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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF WILSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 EDC 05089

[redacted] by and through his parents [redacted] and [redacted] Petitioner, v. Wilson County Schools Board Of Education Respondent.	**FINAL DECISION**

THIS MATTER was heard before the Honorable Stacey B. Bawtinhimer Administrative Law Judge, presiding, on September 27-30, November 1-4, November 8-9, November 22-23, December 5-9, 16, 19-22, 2016, as well as January 4-5, 12-13, 17-18, 2017 at the Office of Administrative Hearings in Raleigh, North Carolina and the Wilson County School Board Offices in Wilson, North Carolina.

After hearing the evidence presented and considering the written and oral arguments of counsel, the Undersigned has concluded that Respondent ("Wilson County Schools," "Respondent," or "WCS") provided Petitioner [redacted] with a free appropriate public education ("FAPE") from December 16, 2014 through June 2015 and made an appropriate education available to [redacted] through his IEP which expired on January 19, 2016. However, from August 24, 2015 to October 23, 2015, the Respondent failed to provide [redacted] access to his non-disabled peers, failed to give the Petitioners an appropriate Prior Written Notice at the June 9, 2015 IEP meeting, and failed to implement a material portion of his speech language therapies thereby denying [redacted] a FAPE for those violations.

APPEARANCES

For Petitioners:
Stacey M. Gahagan
Stella Kreilkampf (withdrew Nov. 3, 2016)
The Gahagan Law Firm, P.L.L.C.
3326 Durham Chapel Hill Boulevard, #210-C
Durham, NC 27707

For Respondent:
Rachel B. Hitch
Kristopher L. Caudle
Schwartz & Shaw, P.L.L.C.
19 West Hargett Street, Suite 1000
Raleigh, NC 27601

WITNESSES

For Petitioners:

2nd grade teacher in the Pitt County Schools (2010-11 school year)
Ph.D.,[1] Expert Witness
[2] mother of
5th grade teacher (Spring of 2015 WCS)
6th grade teacher (Fall of 2015 WCS)
CCC/SLP, Private Speech Therapist ("Let's Talk")
Program Coordinator at
Ph.D. private psychologist
CCC/SLP,

For Respondent:

Ph.D., Expert Witness
CCC/SLP, Speech Pathologist
CCC/SLP, Speech Pathologist
Occupational Therapist
Occupational Therapist
Expert Witness and s 3rd and 5th grade teacher

EXHIBITS ADMITTED INTO EVIDENCE

The following exhibits were received into evidence during the hearing. The page numbers referenced are the "bates stamped" numbers.

Stipulated Exhibits Admitted at Hearing (hereafter Stip. Ex. 1, Stip. Ex. 2, etc.):

Stip. Exs. 1-25, 28-33, 36, and 38-39.

Petitioners' Exhibits Admitted at Hearing (hereinafter Pet. Ex. 1, Pet. Ex. 2, etc.):

Pet. Exs. 2, 4-5, 10-11,13-21, 24-25, 27-30, 32, 33, 34 (pages 898-904), 36, 43,49-52, 61-62, 66, 68-69, 72-74, 106, 112, and 116-120.

Respondent's Exhibits Admitted at Hearing (hereinafter Res. Ex. 1, Res. Ex. 2, etc.):

Res. Exs. 2, 13, 17-19, 21-24, 27-33, 36-39, 41, 44-45, 47, 50-52, 58-60, 63, 65-68, 70, 73-81, 83-84, 97-98, 101-102, 105, 107-110, 112, 114-116, 120-121, 135, 141, 146-147, 154, 156-166, 169-170, 172-175, 179, 193, 198, 202, 239, 243, 244, and 248-253.

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[1] name is misspelled as in Transcript Volume 7.

[2] is a medical doctor and referenced in the transcript as both and . For clarity purposes, in this Final Decision she is referred to as

Offers of Proof:

Petitioners: Tr. vol. 3, pp. 585:11-587:2; vol. 25, pp. 5227:12-5230:4; vol. 28, pp. 5822:3-5823:13.

Respondent: Tr. vol. 5654:7-5659:19.

Official Notice:

The Undersigned took official notice of the fact that [redacted] is not on the North Carolina Department of Public Instruction's approved non-public school list for the provision of special education and related services to children with disabilities. Tr. vol. 28, p. 5873:8-14.

PROCEDURAL BACKGROUND

On December 14, 2015, Petitioners filed a *pro se* Petition for a Contested Case Hearing (15 EDC 9757) ("Original Petition"), alleging violations of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§ 1400 et seq. ("IDEA"), and North Carolina State law N.C. Gen. Stat. §§ 115C-109.6 *et seq.* Stip. 42. Soon thereafter on December 16, 2015 and after service to WCS, Petitioners voluntarily dismissed without prejudice their Original Petition. Stip. 43. The Office of Administrative Hearings ("OAH") closed the Petition for Contested Case Hearing at 15 EDC 09757 on January 6, 2016. Stip. 44.

Less than one-year later, on May 17, 2016, Petitioners refiled their Original Petition as an attachment to a second Petition (16-EDC-5089) ("May 2016 Petition"). Stip. 45. The May 2016 Petition contained additional allegations and supplemental allegations. The Respondent and Petitioners filed Motions for Partial Summary Judgment on August 17, 2016 and June 24, 2016 respectively. The Respondent also filed a Partial Motion to Dismiss.

The case had previously been reassigned to the Undersigned on August 8, 2016 to which the Respondent objected and on August 22, 2016, the Respondent filed a Motion to Recuse. After considering written and oral argument, the Undersigned denied the Respondent's Motion to Recuse and remained assigned to the case. *See* Order Denying Respondent's Motion to Recuse dated 09/06/2016.

Subsequently, after a hearing on the parties' partial summary judgment motions on September 7, 2016, the Undersigned denied both motions finding that multiple material and factual issues were still in dispute by the parties in the case. The Undersigned did, however, grant Respondent's partial motion to dismiss and dismissed with prejudice all of Petitioners' claims and causes of action arising or occurring prior to December 16, 2014, in either the Original Petition or the May 2016 Petition. *See* Order Denying Respondent's Motion for Partial Summary Judgment and Order Granting Respondent's Partial Motion to Dismiss both dated 09/07/2016

A Contested Case hearing on Petition 16-EDC-05089 was commenced in the Office of Administrative Hearings ("OAH") on September 27, 2016 with the Undersigned presiding. The Petitioners' case-in-chief began on September 27, 2016 and continued during additional hearing dates on September 28-30, November 1-4, November 8-9, November 22-23, and December 5-8, 2016.

On January 4, 2016, upon reconsideration, the Undersigned entered an interim Order Granting Respondent's Motion for Partial Summary Judgment, dismissing with prejudice all claims or causes of action in the May 2016 Petition from January 20, 2016 to May 17, 2016 for lack of subject matter jurisdiction.

On December 8, 2016, Petitioners rested their case-in-chief and Respondent moved for the involuntary dismissal of some of Petitioners' claims pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure. After allowing Petitioners an opportunity to respond and after reviewing the records, the Undersigned held a motion's hearing on Respondent's Rule 41(b) motion and verbally dismissed the following portions of the Petitioners' claims. This verbal order was memorialized in a written Order dated March 17, 2017 which dismissed the following claims:

1. A denial of FAPE based on a reduction of speech therapy sessions from thirty-six (36) sessions per reporting period to thirty-three (33) sessions per marking period;

2. A denial of FAPE based on the absence of a regular education teacher during the January 20, 2015 and June 9, 2015 IEP meetings;

3. A denial of FAPE based on a failure to consider ESY services;

4. A denial of FAPE based on WCS' failure to utilize [redacted] to conduct trainings or implement a verbal behavior program of data collection or progress monitoring;

5. A denial of FAPE based on WCS' use of [redacted] as an augmentative communication device;

6. A denial of FAPE based on a lack of meaningful parent participation in the development of [redacted]s January 20, 2015 and June 9, 2015 IEP meetings, excluding the LRE issue, including any claim that WCS denied [redacted] a FAPE by his placement on the extended content standards and the NC EXTEND 1 alternative assessment;

7. A denial of FAPE based on the pre-determination of [redacted]s placement in the Separate Setting;

8. Reimbursement for private in-home therapy sessions provided by [redacted] and BCPS from November 9, 2016 through January, 2016; and

9. To the extent that Allegation No. 72 in the Petition formed the basis of any claim, the date of this allegation was outside of this Tribunal's defined statute of limitations of December 16, 2014, and is also dismissed with prejudice.

10. Claims regarding Respondent's failure to provide information to [redacted] bus driver related to his disability and seizure disorder are outside of the statute of limitations and have been previously dismissed, and

11. Claims regarding the failure to allow the parent to participate in the development of the January 20, 2015, IEP related to the assignment of [redacted] to the adaptive curriculum are outside the jurisdiction of the Office of Administrative Hearings.

Because of the application of the statute of limitations (which barred claims prior to December 16, 2014) and a lack of subject matter jurisdiction for claims arising after January 19, 2016, the operative time period for Petitioners claims was from December 16, 2014 through January 19, 2016. Because [redacted] was withdrawn from WCS, no due process claim was pending, and his last IEP expired on January 19, 2016, the Undersigned also dismissed any claims for private tuition reimbursement after January 20, 2016. After January 20, 2016, [redacted] was a parentally placed private student without a FAPE at issue and subject to a Student Services Plan under 20 U.S.C. § 1412(a)(10)(A)(i) and 34 C.F.R. § 300.132 (b) but not an IEP. Except for "child find" issues which were not raised by the May 2016 Petition, this Tribunal lacked subject matter jurisdiction over any claims after January 20, 2016.

All findings of fact and conclusions of law stated in the prior Orders of this Tribunal are incorporated by reference as if fully stated herein.

ISSUES REMAINING AFTER RULING ON RESPONDENT'S MOTION TO DISMISS

I. Whether Respondent provided [redacted] a FAPE based on the January 14, 2014 IEP as amended on February 27, 2014 (collectively the "January 2014 IEP") from December 16, 2014, through January 19, 2015, a period of sixteen (16) school days ("January 2014 IEP FAPE" issue);

II. Whether Respondent provided [redacted] with a FAPE based on the January 20, 2015 IEP as amended June 9, 2015 (collectively the "January 2015 IEP") from January 20, 2015, through January 19, 2016 ("January 2015 IEP FAPE" issue);

III. Whether [redacted] had appropriate access to non-disabled peers from August 24, 2015 through October 23, 2015 ("LRE" issue);

IV. Whether Respondent failed to properly implement [redacted] related services between December 16, 2014, and January 19, 2016 and, if so, whether this failure caused [redacted] educational harm ("Related Services" issue);

V. Whether Respondent failed to conduct required evaluations of [redacted] from December 16, 2014, and January 19, 2016 and, if so, whether this failure caused [redacted] educational harm ("Evaluation" issue);

VI. If Respondent denied [redacted] a FAPE, whether the private placement chosen by Petitioners from October 23, 2015 through January 19, 2016 was appropriate ("Private Placement" issue); and,

VII. To what remedies, if any, are Petitioners entitled?

BURDEN OF PROOF

Petitioners acknowledged in the Order on the Final Pre-Trial Order Conference entered on September 27, 2016, that they have the burden of proof in this contested case. The standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. v. Weast*, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. § 150B-34(a). Black's Law Dictionary defines "preponderance" as denoting "a superiority of weight or outweighing." The finder of fact cannot properly act upon the weight in favor of the one having onus, unless it overbears, in some degree, the weight upon the other side. North Carolina statutes state that the actions of local boards of education are presumed to be correct and "the burden of proof shall be on the complaining party to show the contrary." N.C. Gen. Stat. § 115C-44(b). The Petitioners, being the complaining party, have the burden of proof to show by a preponderance of evidence that Respondent did not provide [redacted] with a free appropriate public education.

STIPULATIONS

1. Prior to the hearing, the parties agreed to Stipulations of Fact in the Order on the Final Pre-Trial Conference ("Order on Pre-trial") filed on September 27, 2016. An Amended Order on the Final Pre-Trial Conference ("Amended Order on Pre-Trial") was filed on April 24, 2017 which included additional stipulations made by the parties during the contested case hearing. To the extent that Stipulations are not specifically stated herein, the Order and Amended Order on Pre-Trial are incorporated fully herein by reference.

2. The Jurisdictional, Party and Legal Stipulations are incorporated in the Conclusions of Law *infra*. Rather than being restated here, some of the factual stipulations are also incorporated in the Findings of Fact and Conclusions of Law as applicable. For cohesion, some facts are combined and comments are included by the Undersigned for clarity of the relevant IEPs and time frames within this case.

3. Petitioner [redacted]s date of birth is June 6, 2003 and that his father is Petitioner [redacted] ("[redacted] and his mother is Petitioner [redacted] ("[redacted] Petitioner [redacted] was twelve (12) years old at the time of the filing of this petition. Stip. 9.

4. [redacted] is a "child with a disability" as that phrase is defined in IDEA determined eligible for services under the IDEA. Stips. 10 & 13. [redacted] has been diagnosed with autism, receptive and expressive language disorder, and seizure disorder. Stip. 14.

5. [redacted] is domiciled within the boundaries of the Wilson County Schools ("WCS"), and he resides with his parents at [redacted], in [redacted] County, North Carolina. Stips. 11 & 12.

6. [redacted] was enrolled in the Pitt County Schools ("PCS") from 2006 through 2012. Stip. 15. The PCS conducted a Preschool Educational Evaluation of [redacted] on June 5, 2006. Stip. 16. The PCS determined [redacted] met the eligibility category for Autism as his primary eligibility category on June 15, 2006. Stip. 17.

7. [redacted] and his family moved from Pitt County to Wilson County at the beginning of the 2012-13 academic year. Stip. 18.

8. [redacted] attended:

2012-13	Third Grade	[redacted]
[redacted]	[redacted]	[redacted]

Stip. 19.

9. An Annual Review IEP Meeting was held on February 20, 2013, Addendum IEP Meeting was held on March 26, 2013 and a Reevaluation IEP Meeting was held on October 24, 2013, and the documents from those meetings speak for themselves. Stips. 20-22.

10. [redacted] administered the Verbal Behavior Milestones Assessment and Placement Program ("[2013] VB-MAPP") to [redacted] on December 10, 2013, and the evaluation report from that assessment speaks for itself. Stip. 23.

11. A Facilitated Annual Review IEP Meeting was held on December 17, 2013, and a Facilitated Reevaluation and Addendum IEP Meeting was held on January 14, 2014, the documents from those meetings speak for themselves. Stips. 24 & 25.

12. WCS conducted a Speech/Language Evaluation of [redacted] on February 11, 2014. Stip. 26.

13. [redacted] administered the Kaufman Speech Praxis Test for Children to [redacted] on February 11, 2014, and the report for that assessment speaks for itself. Stip. 27.

14. A Reevaluation and Addendum IEP Meeting was held on February 27, 2014, and the documents from that meeting speak for themselves. Stip. 28.

15. The January 14, 2014 IEP, with duration dates 01/14/14-12/16/14, and as amended on February 27, 2014 (collectively the "January 2014 IEP") is the first disputed IEP within the applicable statute of limitations. During the applicable period from December 16, 2014 to October 23, 2015, the January 2014 IEP was implemented for only sixteen (16) school days. Stip. 50.

16. [redacted] attended ESY during the summer of 2014 in accordance with his IEP. Stip. 29.

17. An Annual Review IEP Meeting was held on January 20, 2015, and the documents from that meeting speak for themselves. Stip. 30.

18. The WCS evaluated [redacted] fine motor/gross motor skills on March 4, 2015, using the Bruininks-Oseretsky Test of Motor Proficiency and clinical observation, and the results report from the assessment speaks for itself. Stip. 31.

19. [redacted] obtained the following scores on the fifth grade NC EXTEND1 EOG for the 2014-15 school year:

Reading	3
Math	3
Science	4

Stip. 32.

20. A Reevaluation and Addendum IEP Meeting was held on June 9, 2015, and the documents from that meeting speak for themselves. Stip. 33.

21. The amendments the IEP team made to [redacted] IEP at the IEP Meeting held on June 9, 2015, were to go into effect on August 24, 2015. Stip. 34.

22. [redacted] was [redacted] teacher during the 2015-16 school year at [redacted] Stip. 35.

23. No IEP Meetings were held after October 23, 2015, through the date of the Petition, May 17, 2016. Stip. 36.

24. [redacted] is located at [redacted]. Stip. 37.

25. [redacted] administered the VB-MAPP to [redacted] on December 1, 2015 ["2015 VB-MAPP"], and that the report of the results from that assessment speaks for itself. Stip. 38.

26. [redacted] administered the VB-MAPP to [redacted] on May 1, 2016 ["2016 VB-MAPP"], and that the report of the results from that assessment speaks for itself. Stip. 39.

27. Dr. [redacted] of Dogwood Psychology Center for Children and Families administered a psychological evaluation to [redacted] on April 6, 2016. Stip. 40.

28. The WCS subpoenaed [redacted] educational records from [redacted] on July 12, 2016. Stip. 41.

29. Any documents produced by the school district in discovery including, but not limited to, IEPs, email correspondence, data sheets, and meeting notes, are self-authenticated. Stip. 46.

30. All pleadings filed with the Office of Administrative Hearings on the matter associated with Docket No. 16 EDC 05089 are self-authenticated. Stip. 47.

31. The *North Carolina Department of Instruction's Policies Governing Services for Children with Disabilities* is self-authenticated. Stip. 48.

32. The *North Carolina Department of Public Instruction's 2008-2009 Guiding Practices: Implementing Policies Governing Services for Children with Disabilities* is self-authenticated. Stip. 49.

33. There were sixteen (16) school days from December 14, 2014 until January 20, 2015 during the 2014-15 academic year. Tr. vol. 23, pp. 4876:17-4878:2. Stip. 50.

34. Petitioners are not seeking reimbursement for the services rendered by [redacted] and BCPS. Tr. vol. 28, p. 5855:2-16. Stip. 51.

35. Petitioners are not seeking reimbursement for the attendance of [redacted] at the January 20, 2015 IEP meeting. Tr. vol. 28, p. 5859:3-15. Stip. 52.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding along with the parties' Proposed Final Decisions, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness 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 the case including, but not limited to, verbal statements at IEP meetings, the IEP minutes, the IEP documents, the DEC 5/Prior Written Notices, and all other competent and admissible evidence.

Introduction of Case

1. When the layers of testimony and evidence are peeled back, the central issue of this case concerns the appropriateness of the January 2015 IEP as amended. All other issues were ancillary. Historically, the parties' relationship had soured from the outset and was fraught with misunderstandings and divergent expectations. The Petitioners' preferred methodology was Verbal Behavior Analysis ("VBA") a form of Applied Behavior Analysis ("ABA") therapy. Although some components of VBA were utilized by Wilson County Schools, the relevant IEPs do not specifically reference or require exclusivity to VBA therapy.

2. Dissatisfied with WCS' educational program at [redacted] Petitioner's enrolled [redacted] in [redacted] a private school which used 1:1 VBA therapy as its sole treatment plan for [redacted] In addition to alleging the relevant IEP's denial of a FAPE to [redacted] Petitioner seeks reimbursement for the private school programs and compensatory services.

Relevant IEPs:

3. This case involves only two IEPs with their respective amendments. The relevant IEPs are:

January 2014 IEP: Drafted January 14, 2014, amended February 27, 2014 (collectively referred hereafter to as the "January 2014 IEP"), duration dates 01/14/14-12/16/14, extended by request of the Petitioners to January 20, 2015 because of an unexpected out-of-state funeral. Petitioners are not challenging the tardiness of this IEP meeting or the extension of the January 2014 IEP. Stip. Exs. 10 & 11.

January 2015 IEP: Drafted January 20, 2015, amended June 9, 2015, duration dates 01/20/15 01/19/16, (collectively hereinafter referred to as the "January 2015 IEP"). Stip. Exs. 12 & 13.

Relevant Time Period: The relevant time period for the case is December 16, 2014 to January 19, 2016.

OVERVIEW OF IEP'S

January 2014 IEP

4. All claims prior to December 16, 2014 were dismissed by the Undersigned on September 7, 2016. *See* Order Granting Respondent's Partial Motion to Dismiss. As such, the January 2014 IEP was implemented approximately sixteen (16) days before the development of the January 2015 IEP. Stip. 50. With respect to the January 2014 IEP, Petitioners complained primarily about the change in placement from resource to separate. *See* Petition pp. 13-16; ¶¶ 89, 90, 92, 93, 94, 95 & 96. Petitioners also contested the appropriateness of a writing goal and functional goal. *See* Petition p. 14, ¶91. At the February 27, 2014 IEP Addendum meeting, the IEP team added a language goal for [redacted] recently diagnosed apraxia and changed his testing from NCExtend 2 to NCExtend 1. *See* Petition p. 16, ¶103.

