



37 A remote due process hearing convened on February 3-5, 2025. The Parent was  
38 represented by Maya Anderson and Katie Cox, Attorneys for The Disability Law Center. JSD was  
39 represented by Joan Andrews and Sarah Vaughn, Attorneys at Fabian Vancott.

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42 **Issues Presented:**  
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- 44 1. Did JSD deny Student a free and appropriate public education (“FAPE”) by failing to offer  
45 a continuum of alternative placement, instead limiting the services and placements Student  
46 received on the basis of resource availability?  
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48 2. Did JSD deny Student FAPE by determining Student’s placement and services through a  
49 District-level LRE Committee?  
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51 3. Did JSD deny Student FAPE by failing to ensure that Student’s parents were afforded the  
52 opportunity to meaningfully participate in IEP meetings?  
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54 4. Did JSD deny Student FAPE by failing to develop and implement an IEP that was  
55 reasonably calculated to allow Student to make progress in light of Student’s unique needs?  
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57 **Burden of Proof:**  
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59 On November 14, 2005, the United States Supreme Court issued a decision in Schaffer v.  
60 Weast, the majority held that, “The burden of proof in an administrative hearing challenging an  
61 IEP is properly placed upon the party seeking relief.” Schaffer v. Weast, 546 U.S. 49, 129 S. Ct.  
62 528 (2005). Here, the burden of proof is placed on the Petitioner.  
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64 **Exhibits Admitted into Evidence**

65 There were numerous exhibits submitted by the parties and accepted into evidence by the  
66 undersigned. These exhibits have been examined by the undersigned subsequent to the Due  
67 Process Hearing in light of the testimony presented at said hearing. The undersigned placed no  
68 weight on the fact that any particular matter was offered by any party since the purpose was to get

69 all of the appropriate documents produced for consideration by the undersigned so long as they  
70 were not prejudicial to any other party participating in the Due Process Hearing based upon  
71 objection. The documents were examined and the weight given to each was based upon the  
72 contents of the document which was submitted and not on which party introduced said document.  
73 The undersigned has examined the exhibits based upon the substantive nature contained therein  
74 for the purpose of making a decision in this matter.

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76 **Petitioner’s Witnesses**

- 77 1. [REDACTED] -Licensed Teacher  
78 2. [REDACTED], Parent

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80 **Respondent’s Witnesses**

- 81 1. [REDACTED], Special Education Teacher Specialist  
82 2. [REDACTED], Teacher  
83 3. [REDACTED], School Psychologist  
84 4. [REDACTED], Behavior Specialist  
85 5. [REDACTED], Teacher Specialist  
86 6. Brian King, Assistant Special Education Director  
87 7. Kim Lloyd, Special Education Director

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89 **Joint Statement of Undisputed Facts and Material Admissions**

- 90 1. For the entirety of the 2022-2023 school year, Student attended kindergarten in a special  
91 class placement located at Golden Fields Elementary School (“Golden Fields”).  
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93 2. For the 2022-23 school year, Student’s initial operative IEP was dated May 27, 2022. *See*  
94 Respondent’s Exhibit 9.  
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96 3. For the 2022-23 school year, Student’s initial operative Behavior Intervention Plan (“BIP”)  
97 was dated December 15, 2022. *See* Joint Exhibit 2.  
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99 4. During the spring of 2023, a psychoeducational assessment and evaluation was performed.  
100 *See* Joint Exhibit 6.

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102 5. During the 2022-23 school year, IEP meetings were held April 12, 2023, May 22, 2023,  
103 and May 26, 2023.  
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105 6. A new IEP was developed and signed by the parties dated May 26, 2023. *See* Joint Exhibit  
106 16.  
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108 7. At the beginning of 2023-2024 school year, Student initially continued to attend 1<sup>st</sup> grade  
109 in a special class placement at Golden Fields.  
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111 8. IEP meetings were held on September 25, 2023, and October 10, 2023.  
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113 9. On or around November 1, 2023, Student began attending 1<sup>st</sup> grade in a special class at  
114 Herriman Elementary School.  
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116 10. Additional IEP meetings were held January 3, 2024, and January 31, 2024.  
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118 11. An IEP annual review team meeting was held on February 7, 2024. *See* Joint Exhibit 72.  
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120 12. On or about February 7, 2024, a Functional Behavioral Assessment was completed. *See*  
121 Joint Exhibit 71.  
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123 13. On May 9, 2024, an IEP meeting was held.  
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125 14. On May 9, 2024, Parent requested an Independent Educational Evaluation. *See* Joint  
126 Exhibit 87.  
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128 15. The Parent's IEE Request was granted.  
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130 16. The IEE was performed by Dr. Keith Radley.  
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132 17. Dr. Radley provided a report dated May 26, 2024. *See* Joint Exhibit 91.  
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134 18. An IEP Team meeting was held on May 29, 2024. *See* Joint Exhibit 93.  
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136 19. The IEP Team, with the participation of Dr. Radley, completed a revised FBA and BIP.  
137 *See* Joint Exhibit 92.

