondent called no expert witnesses during the hearing. T vol 2 240:21-24. Final Prehearing Order (statute of limitations hearing), Schedule E (September 2, 2025).

6. On August 29, 2025, the Parties exchanged witness lists for the due process hearing. Petitioners' witness list designated three (3) witnesses with an asterisk (*) indicating Petitioners reserved the right to proffer those witnesses as expert witnesses. Proposed Prehearing Order (evidentiary hearing), Schedule D (September 4, 2025). Respondent's witness list contained no such designation as to any of its twenty-two (22) identified witnesses. *Id.*, Schedule E.

7. During the Prehearing Conference held on September 4, 2025, the Undersigned requested the Parties narrow the issues in the Prehearing Order. On September 5, 2025, the Undersigned's law clerk, Ms. Karen Rust, sent an email to the Parties' Counsel with the directive to "describe the title and purpose of the testimony of each witness." Motion Ex. G.

8. On September 7, 2025, at 6:41 p.m., the night before the first day of hearing in this matter, Respondent's counsel provided its updated witness list for the first time designating seven (7) witnesses as experts: Vickie Brown, Roger Hammel, Dr. Tosha Owens, Sarah Ingram, Misty Williams, Rebecca Warren, and Katherine Aycock. Motion Ex. H; Final Prehearing Order (evidentiary hearing), Schedule E (September 9, 2025).

9. Roger Hammel; Tosha Owens. Ph.D.; Rebecca Warren M.A., CCC-SLP; and Katherine Aycock, Ph.D., are contractors, not employees of Respondent; therefore, their identification was required in response to Petitioners' discovery requests. T vol 2 244:5-8 (argument on Motion *in Limine*); Resp't Ex. 337 (resume of Rebecca Warren); Resp't Ex. 322 (resume of Katherine Aycock); T vol 4 797:12-15 (testimony of Katherine Aycock identifying her role as a contracted school psychologist).

10. Accordingly, the Undersigned permitted Respondent to make an Offer of Proof for Dr. Owen's testimony, and no other witnesses would be permitted to be designated or testify as experts. T vol 2 250:21-251:4.

11. On September 10, 2025, Respondent sought to designate Rebecca Warren as an expert witness to which Petitioners objected. After discussion off the record, the Undersigned permitted Respondent to allow Ms. Warren to testify first as a fact witness and then make an Offer of Proof for her expert testimony. T vol 4 858:8-19.

12. Following Ms. Warren's Offer of Proof, Petitioners renewed their argument as to the exclusion of Ms. Warren's Offer of Proof expert testimony. T vol 4 902:10-908:25 (second argument on Motion *in Limine*).

13. On September 11, 2025, Respondent sought to call Dr. Tosha Owens as a witness. Petitioners, again, renewed their Motion *in Limine* and moved to strike the testimony of Ms. Warren. T vol 5 997:2-1000:15 (third argument on Motion *in Limine* and Motion to Strike)

14. The Undersigned granted Petitioners' Motion to Strike the testimony of Ms. Warren from Respondent's Offer of Proof.

15. The only experts presented in the hearing on this matter were presented by Petitioners.

Documentary Evidence

16. The North Carolina Rules of Evidence govern all contested cases in this Tribunal except as otherwise provided in the administrative rules and N.C. Gen. Stat. § 150-29. 26 NCAC 03 .0122. "Evidence in a contested case including records and documents must be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted by G.S. 150B-30 [official notice]." N.C. Gen. Stat. § 150-29(b).

17. "All evidence to be considered in the case, including all records and documents or a true and accurate copy, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case." 26 NCAC 03.0122(3).

18. Respondent's witnesses alluded to work samples completed by Student but no work samples were admitted into evidence. In addition, Petitioners' expert Dr. Anthony referred to testing protocols and instructions which were not introduced into the record and further used to cross-examine contract school psychologist Ms. Aycock. "To the extent most of this 'alluded to' documentary evidence was not made a part of the record, it cannot be considered." *L.P. v. Wake County Board of Education,* (NC OAH No. 20 EDC 00832). Order dated July 20, 2021 (Bawtinhimer, ALJ). The testimonies of Respondent's witnesses about the illusory evidence will be given proper weight and to the extent that no supporting documentary evidence is available for consideration, it will have no weight. *Id.*

PROCEDURAL HISTORY

1. Petitioners Mother and Father filed a *pro se* Petition for Contested Case Hearing on May 9, 2025, alleging IDEA violations within the jurisdiction of the Office of Administrative Hearings, including issues of identification, evaluation, placement, and FAPE.

2. Counsel entered appearances for both Parties on May 13, 2025.

3. The Undersigned issued an Order Setting Hearing and General Pre-Hearing Order on May 14, 2025, scheduling the Due Process Hearing for June 23, 2025.

4. The Parties jointly moved to continue the hearing on June 4, 2025.

5. For good cause and with the Parties' consent, the Undersigned issued an Order on June 6, 2025, extending the resolution period, adjusting deadlines, and rescheduling the hearing for August 25, 2025.

6. The Parties participated in mediation on July 10, 2025; mediation was unsuccessful.

7. Petitioners filed an uncontested Motion for Leave to Amend on July 11, 2025, which the Undersigned granted on July 14, 2025.

8. Petitioners filed their Amended Petition on July 21, 2025.

9. The Undersigned issued a revised Order Setting Hearing and Prehearing Deadlines on July 22, 2025, rescheduling the hearing for September 2, 2025.

10. Respondent filed its response to the Amended Petition on July 31, 2025.

11. Respondent noticed the depositions of both Petitioners on August 5, 2025.

12. Petitioners moved for a Protective Order on August 8, 2025, seeking relief from the depositions or, alternatively, a stay of discovery pending oral argument.

13. A Notice of Hearing on Petitioners' Motion for Protective Order issued on August 11, 2025.

14. Respondent filed its Objections to Petitioners' Proposed Protective Order on August 13, 2025.

15. The Tribunal held a Webex motion hearing that same day.

16. During the hearing, it became apparent that Respondent sought deposition testimony to establish when Petitioners knew or should have known facts relevant to the statute of limitations.

17. The Tribunal orally ordered bifurcation of the Due Process Hearing into statute-of-limitations and FAPE phases and orally granted Petitioners' Motion for Protective Order. These Orders were entered *nunc pro tunc* on August 18, 2025.

18. Respondent moved for reconsideration of the bifurcation and Protective Order on August 15, 2025.

19. Petitioners filed a Motion to Sequester Witnesses later that same day.

20. The Tribunal also issued a Notice of Hearing for both the statute-of-limitations and FAPE hearings on August 15, 2025.

21. On August 25, 2025, Respondent filed its response to Petitioners' Motion to Sequester Witnesses, and Petitioners filed their opposition to Respondent's Motion for Reconsideration.

22. The Parties participated in a Webex Prehearing Conference on August 27, 2025.

23. To accommodate Respondent's request for testimony related to the statute of limitations, the Parties appeared for a hearing on September 2, 2025, during which Respondent made oral motions to dismiss under Rule 12(b)(6) and for summary judgment under Rule 56.

24. Because the Tribunal considered evidence beyond the four corners of the Petition, the Rule 12(b)(6) motion was converted to a Rule 56 motion pursuant to Rule 12(b).

25. Although referred to as the "statute of limitations hearing," the proceeding was not an evidentiary hearing, as noted by the Undersigned on September 8, 2025. T vol 2 238:23

26. At the Tribunal's request, Respondent filed a Memorialization of its Rule 12(b)(6) Dismissal Request on September 3, 2025.

27. The Parties jointly moved to permit telephonic or video testimony on September 3, 2025.

28. A subsequent Webex Prehearing Conference occurred on September 4, 2025.

29. During that conference, the Undersigned orally denied Respondent's motions to dismiss and for summary judgment, finding Respondent had not met its burden.

30. An Order Permitting Telephonic or Video Testimony issued later that day.

31. Both Parties filed Notices of Decision to Proceed to Hearing on September 5, 2025.

32. The Tribunal also issued an Order Granting Sequestration of Witnesses and an Order Denying Respondent's Motion for Reconsideration on September 5, 2025.

33. The evidentiary hearing on FAPE issues proceeded from September 8–11, 2025.

34. On September 8, 2025, Respondent orally renewed its request for reconsideration of the denial of its time-bar dismissal arguments. T vol 2 216:12–14. The Undersigned again denied the motions. T vol 2 238:18–20.

35. Petitioners also made an oral Motion in Limine on September 8, 2025, seeking exclusion of Respondent's expert testimony; the motion was granted.

36. After Petitioners rested on September 10, 2025, Respondent moved to dismiss under Rule 41(b), renewing its arguments regarding time-barred claims, evaluation claims,

Father's claims, claims predating fourth grade, related-service claims, reimbursement, and identification. T vol 4 765:23–766:24.

37. The Undersigned granted the motion only as to Petitioners' OT, PT, and speech-language claims, took under advisement the dismissal of claims predating May 9, 2024, and denied the motion as to all remaining issues.

38. Respondent presented its case from September 10–11, 2025, eliciting testimony from two teachers, a school psychologist, and its lead speech-language pathologist. In its Offer of Proof, Respondent also elicited testimony from two experts, Dr. Warren and Dr. Owens. Respondent rested on September 11, 2025, and the hearing concluded.

39. The Tribunal issued a Post-Hearing Order on September 15, 2025, setting deadlines for filing admitted exhibits and post-hearing submissions.

40. The Parties filed their verifications and admitted exhibits on September 19, 2025, and transcripts were filed on October 2, 2025.

41. Respondent filed its Proposed Final Decision on November 3, 2025, followed by Petitioners' Proposed Final Decision on November 4, 2025.

42. On November 13, 2025, each Party filed a Notice of Oral Stipulation memorializing their agreement that Student made progress through the end of the 2023–2024 school year. Petitioners did not stipulate that there was no educational harm.

43. The Parties filed indexes of their admitted exhibits on November 14, 2025.

44. Petitioners filed a Notice of Objection on November 13, 2025, challenging Respondent's inclusion of Offer-of-Proof testimony in its Proposed Final Decision. Respondent filed its response on November 25, 2025.

45. On December 2, 2025, the Undersigned sustained Petitioners' objection, struck Respondent's original Proposed Final Decision, and ordered Respondent to file a redacted version, which it submitted on December 15, 2025.

46. The Parties jointly stipulated on December 2, 2025, to extend the Final Decision deadline to December 31, 2025.

47. After reviewing the record and determining that certain claims were time-barred, the Tribunal ordered the Parties to submit revised and counter remedy proposals by December 22, 2025.

48. Respondent moved for an extension on December 19, 2025, citing limited access to school staff during the holiday closure. Both Parties were granted extensions until January 12, 2026, and the Final Decision deadline was extended accordingly.

49. The Parties filed their Supplemental Proposals on January 12, 2026.

50. The Final Decision issued on January 27, 2026.

RULE 41(b) ORDER OF DISMISSAL

1. At hearing, Respondent moved for Rule 41(b) dismissal of Petitioners' claims for failing to prove educational harm, claims related to OT, PT, and speech-language services, claims predating May 9, 2024 based on the statute of limitations, any claims based on failure to conduct a Functional Behavior Assessment (FBA) or AT evaluation, Father's claims, and any claims of failure to properly identify. T vol 4 760-66:8-15 (Statement by R. Nicholas). The Undersigned heard argument from both parties. The Undersigned dismissed Petitioners' claims regarding the appropriateness of Student's occupational therapy, physical therapy, and communication speech goals. T vol 4 782:8-23.

2. Petitioners presented no evidence supporting their claim that Respondent's occupational therapy, physical therapy, and speech-language evaluations of Student were procedurally and substantively inappropriate. *See* T vol 4 781:23-25 (Petitioners' counsel stating "we would concede that we did not present any evidence with regard to related services"). Accordingly, this Tribunal dismissed Petitioners' claims pertaining to related services under Rule 41(b). T vol 4 782:11-23. Likewise, as Petitioners did not present evidence pertaining to the appropriateness of the Student's occupational therapy, physical therapy, and speech-language evaluations, the Undersigned finds that Petitioners failed to meet their burden that Respondent's related services evaluations were not substantively appropriate.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the 13 witnesses presented at the hearing, the documents, the 117 exhibits received and admitted into evidence, the 5 transcripts (1,101 pages), the entire record in this proceeding, Stipulated Facts, the Proposed Final Decisions, and Supplemental Proposed Final Decisions, the undersigned administrative law judge ("ALJ") makes the following Findings of Fact.

In making these Findings of Fact, the ALJ has carefully weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witnesses to see, hear, know, and 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 this case including, but not limited to verbal statements at IEP meetings, IEP meeting documents, affidavits, and all other competent and admissible evidence. Even though this Final Decision may incorporate language from the Parties' respective Proposed and Supplemental Final Decisions, credibility determinations are made independently from any proposals by the Parties. Unless otherwise stated herein, the Undersigned found all witnesses in this hearing to be credible but awarded more weight to the testimony of some based on the factors identified above.

Stipulations of Fact

1. At the start of each part of the bifurcated hearing in this matter, the Parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in proposed Pre-Hearing Orders, which were approved and filed in the OAH on September 2, 2025 (Statute of Limitations Hearing), and on September 9, 2025 (FAPE Hearing). To the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Orders on the Pre-Trial Conference as well as other stipulations later filed in the record are incorporated fully herein by reference.

Prior Orders

2. Unless specifically contradicted, this Order incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation either orally at the hearings or in written format. Such Orders are appealable after issuance of this Final Decision.

3. Any determination later stated as a Conclusion of Law that should have been stated as a Finding of Fact is incorporated in these Findings of Fact.

Student - Minor Petitioner

4. Student is an eleven-year-old student whose date of birth is XXXX. He and his parents, Father ("Father") and Mother ("Mother" or "Parent") (collectively "Petitioners"), have resided in Onslow County, Jacksonville, North Carolina, at all times relevant to the Amended Petition ("Petition"). SOL Stip. 7. When the Petition was filed, Student was a fifth-grade student at Summersill Elementary School in Onslow County Schools and has been enrolled in this school district since 2019. He has received special education services from Onslow County Schools since his third birthday. SOL Stip. 10.

5. Student is a "happy child" who "loves anything with trucks" and "roller coasters" and is excited about "going from Cub Scouts . . . to Boy Scouts in December." T vol 4 705:16-21 (T of Mother).

Student's Unique Circumstances

6. Student is diagnosed with Partial Trisomy 1q42. SOL Stip. 9; Stip. 7. No information was offered from Petitioners' expert witnesses during the hearing to explain the manifestation of this genetic condition other than it was "extremely rare." T vol 3 613:2-5 (T of Anthony); *see also*, Am. Pet. p 2 ¶ 2 ("can cause developmental delays of varying degrees."). Educational records indicated that "Student is diagnosed with a genetic disorder that causes cognitive delays." Stip. Ex. 24 p 0176 (Reevaluation Report 11/30/2021); Stip. Ex. 38 p 287 (October 2022 IEP Addendum).

7. The evidence establishes that this condition is chronic and adversely affects his educational performance, impacting strength, vitality, alertness, learning, speech and communication, and motor development. Stip. Ex. 24 p 0176 (Reevaluation Report 11/30/2021);

Stip. Ex. 38 p 287 (October 2022 IEP Addendum); T vol 3 613:2-5 (T of Anthony stating "extremely rare"); *see also*, Am. Pet. p 2 ¶ 2 ("can cause developmental delays of varying degrees."). Based on medical and educational documentation, Student meets eligibility under the IDEA categories of Other Health Impairment (OHI) and Intellectual Disability (Stip. Ex. 28 p 0188 (03/15/2022). The Parties dispute whether his intellectual disability was mild or moderate, as this distinction has affected his programming.

8. Student is a student with "complex support needs" because "one disability category alone" does not describe his needs. He qualifies for OHI "because he has a genetic condition, but he also has an intellectual disability." T vol 2 493:16-22 (T of Burnette).

9. During the entire relevant period, Student has been developmentally delayed and academically well below grade level in reading, writing, and math. He also has an articulation disorder. His articulation deficits make it difficult for "people who don't necessarily know Student very well [] to understand what he's saying.," yet he is able to participate in the regular education setting. T vol 4 860:25-861:2 (T of Warren). According to his current fifth grade regular education teacher, Student interacts with other students in his class, he didn't want to leave his fourth-grade classroom, he participates in his class and answers questions during group instruction "just like everybody else." T vol 4 959:13-25 (T of Williams).

10. Student "may be below grade level due to his complex support needs, but he continued to make progress in the general education curriculum, particularly in the places that he's not pulled out for specially designed instruction." T vol 2 494:1-4 (T of Burnette). His grades reflect his ability to do grade level work in some classes. Historically, Student's final grades were satisfactory in grade level work in computer, science, social studies, physical education, and visual arts, but below grade level in math, English language arts (ELA) and reading. Stip. Ex. 56 p 415 (stating final grades for the second grade 2022-2023 school year were satisfactory in Grade 2 computer, visual arts, conduct, PE; on grade level in Grade 2 science and social studies; and below grade level in Grade 2 math, ELA, reading; Pet. Ex. 51 p 0167 (stating final grades for the 2023-2024 third grade school year for Grade 3 level classes were: math 85, science 99, ELA 90, and social studies 97. Pet. Ex. 51 p 0167.

11. It is undisputed that Student can and had progressed through third grade. But, because of his unique circumstances and rare genetic diagnosis, it is difficult to gauge the trajectory of his future progress. According to Dr. Burnette, even if Student is a fifth-grade student on a kindergarten, first, or third grade level, "he's still demonstrating progress over time." T vol 2 494:14-19 (T of Burnette). As Dr. Burnette pointed out, "there are students without complex support needs that are that far behind that don't have a disability label and I think that if he continues to demonstrate progress towards the general education curriculum, then he should continue to be in that setting." T vol 2 494:19-24 (T of Burnette).

12. Even though Student was below grade level "doesn't mean that [Student] can't learn in a general education setting." T vol 2 495:4-8 (T of Burnette). Student is "absolutely capable of making progress on the general education curriculum." This was further evidenced by his grade-level performance in science and social studies, where he was not pulled-out and is "making

progress on grade-level content and instruction with the supports that are being provided." T vol 2 497:24-498:5 (T of Burnette).

13. Student can learn to read because "word level reading proficiency is in no way related to IQ" and with focus on becoming good at "decoding" through a Structured Literacy program. T vol 3 511:15-24; 519:2-12 (T of Felton). "[T]here's no reason that [Student] can't become an accurate reader. His intellectual skills and his cognitive skills will have an impact on areas like comprehension, but there's no reason he should not be able to be taught to . . . read words proficiently and develop an understanding of what they mean to some degree, particularly at a concrete level." T vol 3 562:25-563 (T of Felton).

14. With intensive support; appropriate specially designed instruction; appropriate related services in speech, occupational, and physical therapies; as well as significant accommodations and aids, Student has been able to make functional and academic progress commensurate with his abilities primarily in the general classroom setting through the third grade.