5. Petitioners argued that the January 2014 IEP was inappropriate due to [redacted] general lack of educational progress from 2013-2015 and that the goals from 2013-2015 decreased in rigor. *See* Petitioners' Trial Brief pp. 2, 6-18. Many of Petitioners' complaints about placement, and appropriateness of goals precede the statutory period before this Tribunal. Petitioners presented no evidence that the January 2014 IEP, extended for an additional 16 days at the parents' request, caused educational harm to [redacted]

January 2015 IEP and Amended June 2015 IEP

6. Until visited middle school classroom at she had raised no objections to the January 2015 IEP or s placement. primarily objected to the types of students in s middle school classroom whom she perceived were lower functioning in verbal and behavioral abilities. The nine (9) weeks delay in inclusion activities was the final straw which led to private school placement and ultimately this contested case.

7. At the January 2014, January 2015, and June 2015 IEP meetings, Ms. testified that she, the Petitioners, (Petitioners longtime ABA provider), and all members of the IEP team reached consensus on all issues at the IEP meetings. She also testified that the separate placement with Extended Content Standard was the least restrictive placement for and that the IEP goals were appropriate if they were supported by data. During Respondent's case, the school witnesses painstakingly connected each Present Level and goal with supporting data.

8. Both parties presented copious testimony regarding the appropriateness of the January 2014 and January 2015 IEPs. However, none was as compelling as unbiased opinion along with the Respondent's exhaustive data, supporting each Present Level of performance and goal, that the January 2014 and January 2015 IEPs were appropriate.

Witnesses, Designations of Experts, and Credibility Determinations

Petitioner mother of

9. Petitioner testified about her understandings and interpretations of events as they transpired at the IEP meetings and informal interactions with individuals involved in this case. Based on her oral testimony and verbal communications in documentary evidence, s relationship with WCS staff deteriorated over time, which was understandable in some respects. As the mother of is devoted to and has inherently both explicit and implicit biases. Clearly she and want what's best for and have been dedicated advocates for his educational services. The Undersigned found, that s testimony overall was credible.

MS, CCC-SLP

10. The most credible witness, to the Undersigned, was the VBA specialist, the Petitioners' last witness. Ms. has a Master's Degree in Speech Language Pathology, is licensed as a speech pathologist, and has practiced as a speech therapist for 34 years. Tr. vol. 14, pp. 2911: 12-16; 3110:18-22. She has been the owner of "Let's Talk Speech and Language Services" ("Let's Talk") since 1995. Tr. vol. 14, p. 2911:7-18. As part of her responsibilities, Ms.

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[3] name is misspelled in portions of the transcript and exhibits as . has provided ABA services to for eight (8) years prior to his full-time enrollment at

consults and trains for school systems, private clients, parents, runs the clinic and oversees therapists at Let's Talk. Tr. vol. 14, pp. 2911:19-2912:1. Ms. is also familiar with because she was on the initial and now does occasional training. Tr. vol. 14, p. 2913:7-16.[4] Ms. had been hired by both the Wilson County Schools as a consultant, Tr. vol. 14, p. 2912:7-17, and the Petitioners to attend IEP meetings for Tr. vol. 14, pp. 2912:23-2913:4. Although Ms. has been accepted as an expert in ABA/VBA at other hearings before the Undersigned and this Tribunal, in this case Ms. testified because she was subpoenaed by both parties and was not proffered as an expert by either. Tr. vol. 14, pp. 2913:24-2914:3.

11. Ms. described her role at the January 2014 IEP meeting "as a consultant to describe my test results and to make recommendations regarding his IEP goals." Tr. vol. 14, p. 2957:11-16. Ms. credibility was bolstered by her comment that, despite who paid her, she "made it very clear that [she] was there for _ _ " and she "was s advocate." Tr. vol. 14, pp. 2912:25-2913:1.

12. As a participant at the January 2014, January 2015, and June 2015 IEP meetings, Ms. was actively involved in the IEPs' development. Ms. opined that if the IEPs were based on data, then they were appropriate. Respondent then painstakingly connected each Present Level, goal, and objective with supporting data.

13. As an unpaid *de facto* expert, the Undersigned found Ms. very credible and her testimony was one of the most probative in the case.

Respondent's Expert Witness

14. The second most credible and probative testimony came from WCS' Program Specialist.

15. had over 25 years of experience teaching students with Autism. Resp. Ex. 97. She holds a Bachelor of Arts Degree in Psychology from NC State University, a Master's in Education in Special Education and Retardation from NC State, and she has completed all her required academic courses in the doctoral program for Curriculum & Instruction at NC State. Resp. Ex. 97; Tr. vol. 22, pp. 4669:24-4670:2. has National Board Certification in Early Childhood through Young Adulthood/Exceptional Needs. Res. Ex. 97. Ms. has served as a classroom special education teacher, EC Autism Program Specialist, and Adjunct Professor at Barton College. Resp. Ex. 97.

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[4] Even though she was knowledgeable about and VBA, neither party asked Ms. her opinion about the appropriateness of or if required exclusive VBA therapy for a FAPE.

16. [redacted] was received by the Undersigned as an expert in: (1) special education of students with autism, (2) inclusive education of students with autism and the adaptation of their curriculum, (3) teacher training of students with autism, and (4) IEP development for students with autism. Tr. vol. 22, pp. 4672:16-4673:1.

17. [redacted] is the only expert witness in this matter to have directly taught [redacted] She served as the classroom teacher for [redacted] during his 3rd grade year and the Fall of his 5th grade year at [redacted]. Stip. Ex. 7, p. 41; Res. Ex. 166; Stip. Ex. 12; Tr. vol. 23, p. 4745:4-5.

18. [redacted] is the only expert witness to have observed [redacted] in a WCS general education classroom, a WCS resource placement, a WCS separate setting, and the private placement at [redacted]. Tr. vol. 22, p. 4689.

19. [redacted] also served as an IEP team member in six (6) out of the seven (7) IEP meetings for [redacted] (she did not attend an IEP meeting in October 2013) while he was enrolled in WCS. Stip. Ex. 7; Stip. Ex. 8; Stip. Ex. 9; Stip. Ex. 10; Stip. Ex. 12; Stip. Ex. 13. [redacted] was the Program Specialist during each of the operative IEPs in this case. Stip. Ex. 10; Stip. Ex. 12; Stip. Ex. 13.

20. In addition to the deference already given to [redacted] as [redacted]s educator, the Undersigned found [redacted] to be the most knowledgeable and credible expert witness with respect to [redacted]s academic abilities and educational needs during the relevant time periods.

[redacted] *Ph.D.: Petitioner's Expert Witness*

21. Petitioners' expert, [redacted] was qualified in the areas of special education, inclusive education, inclusive education of students with autism, teacher training and support of low incidence students, IEP development and placement of low incidence students, the development and use of curriculum adaptations for low incidence students requiring special education, and educational psychology.

22. [redacted] earned her Bachelor of Science in Human Development from the University of California, Davis, her Masters of Education in Special Education from the University of Washington, and her Doctorate in Educational Psychology from the University of California, Davis. Pet. Ex. 106, p. 2090. [redacted] has published sixteen (16) peer reviewed articles, one (1) book, two (2) chapters in edited books, as well as technical reports, training materials, monographs, and digital and web-based resources, all of which focus on educating students with low incidence disabilities. Pet. Ex. 106, pp. 2092–93. [redacted] has received over one (1) million dollars of grant funding from the U.S. Department of Education, Pet. Ex. 106, p. 2097, and recently received grant funding to provide professional development to high school teachers to teach social studies content to students with autism in the general education setting, Tr. vol. 1, p. 126:18-21. [redacted] has presented at over sixty (60) conferences on educating students with disabilities. *See* Pet. Ex. 106.

23. [redacted] has served as an assistant professor in the Department of Special Education at the University of Kansas since 2013. Pet. Ex. 106, p. 2090. As part of her teaching responsibilities, [redacted] teaches courses on preparing teachers to develop and implement IEPs

in inclusive settings and introducing teachers to autism spectrum disorder. Pet. Ex. 106, p. 2101; Tr. vol. 1, pp. 127:18-128:5. [redacted] serves on a committee that devises standards for evaluating teachers and developing teacher competencies within the state of Kansas. Tr. vol. 1, p. 128:8-13. [redacted] consults with school districts on issues related to professional development and coaching, curriculum modifications, and designing inclusive programs. Tr. vol. 1, pp. 133:17-134:18. [redacted] is a certified teacher and worked as a teacher in California from 2001 to 2008. Tr. vol. 1, p. 127:6-10.

24. [redacted] is especially knowledgeable in the area of autism. [redacted] is trained in ABA and has taught classes leading to ABA certification. Tr. vol. 5, p. 936:21-22. [redacted] has published multiple peer reviewed journal articles specifically related to children with autism. Tr. vol. 1, p. 143:1-5 (discussing her dissertation, which was published in a peer-reviewed journal, where [redacted] evaluated IEPs of students with autism from kindergarten through ninth grade); *see also,* Pet. Ex. 106, pp. 2091-92.

25. [redacted] philosophy, for full inclusion of all disabled students regardless of the severity of their disabilities and needs, conflicts with the IDEA and Fourth Circuit precedent; therefore, the Undersigned viewed [redacted] testimony with skepticism.

26. The Undersigned does appreciate [redacted] dedication in her field and looks forward to the day that all students regardless of their disabilities are automatically included with nondisabled peers, but that is not the reality now. Moreover, her expert opinion that [redacted] was an appropriate placement even though [redacted] was completely isolated from his non-disabled peers seems incompatible with her wholesale preference for full inclusion.

27. The Undersigned also questioned [redacted] initial and subsequent opinions about the appropriateness of [redacted] when, prior to her on-site visit which intersected her testimony, she knew little about [redacted] program other than it provided VBA/ABA therapy.

28. [redacted] limited interaction with [redacted] and failure to conduct any evaluations of [redacted] also weakened the value of her testimony to the Undersigned. In general, the Undersigned did not find her testimony persuasive on the main issues in this case.

[redacted] *Ph.D.: Respondent's Expert Witness*

29. Respondent's expert, Dr. [redacted] was accepted as an expert in the following areas: education of students with autism, education of students with disabilities, cognitive low incidence disabilities students with behaviors and autism spectrum disorder; school administration, educational administration; IEP development; as well as teacher training in the education and instruction of students with disabilities.

30. Dr. [redacted] earned his Bachelor of Arts Degree in Teacher Education from Michigan State University, Master of Arts in Special Education from Oakland University, and Doctorate in Educational Administration from the University of Michigan. Res. Ex. 98, p. 1365.

31. Dr. [redacted] has experience in the areas of educational administration at the school and district levels, having served as a School Accreditation Expert, served as a Deputy Superintendent of Instruction/Interim Superintendent of a public school district, served as a Principal of a public middle school, and served as an Assistant Principal of multiple middle schools. Res. Ex. 98, pp. 1365-67. However, Dr. [redacted] experience in the areas of educational administration at the school or district level was of little relevance to resolving the issues raised in this case.

32. While [redacted] has some experience in the area of autism, his expertise is limited when compared to Petitioners' expert, [redacted] Dr. [redacted] serves as a Graduate Autism Spectrum Disorder Coordinator at Eastern Michigan University. Res. Ex. 98, p. 1366. Dr. [redacted] has completed supplementary training on Autism Spectrum Disorder, specifically, the Michigan Test for Teacher Certification Developer. Res. Ex. 98, p. 1365; *see also,* Tr. vol. 16, p. 3415:18-25 (discussing the autism state test).

33. Dr. [redacted] testimony regarding the development of [redacted]s IEPs and supporting data along with his opinions about [redacted]s potential rate of progress held the greatest weight to the Undersigned. Otherwise, Dr. [redacted] testimony held little value except to corroborate the testimonies of [redacted] and Ms. [redacted]

Other Witnesses:

34. Unless otherwise specifically noted in the Findings, the Undersigned found the remainder of the witnesses to be credible.

Special Matters Outside the Statutory Period

35. [redacted] transferred from Pitt County Schools ("PCS") to Wilson County Schools ("WCS") in August 2012. Soon after [redacted]s transfer to WCS, his educational programming was impacted by the failure of WCS to implement, for several months, his IEP from PCS.

36. As a result, WCS offered compensatory services during the summer of 2013 and more compensatory hours were negotiated during the 2013-2014 school year.

37. A Compensatory Services Schedule Agreement ("Compensatory Services Agreement") for 744 compensatory academic and 35 speech hours was signed by [redacted]s parents and WCS on April 29, 2014. Pet. Ex. 22; *see* Ex. A. to Barnes Aff. (filed January 24, 2017).

38. Based on this Compensatory Services Agreement, [redacted] received academic and speech compensatory services during the summers of 2013 and 2014, academic compensatory services during the 2014-2015 school year, and academic compensatory services during the summer of 2015.

39. This Compensatory Services Agreement is only relevant with respect to the implementation of the related services.

UNIQUE NEEDS/CIRCUMSTANCES

Unique Circumstances for Relevant to Determining the Appropriateness of January 2014 and January 2015 IEPs.

40. *Endrew F.* requires an "educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The initial inquiry is what were s unique needs/circumstances at the time the relevant IEPs were developed? *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017).

Enjoyed Interactions with Non-Disabled Peers

41. Both parties agreed that, when provided the opportunity to interact with his non-disabled peers, enjoyed and benefited from this interaction. Stip. Ex. 7, p. 20. According to Ms. s peer interaction at lunch was "terrific for pairing peers with reinforcement. They clearly care for and it's a positive experience for him." Res. Ex. 114, p. 1568 (10/14/14 Observation at). The IEP team agreed that "enjoys times with his peers" and "has good behavior in [the regular] class." Stip. Ex. 7, p. 42. He did "well with inclusion experiences." Stip. Ex. 7, p. 40. Moreover, that "is a sweet and polite student. He loves to be active and with his peers." Stip. Ex. 10, p. 93.

was Not on Grade Level Curriculum

Extended Content Standards

42. was not on grade level with his academic skills and was instructed on the Extended Content Standards. The appropriateness of this course of study was uncontested at the hearing. Even Petitioner's expert, opined that the Extended Content Standards and NC EXTEND 1 were appropriate for Tr. vol. 1, p. 185, vol. 5, p. 990:18-22 (testimony of Tr. vol. 14, pp. 3185-3186:3 (testimony of

NC EXTEND 1 ("EXTEND 1") Alternative Assessment.

43. As of January 20, 2015, was being instructed on the Extended Content Standards and assessed on the EXTEND 1, which by its very terms is only applicable to students with severe and pervasive delays in functioning. Stip. Ex. 11, p. 166; Stip. Ex. 12, p. 210.

44. The EXTEND 1 is the alternative assessment based on alternative achievement standards that is permitted for the 1% of disabled students who are the lowest functioning students in a school system. Stip. Ex. 36; Tr. vol. 1, pp. 213-216; *see also*, Stip. Ex. 1.

45. [redacted] had previously been on the Extended Content Standards in County Schools, Tr. vol. 1, p. 71:24-72:1 (testimony of [redacted] and the Wilson County Schools' IEP team also deemed the EXTEND 1 to be appropriate for [redacted] *See* Stip. Ex. 11, pp.166, 186 (February 27, 2014 amendment to January 2014 IEP); Tr. vol. 6, p. 1121 ([redacted]).

46. To be eligible for the EXTEND 1, the student must have a current IEP, be enrolled in grades 3-8, 10 or 11, be instructed in the North Carolina Extended Content Standards, and "exhibit severe and pervasive delays in ALL areas of conceptual, linguistic and academic development as well as in adaptive behavior areas, such as communication, daily living skills, and self-care." Stip. Ex. 36 (capitalization in original). [redacted] met this criterion.

[redacted] VB-MAPP Scores, IQ Score, and Adaptive Behavior Scores Are Consistent with the Criteria for the Extended Content Standard.

47. [redacted] was significantly delayed in linguistics, academics, adaptive behavior, communication, daily living skills, and self-care. Tr. vol. 14, pp. 3185: 17-25, 3186:1-3 (testimony of [redacted] Tr. vol. 1, p. 185; Tr. vol. 5, p. 990:18-22 [redacted]; *see also*, Res. Ex. 2.

VB-MAPP Scores: Functional Skills Less than 48 Months.

48. The Verbal Behavior Milestones Assessment and Placement Program ("VB-MAPP") was conducted by [redacted] for WCS in December 2013 just before the facilitated January 2014 IEP meeting. Stip. Ex. 3. The VB-MAPP is an assessment of 170 measurable learning and language milestones that are sequenced and balanced across three developmental levels: Level 1 (0-18 months), Level 2 (18-30 months), and Level 3 (30-48 months). Stip. Ex. 3, p. 4.

49. The VB-MAPP assessment is "more functional rather than academic in its results," Stip. Ex. 10, p. 136, and is not aligned with the North Carolina academic curriculum. Tr. vol. 15, p. 3234:12-16 (testimony of [redacted] The results of the VB-MAPP and the recommendations from the VB-MAPP were the focus of the facilitated January 2014 IEP meeting. Stip. Ex. 10, p. 136.

50. According to the December 2013 VB-MAPP assessment ("2013 VB-MAPP"), [redacted] had not mastered all the skills at the 0-18 month level in mands, independent play, spontaneous vocal behavior. Stip. 3, pp. 2030-2032. [redacted] had also not mastered all the skills at the 18-30 month range for tacts, listener responding/receptive, social, listener responding by function, feature and class, intraverbal, and linguistic structure. Stip. 3, pp. 2030-2032. Overall on the December 2013 VB-MAPP, [redacted] had not reached the top level on any skill areas except for motor imitation, reading, writing, and he demonstrated 3/5 skills at the highest level in math.

51. In summary, based on the 2013 VB-MAPP scores, when [redacted] was 10 years, 4 months old, he was functioning at a developmental age of less than 48 months.

IQ Testing and Adaptive Behavior Scores: Non-Verbal IQ 49

52. In their original Petition (15 EDC 9757, filed 12/14/2015), Petitioners contended that [redacted]s placement on the Extended Contents Standards curriculum was inappropriate because his intelligence had not been evaluated. Approximately a month before refiling their Petition (05/17/2016), on April 6, 2016, Petitioners obtained an independent psychological evaluation, conducted by [redacted] Ph.D., which corroborated that [redacted] had significant cognitive deficits.

53. At 12 years, 10 months of age, [redacted] non-verbal IQ standard score was a 49,[5] which was consistent with the cognitive testing from preschool. Resp. Ex. 2, pp. 1& 9.

54. Dr. [redacted] report included a clinical interview with [redacted] behavioral observations, a review of [redacted]s records, administration of the Leiter International Performance Scale-3rd Edition, ([redacted]) the Vineland Adaptive Behavior Scales-2nd Edition ("VABS-II"), Autism Diagnostic Observation System-2nd Edition ("ADOS-2"), Child Behavior Checklist Ages 6-18 Years ("CBCL"), and a Social Responsiveness Scale-2nd Edition ("SRS-2"). Resp. Ex. 2, p. 6; *see also,* Stip. Ex. 2.

55. [redacted] nonverbal IQ score, as determined by the [redacted], was consistent with the Vineland scores for [redacted] Both the Adaptive Behavior Composite Score from [redacted] and the score from [redacted]s [redacted] therapist fell in the "Low Range" (Resp. Ex. 2, p. 10), which, according to Dr. [redacted] was the "lowest characterization that's available on the Vineland." Tr. vol. 13, pp. 2758:24-2759:4; Resp. Ex. 2, pp. 9-11; Tr. vol. 24, pp. 4948-4957; Stip. Ex. 2.

56. Other than [redacted] written communication skills which were scored at a 6th grade level, all of [redacted] other adaptive skills were equivalent to a 4.7 year-old or younger which was consistent with his IQ (49), VB-MAPP scores (48 months or less), and WCS' prior determination that [redacted] had significant cognitive deficits. Tr. vol. 13, pp. 2759:24-2760:2 (testimony of [redacted] Dr. [redacted] testing was consistent with WCS' determination that [redacted] should be educated on the Extended Content Standards.

Brigance Testing: Below Grade Level in Reading and Math

57. The Brigance testing administered by WCS teachers over several years indicated that, even with modifications to the tests, [redacted] was not on grade level in reading or math. Stip. Ex. 17; Stip. Ex. 18; Stip. Ex. 11; Stip. Ex.12, pp. 200, 204, 225. [redacted] was performing below his grade level, but higher in some respects, math and sight words, than his non-verbal IQ ability level. Tr. vol. 13, pp. 2765:25-2766:7 (testimony of Dr. [redacted]

58. For example, school witnesses testified during Petitioners' case-in-chief that [redacted] was reading at about a second-grade level when he was in the 5th grade. Tr. vol. 24, pp. 5117, 5121, 5572 (testimony of [redacted]); Tr. vol. 9, pp. 1951:11-14, 1955, vol. 12, p. 2605 (testimony of [redacted] Likewise, the 2013 VB-MAPP indicated that [redacted] had developed "some nice strong

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[5] Average composite score falls between 85-115. Res. Ex. 2, p. 9.

functional academic skills…". Stip. Ex. 3, p. 9. Although [redacted] had some strengths, by every measure introduced at the hearing, [redacted] had significant impairment in all domains.