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**Findings of Facts:**

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- 143 20. [REDACTED] is a UT- licensed teacher and BCBA.
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- 145 21. [REDACTED] is a cluster lead over three (3) autism clusters at Rose Creek Elementary
- 146 School.
- 147
- 148 22. A cluster is a self-contained classroom.
- 149
- 150 23. Clusters are divided by grade level.
- 151
- 152 24. [REDACTED] does not provide direct instruction to students but interacts with students
- 153 who need behavioral support.
- 154
- 155 25. [REDACTED] collects behavioral data and is responsible for behavior intervention plans
- 156 (BIP).
- 157
- 158 26. [REDACTED] was introduced to Student and Parent in September 2024.
- 159
- 160 27. On September 03, 2024, [REDACTED] held an intake meeting with Parent at Rose Creek
- 161 Elementary School.
- 162
- 163 28. Student arrived at Rose Creek with a BIP.
- 164
- 165 29. There is no seclusionary time-out unit in the autism unit at Rose Creek.
- 166
- 167 30. Student has not been placed in restraint(s) in the autism unit at Rose Creek.
- 168
- 169 31. The “chunking” intervention is used to reduce the amount of work given to a student to
- 170 make the assignments manageable when students feel overwhelmed.
- 171
- 172 32. [REDACTED] has made progress with the chunking intervention.
- 173
- 174 33. Teacher support specialists support teachers through brainstorming, teaching strategies,
- 175 and providing interventions.
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- 177 34. Teacher specialists attend IEP meetings, when invited.
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- 179 35. [REDACTED] reports to Kim Lloyd.
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- 181 36. Kim Lloyd is the Special Education Director.

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37. [REDACTED] met Student in 2021 during a classroom visit at Golden Fields Elementary. (Hearing Day 3, page 27, Lines 6-12)
38. The IEP Team at Golden Fields met to consider the recommendations made by the LRE Committee that determined Student's placement should be Herriman ES. (JE-55-1).
39. [REDACTED] stated there was not a LRE Committee. (Hearing Day 3, Page 31, Line 22).
40. [REDACTED] did not know why JSD documents and teacher mention/reference an LRE Committee.
41. A SEB classroom (unit) is a social-emotional behavior support classroom.
42. Brian King is [REDACTED]' direct supervisor.
43. Brian King is the Assistant Director of Special Education.
44. [REDACTED] has access to student IEPs.
45. [REDACTED] denied that JSD had a LRE process.
46. JBAT is the Jordan Behavior Assistance Team.
47. JSD has resources available at the district level, called "district resources."
48. JSD has resources available at the school level, called "school resources."
49. The LRE Committee informs the teachers what resources are available to them. (Hearing Day 3, Page 85, Lines 19-20).
50. The LRE Committee meets on Wednesdays. (Hearing Day 3, Page 86, Lines 2-3).
51. Student's teacher believed that the district decided that placement at Kauri Sue was not a good option for him. (Hearing Day 3, Page 94, Lines 12-24).
52. [REDACTED] is a school psychologist.
53. [REDACTED] is a behavior specialist who works with JBAT.

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54. [REDACTED] is a teacher specialist who worked with [REDACTED] at Herriman ES.
55. Special classrooms are district resources. (Hearing Day 4, Page 136, Lines 15-16).
56. Brian King is not a core member of the IEP as he lacks special knowledge about individual students. (Hearing Day 4, Page 144, Lines 18-21).
57. Brian King has knowledge of a JSD LRE Committee that is no longer in effect. (Hearing Day 4, Page 146, Lines 14-19).
58. JSD follows the LRE process currently outlined in the technical assistance manual. (Hearing Day 4, Page 162, Lines 10-13).
59. All schools in the JSD district do not have self-contained classrooms.
60. A school resources is something that is inherently available within the school. (Hearing Day 4, Page 152, Lines 15-16).
61. A district resource is support that is available via collaboration with a teacher specialist. (Hearing Day 4, Page 153, Line 2-7).
62. There are a limited number of self-contained classrooms in the district. (Hearing Day 4, Page 152, Lines 4-5).
63. Student's Kindergarten teacher was [REDACTED].
64. In an email dated, February 21, 2023, the special education teacher and school psychologist express concerns about [REDACTED] being placed in an SEB unit.
65. [REDACTED]'s special education teacher believed that he would benefit from placement at Kauri Sue or an Autism unit.
66. [REDACTED]'s special education teacher did not believe that he would do well in an SEB unit.
67. In a communication between the school psychologist and the parent, the psychologist noted "I don't know what the district will suggest but that [Kauri Sue] would be a good option."

- 260 68. On May 3, 2023, the teacher specialist directed the special education teacher to have a  
261 conversation with the Parent regarding considering a SEB support classroom for Student.  
262 The teacher was directed to let the specialist know the outcome of the conversation with  
263 the Parent. The teacher specialist stated that [we] can then look at moving forward with a  
264 meeting. (JE-38-1).  
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- 266 69. In an email dated May 08, 2023, it is revealed that the Parent is “upset and worried” after  
267 having a conversation with the teacher specialist who recommended a SEB unit. (JE-40-1).  
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- 269 70. In an email dated May 08, 2023, the special education teacher and school psychologist  
270 reference the “LRE team” and note that they “will not move him before next year, the idea  
271 is he will start the new year at the other school.”
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- 273 71. On October 20, 2023, the JSD LRE Review Office sent a letter providing notice to the  
274 principal at Golden Fields Elementary that [REDACTED]’s placement is Herriman Elementary  
275 School- SEB unit.  
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- 277 72. In an email communication between the special education teacher and parent, the  
278 teacher informed parent that “they will only offer SEB.” (JE-99-69)  
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- 280 73. The parent was offered placement in SEB units at Herriman Elementary and Elk  
281 Meadows Elementary.  
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- 283 74. The parent refused placement in an SEB unit at Elk Meadows.  
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- 285 75. In a communication between the parent and special education teacher, the teacher  
286 informed the parent that after meeting with the district “it sounds like the district is open  
287 to whatever you [parent] would want so that’s positive.” (JE-99-71)  
288
- 289 76. Student’s IEP dated 02/07/2024 included the following special education services:  
290 Math – 325 Minutes  
291 Reading – 375 Minutes  
292 Writing – 100 Minutes  
293 Behavior – 981 Minutes  
294 (JE-72-17)  
295
- 296 77. Student’s IEP dated 02/07/2024 fails to explain how the services correlate to his goals.  
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- 298 78. Student’s IEP dated 02/07/2024 fails to explain how the services will be implemented; the  
299 IEP lacks identified program modalities to be used by teachers and/or other providers.