15. In addition to his academic deficits, Student has had behaviors which impede his learning and required behavior and social emotional goals. Stip. Ex. 4 pp 028 (difficulty completing assignments) & 031 (social and behavioral goals for assignment completion and initiating positive peer interaction) (January 2021 IEP); Stip. Ex. 22 pp 0152 & 0154 (November 2021 IEP); Stip. Ex. 29 p 0198 (difficulty with transitions, met assignment completion goal) (March 2022 IEP Addendum); Stip. Ex. 38 (added 2 behavior goals for maintaining personal space and hallway behavior) (October 2022 IEP Addendum); Stip. Ex. 42 pp 315-316 (met assignment goal without much prompting and continued to meet social skills goal) (November 2022 IEP Addendum); Stip. Ex. 49 p 369 (May 2023 IEP); Stip. Ex. 54 p 400 (behavior goal)(November 2023 IEP); Stip. Ex. 60 p 452 (behavior goal) (March 2024 IEP); and, Stip. Ex. 83 (Behavior Support Plan for following directions and off task behaviors).

16. Despite his social emotional deficits through his third-grade school year, Student has met or progressed at an appropriate rate to meet his behavioral goals. Stip. Ex. 13 pp 097-098 (2020-2021 school year); Stip. Ex. 31 p 232 (2021-2022 school year); Stip. Ex. 33 p 238; Stip. Ex. 44 (2022-2023 school year); Stip. Ex. 47, 48 & 57 (2023-2024 school year); Stip. Exs. 62, 119, 120, Pet. Exs. 55& 59 (2024-2025 school year); and Stip. Ex. 121 (2025-2025 school year).

17. In sum, Student is a student who has and could continue to make academic and functional progress in the general education classroom, given appropriate instruction and accommodation for his complex support needs.

Witnesses

Petitioners' Witnesses

18. Petitioners presented three expert witnesses - Kristin Burnette Ph.D., Rebecca Felton Ph.D., and Kelly Anthony, Ph.D. - and Mother as a fact witness. Respondent presented only fact witnesses due to a prior ruling on Petitioners' Motion *in Limine*.

Kristin Burnette, Ph.D. (T vol 2 pp 260 - 499)

19. Kristin Burnette, Ph.D. was qualified as an expert in "special education, inclusive education, special education teacher preparation, special education programming for children with complex support needs, specially designed instruction and IEP development for students with complex support needs, evidence-based practices with respect to the inclusion and instruction of students with complex support needs in academic and nonacademic settings, the appropriateness of placement, accommodations, and service delivery for students with complex support needs" and "assistive technology." T vol 2 266:15-24, 272:8-10, 17-21 (T of Burnette). She holds a National Board Certification as Exceptional Needs Specialist and has an extensive publication and presentation record in special education and inclusive practices Pet. Ex. 126, p 945-47 (published thirteen (13) peer-reviewed journal articles and over 60 presentations); and, T vol 2 261:21-25 (T of Burnette) (serves as an "inclusion consultant").

20. Dr. Burnette reviewed Student's IEPs, prior written notices (PWNs), invitations to conference, evaluations, and reevaluation documents and had direct contact with Student and his family. T vol 2 272:23-273:1-8. No other expert was qualified in the same area. Her testimony regarding programming and placement for students with complex support needs was detailed and well supported by the documentary record and is accorded significant weight.

Rebecca Felton, Ph.D. (T vol 3 pp 506 - 598)

21. Rebecca Felton, Ph.D. was received as an expert, without objection, in the areas of "child development and special education, reading instruction for students with severe language deficits, reading, written expression, and IEP development and implementation." T vol 3 509:18-510:4 (T of Felton).

22. Dr. Felton has served as an Educational Consultant since 1995. Pet. Ex. 128, p 958. Dr. Felton has served as a reading disabilities consultant to both public and private schools and provided teacher training since 1985. Pet. Ex. 128, p 958. Dr. Felton has served as a Reading Consultant for the North Carolina School Improvement Project and Department of Public Instruction from 2000 to 2019. Pet. Ex. 128, p 958.

23. Dr. Felton demonstrated she was current on the latest scientifically research-based and instructional strategies and guidance that affect educating students with disabilities with needs similar to those of Student's. Dr. Felton's education and professional experience qualified Dr. Felton to offer her expert opinion about the areas in which she was qualified as an expert. Pet. Ex. 128.

24. Dr. Felton reviewed Student's educational records and testified about appropriate reading instruction for students with severe phonological and articulation deficits. T vol. 2 514:12-14 (T of Felton). She explained that word-level reading proficiency is not tied to IQ, that Student has severe phonological processing and articulation problems, and that assessments reliant on fluency and speech production (such as mCLASS) must be interpreted with caution in his case. She

opined that Student should receive structured literacy instruction focused on decoding rather than memorization of word lists and that there is no reason he cannot become an accurate reader, although his cognitive profile may affect higher-level comprehension. Her testimony was consistent, grounded in current research, and is given substantial weight.

Kelly Anthony, Ph.D. (T vol 3 pp 599 - 696)

25. Dr. Anthony was qualified as an expert in child clinical and pediatric psychology and in selecting, conducting, and interpreting evaluations of children with disabilities. T vol 3 601:20-24, 612:4 (T of Anthony).

26. She has extensive experience in pediatric psychology at Duke University Medical Center, including supervising psychological testing and training interns, and has consulted with educational entities such as Duke's Children's Education Law Clinic and The Hill Learning Center. Pet. Ex. 127, pp 952, 955; T vol 3 610:6-18; 612:20-613:6 (T of Anthony).

27. Dr. Anthony reviewed Student's psychological and related services evaluations, AAC evaluations, and IEPs, and researched his rare genetic condition. Pet. Ex. 127. She had direct contact with Student and his family and evaluated Respondent's assessment practices and Student's ongoing needs. T vol 3 613:14-614:6 (T of Anthony).

28. As the only expert in her area, and given the depth of her evaluation, her testimony on evaluation sufficiency and interpretation was afforded considerable weight.

Mother (T vol 4 pp 705 - 757)

29. Mother is the Mother of Student and a good advocate for her son. T vol 4 705:11-13; 740:22-24 (T of Mother). She attended and testified at the statute of limitation and evidentiary hearings.

30. The Undersigned observed her demeanor on direct and cross-examination and found her to be generally forthright and credible, recognizing that, as Student's mother, she has an inherent bias toward his best interests. Where her testimony is contradicted by documentary evidence she signed, the latter is credited.

Respondent's Witnesses

31. Respondent presented multiple fact witnesses regarding Student's educational programming, IEP meetings, and district practices. Their testimony is summarized below as it relates to credibility and weight. Due to the ruling on Petitioners' Motion *in Limine*, no expert witness testified on behalf of Respondent during either hearing.

32. Respondent called the following fact witnesses during the Statute of Limitations Hearing on September 2, 2025 - Mother, Timothy Joines, Cheryl Twigger, Shanta' Cooks, Kimberly Mowell, Marvina Murphy, and Misty Williams.

33. Respondent called the following fact witnesses during the FAPE Hearing beginning on September 9, 2025 - Katherine "Kate" Aycock, Rebecca Warren, Christina Cothran, and Patricia Williams.

Mother (T vol 1 pp 43 - 59)

34. Respondent called Mother as a "hostile" witness at the statute of limitations hearing. T vol 1 44:11 (T if Mother). Respondent sought to establish when she "knew or should have known" of alleged violations but did not elicit testimony establishing a specific date for SOL purposes. T vol 1 40:24-41:3 (T of Mother).

Timothy Joines (T vol 1 pp 62 - 84)

35. Timothy Joines was the principal of Blue Creek Elementary School during the 2019-2020 and 2020-2021 school years and served as LEA representative during the IEP meetings held on January 8, 2021 and May 11, 2021. T vol 1 62:21-22 (T of Joines); Stip. Ex. 5, 12. He described general LEA representative and IEP team practices. T vol 1 67:20-69:3 (T of Joines).

36. His testimony was of limited value where it conflicted with undisputed facts. For example, he initially testified (and averred by affidavit) that he provided Mother a physical copy of the *Parents' Rights Handbook* at the virtual January 2021 meeting but later acknowledged this could not have occurred because the meeting was held virtually. T vol 1 69:4-9, 75:22-76:19 (T of Joines); Resp't Ex. 357; 76:24-78:14.

Cheryl Twigger (T vol 1 pp 86-112)

37. Cheryl Twigger was the Assistant Principal of Blue Creek Elementary School during the 2021-22 and 2022-23 school years. T vol 1 86:15-19 (T of Twigger). Ms. Twigger acted as LEA representative during the IEP meetings held on June 3, 2021, November 30, 2021, and May 12, 2022. Stip. Ex. 18, 23, 35; T vol 1 88:1-2 (T of Twigger).

38. Ms. Twigger was also unable to recall any specific details about Student's service delivery and testified only to what was "possible" rather than probable. T vol 1 109:16-110:21, 112:4-15 (T of Twigger).

39. Ms. Twigger's testimony was of limited value as Ms. Twigger testified in generalities and was unable to recall details of the specific meetings. T vol 1 90:3-5, 91:10-11, 92:6-14, 96:14-20, 97:8-10, 15-17, 101:21-102:6, 102:19-22, 103:17-22, 105:11-14, 108:19-24 (T of Twigger).

Shanta' Cooks (T vol 1 pp 114 - 137)

40. Shanta' Cooks was the principal of Blue Creek Elementary School during the 2021-2022 and 2022-2023 school years and served as LEA representative during the IEP meetings held on March 15, 2022 and October 10, 2022. T vol 1 114:18-23 (T of Cooks); Stip. Exs. 30 & 39. She had difficulty recalling specific events at these meetings without reference to the Prior Written

Notices (T vol 1 117:17-18 (T of Cooks)) and her testimony is afforded limited weight beyond what is corroborated by the written record.

Kimberly Mowell (T vol 1 pp 137 - 168)

41. Kimberly Mowell was an exceptional children's (EC) program coach in 2022-2023 and 2023-2024 school years and attended Student's IEP meetings on November 18, 2022, and May 15, 2023 serving as LEA representative at the latter. T vol 1 138:13-21 (T of Mowell); Stip. Ex. 43, 50; Stip. Ex. 50. She had minimal contact with Student and no one-on-one interaction. T vol 1 139:8-10 (T of Mowell). Her testimony is credited for describing team processes and documentation but is given limited weight on Student's specific instructional issues.

Marvina Murphy (T vol 1 pp 168 - 187)

42. Marvina Murphy was Student's EC teacher in 2022-2023 and 2023-2024 and attended the November 18, 2022, November 20, 2023, and March 20, 2024 IEP meetings. T vol 1 169:7-12 (T of Murphy); Stip. Ex. 43, 55 & 61. Her testimony about Mother's receipt of the *Handbook* was corroborated by the documentary evidence and is credited.

Misty Williams (T vol 1 pp 188 - 194)

43. Misty Williams is Respondent's EC Director and did not attend any of Student's IEP meetings. T vol 1 188:25-189 (T of Williams). She authenticated the April 2025 Prior Written Notice for admission into evidence. Her testimony is limited to record-keeping and authentication issues. T vol 1 191:9-11 (T of Williams).

Katherine "Kate" Aycock, PsyD. (T vol 4 796 - 850)

44. Katherine "Kate" Aycock is a contract school psychologist and owner of Coastal Kids Evaluation Services who conducted the February 2025 Psychoeducational Report of Student T vol 4 797:12-15 (T of Aycock); Resp't Ex. 322 p 1924; Stip. Ex. 133. She has conducted approximately 750 evaluations since 2010. T vol 4 799:4-19 (T of Aycock). She acknowledged that she did not review all of Student's educational records, did not speak directly with his parents or teaching staff, did not review an earlier Transdisciplinary Play-Based Assessment or the March 2022 Psychoeducational Evaluation, and did not attempt to explain discrepancies between 2022 adaptive rating scales and cognitive testing. T vol 4 804:25-805:2; 805:16-21 (T of Aycock); Stip. Ex. 80. Her demeanor was credible, but the completeness and reliability of her 2025 evaluation and her conclusions are questioned in light of these omissions, and her testimony was weighed accordingly.

Rebecca Warren, M.A., CCC-SLP (T vol 4 pp 851 - 863)

45. Rebecca Warren is a contracted speech-language pathologist and a member of Respondent's AAC/AT team. T vol 4 852:8-15 (T of Warren). Resp't Ex. 337. She administered AAC evaluations beginning in 2018 and testified that Student's articulation "is not at a point where

people who don't necessarily know Student very well would be able to understand what he's saying." T vol 4 860:25-861:2; 855:8-16 (T of Warren).

Christina Cothran (T vol 4 pp 910 - 954)

46. Christian Cothran was Student's special education teacher in the general separate education classroom during the 2024-2025 school year and attended September 12, 2024, November 13, 2024, and April 22, 2025 IEP meetings. Stip. 4; Stip. Exs. 109, 114 & 136.

47. She has training in early childhood and special education but received limited training in the Specialized Program Individualizing Reading Excellence (SPIRE) reading program. T vol 4 914:16-19 (T of Cothran). SPIRE is a research-based reading program she used for reading instruction for all students in her general separate classroom including Student T vol 4 914:3-22 (T of Cothran).

48. Ms. Cothran testified that all students in the general separate classroom received SPIRE, and that she did not receive training on Student's AAC device until Spring 2025. T vol 4 943:10-1 (T of Cothran). She further testified that the "general separate" classroom was in a separate building only for students with disabilities and that there is no functional difference between that setting and a self-contained placement. T vol 4 948:11-14; 953:7-10 (T of Cothran). Her testimony is generally credited, though statements about the timing and basis of placement decisions are weighed in light of documentary evidence, including text messages referencing Student as a "possible gen sep student" and her significantly discrepant adaptive rating scales in the 2025 Psychoeducational Evaluation. *See* Pet. Ex. 82; T vol 4 950:6-8, 951:9-18 (T of Cothran); Stip. Ex. 133 pp 0689-0692.

Patricia Williams (T vol 4 pp 956 - 990)

49. Ms. Williams was Student's fourth-grade general education teacher during the 2024–2025 school year and attended the September 12, 2024, November 13, 2024, and April 22, 2025 IEP meetings. T vol 4 958:9-10 (T of Williams); Stip. 41. Ms. Williams has been a teacher at Summersill Elementary School for ten (10) years. Resp's Ex. 334 p 2191. She testified candidly about her frustrations teaching Student and managing his behaviors in the general education classroom, describing him as a distraction who required frequent redirection. T vol 5 1091:7-1092:2 (T of Williams). Ms. Williams' adaptive behavior ratings in the 2025 Psychoeducational Evaluation reflect a depiction of Student's self-help abilities that is significantly inconsistent with his demonstrated functioning and therefore of limited reliability. Stip. Ex. 133, pp 0689–0692. Her testimony also reflected concern regarding the challenges of inclusion. In weighing this evidence, her ratings and testimony were considered in light of the broader record documenting Student's progress and capabilities in inclusive settings.

Statute of Limitations

50. The original Petition was filed on May 9, 2025 and amended on July 21, 2025. Absent tolling, the one-year statute of limitations under North Carolina law and the IDEA would bar claims arising before May 9, 2024. Respondent contends that all claims prior to that date were time barred.

51. Petitioners argue that no claims are time barred because all the Prior Written Notices were "deficient" and "d[id] not contain the date by which a due process petition must be filed as required by N.C. General Statute 150B-23." Am. Pet. ¶¶ 17, 32, 38, 47, 84, 90, 99, 112, and 129. As a result, Petitioners contend that they never knew the deadline for filing their petition. Petitioners also assert various misrepresentations and withholding exceptions to toll the deadline. However, Petitioners do not dispute they received a Prior Written Notice at every meeting or that every Prior Written Notice contained information about how to obtain the Procedural Safeguards (aka the "*Handbook*").

Facts Pertaining to the Statute of Limitations

52. Mother has never missed an IEP meeting for Student when she was invited to attend. T vol 4 741:3-10 (T of Mother). The Prior Written Notices for each IEP meeting were reviewed in full by the IEP team at the end of the IEP meetings. T vol 4 748:2-10 (T of Mother). Student's IEP team met multiple times per year to discuss his needs. T vol 4 741:11-17 (T of Mother).

53. At these IEP meetings, Mother expressed her concerns regarding Student and those concerns were discussed by the IEP team. T vol 4 745:7-25; 746:1-8 (T of Mother). Mother has been dissatisfied with Student's special education services for a long time. T vol 1 44:15-21 (T of Mother). As far back as 2021, Mother had expressed to Student's IEP team that she wanted Student to be fully included in the general education classroom. *Id.* Each year, Mother was provided information regarding Student's progress, including progress on his IEP goals, report cards, and benchmark assessment data. T vol 4 746:17-25; T vol 4 747:1-5 (T of Mother).

54. With respect to Extended School Year (ESY) services, these services were discussed during at least one IEP meeting each school year. Mother participated in every meeting at which ESY was determined, and she knew by the summer following the IEP meeting that Student did not receive ESY. Mother testified that she knew she disagreed with the decision that he did not qualify for ESY services each summer that he did not have ESY. T vol 4 750:21-25; 751:1-16 (T of Mother).

Procedural Safeguards (*Handbook*)

*The Parent Rights and Responsibilities in Special Education Notice of Procedural Safeguards (*the *"Handbook")*

55. The North Carolina State Board of Education's Exceptional Children's Division issued the "*Parent Rights and Responsibilities in Special Education – Notice of Procedural*

Safeguards" (the "*Procedural Safeguards Handbook"* or *"Handbook"*), which sets out a parent's rights under the IDEA, including how to file a due process petition and the one-year filing deadline along with the two statutory exceptions. Resp't Ex. 27. Federal law requires local educational agencies (LEA) to provide parents with the procedural safeguards notice at specific times: at least once each school year, upon initial referral or parental request for evaluation, upon receipt of the first State complaint or due process complaint in a school year, upon reevaluation, and upon parental request. 20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a). Unlike a Prior Written Notice—which must be issued whenever the LEA proposes or refuses to initiate or change identification, evaluation, educational placement, or the provision of FAPE—the procedural safeguards notice is not required to be given at every IEP meeting. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a). But if offered and a parent declines the *Handbook*, this must be documented. 34 C.F.R. § 300.503(b)(4).

56. The purpose of the *Procedural Safeguards Handbook* is to "provide parents of a student with disability notice containing a full explanation of the procedural safeguards available under the IDEA and the accompanying federal regulations." Resp't Ex. 27 p 0092. The *Procedural Safeguards Handbook* emphasizes to parents that:

> **It is important that you understand the Procedural Safeguards (legal rights) provided for you and your child with a disability. Staff is available to assist you in understanding your rights and will provide further explanation upon your request. If you have any questions or like additional information, please contact the Exceptional Children's (EC) Department in your local LEA.**

Resp't Ex. 27 p 0089 (bold in original)

57. Contact information for these resources is provided to parents for inquiries about their rights. *Id.* The *Handbook* emphasizes that: "**It is critical for parents to understand both their rights and responsibilities in the special education process.**" Resp't Ex. 27 p 0092 (bold in original). Parents have both rights and responsibilities in ensuring the provision of a FAPE to their children with disabilities.

58. These responsibilities include filing a timely petition contesting the appropriateness of a child's special education programming. Specific, detailed information about how to file a due process petition and the hearing process is included in the *Handbook*. *Id*. pp 0115-0119. The *Handbook* contains the one-year deadline to file a due process petition contesting a final LEA decision and the two exceptions to the timeline. *Id*. p 0118.