[redacted] was Nonverbal with Verbal Apraxia and Required an Augmentative Communication Device ("AAC device")

59. The most "significant" concern noted by Ms. [redacted] in the 2013 VB-MAPP assessment was [redacted]s "lack of spontaneous communication… which will require intensive services by the SLP [speech language pathologist]." Res. Ex. 3, p. 9. After the Kaufman Speech Praxis Test for Children was administered to [redacted] he was diagnosed with verbal apraxia. Stip. Exs. 3 & 4.

60. In her 2013 VB-MAPP assessment, Ms. [redacted] "highly recommended" a voice output system but [sic] used to allow [redacted]s language to continue to grow while the SLP and teachers are building up his vocal speech production." *Id.* Ms. [redacted] testified that [redacted] needed to be taught a voice reply system so that the educators could accurately assess his knowledge. Tr. vol. 14, pp. 2937:15-2938:6.

61. At the January 2014 IEP meeting, Petitioner [redacted] "voiced her concern that this device will become the primary means of communication for [[redacted] which she does not want." Stip. Ex. 10, pp. 137-138; *see also*, Tr. vol. 14, p. 2961:8-17 (testimony of [redacted] Ms. [redacted] his prior PCS teacher (2010-2011 school year) and summer camp assistant, was also "skeptical" of [redacted] using an AAC device. Tr. vol. 1, p. 50:1-4 (testimony of [redacted]).

62. Despite this skepticism, an augmentative communication ([redacted] or [redacted]) and assistive technology devices were on [redacted]s relevant IEPs. *See* Stip. Ex. 10, 11, &12. Ms. [redacted] noted in her February 2014 observation that [redacted] was using the [redacted] in his class. Pet. 34, p. 900 (2/17/14 Teaching Procedure Training for 4 hours).

63. However, instead of an AAC device, [redacted] wanted "more intensive [speech] services." Stip. Ex. 10, p. 137. In response to [redacted]s request, at the January 2014 IEP meeting, speech therapy was increased from 14 sessions a reporting period to four sessions a week. *Compare* Stip. Ex. 9, p. 75 *to* Stip. Ex. 10, p. 115.

64. Based on [redacted]' "reluctance" to use the [redacted] in school, it is doubtful that the device was used in the home while [redacted] was enrolled in WCS. This assumption is supported by the testimony of Ms. [redacted] (his prior PCS teacher and summer camp assistant) who said that she did not know [redacted] used the device in WCS because she never saw him use the device while he was enrolled in WCS or used it during summer camp. Tr. vol. 1, pp. 74:10-75:6. Ms. [redacted] incorrectly assumed that the [redacted] was first introduced at [redacted] not Wilson County Schools. Tr. vol. 1 p. 74:10-21. However, the summer of 2016 after [redacted]'s enrollment in [redacted] Ms. [redacted] testified that the [redacted] device was "very effective" for [redacted] and helped him to ask to leave situations instead of "tantrumming." Tr. vol. 1, pp. 49:25-50:10.

65. After withdrawing [redacted] from WCS, Petitioner [redacted] voiced the same concerns regarding augmentative communication and assistive technology at [redacted] where the

[redacted] device was not utilized until May 2016. Even at [redacted] the speech therapist testified that [redacted] was hesitant to use assistive technology initially. Tr. vol. 12, p. 2563:16-17 (testimony of [redacted] Pet. Ex. 73, p. 2010. Based on [redacted]s concern that [redacted] would become reliant on the technology, Tr. vol. 14, p. 3141 (testimony of [redacted] the implementation of the augmentative communication device did not occur until May 2016, six (6) months after [redacted] was first enrolled at [redacted] Tr. vol. 12, p. 2564:9-21 (testimony of [redacted] Although Ms. [redacted] acknowledged that prior to May 2016, at [redacted], "[redacted] had done very little with [redacted] Tr. vol. 12, p. 2573:20-23, [redacted] testified that [redacted] showed some prior familiarity with [redacted] when it was eventually implemented at [redacted] Tr. vol. 11, p. 2332. The testimony at hearing supported that WCS had used [redacted] with [redacted] while he was in attendance there. Tr. vol. 9, pp. 1966:15-1968:6.

66. Despite [redacted]s prior aversion to the [redacted] device during [redacted]s tenure at WCS, Petitioners now contend that "[redacted] ability to utilize an AAC device to communicate has played a *critical role* in his communication progress." *See* Pet. Proposed Decision, ¶348 (emphasis added) *citing* Tr. vol. 12, pp. 2567:7-9 (testimony of [redacted] 2568:21-2569:14 (testimony of [redacted] discussing [redacted]s progress using [redacted] with spontaneous requests, requesting a larger variety of items, and requesting and responding to intraverbals); Tr. vol. 4, pp. 823:12-824:2 (testimony of [redacted] Tr. vol. 2, p. 406:6-12, 407:3-19 (testimony of [redacted] that [redacted] was able to generalize the skill of communicating with his device to the home environment); Tr. vol. 5, pp. 891:18-22 (testimony of [redacted]), 905:15-21 (testimony of [redacted] describing [redacted] demonstrating understanding of the grammar concept of a complete sentence); Tr. vol. 1, pp. 49:24-50:19 (testimony of [redacted]).

67. It is disingenuous for Petitioners to criticize WCS for a perceived lack of communication progress when Petitioners refused to embrace the [redacted] use at WCS or in the home environment. Petitioners' decision in this regard stifled [redacted]s communication progress at both [redacted] and WCS.

[redacted] was Unable to Generalize Skills, Was Prompt Dependent, and Inconsistent with Mastery of Skills

Unable to Generalize Skills

68. Generalization of skills is important for [redacted] to function academically. Tr. vol. 17, p. 3694 (testimony of Dr. [redacted] had a long history of difficulty generalizing in a new setting. Tr. vol. 23, p. 4879:4-6 (testimony of [redacted]); Tr. vol. 14, pp. 2932:23-2934:1 (testimony of [redacted] Failure to generalize skills to novel tasks was a significant barrier impeding [redacted]s academic progress, and often he lost his generalized skills. *See* Stip. Ex. 3, p. 8 (2013 VB-MAPP Barriers Assessment).

69. Although the Undersigned did not find [redacted] testimony very creditable, she did admit that [redacted] "had inconsistencies in his abilities to show skills," Tr. vol. 1, p. 70:6-13, and that [redacted] could do things at home that he could not do at school. Tr. vol. 1, p. 70:14-22.

Prompt Dependent

70. An additional educational barrier was prompt dependence and these prompts "were difficult to fade and most skills [were] prompt bound." Stip. Ex. 3, p. 8. From 2013-2015, was "extremely prompt dependent." Tr. vol. 10, p. 2034:3-9 (testimony of struggled with prompt dependence in Pitt County Schools, WCS, and Tr. vol. 1, pp. 83:7-11, 112 (testimony of vol. 10, pp. 2034:8-10, 2043:5 (testimony of vol. 13, p. 2897:23 (testimony of Resp. Ex. 24; Tr. vol. 11, p. 2332:4-9 (testimony of was still prompt dependent as of May 2016 at Tr. vol. 11, p. 2332:4-9.

71. The data introduced at the hearing also evidenced inconsistent performance and progress. *See e.g.*, Resp. Ex. 175. noted inconsistency in his performance and progress. Resp. Ex. 114, p. 1567.

72. however, did have "splinter skills" areas in which an autistic student can perform some skills that would not be expected given their general performance abilities. Tr. vol. 24, p. 5113 (testimony of

73. The IEP Teams knew was inconsistent and that such inconsistency is a natural part of autism. Stip. Ex. 9, p. 61; Stip. Ex. 10, p. 93; Stip. Ex. 12, p. 226; Stip. Ex. 14, p. 267; Tr. vol. 24, p. 5113.

74. For a student with autism this does not mean that the skill is lost, just that it may not be shown that day or with that person. Tr. vol. 18, p. 3796.

Suffered from Seizures and Hand Tremors

75. suffered from seizures, was on seizure medication, and experienced hand tremors. *See* Pet. Ex. 36, pp. 955-958; Stip. Ex. 10, p. 109; Res. Ex. 166, p. 2376; Tr. vol. 22, pp. 4703-04 (testimony of At times, s "[h]ands are very shaky and he's very agitated." Pet. Ex. 36, p. 955. experienced a suspected seizure at school and sat down on the floor then "laid out stiff and began tremoring with all extremities. He did not respond to his name or seem aware of his surroundings." Pet. Ex. 36, p. 1016.

76. According to s doctor confirmed that s hand tremors were a side effect of s seizure medication. Pet. Ex. 36, p. 957.

77. occupational therapist, discussed s seizures and his hand tremors with WCS' staff used various strategies, including a weighted cuff for s hand, a slant board and a weighted pencil to counteract the impact of s hand tremors, none of which eliminated the effects of the hand tremors. Tr. vol. 18, pp. 3715, 3730-3731 (testimony of occupational therapist). hand tremors were addressed using handwriting alternatives in his IEP, which helped accommodate for the impact of the tremors. Stip. Ex. 10, pp. 110-11; Stip. Ex. 12, pp. 208-09; Tr. vol. 23, pp. 4744-45, 4805-06.

[redacted]s Self-Stimulatory Behaviors

78. [redacted] had self-stimulating behaviors, but the testimony from his WCS teachers and [redacted] staff indicated that these behaviors were easily redirected and did not impact him educationally. [redacted] did not have a behavior plan at either WCS or [redacted] because [redacted] did not have any behaviors that would warrant a behavior plan. *See* Tr. vol. 11, p. 2311 (testimony of [redacted] Although at the time, [redacted] "engage[d]… in some minor negative behaviors weekly but recovery is quick." Stip. Ex. 3, p. 8 (2013 VB-MAPP Barrier Assessment); *see also*, Tr. vol. 14, pp. 2932:23-2934:1; 3139:2-16 (testimony of [redacted]

[redacted]S APPROPRIATE RATE OF PROGRESS

79. The second inquiry under *Endrew F.* is what was [redacted]s appropriate rate of progress?

80. This question was not answered by the Petitioners. Petitioner's complained that the IEP goals were not meaningful because they did not support [redacted]s rate of progress.

81. As the party with the burden of proof, the Petitioners must offer evidence as to what they contend was [redacted]s expected rate of progress and how the IEPs were not reasonably calculated for [redacted] to make appropriate progress.

82. According to [redacted]s rate of skill acquisition could have been determined. *See* Tr. vol. 2939:24-2940:23 (Ms. [redacted] explanation of how to determine rate of progress).

83. In their opening argument, and again in closing argument, Petitioners argued that [redacted] was on a better trajectory (i.e., anticipated rate of progress) in County Schools than in WCS. However, Petitioners provided no evidence from their expert or anyone else regarding the expected rate of progress that it would have been appropriate to anticipate in [redacted]s IEP goals.

84. In fact, Petitioners did not call as a witness [redacted][6] an autism consultant whose company had worked directly with [redacted] for about eight (8) years (both in Pitt County Schools and WCS)[7] at the time of [redacted]s removal from the WCS. Tr. vol. 4, p. 862; Stip. Ex. 8, p. 47.

85. Even after [redacted]s removal from WCS, Ms. [redacted] company continued to instruct [redacted] Tr. vol. 4, p. 838:24-25. Even if Ms. [redacted] was unavailable or unwilling to testify, Petitioner's expert, [redacted] was trained in ABA and taught classes leading to ABA certification.

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[6] [redacted] has been recognized as an expert by the Undersigned and other ALJ's in the areas of autism, IEP development for autistic students, and ABA therapy.

[7] In addition, no data collection, progress monitoring, therapy notes, or the like, taken by Ms. [redacted] during this time period were ever produced by Petitioners during the development of the relevant IEPs or as part of the Contested Case Hearing (during discovery, or offered as evidence during the Petitioners case-in-chief).

Tr. vol. 5, p. 936:21-22. However, [redacted] testified she did not know who [redacted] was or that [redacted] had previously had received ABA therapy. Tr. vol. 5, pp. 930:23-931:1.

86. If Petitioners' arguments about [redacted]'s rate of progress and anticipated rate of progress diminished in the WCS could be proven, Ms. [redacted] would certainly have direct knowledge of that rate of progress and anticipated rate of progress. Even Petitioner's expert [redacted] as an ABA Trainer, should have been able to estimate [redacted]s rate of progress based on the eight (8) years of ABA data from Ms. [redacted] however, she did not.

Comparison with Past IEP Goals Did Not Establish Rate of Progress

87. Petitioners contend that [redacted]s IEPs were inappropriate because he made inadequate academic and functional progress. To establish his rate of learning Petitioners compared the IEPs' present levels and goals from the 2013 to 2015 as evidence of [redacted]s lack of progress. *See* Petitioners' Trial Brief pp. 7-18. Petitioners relied on the PCS' IEP and testimony of [redacted] to support their claims that [redacted] was functioning higher before he enrolled in WCS and had regressed thereafter.

88. Petitioners' reliance on the PCS' IEP as evidence of [redacted]s trajectory was misguided. A review of the Progress Monitoring reports from PCS, showed that [redacted] did not master any of the PCS' IEP goals, and that his performance was inconsistent, heavily prompt dependent, and required reminders, support, and cueing. Pet. Exs. 13 & 14. While at PCS, [redacted] was taught on the Extended Content Standards and, despite the purported appropriateness of the PCS program, had repeated the 2nd grade. Tr. vol. 1, pp. 71:24-72:1; 80:16-18 (testimony of [redacted] This comparison of IEP goals and present levels did not establish for the Undersigned [redacted]s rate of progress.

Comparison with VB-MAPP Assessments Did Not Establish Rate of Progress

89. According to Ms. [redacted] Petitioner's comparison of the VB-MAPP assessments was inadequate to determine [redacted]'s rate of progress. When asked if [redacted] had made progress since her 2013 evaluation in comparison with [redacted] 2015 evaluation, Ms. [redacted] testified that "I can't answer that with a yes or no because what I needed to see in order to answer that was his rate of acquisition; which means I would need to see the data to indicate how fast he could learn." Tr. vol. 14, pp. 2949:21-2950:5. Basically, Ms. [redacted] did not know "what to expect from him" and "would need to see more data to know his personal, individual trajectory." Tr. vol. 14, p. 2950:13-19.

Progress at [redacted] Did Not Establish Rate of Progress

90. The only progress that Petitioners could cite definitively from his placement at [redacted] was that [redacted] learned how to tie his shoes, had improved with verbal communication as shown on the VB-MAPP, and was consistently using his [redacted] devise. *See* Petitioner's Trial Brief pp. 18-19. Comparison of the 2015 and 2016 VB-MAPP data from [redacted] demonstrated even with 1:1 instruction for six hours daily, [redacted] functional skills were still at less than a 48-month functional level. *Compare* Pet. Ex. 51 (December 2015 VB-MAPP) *to* Pet. Ex. 62 (May 2016 VB-MAPP).

91. In most areas, [redacted] performed at a Level 1 (0-18 months) or Level 2 (18-30 months). The only Level 3's (30-48 months) were math, classroom routines and group skills. After four months of intensive services, [redacted] had made minimal progress in 5 of the 15 areas and remained at less than 30 months functionally for most skills. Pet. Ex. 62.

92. There was insufficient evidence offered by the Petitioners to establish [redacted]s expected rate of progress despite the extensive ABA data available from the eight years of Petitioner's home-based ABA program and the 4 months of the intensive (6 hours daily, one-on-one instruction) ABA program at [redacted]

93. Petitioners did not introduce any evidence that the progress contemplated by [redacted]s IEPs, as developed, was inappropriate in light of [redacted]s circumstances existing at the time of the development of the IEPs.

94. Petitioners' expert [redacted] did not give an opinion about [redacted]s expected rate of progress in WCS or at [redacted] Moreover, [redacted] did not testify that the relevant IEP goals failed to contemplate sufficient progress considering the circumstances unique to [redacted]

95. The evidence introduced at hearing by Petitioners did indicate that Ms. [redacted] Ms. [redacted] and [redacted] who actively participated in the development of both the January 2014 and January 2015 IEPs, did not raise any objections to the Present Levels or goals as not evidencing or anticipating appropriate progress for [redacted] Stip. Ex. 10; Stip. Ex. 11, p. 186; Stip. Ex. 12, p. 224; Stip. Ex. 13, pp. 262-263; Tr. vol. 4, p. 838: 24-25; Tr. vol. 11, p. 2442.

Respondent's Experts Testified as to the Appropriate Anticipated Rate of Progress for [redacted]

96. Respondent's expert Dr. [redacted] testified that a student with a nonverbal IQ of 49 could be expected to have incremental and inconsistent progress and, although he could make progress, his progress would be "up and down." Tr. vol. 17, pp. 3679:9-3680:24; Tr. vol. 21, pp. 4307, 4322:13-17. This is consistent with the testimony of Respondent's other expert [redacted] who had the most relevant and comprehensive experience working with [redacted] of any witness at the hearing. Tr. vol. 25, pp. 5295:24-5296:1, 5321:20-5322:1.

97. Ms. [redacted] and Dr. [redacted] testimonies regarding an expectation of incremental and inconsistent progress, given [redacted]s level of cognitive functioning, was collaborated by other members of the IEP team who had worked with [redacted] directly. *See* Tr. vol. 9, pp. 1995:10-18, 2003:8-9 (testimony of [redacted] Tr. vol. 13, pp. 2686:15-17, 2687:1-5, 2699:10-13 (testimony of [redacted] Tr. vol. 18, pp. 3905:11-12, 3793:16-18, 3794:13-17, 3818:25-3819:2-6, 3847:7-12 (testimonies of [redacted] and [redacted] Tr. vol. 20, p. 4245:14-16; (testimony of [redacted] Tr. vol. 23, pp. 4755:24-4756:3; Tr. vol. 25, 5245:5-10, 5295:24-5296:1 (testimony of [redacted]

98. Based on the probative and credible evidence, the Undersigned finds that [redacted] rate of progress was, at best, inconsistent, incremental, highly situationally dependent, and heavily prompt dependent.

APPROPRIATENESS OF JANUARY 2014 AND JANUARY 2015 IEPS.

99. Drs. [redacted] and [redacted] held divergent views on the appropriateness of the IEPs. Both parties' out-of-state expert witnesses, had never evaluated [redacted] or worked directly with him. They both relied on a review of [redacted]s educational records, depositions of teaching staff and reviewed videos of various dates (not received in evidence).

100. Despite their impressive curricula vitae, *see* Pet. Ex. 106 and Res. Ex. 98, the most credible witness in Petitioner's case-in-chief was [redacted] who was subpoenaed to testify by both parties and not offered as an expert by either. Ms. [redacted] has been admitted numerous times in this Tribunal as an expert on VBA, education of autistic students, and as a speech pathologist.

101. Ms. [redacted] who had tested [redacted] in December 2013 and who had remained involved, at some level, in [redacted]s educational planning at WCS through, at least, the June 2015 IEP meeting, testified that [redacted] IEP's would be appropriate, in her opinion, to the extent they were based upon the data. Tr. vol. 15, pp. 3195:17-21, 3205:4-17 (testimony of [redacted]

102. Respondent then proffered, for days, an exorbitant amount of data supporting each Present Level, goal, and objective for both the January 2014 and January 2015 IEPs.

JANUARY 2014 IEP

103. The January 2014 IEP would have expired on December 16, 2014 but for the Petitioners' requests beginning November 21, 2014 (Pet. Ex. 36, p. 980) to reschedule the dates for annual review IEP meetings which were proposed by the Respondent prior to the IEP expiration date. Pet. Ex. 36, pp. 972-975 ([redacted] preferred to wait until next year [2015]); *see also,* Pet. Ex. 36, pp. 967-996 (attempts to schedule IEP meeting). If the January 2014 IEP had been of one-year duration, it would have expired on January 15, 2015. During the relevant time period, the January 2014 IEP was implemented for sixteen (16) school days. Stip. 50.

104. Petitioners did not allege any procedural violations regarding the extension of the January 2014 IEP. Even assuming *arguendo* that the January 2014 IEP's Present Levels and goals were inappropriate, the Petitioners failed to produce any specific evidence of educational harm during the 16-day implementation period.

Present Level of Academic Achievement and Functional Performance (hereinafter "Present Levels")

105. The appropriateness of the Present Levels included in the IEP developed on January 14, 2014 is outside the limitations period in this matter. To the extent that factual findings are necessary for judicial review, the Undersigned makes the following factual findings with respect to the January 2014 IEP.