**Applicable Standards and Analysis**

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. §1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. V. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP is developed by its IEP team through the IDEA’s procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-7). However, the “IDEA does not itself articulate any specific level of educational benefits that must be provided through and IEP” (Rowley, 458 U.S. at 189). “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created” (Andrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 404). The statute ensures an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents” (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]). Additionally, school districts are not required to “maximize” the potential of students with disabilities (Rowley, 458 U.S. 189, 199).

An appropriate educational program begins with an IEP that includes a statement of the student’s present level of academic achievement and functional performance (see 34 CFR 300.320[a][1], establishes annual goals designed to meet the student’s needs resulting from the student’s disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A], and provides for the use of appropriate special education

325 services (see 34 CFR 300.320[a][4]). In developing the recommendations for a student’s IEP, the  
326 IEP team must consider the results of the initial or most recent evaluation the student’s strengths,  
327 the concerns of the parents for enhancing the education of their child; the academic,  
328 developmental, and functional needs of the student, including, as appropriate, the student’s  
329 performance on any general State or district-wide assessments as well as any special factors as set  
330 forth in federal and State regulations (see 34 CFR 300.324[a]).

331 Federal circuit courts have provided guidance on how to determine whether  
332 implementation has occurred and the degree to which any flawed implementation constitutes a  
333 denial of FAPE. In essence, the IDEA’s implementation mandate does not mean that, to provide  
334 FAPE, a district must perfectly implement a student’s IEP. A minor discrepancy between the  
335 services provided and services required under the IEP is not enough to amount to a denial of FAPE.  
336 See I.Z.M. v. Rosemunt-Apple Valley-Eagan Pub. Schs., 70 IDELR 86 (8<sup>th</sup> Cir. 2017). An IEP is  
337 not required to “furnish[] ... every special service necessary to maximize each handicapped child’s  
338 potential.” Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 379 (2d Cir. 2003) (citation and  
339 internal quotation marks omitted).

340 The Fourth, Fifth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal have held that  
341 only a material implementation failure will qualify as a denial of FAPE. See Sumter County Sch.  
342 Dist. 17 v. Hefferman, 56 IDELR 186 (4<sup>th</sup> Cir. 2011); Houston Indep. Sch. Dist. v. Bobby R., 31  
343 IDELR 185 (5<sup>th</sup> Cir. 2000), cert denied, 111 LRP 30885, 531 U.S. 817 (2000); Neosho R-V Sch.  
344 Dist. v. Clark, 38 IDELR 61 (8<sup>th</sup> Cir. 2003); Van Suyn v. Baker Sch. Dist. 5J, 47 IDELR 182 (9<sup>th</sup>  
345 Cir. 2007), reprinted as amended, 107 LRP 51958, 502 F.3d 811 (9<sup>th</sup> Cir. 2007); and L.J. v. School  
346 Bd. of Broward County, Fla., 74 IDELR 185 (11<sup>th</sup> Cir. 2019).

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349 **Least Restrictive Environment**

350 The IDEA requires that a student's recommended program be provided in the Least  
351 Restrictive Environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.107, 300.114[a][2][i],  
352 300.116[a][2], 300.117; see T.M., 752 F.3d at 161-67; Newington, 546 F.3d at 111; Gagliardo,  
353 489 F.3d at 105; Walczak, 142 F.3d at 132; Patskin v. Bd. of Educ. of Webster Cent. Sch. Dist.,  
354 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

355 In determining an appropriate placement in the LRE, the IDEA requires that students with  
356 disabilities be educated to the maximum extent appropriate with students who are not disabled  
357 and that special classes, separate schooling, or other removal of students with disabilities from the  
358 general educational environment may occur only when the nature or severity of the disability is  
359 such that education in regular classes with the use of supplementary aids and services cannot be  
360 achieved satisfactorily (20 U.S.C. § 1412[a][5][A]; see 34 CFR 300.114[a][2][i], 300.116[a][2];  
361 Newington, 546 F.3d at 112, 120- 21; Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.,  
362 995 F.2d 1204, 1215 [3d Cir. 1993]; J.S. v. N. Colonie Cent. Sch. Dist., 586 F. Supp. 2d 74;  
363 Patskin, 583 F. Supp. 2d at 430; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 144  
364 [N.D.N.Y. 2004]; Mavis v. Sobol, 839 F. Supp. 968, 982 [N.D.N.Y. 1993]). The placement of an  
365 individual student in the LRE shall "(1) provide the special education needed by the student; (2)  
366 provide for education of the student to the maximum extent appropriate to the needs of the student  
367 with other students who do not have disabilities; and (3) be as close as possible to the student's  
368 home" (see 34 CFR 300.116). Consideration is also given to any potential harmful effect on  
369 students or on the quality of services that they need (34 CFR 300.116[d]).