59. The record showed that Mother received the *Handbook* on multiple occasions, including before 2020, and again when she signed consent forms acknowledging receipt on November 30, 2021 and November 20, 2023. Resp't Exs. 1 & 27; T vol 1 58-59:9-1 (T of Mother). She admitted she received and/or was offered the *Handbook* within the limitations period (e.g., in 2024–2025) and acknowledged that the *Handbook* she received included explicit language instructing Petitioners to request a hearing within one year of a final LEA decision. T vol 1 50-51:23-6 (T of Mother).

60. Between 2020 and the filing of the Petition, Mother recalls being "handed" a *Procedural Safeguards Handbook* at either the September 2024 or November 2024 IEP meetings, and again at the April 2025 IEP meeting. T vol 4 740:1–6 (T of Mother). These meetings all occurred within the one-year limitations period. In addition, unlike Prior Written Notices issued before the 2024–2025 school year, the Prior Written Notices for these meetings expressly documented that copies of all documents—including the *Procedural Safeguards Handbook*—were provided to the parent at the conclusion of the IEP meeting. *See* Stip. Ex. 109 p 0615 (September 12, 2024 PWN); Stip. Ex. 114 p 0628 (November 13, 2024 PWN); and, Stip. Ex. 136 p 0737 (April 22, 2025 PWN).

61. Although at the hearing, Mother could not recall receiving any *Procedural Safeguards Handbooks* outside the one-year statute of limitations period (T vol 4 754:19–24 (T of Mother)), she did not testify that the *Handbook* was not offered at those earlier meetings. The record reflected that, during that period, Mother signed multiple acknowledgments indicating she had received the *Procedural Safeguards Handbook*. At the November 2021 IEP meeting, Mother signed a Consent for Evaluation/Reevaluation form acknowledging that she had "received the *Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*." Stip. Ex. 21 p 0014; Stip. Ex. 23; T vol 4 749:10–22 (T of Mother). Similarly, at the March 15, 2022 IEP meeting, Mother signed an acknowledgment indicating she received a "copy of the *Parent Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*." Stip. Ex. 28 p 0198.

62. The May 15, 2023 Prior Written Notice documented that "a copy of the *Parent Rights and Responsibilities in Special Education: Notice of Procedural Safeguards* was offered to the parent." Stip. Ex. 50. Mother signed both the Prior Written Notice and the IEP. *Id.*; Stip. Ex. 49 p 0380. Although Mother carefully testified that she did not receive a *Handbook*, she did not dispute that one was offered but she declined.

63. At the November 20, 2023 IEP meeting, Mother signed a Consent for Evaluation/Reevaluation acknowledging that she had "received the *Parents' Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*." Stip. Ex. 53 p 0388; T vol 4 750:3–20 (T of Mother). She also testified to additional receipts or offers of the *Handbook* within the limitations period and acknowledged that the *Handbook* she received contained explicit language advising parents to request a hearing within one year of a final LEA decision.

64. Giving Petitioners the benefit of the doubt, the evidence establishes that, at the latest, Mother received a *Procedural Safeguards Handbook* on November 20, 2023—prior to the start of the one-year statutory period.

Prior Written Notice (PWN)

65. Although Petitioners did not receive a *Procedural Safeguards Handbook* at every statutorily mandated event, Respondent issued a Prior Written Notice at each IEP meeting documenting the IEP Team's final decisions and advising Petitioners that those decisions

constituted the final decision of the local educational agency and could be challenged through due process as described in the *Handbook.* Each Prior Written Notice also informed Petitioners how to obtain the *Handbook* and included the following advisement:

> This is the final decision of the local education agency. If you (Parent, Guardian or Adult Student) disagree, you are entitled to the due process rights that are described in the *Parent Rights and Responsibilities in Special Education: Notice of Procedural Safeguards* [*Handbook*].
>
> For an explanation of the rights described in the *Notice of Procedural Safeguards* [*Handbook*], or an additional copy, please contact your school principal or local director/coordinator of Exceptional Children Programs. Additional information can be obtained through the Exceptional Children's Assistance Center (ECAC), 1-800-962-6817.

See Stip. Exs. 5, 12, 18, 23, 30, 35, 39, 43, 50, 55, 61, 106, 109, 114 & 136 (italics in originals).

Petitioners Knew or Should Have Known About the Statute of Limitations

66. Based on the entire record, including testimony and documentary evidence concerning each IEP meeting, the Undersigned finds Petitioners knew or should have known about the statute of limitations.

1. *Knowledge of Respondent's Final Decisions*

67. For each challenged IEP meeting between 2020 and 2025, Mother attended the meeting, actively participated in discussions regarding goals, services, ESY, evaluations, and placement, and received both the IEP and PWN summarizing the team's final decisions. She consistently expressed disagreement with various decisions at the time (e.g., denial or limitation of 1:1 aide support, ESY denials, and placement decisions) and testified that she had long been dissatisfied with Student's program and wanted him fully included in the general education classroom.

68. Each year she also received progress reports, benchmarks, and report cards reflecting Student's progress under the IEPs.

69. The record therefore established that, as to each IEP meeting, Petitioners knew or should have known of Respondent's final decisions and the nature of the alleged violations when those decisions were made and to be implemented.

2. *Tolling Based on Procedural Safeguards*

70. The evidence also showed that Respondent did not always provide the *Handbook* at every event required by IDEA. To the extent Petitioners did not previously have actual notice of the one-year limitations period, the statute of limitations was tolled until they actually received the *Handbook* containing the deadline. Once Petitioners received the *Handbook* and thus knew or

should have known of the one-year filing requirement, the limitations period began to run for all then-known claims.

3. *When Statute of Limitations Began to Run On All Prior Claims*

71. By November 30, 2021, Mother had signed written acknowledgment that she received the *Handbook*. By that date, she knew or should have known, both of Respondent's final decisions from earlier IEP meetings and of her obligation to file any due process complaint within one year. At the latest, by November 20, 2023, when she again signed for and acknowledged receipt of the *Handbook*, any tolling attributable to earlier procedural failures ceased, and Petitioners were on notice of the one-year deadline for all previously known claims, including those arising from IEP meetings in 2021–2023.

72. Petitioners did not file their original Petition until May 9, 2025, well more than one year after November 20, 2023, and more than one year after May 9, 2024. All claims prior to May 9, 2024 are time barred absent an exception.

Exceptions

73. Petitioners invoked the IDEA's two statutory exceptions: (1) specific misrepresentations that the LEA had resolved the problem forming the basis of the complaint; and (2) withholding of information required to be provided under Part B of the IDEA.

74. The record reflects various alleged misstatements or omissions in PWNs (e.g., reported service minutes or segregation time; failure to record certain parental proposals or refusals; statements about administrative convenience; characterizations of parental agreement on ESY) and Petitioners' disagreements with the IEP team's decisions regarding ESY, 1:1 support, FBA/BIP, AT evaluations, and placement.[1]

75. In each instance, however, Petitioners were present at the meetings, aware of what was decided, and in many cases immediately disagreed with the decisions. The evidence does not

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[1] *See* Am. Pet. ¶¶ 10, 11, 17, 35 (IEP team and January 8, 2021 PWN misrepresented that Student segregated 36 days instead of the actual 45 days), 20 (Respondent at January 2021 IEP meeting misrepresented that Student had to be segregated from nondisabled peers for an hour on already mastered goals), 32, (May 2021 PWN failed to document IEP teams refusal of Parent's request for 1:1 services), 36 (June 2021 PWN misrepresented to Parent that IEP team would meet again before 2021-2022 school year), 82 (IEP team misrepresented to Parent that additional data was needed for 1:1 aide support during the entire school day), 86 (May 2022 PWN misrepresented that Parent agreed to denial of ESY), 103 (November 2022 PWN misrepresented service times were changed to allow Student to make progress but was really for administrative convenience); 114 (May 2023 PWN misrepresented Student ineligible for ESY because of his progress towards goals); and 129 (November 2023 PWN failed to provide requisite notice for decision not to conduct a FBA or develop a BIP). One alleged misrepresentation occurred outside of an IEP meeting and not in a Prior Written Notice but was related to Student's need for 1:1 support. Am. Pet. ¶ 22 (misrepresented to Petitioner that intensive support plan had been sent to central office when it had not).

indicate that Respondent specifically misrepresented that it had resolved identified problems in a manner that reasonably prevented Petitioners from understanding the continued existence of a dispute or from timely filing. Nor does the record establish that Respondent withheld information required under the IDEA in a way that prevented Petitioners from learning of their rights or claims within the limitations period, particularly once the *Handbook* was provided.

76. Although Petitioners challenged many of Respondent's decisions, the record contains no testimony or evidence disputing the accuracy of the contents of Prior Written Notice, including the statements or concerns attributed to Petitioners. In their Amended Petition, Petitioners primarily alleged that the Prior Written Notices "withheld" the deadline for filing a contested case petition and that certain Notices omitted information—such as addressing the need for an FBA or AAC-AT evaluation, explaining the failure to conduct those evaluations, or providing a rationale for the lack of full inclusion. *See* Am. Pet. ¶¶ 17, 32, 35, 38, 84, 90, 99, 110, & 12. Even if these omissions constituted procedural deficiencies, Petitioners were still aware at the time that no FBA or AAC-AT evaluation had been completed and had repeatedly raised concerns about the lack of full inclusion.

FBA and AAC-AT Evaluation

77. Petitioners' claims regarding the FBA and AAC-AT evaluation stem from the decisions initially made at the November 18, 2022 IEP meeting which were not revisited at subsequent IEP meetings. Petitioners claim they were prevented from filing their claims on time because the Prior Written Notice from the November 18, 2022 IEP meeting did not provide them with the requisite notice or rationale for the team's decision not to conduct an FBA or AAC-AT evaluation.

78. At this IEP meeting, Mother received Prior Written Notice of the IEP team's decision not to conduct an FBA. Stip. Ex. 43. Namely, Respondent explained, the IEP team considered requesting an FBA "due to Student's behavior concerns, but the team rejected that and determined collecting data and implementing a Behavior Support Plan would be the first step if behaviors interfere with his learning." Stip. Ex. 43 p 0336. Afterwards, Petitioners knew that the subsequent IEP teams had not revisited conducting an FBA. Petitioners' disagreement with the Team's decision years later is not enough to excuse them from the one-year filing deadline.

79. Conducting a FBA was revisited in the third grade at the November 20, 2023 IEP meeting. The November 2023 IEP team discussed Mother's concerns about Student's behavioral needs at this meeting. T vol 4 735:3-7 (T of Mother). During the entire 2023-2024 school year, Student had only three minor incident referrals in April and May 2023 for off-task behavior, horseplay, and hitting a student which resulted in loss of privileges only. Pet. Ex. 38 p 110**.** No one on the IEP team, including Mother, proposed conducting an evaluation related to Student's behavior at this meeting. T vol 4 736:4-7 (T of Mother). This decision is consistent with Mother's acknowledgement that: "[Student] is doing well with positive behaviors with transitioning and mom wants them to continue." Stip. Ex. 54 p 0389. Based on this and Student's lack of maladaptive behaviors, a FBA was not necessary at that time.

AAC Systems and Strategies

80. Nor was an AAC-AT evaluation needed before the March 2024 AAC-AT Evaluation. Since the November 18, 2022 IEP, Student had access to AAC systems and strategies across his learning environment. Starting then, the speech/language provider began providing training, consultation, and collaboration with Student's educational team on functional communication and AAC systems and strategies to support Student's communication through his educational environment. Stip. Ex. 42 p 0331.

81. Student's November 20, 2023, IEP also provided that, once per month for twenty minutes, a speech-language provider will provide training, consultation, and collaboration with Student's educational team on functional communication and AAC systems and strategies to support Student's communication throughout his educational environment. Stip. Ex. 54 p 402. At this meeting, the IEP Team decided to conduct an AAC evaluation for Student Stip. Ex. 55 (Prior Written Notice); Stip. Ex. 54 (IEP); and, Stip. Ex. 56 (Reevaluation Report).

March 18, 2024 AAC-AT Evaluation

82. On March 18, 2024, Respondent's speech/language pathologist completed an AAC-AT evaluation of Student Stip. Ex. 59 (AAC-AT Evaluation). The IEP team convened an addendum meeting on March 20, 2024, to review the results of the AAC-AT evaluation. Stip. Ex. 61 p 0465. The March 20, 2024 IEP continued to include access to AAC systems and strategies as accommodations. Stip. Ex. 60 p 458. The IEP Team added "access to AAC systems" to Student's IEP as an accommodation across settings, and information about service provider and staff training, as needed. Stip. Ex. 60.

83. The IEP team met again on May 23, 2024, to determine his ESY eligibility and found him eligible for ESY in the area of Speech Language Services to further equip him to use the AAC systems. Stip. Ex. 105 (May 23, 2024, IEP); Stip. Ex. 106 (May 23, 2024, Prior Written Notice). Thereafter, Student continued to have access to AAC systems and strategies as assistive technology accommodation in his IEPs.

84. Petitioners disputed only the timeliness of the AAC–AT evaluation, not its substantive adequacy. *See* T vol 2 296–297:22–2 (T of Burnette). Petitioners also acknowledged that they were aware no AAC–AT evaluation had been conducted prior to March 18, 2024. None of Petitioners' experts were speech-language pathologists, and therefore, none were qualified to offer opinions regarding the appropriateness, methodology, or sufficiency of the AAC–AT evaluation. In the absence of expert testimony addressing the evaluation's substantive adequacy, the record contains no competent evidence that any alleged delay in conducting the AAC–AT evaluation resulted in educational harm or denied the student meaningful access to services.

85. Accordingly, Petitioners' evidence established only a dispute about timing, not a showing that the timing of the AAC–AT evaluation rendered it inappropriate or caused a deprivation of educational benefit.

Summation of the Statute of Limitations Issue

86. Considering the above, the Undersigned finds that the one-year statute of limitations was tolled only until Petitioners actually received the *Procedural Safeguards Handbook*, which occurred no later than November 20, 2023. Once Petitioners received the *Handbook*, the limitations period began to run on all claims they knew or should have known from the IEP meetings and Prior Written Notices. No misrepresentation or withholding exception applied to extend the limitations period for claims arising before May 9, 2024. Petitioners filed their Petition on May 9, 2025—more than one year after May 9, 2024 and more than one year after their latest acknowledged receipt of the *Handbook*. Accordingly, all claims based on events occurring before May 9, 2024 are time barred, and Petitioners' asserted exceptions did not excuse their untimely filing.

87. Before proceeding to the merits of the FAPE and implementation claims arising on or after May 9, 2024, it is necessary to address certain IEP Team decisions that predate the limitations period but whose implementation extended into it. Although the FAPE claims associated with the November 2023 IEP are time barred, the implementation of that IEP during the statutory period remains properly before the tribunal and must be evaluated.

88. Otherwise, the substantive analysis therefore proceeds only on the implementation claims regarding the November 2023 IEP and FAPE claims arising after May 9, 2024.

2023-2024 School Year – Third Grade

89. In August 2023, Student began third grade at Summersill Elementary School. SOL Stip. 34.

November 20, 2023 IEP Team Meeting

90. Based on Student's progress towards his IEP goals in the previous IEP, the November 20, 2023 IEP Team significantly decreased Student's pullout time in a special education classroom. The November 2023 IEP provided for access to his nondisabled peers the majority of his day (61.8%). *See* Stip. Ex. 54 p 402; Stip. Ex. 94 p 561; and, Stip. Ex. 95.

91. Student's November 20, 2023, IEP also provided that, once per month for twenty minutes, a speech-language provider will provide training, consultation, and collaboration with Student's educational team on functional communication and AAC systems and strategies to support Student's communication throughout his educational environment. Stip. Ex. 54 p 402.

Student Educational Performance at the End of Third Grade

92. By the conclusion of the third grade, Student had earned As and Bs in all grade-level coursework. Pet. Ex. 51 p 16. His end of year mClass reading score increased from 275 to 362, and his iReady reading diagnostic reflected 317% annual typical growth, placing him at the second grade level in vocabulary and comprehension. Am. Pet. p 21 ¶ 139; Stip. Ex. 92. Although still below grade level, these data demonstrated clear and measurable academic progress in reading.

93. In math, Student began third grade performing at the kindergarten level across all domains. Pet. Ex. 8 p 0024. By year's end, his overall iReady placement had increased by two grade levels to an early third grade level, with mid-third-grade performance in numbers and operations—the most significant math progress he had made since first grade. Pet. Ex. 8 pp 0020–0024. His end of year iReady math diagnostic further reflected 340% annual typical growth. Am. Pet. p 21 ¶ 140; Pet. Ex. 8 p 0024.

94. The September 12, 2024 Reevaluation Report also documented progress on his IEP goals in behavior, math, reading, and written expression. Pet. Ex. 51 pp 171–72. The Parties stipulated that Student made progress throughout third grade. T vol 2 257–58:11–8.

95. Taken together, this data showed Student ended third grade having achieved meaningful academic and functional growth and was well placed to begin fourth grade. He was making an appropriate rate of progress in light of his unique circumstances while being educated 61% of the time with his nondisabled peers. On this record, there was no indication that Student required a more restrictive setting; rather, the evidence reflected that he entered fourth grade in a stable and educationally successful position.

Claims Within The Statutory Period

96. The following substantive analysis therefore proceeds only with the implementation of the November 2023 IEP which overlapped the 2024-2025 school year and claims arising on or after May 9, 2024.

FAPE and LRE Violations – May 2024 ESY; September and November 2024 IEPs; and April 22, 2025 IEP

97. All challenged actions and IEPs—the May 23, 2024 ESY decision; the September 12, 2024 reevaluation and IEP; the November 13, 2024 annual IEP; and the April 22, 2025 eligibility/IEP—occurred within the one-year limitations period and were properly before the Tribunal.

May 23, 2024 ESY Determination

ESY Decision and AAC "Window of Opportunity"

98. On May 23, 2024, the team met for an addendum focused on ESY and Student's transition to fourth grade. Stip. Ex. 105 p 0581. No educational services were changed from the prior November 2023 IEP. Am. Pet. p. 20 ¶ 135; *see* Stip. Ex. 105 p 0596.

99. The IEP team found ESY eligibility only in communication, concluded that an "emerging critical skill" in a "window of opportunity" justified limited ESY speech therapy—five 30-minute sessions between July 1 and August 9, 2024. Stip. Ex. 106 p 0607 The ESY decision relied on a March 2024 AAC evaluation documenting that Student was increasingly using his AAC device to imitate speech and repair communication breakdowns. *Id.* Petitioners' expert persuasively opined that this "window of opportunity" in AAC learning did not pertain to speech alone, because the device functioned as Student's "voice" across all academic areas, so ESY limited to speech therapy failed to address the central role of AAC in all instructional areas. T vol 2 392:1-11 (T of Burnette).

100. This same rationale supporting ESY for communication also supported ESY in academics, given that effective AAC use was necessary for Student to access reading, math, and content instruction.