106. The January 14, 2014 IEP meeting was a facilitated IEP meeting. Stip. Ex. 10, p. 136; Tr. vol. 23, p. 4890:3-4. In attendance were [redacted] parent advocate and autism specialist, and [redacted] autism specialist and speech pathologist. Stip. Ex. 10, p. 136; Tr. vol. 7, p. 85:7-11 (testimony of [redacted]

107. The Present Levels of performance were drafted by his 4th grade teacher and WCS' Program Specialist, prior to the January 14, 2014 IEP meeting. Tr. vol. 23, p. 4899:24-2 (testimony of [redacted]

108. No portion of the January 14, 2014 IEP was finalized until everyone on the IEP team agreed to what was developed on that portion. Tr. vol. 14, p. 3156:12-16 (testimony of [redacted] Tr. vol. 23, p. 4794:4-6 (testimony of [redacted]

109. Data that had been used to develop the draft present levels on the January 14, 2014 IEP was available for anyone's review. [redacted] Present Levels were discussed and explained at the January 2014 IEP meeting. Petitioner [redacted] participated in and was provided an opportunity to give input as to [redacted]s Present Levels at the January 2014 IEP meeting and she never indicated that the Present Levels were inaccurate. Tr. vol. 23, p. 4900:6-7.

110. All persons at the January 2014 IEP meeting, including Petitioner [redacted] and her consultant, [redacted] agreed to the Present Levels of performance included in the January 2014 IEP.

111. Even though Petitioners were "lay persons," they had available, prior to and during, the IEP meeting, the expertise of their private autism specialist and ABA provider who both had extensive personal knowledge about [redacted]s academic and communication levels. The Undersigned finds that the Petitioners were afforded meaningful participation in all aspects of the IEP development during the January 14, 2014 IEP meeting.

112. The Undersigned also finds that the Present Levels in the January 2014 IEP were procedurally and substantially appropriate under the IDEA.

Goals of January 2014 IEP

113. The January 2014 IEP incorporated the recommendations of speech pathologist [redacted] Ms. [redacted] conducted a Verbal Behavior Milestones Assessment and Placement Program ("VB-MAPP") of [redacted] on December 10, 2013. Stip. Ex. 3. The VB-MAPP "contains 170

measurable learning and language milestones that are sequenced and balanced across 3 development levels, 0-18 months, 18-30 months, and 30-48 months." Stip. Ex. 3, p. 4. "Information for the assessment was gathered through *direct probing of skills as well as interviews with [s] current and previous teachers*." Stip. Ex. 3, p. 4 (emphasis added).

114. Petitioners' witness contributed to the development of s IEP goals at the January 2014 IEP meeting. Stip. Ex. 11, p. 175. the parent's private consultant, played a large role in the development of s goals at that January 2014 IEP meeting, and that the team did not move on until everyone agreed with the language of the goals. also in attendance at that meeting, had the opportunity to participate in the development of the goals; never expressed specific disagreement with any goals. Tr. vol. 14, pp. 3151-3154:13 (testimony of

115. Ms. implemented s IEP from December 2014 until Ms. took over s 5th grade classroom in January 2015, shortly before s IEP underwent an annual review. Tr. vol. 23, p. 4901:2-9. According to Ms. the IEP goals on the January 2014 IEP were appropriate (Tr. vol. 23, p. 4900:9-10), the goals were measurable (Tr. vol. 23, p. 4900:12-13), and addressed weaknesses identified as part of Present Levels (Tr. vol. 23, p. 4900:14-15). Moreover, the goals were developed with the input of Petitioners and their advocates (Tr. vol. 23, p. 4900:17-20), they were agreed upon by everyone at the January 2014 IEP meeting (Tr. vol. 23, p. 4900:21-23), and everyone agreed that made progress on the goals in his previous IEP (Tr. vol. 23, pp. 4900:24-4901:1).

116. The Undersigned finds that the goals in the January 2014 IEP were procedurally and substantively appropriate under the IDEA. The Undersigned also finds that the Petitioners failed to prove by a preponderance of the evidence that the January 2014 IEP was not reasonably calculated to enable to make progress appropriate in light of his circumstances.

Implementation of Special Education Services and Related Services of the January 2014 IEP.

117. The IEP developed on January 14, 2014, was implemented for approximately sixteen (16) school days within the relevant limitations time in this matter. Stip. 50.

118. With exception of four (4) sessions of speech language services during the relevant period, January 2014 IEP was fully implemented for

Related Services Implementation from December 16, 2014 to January 19, 2015

119. During the period between December 16, 2014 to January 19, 2015, four speech sessions were omitted. *See* Pet. Ex. 112. All OT services were implemented.

120. At the June 9, 2015 IEP meeting, the speech therapist advised the team members that was owed 6 hours and 25 minutes of compensatory speech services for missed sessions during the entire 2014-2015 school year. Stip. Ex. 13, p. 264. This compensatory speech service was provided during the summer of 2015 and included the four sessions missed during the relevant implementation period of the January 2014 IEP.

121. Except for speech services, Petitioners offered no evidence that the January 2014 IEP was not fully implemented. Petitioners offered no evidence that, if the January 2014 IEP was not implemented, any failure to implement the January 2014 IEP caused a deprivation of FAPE.

122. The Undersigned finds that, except for 4 speech sessions during the 16-day period,, the January 2014 IEP was implemented appropriately. Because [redacted] had already been provided compensatory speech prior to the initiation of this contested case that issue was moot and not a denial of FAPE.

Supplemental Aids and Services in January 2014 IEP

123. The IEP team discussed supplemental aids and services at the January 2014 IEP meeting and made amendments to that portion of [redacted]s IEP. The IEP team did not move on from the supplementary aids and services until all members of the IEP team agreed upon them on the IEP.

124. [redacted] did not object to the supplementary aids and services on the January 2014 IEP. [redacted] [redacted] discussed the peer buddy portion of the supplementary aids and services. Likewise, Ms. [redacted] did not express any disagreement with the supplementary aids and services or request any supplementary aids and services that were rejected. Tr. vol. 14, pp. 3154:15-3155:23 (testimony of [redacted] Tr. vol. 7, pp. 105:24-106:2 (testimony of [redacted]

125. On cross examination, Petitioner [redacted] was asked repeatedly whether there were any supplementary aids and services she requested that the IEP team rejected in developing the January 2014 IEP. The only supplemental aid [redacted] identified was that the token board was being used inconsistently. Tr. vol. 7, pp. 103:23-105:23 (testimony of [redacted]

126. The IEP team also discussed [redacted]s placement in the regular education room and determined that [redacted]s IEP could not appropriately be implemented there even with supplementary aids and supports. Tr. vol. 14, pp. 3157:15-3158:11 (testimony of [redacted]

127. The IEP team discussed amendments to the supplemental aids and services and unanimously agreed to the supplementary aids and services included in the IEP. Tr. vol. 13, p. 2778 (testimony of [redacted]

JANUARY 2015 IEP

128. The IEP developed at the January 20, 2015 (as amended in June 2015) is the IEP that governed the majority of the time at issue in the present case. Stip. Ex. 12, p. 193.

129. Again, at the January 2015 IEP meeting, [redacted] focus was verbal speech, that [redacted] "will be a speaker sometime in the future." Stip. Ex. 12, p. 225. The Parents' Vision for the Future was that [redacted] "communicate his needs." Stip. Ex. 12, p. 225.

130. Ms. [redacted] also emphasized that the team "should increase home-school communication regarding the communication and targets … it would work well both ways so that

the school could know what was being worked on at home." Stip. Ex. 12, p. 224. Again, no information was provided about [redacted] home ABA program.

Procedural Appropriateness of January 2015 IEP

January 20, 2015 IEP Meeting

131. On January 2, 2015, almost three (3) weeks before the IEP meeting, Ms. [redacted] provided draft present levels of performance to [redacted] and invited [redacted] to provide feedback. [redacted] acknowledged she received the drafts and that she passed the drafts for the January 20, 2015 IEP meeting along to Ms. [redacted] invited and paid for Ms. [redacted] to be her consultant at the January 20, 2015 IEP meeting.

132. Neither Petitioner [redacted] nor either of Petitioners' consultants ([redacted] [redacted] or [redacted] [redacted] provided feedback regarding the Present Levels of performance before the January 20, 2015 IEP meeting. Tr. vol. 23, pp. 4791-4793 (testimony of [redacted] Resp. Ex. 63; Resp. Ex. 202, p. 2786; Tr. vol. 8, p. 45: 7-12 (testimony of [redacted]

133. The WCS speech pathologist also provided Petitioner [redacted] with draft speech present levels of performance for [redacted]s January 20, 2015 IEP. Tr. vol. 18, p. 3877:18-20 (testimony of [redacted]

134. Again, on January 15, 2015, WCS' Program Specialist, Ms. [redacted] sought specific feedback from [redacted] about the draft present levels of performance. Ms. [redacted] followed up on her earlier communication asking [redacted] for input about the draft Present Levels asking specifically whether the present levels of performance "mesh[ed] with what [redacted] saw [redacted] do at home..." Res. Ex. 65, p. 1105; Tr. vol. 8, pp. 44:12-45:5 (testimony of [redacted] was asked "at least twice" for feedback prior to the IEP meeting. Tr. vol. 28, p. 57:6-9 (testimony of [redacted]

135. Per [redacted] request, [redacted]s data sheets were provided to her prior to the January 20, 2015 meeting. Resp. Ex. 65, p. 1104; Tr. vol. 28, p. 5738:3-8 (testimony of [redacted] Moreover, data sheets (every week) and communication journals (daily) were sent home during the relevant period. Tr. vol. 28, p. 5736: 17-24.

136. As was the case with the January 2014 IEP meeting, data supporting the draft present levels was shared with the IEP team. Tr. vol. 28, p. 5738:3-8 (testimony of [redacted]

137. Despite having worked with [redacted] for years, [redacted] [redacted] never shared any of her ABA data with the January 2015 IEP team. Tr. vol. 28, pp. 5731-5732. Nor did Ms. [redacted] indicate to the IEP team that her data or observations of [redacted]s present levels of academic achievement or functional performance were not consistent with those on the January 2015 IEP.

138. No one, including [redacted] or [redacted] [redacted] brought any "contrary" data to dispute the Present Levels of performance, as drafted, and no one questioned the accuracy of the Present Levels at the meeting. Tr. vol. 23, p. 4803:1-14 (testimony of [redacted]

139. Also, as had been the case at the January 2014 IEP meeting, at the January 2015 IEP meeting, the IEP was developed by projecting the IEP document onto a screen and working on it from beginning to end. Tr. vol. 23, p. 4793:18-20 (testimony of [redacted] This was corroborated by the testimony of [redacted] who testified that [redacted]s draft IEP was projected for the IEP team to work through at both the January 2014 and January 2015 IEP meetings. Tr. vol. 15, p. 3213:10-14; vol. 14, p. 3112:10-14 (testimony of [redacted]

140. For each portion of the IEP, the IEP team did not move on until and unless "there was consensus." Tr. vol. 23, pp. 4793:24-4795:5.

141. [redacted] had previously communicated to WCS when she wanted goals rewritten for [redacted] (Res. Ex. 141), and [redacted] acknowledged that she could make suggestions and contribute in drafting the IEP goals as a member of the IEP team. Tr. vol. 8, pp. 82:19-25, 83:4-6, 10-14 (testimony of [redacted]

142. Specifically, [redacted] understood that she could suggest ideas about what she believed WCS needed to work on as part of [redacted] IEP goals. [redacted] made no suggestions that were rejected by the IEP team about what [redacted] needed to work on in the goals in the January 2015 IEP. Tr. vol. 8, p. 83:10-18 (testimony of [redacted]

143. No one disagreed with the Present Levels of performance as not being reflective of that person's opinion or observation as to [redacted]s current skill levels. "If there were questions we addressed them, clarified, gave examples and if it needed to be reworded, we reworded it. But the present level was accepted upon consensus agreement by the team." Tr. vol. 23, p. 4802:18-24 (testimony of [redacted]

144. [redacted] did not raise any objections to the Present Levels of performance at the January 2015 IEP meeting. Tr. vol. 15, p. 3201:21-24 (testimony of [redacted]

145. In addition, [redacted] admitted that as of October 23, 2015, neither she nor her consultant [redacted] [redacted] had ever disputed any Present Level at any of the IEP meetings she had attended. Tr. vol. 7, p. 176:4-10 (testimony of [redacted]

146. The meeting minutes from the January 20, 2015 IEP evidenced that each Present Level in every area of need for [redacted] was presented for discussion with the IEP team, and that [redacted] as well as [redacted] [redacted] and [redacted] participated in the discussion with changes being made based on their input. Stip. Ex. 12, pp. 225-227.

147. Petitioner [redacted] was provided an opportunity to meaningfully participate in the development of the January 2015 IEP and the IEP minutes documented extensive parent involvement. Stip. Ex. 12, pp. 225-227; Tr. vol. 8, pp. 148:20-25, 149:1-8.

148. Other than the Prior Written Notice from the June 9, 2015 IEP meeting discussed *infra* with respect to the access to nondisabled peers issue, the Undersigned finds that the January 2015 IEP was procedurally appropriate and that the Petitioners and their consultants were afforded meaningful participation in the development of the IEP at the January 20, 2015 IEP meeting.

Substantive Appropriateness of January 2015 IEP

Appropriateness Academic and Functional Present Levels

Data Supported Academic and Functional Present Levels

149. As previously stated, Ms. [redacted] testified that [redacted]s present levels of performance would be appropriate, in her opinion, to the extent they were based upon the data. Tr. vol. 15, pp. 3195:17-21, 3205:4-17.

150. Each of the Present Levels agreed upon by [redacted] IEP team at the January 20, 2015 IEP meeting included multiple sources of information and were based on accurate data. Tr. vol. 23, p. 4900:6-7 (testimony of [redacted]

151. Ms. [redacted] testified as to the extensive process that she, and [redacted] Speech Language Pathologist [redacted] undertook to create the draft Present Levels and goals for [redacted] January 20, 2015 IEP meeting. Tr. vol. 23, pp. 4795:14, 4800:12-4801:9. The "data from [redacted] data sheets match the statements in the Present Levels." Tr. vol. 23, p. 4797:2-6 (testimony of [redacted] Based on the data, all the Present Levels of performance as written on the January 20, 2015 were accurate and supported by data. *See* Resp. Ex. 250; Tr. vol. 23, pp. 4796:16-4, 4800:12-4802 (testimony of [redacted]

152. The respective Present Levels established a baseline for [redacted] academic skills (Tr. vol. 23, p. 4803:16-17), communication skills (Tr. vol. 23, p. 4803:19-21), and social skills. Tr. vol. 23, pp. 4803:22-4804:4 (testimony of [redacted] Tr. vol. 23, p. 2803:16-23 (testimony of [redacted]

153. The Present Levels were accurate (Tr. vol. 23, p. 4801:18-20), were supported by data (Tr. vol. 23, pp. 4796:18-4804:22), and met all the requirements of the IDEA; Tr. vol. 23, p. 4841:2-6; Res. Ex. 252.

154. The documentary evidence also supported that data was used to develop the Present Levels in [redacted] January 2015 IEP. *See* Resp. Ex. 175; Tr. vol. 23, p. 4801:10-17; Resp. Ex. 163; Tr. vol. 23, p. 4802:2-5; Resp. Ex. 173; *and,* Tr. vol. 23, p. 4801:10-17.

155. Ms. [redacted] testimony was especially credible because she also had personal knowledge of [redacted]s Present Levels. She taught [redacted] from August through December 2014, shortly before his IEP was developed on January 20, 2015 and the data was consistent with her personal observations. Tr. vol. 23, pp. 4802-4803.

156. At the hearing, Respondent's expert witness, Dr. [redacted] reviewed each of the Present Levels statements in [redacted] January 20, 2015 IEP (Stip. Ex. 12) and compared the Present Levels statements to the corresponding academic quantitative and qualitative data, including teacher data sheets (Resp. Exs. 173, 175, 156), the December 3, 2014 Brigance Assessment (Resp. Ex. 170,

Stip. Ex. 18), and [redacted]s communication journal (Resp. Ex. 163), all of which was collected by [redacted]s classroom teachers, including Ms. [redacted] and [redacted]s speech pathologist [redacted] (Resp. Ex. 156). *See generally*, Tr. vol. 17, pp. 3502:16-3614:15.

157. After reviewing all [redacted]s relevant data, Dr. [redacted] opined that each of the Present Levels statements in [redacted] January 20, 2015 IEP were appropriate, were based on data, and that the Present Levels "greatly exceed" the norm for IEPs and the requirements of the IDEA. Tr. vol. 17, pp. 3610:15-18, 3611:3-8.

158. The probative evidence in Dr. [redacted] testimony was overwhelming as shown:

- reading applications:[8] Res. Ex. 170, pp. 2425-2429; Stip. Ex. 18;
- reading comprehension: Tr. vol. 17, pp. 3567-3568, 3576:4-3582:10;
- math: Tr. vol. 17, pp. 3568:22-3574:23; 3593:25-3600:12-15 (compared Res. Ex. 170, p. 2432 to Res. Ex. 173 & 175); single digit addition and subtraction (Res. Ex. 170, p. 2433); multiplication and division (Res. Ex. 170, p. 2434); still working on orally counting backwards identifying written times on an analog clock (Res. Ex. 175); and identifying coins by value (Res. Ex. 175);
- writing: Tr. vol. 17, pp. 3583:11-3590:5 (compared the data in Res. Exs. 173 and 175; (inconsistent with writing a noun-verb combination to describe a picture); (compared Res. Ex. 175, p. 2492 "unable to sequence a given set of words"); (compared Rep. Ex. 175, p. 2487 at certain dates and Res. Ex. 163, pp. 2221-2222); and,
- social skills: Tr. vol. 17, pp. 3601:13-3611:2 (compared Res. Ex. 173 and Resp. Ex. 156); (Res. Ex. 173, p. 2481); (Res. Ex. 175, p. 2496).

Data Supported Speech Present Levels

159. [redacted] Present Levels for speech were based on the speech therapist's data from the Fall 2014 (the semester leading up to the development of the January 20, 2015 IEP). Tr. vol. 18, p. 3877:21-24 (testimony of [redacted] Tr. vol. 23, p. 4798:8-16 (testimony of [redacted] *see also,* Tr. vol. 17, p. 3543:12-16 (testimony of Dr. [redacted]

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[8] Petitioners contended that the Brigance should not have been used to develop the Present Levels because its administration was modified. Dr. [redacted] testified that there was nothing improper about using a "non-standard" administration of the Brigance, since the modifications (i.e., "the questions and choices were read aloud," "[redacted] was given the receptive assessment since he had difficulty orally pronouncing multi-syllable words with sufficient clarity to make it correct") were noted in the Present Levels, and anyone else reviewing [redacted]s IEP would be able to read and understand the modifications that had been made in the Brigance administration. Tr. vol. 17, pp. 3563:10-3564:14, 3564:15-24, 3564:2-7; Stip. Ex. 12, p. 200. Ms. [redacted] modifications, as testified to by Dr. [redacted] were "clear" and "quantifiable" in the Present Levels. Tr. vol. 17, p. 3655:2-4.

160. Although this data was available at the January 20, 2015 IEP meeting, no one asked to review the data or questioned the accuracy of the data. Tr. vol. 18, p. 3878:3-5. No one disagreed with the speech Present Levels that were drafted. Tr. vol. 18, p. 3878:3-22 (testimony of [redacted]

161. [redacted] receptive speech Present Levels on the January 20, 2015 IEP was an accurate representation of [redacted]s receptive speech abilities at that time. Tr. vol. 18, pp. 3880:23-3888:12 (testimony of [redacted] Tr. vol. 17, p. 3543:12-16 (*comparing* Resp. Ex. 156 *with* receptive speech Present Levels) (testimony of Dr. [redacted] Likewise, the expressive speech Present Levels on [redacted]s January 20, 2015 IEP, was based on data and the speech therapist's observations working with [redacted] Tr. vol. 18, pp. 3887:16-3892:21 (testimony of [redacted] The Present Levels for oral-motor skills on [redacted]s January 20, 2015 IEP were based on data, the speech therapist's observations working with [redacted] and were accurate representations of [redacted]s oral motor abilities at that time. Tr. vol. 18, pp. 3892:22-3897:2; *see,* Resp. Ex. 156, Resp. Ex. 157, *and* Pet. Ex. 20. The Present Levels for [redacted]s oral-motor skills were derived directly from [redacted] administration of the VB-MAPP (Stip. Ex. 3, p. 9, Tr. vol. 17, pp. 3534:4-3535:12), and supported by data. Tr. vol. 17, pp. 3543:12-16, 3547:21-3548:1.

162. The Undersigned finds that [redacted]s Present Levels in the January 2015 IEP met the substantive requirements of the IDEA. [redacted] January 2015 IEP included a description of what [redacted] could and could not do in each of the areas addressed by the IEP, [redacted]s current academic and functional performance, information about behavior and social emotional development, and how [redacted] disability affected his involvement and progress in the general curriculum.

