<u>Hearing Decision</u>

Child:	[Petitioner]
Case:	25-133
Parent:	[Parent]
Representative:	Gina Lowe, Esq. Attorney for Petitioner The Gallini Group, LLC One Perimeter Park South, Suite 100N Birmingham, AL 35243 ginalowe@thegallinigroup.com
Local Educational Agency:	Enterprise City Board of Education
Representative:	Andrew E. Rudloff, Esq. Attorney for Respondent Bishop Brooks, LLC 1910 First Avenue North Birmingham, AL 35203 arudloff@bishopbrooks.com
Date of Decision:	May 21, 2026
Hearing Officer:	P. Michael Cole, Esq. P. Michael Cole, LLC P.O. Box 1800 Athens, AL 35612 mike.pmcllc@gmail.com

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Hearing Decision

I. Statement of the Case

[Parent] is a biological parent of a preschool-aged student, [Petitioner]. As discussed in greater detail below, the school district offered the student an individualized education program (IEP) after the student turned three years old in February 2024. In October 2025, the parent, acting individually and on the student's behalf, filed a due process complaint against the school district alleging violations of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. §§ 1400 *et seq.;* 34 C.F.R. Part 300; Ala. Admin. Code r. §§ 290-8-9 *et seq.* The parent alleged in the complaint that the programming offered and provided during the 2023-24, 2024-25, and 2025-26 school years was inappropriate or not implemented.

Of course, the school district is a "local educational agency" (LEA), and it is therefore subject to the substantive and procedural obligations imposed by the IDEA. (*See* Resp.'s Ans., p. 1, ¶ 1.) Accordingly, all pre-hearing, hearing, and post-hearing proceedings to resolve the merits of the parent's complaint have been conducted pursuant to the requirements of the IDEA.

II. Procedural History

Initially, the State Superintendent of Education, Eric Mackey, Ed.D., appointed Nika Gholston, Esq., to serve as the IDEA hearing officer. The record reflects that the parties mediated this case through much of December 2025 and January 2026. Those efforts were ultimately unsuccessful, and a global resolution was not reached. So, an evidentiary hearing was held on January 26-27, March 9-10, and March 30, 2026. The parent and student were represented at hearing by Gina Lowe, Esq., and James Gallini, Esq., both of The Gallini Group, LLC.[1] Andrew E. Rudloff, Esq., of Bishop Brooks, LLC, represented the school district. The parent attended all

[1] Mr. Gallini attended the hearing on March 9-10. Mrs. Lowe attended all hearing days.

of the days of the hearing. [Special Education Director, SED] was the school district's hearing representative. She also attended all of the days of the hearing.

In terms of pre-hearing matters, all disclosures were produced as required by the IDEA, pre-hearing orders, or agreement. And, as directed, the parties submitted respective issue statements. A pre-hearing conference was held regarding the issues, and the issue statements and hearing logistics were discussed. The final statement of issues to be heard and decided in the case was not presented to the parties before the hearing; rather, the issues were recited on the record after the hearing started. The record also reflects that the hearing was closed, that the student did not attend any substantive part of the hearing, and that the parties waived opening and closing statements in favor of post-hearing submissions. (Tr. I, pp. 30, 34-35.)

Hearing Officer Gholston presided over all pre-hearing, hearing, and post-hearing proceedings up to and through April 16, 2026.

On April 24, 2026, Dr. Mackey reassigned the case to the undersigned ("the hearing officer") to preside over any remaining proceedings and render a final decision on the merits of the parent's claims. Thereafter, the parties prepared draft decisions based on the testimony that was presented, the admitted exhibits, and stipulations. (*See* Order, dated Apr. 24, 2026, p. 1.) At the parent's request, the deadline for decision was extended to May 22, 2026. (*Id.*)

In all, neither party has brought any defect in the pre-hearing, hearing, or post-hearing proceedings to the hearing officer for decision.

III. <u>Exhibits and Witnesses</u>

The record reflects that exhibits were admitted throughout the hearing. The hearing officer has indexed what exhibits were admitted in "Exhibit A," which is attached. The hearing officer has also examined the exhibits in conjunction with the hearing testimony. In rendering this final decision, the hearing officer did not place any weight on the fact that a particular party offered an exhibit; rather, any weight was based on the exhibit itself. The hearing officer will transfer all admitted exhibits to the State Department after this decision is entered.

