

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

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| <b>C. T.</b>              | ) |                                    |
| <b>Petitioner,</b>        | ) | <b>Special Education No. 19-87</b> |
| <b>v.</b>                 | ) |                                    |
|                           | ) |                                    |
| <b>Jefferson County</b>   | ) |                                    |
| <b>Board of Education</b> | ) |                                    |
| <b>Respondent.</b>        | ) |                                    |

**DUE PROCESS DECISION**

**I. Procedural History**

This matter is before the undersigned pursuant to a due process request filed on August 16, 2019 by the Honorable Andrew S. Ladores and Honorable Shane T. Sears on behalf of Ms. ■■■ parent and legal guardian of ■■■ (‘‘Petitioner’’), a student in the Jefferson County School District. Thereafter, pursuant to a letter dated August 16, 2019 issued by the State Superintendent of Education, the undersigned was asked to serve as the Impartial Hearing Officer in this proceeding. The undersigned issued correspondence dated August 19, 2019 setting a status conference for September 3, 2019.

The District, by its counsel the Honorable Andrew Rudloff, filed a *Response to Due Process Complaint* on August 26, 2019. Thereafter the Resolution Session was waived on August 28, 2019 by the Respondent District via email correspondence from the Honorable Carl E. Johnson, Jr., co-counsel for the Respondent District. The Petitioner via counsel had already waived any resolution or mediation effort within the body of the complaint meaning that the hearing time-line as of August 28<sup>th</sup>, adjusted such that the forty-five days to complete the hearing process started immediately. Accordingly, the deadline for a decision was adjusted to 45 days from the date of the August 28<sup>th</sup> notice of waiver, which is October 12, 2019. This being a Saturday with the following Monday being Columbus Day the decision was due to be delivered on October 15, 2019.

Late in the evening of September 2<sup>nd</sup> counsel for the Respondent filed a *Motion to Dismiss*

*Re-Filed Complaint.* The status conference began as set on September 3, 2019; however, early in the discussions, counsel for the Petitioner, the Honorable Andrew Ladores, made a request that the conference be conducted on the record. This was followed by a written email request as well as a request for time to respond to the *Motion to Dismiss*. The undersigned determined to allow such request, terminated the status conference, reset the conference after confirming a court reporter and allowed the Petitioner through 5 p.m. on September 5<sup>th</sup> to file a written response the District's *Motion*. This was outlined in an *Order* issued by the undersigned on September 5, 2019.

On September 4, 2019, counsel for the Petitioner filed *Petitioner's Response to Respondent's Motion to Dismiss*. On September 5, 2019 counsel filed *Petitioner's Amended Response to Respondent's Motion to Dismiss*.

The telephonic hearing on the current status and pending *Motion to Dismiss* was held on September 6, 2019 with counsel for both parties participating. The conference was on the record with the court reporter, though prior to the telephonic conference the undersigned advised the parties via email that the parties are not entitled to demand 'pre-hearing' conferences and pre-hearing proceedings be transcribed or placed on 'the record'. See *A. L. vs. Jackson County School Board*, 635 F. Appx 774,775 (11<sup>th</sup> Cir.2015). The undersigned was advised by both parties of their respective positions and ultimately advised the parties that the complaint would not be dismissed and would be due to proceed, though on specific issues that had not clearly been dealt with in the prior case.<sup>1</sup> Accordingly, in the September 12, 2019 *Pre-hearing Order* issued by the undersigned, the *Motion to Dismiss* was denied in part and the remaining issues that were due to proceed to hearing were identified. The due process hearing schedule was set taking into account Counsel for Petitioner's schedule as well as all other's involved in the matter and in mind of the tight deadline related to the adjusted time frame relative to the waiver of the resolution process by both parties.

The Hearing comprised one (1) day of testimony, with testimony provided on October 3,

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<sup>1</sup> The prior case before the Alabama Department of Education, Special Education Division, Case # 19-67 was filed on May 30, 2019 and in effect made almost identical allegations. During the history of that case, the parties participated in several extensive discussions following a Motion to Dismiss filed by the Respondent who also submitted a substantial number of documents/exhibits related to the matter and illustrating various facts as well as clarifying details alleged in the complaint. Further, the Petitioner also submitted exhibits/records. This case was dismissed by the undersigned based upon a record that appeared to illustrate facts, which facts were not substantially changed in anyway with this re-filed proceeding. A copy of this Order is part of the record of this present case having been attached as an **Exhibit A** to the Respondent's Motion to Dismiss. The earlier dismissal was not appealed.

2019. Each party submitted a set of documents, with the Petitioner's comprising 144 Pages and the Respondent's comprising 390 pages. Testimony from Six (6) people was obtained within the one day of hearing. All exhibits were kept in the possession of the undersigned as the hearing proceeded and were reviewed again at the conclusion of the hearing.

Following the Hearing, counsel for each party timely filed their post hearing letter/briefs on October 7, 2019 in conformity with the undersigned's request.

During the course of each of the 1 day of the hearing, each party presented evidence and offered the testimony of witnesses in support of their respective positions, and were allowed to cross examine witnesses as provided for under the applicable rules. The Hearing was conducted as a closed hearing, with both parties represented by their counsel. The Petitioner was represented by the Honorable Andrew Ladores with Mrs. [REDACTED] mother, present during the entire process. The child was present for a portion of the hearing as well. The Respondent was represented by the Honorable Carl B. Johnson and the Honorable Andrew Rudloff with Ms. [REDACTED] (Director of Exceptional Education) serving as the corporative representative for the District.

## **II. Exhibits and Witnesses**

By agreement placed on the record, the parties stipulated Exhibit 1 would comprise Bates-stamped collection of 144 pages marked "[REDACTED] v. JCBE Petitioner's Doc. -" and 390 pages marked "[REDACTED] v. JCBE; JCBE DOC. -." As such, when Exhibit 1 is referenced below, the Bates-stamped page number is listed as [P Doc --] or [R Doc --].

### Petitioner's Exhibits

As stated above, the parties stipulated the section titled "Case # 19-87 Petitioner's Disclosures" contains a collection of the child's educational records, Bates-stamped 1-144.

### Respondent's Exhibits

R Ex 1: Notebook, child's school records, Bates-stamped 1-390.