Appropriateness of Goals in January 2015 IEP

163. All of the goals and short-term objectives in [redacted]s January 20, 2015 IEP were related to his Present Levels of performance (Tr. vol. 23, pp. 4823:12-15) and supported by the evidence. *See* receptive speech Present Levels and goals (Tr. vol. 23, pp. 4812:18-4814:14); the reading applications Present Levels and goals (Tr. vol. 23, pp. 4814:15-4815:13); the expressive speech Present Levels and goals (Tr. vol. 23, pp. 4815:15-4816:9); the reading comprehension Present Levels and goals (Tr. vol. 23, pp. 4816:19-4817:11); the writing Present Levels and goals (Tr. vol. 23, pp. 4817:12-4819:8); the math Present Levels and goals (Tr. vol. 23, pp. 4819:12-4821:23); and, the social skills Present Levels and goals (Tr. vol. 23, pp. 4821:24-4823:8).

164. All the goals and objectives on [redacted] January 20, 2015 IEP addressed weaknesses that were identified in his Present Levels of performance. Tr. vol. 23, p. 4823:16-18 (testimony of [redacted]

165. The Undersigned gave great weight to the testimony of Ms. [redacted] the WCS Program Specialist, an expert in IEP development for students with autism and a teacher who had taught [redacted] during two of the three full school years he was in WCS, that [redacted] goals and objectives on his January 20, 2015 IEP were appropriate at that time the IEP was developed (Tr. vol. 23, p. 4841:7-11; Tr. vol. 23, p. 4841:12-16) and were "reasonably calculated for [redacted] to receive appropriate education benefit." Tr. vol. 23, p. 4841:18-24.

166. [redacted] testimony about the appropriateness of [redacted] IEP goals and objectives was corroborated by the testimony of [redacted] who testified that she contributed to the development of [redacted] IEP goals at the January 20, 2015 IEP meeting. Stip. Ex. 12, p. 223; Tr. vol. 14, pp. 3066:21-2061:2, 3116:20-23.

167. According to Ms. [redacted] the IEP team considered the language in the short-term objectives and goals "very carefully." Tr. vol. 15, p. 3212:15-17. Ms. [redacted] testified that [redacted]s goals and short-term objectives were appropriate to the extent they were based upon data. During her testimony, Ms. [redacted] could not recall any disagreement with the language in the short-term objectives or goals on the IEP at the January 20, 2015 IEP meeting when the IEP was completed. Tr. vol. 15, p. 3212:11-14.

168. Furthermore Ms. [redacted] testified that, in her professional opinion, all the goals on [redacted] January 20, 2015 IEP were measurable (Tr. vol. 15, p. 3210:6-9) and appropriate for [redacted] based on his unique needs (Tr. vol. 15, pp. 3209:23-3210:5). Ms. [redacted] testified that she had no recollection of [redacted] objecting to any of the goals adopted for [redacted] at the January 20, 2015 IEP meeting. Tr. vol. 15, p. 3210:18-21. Ms. [redacted] also testified that [redacted] never indicated to Ms. [redacted] any disagreement with the goals. Tr. vol. 15, p. 3211:5-7.

169. In addition to being consistent with Ms. [redacted] testimony during Petitioners' case-in-chief, Ms. [redacted] testimony on the procedure used to develop the goals and the substantive appropriateness of the goals was consistent with the testimony of Dr. [redacted] who testified, after a complete review of [redacted] special education records and videos of [redacted] at [redacted] that the short-term objectives and goals derived from the Present Levels on [redacted]s January 20, 2015 IEP were measurable, "very well written," and appropriate for [redacted] Tr. vol. 17, p. 3610:20-3611:2; *see also,* Stip. Ex. 12, pp. 196-205; Tr. vol. 17, pp. 3600:16-3614:8.

170. The Undersigned finds that, on [redacted] January 2015 IEP, the reading applications, reading comprehension, math, writing, and social goals as well as all the short-term objectives were measurable, individualized and reasonably calculated to provide [redacted] with a FAPE.

171. In addition, the Undersigned finds that the receptive, expressive and oral motor goals and short-term objectives were measurable and appropriate, as well as reasonably calculated to provide [redacted] with appropriate progress in speech.

172. The Undersigned finds that Petitioners have not met their burden by a preponderance of the evidence that the January 2015 IEP was not reasonably calculated to enable [redacted] to make appropriate progress in light of his unique circumstances.

Implementation of January 2015 IEP

[redacted]s January 2015 IEP was implemented in the Spring 2015.

173. [redacted] was [redacted] 5th grade teacher in Fall 2015 remained and involved in the implementation of [redacted]s IEP during Spring 2015 when [redacted] became [redacted] new teacher. Tr. vol. 23, pp. 4810:19-4811:3. Ms. [redacted] made unannounced visits to

classroom and provided support to teachers to help implement s goals. Tr. vol. 23, pp. 4810:19-4811:3.

174. Ms. personally observed receiving the services indicated on his service delivery plan set out in his January 2015 IEP during Spring 2015. Tr. vol. 23, p. 4854:19-21.

175. Moreover, Ms. ensured that had access to handwriting alternatives and his augmentative communication device (Tr. vol. 23, pp. 4810:24-4811:12), developed specific tasks and activities for every objective on IEP (except speech which was implemented by the speech therapist), and organized materials to contain all the items (e.g., instructions and data sheets) needed to fully implement s IEP. Tr. vol. 23, pp. 4851:8-4854:18.

176. Ms. worked on the Extended Content Standards with in all his academic areas (Tr. vol. 9, p. 1952:2-3) and she designed tasks and used demonstrations to guide instruction in these areas (Tr. vol. 9, p. 1961:14-1962:16) based on unique "cognitive and developmental academic ability." Tr. vol. 9, 1956:21-25 (testimony of

177. At the hearing, Ms. testified how she implemented goals. Tr. vol. 9, p. 1976:20-1977:1; Tr. vol. 13, p. 2885: 9-18; Tr. vol. 12, p. 2608:1-9 (Reading Milestones); Tr. vol. 9, p. 1952:12-19, 1954:14-16, 1955:9-14, 1963:21-1964:3 (embedded instruction); Tr. vol. 9, p. 1962:24-1963:6 (science task); Tr. vol. 9, p. 2006:3-12 ("Handwriting Without Tears")); Tr. vol. 12, 2608:19-2612:9; Tr. vol. 9, p. 1965:7-9 (math goals); and, Tr. vol. 9, pp. 1946:19-1947:3; Tr. vol. 13, pp. 2892:24-2893:1, 2795:25-2796:19 (contrived social situations).

178. In addition, Ms. also used device to implement s science curriculum as well as s speech, math, and reading goals. Tr. vol. 9, pp. 1966:10-1968:6.

179. Petitioner's offered no evidence to contradict the implementation of January 2015 IEP in Spring 2015.

Implementation of January 2015 IEP, (as amended in June 2015) in Fall 2015

180. During her weekly observations, in the Fall of 2015, Ms. observed Ms. implementing IEP. Tr. vol. 23, p. 4861:7-16. Also, during her unannounced visits to Ms. classroom, Ms. observed Ms. using various tasks (some of which Ms. had helped to create) to implement the goals and objectives on s IEP. Tr. vol. 23, p. 4892:16-18.

181. For the subjects of math, social studies, language arts, and science, had access to an augmentative communication voice output device, was provided with handwriting alternatives, and was allowed sensory breaks. Tr. vol. 11, p. 2464:19-2465:6 (testimony of was also provided access to an augmentative communication voice output device

during his lunch period. Tr. vol. 11, p. 2464:15-18. Ms. [redacted] used assistive technology in [redacted]s classroom, including using an iPad in implementing [redacted]s IEP.

182. [redacted] math goal, was implemented by using a variety of techniques, including matching and using touch math. Tr. vol. 10, p. 2110:23-2111:14. As an example of the implementation of [redacted]s reading comprehension goal, Ms. [redacted] described [redacted] use of a written schedule. Tr. vol. 10, p. 2111:15-2112-15. Ms. [redacted] explained how she created a small make-shift "dictionary" for [redacted] to use as an example of how his writing goal was implemented. Tr. vol. 10, p. 2113:23-2114:14. Ms. [redacted] also used raised-line paper and wikki sticks to assist [redacted] with his handwriting. Tr. vol. 10, p. 2104:15-17.

183. Ms. [redacted] used auditory and sensory stimulation with [redacted] Tr. vol. 11, p. 2412:1-3, and that she had several methods of providing sensory activities for [redacted] such as a stress ball for tactile stimulation, nature music for auditory stimulation, a Slinky for tactile stimulation, Tr. vol. 11, p. 2411:7-10, a trampoline, a beanbag and a glider rocker. Tr. vol. 11, p. 2411:14-22.

184. Ms. [redacted] frequently provided modeling for [redacted] when working with him on his goals. Tr. vol. 11, p. 2418:23-2419:9. Additionally, Ms. [redacted] worked with [redacted] on life skills like brushing his teeth, working with money, and independently completing a school task or job. Tr. vol. 11, p. 2412:11-2415:15.

185. Ms. [redacted] gave specific example of methods she used in implementing [redacted]s IEP goals. Ms. [redacted] explained how she implemented the January 2015 IEP with regards to [redacted]s social goal by contriving situations that would allow [redacted] to participate in activities with nondisabled peers. Tr. vol. 10, p. 2163:3-4.

186. Petitioner offered no probative evidence to contradict that the January 2015 IEP was implemented in the Fall 2015.

Supplemental Aids and Services January 2015 IEP

187. The operative IEPs during the 2014-2015 school year reflect, on their face, that the IEP team considered supplementary aids and services necessary to educate [redacted] in the least restrictive environment and still allow him daily access to his non-disabled peers. No one at the IEP meeting suggested that [redacted] could be educated in the regular setting with supplementary aids or services. Tr. vol. 23, p. 4845:6-13.

188. The Undersigned having already determined that the separate setting was an appropriate placement for [redacted] any failure to consider placement of [redacted] in the regular education setting with supplementary aids and services is – at most – a technical procedural violation that did not impact [redacted] receipt of FAPE. Nonetheless, there was ample evidence that the IEP teams developing the operative IEPs considered supplementary aids and services for [redacted] at the January 20, 2015 IEP meeting. Tr. vol. 23, pp. 4824:24-4825:3, 4847:15-21.

Implementation of Speech Services

January 20, 2015 to June 9, 2015

189. During the period from January 20, 2015 to June 9, 2015, the WCS speech therapist failed to provide [redacted] with twelve (12) sessions of speech services. *See* Pet. Ex. 116, pp. 2147-2151.

190. In Respondent's January 23, 2017 Memorandum, WCS contended that no speech language services are owed [redacted] because the speech therapist [redacted] inadvertently provided 240 minutes more of speech services during the summer of 2015. *See* Res. Memorandum, p. 3 *citing* Pet. Ex. 27 and Res. Ex. 154. According to the Respondent, there can be no educational harm since [redacted] received speech/language services in excess of those required in his IEP. Res. Pro. Dec. p. 44.

191. WCS does not deny that compensatory speech therapy was owed for the 2014-2015 school year period, but contends that it should be credited from the excess speech hours provided during the summer of 2015.

192. The Undersigned agrees that no additional compensatory speech is owed for the sessions omitted from January 20, 2015 to June 9, 2015 because [redacted] received compensatory speech services during the summer of 2015 for these 12 sessions.

August 24, 2015 to October 23, 2015

193. From August 24, 2015 to October 23, 2015, the remainder of the relevant implementation period for the January 2015 IEP, WCS speech therapist failed to provide seven (7) sessions or 175 minutes of speech therapy. Pet. Ex. 116. This amount represented 21% of [redacted] speech services during the fall of his 2015-2016 school year. *See* Pet. Proposed Dec. p. 52.

194. Petitioners asserted that the overall omission of speech services caused [redacted] to regress in his expressive and receptive skills as evidenced by the speech therapists' data sheets. *See* Pet. Proposed Dec. pp. 53-55. A review of the speech data showed that [redacted] was inconsistent with his mastery of the expressive and receptive skills. All parties concede that speech therapy was an important part of his educational program.

195. Respondent requests a retroactive award of compensatory speech services for the missed sessions in Fall 2015 because of its provision of excess speech services during the summer 2015.

196. Petitioners, on the other hand, argue that any excess compensatory services from the summer of 2015 should be applied to the amount owed in the Compensatory Services Agreement, *see supra,* and that these are separate unanticipated speech services which are still owed. The Undersigned agrees with Petitioner's that WCS cannot "bank" ahead for a future denial of FAPE.

197. The Undersigned finds that this intermittent omission of speech services represented a material portion (21%) of [redacted] speech therapy during the Fall of 2015; therefore, [redacted] is entitled to 7 sessions of 25 minutes duration (175 minutes) of compensatory speech therapy.

Appropriateness and Implementation of Occupational Therapy

Direct or Consultative Occupational Therapy

198. Petitioner claims that Respondent failed to provide related services that would "enable [[redacted] [advance appropriately toward attaining [his] annual goals . . . [and] make progress" in violation of 34 C.F.R. 300.320(a)(4), and that [redacted] required direct occupational therapy services. *See* Pet. Ex. 28, pp. 777-78 (demonstrating [redacted] illegible handwriting); Pet. Ex. 21, pp. 459-67 (demonstrating [redacted] illegible handwriting); Tr. vol. 3, p. 563:14-18 (testimony of [redacted] that [redacted] required direct occupational therapy services); Tr. vol. 3, p. 661:2-15 (testimony of Petitioner [redacted] regarding [redacted] motor planning difficulties); *and* Tr. vol. 14, p. 3079:3-5 (testimony of [redacted]

199. Occupational therapy services qualify as a "related service" under the IDEA and its implementing regulations. "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes...physical and occupational therapy...." 34 C.F.R. § 300.34(a).

200. At the January 20, 2015 IEP meeting, [redacted] IEP team determined that [redacted] needed a reevaluation in occupational therapy in the areas of "visual motor integration, eye/hand coordination, fine and gross motor." Stip. Ex. 12, pp. 191-192, 227. During the assessment period, the IEP team agreed to increase occupational therapy services to 2 times per month. Stip. Ex. 12, p. 211; Resp. Ex. 23, p. 109. [redacted] occupational therapist, [redacted][9] elected to conduct the Bruininks-Osertsky Test of Motor Proficiency ("BOTS"). Stip. Ex. 6. The occupational therapy evaluation confirmed that [redacted] motor skills were "well below average to below average." Stip. Ex. 6, p. 16.

201. At the June 9, 2015 IEP meeting, the IEP Team convened to discuss the results of the BOT Assessment and discuss transition planning for [redacted] upcoming transition to middle school. The results of the occupational therapy reevaluation were shared with the IEP Team. Stip. Ex. 13, p. 262. After discussing the results of the BOT, the June 9, 2015 IEP meeting minutes evidenced that the "[t]he team discussed whether [redacted] needs to increase OT back to direct therapy versus current consult model." Stip. Ex. 13, p. 262.

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[9] Interestingly, Ms. [redacted] testified that if a child with average cognitive abilities demonstrated [redacted] level of fine motor deficits, she would recommend direct occupational therapy services. Tr. vol. 18, p. 3850:3-14. However, Ms. [redacted] failed to show any justification for this position. The IDEA, its implementing regulations, and the *North Carolina Policies Governing Services for Children with Disabilities* do not support Ms. [redacted] position, in this regard.

202. After the team's discussion, the team decided that consultative occupational therapy services were still appropriate for because under the consultative model, "OT techniques can be shared with a teacher and done throughout the day." Stip. Ex. 13, p. 262. The June 9, 2015 IEP meeting minutes are consistent with testimony taken at hearing.

203. Two occupational therapists and testified on behalf of the Respondent. explained the difference between occupational therapy services provided in clinical setting and occupational therapy services provided in a classroom setting; "in school-based OT, you're looking at educational relevance. You're looking at how to get that child to access their special education." Tr. vol. 18, p. 3708:10-15 (testimony of

204. agreed that school OT is focused on "the functionality of the student and what the student is expected to complete and to do in [the] academic setting that they're placed in." Tr. vol. 20 p. 4214:4-7. Ms. further agreed that handwriting alternatives are appropriate to address handwriting concerns because it decreases the frustration he experiences when attempting to produce "handwritten expression" and increases s ability to express himself. Tr. vol. 20 pp. 4214:16-4215:12.

205. In addition to assistive technology, had fine motor tools, iPad, weighted cuff, keyboarding, and sensory tools (wikki stix, slinkies, and glitter bottles) in his classroom that were provided by occupational therapists for his teachers to use. Stip. Ex. 13, p. 262; Tr. vol. 20, pp. 4216:16-4217:1.

206. testified that, in her opinion, at no point from December of 2014 until was withdrawn in October 2015 did need direct OT services to benefit from his special education. Tr. vol. 18, pp. 3775:7-9; 3858:15-19. did not need direct OT services because had the motor skills to complete tasks and access his education. Tr. vol. 20, pp. 4213:19-22, 4214:8-11, 4217:16-17.

207. Ms. further testified that she had all the evaluation information that she felt she needed to serve and that there was no additional evaluation information she needed. Tr. vol. 20, p. 4217:4-15.

208. The testimonies of occupational therapists and are consistent with the testimonies of s teachers and as well as former teacher and Program Specialist, that in their professional judgment, needed consultative therapy services to benefit from his IEP and that needs were met through the consultative occupational therapy model rather than direct occupational therapy. Tr. vol. 13, p. 2718:1-14; Tr. vol. 10, pp. 2100:24-2101:17; Tr. vol. 11, pp. 2478:15-20; Tr. vol. 23, pp. 4831:5-4833:14; Tr. vol. 24, pp. 4942:14-20, 5826:24-5827:6.

209. At the end of the June 9, 2015 IEP meeting, Ms. agreed that would benefit from his special education plan without direct OT Services, Tr. vol. 15, p 3240:17-22, and that the June 9, 2015 IEP was reasonably calculated to lead to an educational benefit even without direct OT services. Tr. vol. 15, pp. 3240:17-22.; 3241:20-22. corroborated the opinions

of the WCS' occupational therapists and conceded during Petitioners' case-in-chief that an IEP for [redacted] with consultative OT services would be appropriate for [redacted] Tr. vol. 15, p. 3241:20-22.

210. At hearing, the focus regarding OT was [redacted] handwriting. The testimony was that [redacted] had the motor skills necessary to write, that [redacted] suffered from hand tremors because of seizure mediation, that OT interventions had not helped with the tremors, that given [redacted] age and likeliness of little improvement in handwriting, the IEP team decided that handwriting alternatives were the appropriate way to address [redacted] issues with handwriting legibility.

211. Petitioners offered no competent evidence in their case-in-chief to support a finding that [redacted] required direct occupational therapy services to receive a FAPE. No occupational therapist testified during Petitioners' case-in-chief. Petitioners provided no evidence that [redacted] occupational therapy needs could not be addressed through a support plan. Petitioners offered no private occupational therapy evaluation. [redacted] has not received any OT services since October 2015, and Petitioners' contention that [redacted] is still making great progress without such services, contradicts their position that direct OT was necessary for [redacted] to receive a FAPE.

212. The Undersigned finds that direct occupational therapy was not necessary to assist [redacted] to benefit from his special education services and that consultative occupational therapy provided [redacted] a FAPE.

Implementation of OT Services

213. During his enrollment in WCS, [redacted] received all the occupational therapy services required under each of his relevant IEP's. *See* Stip. Ex. 7, p. 036; R-159, pp. 2173-74; S-10, p. 115 (once a month in the total school environment). The IEP team increased [redacted] service delivery from once a month to twice a month during [redacted] interim assessment period from January to June 2015 and through October 23, 2015 consistent with his IEPs. Stip. Ex. 23, p. 109; R-159, p. 2175-78; S-12, p. 211; S-13, p. 255; R-159, p. 2179-80; Tr. vol. 20, pp. 4218:25-4219:4 (testimony of [redacted] Ms. [redacted] observed [redacted] in his classroom receiving OT, reviewed [redacted] notes from the prior year, and reviewed [redacted]s IEP, BOT results, and writing samples. Tr. vol. 20, pp. 4211:23-4212, 4242:21. Ms. [redacted] consulted with [redacted]s teacher, [redacted] "numerous" times during Fall 2015 (outside of the consultations required under the IEP) regarding [redacted]s occupational therapy needs. Tr. vol. 20, p. 4221:12-22.

214. Under each of [redacted] operative IEP's, [redacted] was provided occupational therapy services consistent with his IEPs by a qualified occupational therapist, [redacted] and for a brief period in the Fall of 2015, another occupational therapist, [redacted]

215. The Undersigned finds that Respondent properly implemented the consultative occupational therapy services in [redacted] January 2015 IEP.