Regression/Recoupment Evidence

101. This ESY conclusion was supported by the mCLASS data which showed Student had never recouped the reading skills achieved at the end of first grade—his most inclusive year in reading—despite subsequent services. T vol 2 393:17-19 (T of Burnette); *compare,* Stip. Ex. 92 *with* Stip. Ex. 118. By the end of the 2023-24 school year, when the May 2024 ESY decision was made, his mCLASS score (362) remained below his prior scores (394 at the end of first grade; 378 at the end of 2022-23), reflecting a pattern of regression and incomplete recoupment. Stip. Ex. 118.

102. The evidence was consistent with Petitioners' experts' opinions, based on multi-year mCLASS, iReady, and IEP progress data, that Student historically required ESY each summer for FAPE due to regression over breaks. T vol 3 554:14-19 (T of Felton); T vol 2 420:9-11 (T of Burnette); *see also*, T vol 2 373:11-374:7 (T of Burnette) (never recouped skills from first grade). Although outside the statute of limitations, Petitioners' experts opined that Student historically needed ESY after every school year due to regression over breaks evidenced by mClass, iReady, and IEP goals' progress reporting. T vol 2 275:23-276:4, 350:15-18, 374:8-10 (T of Burnette); T vol 3 527:12-15, 537:17-23, 545:6-9 (T of Felton) (needed ESY for FAPE).

103. While Petitioners acknowledged significant 2023-24 progress in both reading and math on iReady and mCLASS scores, they and their experts explained that evidence of some growth during the school year does not negate ESY eligibility where regression/recoupment patterns and AAC-related access needs show that, absent summer services, gains would likely be jeopardized.

104. Respondent did not present expert testimony rebutting Petitioners' regression/recoupment analysis, their interpretation of the AAC "window of opportunity," or their conclusion that ESY in academics as well as communication was required for FAPE. Considering

the unrebutted expert testimony and cumulative data, the May 23, 2024 limitation of ESY to speech services, despite broader ESY needs in academics linked to AAC-based access, supported a finding that Student was denied FAPE for the 2024 summer period.

2024-2025 School Year - Fourth Grade

September 12, 2024 Reevaluation Planning

105. At the start of fourth grade, the IEP team convened on September 12, 2024 to plan Student's triennial reevaluation. Stip. 33. The September 2024 IEP reflected only limited revisions to the November 2023 IEP—an addition to the parent-concerns section and updated testing accommodations—and was otherwise identical to the November 2023 IEP, under which Student continued to be mainstreamed for 61% of the school day. Pet. Ex. 48. Although Petitioners' allegations regarding implementation of the November 2023 IEP may proceed, any challenge to the substantive contents of that IEP, as carried forward unchanged into the September 2024 IEP, are time-barred.

106. The September 2024 IEP team determined reevaluation was needed to confirm Student's continued disability and need for special education and to inform programming but did not suspect any disability category other than Intellectual Disability–Mild (IDMI), his existing primary category, despite his known genetic disorder and OHI-type characteristics. Pet. Ex. 51 p 173.

107. The team formally planned only three evaluation components: (1) progress monitoring via two scientific-research-based (SRB) interventions targeting academic/functional skills; (2) a health screening; and (3) a psychoeducational evaluation including intellectual testing. Pet. Ex. 51 p 173. In practice, no SRB interventions were implemented, contrary to North Carolina Policy 1503-2.5(d)(7), which required at least two SRB interventions with documented progress monitoring, plus additional data (parent interview, social/developmental history), before confirming eligibility under any intellectual disability category. Stip. Ex. 134.

108. The Prior Written Notice from that meeting suggested a more comprehensive reevaluation (adaptive behavior, educational evaluation, motor evaluation/screening, observations, social/developmental history, parent conferences, review of existing data), aligning with State requirements for intellectual disability reevaluations in NC. Policy 1503-2.5(d)(7), but the components conducted did not match the Prior Written Notice description and omitted critical elements. Stip. Ex. 109 p 613.

109. Petitioners' experts testified that the September 2024 evaluation planning and execution were not sufficiently comprehensive and failed to assess all suspected areas of disability, including OHI and behavior, thereby violating IDEA and State policy. They further testified that the team's continued focus on the intellectual disability label, rather than his underlying genetic/OHI-related profile, facilitated a pattern of lowering expectations and increasing segregation based on category, not individualized need. Respondent offered no rebuttal expert testimony. The Tribunal agrees and finds that Respondent did not appropriately evaluate Student in all suspected areas, inappropriately focused only on IDMI instead of also considering OHI,

failed to provide adequate notice of specific evaluations, and did not conduct the required ID-related SRB interventions.

November 13, 2024 IEP (Goals/Services, Speech, ESY, LRE, and Implementation)

Present Levels, Goals, and Instructional Design

110. On November 13, 2024, the IEP team convened for Student's IEP annual review, revised the IEP goals and service delivery. Stip. 35. The November 2024 IEP team reduced Student's segregations from his nondisabled 31% of his instructional day. Pet. Ex. 57 (November 13, 2024 IEP); Stip. Ex. 114 (November 13, 2024 PWN).

111. Even though, the November 2024 IEP reduced pull out, this IEP reflected serious misalignments between Student's present levels of performance and his goals, particularly in reading and math. For reading, the reevaluation data indicated that Student could read 68 of 80 sight words, yet the IEP's PLOPs reported only 43% accuracy on DOLCH high-frequency words and referenced "Trial 1, Trial 2, Trial 3" without specifying timing, conditions, or frequency. *Compare* Pet. Ex. 57 p 183 *to* Pet. Ex. 51 p 17. This progress monitoring was "very unclear," with Respondent's own data showing inconsistent performance that suggested Student was not receiving sufficient practice or intensive instruction in word reading to develop consistent proficiency. T vol 2 409:15-410:3 (T of Burnette); Pet. Ex. 57 pp 181-82; and, T vol 3 558:2-3, 13-21 (T of Felton).

112. Instead of appropriate reading instruction, the IEP team simply repeated the existing DOLCH high-frequency word goal and removed prior phonics/sound-symbol goals. Pet. Ex. 57 p 191. Dropping phonics goals indicated the IEP team was "starting to lower and lower the expectations" and abandoning a coherent, evidence-based literacy sequence. T vol 2 413:1-5 (T of Burnette). Narrowing reading instruction almost exclusively to high-frequency words, without systematic phonics or spelling, amounted to "stop[ping] trying to teach [Student] to be a reader," which was inappropriate for any student. T vol 3 559:16-19 (T of Felton).

113. Nor were the reading and written expression goals aligned with the Specialized Program Individualizing Reading Excellence's (SPIRE) structured-literacy sequence Respondent's EC teacher purported to use in the general separate classroom, and that Student required to be implemented with fidelity for his needs, not the entire EC class. T vol 3 559:16-19 (T of Felton).

114. In math, the November 2024 IEP documented regression. While Student had previously been reported as independently performing two-digit addition with and without regrouping, but based on the November 2024 IEP math present levels now, met that goal with only 35% accuracy, and continued to use "touch points" even though his present levels indicated Student could perform mental calculations. *Compare* Pet. Ex. 57 p 183 *with* Stip. Ex. 54 p 392; T vol 2 413:11-19 (T of Burnette).

115. The November 2024 IEP team reintroduced addition and subtraction with regrouping goals with slightly different wording, effectively repeating a previously mastered goal

instead of progressing toward more grade-aligned objectives. Pet. Ex. 57 p 191. This further evidenced lowered expectations and failures to design appropriately ambitious, forward-moving goals for Student T vol 2 413:23-414:8; 416:14-15 (T of Burnette); and, Pet. Ex. 57 pp 191-93.

116. The November 224 IEP "goals were written like what's seen in a self-contained special education class [which Student was actually being served unbeknownst to Petitioners] and not aligned to the standard course of study." T vol 2 416:17-417:5 (T of Burnette); T vol 3 560:2-10 (T of Felton stating goals were inappropriate).

117. The November 2024 IEP goals were repetitive, not appropriately ambitious, often misaligned with the IEP's present levels which Respondent presented no evidence justifying. Moreover, Respondent presented no persuasive evidence that the November 13, 2024 IEP provided Student with FAPE in the LRE. Respondent offered no expert testimony contesting Petitioners' experts' conclusions that the IEP's goals/services were inappropriately written as though for a self-contained placement and were not adequately aligned with Student's unique needs.

Speech-Language Services and Behavioral Implications

118. The November 2024 IEP reduced Student's speech-language minutes, citing "increased difficulty maintaining engagement in therapeutic activities." Stip. Ex. 114 p 626. Difficulty with engagement was not a valid educational reason to reduce a core related service in an area of persistent need, and that such difficulties instead should prompt an FBA and development of behavioral supports to enable the student to access speech services. T vol 2 419:1-10 (T of Burnette).

119. This justification was consistent with a systemic pattern of pressure to generally reduce related services as students age and viewed as another instance of lowered expectations to Petitioners' experts. Petitioners, however, did not present a speech-language pathologist to opine that the reduction in speech minutes, standing alone, denied FAPE, and therefore did not establish that this dosage change constituted an independent FAPE violation. However, the rationale used—cutting services because Student struggled to engage—supports the broader pattern: when behaviors interfered with engagement, Respondent reduced services or increased segregation instead of conducting an FBA to seek behavioral supports. In that sense, the speech language services' reduction was probative of the Respondent's approach to behavior and expectations, reinforcing Petitioners' global FAPE/LRE denial claims.

ESY Determination in November 2024

120. Departing from prior practice of deferring ESY decisions until late spring, the November 2024 IEP team preliminarily found Student ineligible for ESY, asserting "no data to support that he regresses during extended breaks or that recent gains will be jeopardized without continued instruction." Stip. Ex. 114 p 626; Stips. 13 (May 11, 2021); 23 (May 15, 2022); 28 (May 15, 2023), 32 (May 23, 2024). This conclusion was inconsistent with existing data showing regression in math skills and attention, and Petitioners' expert opined that such regression warranted ESY for 2024-25. T vol 2 419:18-8 (T of Burnette). While, the November IEP team agreed to revisit ESY after the reevaluation, at the April 22, 2025 IEP meeting, the same IEP team

again denied ESY despite cumulative regression/recoupment and AAC-access evidence. Stip. Ex. 114 p 626; Stip. Ex. 135 p 0732; T vol 2 420:9-11 (T of Burnette).

121. Regardless of when the IEP meeting was held, Student required ESY to receive FAPE and the failure to provide ESY for the summer after the 2024-25 school year, denied Student a FAPE. Respondent proffered no expert testimony or cogent analysis contesting Petitioners' ESY opinions or regression-based interpretations. The unrebutted expert evidence thus supported Petitioners' claim that the November 2024 and subsequent April 2025 ESY determinations contributed to the denial of FAPE to Student

Over-Implementation of November 2023, September 2024, and November 2024 IEPs' Service Deliveries

122. On paper, the November 13, 2024 IEP reduced Student's specially designed instruction (SDI) for reading, math, and reading[2] outside the regular education classroom to 420 minutes per week (about 30%, depending on calculation method) which equated to almost 70% mainstreaming. Petitioners admit this was the least amount of segregation in Student's IEP history. Am. Pet. p 23 ¶ 160. Even so, Petitioners' experts concluded that the November 2024 IEP did not provide FAPE in the LRE because: (1) all goals could be implemented in the regular classroom with supplementary aids/services; (2) the IEP did not demonstrate that Student could not continue to benefit from mainstreaming; and (3) there was no evidence he met the *DeVries/Roncher's* "disruptive force" threshold. T vol 2 416:14-15; 417:6-9 (T of Burnette); T vol 3 560:11-14 (T of Felton).

123. To the extent expert witnesses offered opinions regarding the appropriateness of the IEP's written service delivery model, such opinions have limited relevance where the evidence establishes that the IEP was not implemented as written. In such circumstances, the inquiry shifted from the adequacy of the IEP on its face to the adequacy of its implementation. The substantive appropriateness of the written IEP was not outcome-determinative as FAPE was denied because of the inappropriate implementation.

124. Since the beginning of the 2024-2025 school year, neither the November 2023 IEP[3] (36% pull out), September 2024 IEP (36% pull out) nor the November 2024 IEP (31% pullout) were implemented as written. In a March 31, 2025 email, the EC teacher (Cothran) admitted she was removing Student from the regular classroom 48% of the day with service delivery of five days per week for reading and math and three days per week for writing—different than the four days a week pull-out specified in the November 2023 and September 2024 IEPs and far in excess

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[2] Pull out for related services is not included nor special education classroom SDI for behavior because services were delivered in the general education setting.

[3] November 2023 Annual Review IEP, the service delivery was revised again to: writing 15 minutes, math 60 minutes, reading 60 minutes 4 times a week in the special education setting with behavior in the general education setting 10 minutes 4 times a week. Stip. Ex. 54 p 0401. This totals 135 minutes a day or 675 minutes per week a 36% daily segregation (375 instructional minutes per day) and weekly (1,875 instructional minutes per week). Stip. Ex. 94 p 561, *compare* Resp't Pro FD pp 33-34 (38%).

of amount of pull-out specified in the November 2024 IEP. Pet. Ex. 82; T vol 2 422:14-15 (T of Burnette stating this is beyond what is in the IEP).

125. At hearing, the EC teacher admitted pulling Student out five days per week for reading and math due to her schedule and confirmed that all fourth-grade EC students she served received the same SPIRE lesson at the same time, meaning instruction was group-driven rather than individualized. T vol 4 917:7-9 (T of Cothran). Using her actual schedule, Petitioners calculated that Student was receiving approximately 900 minutes per week of academic SDI in the special education classroom (about 48% of the school week), rather than the 420 minutes (31%) contemplated by the November 2024 IEP.

126. Due to her unilateral decision, Student was "missing essential class time in the general education curriculum and his pull-out services were now impeding his ability to make progress in the general education content" and affecting his grades. T vol 2 427:8-16 (T of Burnette). Student's grades were markedly lower for Quarter 3, and supported Mother's concerns documented in October 1, 2024, that Student's "grades and missing work assignments were due to his pull-out time due to his Special Education service minutes." Stip. Ex. 134 p 695.

127. The evidence proved that since the beginning of the 2024-2025 school year, without Parent participation or reconvening an IEP meeting, Respondent unilaterally over-implemented the November 2023, September 2024, and November 2024 IEPs in place at the time and removed Student from the regular classroom more than required, for reasons of administrative convenience and group scheduling rather than individualized need, thereby failing to implement the IEPs as written and significantly increasing segregation. Respondent's unilateral decision denied Petitioners meaningful participation in the IEP decision making process and substantively denied Student a FAPE in the least restrictive environment.

Least Restrictive Environment

128. The yardstick for mainstreaming is not mastery of the general-education curriculum for mainstreaming to remain a viable option. Rather, the appropriate yardstick is whether Student, with appropriate supplemental aids and services, can make progress toward his IEP's goals in the regular education setting.[4] According to the Fourth Circuit Court of Appeals' *DeVries/Roncker* analysis[5] only three factors that could defeat the presumption of a general education classroom placement which are: (1) Student would not benefit from mainstreaming; (2) any marginal benefits received by Student from mainstreaming are far outweighed by the benefits gained from services that could not be feasibly provided in the non-segregated setting; or (3) Student was a disruptive force in the non-segregated setting. As demonstrated below, based on that analysis, the over implementation of the IEPs during the 2024-2025 school year and the placement decision of the April 2025 IEP team inappropriately denied Student a FAPE in the LRE.

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[4] *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779, 793 (6th Cir. 2018).

[5] *DeVries v. Fairfax Country School Board*, 882 F.2d 876, 879 (4th Cir. 1989) (citing *Roncker v. Walter*, 700 F. 2d 1058, 1063 (6th Cir. 1983).

April 22, 2025 IEP

129. On April 22, 2025, the IEP team convened to review Student's reevaluation, determine eligibility, and revise his IEP. Stip. 38. The meeting invitation identified reevaluation, eligibility, and review/revision but did not indicate that a significant change in placement would be considered. *See* Pet. Ex. 89 p 0574 (Invitation to Conference).

130. The documents generated at the meeting, April 2025 Prior Written Notice and Eligibility Determination, indicated that: Student was passing all academic and elective classes for the two grading periods preceding the meeting, with grades ranging from 74 (Social Studies) to 96 (math), and had satisfactory performance in specials; and his conduct required improvement but discipline consisted of relatively minor consequences and limited office/minor referrals, mainly in non-instructional settings. Furthermore, the Prior Written Notice stated Student was "progressing and making gains" in math, reading, writing, and behavior with support. His iReady and mCLASS data showed continued reading progress, including a 23-point improvement on the April 2, 2025 iReady reading diagnostic and end-of-year mCLASS gains from 272 to 350. Student had made his strongest reading gains when he received the inclusive, push-in support with reduced pull-out time service delivery found in the predecessor November 2024 IEP.

131. Based on this positive information, the IEP Team updated the service delivery in the April 22, 2025 IEP without changing any of the goals on which the service delivery was supposed to be based.[6] *Compare* Stip. Ex. 135 pp 719-22 *with* Pet. Ex. 57 pp 191-94. The April 2025 IEP team reported it "reviewed [Student]'s service minutes and proposed changes to match his current needs." Stip. Ex. 136 p 733. The service delivery changed to five (5) days each week in the special education setting in all areas for a 60% pull out consistent with the general separate classroom schedule but not consistent with the least restrictive setting. Stip. Ex. 135 p 0722.

132. The service deliveries for reading and written expressions were inappropriate. T vol 3 560:20-23 (T of Felton). The IEP team also added a 60-minute-per-day "Academic Skills" service block in the special education setting without identifying corresponding specific, measurable goals. *Compare* Stip. Ex. 135 pp 719-721 *with* p 722. The EC teacher later testified that "academic skills is what makes up the other minutes in the classroom" regardless of Student's needs. T vol 4 947:2-3 (T of Cothran). This academic skills block of time represented undifferentiated, segregated instruction not anchored in individualized goals. Based on the April 2025 IEP, the majority of Student's instructional school day would be away from his non-disabled peers.[7]

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[6] The United States Department of Education's OSEP, Questions *and Answers on the Least Restrictive Environment LRE Requirements of the IDEA* (1997) states that placement cannot be determined before goals are developed because the goals drive the placement. Respondent did not review or revise goals before determining placement.

[7] Prior to the unilateral change in placement and April 2025 IEP, excluding related services, Student was segregated from his nondisabled peers for academic and functional special education as follows: 16.4% (2021-2022 Blue Creek); 17.6 % (2022-2023 Blue Creek) and 40% (Summersill); 38% (2023-2024 Summersill); and 41% (2024-2025 Sept. 2024 IEP) & 31% (Nov. 2024 IEP) (Summersill).

133. The new service delivery aligned with the "general separate classroom" setting schedule not Student's unique needs. The "general separate" setting was not a "general" education separate setting as the name implies but instead a self-contained placement solely for children with disabilities and located in a building completely segregated from all regular education classes. T vol 4 948:11-14; 953:7-10 (T of Cothran). This was the most restrictive setting proposed thus far by the school-based members of the IEP team and was rejected by Student's Parents. Stip. Ex. 136 p 0737.