Witnesses (in order of initial appearance)

- [REDACTED] Child's special education teacher
- [REDACTED] special education teacher, supervisor
- [REDACTED] Certified Speech Pathologist
- [REDACTED] Occupational Therapist
- [REDACTED], Parent
- [REDACTED] Director of Exceptional Education, Jefferson County BOE

The exhibits submitted have been kept and maintained by the undersigned during the course of this hearing. On October 3<sup>rd</sup>, the testimony taken was transcribed by Ms. [REDACTED], Certified Court Reporter and Commissioner, ACCR#231, who duly took down all testimony and dialogue. The transcript had yet to be filed due to the short timeframe from the date of taking testimony to the deadline for a decision. Neither counsel at the time briefs were due nor the undersigned had access to the transcript. The undersigned was able to review the record, exhibits, personal notes taken during testimony, and post-hearing briefs of each counsel in the drafting of the decision set out below.

### **III. Summary of Facts**

[REDACTED] was enrolled at [REDACTED] High School on January [REDACTED], 2019, and on the same date, was referred for evaluation and deemed eligible for special education services. [REDACTED] receives all of [REDACTED] academic instruction in the self-contained classroom based on the Alabama Extended Standards and is working towards the Alabama High School Diploma based on the Alternate Achievement Standards Pathway. [Complaint]

The parties agreed on the following 9 stipulations of facts:

- [REDACTED] was enrolled in private school in [REDACTED], Alabama during the 2015-16, 2016-17, and 2017-28 school years.
- [REDACTED] and [REDACTED] moved into the territorial boundaries of the Jefferson County Schools in August of 2018.

- A true and accurate copy of the Jefferson County School schedule for the 2018-19 school year is attached here as “Exhibit A”.
- [REDACTED] was homeschooled for the part of the 2018-19 school year that preceded [REDACTED] enrollment at [REDACTED] High School ([REDACTED]).
- [REDACTED] did not have a current IEP as of January 2, 2019.
- On January 2, 2019, [REDACTED] sent an e-mail to the Board’s Director of Exceptional Education, [REDACTED]. In that e-mail, [REDACTED] indicated that she “wanted to see if [she and [REDACTED]] could chat by phone first, and then also learn the best way to schedule a meeting\*\*\*to discuss [REDACTED] needs, where [REDACTED] [was] at and [REDACTED] situation prior to\*\*\*registering [REDACTED].
- On January 23, 2019, [REDACTED], an exceptional education teacher at [REDACTED], spoke with [REDACTED] by phone. That evening, [REDACTED] provided to [REDACTED] via email records regarding [REDACTED]. The records included, among other things, an April 10, 2018 evaluation report documenting past assessments in multiple areas, including intelligence, achievement, and adaptive behavior.
- [REDACTED] started [REDACTED] on January [REDACTED], 2019.
- On May 17, 2019, the IEP team convened to discuss future programming and revising [REDACTED] IEP, including the addition of speech-language and occupational therapy services.

[See Respondent’s Pre-hearing Disclosures Re: Administrative Defenses and Stipulations and Petitioner’s Response to Pre-Hearing Order]

Additional facts revealed via the records provided by the party and were uncontested and follow:

The *Referral for Evaluation* form was dated January 22, 2019 and the IEP team accepted [REDACTED] for evaluation on January 25, 2019. [P Doc 043-046]

The *Notice and Eligibility Decision Regarding Special Education Services* was dated January 25, 2019. The team determined [REDACTED] was a student with a disability in need of special education services on January 25, 2019. [P Doc 048-052]

An *Individualized Education Program* with initiation dates 01/25/2019 to 01/24/2020 was developed on 01/25/2019 with signatures of people attending and participating in the meeting to develop the IEP obtained. [P Doc 063]

The IEP developed on 01/25/2019 contained the following, in part:

Parental Concerns: “█ mother is concerned with █ academic ability and has not noted much progress over the past 4 years. She wants to encourage █ teachers to push and motivate █ to participate and complete assignments. The mother reported that █ has been bullied, verbally and physically at a past school. Since then she has noticed both emotional and social changed with █. █ sometimes will threaten or use inappropriate language toward others. Mother does not think that █ understands what █ is saying but wants to encourage appropriate behavior. Mother is concerned with █ ability to have reciprocal conversations.” [P Doc 053]

Special Instruction Factors: “Does the student have communication needs?” *Yes* box checked. “Does the student require specially designed P.E.? *No* box is checked. [P Doc 055]

Transportation: “Bus for special needs” box checked; “Restraint system” box checked, Specify Type: “█ will wear a seat belt for safety purposes on the bus when available”. [P Doc 055]

Method/Frequency for Reporting Progress of Attaining Goals to Parents: “Annual Goal Progress Reports will be sent to parents each time report cards are issued (every 9 weeks)” [[R Doc 90]

Annual Transition Goals: “Based on previous school records, █ demonstrates difficulty with social interaction with peer and expressive communication”. “By January 2020, after direct instruction, █ will be able to use expressive and receptive language skills for sharing and gaining information in 3/5 trials. (TS.PS9.2B)” “By January 2020, after direct instruction, █ will be able to express and demonstrate flexibility and willingness to follow directions and learn new knowledge and skills in school and community settings in 3/5 trials. (TS.OC9.1.C)”. “By January 2020, █ will be able to identify responsible behaviors (social interaction, appropriate social behavior) across various environments in 3/5 trials. (TS.PS9.3B)”. [P Doc 057]

Functional Language/Communication: “Based on previous school records, █ has trouble distinguishing appropriate positive social interactions with peers. █ is working toward improving █ social skills”. “By January 2020 after teacher led instruction, █ will be able to sustain two or more exchanges or turns during a one-on-one or small group discussion about a community issue, law, or the consequences of disobeying rules or laws with 70% accuracy. (L.A. ES 9.1)”. [P Doc 058] “Benchmark 2. By October 2019, after teacher led instruction, █ will be able to sustain two or more exchanges or turns during a one-on-one or small group discussion about a community issue, law, or the consequences of disobeying rules or laws with 65% accuracy. (L.A. ES 9.1)” [R Doc 93]