In total, 13 witnesses testified over five days: [Speech Language Therapist, SLP1], CCC-SLP (video); [Occupational Therapist, OC], OTR/L (video); [Head Start Teacher, HST]; [General Education Preschool Teacher, GEPT]; [Psychologist, Psych], Ph.D. (video); [Clerical Aide, CA]; [Speech Language Pathologist, SLP2], CCC-SLP; [Board Certified Behavior Analyst, BCBA], BCBA, [Licensed Behavior Analyst, LBA] LBA; [Special Education Teacher, SET1], BCBA, LBA (video); [Principal/First Class PreK Director, P/FCPKD]; [First Class PreK Teacher, FCPKT]; [Special Education Director, SED]; and the parent. Because of the timing of the reassignment, the hearing officer did not observe any of the testimony but has reviewed the 1671 page transcript of the 5-day hearing and all of the exhibits admitted into evidence in this matter.

IV. Legal Background

The IDEA is complex, so some background is helpful. Part B of the IDEA requires an LEA to provide a "free appropriate public education" (FAPE) to an eligible student—a "child with a disability"—between "the ages of 3 and 21, inclusive …." §§ 1401(3); 1412(a)(1)(a); 1414(d)(1)(A)(i)(I). For a preschool-aged student in Alabama who is between the age of three and the age of compulsory school attendance, the LEA, to afford a FAPE, must provide "special education and related services" that constitute an "appropriate" preschool education, and must provide those things "in conformity with" an IEP that satisfies the procedural requirements of the IDEA. § 1401(9)(C). The LEA must also educate the preschool-aged student in the "least restrictive environment." § 300.116(a)(2). Each of these points is discussed further below.

a. The IDEA's procedures guide eligibility and IEP development.

The IDEA provides a three-step process to decide who can receive programming and what it must include. Under the first step, a student must be referred for a full and individual initial evaluation "in all areas of suspected disability," and the parent must consent to an evaluation. §§ 1414(a)(1)(D)(i)(I); 1414(b)(3)(B). Practically, this means that the LEA staff and the parent must meet to discuss the reason for the referral and plan for the evaluation. The parties discuss the student, potential areas of need, and the assessments that the LEA will use. Once all agree on suspected areas of need and the parent consents, the LEA must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent …." §§ 1414(b)(2)(A)(i), (ii). This information may be used not only to decide if the student meets all three of the IDEA eligibility requirements, but also in developing an IEP if one is due. *Id*. Sometimes, a student who is not yet three years old is involved in IDEA Part C programming or "early intervention." § 1412(a)(9). The referral and initial evaluation processes often occur when it is anticipated that the student will transition from Part C to Part B programming at age three. *Id*.

Once an evaluation is completed, an eligibility team, in the second step of the three-step process, considers the results and decides if all three eligibility requirements are met. § 1414(b)(4). One of the three requirements is that the student meets criteria for a defined disability category. §§ 1401(3); 1414(b)(4). Here, the disability categories that are relevant are "autism" and "developmental delay." § 1401(3); §§ 290-8-9-.03(1); 290-8-9-.03(3).

If all three eligibility requirements are met, the final step is for the LEA to offer an IEP. § 1401(14). The IDEA prescribes what the IEP must include. § 1414(d)(1)(A)(i). The IDEA also envisions that the parent will be a member of the team that develops the IEP, and that the parent will "participate" in the development process. § 1414(d)(1)(B)(i); § 300.501(b)(2). So, the IDEA requires an LEA to provide notice of a team meeting that will afford an "opportunity to participate" in the meeting. § 1415(b)(1); § 300.501(b)(2).

The requirement to evaluate does not end when an IEP is offered. The LEA must reevaluate or otherwise assess if it decides "the educational or related services [sic] needs warrant a reevaluation" or the student's parent or teacher requests a reevaluation. § 1414(a)(2)(A). A student's needs may "warrant a reevaluation" if there is a basis for the school district to "suspect" a disability-related need. *See Phyllene W. v. Huntsville City Bd. of Edu.,* 630 Fed. App'x 917, 928 (11th Cir. 2015).

b. The IDEA promises a FAPE in the LRE.

In terms of the IEP, the IDEA envisions, first, that it will deliver what the IDEA promises—the substantive guarantee of a FAPE. *J.N. v. Jefferson Cnty Bd. of Edu.,* 12 F.4th 1355, 1362 (11th Cir. 2021). The FAPE standard was addressed in *Endrew F. ex rel. Joseph F. v. Douglas Cnty Sch. Dist.,* 580 U.S. 386 (2017). To fashion an IEP that is substantively appropriate, the LEA must use data and prospective judgment to map a path forward. *Id*. at 398-400. The standard requires the offered IEP to be "reasonably calculated" to enable a student to make progress that is "appropriate in light of the child's circumstances." *Id*. The degree of projected progress that is envisioned when the IEP is offered turns on a student's "unique circumstances," so what progress the IEP must envision for the IEP to be substantively appropriate differs in each case. *Id*. at 401-402. At a minimum, the offered IEP must challenge the student and aim for the student to make more than *de minimis* progress. *Id*. But the LEA need not offer the best plan or one that aims to maximize potential. *Id.; see also Bd. of Edu. of Hendrick Hudson Central Sch. Dist., Westchester Cty v. Rowley,* 458 U.S. 176, 198 (1982).

