

**BEFORE THE DEPARTMENT OF EDUCATION  
OF THE STATE OF ALABAMA**

<b>G.H.,</b>	)	
	)	
<b>PETITIONER,</b>	)	
	)	
<b>v.</b>	)	<b>SPECIAL EDUCATION NO. 18-129</b>
	)	
<b>JEFFERSON COUNTY</b>	)	
<b>BOARD OF EDUCATION,</b>	)	
	)	
<b>RESPONDENT.</b>	)	

**HEARING DECISION AND FINAL ORDER**

**I. PROCEDURAL HISTORY**

This matter was filed by Petitioner on November 7, 2018 and was assigned to this Hearing Officer by the Alabama State Department of Education on the same day. Resolution was waived by the parties effective November 15, 2018. A due process hearing convened on March 18, 2019, and a second day of testimony began on March 19, 2019. Before testimony began on March 19, 2019, Respondent submitted a report to Petitioner that had been overlooked in the document exchange conducted prior to the hearing. Counsel for Petitioner requested an opportunity to review the report, and this Hearing Officer found good cause to continue the hearing. The hearing reconvened on April 23, 2019, and this Hearing Officer found good cause to allow an additional day for the hearing to be convened on April 24, 2019 to permit more testimony. The parties were allowed to submit closing briefs after the testimony concluded, and Respondent submitted a closing brief.

**II. EXHIBITS ADMITTED INTO EVIDENCE**

At the hearing, exhibits were submitted by the parties in Exhibit Binders and accepted by this Hearing Officer. These exhibits have been examined by this Hearing Officer subject to the

issues heard at the due process hearing and in light of the testimony presented at said hearing. The documents and materials have been in the constant possession of this Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the Alabama State Department of Education.

This Hearing Officer placed no weight on the fact that any particular matter was offered by either party since the purpose was to have all of the appropriate documents produced for consideration by this Hearing Officer, so long as they were not prejudicial to the other party participating in the due process hearing based upon objection. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. This Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

**A. PETITIONER'S EXHIBITS**

1. Petitioner's Exhibit 1: Complaint for Due Process
2. Petitioner's Exhibit 2: Notice and Eligibility Decision Regarding Special Education Services
3. Petitioner's Exhibit 3: [REDACTED] Evaluation Report
4. Petitioner's Exhibit 4: Student's IEPs
5. Petitioner's Exhibit 5: Annual Goal Progress Reports
6. Petitioner's Exhibit 6: Behavior Reports

**B. RESPONDENT'S EXHIBITS**

1. Respondent's Exhibit 1: Student's Educational Records

### III. BURDEN OF PROOF

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08(9)(c).

### IV. STATEMENT OF FACTS AND SUMMARY OF THE TESTIMONY

This section is a summary of some of the pertinent facts presented to this Hearing Officer. These facts are not necessarily the only facts considered by this Hearing Officer in making this decision. This Hearing Officer has heard all of the testimony and has reviewed the transcript of said testimony. This decision is based on all testimony presented at the hearing as well as exhibits admitted into evidence during the hearing.

Both parties were permitted to offer testimony by way of witnesses sworn under oath. The testimony has been recorded and transcripts will be delivered to the Alabama State Department of Education. This Hearing Officer placed no weight on the fact that any particular testimony was offered by either party since the purpose was to provide all of the appropriate and admissible testimony for consideration by this Hearing Officer. The witnesses were examined and the weight given to each was based upon the substantive nature contained therein for the purpose of making a decision in this matter. The following witnesses testified:

████████████████████ Mother  
████████████████████ Middle School Lead Special Education Teacher  
████████████████████ Jefferson County School District Exceptional Education  
Specialist  
████████████████████ Student's ██████ and ██████ Grade Special Education Teacher and  
Case Manager  
████████████████████ Student's ██████ Grade Special Education Teacher and Case  
Manager  
████████████████████ Jefferson County School District ██████ Specialist  
████████████████████ Student's ██████ Grade ██████ Teacher  
████████████████████ █████████████████████ Middle School Principal  
████████████████████ Student's ██████ Grade ██████ Teacher  
████████████████████ Jefferson County School District Special Education Director

**Testimony:**

*Student's Prior History:*

Student attended private school for Kindergarten. After being displeased with the Kindergarten program, Mother moved Student to a different private school for the first grade. That school informed Mother during the first semester of the first grade year that Student's needs were greater than what the school could provide, so Mother enrolled Student at [REDACTED] Elementary School in the Jefferson County School District for the second semester of the first grade year. During that semester, Student was identified as possibly needing special education services and was evaluated. Student was found eligible to receive special education services in the second grade. Mother testified that she was pleased with the services offered at [REDACTED] Elementary School, where Student attended through the third grade.