January 2015 IEP Was Reasonably Calculated to Provide [redacted] Appropriate Educational Benefit

216. At the contested case hearing, there was ample, credible testimony that [redacted] January 2015 IEP were reasonably calculated to provide [redacted] with the requisite educational benefit in the least restrictive appropriate environment for [redacted]

217. [redacted] Petitioners' witness and IEP consultant, agreed that the January 2015 IEP for [redacted] was reasonably calculated to provide [redacted] with educational benefit. Tr. vol. 15, 3216:11-18.

218. [redacted]s teachers testified that the January 2015 IEP was reasonably calculated to provide [redacted] with appropriate educational benefit in the least restrictive environment for meeting his needs. Tr. vol. 13, pp. 2798:23-2799:13 (testimony of [redacted] Tr. vol. 11, pp. 2469:16-2470:11 (testimony of [redacted] Tr. vol. 24, p. 4946 7-14 (testimony of [redacted]

219. Respondent's experts testified that the IEP written for [redacted] in January 2015 were reasonably calculated to provide [redacted] with meaningful educational benefit. Tr. vol. 17, p. 3670:16-24 (testimony of Dr. [redacted] Tr. vol. 24, p. 4946 7-14 (testimony of [redacted]

220. Even Petitioner's expert [redacted] admitted that [redacted] January 2015 IEP would be hard to implement, but if it could be implemented, [redacted] would receive educational benefit from it. Tr. Vol. 6, 1142:2-16 (testimony of [redacted]

221. The related service providers testified that the January 2015 IEP was reasonably calculated to provide [redacted] with meaningful educational progress in speech and oral-motor skills. Tr. vol. 18, p. 3929:5-23 (testimony of [redacted] Tr. vol. 18. p. 3775:2-18 (testimony of [redacted]

222. The sworn testimony and evidence supported the appropriateness of the January 2015 IEP and the Undersigned finds that the January 2015 IEP provided [redacted] a FAPE.

June 9, 2015 IEP Team Did Not Appropriately Address the Issue of LRE

223. Despite the appropriateness of the January 2015 IEP, the June 9, 2015 amendment was not least restrictive.

224. Prior to his enrollment in WCS, at PCS [redacted] was placed in a separate, self-contained classroom and access to his nondisabled peers was provided through reverse inclusion, non-disabled peers came into the self-contained class during specials (art, music, library etc.) time. Tr. vol. 1, p. 56:18-20; 36:1-7 (testimony of [redacted] During the implementation of the 2014 and 2015 IEPs in [redacted] was provided daily access to his non-disabled peers during specials. The IEP team decided that this was the LRE for him. *See* Stip. Ex. 12 & 13; Tr. vol. 15, p. 3215:17-3216:1 (testimony of [redacted]

Access to Non-Disabled Peers During Middle School Transition Fall 2015

225. Although [redacted] was still in a separate placement setting, at the June 2015 IEP meeting this setting became even more restrictive such that he was denied daily access to non-disabled peers and all instruction was conducted in the EC class. Stip. Ex. 13, pp. 251-252, 254.

226. At the June 9, 2015 IEP meeting, the IEP team noted that "[[redacted] likes to be around his peers at school" and "responds to social interactions…". Stip. Ex. 13, p. 235. During Ms. [redacted] observations of [redacted] participation in specials class overall he was able to participate at his level. Stip. Ex. 13, p. 262. Moreover, despite the "disparity in cognitive levels" between [redacted] and other students, [redacted] could benefit from the social interaction and peer modeling.

227. Despite the team's acknowledgement that [redacted] benefited from access with his non-disabled peers, the June 9th IEP Team determined [redacted] would "start with EC full day and opportunities will be evaluated as his interest and ability to tolerate the environment develop." Stip. Ex. 13, p. 263.

228. Solely because of the transition to middle school this separate placement was "adjusted to reflect middle school activities" even though his annual IEP goals remained the same. *See* Stip. Ex. 13, p. 259 (Prior Written Notice June 9, 2015).

229. The service delivery in the EC classroom for Daily Living Skills' was increased, from 30 minutes to 180 minutes, 5 days a week. *Compare* Stip. Ex. 13, p. 254 *to* Stip. Ex. 12, p. 211.

230. At the June 9, 2015 meeting, the IEP Team increased the service delivery for [redacted] specialized instruction by over forty percent (40%). *Compare* Stip. Ex. 12, p. 211 *with* Stip. Ex. 13, pp. 254-55.

231. When discussing inclusion opportunities for [redacted] the IEP team recommended that [redacted] "start with EC full day and opportunities will be evaluated as his interest and ability to tolerate the environment develop." Stip. Ex. 13, p. 263 (IEP Minutes).

232. The Undersigned acknowledges that [redacted]s successful transition to middle school, given the differences in the middle school environment from the elementary school environment, was a valid concern of the IEP team. Tr. vol. 23, pp. 4839-4840. However, the IEP team did not discuss how [redacted] would even have an opportunity to demonstrate that he was capable of being allowed access to his nondisabled peers in specials. Tr. vol. 4, pp. 762:18-763:3 (testimony of [redacted]

233. The June 2015 IEP amendment failed to include any timeframe for transitions or supplemental aids and services which could assist [redacted] inclusion in the middle school specials such as an aide, peer buddies, modification of classroom materials, and teacher collaboration.

234. According to the June 2015 IEP minutes, it appears that, because of the class size, all low incidence students are excluded initially from the Creative Core classes and "encouraged

to participate in regular electives as they can tolerate the activity (classes are huge)." Stip. Ex. 13, p. 262. This general policy violated the LRE mandate of the IDEA.

235. In Fall 2015, [redacted] was provided limited, but not daily, opportunities to interact with his non-disabled peers for the short period he was at [redacted] Tr. vol. 10, pp. 2062, 2118 (on the playground), 2162 (field trips), 2162-2163 (Club Unify); 2163 (charity auction); 2387 (arrangements in process for [redacted] to attend a math class with non-disabled peers) (testimony of [redacted]

236. The IEP Team changed [redacted]s specially designed instruction due to administrative convenience, not based on [redacted] individual needs. *See* Tr. vol. 2, pp. 376:6-11, 377:6-17. The IEP team increased [redacted] specially designed instruction to fit into Ms. [redacted] existing classroom schedule for her middle school self-contained classroom. Moreover, Ms. [redacted] admitted that she did not even complete the times in the specially designed instruction until after the meeting. Tr. vol. 27, p. 5560:7-22

237. The WCS' witnesses claimed that had [redacted] stayed enrolled in the WCS, he would have been allowed additional access to nondisabled peers. *See* e.g., Tr. vol. 11, pp. 2447:22-2448:3. The documentary evidence undermined these assertions.

238. For example, upon learning of [redacted] lack of access to his nondisabled peers, [redacted] requested an IEP Meeting. Res. Ex. 78 (email from Petitioner [redacted] dated October 14, 2014, to Ms. [redacted] requesting an IEP Meeting). The WCS refused to even convene an IEP Meeting to discuss her concerns.

239. Evidence admitted at the hearing established that WCS attendees believed the meeting on October 23, 2014 was not an IEP meeting, just a parent-teacher meeting for the purpose of compensatory planning. Res. Ex. 77; Tr. vol. 23, pp. 4893:4894; vol. 20, p. 4152.

240. Furthermore, Ms. [redacted] description of her class and the inherent, predetermined lack of access to nondisabled peers for all her students, revealed there were no actual efforts or intent to allow [redacted] increased access to nondisabled peers until [redacted] complained. Pet. Ex. 30, pp. 877-78.

241. The testimony that [redacted] placement might have become less restrictive had his parents allowed him to remain enrolled in the WCS beyond the first grading period, is speculative when even an IEP meeting had not been planned during that period.

242. The Undersigned finds that the June 9, 2015 IEP Team did not appropriately address the issue of LRE in the amended IEP.

Prior Written Notice of Restriction of [redacted]'s Access to Non-Disabled Peers

243. According to the June 9, 2015 Prior Written Notice ("PWN"), "IEP service time [was] changed to reflect middle school needs." and "[s]ervice time needed to be adjusted to reflect middle school activities." Stip. Ex. 13, p. 259. "Not adjusting services was rejected because the

classes and activities available in middle school differ from elementary school." Stip. Ex. 13, p. 259.

244. The PWN was defective because it did not indicate to the Petitioners that [redacted] would no longer have daily access to nondisabled peers; that the IEP Team had agreed upon a "transition" period; and that the service delivery times were changed after the IEP meeting. Petitioners were provided a revised service delivery after the IEP meeting via email from Ms. [redacted] Tr. vol. 27, pp. 5560:7-5561:2-21 (testimony of [redacted]

245. At the time of the June 2015 IEP Meeting, [redacted] did not understand the changes made to [redacted] IEP, specifically, that [redacted] would no longer attend nonacademic activities and services with his non-disabled peers in middle school. Tr. vol. 4, pp. 762:2-12, 771:4-6 (testimony of [redacted] On October 2, 2015, [redacted] wrote to Ms. [redacted] "Could you help me understand why he went from a high functioning class in 5th grade where he went to specials with regular education to complete inclusion and not interacting in encore classes with regards to regular ed[ucation] students. At our transition meeting in June, this setting change was not explained to me . . ..". Pet. Ex. 30, p. 880.

246. Ms. [redacted] also in attendance at the meeting, testified that she had not understood at the June 9, 2015 IEP meeting that [redacted] would be spending the entire day segregated from his non-disabled peers. Tr. vol. 14, p. 3079:14-3080:2.

247. Even until October 23, 2015, [redacted] did not understand that [redacted] would not have daily access to his nondisabled peers during middle school. Tr. vol. 3, pp. 683:14-684:3 (testimony of [redacted] *see also* Tr. vol. 23, p. 4894:1-20 (testimony of [redacted] that [redacted] "expressed concerns [at the October 2015 meeting] that he had been removed from opportunities with peers. And the statements that she made it sound like it had just happened.").

248. As Petitioners [redacted] and [redacted] did not have sufficient notice of the decisions made at the June 9, 2015 IEP Meeting, they were unable to fully consider the changes and determine if they had additional suggestions, concerns and questions. WCS' failure to provide Petitioners [redacted] and [redacted] with an adequate Prior Written Notice seriously impeded Petitioners' opportunity to participate in the IEP development process.

Data Collection and Progress Monitoring

249. Petitioners offered no authority to support their contentions that the progress monitoring was inappropriate. The format of the data sheets used to collect data for [redacted] was developed and agreed upon by the IEP teams.

250. During the 2013-14 school years and the Fall of 2014, [redacted] data sheets were recorded daily using an "Independent" and "Prompt" response method ("I" and "P"). Meeting minutes from the January 20, 2015 IEP meeting indicated that the IEP team discussed changing the format of the data collection because [redacted] had "gotten the data sheets but feels that is not wholly communicating the information." Stip. Ex. 12, p. 224.

251. The January 2015 IEP also indicated that "[redacted] ([redacted] sic] also recommends the data collection be changed for the parent" and "[redacted] states that data on targets needs to continue." Stip. Ex. 12, p. 224. Specifically, Ms. [redacted] "recommend[ed] picking the most important goals to report on instead of all." Stip. Ex. 12, p. 224.

252. The format of the data sheet came primarily from [redacted] Tr. vol. 23, p. 4752:21-24. The IEP team adopted the format of this data sheet "to be user friendly" to separate the objectives and the data collected on the objectives "in one space" to avoid having to flip through multiple pages of data to view progress on one objective. Tr. vol. 23, p. 4753:3-20. The forms used to track [redacted] progress were agreed upon by the IEP Team. Tr. vol. 13, p. 2719:21-25 (testimony of [redacted]

253. The data collection use of I's and P's used by WCS for [redacted] is the same data collection method used at [redacted] Pet. Ex. P-67; Tr. vol. 23, pp. 4752:21-4753:7 (testimony of [redacted] Tr. vol. 11, p. 2324 (testimony of [redacted]

254. None of [redacted] operative IEPs required a specific amount of data to be taken on [redacted] IEP goals. [redacted] gave an opinion that a school district should take six (6) points of data every two weeks. However, [redacted] "underst[ood] that sometimes schools don't take data every single day" (Tr. vol. 3, p. 470:10-12) and acknowledged that this was simply her opinion of best practice, not a legal requirement for compliance under the IDEA. Tr. vol. 5, pp. 1045-1046.

255. Furthermore, there is no requirement that [redacted]s IEP data be graphed. Graphing data is not part of [redacted] IEP, it is not required by the IDEA, and it is not done for [redacted] at [redacted] Tr. vol. 11, p. 2325 (testimony of [redacted]

256. The Undersigned finds that [redacted]s IEPs do not require the extensive progress monitoring system that the Petitioners desired nor, at this time, does the IDEA.

Evaluations and Behavior Plan

257. When the IEP team met on January 20, 2015 for an annual review of [redacted] IEP, the team, which included [redacted] reviewed existing evaluation data and, based on its review and input from [redacted] determined that an evaluation for fine motor/gross motor skills was needed. The team, along with [redacted] determined that no additional data was needed for a reevaluation of [redacted]

258. [redacted] never requested a comprehensive education evaluation of [redacted] or an independent evaluation of [redacted] at public expense, although she had been given a *Parents' Rights Handbook*. Pet. Ex. 120; Tr. vol. 9, pp. 1874-1875. There is no evidence that Petitioners' consultants, [redacted] [redacted] or [redacted] believed that additional educational evaluations or testing were necessary for [redacted] None of the WCS professionals believed that [redacted] needed any additional testing. Tr. vol. 27, p. 5709: 14-16.

259. The IEP team had sufficient information regarding [redacted] intellectual functioning to develop sound IEPs for [redacted] Even without the benefit of an official I.Q. test, [redacted] teachers knew that [redacted] was very low functioning. Tr. vol. 10, p. 2170:3-11; Tr. vol. 11, p. 2385:9-10. The

IEP team's understanding of [redacted] intellectual abilities was supported by the private evaluation obtained by Petitioners. Res. Ex. 2, p.9.

260. Moreover, a functional behavior assessment was unnecessary because [redacted] self-stimulatory behavior did not impede his learning or the learning of others. His self-stimulatory behavior was easily redirected with behavior strategies that WCS teachers utilized in their classrooms. Stip. Ex. S-12, p. 194; Tr. vol. 9, p. 1943:9-14, pp. 1943:15-1944:17; Tr. vol. 13, pp. 2775:22-2777:2; Tr. vol. 10, p. 2181:1-14; Tr. vol. 10, pp. 2107:2- 2108:6; Tr. vol. 10, p. 2182:2-18 (testimony of Ms. [redacted] Tr. vol. 23, pp. 4793:12-4794:2 (testimony of [redacted] Tr. vol. 23, p. 4794:6-11 (testimony of [redacted] does not have a behavior plan in place at [redacted] despite similar behaviors. Tr. vol. 8, p. 132:16-17 (testimony of [redacted]

261. The Undersigned finds that the IEP team had sufficient information from formal and informal evaluations to develop appropriate IEPs during the relevant period. Moreover, the Undersigned finds [redacted] behavior did not impede his learning and a behavior plan was unnecessary.

Educational Progress January 2014 And January 2015 IEPs

262. At the subsequent annual review on January 20, 2015, [redacted] stated that [redacted] "had made progress from last year [2014] at this time [and] ...thanked the team for progress." Stip. Ex. 12, p. 223. The January 2015 IEP team reported that "[g]ood progress or mastered on all previous IEP goals" in the January 2014 IEP. Stip. Ex. 12, p. 193.

263. [redacted] and [redacted] also attended this IEP meeting and did not contest [redacted] progress during the 2013-2014 school year.

264. As with the prior 2014 IEP, Petitioners' focus for the 2015 IEP was [redacted] communication skills. [redacted] admitted that [redacted] make progress in the areas of speech language acquisition and functional communication, and other evidence supports that progress. Tr. vol. 14 p 3180:24-3181:1 (testimony of [redacted] Resp. Ex. 83, 1161; Resp. Ex. 198, p. 2755; Resp. Ex. 63, p. 1093; Stip. Ex. 12, p. 223, 225; Tr. vol. 14 p. 3182:3-7; Resp. Ex. 24, p. 109; Tr. vol. 21, p. 3180:11-18, 3180:21-25.

Academic and Functional Progress

265. [redacted] made academic progress during the relevant periods according to Dr. [redacted] While in WCS, [redacted] performed at academic levels higher than would be expected for his cognitive functioning. Tr. vol. 13, pp. 2765:25-2766:6.

266. [redacted] made progress on his IEP goals developed at the January 2015 IEP meeting. Tr. vol. 11, pp. 2404:18-2410:6 (testimony of [redacted] Tr. vol. 23, pp. 4900:24-4901:1 (testimony of [redacted] Resp. Ex. 251.

267. Evidence reflected in quantitative data sheets collected by [redacted] (Resp. Ex. 172) and [redacted] (Pet. Ex. 174) as well as qualitative data in the form of

communication journals (Resp. Ex. 162; Resp. Ex. 163) from [redacted] teachers to [redacted] corroborated this progress.

268. [redacted] progress on his reading applications goal from the 2015 IEP (Stip. Ex. 12, pp. 196-197) was supported by data (Resp. Ex. 251, pp. 11-12); reading comprehension goal from the 2015 IEP (Stip. Ex. 12, pp. 200-201) was supported by data (Resp. Ex. 251, pp. 13-16); his writing goal progress from the 2015 IEP (Stip. Ex. 12, pp. 202-203) was supported by data (Resp. Ex. 251, pp. 17-18, 21); his math goal from the 2015 IEP (Stip. Ex. 12, pp. 204-205) was supported by data (Resp. Ex. 251, pp. 19); and, his social goal from the 2015 IEP (Stip. Ex. 12, pp. 206-207) was supported by data (Resp. Ex. 251, pp. 20; Resp. Ex. 154).

269. [redacted] progress was also reflected on the NCExtend 1 assessments which increased in reading and math from scores of 1 to scores of 3.[10] Stip. Ex. 36; Stip. Ex. 12, p. 193; Tr. vol. 23, p. 4780:14-21; Stip. Ex. 11.

270. Petitioners provided no probative evidence to refute that [redacted] progress was inconsistent and incremental. The Undersigned finds that, during the relevant time periods, [redacted] made academic, functional, and social skills progress appropriate in light of his circumstances.

Speech Progress

271. Testimony about [redacted] progress in speech was given by [redacted] Dr. [redacted] and [redacted] In addition, the summary of Ms. [redacted] analysis of [redacted] speech data was also admitted as evidence. Resp. Ex. 251.

272. Data supported the testimony at hearing that [redacted] had made progress on his speech goals. Quantitative data collected by [redacted] (Resp. Ex. 156; Resp. Ex. 157; Pet. Ex. 20), Stacey Gay (Pet. Ex. 114; Resp. Ex. 154), and [redacted] (Resp. Ex. 158) during 2014-15 and 2015-15 school years, along with qualitative data in communication journals facilitated by [redacted]s teachers, evidenced his progress. Resp. Ex. 162; Resp. Ex. 163; and Pet. Ex. 29.

273. [redacted]s progress on his speech goals was evident by this data: expressive speech goal (Stip. Ex. 12, p. 195) (Resp. Ex. 251, pp. 1-3, 20); receptive speech goals (Stip. Ex. 12, pp. 198-199) (Resp. Ex. 251, pp. 4-8); summer progress (Resp. Ex. 154; Pet. Ex. 114; Pet. Ex. 29; and Resp. Ex. 51).

274. No progress report was due yet for the Fall 2015 at the time [redacted] stopped attending WCS, but Resp. Ex. 158 identified progress made on [redacted] speech goals during the Fall 2015.

275. Petitioner's expert [redacted] admitted that a comparison of [redacted] December 2013 VB-MAPP to the November 2015 VB-MAPP demonstrated that [redacted] improved in functional language skills while enrolled in WCS specifically in the areas of tacts, independent play, listener responding, intraverbals, and spontaneous vocalization. Resp. Ex. 48; Tr. vol. 3, pp. 510-533:15.

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10 This increase is to be viewed with caution because of the significant changes in the testing procedures for administrative of the NC EXTEND1 in 2015.

276. Likewise, comparative scores on the Kaufman Speech Praxis Test for Children ("Kaufman") evidenced that [redacted] made progress in speech language from 2014 to 2015. Tr. vol. 18, pp. 3916:24-3925:12 (testimony of [redacted]

277. The Undersigned finds that [redacted] made appropriate progress in speech and oral motor skills considering his circumstances.

APPROPRIATENESS OF PRIVATE SCHOOL PLACEMENT

278. [redacted] is a private treatment facility specializing in Applied Behavior Analysis ("ABA") methodology to meet the behavior and language needs of disabled students with autism. [redacted] is based on a medical/therapy model and uses "treatment plans." At [redacted] receives 1:1 instruction all day based on the VB-MAPP.