Mathematics: “Based on previous school records, █ struggles with addition and subtraction. █ is able to do basic math problems. This hinders █ ability to perform in the general education classroom”. “By January 2020 after teacher led instruction and repeated practice, █ will be able to determine appropriate units of measure for given situations with at least 70% accuracy. (M. ES 9.4)”. [P Doc 059] “Benchmark 1. By May 2019, after teacher led instruction and repeated practice, █ will be able to determine appropriate units of measure for given situations with at least 60% accuracy. (M. ES 9.4)” [R Doc 94]

Reading: "According to previous school records, ■ is at the beginning level of reading. ■ mother reports that ■ is reading on the Kindergarten to 1<sup>st</sup> grade level. This hinders ■ ability to perform in the general education classroom". "By January 202 after repeated practice, ■ will be able to listen to a four-sentence passage read aloud and identify key details of the text to answer a question. (ELA 9.3) with at least 75% accuracy." [P Doc 060] "Benchmark 1. By May 2019 after repeated practice, ■ will be able to listen to a four-sentence passage read aloud and identify key details of the text to answer a question. (ELA 9.3) with at least 60% accuracy." [R Doc 95]

Special Education Services were to be provided by special education teach and special education staff. The related services box "not needed" was checked. [P Doc 061]

Extended School Year Services (ESY) – "The IEP Team has considered the need for extended school years services." *Yes* box is checked. [P Doc 063]

(end of excerpts from IEP 01/25/2019)

From "Amended" IEP from 01/25/2019 to 01/24/2020:

"4/5/2019 The IEP Team met to discuss the need for additional data to determine if changes need to be made to the IEP to address mother's concerns regarding fine motor skills, language, and articulation difficulties". [P Doc 065]

The *Notice and Consent for Reevaluation* form was signed by ■ on 3/5/19 with the areas of "Language" and "Occupational Therapy Evaluation" checked. The "date signed consent received by Public Agency" was 04/05/2019. [P Doc 070]

The *Notice of Proposal or Refusal to Take Action* form for "basis for decision(s)" stated: "The parent expressed concerns regarding ■ fine motor skills, language and articulation difficulties". For "description of other options considered and why the options were rejected" stated: "The IEP Team considered not evaluating but this was rejected due to parent's concerns and previous school records which indicated that ■ had received OT and speech services previously when enrolled in public school." [P Doc 071]

(end of excerpts from Amended IEP 01/25/2019)

From IEP created in May 2019, from 5/17/2019 to 5/16/2020:

Special Instructional Factors: "Does the student have communication needs?" The box in "yes" column is checked. "Does the student require specially designed P.E.?" The box in "no" column is checked. [P Doc 085]

Annual Transition Goals were written. [P Doc 086-088]

Area: Functional Reading: "Presently as evidenced by teacher observation, ■ is very reluctant to read aloud. ■ completes computer activities that indicate ■ can read. When presented with an

informal reading inventory, ■ read a pre-primer passage but only answered one out of 8 comprehension questions. ■ read 82 of 220 Dolch Sight Words.” Goal: “■ will answer who, what, when, where, and why questions to analyze stories, using textual evidence and inferences as support on 4 of 5 attempts on primer passages with 8-% correct (ELA.A.AS.10.1). Benchmark 1. ■ will answer who, what, when, where, and why questions on 2 of 3 attempts with 60% accuracy on primer passages by October 2019”. [P Doc 089]

Area: Functional Mathematics: “■ has worked on extended standards in math. ■ has mastered the goals for ■<sup>th</sup> grade year. ■ can interpret data from a graph or chart, ■ can compare single digit whole numbers using greater than, less than, or equal, ■ can complete a simple number sentence, ■ can determine appropriate units of measure for given situations. ■ can use a calculator to solve addition problems containing numbers with decimals to the hundredths place. ■ can identify positive and negative integers on a number line. A diagnostic assessment on March 19, 2019, indicated that ■ was functioning on a 2<sup>nd</sup> grade level in math”. “Goal: My May 2020, when given data, ■ will construct a simple graph (Line, pie, bar, picture) or table, and interpret the data in terms of range, mode, and median, mean on 4 of 5 attempts with 80% correct (M. AAS SP. HS 41). Benchmark 1: By September 2019, when given data, ■ will construct a simple graph on 2 of 3 attempts with 4 of 5 items correct.” [P Doc 090]

Area: Functional Mathematics: “Presently ■ can complete math activities using a calculator. ■ can identify amounts of coins. ■ can add coins using a calculator. ■ knows that money is important and has expressed an interest in working a cash register”. “Goal: ■ will use paper money and coins to make a (mock) purchase on 3 of 4 attempts successfully by May 2020. Benchmark 1. ■ will count money amounts up to \$5.00 using coins and paper money on 2 of 3 attempts with 60% accuracy by September 2019”. [P Doc 091]

Area: Speech-Language: “■ greets others and participates in speech activities. ■ is enthusiastic and completes tasks. ■ is able to identify and use gerund verbs in sentences. ■ is able to answer “wh” questions with some prompting. ■ is not always able to use correct pronouns in sentences. ■ will continue to work on syntax and sentence structure to improve communication.” “Goal: “By May 2020, demonstrate command of the conventions of Standard English grammar when speaking including pronouns as well as develop knowledge of figurative language by identifying idioms with 80% accuracy. (ELA.AAS.9.36) By December 2019, ■ will identify and use correct pronouns in sentences with 80% accuracy. (ELA.AAS.9.36)” [P Doc 092]

Goals were written for in the areas of Science and Social Studies. [P Doc 093, 094] The goals were developed from parental input. [P Doc 080]

On the *Special Education and Related Services* page, Speech/Language Services were to be provided 2 times(s) weekly for 30 minutes [P Doc 095] and Occupational Therapy was to be provided 1 time(s) Monthly for 30 minutes. [P Doc 96]

Extended School Year Services (ESY) – “The IEP Team has considered the need for extended school years services.” *Yes* box is checked. [P Doc 097]



(end of excerpts from IEP 05/17/2019)

While the parties only stipulated to certain facts leading up to the hearing the undersigned drew upon the aforementioned facts that were drawn from the records. Further, during the course of testimony other details, or facts, were put forth providing a framework for the events that occurred in January leading up to the initial IEP provided [REDACTED] by the Respondent and as well, balanced against both the stipulated facts and those contained within the records identified and listed above. While these had been set out and touched on in the course of the prior case, the testimony at this hearing served mostly to confirm details surrounding the child's enrollment in the Jefferson County School System and the process by which [REDACTED] IEP was developed. Further, such testimony provided more personal information as to the child, who also spent several hours at the hearing<sup>2</sup>, as well as providing testimony by the parties and some teachers that provided a further explanation as to the various events about which the Petitioner filed [REDACTED] complaints.