Student attended [REDACTED] Elementary School for the fourth and fifth grades. Student had the same Special Education Teacher and Case Manager for both school years, who Mother testified was Student's "safe haven", "go-to person", and "mother at school". The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified that Student was at the "mid to high" second grade level in reading at the beginning of the fourth grade year and then on grade level by end of that school year. Student was reading grade level material without any problem during fifth grade. She further testified that Student was "bright" and far surpassed her expectations in reading. She testified that teachers got to know Student in the fourth grade and that there "really wasn't any issues in the beginning." Student exhibited frustration, and she learned what worked to calm Student down. There were no aggressive acts in fourth grade; however, the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager identified Student as possibly having [REDACTED] during that school year. She contacted the Jefferson County School District Special Education Director,



and a Jefferson County [REDACTED] Specialist observed Student. Jefferson County School District requested that [REDACTED] an agency that contracts with the Alabama State Department of Education to conduct educational evaluations for [REDACTED] evaluate Student. However, the request was denied because the State program for these evaluations ran out of money.

During the [REDACTED] grade, Jefferson County School District resubmitted its request to [REDACTED] for an [REDACTED] educational evaluation, and the request was accepted. The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified that Student's behavior usually "wasn't as upset as would be considered, you know, a meltdown..." and [REDACTED] would come and cool down with her. She used a timer with Student. She testified that a "trigger" for Student is "if someone proposes a different idea from Student's own". Usually it was Student's difficulty working in a small group that resulted in Student coming to cool down with her. During the fifth grade, Student had an altercation in physical education and another altercation in the lunchroom. Both instances occurred during transition or unstructured times, which the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager recognized as problem times for Student. Student started eating lunch with the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager on Fridays, and the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager pulled others students into the lunch times as a group to work on social skills. She testified that Student made gains recognizing frustration and self-removing from a situation, but Student could not cope with conflict once it happened or deescalate during those two school years. Student could verbalize needs or frustrations to adults when calm. At the end of the [REDACTED] grade, Student was evaluated by [REDACTED] and found eligible to receive special education services in the category of [REDACTED] after being previously served in the categories of [REDACTED].

At the end of the [REDACTED] grade, [REDACTED] Elementary School convened an IEP meeting to develop an IEP for the sixth grade year, when Student would transition to [REDACTED] Middle School. The Lead Special Education Teacher at [REDACTED] Middle School attended the meeting as a liaison for that school. During the [REDACTED] grade, Student worked on social skills during the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager's reading comprehension group and throughout each day as needed. Student also attended speech twice a week for specific social skills instruction. The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified that she made recommendations at that meeting that Student have someone with whom a relationship could be established and that social skills instruction be provided. However, she further testified that she did not recommend a specific amount of time for social skills instruction for the [REDACTED] grade at the meeting. Mother testified that she and the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager "wanted a lot of the same things", and the Lead Special Education Teacher at [REDACTED] Middle School said, "We don't do that at the Middle School." The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified that she did not remember the Lead Special Education Teacher at [REDACTED] Middle School's exact words, but that the Lead Special Education Teacher at [REDACTED] Middle School discussed the differences between elementary and middle school. The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified that "it was not a disagreement, but it was just different from the way that we did it." The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager shared what had been done previously, and the Lead Special Education Teacher at [REDACTED] Middle School shared how social skills training would be done at the middle school. The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager testified, "And I mean, there wasn't an argument or a disagreement or anything of that nature." The Lead Special

Education Teacher at [REDACTED] Middle School testified that she did not have any disagreement with the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager at the meeting. The Lead Special Education Teacher at [REDACTED] Middle School further testified that she informed Mother at the meeting that the difference would be that the elementary school used a small reading group for social skills instruction, but the middle school would use Response to Intervention time to pull Student to work on social skills. The elementary school did use speech time for social skills, and the middle school did also. The IEP Team decided that Student would have a monthly session of social skills instruction during small group Response to Intervention and that social skills would be addressed every day during a daily resource period "as needs arise". Student would also receive social skills through speech instruction. The IEP did not contain a behavior intervention plan but did address Student's needs in the areas of social skills and conflict resolution.