370 In the present case, the Petitioner alleges that JSD denied █████. FAPE by predetermining  
371 his LRE environment.

372 Predetermination occurs when an educational agency has made its determination prior to  
373 the IEP meeting, including when it presents one placement option at the meeting and is unwilling  
374 to consider other alternatives.” H.B. v. Las Virgenes USD, 239 Fed. Appx. 342 (9<sup>th</sup> Cir. 2007).  
375 Predetermination of a student’s IEP amounts to a procedural violation of the IDEA “if it deprives  
376 the student’s parents of meaningful participation in the IEP process.” B.K. v. New York City Dep’t  
377 of Educ., 12 F. Supp. 3d 343 358 (E.D.N.Y. 2014). For an IEP to be predetermined, the district  
378 must “not have an open mind” to consider alternative programs or services during the meeting.  
379 T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 253 (2d Cir. 2009). Mere parental  
380 disagreement with a school district’s IEP and placement recommendation does not amount to a  
381 denial of meaningful participation. See B.K., 12 F. Supp. 3d at 359 (“The mere fact that the CSE’s  
382 [IEP team’s] ultimate recommendation deviated from the express request [of the Parents] does not  
383 render the Parents ‘passive observers’ or evidence any predetermination on the part of the CSE  
384 [IEP team].” (citations omitted)); P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383  
385 (S.D.N.Y. 2008) (“The mere fact that the district staff ultimately disagreed with the opinions of  
386 plaintiffs and their outside professionals does not mean that plaintiffs were denied the opportunity  
387 to participate in the development of the IEP’s, or that the outcomes of the CSE [IEP team]  
388 meetings were ‘pre-determined.’ A professional disagreement is not an IDEA violation.”); Sch. For  
389 Language & Commc’n Dev. v. New York State Dep’t of Educ., No. 02 CV 0269 JS JO, 2006 WL  
390 2792754, at \*7 (E.D.N.Y. Sept. 26, 2006) (“Meaningful participation does not require deferral to  
391 parent choice.” (citations omitted)).

392 Predetermination is not synonymous with preparation.” Nack ex rel. Nack v. Orange City  
393 Sch. Dist., 454 F. 3d 604, 610 (6<sup>th</sup> Cir. 2006). “IDEA regulations allow school districts to engage  
394 in ‘preparatory activities ... to develop a proposal or response to a parent proposal that will be  
395 discussed at a later meeting’ without affording the parents an opportunity to participate.” T.P.,

396 554 F.3d at 253 (citations omitted). School districts are permitted to come prepared to the CSE  
397 [IEP team] meeting with a draft IEP – as long as it has not been finalized, and the parents are not  
398 deprived of “the opportunity to meaningfully participate in the IEP development process.” M.M.  
399 ex rel. A.M. v. New York City Dep’t of Educ., Region 9 (Dist. 2), 583 F. Supp. 2d 498, 506  
400 (S.D.N.Y. 2008) (citations omitted); see also Dirocco ex. Rel. M.D. v. Bd. of Educ. of Beacon City  
401 Sch. Dist., No. 11 CIV 3897 ER, 2013 WL 25959, at \*18 (S.D.N.Y. Jan. 2, 2013); Nack, 454 F.3d  
402 at 611 (“[S]chool evaluators may prepare reports and come with pre-formed opinions regarding  
403 the best course of action for the child as long as they are willing to listen to the parents and parents  
404 have the opportunity to make objections and suggestions.” (citation and internal quotation marks  
405 omitted)); W.S. ex rel. C.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 147-48 (S.D.N.Y. 2006)  
406 (Equating draft IEPs containing proposed placements with predetermination “will inevitably lead  
407 to gamesmanship in the preparation of IEPs by CSEs [IEP teams], with the district withholding  
408 points of view that ought to be out on the table and subject to discussion and parental challenge  
409 (which may or may not be successful) prior to the document’s finalization.”)

410 The IDEA contains a subsection titled “Least Restrictive Environment (LRE).” The  
411 subsection provides: “To the maximum extent appropriate, children with disabilities, including  
412 children in public or private institutions or other care facilities, are [to be] educated with children  
413 who are not disabled ...” 20 U.S.C. § 1412(a)(5). States that receive federal special education  
414 funding must ensure that:

415 [S]pecial classes, separate schooling, or other removal of children with disabilities from the regular  
416 educational environment occurs only when the nature or severity of the disability of a child is such  
417 that education in regular classes with the use of supplementary aids and services cannot be achieved  
418 satisfactorily.

419 The text of the subsection, providing that taking the child out of the mainstream only when  
420 satisfactory education cannot be achieved with supplementary aids and services, creates an  
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422 affirmative obligation to provide the supplementary aids and services to forestall the possibility of  
423 moving the child to a separate setting outside of regular classes. It also supports the observation  
424 that special education is a bundle of services and accommodations to enable a child who has  
425 disabilities to learn, rather than a place to put a child. The provisions of IDEA covering IEPs  
426 reinforce that message. An IEP must include:

427 (IV) a statement of the special education and related services and supplementary aids and  
428 services, based on peer-reviewed research to the extent practicable, to be provided to the  
429 child, or on behalf of the child, and a statement of the program modifications or supports  
430 for school personnel that will be provided for the child –

431  
432 (aa) to advance appropriately toward attaining the annual goals; and

433  
434 (bb) to be involved in and make progress in the general education curriculum in accordance  
435 with subclause (I) and to participate in extracurricular and other nonacademic activities;  
436 and

437  
438 (cc) to be educated and participate with other children with disabilities and nondisabled  
439 children in the activities described in this subparagraph; and

440  
441 (V) an explanation of the extent, if any, to which the child will not participate with  
442 nondisabled children in the regular class and in the activities described in subclause (IV)(cc).

443  
444 20 U.S.C. § 1414(d).

445  
446 Here, the Petitioner argues that JSD reached outside the scope of permissible  
447 administrative oversight of special education programs by developing and implementing a LRE  
448 Review Process, which is documented in its explanatory LRE Process Manual. Per the LRE  
449 Process Manual, JSD maintained “school resources” and “district resources.” Per the manual,  
450 district resources were noted as “not inherently available to IEP teams at the school level and may  
451 be considered only by collaborating with a special education teacher specialist.” It is noted that  
452 self-contained classrooms and special schools were listed as district resources. The manual further  
453 notes that any service or placement designated as a “district resource” can only be considered after  
454 “exhausting all school resources and available district supports.” Based on the foregoing, the

455 Petitioner asserts that the IEP team for [REDACTED]. could not make changes to his LRE environment  
456 without prior approval from the District’s LRE Review Process.