134. The April 2025 Prior Written Notice justified the change in placement because purportedly the new "service times will support [Student]'s growth and progress with the general education curriculum." Stip. Ex. 136 p 734. However, in the segregated class, "[h]e's not going to be accessing the general education curriculum" "so it can't support his growth and progress" because "the context isn't there." T vol 2 431:5-9 (T of Burnette). Yet, the same Prior Written Notice indicated Student was "progressing and making gains in [math, reading, writing, and behavior] but [stated he] require[d] support and assistance." Stip. Ex. 136 p 734. Which was contraindicated to him "making progress and gains in the general education setting … where he should stay because that would be access to his least restrictive environment . . . [and a] free, appropriate public education." T vol 2 432:2-7 (T of Burnette).

135. The explanation for this more restrictive placement in the April 2025 Prior Written Notice was explicitly linked to the Intellectually Disabled - Moderate scores ("three standard deviations below the mean") from the 2025 Psychoeducational Evaluation. Based on these scores, the school-based members of the IEP team concluded Student required "additional, direct instruction and supports" across settings, aligned with the self-contained classroom schedule while leaving goals unchanged. Stip. Ex. 136 p 734; T vol 2 430:16-24 (T of Burnette).

136. Student cognitive impairments became the justification for increased pull-out. T vol 2 337:20-23 (T of Burnette). Consistent with the bias documented in the research, Student "was placed in a more restrictive setting based on his eligibility alone and not on the fact that he was making progress." T vol 2 430:16-24 (T of Burnette). The April 2025 IEP team inappropriately looked at Student's area of eligibility instead of his unique circumstances and based on his eligibility alone place him in a more restrictive setting with lower expectations for his achievement. T vol 2 337:20-338:5 (T of Burnette).

137. Previously the IEP Team had determined Student was eligible in both Intellectually Disabled – Mild (ID-Mild) and Other Health Impaired (OHI), with ID-Mild as the primary, but the only area of eligibility listed on Student's Apri 2025 IEP was ID-Mild. Stip. Ex. 29 p 199. No secondary eligibility category was identified at the April 2025 IEP meeting, thus the April 2025 IEP team focused on Student's needs as due to his intellectual disability, rather than his genetic condition, OHI was "notably missing." T vol 2 340:2 (T of Burnette). However, because of Student's "genetic condition . . . other health impairment . . . [wa]s a better primary category of eligibility because it more explains who he is." T vol 2 338:6-10 (T of Burnette). Student's genetic condition is what overall impacts his ability "to have intelligible speech . . . cognitive limitations . . . genetic predisposition for speech, for sounds, for fine motor skills, for all the other parts of him." T vol 2 338: 16-21 (T of Burnette). The April 2025 IEP meeting the school-based

members of the IEP team inappropriately focused on Student's cognitive deficits rather than his global health impairments caused by his genetic disorder.

138. Also notably, although Student's regular education teacher complained about his behavior, the April 2025 Prior Written Notice did not document that Student was disruptive in the regular education setting. Although Student did have some minor and office referrals prior to the April 2025 IEP meeting, these were not significant enough for the IEP team to justify a more restrictive setting. *See* Stip. Ex. 136; Pet. Ex. 67 pp 0484-0485 (Office Referral Incidents); Stip. Ex. 123 (2024-2025 School Calendar); Pet. Ex. 66 pp 480-481. Despite a reduction in speech services because of "difficulty maintaining engagement," the April 2025 IEP team did not propose a FBA or BIP to address behaviors which potentially were becoming barriers to Student's access to the regular classroom and services. If behavior was effectively used to justify segregation and reductions in services, yet was not systematically assessed or addressed through a BIP—the failure to conduct an FBA contributed to the denial of FAPE.

139. Applying *DeVries/Roncker* analysis, none of the three factors justified removal of Student from the regular classroom. Student derived more than marginal benefit from mainstreaming; no services were identified that could not feasibly be delivered in the general education classroom with supports; and the record did not show that he was a "disruptive force" at the level contemplated by *DeVries*. Respondent presented no persuasive rebuttal evidence or credible expert analysis that the April 2025 IEP provided FAPE in Student's least restrictive environment. *Compare* T vol 2 429:14-17 (T of Burnette) *and* T vol 3 562:8-12 (T of Felton).

2025 Psychoeducational Evaluation

140. The February 28, 2025 Psychoeducational Evaluation (2025 Psychoeducational Evaluation) was the central justification for both the eligibility change to ID - Moderate and the proposed move to the self-contained setting. Stip. Ex. 133. Petitioners' expert, Dr. Anthony, identified multiple serious procedural and interpretive flaws in this evaluation such as:

> The evaluator admittedly did not review Student's current IEP, nor his most recent OT, PT, or speech-language evaluations; did not consult with teachers, administrative staff, or parents; and did not meaningfully review or reconcile the 2022 psychoeducational evaluation, which had used different instruments and yielded substantially higher scores and no basic self-care deficits. T vol 4 805:17-21; 823:3-6; 829:9-20; 838:17-18; 844:23-845:1 (T of Aycock); T vol 3 659:1-18 (T of Anthony); and,
>
> Contrary to the IEP's testing accommodations (multiple sessions, frequent breaks, extended time, AAC access, dictation to scribe), the evaluation was conducted in a single session without access to his AAC device, with his 1:1 aide informally interpreting his speech; the report did not document provision of any of his required accommodations beyond the aide's presence. T vol 4 811:22 (T of Aycock); Stip. Ex 133 p 677; T vol 4 823:35-824:1 (T of Aycock); Stip. Ex. 133 p 679; T vol 3 645:21-23; 646:5-12 (T of Anthony); and,

> The evaluator administered the WISC-V, which has relatively high expressive-language and fine-motor demands and several timed subtests, despite known motor, speech, and fatigue limitations, and did not use "testing-of-limits" procedures or an alternative nonverbal measure (e.g., the CTONI) that had been used successfully in 2022. T vol 3 647:24-648:16; 654:19-655:3; 655:12-16; 656:2-5; 666:19-20; 694:7-11 (T of Anthony).

141. Particularly concerning, the report reflected a decline in cognitive ability and a significant decline in adaptive scores from 2022, including up to five standard deviations of discrepancy between the Parent and teacher ABAS-3 ratings. There were dramatic shifts in ratings of basic self-care and toileting that were inconsistent with the 2022 Psychoeducational Evaluation and the November 2024 Occupational and Physical Therapy Evaluations (which documented independence in all self-care needed at school). *Compare* Stip. Ex. 80 pp 528-29 (2022 ABAS Ratings); Stip. Ex. 113 p 0623 (OT Evaluation) (stating demonstrates independence in all self-care skills); Stip. Ex. 115[8] (PT Evaluation) *to* Stip. Ex. 133 pp 689-92 (2025 Psychoeducational Evaluation ABAS-3 Ratings); and T vol 3 657:9-21 (T of Anthony).

142. The regular education teacher (Paticia Williams) and EC teacher (Christie Cothran) scored Student's adaptive skills below the 1st percentile while Mother scored him at meeting or exceeding 90% of his peers. Stip. Ex. 133 p 0691; T vol 3 667:7-16 (T of Anthony stating characterizing the difference of "five (5) standard deviations" between some of the scores between the parent and teacher ratings as "wild"). The evaluator admittedly did not follow up with raters to clarify these discrepancies and did not explore medical, psychiatric, or environmental explanations for the sharp score declines. T vol 3 671:12-23 (T of Anthony); Stip. 133 pp 689-91.

143. The school staff's adaptive behavior scores were suspect. A student's classification within the Intellectual Disability spectrum must be grounded in reliable cognitive data and valid adaptive behavior information. The cognitive component (WISC-V) was standardized and resistant to manipulation. By contrast, adaptive behavior rating scales (ABAS-3) relied on subjective reporting by Respondent's staff and therefore required careful scrutiny, particularly when results diverged from other evidence.

144. The 2022 and 2025 Psychoeducational Evaluations produced comparable cognitive scores, with the 2025 score only modestly lower. Nothing in the cognitive data suggests a significant decline in functioning. Yet, the adaptive behavior ratings provided by school personnel in 2025 reflect an extreme level of impairment wholly inconsistent with Student's demonstrated self-help skills and with the broader evaluative record. In 2022, Student was appropriately identified as having an Intellectual Disability—Mild. In 2025, however, both the Exceptional Children teacher and the general education teacher rated Student at the 1st percentile across adaptive domains, while Mother rated him within the average range and other assessments documented functional abilities far above the level suggested by the teachers' ratings.

[8] In her November 26, 2024 Physical Therapy (PT) evaluation, the physical therapist indicated that the PT reevaluation was for the category of Intellectual Disability - Moderate. Stip. Ex. 115 p 0629.

145. The teachers' ratings represented the only component of the evaluation process susceptible to subjective influence, and they stood in stark contrast to Student's observed abilities, his prior classification, and the objective cognitive data. The magnitude of the discrepancy, coupled with the absence of any corresponding decline in functioning, raises substantial concerns regarding the reliability and objectivity of the adaptive behavior data. On this record, the adaptive scores appear to reflect Respondent's staff bias rather than Student's actual adaptive functioning, undermining the validity eligibility category determination that relied upon these rating scales.

146. The ID-Moderate eligibility category will have negative long-term consequences for Student's future education.[9] The adaptive behavior scores facilitated Respondent's goal to remove Student from the regular education classroom and general curriculum because lower adaptive behavior ratings justified his removal from the regular education classroom and placement in the general separate/self-contained classroom.

147. Given these errors and inconsistencies, the 2025 Psychoeducational Evaluation was not a valid, sufficiently comprehensive assessment of Student's functioning. T vol 3 661:25-662:2; 674:1-675:21 (T of Anthony). Nonetheless, the IEP team inappropriately accepted these results at face value, used them to change Student's eligibility to ID-Moderate, and improperly relied on this eligibility category to justify the shift to a self-contained program, without seeking a clarifying assessment or reconciling the discrepancies.

Predetermination and Administrative Convenience

148. Several features of the April 2025 IEP's eligibility determination process support a finding of predetermination and reliance on administrative/programmatic considerations rather than an individualized LRE analysis. First, the IEP meeting Invitation to Conference did not indicate that placement would be addressed, yet the team proposed a dramatic change to a self-contained classroom for about 60% of the day, in a separate pod with only disabled peers, a degree of segregation not previously proposed.

149. Second, testimony and the general separate classroom schedule evidenced prior to the April 2025 IEP meeting, Student's EC teacher had already been pulling him from the regular classroom more frequently than the November 2024 IEP required. This resulted in roughly 900 minutes per week (48%) of pull-out, largely for group SPIRE instruction delivered to all fourth-grade EC students at the same time. All of which was driven by the EC teacher's schedule rather than Student's individualized IEP specifications. The April 2025 IEP service delivery

[9] Students with significant cognitive disabilities who have an IEP and require intensive individualized support typically are on the Extended Content Standards (ECS) which lead to alternative assessment and a Certificate of Completion, not a regular high school diploma. *See Participation in the North Carolin Alternative Assessment: An NCEXTEND1 User Guide* (February 2024) p 5. https://www.dpi.nc.gov/participation-north-carolina-alternate-assessment-extend-1-user-guide (last visited December 23, 2025). NCEXTEND1 eligibility is an IEP team decision and only for grades 3-8, 10, and 11. *Id.* Significant cognitive disability falls within the ID – Moderate and ID – Severe ranges; that is, 3+ standard deviations below the mean in cognitive ability and at least 2 standard deviations below the mean for adaptive skills. *Id*. www.dpi.nc.gov/documents/accountability/policyoperations/tswd/ncextend1-eligibility-criteria; *see* NC Policy 1503-2.5(d)(7)(ii)(b)&(c) (definition of ID-Moderate and ID-Severe).

proposal effectively formalized and expanded this practice, aligning service minutes with the existing general separate classroom schedule.

150. Third, Petitioners offered evidence that, over multiple years, Respondent had increasingly emphasized the intellectual disability label as the primary driver of programming, while de-emphasizing Student's genetic condition and OHI eligibility, consistent with research indicating that IEP teams sometimes place students primarily by disability classification rather than individual needs.

151. Fourth, parental objection to the proposed placement was clear. Both Parents opposed the segregated setting, shared data supporting continued placement in the less restrictive environment and asserted that the general separate classroom was not appropriate. When the IEP team could not reach consensus, the LEA representative made the final decision to implement the more restrictive placement over parental objection, yet the Prior Written Notice inaccurately recorded that no actions were refused and did not document parental disagreement. These facts indicate that Respondent had effectively decided on the self-contained placement, closely tied to the ID- Moderate classification and existing program structures, before fully engaging with parental input or alternatives.

152. Taken together—the invalid 2025 Psychoeducation Evaluation, the direct linkage from ID-Moderate scores to self-contained programming, the alignment of services with a pre-existing program, and the disregard of parental objections—the record supports a finding that the April 22, 2025 placement decision was substantially predetermined and driven by disability label and administrative convenience, rather than by a good-faith, individualized LRE analysis.

Other Evaluations: Occupational Therapy, Physical Therapy, and Speech-Language Evaluations

153. Petitioners presented no evidence supporting their claim that Respondent's occupational therapy, physical therapy, and speech-language evaluations of Student were procedurally or substantively inappropriate. *See* T vol 4 781:23-25 (Petitioners' counsel stating "we would concede that we did not present any evidence with regard to related services"). Accordingly, the Tribunal dismissed Petitioners' claims pertaining to related services under Rule 41(b). T vol 4 782:11-23. Likewise, because Petitioners did not present evidence pertaining to the appropriateness of the Student's occupational therapy, physical therapy, and speech-language evaluations, the Undersigned finds that Petitioners failed to meet their burden that Respondent's related services evaluations were not substantively appropriate.

REMEDY

154. Based upon the foregoing Findings of Fact, including the determinations that Respondent denied Student a FAPE in the least restrictive environment in connection with the May 23, 2024 ESY decision; implementation of the November 20, 2023 IEP; the September 12, 2024 reevaluation decision and implementation; the November 13, 2024 IEP (including ESY and implementation); and the April 22, 2025 eligibility/placement decision and IEP (including predetermination), Petitioners are entitled to relief for these substantive FAPE violations.

Independent Psychoeducational Evaluation

155. The Tribunal finds that the 2025 Psychoeducational Evaluation conducted by the contract school psychologist was not a valid and sufficiently comprehensive assessment of Student's functioning and that Respondent inappropriately relied on that evaluation to change his eligibility from ID-Mild to ID-Moderate and to justify a substantially more restrictive placement. In light of these findings, an independent psychoeducational evaluation at public expense is required.

Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)

156. Respondent, without justification, relied on Student's purported behavior and "disruption" to justify increased segregation, reductions in services (including speech), and removal from the general education classroom, yet never conducted an FBA or developed a BIP despite staff testimony that these behaviors were not new. This failure contributed to the denial of FAPE and LRE. A functional behavior assessment is necessary to develop behavioral goals or a Behavior Intervention Plan (BIP) to enable Student to remain in the least restrictive environment going forward.

Independent Inclusion Specialist

157. The November 20, 2023, September 12, 2024, November 13, 2024, and April 22, 2025 IEPs did not offer Student a FAPE in the least restrictive environment under the *DeVries/Roncker* standard, because Respondent increased segregation by over-implementation of these IEPs despite evidence of Student's more-than-marginal benefit from inclusion. Moreover, the April 22, 2025 placement decision was substantially influenced by disability label and administrative convenience rather than an individualized analysis about Student's unique circumstances. To remediate these predeterminations and to support Student's education in his least restrictive environment going forward, an independent inclusion specialist is needed to assist with the development and monitoring of Student's IEPs for the remainder of the 2025-2026 school year and summer through the end of the 2026-2027 middle school year.

Independent Reading Specialist and Structured Literacy Program

158. The November 2024 and April 2025 IEP goals—particularly in reading and written expression—were repetitive, insufficiently ambitious, and misaligned with Student's present levels of performance. Moreover, the phonics goals were inappropriately removed and reading instruction narrowed largely to high-frequency words. Based on the EC teacher's admissions, Respondent did not implement the structured literacy program (SPIRE) with fidelity or individualized for Student's literacy needs. An independent reading specialist is needed to facilitate Student's reading and writing goal development and monitor implementation of appropriate specialized instruction in reading and written expression.

Compensatory Services

159. The record established that Respondent denied Student free appropriate public education by failing to provide extended school year services, providing inappropriate evaluation information, failing to properly implement his IEPs, and not proposing FAPE in the least restrictive environment during the statutory period. However, Petitioners did not present sufficiently specific and reliable evidence regarding the precise amount of specially designed instruction or extended school year services in order to calculate a quantified, hour-by-hour compensatory services award.

160. Dr. Burnette's global estimate of 1,800 hours was not grounded in a detailed analysis of appropriate service levels on the 2024–25 IEP, and Dr. Felton could not reliably predict the total amount of instruction required to remediate Student's reading deficits. In addition, the evidence reflects that Student was "overserved" in certain respects in 2024–2025 due to over-implementation of pull-out special education beyond the IEPs' specified minutes.

161. Under these circumstances, and in the exercise of equitable discretion, the Tribunal declines to order a quantified bank of compensatory hours. Instead, the prospective relief ordered herein—including an independent psychoeducational evaluation, an FBA and BIP, an independent inclusion specialist, and an independent reading specialist directing a structured literacy program—is tailored to address the specific FAPE and predetermination violations found and to place Student as nearly as possible in the position he would have occupied had those violations not occurred.

IEP Team Meeting and Revision of IEP/Placement

162. To correct the effects of the invalid evaluation, predetermination, and LRE violations associated with the April 22, 2025 IEP, and to address the over implementation and FAPE violations in the November 2023 (implementation only), as well as the May, September, and November 2024 IEPs, an IEP meeting shall to be held after all independent evaluations are completed with the independent educational evaluators/specialists' participation.

ESY Consideration

163. The Tribunal finds that the May 23, 2024 ESY decision, which limited ESY to speech despite evidence of regression/recoupment and an AAC-based "window of opportunity" affecting all academics, as well as the subsequent November 2024 and April 2025 denials of ESY, were inconsistent with the data and contributed to the denial of FAPE. Student is entitled to compensatory ESY for the summer following the 2023-2024 school year and prospective ESY for the summers following the 2025-2026 and 2026-2027 school years in the amounts to be determined by the independent evaluators/specialists.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, relevant laws, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

1. To the extent that the foregoing Conclusions of Law contain findings of fact, or that the Findings of Fact are conclusions of law, they are intended to be 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); *Warren v. Dep't of Crime Control & Pub. Safety,* 221 N.C.App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. denied,* 366 N.C. 408, 735 S.E.2d 175 (2012); *Watlington v Rockingham Cnty. Dep't of Soc. Servs.*, 261 N.C.App. 760, 822 S.E.2d 43 (2018).

Jurisdiction

2. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public education ("FAPE") pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq*. and implementing regulations, 34 C.F.R. Part 300. Stip. 2.

3. The IDEA is the federal statute governing education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. The controlling State law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9. Stips. 3&5.

Parties

4. Petitioner Student is a "child with a disability" as defined by the IDEA and entitled to a free appropriate public education. 20 U.S.C. § 1401(3). Petitioners Mother and Father, as parents of a minor child with a disability, and Student are guaranteed procedural safeguards with respect to the provision of FAPE which includes contesting the appropriateness of educational decisions made by the Onslow County Schools and the implementation of Student's educational programming. *See* 20 U.S.C. § 1415.