Student's [REDACTED] Grade Year:

Student was in the [REDACTED] Grade at [REDACTED] Middle School during the [REDACTED] school year. Student's [REDACTED] Grade Special Education Teacher and Case Manager was Student's "go-to person". The Lead Special Education Teacher at [REDACTED] Middle School served as Student's [REDACTED] Grade Special Education Teacher and Case Manager's mentor, as he was a first year teacher. Student's [REDACTED] Grade Special Education Teacher and Case Manager was taking courses for a master's degree in special education and not fully certified. Student came to the Lead Special Education Teacher at [REDACTED] Middle School's classroom occasionally to take tests and when Student's [REDACTED] Grade Special Education Teacher and Case Manager was not available. Student's [REDACTED] Grade Special Education Teacher and Case Manager taught a resource class for 30 minutes per day with academics and social skills, and Student's [REDACTED] Grade Special Education



Teacher and Case Manager used the curriculum for social skills recommended by the Lead Special Education Teacher at ██████████ Jefferson Middle School. Student's ██████████ Grade Special Education Teacher and Case Manager testified that he did not know if the social skills curriculum was peer-reviewed. He further testified that he did not know what peer-reviewed research is. The Jefferson County Special Education Director testified that the district used peer-reviewed, research-based curriculum. Student's ██████████ teacher talked to Student's ██████████ Grade Special Education Teacher and Case Manager about Student's difficulty doing group work. Student's ██████████ Grade Special Education Teacher and Case Manager testified that he never had a problem with Student in his own classroom. Student had some verbal aggression and name calling, and fellow teachers sent Student to the Student's ██████████ Grade Special Education Teacher and Case Manager for cool down.

Mother testified that she attended an IEP meeting in August 2018 and that the district "pretty much did the IEP how they wanted it." She testified that the Lead Special Education Teacher at ██████████ Middle School told her that Student "gets social skills even when ██████████ doesn't know it" throughout the day. Mother further testified that the ██████████ Grade Special Education Teacher and Case Manager had said same thing last year, but that was "more geared toward Student one-on-one." Mother testified that she believed Student was receiving less time for social skills instruction in ██████████ grade than in ██████████ grade.

The Lead Special Education Teacher at ██████████ Middle School testified that personnel were not seeing any incidences of concern from August 2018 until October 2018 and that "things were rocking along great." But then an incident happened in Student's sixth period ██████████ class at the end of October 2018. Student had participated in the first big project of the year, pretending to be an engineer. Student constructed a pull-toy that would be appropriate for a three year old child. Student worked alone or with the ██████████ teacher instead of working in a



group as the other students in the class did due to Student's difficulty working in a group. The [REDACTED] teacher testified that Student experienced frustration while building the toy, but all students did because the project was difficult. On the final day of the project, the class paraded the toys down the hall for another class to watch and judge. Student felt like the project was not complete, although Student's project had everything the [REDACTED] teacher required. Student chose not to parade the toy, and the [REDACTED] teacher allowed Student to sit in the classroom while the other students paraded their toys because she realized Student's frustration level. When the parade was over, the other students went back to the classroom. The [REDACTED] teacher instructed the class to take their toys apart so that the parts could be reused for the next project. Student felt that the project was not properly finished and became upset. The [REDACTED] teacher tried to talk with Student, but Student shouted "that Student was going to get a shotgun and blow my head off with the shotgun." The [REDACTED] teacher asked for help from the office, and the [REDACTED] teacher next door came in to try to talk to Student. The [REDACTED] teacher testified that she felt that Student "was at a point that Student just couldn't hear anything that anyone was saying at that point. Just very upset." Student kicked the [REDACTED] teacher in the stomach and punched her. An Assistant Principal came to the classroom, and Student was restrained. The Principal came to the classroom, asked the teachers to leave, and deescalated Student. When Student deescalated, the Principal engaged in conversation with Student. The Principal testified, "When I was able to deescalate Student, Student went from being very upset to no longer being upset and being able to conversate just like you and I are." Student then got [REDACTED] books from the [REDACTED] Grade Special Education Teacher and Case Manager's classroom and went to the seventh period class.