457 To further support their argument, the Petitioner proffered P.L. and M.L. v. New York  
458 City Dep’t of Educ., wherein the Eastern District of New York found the local educational agency  
459 denied [a student] FAPE because the student’s unique needs were not considered when it offered  
460 its “standard proposal” for students on the autism spectrum. P.L. and M.L. v. New York City  
461 Dep’t of Educ., 56 F. Supp. 3d 147, 165 (E.D.N.Y. 2014). The Petitioner posits that the student in  
462 the present case is similarly situated like “M.L.” Petitioner avers that [REDACTED]., like “M.L.”, was offered  
463 no specific reason(s) for his placement in his LRE; that JSD only provided vague reasons (i.e., “an  
464 SEB could handle the [Student’s] BIP”; “[an SEB could] provide the support that he requires) for  
465 [REDACTED]’s LRE placement.

466 More concerning is the Petitioner’s allegation that [REDACTED]’s assignment in the SEB unit  
467 essentially the result of the District’s limited placement resources; the SEB unit was the only class  
468 available to accommodate [REDACTED] at the time of placement.

469 Next, the Petitioner turned its attention to communications between the IEP team  
470 members regarding [REDACTED]’s LRE environment. Petitioner specifically points to an email dated  
471 February 21, 2023, between the special education teacher and school psychologist wherein the  
472 teacher expresses concern about [REDACTED] being placed in an SEB unit. The teacher believes [REDACTED].  
473 would benefit from placement at Kauri Sue Hamilton School or an Autism unit. The school  
474 psychologist also notes that she believed Kauri Sue to be a good placement option, but “did not  
475 know what the district would suggest.” Finally, the Petitioner asserts that [REDACTED]’s placement in an  
476 SEB was not reasonably calculated according to his individual needs because there was no data to  
477 support the decision. Petitioner offered parental observations of [REDACTED]’s behaviors in the home  
478 environment, Functional Behavioral Assessment (FBA) data, and data from a psychoeducational

479 evaluation conducted in April 2023 to support its argument that the decision to place ██████ in an  
480 SEB unit was unfounded; furthermore, there was no support for the placement at the IEP team  
481 level.

482 Conversely, the District argues that it maintains a full continuum of placements and  
483 specifically considered said continuum with respect to ██████. The District denies that ██████'s LRE  
484 was predetermined at the administrative level and maintains that it was appropriately determined  
485 by the IEP team. The District avers that ██████'s appropriate placement is a self-contained classroom  
486 within a general education school.

487 To support its LRE decision, the District cites Ellenberg v. New Mexico Mil. Inst., 478  
488 F.3d 1262, 1277 (10<sup>th</sup> Cir. 2007) (citing L.B. ex. Rel. K.B. v. Nebo School District, 379 F. 3d 966  
489 (10<sup>th</sup> Cir. 2004) wherein the court developed a test for determining whether an educational  
490 placement is a student's LRE; [courts] look to (1) 'whether education in a regular classroom, with  
491 the use of supplemental aids and services, can be achieved satisfactorily;' and (2) 'if not, if the school  
492 district has mainstreamed the child to the maximum extent appropriate.'

493 A closer examination of Nebo is relevant here:

494 In Nebo, the Court adopted the two-part test previously stated in Daniel R.R. v. Bd. Of  
495 Education, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989): (1) determines: whether education in a regular classroom,  
496 with the use of supplementary aids and services can be achieved satisfactorily; and (2) if not, the  
497 court determines if the school district has mainstreamed the child to the maximum extent  
498 appropriate. Next, the Court outlined four factors to be considered in determining the first part of  
499 the test:

- 500 (1) Steps the school district has taken to accommodate the child in a regular classroom,  
501 including the consideration of a continuum of placement and support services;
- 502
- 503 (2) Comparison of the academic benefits the child will receive in the regular classroom with  
504 those [s]he will receive in the special education classroom;

505  
506 (3) The child’s overall educational experience in regular education, including non-academic  
507 benefits; and

508  
509 (4) The effect on the regular classroom of the disabled child’s presence in that classroom.  
510

511 On the contrary, the District contends that it has satisfied the Nebo test. As evidence, the  
512 District points to its review of ■■■■■’s IEPs and placement history; its review of data from ■■■■■’s  
513 psychoeducational assessment and other test results; ■■■■■’s IQ; and several IEP team meetings  
514 held to discuss ■■■■■’s LRE placement. While the District does not dispute that IEP team members  
515 were considering Kauri Sue Hamilton, a special school, as an appropriate placement for ■■■■■, it  
516 contends that it was the IEP team’s review of student data and subsequent IEP team discussions  
517 that ultimately led to a finding that the school was not an appropriate placement.

518  
519 **Parental Participation**

520 The IDEA sets forth procedural safeguards that include providing parents an opportunity  
521 “to participate in meetings with respect to the identification, evaluation, and educational  
522 placement of the child” (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental  
523 participation require that LEAs take steps to ensure that parents are present at their child’s IEP  
524 meetings or are afforded the opportunity to participate (34 CFR 300.322; SpEd Rules III.G.).

525 Although school district’s must provide an opportunity for parents to participate in the  
526 development of their child’s IEP, mere parental disagreement with a school district’s proposed IEP  
527 or placement recommendation does not amount to a denial of meaningful participation (see T.F.  
528 v. New York City Dep’t of Educ., 2015 WL 5610769, at \*5 [S.D.N.Y. Sept. 23, 2015]; A.P., 2015  
529 WL 4597545 at \*8, \*10; E.F. v. New York City Dep’t of Educ., 2013 WL 4495676 at \*17 [E.D.N.Y.  
530 Aug 19, 2013])[stating that “as long as the parents are listened to, “the right to participate in the

531 development of the IEP is not impeded, “even if the [district] ultimately decides not to follow the  
532 parents’ suggestions”]; P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y.  
533 2008][noting that “[a] professional disagreement is not an IDEA violation”]; Sch. For Language  
534 & Commc’n Dev v. New York State Dep’t of Educ., 2006 WL 2792754, at \*7 [E.D.N.Y. Sept. 26,  
535 2006][finding that “[m]eaningful participation does not require deferral to parent choice”)].