5. Respondent, Onslow County Board of Education, is a local education agency receiving monies pursuant to the Individuals with Disabilities Education Act responsible for providing Student a free appropriate public education. 20 U.S.C. § 1401; N.C. Gen. Stat. § 115C-5(7a); Stip. 4. Respondent is the LEA responsible for providing educational services in Onslow County, North Carolina. Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. § 1400 *et seq*.; 34 C.F.R. § 300 *et seq*.; and N.C. Gen. Stat. § 115C-106 *et seq*. These acts, laws, and regulations require Respondent to provide FAPE for those children in need of special education residing within its jurisdiction.

6. The Parties are properly before the Undersigned administrative law judge and jurisdiction and venue are proper. The Petitioners and Respondent named in this action are correctly designated and had been properly noticed of this hearing proper and venue was proper. T vol 1 8:22-9:10. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The Parties received proper notice of the hearing in this matter. Stip. 1.

7. Under the IDEA, a state is eligible for federal funding if it "provides assurances" to the federal government that it "has in effect policies and procedures to ensure," *inter alia*, "a free appropriate public education (FAPE) is available to all children with disabilities residing in the state." 20 U.S.C. § 1412. A Local Educational Agency (LEA) is also "eligible for assistance" if its plan to effect policies and procedures is consistent with the State Educational Agency (SEA). 20 U.S.C. § 1415(a)(1).

Burden of Proof, New Issues Barred, Evidence

8. Petitioners have the burden of proof in this contested case and must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a).

9. "When we are determining the burden of proof under a statutory cause of action, the touchstone of the inquiry is, of course, the statute." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005). "The ordinary default rule, of course, admits exceptions." *Id.* at 57 (citing 2 J. Strong McCormick on Evidence § 342, p. 412-13 (5th ed. 1999)).

10. The statute of limitations is an affirmative defense. N.C. R. of Civ. P. 8(c). A respondent may move for judgment on the pleadings in the "relatively rare circumstances where facts sufficient to rule on the affirmative defense are alleged in the complaint." *Goodman v. Praxair, Inc.*, 494 F.3d 458,464 (4th Cir. 2007). A defendant may also raise an affirmative defense in a motion for summary judgment. N.C. R. Civ. P. 12(h)(2).

11. "The defendant, of course, has the burden of establishing all affirmative defenses, whether they relate to the whole case or only to certain issues in the case. As to such defenses, he is the actor and has the laboring oar." *Williams v. Philadelphia Life Ins. Co.*, 212 N.C. 516, 193 S.E. 728, 729 (1937). The burden of proof "lies where it usually falls, upon the party seeking relief." *Schaffer,* 546 U.S. at 58.

12. Whether a respondent elects to raise a statute of limitations defense through a motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment, as the party seeking relief, the respondent bears the burden of establishing the affirmative defense. *See Williams,* 193 S.E. at 729; *Schaffer,* 546 U.S. at 57-58. Once the respondent successfully establishes the affirmative defense, only then does the burden shift to the plaintiff to show the statute of limitations does not bar her claims. *Horton v. Carolina Medicorp, Inc*., 344 N.C. 133, 136 (1996).

13. During the hearing on September 2, 2025, Respondent made an oral motion to dismiss seeking partial dismissal of Petitioners' Amended Petition and raised the affirmative defense of the statute of limitations. T vol 1 8:1-6. In the Amended Petition, Petitioners' pleaded exceptions to the statute of limitations under State and federal law (i.e., misrepresentation, withholding, and tolling under North Carolina General Statute 150B-23(f)). *See, e.g.,* Am. Pet. pp 1-2.

14. Respondent argued the tolling provision of North Carolina General Statute Section 150B-23(f) did not apply and any claims for which Petitioners only raised the failure to provide

notice under 150B(f) should be dismissed under Rule 12(b)(6). *See, e.g.,* T vol 1 15:10-15; 18:14-15 (all claims for the November 30, 2021 IEP); 20:12-15 (all claims for the October 10, 2022 IEP); and, 21:17-19 (all claims for March 18, 2024 IEP).

15. Petitioners, as the party requesting the hearing, may not raise issues at the hearing that were not raised in the due process petition unless Respondent agreed otherwise. 20 U.S.C. § 1415(f)(3)(B).

16. The North Carolina Rules of Evidence in Chapter 8C of the General Statutes govern all contested cases proceedings. N.C. Gen. Stat. § 150B-29; 26 NCAC 3.0122(1). All evidence admitted into the official record that has probative value must be considered by the administrative law judge as has been done in this case. 26 NCAC 3.0122(1)-(2).

I. STATUTE OF LIMITATION ISSUES

Whether Petitioners knew or should have known by May 9, 2024 of Respondent's final decisions such that, absent an exception, the statute of limitations bars any of Petitioners' claims for the 2020-2021, 2021-2022, 2022-2023, and/or 2023-2024 school years?

If so, whether any exception tolls the statute of limitations for any of Petitioners' claims prior to May 9, 2024?

17. Before turning to the substantive issues, the affirmative statute of limitations issues needs to be addressed since limitation of most of Petitioners' FAPE claims prior to May 9, 2024 will result.

The Knew of Should Have Known ("KOSHK") Date

18. The IDEA provides the complaint must "set[] forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known [KOSHK date] about the alleged action that forms the basis of the complaint" and allows states to establish a distinct statute of limitations "for presenting such a [due process] complaint." 20 U.S.C. § 1415(b)(6)(B).

19. In North Carolina, "[n]otwithstanding any other law, the party shall file a petition . . . that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition." N.C. Gen. Stat. § 115C-109.6(b).

20. The limitations period is extended in two limited circumstances: if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent. N.C. Gen. Stat. § 115C-109.6(c) 20 U.S.C. §§ 1415(b)(6)(B), (f)(3)(D)).

21. To circumvent the statute of limitations based on a misrepresentation exception, Petitioners must show that Respondent made "specific misrepresentations... that it had resolved the problem forming the basis of the petition." N.C. Gen. Stat. § 115C-109.6(c); *see also,* 20 U.S.C. § 1415(f)(3)(C)-(D); and, 34 C.F.R. § 300.511(e)-(f). "[A] rule demanding at least a school's knowledge that its representations of a student's progress or disability are untrue or inconsistent with the school's own assessments best comports with the language and intent of the [IDEA]." *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 246 (3d Cir. 2012).

22. To circumvent the statute of limitations based on a withholding exception, Petitioners must show that Respondent withheld information from them that was required to be provided to them State or federal law. N.C. Gen. Stat. § 115C-109.6(c); s*ee also,* 20 U.S.C. § 1415(f)(3)(C)-(D); and, 34 C.F.R. § 300.511(e)-(f). For this exception, "only the failure to supply statutorily mandated disclosures can toll the statute of limitations. In other words, plaintiffs can satisfy this exception only by showing that the school failed to provide them with a written notice, explanation, or form specifically required by the IDEA statutes and regulations." *D.K.*, 696 F.3d at 246. Although the Prior Written Notices repeatedly reminded Petitioners how to obtain a *Handbook*, the preponderance of the credible evidence proved that Respondent failed its statutory duty to give Petitioners copy of the *Procedural Safeguards Handbook* at least once during the 2020-2021 and 2022-2023 school years and at other times mandated by federal law.

23. "Establishing evidence of specific misrepresentations or withholding of information is insufficient to invoke the exceptions; a plaintiff must also show that the misrepresentations or withholding caused her failure to request a hearing or file a complaint on time." *Id.* (emphasis in original). "Thus, where the evidence shows, for example, that parents were already fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those safeguards." *Id.* at 246-47. To rely on the withholding exception, Petitioners were required to prove that Respondent's failure actually prevented them from timely filing once they became aware of the filing deadline. They offered no such proof.

The Prior Written Notice Requirements Regarding the One-Year Deadline

24. Among other tolling arguments, Petitioners assert that all Prior Written Notices were defective because the Notices "did not contain a date by which due process must be filed as required by N.C. Gen. Stat. § 150B23," and therefore did not trigger the statute of limitations. Evaluating the validity of this contention requires examining the interplay of federal and State law and applying the principles of statutory construction that govern conflicts between IDEA specific provisions and the North Carolina Administrative Procedure Act (APA). This analysis necessarily turns next to the 2004 amendments to the IDEA and North Carolina's 2006 conforming revisions, as those enactments define the operative notice requirements and govern whether Petitioners' tolling theory can be sustained.

Federal Law Establishes a Specific, Mandatory Notice Regime for IDEA Due Process Petitions

25. When Congress reauthorized the Individuals with Disabilities Education Act in IDEA 2004, it created a detailed, exclusive set of notice requirements[10] for due process complaints. These provisions form a self-contained- federal notice system.

North Carolina Adopted the IDEA Specific Notice System Through Session Law 2006-69

26. Recognizing the 2004 substantive changes in IDEA's notice requirements, North Carolina amended its special education statutes in 2006 to align State law with the reauthorized Individuals with Disabilities Education Act of 2004. The General Assembly enacted Session Law 2006-69, titled *An Act to Conform State Law to the Federal Individuals with Disabilities Education Improvement Act of 2004*, which revised multiple provisions of Article 9 of Chapter 115C governing the education of children with disabilities. *See* 2006 N.C. Sess. Laws 69 (codified in scattered sections of N.C. Gen. Stat. §§ 115C-106 through 115C-116). Session Law 2006-69 expressly states that its purpose is to "conform State law to the federal Individuals with Disabilities Education Improvement Act of 2004." These amendments became effective upon enactment on June 21, 2006, thereby updating North Carolina's statutory framework to reflect the requirements of IDEA 2004.

27. Additionally, North Carolina adopted the enhanced Prior Written Notice and Procedural Safeguards requirements introduced in 2004 through the enactment of Session Law 2006-69, which revised Article 9 of Chapter 115C to conform State law to the federal IDEA of 2004. *See* 2006 N.C. Sess. Laws 69. These amendments incorporated the detailed content requirements for Prior Written Notice set forth in 20 U.S.C. § 1415(c)(1) and 34 C.F.R. § 300.503(b), as well as the expanded obligations for providing the procedural safeguards notice under 20 U.S.C. § 1415(d)(1)(A) and 34 C.F.R. § 300.504(a). Accordingly, North Carolina's statutory framework fully adopted and implemented the federal requirements governing notice and procedural protections for parents of children with disabilities.

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[10] The federal implementing regulations for the Individuals with Disabilities Education Act (IDEA), codified at 34 C.F.R. Part 300, were published in the Federal Register on August 14, 2006, at 71 Fed. Reg. 46540 effective October 13, 2006.[10] *See* Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, Final Rule, 71 Fed. Reg. 46540, 46540 (Aug. 14, 2006) (noting that "[t]hese regulations are effective October 13, 2006"). The Code of Federal Regulations likewise identifies 71 Fed. Reg. 46753 (Aug. 14, 2006) as the source authority for Part 300, confirming the same publication and effective dates. *See* 34 C.F.R. Part 300 (Authority & Source). Accordingly, all regulatory obligations, procedural safeguards, and compliance requirements arising under 34 C.F.R. Part 300 became legally enforceable at that time.

28. At this point, the notice requirement in N.C. Gen. Stat. § 150B-23(f), which applies to general contested case petitions under the North Carolina Administrative Procedure Act, was no longer applicable to special education due process petitions because both federal law (IDEA 2004) and North Carolina's 2006 conforming amendments created a separate, comprehensive, and superseding notice framework governing IDEA complaints.

The Specificity in the IDEA and N.C. Gen. Stat. § 115C-109.6 Controls

29. Under well-settled rules of statutory construction, when two enactments concern the same subject matter, a statute that addresses a subject "in a narrow, precise, and specific manner" is treated as an implied exception to – and therefore controls over – any statute that regulates the same subject only in general terms, unless the legislature has unmistakably expressed a contrary intent.

30. The Supreme Court of North Carolina has consistently held that, where two statutory provisions address the same subject matter, the provision that speaks directly and specifically to the issue governs over a more general enactment. *State ex rel. Utilities Com. v. Lumbee River Elec. Membership Corp.*, 275 N.C. 250, 166 S.E.2d 663 (1969); *Fowler v. Valencourt*, 334 N.C. 345, 348, 328 S.E.2d 274, 279 (1993); *High Rock Lake Partners, LLC v. N.C. DOT*, 366 N.C. 315, 319, 735 S.E.2d 300, 307 (2012); *LexisNexis Risk Data Mgmt. v. N.C. Admin. Office of the Courts*, 368 N.C. 180, 184–85, 781 S.E.2d 152, 160–61 (2015); *Carter-Hubbard Publ'g Co. v. WRMC Hosp. Operating Corp.*, 178 N.C. App. 621, 625, 624 S.E.2d 891, 896 (2006). This principle is equally recognized by the United States Supreme Court, which has held that "a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." *Traynor v. Turnage*, 485 U.S. 535, 547–48 (1988) (citing *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)).

31. Federal law further provides that, where state law conflicts with federal requirements, the federal statute controls under the Supremacy Clause. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210–11 (1824); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Accordingly, where a conflict arises between a specific federal statutory directive and any inconsistent state provision, the federal statute is controlling.

32. Article 9 of Chapter 115C—after the 2006 amendments—constitutes a specialized, federally aligned procedural framework for IDEA due process hearings. Because N.C. Gen Stat. § 150B-23(f) is a general APA notice provision, it cannot override or supplement the specific federal and State requirements governing IDEA complaints.

OAH Conducts IDEA Hearings Under Article 9, Not Under the General APA Petition Rules

33. Although OAH is the public forum for IDEA hearings, special education petitions are unique in OAH because "[n]othwithstanding any other provisions of this Chapter, timelines and other procedural safeguards required under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing initiated when a petition is filed

under G.S. 115C-109.6." N.C. Gen Stat. 150B-22.1. Thus, the procedural rules come from IDEA and Article 9, not Chapter 150B. Thus, the only applicable notice requirements are those in 20 U.S.C. § 1415(b)(7) & (c)(2); 34 C.F.R. § 300.508; and, N.C. Gen. Stat. § 115C-109.6.

34. These provisions replace the general APA notice requirement in N.C. Gen. Stat. § 150B-23(f).

35. In sum, because IDEA 2004 created a comprehensive federal notice system for due process complaints, and because North Carolina adopted that system in 2006 through Session Law 2006-69, the general APA notice requirement in N.C. Gen. Stat. § 150B-23(f) no longer applies to special education due process petitions filed in the Office of Administrative Hearings. IDEA's specific, federally mandated complaint procedures—as incorporated into Article 9—govern exclusively.

Tolling of the Statute of Limitations

36. The Undersigned concludes as a matter of law that Petitioners' claims are not tolled by Respondent's failure to include the one-year filing deadline on its Prior Written Notices. Under N.C. Gen. Stat. § 115C-109.6(c), tolling applies only where a parent is prevented from timely filing due to a withholding or misrepresentation.

37. Respondent's failure to provide *Handbooks* nevertheless meets the withholding exception because it failed to provide Petitioners the *Procedural Safeguards Handbook* during each school year, prior to May 9, 2024 as required by the IDEA. Credible evidence establishes that Petitioners did not receive a *Handbook* until Mother acknowledged one at the November 2021 and November 2023 Reevaluation Meetings. The statute of limitations was therefore tolled until Petitioners were provided the *Handbook*. Respondent's repeated failure to provide the *Handbook* prior to the 2024–2025 school year continued to toll Petitioners' claims.

38. However, the tolling did not indefinitely preserve Petitioners' claims before May 9, 2024. Once Petitioners had actual knowledge of their procedural safeguards, including the one-year filing deadline, they did not timely contest Respondent's final IEP team decisions. Accordingly, Petitioners' FAPE claims predating May 9, 2024 are time barred.

Evidentiary Findings on Statute of Limitations

39. Under the IDEA, a copy of the procedural safeguards must be provided to the parents only once per year, upon the initial referral, parental request for referral, evaluation or reevaluation, first occurrence of the filing of a complaint, and upon request by the parent. 20 U.S.C § 1415(d)(1)(A). In North Carolina, the State Department of Public Instruction published the most recent version of the *Procedural Safeguards Handbook* for local agency use in 2016.

40. The weight of the evidence establishes that Petitioners received multiple copies of the Handbook before May 9, 2024. The latest date on which they received the Handbook prior to the one-year limitations period at issue (May 9, 2024 to May 9, 2025) was November 20, 2023. As of that date, Petitioners were on notice of their procedural rights and the applicable filing

deadlines. Accordingly, any claims that accrued before November 20, 2023 were required to be filed no later than November 20, 2024. With one exception, because Petitioners did not file their due process complaint until May 9, 2025, all claims arising before November 20, 2024 are untimely. The sole exception is Petitioners' implementation claims related to the November 2023 IEP during the 2024–2025 school year, which fall within the statutory period and are therefore timely.

41. Respondent met its burden to establish Petitioners knew or should have known of the actions forming the basis of their claims pre-dating May 9, 2024, more than one year before filing those claims. Furthermore, Petitioners failed to meet their rebuttal burden or demonstrate that they were prevented from timely filing their claims due to a withholding or misrepresentation of Respondent under N.C. Gen. Stat. § 115C-109.6(c), except for the implementation claims related to the November 2023 IEP. As a result, all FAPE claims for the 2021-2022, 2022-2023, and 2023-2024 school years are barred by the statute of limitations and must be dismissed.

Remaining Claims After May 9, 2024

42. The Petitioners' viable claims after May 9, 2024 are: the FAPE claims for the 2024-2025 IEPs, the implementation claims of the November 2023, September 2024, and November 2024 IEPs; parental participation claims; extended school year claims for the May 2024, November 2024, and April 2025 IEPs; and the assessments (FBA & ACA), identification category, and cognitive evaluation claims.

II. APPROPRIATENESS OF 2024-2025 IEPs

Whether the November 13, 2024 IEP and April 22, 2025 IEP developed during the 2024-2025 school year, offered Student a FAPE in his LRE?

Standard for a Free Appropriate Public Education (FAPE)

43. The Individuals with Disabilities Education Improvement Act of 2024 (IDEA) was enacted to "ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

44. An IEP is "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with" the IDEA. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a). The IEP is "[t]he primary vehicle for implementing" the IDEA and "sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives." *Honig v. Doe*, 484 U.S. 305, 311 (1988).

45. "The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). Regardless of the child's disability,

the "substantive obligation" of the school district is the same for all students: "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id*.

46. "Progress through [the education] system is what our society generally means by an 'education,' [a]nd access to an 'education' is what the IDEA promises," *Endrew F*., 580 U.S. at 400-01 (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 203 (1982)). Therefore, "[a] student offered an educational program providing 'merely more than de minimis progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly . . . awaiting the time when they were old enough to 'drop out.'" *Endrew F.*, 580 U.S. at 402-03 (quoting *Rowley,* 458 U.S. at 179).

47. "[T]he formal requirements of a free appropriate public education, 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 (1st Cir. 1984), aff'd sub nom. *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985). "If a school district fails to . . . offer the student an appropriate IEP, and if that failure affects the child's education, then the district has necessarily denied the student a free appropriate public education." *Boose v. D.C*., 786 F.3d 1054, 1056 (D.C. Cir. 2015).