The [REDACTED] teacher acknowledged that the 2018-2019 IEP stated that Student would be allowed to leave the general education classroom for a cool down in the resource classroom when

upset or emotional and that there was no stated restriction. The [REDACTED] teacher further testified that she did not have Student go cool down with the [REDACTED] Grade Special Education Teacher and Case Manager because “that day there was no—it went from zero to escalated too much for me to call or to tell—to take the procedure that I typically would take. There was not enough time.” The [REDACTED] teacher holds an undergraduate degree in special education with an emphasis in Autism and a master of psychology and counseling degree.

The Lead Special Education Teacher at [REDACTED] Middle School testified that she was “not sure what triggered it or anything. So apparently the time that we were spending with [REDACTED] it was benefiting [REDACTED] at that time.” In the weeks before the incident, Student had difficulty working with other students and had a difficult time listening to others’ opinions. The [REDACTED] teacher collaborated with Student’s [REDACTED] Grade Special Education Teacher and Case Manager often. Prior to the incident, the [REDACTED] teacher and assistant principal had a meeting with Mother concerning what to do to help Student within the classroom. Mother testified that she told them “that Student has to have—when Student has something on Student’s mind, Student has to process it. Student can’t let it go until Student completes it or finishes it. Student does better if Student knows beforehand. I’ve told every teacher that about Student. That’s the key to Student not getting upset. That is the key for Student.” The [REDACTED] teacher testified, “I don’t recall that.”

The Principal contacted the Jefferson County Special Education Director for guidance. The Special Education Director testified that the Principal was adamant that alternative school was not appropriate for Student. All students in the [REDACTED] class heard the death threat, which made the situation bigger. Student was given a three day out-of-school suspension for a Class Three Violation, which is a serious infraction, pending a manifestation determination. A manifestation determination meeting was convened, and the team determined that the incident was a

manifestation of Student's disability. Mother participated, and the Principal testified that Mother offered input and agreed with the decision made by the team. Mother testified that all team members agreed that the incident was manifestation of Student's disability. A Jefferson County School District Exceptional Education Specialist who attended the meeting testified that she agreed with the decision. Mother testified that she had never heard Student "say anything like that." Principal testified that Mother told the team to "suspend Student all week if you need to because Student knows what Student said was wrong. We've been talking to Student about it." Mother then testified that Student "still doesn't understand the seriousness, how serious that is. Student still doesn't."

The team decided to conduct a Functional Behavior Assessment due to the extent of the behavior that had occurred. Also, Mother provided consent for a Jefferson County School District [REDACTED] Specialist to conduct an observation of Student. The team also decided that Student would go to the school's [REDACTED] Unit with a teacher that is trained specifically to work with children with [REDACTED] for one week to help Student transition, work on social skills, and teach replacement behaviors if that incident occurred again. The Jefferson County Special Education Director testified that the [REDACTED] Unit was "specifically designed to put in a middle school culture." Mother testified that the Principal told her "three or four times it's either this classroom or alternative school", and she didn't want Student to go to alternative school. Mother testified that she observed the classroom and agreed to have Student transition there for one week but did not understand that the classroom serves students with [REDACTED]. She further testified that her lack of understanding would not change her mind about appropriateness. The Principal testified that services in the [REDACTED] Unit was not a change of placement but instead a transition back to Student's daily routine, with access to the general education teachers, lunch and physical education. Mother testified that



she thought that Student “does need consequences” and that “Student should have been suspended” and then sent straight back to Student’s regular education schedule. Mother further testified that she “stressed that this is not a good idea because Student doesn’t do well with change.” However, Mother told the team that she and her husband wanted Student taken out of [REDACTED], which was change. She testified that this was because “we had told Student beforehand that we were going to do that, that this was our decision” and that it was “part of Student’s consequences.”