The IDEA also includes a separate "mainstreaming" requirement, which obligates the LEA to educate the student in the "least restrictive environment" (LRE). *Greer v. Rome City Sch. Dist.,* 950 F.2d 688, 695 (11th Cir. 1991). This principle applies to preschool and school-aged children. § 300.116(a)(2). And the principle obligates the LEA to educate a student with non-disabled peers "[t]o the maximum extent appropriate …." § 1412(a)(5)(a). As a result, a student may only be removed "from the regular educational environment [if] education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id*. The IDEA does not define "regular class" in the preschool context, but guidance says that it means "a preschool setting with typically developing peers." U.S. Dep't of Edu., Office of Special Education and Rehabilitative Services, *Dear Colleague Letter: Preschool LRE* (Jan. 9, 2017), *3, citing 71 Fed. Reg. 46450, 46666 (Aug. 14, 2006).[2] The same guidance also says a preschool class that "includes a majority (at least 50 percent) of nondisabled children (i.e., children who do not have IEPs)" is a regular early childhood program. *Id.* at *5.

The LEA and the parent must decide the student's placement in developing the IEP. *Greer,* 950 F.2d at 696. The group must make the placement decision "in conformity" with the LRE requirement. §§ 300.116(a); 300.327; 300.501(c). And the group must factor "any potential harmful effect on the child or on the quality of services that he or she needs …." § 300.116(d). Importantly, though, the LRE requirement "applies only to the placement choice *between* a regular education class *and* a special education class …." *C.B. v. Henry Cnty Sch. Dist.,* 167 F.4th 1134, 1141 (11th Cir. 2026) (emphasis added). So, for example, the decision to place in one of two special education classes is one of methodology left to the LEA—parental disagreement in this situation cannot serve as the basis for a "mainstreaming" claim. *Id*.

Finally, the two requirements—FAPE and LRE—are distinct. "Whether a child is receiving a [FAPE] requires a separate analysis from whether the child has been placed in the least restrictive environment." *Id*. at 1142, citing *Greer,* 950 F.2d at 695-96.

[2] This letter is hereafter referenced as "the preschool DCL."

c. A parent may raise four types of IDEA claims.

Parties can disagree over whether an LEA has done all that the IDEA requires. So, the law grants safeguards, which include the right to file a due process complaint. In general, a parent may allege a "content" claim, a "mainstreaming" claim," an "implementation" claim, or a "procedural" claim. *See L.J. v. Sch. Bd. of Broward Cnty.,* 927 F.3d 1203, 1207 (11th Cir. 2019) (content and implementation claims); *Greer,* 950 F.2d at 696-98 (11th Cir. 1991) (mainstreaming claim); *C.B.,* 167 F.4th at 1141 (mainstreaming claim); *J.N.,* 12 F.4th at 1362 (procedural claim). The party asserting the claim and seeking relief bears the burden of proof. *J.N.,* 12 F.4th at 1365. A preponderance-of-the-evidence standard applies.

i. A parent may allege a "content" claim.

A "content" claim alleges that the IEP an LEA offered, as the IEP was written, fell short of the *Endrew F.* standard. *L.J.,* 927 F.3d at 1207. But a hearing officer cannot review an IEP in hindsight. *Jefferson Cnty Bd. of Edu. v. Amanda S.,* 418 F.Supp.3d 911, 918 (2019); *D.J.D. v. Madison City Bd. of Edu.,* 2018 WL 4283058, *5 (N.D. Ala. Sept. 7, 2018). Rather, a hearing officer must decide if the IEP was appropriate when the LEA offered it. *Id*.