The child's parents adopted [REDACTED] around the age of 7 after serving several years as [REDACTED] foster parent. [REDACTED] parents have clearly sought the best for the child and have also clearly worked hard to assist with [REDACTED] education, placing [REDACTED] at different private schools and as well homeschooling [REDACTED] for the year or so prior to [REDACTED] January 2019 enrollment with the Jefferson County BOE. They moved to Jefferson County 6-9 months prior to January 2019 and determined to allow [REDACTED] to be homeschooled due to what was explained was a bad experience, including bullying, in a prior private school setting coupled with the stress of the recent move on [REDACTED]. The child was [REDACTED] in the spring of 2019 was assigned to the [REDACTED] grade with a full scale IQ that was recently assessed at [REDACTED] (approximately 0.1 percentile) complicated by additional diagnosis of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. [See Eligibility Report, R Doc 119, citing [REDACTED], Ph.D, of the [REDACTED] Clinic, P.C. from an Evaluation dated 4/10/2018, R Doc 123-130.]

Later in the fall of 2018 [REDACTED] expressed to [REDACTED] mother that [REDACTED] wanted to go to [REDACTED]

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<sup>2</sup> The child seemed pleasant during the hearing and stayed occupied most of the several hours by watching videos on what appeared to be a hand held device. At times [REDACTED] would fidget and responded well to [REDACTED] mother, but [REDACTED] showed no inappropriate behavior and only spoke out a few times. The description of the child during the hearing by Petitioner's counsel in his post-hearing brief was not how the undersigned would have characterized the child's presence, particularly in light of the fact that this child was required to sit for 2-4 hours in a room listening to others drone on in their testimony. Finally, [REDACTED] appeared to light up and interact well with the different Jeff Co staff called to testify.

since that was the school they would drive past near their home. To that end ██████ began investigating that school thinking it could be time for ██████ to be enrolled in public school, though ██████ last IEP had been approximately 6-7 years earlier in another state. After she had initiated her effort to reach out to the staff at ██████ for purposes of investigating enrollment, [See January 17<sup>th</sup> email regarding a voice mail left by ██████ and hand written notes on page; R Doc 4] ██████ received a job offer that she accepted. For ██████, ██████ enrollment then became urgent as she would need to have ██████ in school by the date she started work which was January 28<sup>th</sup>. She then expressed this to the Jefferson County staff [R Doc. 6] and provided documentation that provided evidence and details of the child's disability that included reports less than a year old. In turn the Jefferson County BOE staff involved responded and sought to accommodate her request and they undertook to move as fast as they could, utilizing information she provided and promptly working through the process to review eligibility and construct an IEP. After the IEP had been put in place and the child had commenced school within the tight timeframe requested by ██████ she expressed her appreciation in numerous cards and notes to different staff at the District.<sup>3</sup>

Then in March of 2019 ██████ reminded the staff for Jefferson County BOE that she felt that ██████ might need related services such as Speech Language Therapy and OT, reminding them that this was something that they had discussed doing once they had time to observe ██████ in a school setting. Subsequently meeting notice was sent to the parent on March 22<sup>nd</sup>, consent was granted and an IEP meeting was held on April 5<sup>th</sup>, 2019 to discuss testing for related services. The child had as of that time been enrolled for approximately 60 days.

On May 17<sup>th</sup>, 2019 the IEP met again and added certain related services to commence in August of 2019 with the start of the next school year. Additionally, the team discussed Extended School Year services but determined such were not necessary for ██████, though ██████ had asked for them. On August 16, 2019, during the first weeks of fall semester of the 2019-2020 year, ██████ filed this Due Process Complaint.

#### **IV. Issues Presented**

In the Pre-Haring Order dated September 12, 2019, the undersigned outlined the issues

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<sup>3</sup> This sense of thankfulness by the parent continued on until after the summer break began in May 2019.

remaining as to whether or not the IEP in place for the Petitioner denied a FAPE to the child because of the following specific questions raised, namely:

- By virtue of the way the goals and standards are written.
- The IEP not including a provision of services for the child during summer (ESY); and if so, whether compensatory services are due Petitioner;
- The IEP's lack of provision or less than timely provision for related services such as OT, PT, SLT or BCT.

*Issue 1: Did the Respondent fail to provide a FAPE to the child by virtue of the way the goals and objectives using standards were written?*

*Issue 2: Did the Respondent deny a FAPE to the child by not providing ESY services during the summer?*

*Issue 3: Did the Respondent fail to provide a FAPE to the child by failing to provide, or timely provide related services such as OT, PT, SLT or BCT?*

## **V. Discussion**

### *Introduction:*

The Individuals with Disabilities Education Act (the "IDEA" or "Act") established certain basic entitlements, including a free, appropriate public education ("FAPE"), for children between the ages of three and twenty-one years old with specified disabilities. *20 U.S.C. §§ 1400, 1412(a)(1)(A) (2004)*. Now called the IDEIA (Individuals with Disabilities Improvement Act), the act defines "free appropriate public education" (FAPE) as "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate pre-school, elementary or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title" 20 U.S.C. § 1401 (18). In order to be eligible for Federal financial

services under IDEIA, a state must therefore assure that “all children with disabilities who are between the ages of three and twenty-one receive a Free Appropriate Public Education (FAPE).”

The point of service whereby a FAPE is provided to children eligible for services, is at the local level, the school district or local educational agency, where a child resides. With this matter of course, Jefferson County Schools is this Local Educational Agency. The State of Alabama implements this law via the directives found in the Rules of the Alabama State Board of Education, State Department of Education, Special Education Services, codified in The *Alabama Administrative Code* § 290-8-9-.00 et seq. Additionally, the Federal Regulations that provide guidance for the implementation of IDEIA are found in the Code of Federal Regulation, 34 CFR 300.101, et seq. What follows is a discussion of the general issues raised and identified by the parties during this Due Process Hearing in light of the applicable law and the facts relevant to the matter, as presented during the hearing.