Student went back to school and arrived at the [REDACTED] unit. Principal testified that Student was only there for approximately 30 minutes the first morning. The Principal testified that, according to the disciplinary note sent to him, Student refused to put a book away when the [REDACTED] Unit teacher requested that Student do so. After telling Student she would have to take the book away if Student did not put it away, the [REDACTED] Unit teacher tried to take the book. Student got angry and then hit and kicked at the [REDACTED] Unit teacher. The Jefferson County Special Education Director testified that “things escalated quickly.” Student then tried to leave the classroom. Mother testified that Student tried to get up and leave because it is part of [REDACTED] IEP to have a cool down moment with the [REDACTED] Grade Special Education Teacher and Case Manager. Student spent the majority of the day with the Principal instead of in the [REDACTED] Unit and did well for the Principal. This second code of conduct violation incident resulted in a two-day out-of-school suspension. Principal told Mother that the incident could be another Class Three violation, but he did not process it that way. The Principal testified that Mother agreed with that decision. Student was then transitioned over a period of two to three days back into the regular routine, except Student did not return to the [REDACTED] class.

The Principal again contacted the Jefferson County Special Education Director after the second incident. The Jefferson County Special Education Director testified that Student “does not



demonstrate consistent significant behavior. It's what I call intermittent." She further testified that after escalating and deescalating, Student calms and then it's almost like it didn't happen." This made the Principal feel comfortable sending Student back into the regular schedule.

After the Filing of the Due Process Complaint:

Mother testified that the Principal told her Student could be sent to alternative school after the second incident, so she filed this request for a due process hearing. Student was never sent to alternative school. Mother further testified that she filed this request for a due process hearing because she didn't believe that Student was "getting help that Student needed from school for social skills, for anything to do with [REDACTED]. Student wasn't getting any services for that."

The Principal testified that Student has had no further suspensions. The Principal routinely interacts with Student and has a personal relationship with Student. The Principal testified that he had a daughter in the [REDACTED] grade class at [REDACTED] Middle School with [REDACTED], and he used the techniques he had learned over the years with Student. The Principal and Student worked on rebuilding the robot together. The Principal felt that he had a good relationship with Mother and talked with her about concerns.

Student's [REDACTED] grade [REDACTED] teacher testified that Student is in her honors class period during seventh period at the end of the day. Student loves [REDACTED] and her class is very organized. She testified that Student has shown improvement from wanting to be in charge and not listening to others from the beginning of the year. She found a group of students for Student to participate in group work with whom Student was compatible. She testified that the [REDACTED] Grade Special Education Teacher and Case Manager was very attentive to Student. Student asked to go to the [REDACTED] Grade Special Education Teacher and Case Manager more at the beginning of the year, but that request decreased. She testified that she used Student's love of reading to help manage

behavior by allowing short periods of reading. She testified that Student had made progress and that the transition from elementary to middle school is difficult for all students.

The Jefferson County School District [REDACTED] Specialist observed Student and wrote a report. There was some confusion regarding when she had come and when her observation report had been sent to teachers. Mother had not seen the report at the time when the due process hearing was first convened in March 2019. The Jefferson County School District [REDACTED] Specialist testified that the district uses applied behavior analysis and naturalistic methodologies. She further testified that no recommendations in her report conflicted with the 2018-2019 IEP but only enhanced it.

The [REDACTED] Grade Special Education Teacher and Case Manager conducted a Functional Behavior Analysis. He testified that Student has made “tremendous progress from August until now” and that he was not “getting word from teachers as much with issues or problems and I’m not seeing anything in the classes I’m in with [REDACTED].” Student had good grades during the school year. The Jefferson County Special Education Director testified that the Present Levels of Performance on Student’s IEPs over the years demonstrated progress, and thus Student’s goals were appropriate.

## **V. ISSUE PRESENTED**

The sole issue presented at the due process hearing, pursuant to Petitioner’s Prehearing Submissions, was whether Respondent “engaged in conduct designed to deprive Petitioner of [REDACTED] right to a free, appropriate public education by denying [REDACTED] the opportunity of receiving special education and related services based upon Petitioner’s unique needs and characteristics.”

## VI. DISCUSSION OF THE ISSUE

The sole issue presented at the due process hearing, pursuant to Petitioner's Prehearing Submissions, was whether Respondent "engaged in conduct designed to deprive Petitioner of [REDACTED] right to a free, appropriate public education by denying [REDACTED] the opportunity of receiving special education and related services based upon Petitioner's unique needs and characteristics." School Districts have a duty to provide students with disabilities a Free, Appropriate Public Education. Ala. Admin. Code 290-8-9-.05(1)(a).