536 When determining whether a school district has complied with the IDEA’s procedural  
537 requirements, the inquiry focuses on whether the parents “had an adequate opportunity to  
538 participate in the development” of their child’s IEP (Cerra, 427 F.3d at 192). Moreover, “the IDEA  
539 only requires that the parents have an opportunity to participate in the drafting process” (D.D-S.  
540 v. Southold Union Free Sch. Dist., 2011 WL 3919040, at \*11 [E.D.N.Y. Sept 2, 2011], quoting  
541 A.E. v. Westport Bd. of Educ., 463 F. Supp. 2d 208, 216 [D. Conn. 2006]; see T.Y. v. New York  
542 City Dept’ of Educ., 584 F.3d 412, 420 [2d Cir. 2009][noting that the IDEA gives parents the right  
543 to participate in the development of their child’s IEP, not a veto power over those aspects of the  
544 IEP with which they do not agree]).

545 In the present case, the Petitioner alleges that they were denied an opportunity to  
546 meaningfully participate in the development of ██████’s IEP. To support its argument, the Petitioner  
547 asserts that the District held formal, regularly scheduled “LRE Committee” meetings between  
548 teacher specialists and the district administrators to discuss concerns regarding ██████’s IEP and  
549 placement decisions. The Petitioner contends that these placements meetings extended beyond the  
550 scope of the IDEA’s regulations at 34 CFR § 300.501(1)(3), which provides that a “meeting” for  
551 the purposes of the parent participation requirement does not include “informal or unscheduled  
552 conversations” or “preparatory activities [...] to develop a proposal or response to a parent  
553 proposal that will be discussed at a later meeting.”

554 The Petitioner contends that the District’s LRE Committee met on a scheduled and  
555 consistent basis to discuss and predetermine student placements in anticipation of IEP team  
556 meetings. And, that IEP teams meetings were merely performative to satisfy the parental  
557 participation requirement. As evidence, the Petitioner cites communications between IEP team  
558 members wherein, they discuss concerns about ██████’s placement in a SEB unit. (JE-25-1). The  
559 Petitioner next points to an email dated May 03, 2023, where the teacher specialist is directing the  
560 special education teacher to have a conversation with the parent about considering a SEB support  
561 classroom. The teacher is then directed to “let me [the district] know how it went. We can then  
562 look at moving forward with a meeting.” (JE-38-1). The Petitioner also cites an email dated May  
563 08, 2023, where it is revealed that the Parent is “upset and worried” after having a conversation  
564 with the teacher specialist who recommended a SEB unit. (JE-40-1).

565  
566 **IEP Reasonably Calculated to Allow Student to Make Progress**

567 An appropriate educational program begins with an IEP that includes a statement of the  
568 student’s present level of academic achievement and functional performance (see 34 CFR  
569 300.320[a][1], establishes annual goals designed to meet the student’s needs resulting from the  
570 student’s disability and enable him or her to make progress in the general education curriculum  
571 (see 34 CFR 300.320[a][2][i], [2][i][A], and provides for the use of appropriate special education  
572 services (see 34 CFR 300.320[a][4]). In developing the recommendations for a student’s IEP, the  
573 IEP team must consider the results of the initial or most recent evaluation the student’s strengths,  
574 the concerns of the parents for enhancing the education of their child; the academic,  
575 developmental, and functional needs of the student, including, as appropriate, the student’s  
576 performance on any general State or district-wide assessments as well as any special factors as set  
577 forth in federal and State regulations (see 34 CFR 300.324[a]).

578 Federal circuit courts have provided guidance on how to determine whether  
579 implementation has occurred and the degree to which any flawed implementation constitutes a  
580 denial of FAPE. In essence, the IDEA's implementation mandate does not mean that, to provide  
581 FAPE, a district must perfectly implement a student's IEP. A minor discrepancy between the  
582 services provided and services required under the IEP is not enough to amount to a denial of FAPE.  
583 See I.Z.M. v. Rosemunt-Apple Valley-Eagan Pub. Schs., 70 IDELR 86 (8<sup>th</sup> Cir. 2017). The  
584 Fourth, Fifth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal have held that only a material  
585 implementation failure will qualify as a denial of FAPE. See Sumter County Sch. Dist. 17 v.  
586 Hefferman, 56 IDELR 186 (4<sup>th</sup> Cir. 2011); Houston Indep. Sch. Dist. v. Bobby R., 31 IDELR 185  
587 (5<sup>th</sup> Cir. 2000), cert denied, 111 LRP 30885, 531 U.S. 817 (2000); Neosho R-V Sch. Dist. v. Clark,  
588 38 IDELR 61 (8<sup>th</sup> Cir. 2003); Van Suyn v. Baker Sch. Dist. 5J, 47 IDELR 182 (9<sup>th</sup> Cir. 2007),  
589 reprinted as amended, 107 LRP 51958, 502 F.3d 811 (9<sup>th</sup> Cir. 2007); and L.J. v. School Bd. of  
590 Broward County, Fla., 74 IDELR 185 (11<sup>th</sup> Cir. 2019).