*Applicable Laws and Issues:*

*Issue 1: Did the Respondent fail to provide a FAPE to the child by virtue of the way the goals and objectives using standards were written?*

In Paragraph 15 of the *Complaint*, the Petitioner alleges that the Respondent District failed to provide a FAPE by needing to: ...(g). “Develop and implement an IEP that identifies the current performance of Petitioner, provides extended standards, benchmarks and/or annual goals for Petitioner to achieve within the upcoming twelve (12) months that correspond to each unique need of Petitioner, and describes how each extended standard, benchmark, and/or goal will be measured. Rather the Respondent merely copied the general AAA standards into Petitioner’s IEP....” [see Complaint]

The *Alabama Administrative Code* §290-8-9.05(6) **IEP Content** states in pertinent part: “In developing each child’s IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; the academic, developmental, and functional needs of the child...”

...(b) “A statement of measurable annual goals, including academic and functional goals, designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child’s other educational needs that result from the child’s disability. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks is also required.”

In the *Petitioner’s Post-Hearing Brief*, counsel argues: “...In developing the January IEP, the team did not consider all the information in the context of the concerns shared by ■■■■■, especially the safety and behavioral concerns raised as a result of ■■■■■ being bullied and threatening to harm another student and faculty member while at ■■■■■ prior school. Rather, the measurable goals were copied verbatim from the AAS and either no benchmarks were included in relation to these goals or benchmarks were not established to be measured until sometime the following school year despite the fact that an entire half of the 2018-2019 school year remained.”  
[Petitioner’s Post-Hearing Brief]

Counsel for the Respondent argues: “Petitioner complained that the goals and standards for ■■■■■ were not appropriately individualized, but offered no testimony—expert or otherwise—as to how they should have been written. On the other hand, Board witnesses explained (without contradiction) that development of the governing standards have themselves been in a state of flux, and that definitive guidance as to their implementation has yet to be issued. In any event, Petitioner offered nothing to demonstrate that the Board’s approach had an adverse impact on ■■■■■ progress. In fact, Board witnesses consistently testified that ■■■■■’s performance across the curriculum exceeded what would have been expected given ■■■■■ assessment scores and ■■■■■ academic history. Moreover, implementation of ■■■■■’s instructional goals was, in fact, individualized by using a percentage of attempts, functioning level, and percentage of correct responses. Each academic, speech language and transition goal was developed in that manner to represent ■■■■■’s current level of functioning. The goals were sufficiently rigorous and *reasonably calculated to enable ■■■■■ to make progress appropriate in light of ■■■■■ circumstances.*”  
[Respondent’s Post-Hearing Argument pg. 2]

In the IEP dated 01/25/2019 to 01/24/2020, the District noted in “Parental Concerns” that ■■■■■ had been bullied at the previous school and that ■■■■■ had noticed both emotional and

social changes in [REDACTED]. [P Doc 53] This certainly puts school personnel on notice that there is the potential for this to continue or happen again. It would seem appropriate for school personnel to monitor and watch for bullying and immediately address these behaviors if and when they occurred. In fact, [REDACTED] testified directly to this explaining that when she was participating in the initial January 2019 IEP meeting, she had in mind that [REDACTED]'s class would be a good setting because 1) she knew the teacher and that she had significant experience and was well qualified; and 2) that she knew the students currently in the class that [REDACTED] would join and felt that it would be a safe environment. In other words, [REDACTED] had listened to [REDACTED] and was aware of her concerns and had factored such concerns into the IEP that she participated in for [REDACTED] as the LEA Representative in January 2019.

While the undersigned is not an educator and leaves the development of the goals, objectives, and benchmarks to the professionals, it does appear the goals, objectives, and benchmarks are related to the child's individual current levels and needs. [See III. Summary of Facts] While benchmarks were written as "stepping stones" to mastery of the goal, progress reports towards the attainment of goals were to be issued every 9 weeks. [R Doc 90]

*Issue 2: Did the Respondent deny a FAPE to the child by not providing ESY services during the summer?*

In Paragraph 15 of the *Complaint*, the Petitioner alleges that the Respondent District failed to provide a FAPE by needing to: ... (j). "Develop and provide the Petitioner with extended school year ("ESY"), homebound school, and/or transition services".

The *Alabama Administrative Code* §290-8-9.05(9) **Extended School Year Services (ESY)** states in pertinent part: "The length of a program for a child with a disability may not be limited to the regular school term/year if an interruption in educational services is likely to deny a child FAPE. One criteria that may be considered by the child's IEP Team is if significant regression, caused by an interruption in educational services, renders it unlikely that the child will regain critical skills even after an appropriate recoupment period"...."(b) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child."

*Petitioner's Post-Hearing Argument*

In Section C of the *Petitioner's Post-Hearing Brief*, counsel argued "The Petitioner was denied a FAPE because the IEP failed to apply or consider the proper criteria to determine whether ESY services were necessary and (ii) the IEP did not provide for ESY services over an extended 13 week long summer break." According to the ALSDE, the critical question that each IEP Team must ask regarding ESY services is whether meaningful progress in critical skills related to IEP goals that occurred during the regular school year will be significantly jeopardized if ESY is not provided. In order to answer this critical question, retrospective data and predictive data are used to determine the rate of regression and recoupment of critical skills. The collection of data implies the need to gather pre- and post- test data in order to make assumptions about what regression and recoupment might occur following a break in education or services to the disabled child.