279. Petitioners seek reimbursement for all of [redacted]'s attendance at [redacted] both part-time attendance and full-time attendance. Therefore, the appropriateness of the part-time attendance from November 9, 2015 to January 10, 2016 and the appropriateness of the full-time services from January 11, 2016 to January 20, 2016 are both at issue. Although [redacted] was enrolled as of October 23, 2015, he attended [redacted] only part-time from November 9, 2015 through January 11, 2016 with various degrees of services. The statutory period ended on January 19, 2016 when the January 2015 IEP expired.

No Academic Curriculum

280. [redacted] does not have an education program for [redacted] is more focused on functional skills, not academics. Tr. vol. 11, p. 2274 (testimony of [redacted] Per its Director, [redacted] does not have a: math curriculum (Tr. vol. 11, p. 2272), reading curriculum (Tr. vol. 11, pp. 2272-2274), writing curriculum (Tr. vol. 11, p. 2272), social studies curriculum (Tr. vol. 23, p. 4910), science curriculum (Tr. vol. 23, p. 4910) or curriculum for the electives of music, art, and physical education (Tr. vol. 23, p. 4910). Parents with a child who is "on par" with their typically developing peers often supplement [redacted] with an academic program like the Sylvan Learning Center. Tr. vol. 11, pp. 2330-31, 2354:1-6 (testimony of [redacted] Tr. vol. 23, p. 4910 (testimony of [redacted]

281. [redacted] has no social skills curriculum or related services. [redacted] received private speech language therapy from a "Let's Talk" therapist during the school day, but no occupational therapy. Tr. vol. 8, p. 122:21-24 (testimony of [redacted]

282. [redacted] uses the VB-MAPP to guide its curriculum for [redacted] Tr. vol. 11, pp. 2204:14-15; 2272:6-7 (testimony of [redacted]

283. During Petitioners' case-in-chief, [redacted] characterized the VB-MAPP as "more functional rather than academic in its approach." Stip. Ex. 10, p. 136. [redacted] used the VB-MAPP to guide its services for [redacted] Tr. vol. 11, pp. 2204:14-15, 2272:6-7, p. 2272:6-7. The VB-MAPP maxes out at 48 months. Tr. vol. 11, p. 2272:4-12.

284. The VB-MAPP was used for assessment in WCS but not as a curriculum because it does not address academic areas. Tr. vol. 24, p. 4961 (testimony of [redacted] The VB-MAPP goals used for [redacted] by [redacted] are not specific or individualized to [redacted] because they come directly from the VB-MAPP assessment. Tr. vol. 24, p. 4961. The VB-MAPP is not an appropriate curriculum for [redacted] because it only addresses language and does not address any other curriculum area. Tr. vol. 24, p. 4959 (testimony of [redacted]

No Related Services Provided by [redacted]

285. [redacted] did not provide speech therapy. The Petitioners paid for private speech services which were provided during the school day at [redacted] [redacted] did not receive occupational therapy services while at [redacted] Tr. vol. 11, p. 2316 (testimony of [redacted]

286. [redacted] most recent IEP in WCS provided for consultative occupational therapy two (2) times per month. Stip. Ex. 13, p. 255. Petitioners themselves claim that [redacted] requires direct occupational therapy to receive an appropriate education. Both of [redacted]s occupational therapists in WCS testified that a placement with no occupational therapy services would not be appropriate. Tr. vol. 18, p. 3856:10-14 (testimony of [redacted] Tr. vol. 20, pp. 4224:25-4225:02 (testimony of [redacted] *see also*, Tr. vol. 24, p. 4943 (testimony of [redacted] Tr. vol. 17, p. 3687:7-13 (testimony of Dr. [redacted]

No Access to Age Appropriate Disabled Peers or Non-Disabled Peers

287. In addition to [redacted] being inappropriate to address [redacted] academic needs, [redacted] is inappropriate to address [redacted] social needs.

288. At the time of his enrollment at [redacted] [redacted] was twelve (12) years old. Stip. 9.

289. [redacted] had few age appropriate disabled peers for [redacted][11] no non-disabled peers for [redacted] to ever interact with, and provided very little time for interaction between [redacted] and any other student. Tr. vol. 5, p. 947:20-23 (testimony of [redacted] Tr. vol. 11, p. 2282:7-9 (testimony of [redacted]

290. This environment provided insufficient opportunities for [redacted] to work on peer communication or peer social interactions. Tr. vol. 24, p. 4951:7-13. Not surprisingly, [redacted] made no progress in the social domain. Tr. vol. 14, p. 3145:15-21 (testimony of [redacted]

291. The average age of the children at [redacted] is reflected in the environment, which does not provide age-appropriate materials for [redacted] Tr. vol. 23, pp. 4905-06. The instructional setting at [redacted] did not reflect or bear any resemblance to a classroom environment. Tr. vol. 24, p. 4968. The materials were not age-appropriate for a 13-year-old… There was preschool

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[11] The occasional visit to the school of a 12-year-old [redacted] of a staff member during his public school track out period, was the only potential non-disabled peer interaction and there was no evidence that [redacted] ever interacted with this particular peer. At best, [redacted] interactions with non-disabled peers was, as described by the [redacted] school director, "sporadic". Tr. vol. 11, p. 2296:18-24.

materials, kindergarten materials, these little cartoon characters and just it looked like materials I'd find in a kindergarten or a preschool." Tr. vol. 23, pp. 4905:12-4906:1.

Concerns about Prompt Dependency and Generalization of Skills

292. [redacted] one-on-one instructional model raised concerns about [redacted] prompt dependence and ability to generalize skills.

293. The environment at [redacted] exacerbated, instead of addressed, [redacted]s weakness in generalizing skills across people and settings. There were ample references to concerns regarding [redacted] prompt dependence and difficulty generalizing skills. Tr. vol. 13, p. 2897:23; Resp. Ex. 24; Tr. vol. 1, p. 112; Tr. vol. 10, p. 2034:8-10; Tr. vol. 11, p. 2332:4-9 (testimony of [redacted] Tr. vol. 17, pp. 3694:25-3695:6; Tr. vol. 20, p. 4172:1-11 (testimony of Dr. [redacted] Tr. vol. 23, p. 4909 (testimony of [redacted]

294. [redacted] skills at [redacted] were "very situation specific" and even the Director "doubted that he [redacted] would be able to do any of those skills in another setting." Tr. vol. 23, p. 4917 (testimony of [redacted]

Teachers not Licensed in Special Education or Core Academic Subjects

295. Although not dispositive for reimbursement purposes, none of [redacted] teachers are licensed to teach academic curriculum for special education and [redacted] is not a North Carolina State approved Non-Public School for special education and related services.[12] Tr. vol. 11, pp. 2201, 2270; Tr. vol. 23, pp. 4922-23.

Expert Opinions about Appropriateness of [redacted]

296. Respondent's expert witness Dr. [redacted] opined that [redacted] was not appropriate because [redacted] "needs educational delivery systems not therapy." Tr. vol. 17, p. 3671:23-25. In his expert opinion, it would be "very limiting and seriously restrictive" to be educated in a private placement where the only guide for academic services was the VB-MAPP. Tr. vol. 17, p. 3688:18-21 (testimony of Dr. [redacted] could not receive an educational benefit where the only curriculum being used with him was the VB-MAPP. Tr. vol. 17, pp. 3688:24-3689:3 (testimony of Dr. [redacted]

297. When Petitioners' expert witness, [redacted] opined that as to the appropriateness of [redacted] for [redacted] she had limited knowledge of [redacted]s program at [redacted] [redacted] testified that she had reviewed videos of [redacted] at [redacted] and that her opinion about the appropriateness of [redacted] and the "high quality instruction" she observed, was based on her review of "less than an hour" of videos[13] at [redacted] Tr. vol. 2, pp. 421:11-23, 430:6-13. Without

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[12] The Undersigned took official notice that [redacted] is not on the NCDPI list of approved non-public schools. Tr. vol. 28, p. 5873:8-14.

[13] No videos were ever shown to [redacted] by Petitioners' counsel during direct examination. No videos were entered into evidence by Petitioners through [redacted] or with anyone else in Petitioners' case-in-chief.

knowing the curriculum, classroom environment, accessibility of disabled or nondisabled peers, and prior to observing the setting, [redacted] testified that [redacted] was an appropriate placement.

298. [redacted] Petitioners' only expert, testified that [redacted] was appropriate even though [redacted] was using the VB-MAPP to guide its services for [redacted] and [redacted] admitted in her testimony that she was "relatively unfamiliar" with the VB-MAPP (Tr. vol. 5, p. 955:12-15), that she "[did]n't know much about the VB-MAPP" (Tr. vol. 5, p. 960:2), and that she had "never given" and "never used" the VB-MAPP (Tr. vol. 5, p. 955:21-23). [redacted] lack of knowledge about the [redacted] program and the VB-MAPP seriously compromised her credibility on this issue.

299. Like Dr. [redacted] Respondent's other expert witness Ms. [redacted] opined that [redacted] was inappropriate for [redacted] Prior to her forming that opinion, Ms. [redacted] had prior knowledge of the [redacted] program, first-hand experience teaching [redacted] reviewed all [redacted]'s record, observed [redacted] at [redacted] consulted with [redacted] personnel regarding the program for [redacted], and reviewed all of Petitioners' videos available of [redacted] at [redacted]

Part-Time Private School Placement from October 23, 2015 to November 9, 2015

300. From October 23, 2015 ([redacted] last day in the WCS) until November 9, 2015, there was no evidence that [redacted] received any educational services, although he had been accepted by [redacted] as of October 23, 2015.

301. During that time [redacted] also received in-home ABA therapy services from [redacted] two (2) days per week for a "half day," but [redacted] could not recall if it was "three or four hours" each day. Tr. vol. 4, p. 838:24-25.

302. [redacted] received private speech therapy services from speech pathologist [redacted] CCC-SLP at "Let's Talk." Due to her availability at that time, Ms. [redacted] only provided speech therapy services to [redacted] at most, one (1) day per week, thirty (30) minutes per session. Pet. Ex. 73, p. 1943-1952; Tr. vol. 12, pp. 2570:1-2571:2; 2575:12-21. No speech services were provided during the weeks of November 23, December 21 and December 28, 2015. Pet. Ex. 73, pp. 1943-1952.

303. Ms. [redacted] conceded that [redacted] needed more speech in his daily routine and, when her scheduled allowed, increased [redacted]'s speech therapy to three (3) times per week (less speech than any of the IEPs being challenged in this action called for). Tr. vol. 12, p. 2575:12-18; *see also*, Tr. vol. 15, p. 3216:6-10; Tr. vol. 18, p 3908:16-19; Tr. vol. 20, p 4164:6-10 (speech therapy once a week inappropriate) (testimony of [redacted]

304. On direct examination, Petitioners' expert [redacted] gave an opinion that [redacted] was an appropriate placement for [redacted] Tr. vol. 2, p. 394:8-20. However, [redacted] did not

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[14] Petitioners are not seeking reimbursement for [redacted] services, Stip. 51. Petitioners' claim for reimbursement for Ms. [redacted] services were dismissed. Rule 41(b) Interim Order, p. 21, ¶ 8.

distinguish whether her opinion was based on a full-time placement, a part-time placement, or both. Tr. vol. 3, p. 498:4-14.

305. Petitioners presented no evidence to support an opinion that the part-time combination of services was appropriate or that [redacted] made any progress under this arrangement from November 9, 2015 to January 11, 2016. All of Petitioners' testimony regarding the appropriateness of [redacted] was premised on a full-time enrollment.

306. No witness gave an expert opinion that the collection of services provided to [redacted] from November 9, 2015 through approximately January 11, 2016 was appropriate to meet [redacted] unique needs. [redacted] the service provider responsible for 6-8 hours of [redacted] instruction each week from November 9, 2015 to January 11, 2016, did not testify and no evidence was admitted to support the appropriateness of the services she rendered. No evidence was entered to support Petitioners' claims that [redacted] was appropriate without [redacted] receiving any occupational therapy services, despite Petitioners' claims that direct occupational therapy services were necessary for [redacted] to benefit from educational services.

307. The Undersigned finds that Petitioners did not meet their burden of proof and the greater weight of the evidence, presented during Petitioners' case-in-chief and in WCS case, was that the private placement from November 9, 2015 through approximately January 11, 2016 was not appropriate.

Full Time Placement at [redacted] From January 11, 2016 through January 19, 2016

308. Petitioners' claims for tuition reimbursement for the period from January 20, 2016 to May 17, 2016 were dismissed, as after January 20, 2016, [redacted] was a parentally placed private school student to whom no FAPE obligation was owed after the expiration of the most recent IEP. *See* Interim Order dismissing Petitioner's claims from January 20, 2016 to May 17, 2016, January 4, 2017, p. 4, ¶¶ 9-10.

309. Given that no evidence was presented that the private placement from October 23, 2015 through approximately January 11, 2016 was appropriate, and given the dismissal of Petitioners' private school reimbursement claims from January 20, 2016 through the filing of the Petition on May 17, 2016, the only period for which private school reimbursement was sought available to Petitioners and for which Petitioners presented any evidence is January 11, 2016 through January 19, 2016.

310. Petitioners' private placement did not remedy any of the alleged deficiencies given by Petitioners as justification for unilaterally withdrawing [redacted] from WCS and placing him in a private school.

311. Even though [redacted] provides [redacted] with foundational language skills based on the same VBA oriented program used by WCS, the Petitioners have proffered no evidence that [redacted] requires VBA therapy exclusively in lieu of academic instruction.

312. [redacted] lack of math, reading, writing, science, social studies, and elective curricula is the primary reason that the Undersigned finds [redacted] inappropriate for [redacted] Secondary factors are [redacted] s lack of access to non-disabled peers and its unlicensed teaching staff. The fact that [redacted] is not an approved non-public school on the NC DPI list was irrelevant in this decision.

313. Based on the above, the Undersigned finds that [redacted] was an inappropriate full-time and part-time private school placement for [redacted]

CONCLUSIONS OF LAW

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

2. This Order incorporates and reaffirms the conclusions of law and findings of fact contained in its previous Orders entered in this litigation.

Burden of Proof

3. As the party requesting the hearing, the burden of proof lies with Petitioners and the standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Stip. 3.

4. Suggestions, innuendoes, assumptions, and personal beliefs, without competent documentation evidence and testimony, are insufficient to meet this burden. Actions of local board of education are presumed to be correct and Petitioners' evidence must outweigh the evidence in favor of the Board's decisions. *See* N.C.G.S. § 115C-44(b).

Jurisdictional

5. Petitioners and Respondent named in this action are properly before this Tribunal, and that this Tribunal has personal jurisdiction over them. Stip. 1.

6. Petitioners and Respondent named in this action are correctly designated. Stip. 2

7. [redacted] is a "child with a disability" as that phrase is defined in IDEA, Stip. 10, and [redacted] has been determined eligible for services under the IDEA. Stip. 13.

8. [redacted] is domiciled within the boundaries of the Wilson County Schools, Stip. 11, and his parents reside at [redacted], in County, North Carolina. Stip. 12.

9. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with

Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §1400 *et seq.* and implementing regulations, 34 C.F.R. Parts 300 and 301; N.C. Gen. Stat. § 115C-109.6(a) controls the issues to be reviewed. Stip. 4.

10. Pursuant to 34 C.F.R. § 300.137(a)(i), the Office of Administrative Hearings does not have jurisdiction over any of the Petitioners' private tuition claims after January 19, 2016. No IEP Meetings were held after October 23, 2015 through the date of the Petition, May 17, 2016. Stip. 36.

11. Because a due process case was not pending after the January 2015 IEP expired on January 19, 2016 and [redacted] was a parentally privately placed student in [redacted] County not Wilson County, WCS had no obligation to develop an IEP or provide [redacted] with a FAPE. *See* Order dated January 4, 2017; see also, *M.M. ex rel. D.M. v. Sch. Dist. Of Greenville Cnty.*, 303 F.3d 523, 536 (4th Cir. 2002).

General Legal Framework

12. The IDEA is the federal statute governing education of students with disabilities 20 U.S.C. §1400 *et seq.* The federal regulations promulgated under IDEA are codified at 34 C.F.R. Parts 300 and 301. Stip. 4.

13. Respondent is a local education agency receiving monies pursuant to the IDEA. Stip. 5

14. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9 and the corresponding state regulations. Stip. 6.

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

Professional Judgment and Deference to Educators

16. The Fourth Circuit has explicitly held that, in determining whether a school provided FAPE a court "must afford great deference to the judgment of education professionals in implementing the IDEA." *O.S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (quotations and citation omitted). "Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals." *M.M.*,303 F.3d at 532 (4th Cir. 2002). A reviewing court should "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides." *Id.*

17. "[C]ourts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." *Rowley*, 458 U.S. 176 at 208-09 (1982). "Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the

handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States." *Id.*

18. In *Endrew F.*, the Supreme Court re-enforced the principle of deference to educators set forth in *Rowley* and the Fourth Circuit's jurisprudence. *Endrew F. ex rel., Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988 (2017).*

Private School Tuition Reimbursement Requirements

19. The Supreme Court has established a two-part test to determine whether a district is required to reimburse parents for their expenditures for private school: (1) was the IEP proposed by the school district inappropriate; and, (2) was the private placement appropriate to meet the child's needs. *School Committee of the Town of Burlington v. Dep't of Educ. of Massachusetts,* 471 U.S. 359, 370-71 (1985). Hearing officers are empowered with "broad discretion" to award "appropriate relief," when a district fails to meet it obligation and violates a child's rights under the law. 20 U.S.C. § 1415; *Burlington,* 471 U.S. at 369–70. As the Court in *Burlington* opined, "[I]t seems clear beyond cavil that 'appropriate' relief" should avoid an "empty victory," if a school district has failed meet its obligation; otherwise, "the child's right to a free appropriate public education, the parents' right to participate fully in developing a proper IEP, and all of the procedural safeguards would be less than complete." *Id.* The reimbursement provision of the IDEA prescribes that a school district may be required to reimburse the parents for tuition the parents paid as a result of the school district's failure to meet its obligations. *Id.*

FREE AND APPROPRIATE PUBLIC EDUCATION

Substantive Appropriateness of IEPs

20. An Individualized Education Program ("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).

21. The IEP is "[t]he primary vehicle for implementing" the IDEA. The IEP is "[p]repared at meetings between a representative of the local school district, the child's teacher, the parents or guardians, and, whenever appropriate, the disabled child," and the IEP "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.

22. 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). The commentary to the federal regulations interprets these requirements to "ensure that progress toward achieving a child's annual goals can be objectively monitored and measured." 71 Fed. Reg. 46664. In addition, the IDEA requires that the goals developed are individualized, and target the

unique needs of the child. 20 U.S.C. §§ 1401(29), 1414(d)(1)(A); 34 C.F.R. § 300.39(a)(1); N.C. Policy 1500-2.34(a)(1), 1503-4.1(a).

23. An IEP must include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child . . . (aa) to advance appropriately toward attaining the annual goals; (bb) to be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and (cc) to be educated and participate with other children with disabilities and nondisabled children." 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

24. The IDEA requires school districts to review and revise a disabled "child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved." 34 C.F.R. 300.324(b)(1)(i). To make this determination, the IDEA mandates school districts to measure and periodically report each "child's progress toward meeting the annual goals." 34 C.F.R. 300.320(a)(2-3).

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

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

27. *Endrew F.* did not overturn, but instead further clarified *Rowley*, for students like [redacted] who are not on grade level and not in mainstreamed classes.

28. If the IEP is developed in compliance with the procedures set forth in the IDEA and is reasonably calculated to enable the student to make educational progress appropriate in light of the child's circumstances, "the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 207.

29. School districts are not charged with providing the best program, but only a program that is designed to provide the child with an opportunity for a free appropriate public education. *Rowley*, 458 U.S. at 189-90. A district is not required to maximize a student's educational performance. *See e.g. Rowley*, 458 U.S. at 188-89 (1982); [redacted] *ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir.2004); *and Hartmann v. Loudoun County Bd. of Educ.*, 118 D.3d 996, 1001 (4th Cir. 1997) (*quoting Rowley*, 458 U.S. at 199-200).

30. The public school district satisfies this test if it provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990) (*quoting Rowley*, 458 U.S. at 203); *see also, Hudson v. Wilson*, 828 F.2d 1059, 1063 (4th Cir. 1987) (underscoring the

notion that a free and appropriate education "does not mean that a local school board must provide the most appropriate education for each child.").

I. Whether Respondent provided [redacted] a FAPE based on the January 14, 2014 IEP as amended on February 27, 2014 (collectively the "January 2014 IEP") from December 16, 2014, through January 19, 2015, a period of sixteen (16) school days ("January 2014 IEP FAPE" issue).