591 The IDEA directs that, in general, an IHO's decision must be made on substantive grounds  
592 based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]).  
593 A school district offers a FAPE "by providing personalized instruction with sufficient support  
594 services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at  
595 203). However, the "IDEA does not itself articulate any specific level of educational benefits that  
596 must be provided through an IEP" (Walczak, 142 F. 3d at 130; see Rowley, 458 U.S. at 189). "The  
597 adequacy of a given IEP turns on the unique circumstances of the child for whom it was created"  
598 (Andrew F., 580 U.S. at 404). The statute ensures an "appropriate" education, "not one that  
599 provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132,  
600 quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations  
601 omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize"

602 the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379;  
603 Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to  
604 produce progress, not regression,' and . . . affords the student with an opportunity greater than  
605 mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations  
606 omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir.  
607 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v.  
608 Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Andrew F., 580 U.S. at 403 [holding  
609 that the IDEA "requires an educational program reasonably calculated to enable a child to make  
610 progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The Court  
611 in Andrew held that the "adequacy of a given IEP turns on the unique circumstances of the child  
612 for whom it was created" and the "nature of the IEP process [] ensures that parents and school  
613 representatives will fully air their respective opinions on the degree of progress a child's IEP should  
614 pursue; thus, by the time any dispute reaches court, school authorities will have had the chance to  
615 bring their expertise and judgment to bear on areas of disagreement" (Andrew F., 580 U.S. at p.  
616 404). Lastly, the Supreme Court held that the "reviewing court may fairly expect those authorities  
617 to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is  
618 reasonably calculated to enable the child to make progress appropriate in light of his  
619 circumstances." (id.).

620 Here, the Petitioner contends that [REDACTED]'s IEP was not reasonably calculated to allow him  
621 to make progress because it was developed at the administrative level and not by the IEP team. As  
622 such, the IEP focused less on student's needs and more on resource availability. The Petitioner also  
623 suggests that [REDACTED]'s IEP at Herriman Elementary (start date 01/31/2024) was further complicated  
624 by the way it was written. [REDACTED]'s services were to be provided in total weekly minutes (i.e., 981  
625 minutes of behavior) with no explanation how they would be administered and measured.

626 The District argued that the Petitioner used a hindsight approach to challenge the  
627 appropriateness of ██████'s IEPs. However, it failed to introduce sufficient evidence to support a  
628 finding that ██████'s most recent IEP is appropriate.

629

630 **Compensatory Education**

631 Compensatory education is an equitable remedy that is tailored to meet the unique  
632 circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). The  
633 purpose of an award of compensatory education is to provide an appropriate remedy for a denial  
634 of a FAPE (see E.M., 758 F.3d at 451; P. v. Newington Bd. of Educ., 546 F.3d 111, 123 [2d Cir.  
635 2008] [holding that compensatory education is a remedy designed to "make up for" a denial of a  
636 FAPE]; see also Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 456 [2d Cir. 2015]; Reid v. Dist. of  
637 Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate  
638 compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's  
639 purposes, the ultimate award must be reasonably calculated to provide the educational benefits  
640 that likely would have accrued from special education services the school district should have  
641 supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th  
642 Cir.1994]). Accordingly, an award of compensatory education should aim to place the student in  
643 the position he or she would have been in had the district complied with its obligations under the  
644 IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be  
645 designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta  
646 Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards  
647 should place children in the position they would have been in but for the violation of the Act"];  
648 Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible  
649 approach, rather than a rote hour-by-hour compensation award, is more likely to address [the

650 student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory  
651 education is a "replacement of educational services the child should have received in the first place"  
652 and that compensatory education awards "should aim to place disabled children in the same  
653 position they would have occupied but for the school district's violations of IDEA"]).

### 654 Conclusions of Law

655 In consideration of the foregoing facts and arguments, the undersigned finds:

- 656 1. That the Petitioner has satisfied its burden to prove that during the relevant time-period  
657 the Jordan School District developed and maintained a LRE Process that predetermined  
658 ■■■■■'s educational placement and special education services.
- 659 2. That ■■■■■'s IEP was not reasonably calculated to allow him to make progress.
- 660 3. That predetermination precluded Petitioner's parent active participation in his educational  
661 program.  
662

### 663 ORDER

664 The undersigned finds in favor of the Petitioner and Student, and against the Respondent  
665 (Jordan School District), and hereby grants the Petitioner the following relief:

- 666 1. Petitioner is the prevailing party.
- 667 2. JSD is ordered to fund an independent thorough and appropriate evaluations for the  
668 purposes of identifying current baselines across ■■■■■'s educational performance areas of  
669 Academics, Communication, and Social/Emotional Development. This shall include, but  
670 not limited to: Cognitive, Achievement, Behavior, Adaptive Functioning,  
671 Speech/Language (to include pragmatics), Occupational Therapy (to include  
672 sensory/attention observation in instructional settings). JSD will reimburse the parent for  
673 the transportation costs associated with the IEE at the mileage rate typically reimbursed to  
674 JSD employees.  
675
- 676 3. JSD shall utilize mutually agreed-upon third party reading specialist to assess ■■■■■. for skill  
677 deficits in reading comprehension, fluency, written expression and other skills necessary for  
678 academic reading.