In this case, the District had the opportunity to collect data to determine regression and recoupment rates by testing ■■■ before Spring Break and upon returning from Spring Break. No such testing occurred. In fact, no objective data were produced by the District to support that ■■■ made progress towards ■■■ measurable goals since enrolling at ■■■ High in January 2019. Further, testimony is unclear whether ESY was even considered at the IEP meeting in May 2019 except for a decision that it was not needed. This appears to be consistent with the fact that no evidence was produced at any time that the IEP Team could rely upon to evaluate ■■■'s rate of regression and recoupment; and thus, make an informed decision about the need for ESY services. Additionally, this issue was more important than in other years because the summer break was 13 weeks long, 30% longer than the typical summer break. [see *Petitioner's Post-Hearing Brief*]

#### *Respondent's Post-Hearing Argument*

Counsel for the Respondent argues that "extended school year services are appropriate "... if an interruption in educational services is likely to deny a child FAPE." That decision is committed to the sound discretion of the IEP team, which may utilize the "significant discrepancy" test in reaching its determination: "[W]hether significant regression, caused by an interruption in educational services, render it unlikely that the child will regain critical skills even after an appropriate recoupment period." The regulatory formulation of the standard effectively assumes that some academic loss will be experienced by most if not all students after an

interruption in services. However, in this case, no significant loss was observed following the spring semester of the 2018-2019 school year. To the contrary, ■■■'s teacher reported that ■ resumed work promptly and successfully after every break in the school calendar (including "spring break"). She came to the same conclusion after ■ returned to school following the 2019 summer break.

During the 5/17/19 IEP meeting, team members reviewed ■■■'s progress since beginning ■ attendance at ■■■ HS on January 28, 2019. The team discussed the need for extended school year services by reviewing the existing IEP, discussing work product, and assessing behavior throughout the second semester of the 2018-2019 school year. The team reviewed loss of skill during periods of non-attendance. No loss of skill was seen in any functional academic areas or in language. Rather, ■ was characterized as a student who gets along well with ■ peers, completes all of ■ classwork to the best of ■ ability, follows a routine, and usually stays in ■ seat and asks for help when needed. Increase in basic sight word knowledge and the ability to answer simple comprehension questions was noted. Also, ■ was able to complete basic math problems independently. With the exception of one, minor behavioral episode regarding use of the water fountain, ■ demonstrated no inappropriate behaviors. Instead, as noted in the profile on the IEP, ■ exhibited a positive attitude throughout the school day. Based on all available data, including work samples, daily classroom performance in the areas of language, and behavior, the team concluded that ■ was not eligible for extended school year services. That decision was validated by ■■■'s special education teacher (who was also ■ teacher for the 18-19 school year), who monitored ■ functional academics, language, and behavior during the first two months of the 2019-2020 school year and testified that no regression that could not be easily recouped occurred over the course of the summer.

In sum, the question is not whether ■ could have benefited from extended year services. Most (if not all) students would presumably realize some benefit from a continuation of services. Nor is the fact that ■'s parent elected to enroll ■ in a summer tutoring program material. The relevant inquiry whether Petitioner has carried ■ burden of demonstrating that the IEP team should have concluded based on the available evidence that the absence of extended year services would *likely* have denied ■ FAPE. Because ■ actual experience proved otherwise, and because no evidence supporting a different conclusion was offered, the IEP team's decision should be sustained." [see Post-hearing Argument of the Jefferson County Board of



Education]

It is unclear to the undersigned why counsel for the Petitioner would even bring up “homebound school”, and or “transition services” in the complaint or in post-hearing argument. Homebound school is a placement option and there does not appear any mention of a need at any time as to a reason why this should be considered. Both the IEPs dated 1/25/2019 and 5/17/2019 have a transition plan and services. [R Doc 91-92, P Doc 086-088]

Regardless, moving to the issue of ESY, based on a review of the current levels and goals, it appears that ■ has received educational benefit from ■ program, and there was no evidence presented contrary to the IEP team’s decision that ■ required extended school year services. A review of the various work samples illustrates the child’s work and would indicate that there was an ongoing effort to monitor and measure ■ progress, as testified to by ■ ■ teacher. When examined and questioned Petitioner’s counsel about the data that he urged did not exist, ■ appeared unruffled and explained that she had in fact reviewed work samples and noted ■’s progress in both math and functional reading.

However, during the taking of testimony, and more precisely stated in the Petitioner’s post-hearing brief, “no objective data were produced by the District to support that ■ made progress towards ■ measurable goals since enrolling at ■ High in January 2019.” According to the IEP, progress towards mastery of goals and benchmarks should be reported every 9 weeks. [R Doc 90] While many of the work samples indicated a score such as “3/3” [R Doc 371] or “w/ calculator and teacher assistance” [R Doc 381] or 100% [R Doc 351], there is no documentation of how the collected work samples relate directly to progress towards mastery of the benchmark nor how this was reported to the parent every 9 weeks. In other words, there appeared to be a lack of objective data available to confirm what the teacher testified to as ■ progress. To the undersigned, the lack of this specific objective data is a procedural violation which needs to be remedied; however, this lack of objective data does not create a denial of a FAPE at this point. Though it is not remedied by the teacher’s attesting that ■’s binder of assessment papers had gone missing, this could be the data which the Petitioner’s counsel urges should have been in place.

In sum, testimony provided at hearing by both ■ and ■ who each were participants as part of the IEP team that met on May 17, 2019, was that ESY was

reviewed and determined not to be necessary for [REDACTED].

Issue 3: Did the Respondent fail to provide a FAPE to the child by failing to provide, or timely provide related services such as OT, PT, SLT or BCT?

In Paragraph 15 of the *Complaint*, the Petitioner alleges that the Respondent District failed to provide a FAPE by needing to: ...k. “Provide Petitioner with related services including Occupational Therapy (“O.T.”), Physical Therapy (“P.T”), Speech/Language Therapy (“SLT”), and Behavior Therapy/Counseling (“BTC”). [see *Complaint*]

The *Alabama Administrative Code* §290-8-9.00(18) **Related Services** definition states: “(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.”

Petitioner’s Post-Hearing Argument

In Section B of the *Petitioner’s Post-Hearing Brief*, counsel alleges “the Petitioner was denied a FAPE because of the IEPs lack of provision or less than timely provision for related services; such as OT, PT, SLT, or BCT.” Counsel for the Petitioner argues: “The IDEA requires that states and LEAs ensure that “[a]ll children with disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated.” 34 C.F.R. Section(s) 300.128(a)(1); See Ala. Admin. Code 290-8-9 *et seq.* Further, “before the initial provision of special education and related services to a child with a disability, a full and individual evaluation of the child’s education needs must be conducted.” AAC 290-8-9.02(1)(a)2(c). And, “the child must be assessed in all areas related to the suspected disability including, if appropriate, health vision, hearing, social, and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” AAC 290-8-9.02(1)(a)2(g). Although the statute nor AAC establish a “bright line” deadline a LEA has to

comply with this requirement, other circuits have inferred that it is to be done within a *reasonable time* after school officials are on notice of behavior that is likely to indicate a disability. *W. B. v. Matula*, 67 F.3d 484, 500-1 (3d Cir. 1995). In applying the “reasonable time” standard, a case by case approach has been employed by these same districts to “assess whether the school district’s response was reasonable in light of the information and resources possessed” by the district at a given point in time.” *Id.* Here, the District had a plethora of information and assessments available to it from which to conclude that [REDACTED] is a child with a disability and may need special education and related services in multiple areas, especially OT, PT, SLT, and BCT. Further, it erroneously relied on [REDACTED]’s opinion of [REDACTED]’s needs to delay evaluations in the two related areas of OT and SLT – both areas [REDACTED] was determined eligible.