31. The IEP's team decisions regarding the content and development of the Present Levels, goals, progress monitoring, LRE, related services at the December 2013, January 14, 2014 and February 27, 2014 IEP meetings are outside the statute of limitations and therefore not before the Undersigned. To allow challenges to the appropriateness of these decisions prior to the start of the relevant statutory period, December 16, 2014, would essentially extend the applicable one-year statute of limitations set by N.C.G.S. §115C-109.6(b) to two years.

32. Nevertheless, for purposes of judicial review, based on Findings of Facts, various stipulations, and other evidence in the record, the weight of the evidence supports that the January 2014 IEP provided [redacted] a FAPE during the period of December 16, 2014 through January 19, 2015; and, even assuming *arguendo* that the January 2014 IEP was inappropriate, the Petitioners have failed to show any educational harm that resulted during the implementation period of sixteen (16) days.

33. Based on Findings of Fact 1-5, 40-127, 249-256, 262-277, various stipulations, and other evidence in the record, the weight of the evidence supports that the January 2014 IEP was reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances and provided [redacted] a free appropriate public education in the least restrictive environment.

II. Whether Respondent provided [redacted] with a FAPE based on the January 20, 2015 IEP as amended June 9, 2015 (collectively the "January 2015 IEP") from January 20, 2015, through January 19, 2016 ("January 2015 IEP FAPE" issue).

Appropriateness of Present Levels, Goals, Objectives, and Supplemental Aids and Services

34. Based on Findings of Fact 1-3, 6-8, 40-102, 128-277, various stipulations, and other evidence in the record, the weight of the evidence supports that the January 2015 IEP drafted on January 20, 2015 was reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances and provided [redacted] a free appropriate public education in the least restrictive environment from January 20, 2015 until the end of the 2014-2015 school year.

35. Based on Findings of Fact 1-3, 6-8, 40-102, 128-277, various stipulations, and other evidence in the record, the weight of the evidence supports that the January 2015 IEP drafted on January 20, 2015, was reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances but, from August 24, 2015 through January 19, 2016 [redacted] was not afforded sufficient access to his non-disabled peers as explained in the LRE Issue, *infra*.

Occupational Therapy Related Services

36. Petitioners objected to the provision of occupational therapy in a supportive mode rather than direct therapy. The IDEA defines related services as "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education." 34 C.F.R. § 300.34(a). These services include "speech-language pathology and audiology services, psychological services, [and] physical and occupational therapy." 34 C.F.R. § 300.34(a).

37. Occupational therapy means services provided by a qualified occupational therapist for improving, developing or restoring impaired function, improving ability to perform tasks for independent functioning, and preventing further impairment or loss of function. 34 C.F.R. § 300.34(a)(6).

38. Petitioners failed to meet their burden by a preponderance of the evidence that direct occupational therapy, rather than supportive services, was necessary for [redacted] to receive a FAPE.

39. Based on Findings of Facts 249-256, various stipulations, and other evidence in the record, the weight of the evidence supports that consultative occupational services were appropriate to assist [redacted] to benefit from his special education.

Behavior Intervention Plan

40. The IDEA does not require the use of a specific written "behavior intervention plan" except in cases of a disciplinary change in placement. See 1415(k)(1)(F); 34 C.F.R. § 300.324(a)(2)(i); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 25 (1st Cir. 2008) ("The IDEA only requires a behavioral plan when certain disciplinary actions are taken against a disabled child."). Rather, the statute requires that the IEP team "consider the use of positive behavior interventions and supports" for a "child whose behavior impedes the child's learning or that of others." 20 U.S.C. § 1414(d)(3)(B). There is no requirement that every behavioral response or strategy be reduced to a written plan. *See Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. Re-1*, 798 F.3d 1329, 1338 (10th Cir. 2015), cert. granted, 137 S. Ct. 29, 195 L. Ed. 2d 901 (2016); *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766-67 (8th Cir. 2011); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 26 (1st Cir. 2008); *Sch. Bd. of Indep. Sch. Dist. No. 11 v. Renollett*, 440 F.3d 1007, 1011 (8th Cir. 2006).

41. Petitioners provided no evidence or authority for the requirement of a BIP outside of a disciplinary change in placement, which is not alleged to have occurred in this case. The IEP team's decision not to develop a behavior plan for [redacted] was supported by substantial evidence in the form of testimony by [redacted], WCS teachers, the Director of [redacted] and Ms. [redacted] that [redacted]s behaviors were manageable, could easily be redirected, and did not impede the learning of [redacted] or others.

42. Based on Findings of Fact 41, 78, 257-261, various stipulations, and other evidence in the record, Petitioners failed to prove by a preponderance of the evidence that [redacted] required a Behavior Intervention Plan or additional functional behavior assessment for a FAPE.

Procedural Appropriateness of IEPs

43. The IDEA contains a number of critical, procedural safeguards to provide notice to parents of decisions regarding their children and "an opportunity [for parents] to object to those decisions." *G. ex rel. R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 299 (4th Cir. 2003) (*quoting MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 527 (4th Cir. 2002) (internal citation omitted)). Should the LEA fail in its obligations under the IDEA, parents are afforded the right to file a due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6).

44. For a procedural defect in the development of an IEP to entitle a claimant to relief, the defect must result in a loss of educational benefit and not simply be a harmless error. *See A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 684 (4th Cir. 2007). To the extent that the procedural violations do not actually interfere with the provision of FAPE, these violations are not sufficient to support a finding that a district failed to provide a FAPE. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir. 1997). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations. *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir.1990); *see* also, N.C. Gen. Stat. § 115C-109.6(f).

45. "In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits." N.C.G.S. 115C-109.8 (a).

Prior Written Notices

46. Petitioners contend that the Prior Written Notices for the relevant IEPs were procedurally defective.

47. The IDEA requires that the Prior Written Notice include: a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options considered by the IEP Team and the reason why those options were rejected; and, a description of the factors that are relevant to the agency's proposal or refusal. 20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b).

48. Regardless of whether all team members agree to the change, the agency must provide notice as it "allows the parent time to fully consider the change and determine if he/she

has additional suggestions, concerns, questions, and so forth." *Letter to Lieberman*, Office of Special Education and Rehabilitative Services (Aug. 15, 2008).

49. Based on Findings of Fact 243-248, other findings, the above conclusions and other evidence in the record, with respect to the Prior Written Notice from the June 9, 2015 IEP meeting only, this PWN was defective when it failed to fully inform the Petitioners that [redacted] would no longer have access to non-disabled peers during the day and failed to include a transition period thereby denying Petitioners [redacted] and [redacted] meaningful participation in the IEP process.

III. Whether [redacted] had appropriate access to non-disabled peers from August 24, 2015 through October 23, 2015 ("LRE" issue).

Least Restrictive Environment

50. In addition to IDEA's requirement that the state provide each student with educational benefit, the student must be placed in the least restrictive environment ("LRE") appropriate for the student to achieve educational benefit. *See, e.g.,* [redacted] *ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir. 2004); *MM ex rel. DM v. Sch. Dist. Of Greenville County*, 202 F.3d 523, 526 (4th Cir. 2003); *see also*, *Devries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 879 (4th Cir. 1989) ("The perception that a segregated institution is academically superior for a handicapped child may reflect no more than a basic disagreement with the mainstreaming concept. Such a disagreement is not, of course, any basis for not following the Act's mandate.").

51. The IDEA clearly articulates a presumption that disabled children will not be segregated from their nondisabled peers and will be educated in the least restrictive environment to the maximum extent appropriate. 20 U.S.C. § 1412(5)(A); *see* 34 C.F.R. § 300.114(a).

52. The school district may consider "[s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment . . . *only if* the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii) (emphasis added).

53. Although the IEP team members agreed that [redacted] benefited from his social interactions with his nondisabled peers, it further segregated him in middle school for administrative convenience.

54. Based on Findings of Fact 41, 78, 223-248, other findings, the above conclusions and other evidence in the record, Petitioners met their burden that the June 9, 2015 amendment to the January 2015 IEP which further restricted [redacted] access to nondisabled peers from August 24, 2015 to October 23, 2015 was inappropriate and denied [redacted] a FAPE.

IV. Whether Respondent failed to properly implement [redacted] related service needs between December 16, 2014, and January 19, 2016 and, if so, whether this failure caused [redacted] educational harm ("Related Services" issue).

55. The failure to perfectly execute an IEP does not necessarily amount to the denial of a free, appropriate public education. However, as other courts have recognized, a failure to implement a material or significant portion of the IEP can amount to a denial of FAPE. *Sumter Cnty. Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011). *See also, Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir.2007) ("[A] material failure to implement an IEP violates the IDEA."); *Neosho R–V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n. 3 (8th Cir.2003); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir.2000) ("[A] party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.").

56. "A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." *Van Duyn v. Baker Sch. Dist.*, 481 F.3d 770, 780 (9th Cir. 2007). In order to find a "material failure," the child does *not* have to "suffer demonstrable educational harm in order to prevail; [h]owever, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided." *Id.*

57. Based on Findings of Fact 35-39, 189-197, other findings, the above conclusions and other evidence in the record. Petitioners have not proved by a preponderance of the evidence that the Respondent failed to implement substantial or significant provisions of the January 2014 IEP except for speech services which were later provided in the summer of 2015.

58. Based on Findings of Fact 35-39, 189-197, other findings, the above conclusions and other evidence in the record. Petitioner proved by a preponderance of the evidence that from August 24, 2015 to October 23, 2015 Respondent failed to implement a material portion (21%) of [redacted] speech services required by his January 2015 IEP.

V. Whether Respondent failed to conduct required evaluations of [redacted] from December 16, 2014, and January 19, 2016 and, if so, whether this failure caused [redacted] educational harm ("Evaluation" issue).

59. Petitioners contend that WCS failed to conduct all necessary reevaluations, specifically cognitive testing and a behavior assessment. The reevaluation decision predates the relevant statutory period but to the extent that Petitioners contend that ongoing reevaluations should have been done during the relevant for appropriate educational programming, the Undersigned will make provisional conclusions on this issue for judicial review purposes.

60. An LEA must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary. 34 C.F.R. 300.303(b)(2); 20 U.S.C, § 1414 (a)(2).

61. [redacted] signed the Consent for Reevaluation Form ("DEC2") on October 24, 2013 for educational and speech/language (Verbal Behavior Analysis) reevaluations. Stip. Ex. 8, p. 45. She also acknowledged receipt of the *Handbook on Parent's Rights* that explains the due process procedures on that form. *Id.*

62. If she disagreed with the evaluations selected or requested additional evaluations, she could have specifically stated that on the Reevaluation DEC 7 form under the section which states: "I **disagree** with the IEP Team decision to obtain no additional assessment information concerning my child. I request that additional assessment(s) be completed prior to determining continued eligibility." Stip. Ex. 8, p. 46 (emphasis in original).

63. WCS had sufficient evaluative material to enable it to develop sound IEPs for [redacted] and no additional testing was required. WCS complied with the requirements of 34 C.F.R. § 300.305(d) by providing [redacted] with a DEC 5 and a DEC 7, after the January, 2015 IEP meeting, both of which notified [redacted] that [redacted] needed an evaluation for fine motor/gross motor skills. Stip. Ex.12, pp. 216, 220-22. Pursuant to 34 C.F.R. § 300.305(d)(2), "[t]he public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents." As [redacted] agreed with this reevaluation decision, WCS was not required to conduct additional assessments.

64. Based on Findings of Fact 42-48, 78, 198-222, 257-261, other findings, the above conclusions and other evidence in the record, Respondent conducted the required evaluations of [redacted] and Petitioners failed to meet their burden on this issue.

Educational Progress

65. While evidence of actual progress may be relevant to a determination of whether a challenged IEP was reasonably calculated to confer some educational benefit, "progress, or the lack thereof, while important, *is not dispositive*." *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009) (emphasis added).

66. This is because the "benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." *Endrew F.*, 2017 WL 1066260, at *10 (Mar. 22, 2017) (quoting *Rowley*, 458 U.S. at 202). "One child may have little difficulty competing successfully in an academic setting with [nondisabled] children while another child may encounter great difficulty in acquiring even the most basic self-maintenance skills." *Rowley*, 458 U.S. 176, 202 (1982).

67. The appropriateness of an IEP is "judged prospectively so that any lack of progress under a particular IEP, assuming *arguendo* that there was no progress, does not render that IEP inappropriate." *Carlisle Area Sch. v. Scott P. By & Through Bess P.*, 62 F.3d 520, 530 (3d Cir. 1995).

68. Based on Findings of Fact 79-98, 262-277, other findings, the above conclusions and other evidence in the record, Petitioners failed to prove [redacted] rate of progress; therefore, Petitioners have not met their burden by a preponderance of the evidence that [redacted] did not make progress appropriate to his circumstances during this relevant period in this contested case.

VI. If Respondent denied [redacted] a FAPE, whether the private placement chosen by Petitioners from October 23, 2015 through January 19, 2016 was appropriate ("Private Placement" issue).

Appropriateness of Private School Placement

69. The appropriateness of a unilateral private placement is a subsequent consideration that requires the Petitioners to first establish that the program offered by the Respondent was legally insufficient. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 324 (4th Cir. 2009).

70. Since Petitioners met their burden as to the related service and LRE issues during the Fall 2015, the appropriateness of [redacted] must be addressed.

71. Parents who "unilaterally change their child's placement...without the consent of state or local school officials, do so at their own financial risk." *Florence Cty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 366, 126 L. Ed. 2d 284 (1993). Parents challenging an IEP are entitled to reimbursement only if the Court "concludes both that the public placement violated IDEA and the private school placement was proper under the Act." *James M. ex rel. Sherry M. v. Hawai'i*, 803 F. Supp. 2d 1150, 1157 (D. Haw. 2011) (citing *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 174 L. Ed. 2d 168 (2009)).

72. Petitioners seeking reimbursement bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate. *M.S. v. Yonkers Bd. of Educ.*, 231 F.3d 96, 104 (2d Cir. 2000). Unlike a public school receiving funding under the IDEA, private schools are not required to meet the IDEA's definition of a FAPE, 20 U.S.C. § 1401(9), or attain state education standards in order to be deemed appropriate. *Florence Cnty. Sch. Dist. Four v. Carter,* 510 U.S. 7, 7 (1993); *R.E.*, 785 F. Supp. 2d at 44 (citing *Frank G.*, 459 F.3d at 364).

73. For reimbursement to be available, Petitioners must prove that their unilateral private placement is appropriate to meet the student's needs. *See M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 324 (4th Cir. 2009) (quoting *Carter v. Florence County Sch. Dist. Four,* 950 F.2d 156, 163 (4th Cir.1991) (holding that like an IEP, a parental placement is appropriate if it is 'reasonably calculated to enable the child to receive educational benefits.').

74. Respondent asserts that [redacted] is inappropriate because it is not least restrictive. The Fourth Circuit has "never held that parental placements must meet the least restrictive environment requirement." *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009). Rather, the IDEA's mandate that "children with disabilities . . . are educated with children who are not disabled," 20 U.S.C. § 1412 (a)(5)(A), is simply a factor when considering the appropriateness of a private school selected by the parents. *Sumter Cnty. Sch. Dist. 17*, 642

F.3d at 487–89; *see also M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009) (finding the district court's consideration of the private school's restrictiveness proper "because it considered the restrictive nature only as a factor in determining whether the placement was appropriate under the IDEA, not as a dispositive requirement")

75. The IDEA provides various scenarios where a reimbursement claim *may* be reduced or denied. 34 C.F.R. § 300.148(d)(1-3). The Undersigned has determined that the Petitioners gave sufficient notice at the October 23, 2015 *de facto* IEP meeting. Moreover, the Undersigned finds no "unreasonableness with respect to actions taken by the parents." 34 C.F.R. § 148(d)(3).

76. Based on Findings of Fact 278-313, and other evidence in the record, Petitioners have failed to prove by a preponderance of the evidence that the [redacted] program, either part-time or full-time, was appropriate to meet [redacted] unique academic and functional needs. Petitioners presented treatment plans but no educational plans from [redacted] and [redacted] has no academic curriculum for [redacted] The lack of related services provided at [redacted] contributes to its inappropriateness. Moreover, [redacted] provided [redacted] no access to non-disabled peers, or even age appropriate disabled peers. The combination of these factors made [redacted] inappropriate.

77. Although VBA was part of [redacted]s educational plan in WCS, Petitioners failed to present evidence that [redacted] required an exclusive program of VBA therapy as provided by [redacted] to receive appropriate educational benefit.

78. The Undersigned concludes that [redacted] was not an appropriate private school placement; therefore, tuition reimbursement is not a viable remedy in this case.

Other Issues:

Progress Monitoring

79. Petitioners solicited evidence regarding Respondent's alleged failure to keep some monitoring data, specifically social skills data from the 2014-15 school year. Petitioners provided no authority for an obligation to maintain such data.

80. IDEA does not expressly require the Respondent to maintain records of the kind described by in the testimony. Neither the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g) *et seq.* nor the IDEA requires school districts to maintain the type of raw data for progress monitoring that Ms. [redacted] and Ms. [redacted] described. Ms. [redacted] testified that the raw data was used to draft the present level of performance and the goal related to the data. The records that Ms. [redacted] described are not records which the LEA was required to maintain once progress reports had been distributed.

81. There were "constant communications" between the parents and the school staff both through face-to-face meetings, emails, communication logs, and data sheets such that any gaps in the IEP progress monitoring did not inhibit the parents from meaningful participation.

82. Based on Findings of Fact 249-256, other findings, the above conclusions and other evidence in the record, to the extent that the destruction of these records or inadequate progress monitoring constitutes a procedural violation, Petitioners have not met their burden of providing that the violation impeded [redacted]s right to a FAPE, significantly impeded [redacted] or [redacted] opportunity to participate in the decision making process or caused a deprivation of educational benefit to [redacted]

Other Claims

83. To the extent that this Order does not expressly rule on any other claims raised in the Petition, the Undersigned concludes that Petitioners did not meet their evidentiary burden to establish any right to relief on those claims.

VII. To what remedies, if any, are Petitioners entitled?

84. Since [redacted] has been deemed an inappropriate private school placement, the Petitioners are not entitled to private school tuition reimbursement. Because Petitioners did not propose alternative remedies at the hearing, the Undersigned, based on the broad discretion afforded hearing officers, has fashioned remedies appropriate in her estimation. These remedial violations of FAPE are detailed below in the Final Decision.

THEREFORE, the Undersigned finds and holds that there is sufficient evidence in the records to properly and lawfully support the Conclusions of Law cited above.

FINAL DECISION

The Undersigned is mindful of the challenges faced by the Petitioners and was impressed throughout the hearing with Petitioners, [redacted] and [redacted] who are extremely involved parents, in seeking the best of all things that they possibly can for [redacted]

Through IDEA, Congress seeks to improve educational results for children with disabilities and provide assistance through the Act to a FAPE for all disabled children. The Act does not, however, require that States do whatever is necessary to achieve a particular level of education, but calls for an individualized education program reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. [redacted] educational program in WCS need not be superior to the alternatives.

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

1. Petitioners proved by a preponderance of the evidence that the Respondent failed to implement all speech therapy sessions, failed to provide a legally sufficient Prior Written Notice on June 9, 2015, and failed to ensure [redacted] access to his nondisabled peers from August 24, 2015 through October 23, 2015.

2. Petitioners are prevailing party only as to the claims listed above.

3. Petitioners failed to meet their burden by a preponderance of the evidence on all other issues and claims in this matter and those shall be dismissed. Respondent is prevailing party on all other issues in this Final Decision and those claims dismissed in prior orders.

IT IS HEREBY ORDERED THAT:

4. Petitioners are entitled to seven (7) sessions, 25 minutes per session (175 minutes), of compensatory speech therapy. Respondent will reimburse the Petitioners the equivalence of this amount of speech therapy previously provided by the Petitioners' private speech therapist.

5. Petitioners are also entitled to compensatory social skills training to remedy the Respondent's denial of FAPE in the LRE from August 24, 2015 to October 23, 2015, a period of approximately nine (9) weeks. Respondent shall contract with a private speech pathologist, of Petitioners' choice, to provide social skills training in a group setting for 3 sessions weekly of 30 minutes duration per session for a period of 9 weeks This is a total of 27 sessions (13.5 hours), or its equivalence as agreed upon by the parties.

6. If social skills training in a group setting is not available, then the Respondent shall contract with a private speech pathologist, of Petitioners' choice, to provide speech language services that specifically focuses on social skills and pragmatic language for 3 sessions weekly of 30 minutes duration per session for 9 weeks, a total of 27 sessions (13.5 hours), or its equivalence as agreed upon by the parties.

IT IS FURTHER ORDERED THAT:

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that any remaining claims of Petitioners are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

NOTICE

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

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C106.1 et seq.) and particularly N.C.G.S. §§ 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

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

This the 21st day of July, 2017.

Stacey Bice Bawtinhimer
Administrative Law Judge

CERTIFICATE OF SERVICE

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

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This the 21st day of July, 2017.

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