- 679 4. JSD shall utilize the services of a mutually agreed-upon third party psychometrist to assess  
680 ■■■ in the area of math including, but not limited to, math computation and other  
681 mathematical concepts.  
682
- 683 5. Within twenty-one (21) days of receiving the afore-mentioned evaluation results/reports,  
684 JSD shall convene a facilitated IEP team meeting.  
685
- 686 6. JSD shall invite the psychometrist, math coach, and reading specialist to the IEP team  
687 meeting to perform the following tasks:  
688 a. Explain the results of the assessments conducted to the IEP team and the reasonable  
689 recommendations, including the reading/math program that would be appropriate for  
690 ■■■  
691 b. Notate, within the IEP, the appropriate frequency level of services as recommended by  
692 the adopted reading/math program, define the data collection that will be taken to  
693 monitor progress, and provide verification to the Parent that the teacher and any other  
694 staff members who will be providing instruction to ■■■ in these areas, meets the  
695 competency requirements, as specified in the adopted reading/math program, for  
696 instructing students in the given program.  
697 c. Train applicable staff on the proper methods of data collection to monitor Student's  
698 progress with the reading/math program.  
699 d. Participate as a team member of ■■■s IEP team through at least the end of the 1<sup>st</sup>  
700 semester of the 2025-2026 school year.  
701 e. Provide recommendations for program modifications as needed.  
702
- 703 7. JSD shall provide ■■■ with one hundred (100) hours compensatory, remedial educational  
704 services in behavior, speech, math and reading based upon his deficits and areas of need  
705 identified in the evaluations and assessments previously referenced in this Order as well as  
706 progress and data collections throughout the 2024-2025 school year. The compensatory  
707 services shall be delivered during the 2025 summer through the first semester of the 2025-  
708 2026 school year.  
709 (i) The location and schedule for the services will be determined by the IEP Team  
710 prior to the beginning of the services, based on the availability and schedules of the  
711 service provider(s) and, to the extent reasonable, the Parent.  
712 (ii) The remedial services pursuant to this Paragraph will be offered regardless of  
713 whether the IEP Team determines Student qualifies for Extended School Year  
714 ("ESY") services. If Student qualifies for ESY services during the summer of 2025,  
715 any remedial services offered and available during that time-period are in addition  
716 to ESY hours.  
717 (iii) If Student is unable to attend a remedial service session pursuant to this Paragraph,  
718 the Parent will provide notice to JSD at least twenty-four (24) hours in advance of  
719 the scheduled session. If Student fails to attend two (2) remedial service sessions  
720 without the provision of notice, JSD's obligation to provide any further remedial  
721 services pursuant to this Paragraph will cease. "Notice" for the purposes of this  
722 subparagraph means contacting a JSD representative either by phone/voicemail or  
723 email at least 24 hours in advance. JSD will designate in writing the representative  
724 (including contact information) to whom the Parent should provide notice.  
725

726 8. JSD shall provide [REDACTED], a mutually agreeable Board Certified Behavior Analyst (“BCBA”),  
727 who will collect all collateral information, including without limitation, interviews with  
728 relevant School District staff working with [REDACTED], the Parent and any private counselors and  
729 therapists; review, as requested by the BCBA, pertinent education records and any private  
730 healthcare or service provider reports available to the School District and, thereafter,  
731 perform a Functional Behavior Assessment (“FBA”), and, if deemed appropriate by the  
732 BCBA, develop a Behavior Intervention Plan (“BIP”) to address [REDACTED]’s behaviors that  
733 impact his learning and educational performance. In addition, the BCBA will do the  
734 following:

- 735 a) The BCBA will consider [REDACTED] as the client pursuant to the Behavior Analyst  
736 Certification Board (BACB) ethical requirements.
- 737
- 738 b) Make recommendations to the IEP team on whether developmental assessments  
739 (i.e., ABLLS) would be beneficial and, if adopted by the IEP team, conduct said  
740 assessment and explain results to the IEP team. Using the data from the FBA, and  
741 any other assessments completed, create a skill acquisition program individualized  
742 for [REDACTED] with pertinent goals matched to Alabama Standards.
- 743
- 744 c) If a BIP is developed, the BCBA will develop a data collection system to be used by  
745 School District staff in assessing [REDACTED]’s progress with the BIP in reducing target  
746 behaviors. Also, train applicable staff have been trained to a level of competency  
747 using a competency checklist established by the BCBA on the BIP and in any areas  
748 where the IEP team is incorporating goals, plans or programs. Incorporate periodic  
749 integrity checks and provide additional training if it becomes necessary.
- 750
- 751 d) Make recommendations on whether changes need to be made to [REDACTED]’s Least  
752 Restrictive Environment (LRE) based upon the evaluations and his abilities and  
753 needs. Work with School District Staff to accommodate [REDACTED] into the General  
754 Education setting to the maximum extent appropriate.
- 755
- 756 e) Make recommendations regarding the need for ABA Strategies to be provided for  
757 the Petitioner inside the school setting.
- 758
- 759 f) Provide parent training on the strategies recommended and adopted by the IEP  
760 team.
- 761
- 762 g) Make recommendations regarding the need for targeted trained Aide support to  
763 assist [REDACTED] in skill acquisition and make academic gains inside the general  
764 education setting. This would include any recommendations applicable to P.H.’s  
765 preferred means of communication.
- 766
- 767 h) Once the services pursuant to this Paragraph are completed, the IEP Team will  
768 consider the reasonable educational recommendations of the BCBA for on-going  
769 support to assist staff in the appropriate implementation of [REDACTED]’s program.
- 770

- 771 i) Work with the District’s SLP, if applicable, and teachers and staff to create a plan,  
772 to include competency-based training, to promote and encourage [REDACTED]’s social skills  
773 and communication skills throughout the day.
- 774
- 775 j) The BCBA shall be invited to attend, as a participating member of the team, any  
776 IEP meetings convened until deemed not necessary based on [REDACTED]’ progress and  
777 behavior intervention plan data through the end of the first semester of the 2025-  
778 2026 school year.
- 779

780 **DONE AND ORDERED** this the 24<sup>th</sup> day of March 2025.

781  
782

783 **Notice of Right to Appeal**

784 This is the final administrative decision in this matter. Any party aggrieved by the findings and  
785 decision herein has the right to bring a civil action in the appropriate Court under 20 U.S. C.  
786 Section 1415. Pursuant to State Bd. of Educ., Special Education Rules IV. P., (2016), this decision  
787 may be appealed. If appealed, the appeal must be filed within thirty (30) days of the due process  
788 hearing decision. Sped. Rule IV.S. (2).

789

790 **CERTIFICATE OF SERVICE**

791 I hereby certify that a copy of this Decision has been forwarded to the following individuals by  
792 electronic mail on this the 24<sup>th</sup> day of March 2025.

- 793 Maya Anderson, Esq.
- 794 Joan Andrews, Esq.
- 795 Katie Cox, Esq.
- 796 Sarah Vaughn, Esq.

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803  
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805

*/s/ Nika Gholston*  
Nika Gholston  
Due Process Hearing Officer