Additionally, in *L.M. v. Willingboro*, the District “informed the parents it would revisit the child’s IEP after her teacher and related services providers had the opportunity to evaluate her skills, the Court affirmed the ALJ’s decision that the failure to assess the child’s need for related services before convening her IEP team amounted to a denial of FAPE.” *L.M. v. Willingboro Township School District*, 70 IDELR 34 (2017). The Court reasoned that “while it may prefer to have staff members document the student’s needs and deficits as they become apparent, the IDEA requires the district to conduct a full and individual initial evaluation before providing special education services.” *Id.* Similarly, in this case, testimony of the District’s own employees established that there is a District policy to put off evaluations and assessments in order to “get to know the student better... for a period of four to six weeks.” Taken together, the Petitioner was denied a FAPE because of the IEPs lack of provision or less than timely provision for related services such as OT, PT, SLT, or BCT despite having sufficient information available to suspect services may be needed at the initial IEP meeting in January 2019.” [see Petitioner’s Post-Hearing Brief]

#### Respondent’s Post-Hearing Argument

In Section C. of *Post-Hearing Argument of the Jefferson County Board of Education*, counsel for the Respondent argues: “As dictated by the accelerated nature of the eligibility determination process in January of 2019, and in keeping with the understanding reached at that time, school officials deferred additional assessments for related services. That decision was largely unavoidable in light of the urgency voiced by [REDACTED]’s parent in reaching the initial

eligibility determination decision, the impracticality of conducting a full battery of related service evaluations within that compressed decision-making timeline, and the need to allow sufficient time to observe ■■■'s functioning in the school environment so as to better determine whether such assessments were needed.

Although ■■■ ultimately qualified for language and occupational therapy services, no evidence was offered to suggest that immediate implementation of those services was necessary or even appropriate. In fact, uncontroverted testimony established that, as a practical matter, ■■■'s language needs were being effectively addressed prior to formal assessment through implementation of the language component of ■■■'s IEP. Moreover, the Board's OT specialist testified without contradiction that ■■■'s functional skills met or exceeded what would have been expected given ■■■ deficits.

During the January 25, 2019 referral meeting, eligibility meeting and IEP meeting, no reference was made for the need for OT, PT, SLT, or BCT. ■■■ had not been enrolled in public education since ■■■ 5th grade year. Previous eligibility and IEP documentation were not available to the IEP team on January 25, 2019. ■■■ did not recommend an OT evaluation, a speech evaluation, a PT evaluation, or a behavior evaluation because no observable behavior warranted an evaluation. ■■■ was given the Wechsler Adult Intelligence Scale, 4th edition on 4/10/18 by ■■■, PhD. ■■■'s overall IQ fell at ■■■, placing ■■■ 3 standard deviations below the mean, demonstrating a significant delay in overall intellectual functioning. The Wechsler Individual Achievement Test, III, was administered on 4/10/18 and an overall test composite score of 41 was obtained. ■■■ explained, as did ■■■, that ■■■'s language skills and overall fine motor skills were commensurate with or above the expected level based on IQ and achievement.

In the area of fine motor, ■■■'s handwriting, although larger in size, is legible. ■■■'s use of vocabulary and ability to answer comprehension questions on a day to day basis is above ■■■ expected level based on testing information from 2018. Finally, no educationally based PT services were warranted or no PT evaluation was recommended because ■■■ can ambulate throughout the school, demonstrates good balance, and can maneuver stairs without difficulty. Nonetheless, when the parent voiced concerns regarding the status of related service assessments, the IEP team obtained written consent on 4/5/19 and the OT evaluation was completed on 4/17/19. The occupational therapist reported the following findings

"Strengths of the student: [REDACTED] worked hard during testing and attempted each activity presented to [REDACTED]. Overall when writing letters or copying sentences [REDACTED] does not demonstrate any letter reversals and [REDACTED] letter formation is legible. [REDACTED] is not able to tie [REDACTED] shoes independently but it is important to note that due to [REDACTED] age there may be times that an adaption to the activity may be presented to help [REDACTED] maintain [REDACTED] independence with a self-help skills (i.e., adapted laces). It is important to note that despite lower scores on the VMI and Visual Perception Subtest these scores do correlate with [REDACTED] current functional level. [REDACTED] did surpass [REDACTED] functional level on the motor coordination subtest." (JCBE Doc. 105).

The IEP team met on 5/17/19 and recommended that [REDACTED] receive direct OT services once per month for 30 minutes targeting self-help, handwriting, and visual motor integration skills in the special education classroom. However, as a matter of course, [REDACTED]'s teacher/case manager had effectively provided [REDACTED] with a plethora of OT type supports, including multiple handwriting activities to enhance handwriting skills, visual motor integration skills, and work completion and multiple opportunities for functional self-help activities to include tying shoes, stringing beads, cooking, gardening, manipulating buttons, etc.

A language evaluation was completed on 4/15/19. The OWLS II was administered and [REDACTED]'s oral language composite was comparable to [REDACTED] overall IQ. Throughout the second semester, [REDACTED], speech pathologist, included [REDACTED] in her language groups involving members of [REDACTED]'s class. Work samples demonstrating [REDACTED] involvement are located within the JCBE Doc. 287-302. Although not formally provided services until the beginning of the 2019-2020 school year, [REDACTED] received language services provided in a small group setting within the special education classroom during the 2019 spring term. FAPE was not implicated or denied.