Whether the Board violated its obligation to provide Student a Free, Appropriate Public Education:

In the complaint for due process, Petitioner alleges the following violations, *verbatim*: (1) Failing to evaluate Petitioner for a significant behavior disorder in a timely manner; (2) Failing to provide Petitioner with an educational placement appropriate with [REDACTED] level of intellectual and academic functioning; (3) Failing to develop and implement an IEP that (a) complies with state and federal laws, and all regulations and policies promulgated thereto; (b) addresses the individual needs and characteristics of Petitioner; and (c) is based upon current professional practices as determined by peer reviewed research; (4) Failing to consider the parents equal participants in the development and implementation of Petitioner's educational program; and (5) Failing to develop and implement a current behavior intervention plan developed by a board-certified behavior analyst that is based upon peer reviewed scientifically based research and a properly conducted functional behavior assessment.

First, Petitioner alleges that Respondent failed to evaluate Petitioner for a significant behavior disorder in a timely manner. The testimony of the Jefferson County Special Education Director and the Jefferson County [REDACTED] Specialist revealed that Student's [REDACTED] and [REDACTED]



Grade Special Education Teacher identified Student as possibly having [REDACTED] in the [REDACTED] grade, and Respondent requested that an evaluation be conducted. [REDACTED] declined Respondent's request, but Respondent took care to resubmit its application. The second application was accepted. The testimony of the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager further demonstrates that she took care to anticipate Student's needs in light of her identification and initiated strategies to meet Student's unique needs. Based upon the preponderance of the evidence, this Hearing Officer finds no violation.

Second, Petitioner alleges that Respondent failed to provide Petitioner with an educational placement appropriate with [REDACTED] level of intellectual and academic functioning. Student participated in the regular education setting. Following the first incident, Student was given a three-day out-of-school suspension and was to be transitioned for one week through the [REDACTED] Unit back to the regular education classroom. Following the second incident, Student was given a two-day out-of-school suspension and was transitioned back to the regular schedule over two to three days. "School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement)." Ala. Admin. Code 290-8-9-.09(1)(b). "For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if the removal is more than ten (10) consecutive school days, including partial school days of a half day or more, or the child has been subjected to a series of removals that constitute a pattern because the series of removals total more



than ten (10) school days in a school year,” Ala. Admin. Code 290-8-9-.09(2)(a). Even if the transition days were considered equivalent to in-school suspension days, “A day of in-school suspension is not a removal from a child’s educational program for disciplinary reasons as long as the child is afforded the opportunity to continue to appropriately participate in the general education curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in his or her current placement.” Ala. Admin. Code 290-8-9-.09(8). Thus, Student did not suffer a change of placement. Student was removed from the regular education setting for less than 10 ten days, and Student’s placement was appropriate. Based upon the preponderance of the evidence, this Hearing Officer finds no violation.

Third, Petitioner alleges that Respondent failed to develop and implement an IEP that (a) complies with state and federal laws, and all regulations and policies promulgated thereto; (b) addresses the individual needs and characteristics of Petitioner; and (c) is based upon current professional practices as determined by peer reviewed research. The IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County School District Re-1*, 137 S.Ct. 988, 1001 (2017). “Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” *Id.* at 999, citing *Board of Educ., etc. v. Rowley*, 458 U.S. 176 (1982). “A reviewing court may fairly expect those [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress in light of his circumstances.” *Id.* at 1002.

The record reflects that Student's IEPs were reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances. Student's need for social skills instruction was addressed, and Student made good grades throughout the years and increased ability in reading. Judge Kallon, writing for the United States District Court, Northern Division of Alabama, recently opined,

“After all, because ‘a federal district court does not have the expertise or experience in the field of education presumably possessed by professional educators,’ courts ‘grant deference to the evaluations of [the student’s] teachers and the school officials’ when signs of disability are not readily clear. *Clay T.*, 952 F. Supp. at 823. Additionally, “An ‘individualized education program (IEP) must be evaluated in light of the ‘snapshot rule,’ which instructs a reviewing court to judge an IEP not in hindsight.” *Dep’t of Educ. Of Hawaii v. Leo W. by & through Veronica W.*, 226 F. Supp. 3d 1081 (D. Haw. 2016). The court must base its decision instead ‘on the information that was reasonably available to the parties at the time of the IEP.’ *Id.*”

p. 12.