48. "In determining what it means to 'meet the unique needs' of a child with a disability, the provisions of the IDEA governing the IEP development process provide guidance. These provisions reflect what the Supreme Court said in Rowley by focusing on "progress in the general education curriculum." *Endrew F*., 137 S. Ct. at 992; *see also.* 34 CFR §§ 1414(d)(1)(A)(i)(I)(aa), (II) & (IV).

49. Turning to the appropriateness of the November 2024 and April 2025 IEPs, the evidence establishes that each was inappropriate, though for different reasons. The deficiencies in each IEP will be addressed separately in the sections that follow.

November 12, 2024 IEP

50. The November 2024 IEP's academic and behavioral present levels and goals were inappropriate.

IEP Present Levels and Goals

Appropriately Ambitious IEP Goals

51. "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Endrew F.*, 580 U.S. at 404. "The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* at 388.

52. The IDEA requires that every IEP contain "[a] statement of the child's present levels of academic achievement and functional performance, including how the child's disability

affects the child's involvement and progress in the general education curriculum," "[a] statement of measurable annual goals," and a description of "[h]ow the child's progress toward meeting the annual goals . . . will be measured." 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320(a)(1)–(3).

Present Levels of Performance

53. Each IEP must include "[] a statement of the child's present levels of academic achievement and functional performance, including [] [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)." 34 C.F.R. § 300.320(a)(1)(i).

Goals

54. "Furthermore, an 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; and [] [m]eet each of the child's other educational needs that result from the child's disability." 34 C.F.R. § 300.320(a)(2)(i)(B).

55. Petitioners proved by a preponderance of unrebutted evidence that the November 2024 IEP's goals were repetitious, not appropriately ambitious for his needs, and did not match the Present Levels. Student also required a Structured Literacy program implemented with fidelity, which Respondent did not provide. The November 2024 IEP denied Student a FAPE. It also denied Student access to the least restrictive environment because it was not properly implemented.

III. IMPLEMENTATION ISSUE

Whether Respondent implemented Student's IEPs as written?

Over Implementation of IEPs

56. Respondent "over implemented" the November 2023, September 2024 and November 2024 IEPs in place during the 2024-2025 school year by unilaterally altering Student's placement to align with the general separate classroom schedule. "[A] material failure to implement an IEP, or, put another way, a failure to implement a material portion of an IEP, violates the IDEA." *Sumter Cnty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478, 484 (4th Cir. 2011). This over implementation both deprived Petitioners of meaningful participation in the placement determination process and resulted in a denial of FAPE in the least restrictive environment.

IV. EXTENDED SCHOOL YEAR (ESY) ISSUE

Whether Student needed Extended School Year (ESY) services to receive a FAPE?

Extended School Year Services- May 2024, November 2024, and April 2025 IEPs

57. The November 2024 IEP, the predecessor May 2024 IEP, and subsequent April 2025 IEP did not include extended school year services. "Extended school year services must be provided only if a child's IEP Team determines, on an individual basis . . .that the services are necessary for the provision of FAPE to the child." 34 C.F.R. § 300.106(a)(2).

58. Under the IDEA, extended school year services are services defined as "special education and related services" that are provided "[i]n accordance with the child's IEP" and outside of the normal school year. 34 C.F.R. § 300.106(b). Accordingly, extended school year services do not include instruction in the general education curriculum if that is not a component of the student's special designed instruction in accordance with their IEP.

59. The determination of whether a student required ESY for the provision of FAPE must be based on adequate data collection. Standards for ESY eligibility in North Carolina can be found in the *Policies Governing Services for Children with Disabilities* which require the IEP team to consider:

1. Whether the student regresses or may regress during extended breaks from instruction and cannot relearn the lost skills within a reasonable time; or,
2. Whether the benefits a student gains during the regular school year will be significantly jeopardized if they are not provided with ESY; or
3. Whether the student is demonstrating emerging critical skill acquisition that will be lost without the provision of ESY.

NC Policy 1501-2.4; s*ee also, M.M. ex rel. D.M. v. School Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002) (holding that ESY is generally necessary to FAPE when "the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.").

60. In this case, the record clearly shows that Student's IEPs prior to his fourth-grade year (2024-2025) allowed him to make progress but that progress was historically stymied due to his regression over the summer breaks. Petitioners met their burden of proof that ESY was necessary for Student to receive a FAPE and Respondent's failures to include ESY in the May 2024 IEP, November 2024 IEP, and April 2025 IEP denied him a FAPE.

April 22, 2025 IEP

61. Of most significance were the decisions made at the April 22, 2025 IEP meeting because these decisions changed the trajectory of Student's education. Since no changes were made to the November 2024 goals, which drive placement, or other educational services, the decisions made by the April 2025 IEP team were based primarily on the invalid results of the 2025 Psychological Evaluation.

V. ASSESSMENTS (FBA & AAC-AT), IDENTIFICATION CATEGORY, AND COGNITIVE EVALUATION ISSUES

Whether Respondent should have conducted a functional behavior assessment (FBA); timely conducted an Assistive and Augmentative Communication Assessment (AAC-AT); appropriately identified Student's disabling category; and appropriately evaluated Student's cognitive ability?

62. The IDEA dictates procedural and substantive requirements for reevaluations.

IDEA Evaluation Requirements

63. Reevaluations must be conducted in accordance with 34 CFR 300.304-300.311 if "the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation;" or a reevaluation is requested. 34 C.F.R. § 300.303(a). A reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b).

64. The IDEA also includes numerous requirements pertaining to the manner in which evaluations are conducted. Namely, "[i]n conducting the evaluation, the public agency must—[u]se technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 34 C.F.R. §300.304(b)(3).

65. Public agencies must also ensure assessments "are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure." 34 C.F.R. § 300.304(c)(v)(3). "Each public agency must ensure that: [] [a]ssessments and other evaluation materials used to assess a child under this part—[a]re used for the purposes for which the assessments or measures are valid and reliable." 34 CFR § 300.304(c)(1)(iii). Public agencies are also required to administer assessments "in accordance with any instructions provided by the producer of the assessments." 34 C.F.R. § 300.304(c)(1)(v).

66. In North Carolina,[11] psychologists are urged to "use his/her professional judgment about the selection of instruments for assessing the intellectual functioning of children" where instruments are" clearly inappropriate as standardized." *North Carolina Polices Governing Services for Children with Disabilities*, NC 1500-2.14(b)(15).

67. Each public agency must ensure that "[t]he child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;" 34 C.F.R. § 300.304(c)(4).

[11] "The IDEA-B leaves the selections of testing and evaluation materials and the procedures to be used for reevaluations to the individual States, with the understanding that all IDEA-B requirements must be satisfied." *Letter to Shaver*, 17 IDELR 356 (OSERS 1990).

Occupational Therapy, Physical Therapy, Speech-Language Evaluation and Services, Accommodations, and Implementation of Related Services and Accommodations

68. Before turning to the appropriateness of 2025 Psychoeducational Evaluation and FBA claims, some of Petitioners' evaluation and related services claims must be dismissed.

69. Petitioners presented no evidence supporting their claim that the evaluations, present levels, goals or implementation of occupational therapy, physical therapy, and speech-language related services were procedurally or substantively inappropriate. *See* T vol 4 781:23-25 (Petitioners' counsel stating "we would concede that we did not present any evidence with regard to related services").

70. In addition, Petitioners presented no evidence about the appropriateness or implementation of the IEPs' accommodations, supplementary services and aids. Accordingly, Petitioners' claims pertaining to related services and accommodations were dismissed under Rule 41(b). T vol 4 782:11-23.

2025 Psychoeducational Evaluation and Functional Behavior Assessment (FBA)

71. Petitioners assert that the 2025 Psychoeducational Evaluation, together with Respondent's failure to conduct a Functional Behavioral Assessment ("FBA") prior to developing the April 2025 IEP, rendered the evaluation process both substantively and procedurally inappropriate. The IDEA requires that a district conduct valid, reliable, and comprehensive evaluations in all areas of suspected disability, using multiple measures and technically sound instruments to ensure that the child's needs are accurately identified. 20 U.S.C. § 1414(b)(3)–(5). An evaluation that omits suspected areas of disability, relies on invalid or incomplete data, or fails to incorporate necessary behavioral assessments does not satisfy these statutory requirements and undermines the IEP team's ability to develop an appropriately individualized program.

2025 Psychoeducational Evaluation

72. Petitioners proved by a preponderance of the evidence that the 2025 Psychological Evaluation was invalid. The IDEA requires that an IEP be grounded in valid, comprehensive, and methodologically sound evaluation data, because evaluations supply the factual basis for identifying needs, establishing present levels, developing measurable goals, and determining appropriate services and placement. 20 U.S.C. § 1414(b); 34 C.F.R. §§ 300.304–300.306. The Supreme Court has made clear that an IEP must be reasonably calculated to enable progress, a standard that presupposes the existence of accurate and complete evaluative information. *Endrew F.* at 399–402.

73. Without reliable data, the April 2025 IEP team could not design goals or services capable of meeting this substantive requirement. Federal courts within the Fourth Circuit have held that when a district fails to evaluate in all areas of suspected disability, or relies on incomplete or invalid assessments, the resulting IEP is fundamentally compromised because the team lacks the

information necessary to identify needs or develop appropriate goals. *N.C. ex rel. M.C. v. Bedford Cnty. Sch. Bd.*, 471 F. Supp. 2d 690, 699–700 (W.D. Va. 2007); *D.B. v. Bedford Cnty. Sch. Bd.*, 708 F. Supp. 2d 564, 579–82 (W.D. Va. 2010). For these reasons, invalid or incomplete evaluations undermine the entire IEP and violate the IDEA's requirement that the program be individualized, data-based, and designed to enable progress.

74. The April 2025 IEP was developed on inaccurate and insufficient evaluative foundation therefore fails both procedurally and substantively, as the present levels, goals, services, and placement decisions are not tied to reliable information about Student

Functional Behavior Assessment (FBA)

75. This defect was compounded where Respondent also failed to conduct a Functional Behavioral Assessment (FBA) despite teaching staff citing behavior as a justification for removal. The absence of an FBA also deprived the April 2025 IEP team of essential data regarding the function of Student's behaviors, preventing the development of appropriate behavioral goals, interventions, or supports.

76. When a child's behavior impedes learning, the IEP team must consider positive behavioral interventions and support, including the need for an FBA and BIP. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). Courts have consistently held that when behavior is invoked to justify segregation or reduced services, the failure to conduct an FBA or develop an appropriate BIP may support a finding that the LEA denied FAPE. *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist.*, 375 F.3d 603, 615–16 (7th Cir. 2004); *C.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 80–82 (2d Cir. 2014); *M.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 140–41 (2d Cir. 2013); and, *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 68–69 (D.D.C. 2008).

77. Because both the 2025 Psychoeducational Evaluation and the behavioral assessment process were deficient, the April 2025 IEP team lacked the foundational information required to develop individualized academic and functional goals. As a result, any in-depth inquiry into the appropriateness of those goals becomes perfunctory, as the goals themselves rest on an invalid and incomplete evaluative foundation. These combined failures render the April 2025 IEP procedurally and substantively invalid under the IDEA.

Appropriateness of Placement Decision in the Least Restrictive Environment (LRE)

78. The placement decision of the school-based members of the April 2025 IEP was inappropriately based on administrative convenience not Student's unique needs. Placement decisions under the IDEA must be grounded in the individual needs of the child rather than administrative convenience or disability label. *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983); *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1214–15 (3d Cir. 1993); *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 697 (11th Cir. 1991).

79. The school-based members of the IEP team failed to consider the full continuum of alternative placement options required by 34 C.F.R. § 300.115. Under IDEA, removal from the regular classroom is permissible only when education there cannot be achieved satisfactorily in

that setting with supplementary aids and services. *Daniel Student v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989); *Oberti*, 995 F.2d at 1216.

Presumption of a General Education Classroom Placement

80. Consistent with *DeVries, Roncker*, and *L.H. v. Hamilton*, there is a strong presumption in favor of educating children with nondisabled peers to the maximum extent appropriate. This presumption is supported by "[fifty] years of research has indicated that placements in more restrictive settings –there's a lack of instruction, a lack of time on task, and a lack of content and expertise from a person that has expertise in that area. On the converse side, inclusion in general education settings offers more opportunities to learn general education content, higher engagement, and more likelihood of a teacher being certified in the content area in which they teach." T vol 2 303:8-16 (T of Burnette).

81. In *DeVries v. Fairfax County School Board*, the Fourth Circuit emphasized that mainstreaming of children with disabilities is "not only a laudable goal but is also a requirement of the Act" and adopted the *Roncker* standard. 882 F.2d 876, 879 (4th Cir. 1989) (citing *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983) (requiring a court to "determine whether the services which make that placement [at a segregated facility] superior could be feasibly provided in a non-segregated setting")).

82. According to the *DeVries/Roncker* feasibility analysis, removal to a more restrictive setting is warranted only when: (1) the child cannot benefit from mainstreaming; (2) any limited benefit from mainstreaming is substantially outweighed by the benefits of services that cannot be feasibly delivered in the regular setting; or (3) the child's presence would significantly disrupt the general education environment. *DeVries*, 882 F.2d at 876. Student's mastery of the general education curriculum does not factor into the mainstreaming analysis. The relevant inquiry is whether Student, with appropriate supports, can make progress toward his IEP goals in the regular classroom. *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779, 793 (6th Cir. 2018).

83. Based on a preponderance of the evidence, including Student's educational records and the documentation incorporated into the April 2025 IEP, the record establishes that Student made more than marginal educational and functional progress toward his IEP goals while educated in the regular education classroom. Other than the regular education teacher's expressed frustration with having Student in her class, Respondent presented no credible evidence that Student was disruptive or that his presence impeded instruction in the mainstream setting. In the absence of data demonstrating a need for increased segregation—and given Student's documented progress in the regular classroom—Respondent's decision to remove him to a more restrictive placement was unsupported by evaluative information, inconsistent with the IDEA's LRE mandate, and resulted in a denial of FAPE.

VI. PARENTAL PARTICIPATION ISSUE

Whether Respondent impeded Student's parents' participation in the development of Student's IEPs?

Predetermination and Parental Participation in the Decision-Making Process

84. Respondent also predetermined placement in the general education separate classroom unilaterally at the beginning of the 2024-2025 school year and prior to the April 2025 IEP meeting without Petitioners' participation in the decision-making process. Predetermination occurs when the LEA reaches placement decisions before the IEP meeting and refuses to meaningfully consider parental input or alternative options, a practice repeatedly condemned by the courts. *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 857–60 (6th Cir. 2004); *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610–11 (6th Cir. 2006); *Spielberg v. Henrico Cnty. Pub. Sch.*, 853 F.2d 256, 258–59 (4th Cir. 1988). "Drafting an IEP requires the input of the student's parents." *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562, 569 (8th Cir. 2024). "The IDEA requires school districts to consider the concerns of the parents for enhancing the education of their child, and to address information about the child provided to, or by, the parents." *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562, 569 (8th Cir. 2024).

85. "An IEP is procedurally invalid when a school district predetermines the educational program to be provided to a disabled student prior to meeting with the parents and closes its mind to the concerns or evidence of the parents . . .. Such behaviors would inappropriately deprive the parents of the meaningful opportunity to participate in the IEP's formulation." *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562, 569 (8th Cir. 2024) (internal citations omitted). "On the other hand, the 'IDEA does not mandate that parental preferences guide educational decisions.'" *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562, 569 (8th Cir. 2024). "Accordingly, there is no procedural error when there is an express finding that the School District was willing to listen to the parents' evidence and concerns and work with them in drafting all of the student's IEPs." *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562, 569 (8th Cir. 2024) (quotations and citation omitted) (finding that district did not predetermine student's IEP where parents participated in numerous meetings, involved the parents in meetings, and documented parents' concerns for enhancing the student's education, and that the parents were involved in drafting the IEP).

86. The evidence here demonstrates that Student benefited from mainstreaming, made more than marginal progress, and exhibited no significant documented behaviors that would justify removal from the regular education classroom; the primary concerns reflected in the record stem from the teacher's frustration, not from behaviors rising to a level warranting segregation. Respondent therefore failed to satisfy any prong of the *DeVries/Roncker* feasibility test, as Student both received educational benefit in the regular setting and could have continued to do so with appropriate support.

87. This violation was compounded when Respondent unilaterally altered Student's placement during the 2024–2025 school year through an over-implementation of services that effectively changed his educational setting without convening an IEP team meeting or revising the IEP goals.

88. The subsequent April 2025 IEP meeting reflects clear predetermination, as the team adopted a more restrictive placement without reviewing or revising the existing IEP goals. This approach contravenes longstanding guidance from the U.S. Department of Education—OSEP,

Questions and Answers on the Least Restrictive Environment (LRE) Requirements of the IDEA (1997)—which explains that placement cannot be determined before goals are developed because the goals drive the placement, not the reverse. No changes to goals were considered at the November 2024 or April 2025 IEP meetings, despite Respondent's simultaneous move toward a substantially more restrictive setting. This sequence of events confirms that Respondent predetermined Student's placement rather than basing the decision on an individualized analysis of Student's needs, as the IDEA requires.

89. Moreover, Respondent's reliance on behavior—whether genuine or as a pretext for a more restrictive placement—invokes the same statutory logic reflected in the IDEA's manifestation determination review framework, which prohibits a behavior-based change of placement without first conducting a Functional Behavioral Assessment (FBA) and developing or revising a Behavior Intervention Plan (BIP). 20 U.S.C. § 1415(k)(1)(D)–(F); 34 C.F.R. § 300.530(d)–(f). Respondent's failure to conduct an FBA, revise goals, or meaningfully consider less restrictive options demonstrates that the placement decision was not based on Student's individual needs but instead violated the IDEA's mandate to educate children with nondisabled peers to the maximum extent appropriate.

90. Petitioners proved by a preponderance of the evidence that Respondent impeded Petitioners' participation in decisions regarding special education services; Respondent's staff unilaterally changed Student's placement at the beginning of the 2024-2025 school year without convening an IEP meeting and without parental participation; and, prior to the April 2025 IEP meeting, Respondent improperly predetermined Student's placement in the general separate classroom. All these actions denied Student a free appropriate public education in the least restrictive environment.

REMEDY

91. Having concluded that Respondent's actions resulted in a denial of FAPE, the decision now turns to the determination of the appropriate remedial measures required under the IDEA to restore Student to the position he would have occupied but for these violations.

92. The IDEA confers "'broad discretion' on the court when fashioning an appropriate remedy." *M.S. ex rel Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 325 (4th Cir. 2009) (quoting *Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1996)). "Courts fashioning discretionary equitable relief under the IDEA must consider all relevant factors . . .." *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993). "[O]nce a court holds that the public placement violated [the] IDEA, it is authorized to 'grant such relief as the court determines is appropriate.'" *Id.* at 15-16 (quoting 20 U.S.C. §§ 1415(e)(2)) and 1415(i)(2)(C)(iii)).