As to any asserted need for behavioral services, [REDACTED] simply demonstrated no need for special behavioral tracking or programming. [REDACTED] related well to school staff and peers, enjoyed school, and was consistently engaged in [REDACTED] school activities. None of the behavioral history that had been reported by the parent has manifested itself in a Jefferson County School setting." [see Post-hearing Argument of the Jefferson County Board of Education]

First, in addressing the timeliness of evaluations for related services, a review of the record supports the urgency for getting the child enrolled as a student with a disability, not as a student in general education. The District had 60 school days to evaluate the child before determining eligibility. The consent for evaluation was signed on January 25, 2019 with the

areas of vision, hearing, and behavior checked. [P Doc 047]. The estimated 60 school days to complete an evaluation would be on or before roughly April 19, 2019 or April 26<sup>th</sup> tacking on spring break. A second consent was signed 4/5/2019 with the areas of “Language” and “Occupational Therapy” checked. [P Doc 070]. The IEP Team determined [REDACTED] required speech/language services and occupational therapy on May 17, 2019. [P Doc 095, 096] Counsel for the Petitioner argued *L. M. v. Willingboro* supports the notion that the Respondent District should have evaluated for related services at the beginning and not waited until the parent request. It may have been prudent for the District to have checked all areas on the initial consent and begun the additional evaluations after the child was enrolled. Given the time-frame of the original 60 days to complete all evaluations, the urgency to get the child enrolled, and that the IEP written on January 25, 2019 contained goals and objectives concerning communication, the undersigned does not believe a FAPE was denied the child in regards to the related services of speech/language therapy and occupational therapy. Further, as explained by [REDACTED] contrary to how the facts played out in *L.M. v. Willingboro*, the IEP was in place to give a framework of services with the intention to follow up as they got to know the child. Contrary to *L.M. v. Willingboro* this review commenced and concluded within 90 days of the child’s enrollment, and in no way did Jefferson County appear to be merely putting off something or failing to attend to a need evidenced by the child.

Second, it is unclear to the undersigned why counsel for the Petitioner alleges FAPE was denied in not evaluating or providing Physical Therapy services. The *Alabama Administrative Code* §290-8-9.00(18)(c)9. states “Physical Therapy means services provided by a qualified therapist”. The IEPs developed on 1/25/19 and 5/17/19 do not appear to have any mention of any physical disability that requires physical therapy.

Third, in regards to “BCT” or behavioral counseling therapy, the written record simply does not support the need for a FUBA (functional behavioral assessment) or a formal BIP (behavior intervention plan) to have been written up to the time of taking testimony. Counsel for the Petitioner failed to put forth a viable argument as to why “BCT” was actually needed.

## VI. Conclusion

The issues properly before the undersigned hearing officer in this due process hearing are due to be reviewed in the manner provided for under *20 U.S.C. §1415 (f)(3)(E)*. Further, Congress directs that any decision of the undersigned is limited in this Final Order to a decision:

- (i) [Made] on substantive grounds based on a determination of whether the child received a free appropriate public education.
- (ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate education only if the procedural inadequacies-
  - (I) impeded the child's right to a free appropriate public education; or,
  - (II) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or,
  - (III) caused a deprivation of educational benefits. *20 U.S.C. §1415(f)(3)(E)(I)&(ii)*

The undersigned reviews the issues in light of the fact that the burden of proof in a due process hearing rests upon the Petitioner. Therefore, in order to prevail the Petitioner must demonstrate by a preponderance of the evidence that the Petitioner was in fact denied a FAPE by virtue of the actions, or lack thereof, by the Respondent School District. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 52 (2005)

Finally, in completing a review in this matter the undersigned is mindful that it is not the job of the hearing officer to substitute his judgment for those of the educational professionals involved in the decisions made for the child. The standard as to such review does arise through the decision in *Board of Education Hendrick-Hudson v. Rowley*, 458 U.S. 176, 206 (1982). With this in mind the undersigned has reviewed the facts as set forth in the testimony and evidence, providing the due weight to the information provided by the Petitioners and Respondent alike. The discussion above purports to examine what the undersigned found was not only relevant to an understanding of the facts in this hearing, but the facts that were germane to an understanding of how the law would apply to the questions posed by the Petitioner's complaint and allegations.

In regards to issue 1, whether or not a FAPE was denied the child by virtue of the way the goals and objectives using standards were written, the undersigned concludes the goals and objectives are sufficient to meet the individual needs of the child.

In regards to issue 2, whether or not a FAPE was denied the child in the IEP's decision

not to provide ESY services to the child, the undersigned concludes that the team properly considered the child's progress and other factors pertinent to a proper determination on this question. The undersigned does note that the while there is clear evidence of educational progress, objective data tracking this in detail is lacking, though finds that this lack of objective data does not deny ■■■ a FAPE at this point in time.

In regards to issue 3, whether or not a FAPE was denied the child by failing to provide, or timely provide related services such as OT, PT, SLT or BCT, the undersigned concludes that ■■■'s needs were addressed and related services were provided in a timely manner.

## VII. Specific Findings

1. The Petitioner was **not** denied a FAPE by the virtue the way goals, objectives, and benchmarks using standards were written by the Respondent District.
2. The Petitioner was **not** denied a FAPE by the IEP team decision not to extend ESY services for the child.
3. The record reveals a lack of objective data related to measuring the child's progress towards benchmarks. The record also provides evidence that the child made progress and more than just *de minimis* progress. The lack of objective data is a procedural violation; however **this does not arise** to a substantive denial of a FAPE.
4. The Petitioner was **not** denied a FAPE by failing to provide, or timely provide related services such as OT, PT, SLT or BCT.

## VIII. Notice of Appeal Rights

Any party dissatisfied with the decision may bring an appeal pursuant to 20.U.S.C. § 1415(e)(2) and/or Alabama Administrative Code 290-8-9.08(9) ( c ) (15) and must file 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.



**DONE and ORDERED, and ENTERED** this the 14<sup>th</sup> day of October, 2019

[REDACTED]

Steve P. Morton, Jr.  
Due Process Hearing Officer

A copy of this Order has been forwarded to the Honorable Andrew S. Ladores, the Honorable Shane T. Sears, the Honorable Carl Johnson, and the Honorable Andrew Rudloff via email and standard U.S. mail.

cc: - [REDACTED]