*D.J.D. v. Madison City Bd. of Educ.*, Case No. 5:17-cv-00096-AKK (N.D. Ala. 2018), at \*10. Mother testified that she had never heard Student “say anything like that.” There was no reason for personnel to believe Student would engage in the serious level of conduct that occurred when there had only been minor instances previously. The testimony revealed, particularly that of the [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager, the [REDACTED] Grade Special Education Teacher and Case Manager, and the Principal, that personnel took time with Student, made changes as appropriate, and demonstrated caring and support. An IEP does not have to state the specific Peer Reviewed Research on which it is based, but district personnel should “be able

to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress in light of his circumstances.” *Andrew F.*, 137 S.Ct. at 1002. While the [REDACTED] Grade Special Education Teacher and Case Manager, who was a first year, provisionally certified teacher, testified that he did not know whether the first social skills curriculum was based upon peer reviewed research, the Jefferson County Special Education Director and the Jefferson County [REDACTED] Specialist both testified that Student’s programming was based upon peer reviewed research. Based upon the preponderance of the evidence, this Hearing Officer finds no violation.

Fourth, Petitioner alleges that Respondent failed to consider the parents equal participants in the development and implementation of Petitioner’s educational program. The testimony reflects otherwise. The [REDACTED] and [REDACTED] Grade Special Education Teacher and Case Manager and Lead Special Education Teacher at [REDACTED] Middle School testified that there was no conflict in the decision to provide services. The Principal testified that Mother offered input at the manifestation determination meeting. The testimony demonstrated that personnel had meetings with Mother and considered her input. Based upon the preponderance of the evidence, this Hearing Officer finds no violation.

Fifth, Petitioner alleges that Respondent failed to develop and implement a current behavior intervention plan developed by a board-certified behavior analyst that is based upon peer reviewed scientifically based research and a properly conducted functional behavior assessment. Petitioner’s IEPs for the statutory time period did not contain a behavior intervention plan but did address Student’s needs in the areas of social skills and conflict resolution. Applying Judge Kallon’s rationale, deference should be given to the professional educators regarding how services are implemented. Any complaint regarding the conduct of the Functional Behavior Assessment



and the development of a Behavior Intervention Plan subsequent to the filing of this request for a due process hearing is outside the scope of this Hearing Officer's jurisdiction, as the request for a due process hearing applies to the two previous years from the date of the filing. Ala. Admin. Code 290-8-9-.08(9)(c).

Accordingly, this Hearing Officer finds by a preponderance of the evidence that the Jefferson County Board of Education provided Student a Free, Appropriate Public Education.

*The appropriate amount and type of compensatory education or other relief, if any:*

This Hearing Officer finds that the Jefferson County Board of Education provided Student a Free, Appropriate Public Education. Accordingly, this Hearing Officer finds by a preponderance of the evidence that no award of compensatory education or other relief is warranted.

#### **VII. SPECIFIC RULINGS AND CONCLUSIONS**

- A. This Hearing Officer finds that, based upon the preponderance of the evidence, the School District provided Student a Free, Appropriate Public Education.
- B. This Hearing Officer finds that, based upon the preponderance of the evidence, no award of compensatory education or any other relief is warranted.

#### **VIII. FINAL ORDER AND NOTICE OF APPEAL RIGHTS**

This Hearing Decision constitutes a Final Order in this case. Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. §1415(i)(2). The party dissatisfied with this decision must file a notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of the notice of intent to file a civil action. Ala. Admin. Code 290-8-9-.08(9)(c)(16).



**SO ORDERED** this the 28th day of June, 2019.



AMANDA DICKERSON BRADLEY *0*  
HEARING OFFICER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been sent via certified mail and electronic mail to:

Hon. James D. Sears  
Attorney for Petitioner  
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Hon. Carl E. Johnson  
Attorney for Respondent  
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carljohnson@bishopcolvin.com

SO CERTIFIED, this the 28<sup>th</sup> day of June, 2019.



HEARING OFFICER