93. "The relief granted by courts under section 1415(i)(2)(C)(iii) is primarily compensatory education. Compensatory education, however, is not defined within the IDEA and is a judicially created remedy. It is intended as "'a remedy to compensate [the student] for rights the district already denied . . . because the School District violated [the] statutory rights while [the student] was still entitled to them.'" *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717 (3d Cir. 2010) (*citing Lester H. v. Gilhool*, 916 F.2d 865, 872(3d Cir. 1990); *Boose v. D.C.*, 786 F.3d

1054, 1056 (D.C. Cir. 2015) (*citing Reid ex rel. Reid v. District of Columbia,* 401 F.3d 516, 522–23 (D.C.Cir.2005)). "Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *G ex rel. RG v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003). "[W]hereas ordinary IEPs need only provide 'some benefit,' compensatory awards must do more—they must *compensate." Reid*, 401 F.3d at 525 (emphasis in original).

94. Courts may also order the school district to take specific actions, such as requiring the school district to conduct evaluations, hire consultants, develop an IEP, and implement an IEP. *See, e.g.*, *K.I. v. Montgomery Publ. Schs.*, 805 F. Supp. 2d 1283, 1299 (ordering the school district to evaluate the child and develop a new IEP); *and, P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 (2d Cir. 2008) (upholding the hearing officer's mandate that the school district retain an inclusion consultant for a year and complete an FBA as the remedy appropriately addressed the problems with the IEP).

95. When determining the award, "the hearing officer may not delegate his authority to a group that includes an individual specifically barred from performing the hearing officer's functions." *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 317 (6th Cir. 2007) (quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 526 (D.C. Cir. 2005)); *see also, M.S. v. Utah Sch. Deaf & Blind*, 822 F.3d 1128, 1136 (reversing the lower court's decision to remand the issue of the child's placement to the IEP Team because "[a]llowing the educational agency that failed or refused to provide the covered student with a FAPE to determine the remedy for that violation is simply at odds with the review scheme set out at § 1415(i)(2)(C).").

96. Respondent's failure to conduct a valid and comprehensive psychoeducational evaluation and its failure to perform a Functional Behavioral Assessment when behavior was cited as a basis for removal deprived the IEP team of the essential data required to identify Student's needs, develop appropriate goals, and determine an educational placement reasonably calculated to enable progress. These procedural and substantive violations denied Student a FAPE under the IDEA and warrant corrective relief.

97. Consistent with the IDEA's guarantee of full and equal access to independent evaluative information, and considering the deficiencies in Respondent's assessments, Petitioners are entitled to Independent Educational Evaluations at public expense, conducted by evaluators of their choosing and in accordance with the independent evaluators' professional judgment and expertise. This remedy is necessary to restore the integrity of the evaluative record and to ensure that future IEP decisions are based on accurate, comprehensive, and reliable data.

98. Because Respondent's failures also impeded the IEP team's ability to design appropriate instruction, supports, and placement, additional corrective measures, the involvement of an Independent Inclusion Specialist and Independent Reading Specialist is necessary to conduct observations and assist in developing an appropriate IEP, staff training, implementation of a structured literacy program with progress monitoring, and compensatory ESY services as necessary to remedy the denials of FAPE and ensure that future IEP decisions are based on accurate data and appropriate instructional methodologies.

BASED upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINAL DECISION

1. Based on allegations in the Amended Petition which are considered true for the purposes of a motion to dismiss, Respondent's Motion to Dismiss the Amended Petition was **DENIED** (*nunc pro tunc* on September 2, 2025).

2. Because there are genuine issues of material fact as to what Petitioners knew or should have known about the deadline for filing their original Petition which the Amended Petition relates back to, Respondent's Motion for Summary Judgment was **DENIED** (*nunc pro tunc* on September 2, 2025).

3. Respondent's Rule 41(b) Motion to Dismiss all claims pertaining to the appropriateness and provision of related services – speech language (except for the timeliness of the AAC evaluation), occupational therapy, and physical therapy was **GRANTED** and those claims were **DISMISSED WITH PREJUDICE** (*nunc pro tunc* on September 10, 2025).

4. Except for implementation of the November 2023 IEP, all claims prior to May 9, 2024 are time barred and **DISMISSED WITH PREJUDICE**.

5. Petitioners' claim that the AAC-AT evaluation was untimely is **DISMISSED WITH PREJUDICE.**

6. Based on the Findings of Fact—including the determinations that Respondent denied Student a FAPE in the least restrictive environment through the May 23, 2024 ESY decision; the implementation of the November 20, 2023 IEP; the September 12, 2024 reevaluation planning and implementation; the November 13, 2024 IEP (including ESY and implementation); and the April 22, 2025 eligibility, placement, and IEP decisions (including predetermination)—the Tribunal concludes that Petitioners are entitled to relief for Respondent's denial of Student's right to the least restrictive environment.

7. The following is **ORDERED** for the FAPE violations:

A. Independent Educational Evaluations and Required IEP Meetings

a. As a remedy for Respondent's failure to conduct valid and comprehensive evaluations in all areas of suspected disability, including its failure to perform a Functional Behavioral Assessment when behavior was cited as a basis for removal, Petitioner is entitled to Independent Educational Evaluations (IEEs) at public expense, including an independent psychoeducational evaluation and functional behavior assessment.

b. The independent evaluators shall be professionals of Petitioner's choosing with expertise comparable to their expert witnesses, the FBA must be conducted by a Board-Certified

Behavior Analysist (BCBA), and the evaluators shall conduct the evaluations in accordance with their own professional judgment, standards, and expertise, without limitation, direction, or constraint imposed by Respondent.

c. Petitioners shall provide Respondent with the names and contact information of each selected independent evaluator within 5 days of the issuance of this Final Decision.

d. Respondent shall contract with the selected evaluators within 30 days of the issuance of this Decision and shall fully cooperate by providing all records reasonably requested and ensuring timely access to the student for assessment.

B. Independent Psychoeducational Evaluation

e. The February 28, 2025 Psychoeducational Evaluation was not valid or sufficiently comprehensive, and that Respondent improperly relied on that evaluation to: change Student's eligibility from ID-Mild to ID-Moderate, and, justify a substantially more restrictive placement.

f. Given the procedural and substantive flaws identified—including failure to review critical records, failure to provide required accommodations, use of inappropriate instruments, and extreme unexplained adaptive behavior discrepancies—an independent psychoeducational evaluation at public expense is required.

g. An Independent Psychoeducational Evaluation is **ORDERED** and shall, at minimum, include:

1. A standardized intellectual assessment using instruments less confounded by language and motor demands (such as the DAS-II and/or CTONI or similar nonverbal cognitive measures), with appropriate "testing of the limits" and adherence to publisher guidance for testing children with significant communication and motor needs.

2. Achievement testing across core academic domains.

3. Adaptive behavior assessment with appropriate explanation of rating scales to raters and follow-up where ratings are discrepant.

4. Consideration and implementation of all testing accommodations in Student's IEP, including access to his AAC device, multiple sessions, frequent breaks, and extended time, so that results reflect his aptitude and achievement rather than his speech and motor impairments.

h. The independent evaluator shall, at public expense, attend (in person or virtually) the IEP Team reevaluation meeting held to review the independent psychoeducational evaluation and IEP meetings to develop Student's IEPs including ESY services for the remainder of the 2025-2026 school year and through the 2026-2027 school year including ESY determinations.

C. Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)

i. The Tribunal finds that Respondent relied on Student's purported behavior and "difficulty maintaining engagement" to justify: increased segregation, reductions in related services, and removal from the regular education classroom, yet never conducted an FBA or developed a BIP, despite staff testimony that these behaviors were not new. This failure contributed to the denial of FAPE and LRE in the April 22, 2025 IEP. Accordingly, Respondent shall ensure that an FBA is conducted and that a BIP is developed and implemented based on that assessment.

j. A Functional Behavioral Assessment is **ORDERED** and shall be conducted by a Board-Certified Behavior Analysist (BCBA) of Petitioners' choice and include at a minimum:

1. Direct observations across settings (including general education classrooms, specials, lunch, and recess);

2. Review of historical discipline data and IEP documentation;

3. Structured interviews with Student's parents, current and recent teachers, related service providers, and his 1:1 aide; and,

4. Data-based analysis of antecedents, behaviors, and consequences, with attention to behavior previously cited as a rationale for pull-out services or reductions in related services.

k. The BCBA shall use the FBA to develop a Behavior Intervention Plan (BIP) and revise existing behavioral goals and supports which shall use positive behavioral interventions and supports designed to enable Student to be educated in the general education setting to the maximum extent appropriate; and,

l. The BCBA shall, at public expense, observe, train staff, and monitor implementation of the BIP as the BCBA deems necessary in his/her professional opinion to ensure proper implementation of the BIP, behavior/social emotional goals and supports through the remainder of the 2025-2026 school year and 2026-2027 school year.

D. Independent Inclusion and Reading Specialists

Independent Inclusion Specialist

m. The November 20, 2023; September 12, 2024; November 13, 2024; and April 22, 2025 IEPs did not offer Student a FAPE in his LRE under the *DeVries/Roncker* standard. Respondent unilaterally increased segregation through over-implementation of pull-out services, failed to demonstrate that Student could not be educated satisfactorily in the regular classroom with supplementary aids and services, and relied on disability label and administrative convenience rather than individualized analysis.

n. To remediate these LRE and predetermination violations and to support Student's education in his least restrictive environment going forward, the Tribunal **ORDERS** Respondent contract with an independent inclusion specialist of Petitioners' choice to assist with the development and monitoring of Student's IEPs for the remainder of the 2025–2026 school year and summer, through the end of the 2026–2027 middle-school year.

o. Petitioners shall provide Respondent with the names and contact information of each selected independent specialist within 5 days of the issuance of this Decision.

p. Respondent shall, at public expense, contract with the Independent Inclusion Specialist and Reading Specialist of Petitioners' choice with comparable expertise as their expert witnesses, within 30 days of the issuance of this Decision and shall fully cooperate by providing all records reasonably requested and ensuring timely access to the student for assessment.

q. The inclusion specialist shall:

1. Review Student's educational records;

2. Conduct classroom observations in both general and special education settings;

3. Interview Petitioners, current teachers, related service providers, and administrators;

4. Make written recommendations regarding appropriate supplementary aids and services to support Student in general education;

5. Provide staff training regarding inclusive practices and use of Student's AAC device; and,

6. Develop data collection and progress monitoring systems necessary to maintain Student in the LRE.

r. The inclusion specialist shall provide consultation and support through the end of the 2026-2027 school year including extended school year services.

s. The inclusion specialist's attendance (in person or virtually) at the IEP Team meetings through the end of the 2026-2027 school year is required and shall be at public expense.

t. In accordance with his/her own professional judgment, the inclusion specialist shall conduct follow-up consultations (at least quarterly through the end of the 2026-2027 school year including extended school year services) with the IEP Team to review data on Student's academic and behavioral progress and to advise on any needed adjustments to maintain him in his LRE; and,

u. The inclusion specialist shall conduct at least one training session for staff working with Student on inclusive practices, LRE decision making, and implementation of

accommodations and supplementary aids and services. The training sessions shall be held during the remainder of the 2025-2026 school year and each semester during the 2026-2027 school year, but more if deemed necessary in the inclusion specialist's professional judgment for implementing Student's educational services.

Independent Reading Specialist and Structured Literacy Program

v. The November 2024 and April 2025 IEP goals—particularly in reading and written expression—were: repetitive, insufficiently ambitious, misaligned with present levels, and inconsistent with structured literacy principles. Respondent did not implement a structured literacy program with fidelity, removed phonics goals, and narrowed instruction to high-frequency words. These failures contributed to the denial of FAPE.

w. Accordingly, Respondent is **ORDERED** to contract with an independent reading specialist of Petitioners' choice to design and oversee a structured literacy program individualized to Student's needs and to monitor its implementation. A structured literacy program and expert oversight are needed to ensure the appropriateness of Student's reading and written expression present levels, goals, and implementation with fidelity. The independent reading specialist shall, at a minimum:

1. Review Student's educational and assessment records, including mCLASS, iReady, and progress monitoring data, and observe his current reading instruction as needed;

2. Recommend an evidence-based structured literacy program appropriate for an older student who still requires explicit instruction in foundational skills, with accommodations for his speech and motor deficits.

3. Assist the IEP Team in aligning reading and written expression goals, benchmarks, and progress monitoring procedures with the selected program.

x. Based on the reading specialist's recommendations, Respondent shall ensure that any special education teacher providing reading or written expression specially designed instruction to Student is trained in the science of reading and in the specific structured literacy program selected by the independent reading specialist.

y. Through the remainder of the 2025-2206 and throughout the 2026-2027 school year, the reading specialist shall monitor that Student's reading and written expression specially designed instruction is delivered using that structured literacy program to ensure fidelity and review databased progress monitoring.

z. During this period, the independent reading specialist shall provide follow-up consultation at public expense including progress review consultations as the specialist deems necessary to ensure the effectiveness of the program and any adjustments.

E. IEP Team Meeting: Revision of IEP, Eligibility Category, and Placement

aa. To correct the effects of the invalid evaluation, predetermination, and LRE violations associated with the April 22, 2025 IEP—and to address the over-implementation and FAPE violations in the November 2023 (implementation only), May 2024, September 2024, and November 2024 IEPs—an IEP Team meeting shall be convened after completion of all independent evaluations. The independent educational consultants shall participate in this meeting. The Team shall revise Student's IEP and placement consistent with the independent evaluations and the findings herein.

bb. An IEP meeting shall be held to revise the existing IEP within 10 school days of receiving both the completed independent psychoeducational evaluation; and, the completed FBA and any draft BIP.

cc. Respondent shall contact Petitioners to schedule an IEP Team meeting at a mutually agreeable time. Respondent shall invite and pay all expenses of the following individuals to participate in that IEP meeting (in person or virtually): the independent psychoeducational evaluator; the BCBA who conducted the FBA; the independent inclusion specialist; and the independent reading specialist.

dd. At the IEP meeting, the IEP Team shall:

1. Review and incorporate into the IEP the recommendations of the independent psychoeducational evaluation, the FBA, the inclusion specialist and reading specialist;

2. Revise Student's eligibility determinations so that eligibility is not driven solely by intellectual disability scores but appropriately reflects all areas of suspected disability, including his genetic condition and OHI type characteristics, consistent with IDEA;

3. Develop a BIP and behavioral goals based on the FBA, with the express purpose of supporting Student in the general education classroom to the maximum extent appropriate;

4. Revise Student's IEP—including present levels, goals, SDI minutes, placement, and supplementary aids and services so that the program is reasonably calculated to enable appropriate progress in light of his circumstances; and,

5. Determine placement by an individualized LRE analysis, not by disability label, administrative convenience, or preexisting program structures. In conducting the LRE analysis, the IEP Team shall begin with the presumption of education in the regular education classroom with appropriate supplementary aids and services; and,

6. Remove Student from the general education setting only for those portions of the school day where the Team, based on current data and the specialists' input, concludes he cannot be successfully educated in that setting with such aids and services, consistent with *DeVries/Roncker*; and,

7. The IEP team's Prior Written Notice from this meeting shall accurately reflect: all options considered (including less restrictive placements); the reasons for accepting or rejecting each option; and, any areas of parental disagreement, so as to avoid the procedural defects and misdocumentation found in the April 22, 2025 PWN.

Compensatory and Prospective ESY

8. Respondent is **ORDERED** to provide compensatory and prospective ESY services as recommended by the independent evaluators and specialists. Compensatory ESY shall be provided to compensate for the ESY not provided during the summer of the 2023-2024 school year because of the adverse ESY decision of the May 23, 2024 IEP team. Student is therefore entitled to: compensatory ESY for the summer following the 2023–2024 school year, and prospective ESY for the summers following the 2025–2026 and 2026–2027 school years consistent with the independent evaluators and specialists' recommendations.

9. Nothing in this section precludes the IEP Team, informed by the independent evaluations and specialists, from determining that additional compensatory services are appropriate and including such services in Student's IEP by mutual agreement.

Generally

10. Nothing in this Order prevents the Parties from agreeing to additional remedies or supports beyond those specified herein, including additional staff training, mentoring, or compensatory services, so long as such agreements are reduced to writing and incorporated into Student's IEP or a separate settlement document.

11. All evaluations and services provided by the independent evaluators and specialists as well as their attendance at all IEPs meetings shall be paid by Respondent. The independent evaluators and specialists shall be invited to attend all IEP meetings held during the remainder of the 2025-2026 school year and throughout the entirety of the 2026-2027 school year which they may at their discretion choose to attend in-person or virtually.

12. Petitioners are prevailing party on the November 2023 implementation issue and all claims after May 9, 2024; and, Respondent is prevailing party on all other claims.

Compliance Monitoring

13. To ensure full and timely implementation of this Final Decision, Respondent shall comply with the following requirements:

a. Contracting With Petitioners' Selected Evaluators and Specialists:

Respondent shall, within 30 days of the issuance of this Decision, provide written documentation confirming that it has contracted with each independent evaluator and specialist selected by Petitioners, including the defined scope of work and anticipated timelines for completion.

b. Direct and Open Communication:

All independent evaluators and specialists selected by Petitioners shall be permitted to communicate directly with both Parties regarding scheduling, records needed, assessment procedures, and any clarifying information necessary to complete their evaluations. Respondent shall not restrict, limit, or condition the evaluators' ability to engage in professional dialogue with either Party concerning the scope, methodology, or progress of the evaluations.

c. Timely Exchange of Information:

Both Parties shall promptly provide any information, records, or responses reasonably requested by the evaluators/specialists to ensure timely completion of the assessments. Respondent shall ensure that evaluators/specialists have timely access to Student for all assessment activities.

d. Transparency in Evaluation Process:

Evaluators/specialists may request additional data, seek clarification, or communicate preliminary impressions with either Party as needed to complete their work. Respondent shall inform each evaluator/specialist, in writing, that such communication is authorized and expected.

e. Mutual Extensions of Deadlines:

The Parties may mutually agree, in writing, to extend any deadline set forth in this Final Decision as necessary to accommodate evaluator/ specialist's availability or to facilitate the orderly completion of the independent evaluations.

f. Ongoing Documentation of Compliance:

Respondent shall submit written evidence to Petitioners within 10 days of each contracting action, record transfer, evaluation appointment, or other steps taken to facilitate the independent evaluations.

g. Verification of Evaluation Completion and IEP Scheduling:

Within 10 days of receiving each completed independent evaluation report, Respondent shall provide Petitioners with a copy and shall document the scheduling of the required evaluation review IEP meeting.

h. Additional Documentation Upon Request:

Upon reasonable request, Respondent shall provide Petitioners with any further documentation necessary to verify timely and complete compliance with this Order.

Enforceability

14. This Decision constitutes the final administrative determination of the issues presented. This Final Decision is immediately enforceable by the State Board of Education and remains in effect until the party aggrieved files a complaint in either State or federal court and the reviewing court grants a stay of this Final Decision pursuant to N.C. Gen. Stat. § 150B-48.

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 an Administrative Law Judge 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.

IT IS SO ORDERED.
Original Final Decision Served on the 27th day of January, 2026.
Redacted Final Decision For Publication Purposes Only
Served on the 2nd day of February, 2026.

Stacey Bice Bawtinhimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 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.

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Redacted Final Decision For Publication Purposes Only
Served on the 2nd day of February, 2026.

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