While *Endrew F.* requires the LEA to *envision* progress, *actual* progress under an IEP may turn out to be different from what everyone wanted. Proof of *actual* progress can be evidence in analyzing a "content" claim. *L.J.,* 927 F.3d at 1214. But that proof "is not dispositive" of a FAPE denial, is not necessarily "outcome-determinative," and should not be relied on "too heavily." *Id.; see also, e.g., G.D. v. Swampscott Pub. Sch.,* 27 F.4th 1, 10-11 (1st Cir. 2022) ("slow gains" did not prove IEP denied a FAPE); *S.C. v. Oxford Area Sch. Dist.,* 751 Fed. App'x. 220, 221 (3rd Cir. 2018) ("It is unfortunate that [the student] did not progress as far as [petitioner's] mother hoped [petitioner] would. But [the LEA] met its legal obligation."); *O.P. v. Jefferson Cnty Bd. of Edu.,* 2023 WL 1805832, *7 (N.D. Ala. Feb. 7, 2023) ("[G]iven the evidence in this case and the prospective nature of drafting IEPs, O.P.'s progress (or lack of progress) is insufficient to show that the IEPs were not reasonably calculated to enable O.P. to advance.") In all, these points align with the U.S. Supreme Court's explanation of one of the IDEA's most fundamental tenants, namely, that the IDEA "cannot and does not promise any particular [educational] outcome" for a student. *Endrew F.,* 580 U.S. at 398.

ii. A parent may allege a "mainstreaming" claim.

A parent may also allege, separately, that the LEA violated the IDEA's LRE requirement—this is a "mainstreaming" claim. *See C.B.,* 167 F.4th at 1141-42. In analyzing that type of claim, a hearing officer asks, first, if the student "can be educated in a 'regular educational environment' with the use of supplemental aids and services …." *Id*. at 1141, citing *Greer,* 950 F.2d at 696. If that step cannot be achieved and the student is removed from that environment, a hearing officer asks, second, if the LEA educated the student with non-disabled peers to the maximum extent appropriate. *Id.* But, again, not all disputes in this area implicate LRE or support a "mainstreaming" claim. *Id*.

iii. A parent may allege an "implementation" claim.

In contrast to a "content" claim, an "implementation" claim alleges that the LEA did not do something that was written in the IEP. *L.J.,* 997 F.3d at 1207. A hearing officer's focus is on the steps the LEA took to put the IEP into action. *Id*. But "an IEP is a plan, not a contract." *Id*. at 1212. So, the LEA need only act "in conformity with" the IEP; it need not implement the IEP to perfection. § 1401(9)(D). As a result, "a properly designed IEP will be capable of providing a [FAPE] even in the face of a non-material implementation failure." *L.J.,* 997 F.3d at 1213. Thus, a parent must prove a misstep and "materiality" to prevail on this type of claim. *Id*. at 1211. And, to prove "materiality," the parent must show "more than a minor or technical gap between the plan and reality; *de minimis* shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP" that individually or cumulatively rise to the level of a FAPE denial. *Id*. In gauging "materiality," a hearing officer must remember that "the question is not whether the school has materially failed to implement an individual provision in isolation …." *Id*. at 1215. It is, instead, "whether the school has materially failed to implement the IEP as a whole." *Id*.

iv. A parent may allege a "procedural" claim.

Finally, a "procedural" claim alleges that the LEA violated one of the IDEA's procedures. *J.N.,* 12 F.4th at 1363. A procedural violation and substantive harm are not equivalents. *Id*. at 1366; *see also Sch. Bd. of Collier Cnty, Fla. v. K.C.,* 285 F.3d 977 (11th Cir. 2002) ("A procedurally defective IEP does not automatically entitle a party to relief. In evaluating whether a procedural defect has deprived a student of a FAPE, the court must consider the impact …, and not merely the defect per se."), citing *Weiss v. Sch. Bd.,* 141 F.3d 990, 994 (11th Cir. 1998); *Doe v. Ala. State Dep't of Edu.,* 915 F.2d 651, 661-63 (11th Cir. 1990). So, some procedural violations may result in substantive harm, while others may not. A procedural violation results in substantive harm only if "[1] the procedural problem impeded the child's right to a [FAPE], [2] significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a [FAPE] to their child, or [3] caused a deprivation of educational benefits." *J.N.,* 12 F.4th at 1363, citing § 1415(f)(3)(E)(ii). To succeed on this type of claim, a parent must prove that the LEA violated a procedure, and that the student's "education would have been different but for the procedural violation." *Id*. at 1366, citing *Leggett v. District of Columbia,* 793 F.3d 59, 68 (D.C. Cir. 2015) (quotations omitted).

The remedy for the procedural violation depends on any impact. *K.C.,* 285 F.3d at 983. If the violation *does not* cause substantive harm, "the remedy … is generally to require that the procedure be followed." *J.N.,* 12 F.4th at 1366; § 1415(f)(3)(E)(iii). If the violation *does* cause substantive harm *and* the parent seeks compensatory relief, "a parent must show that the child's educational program was substantively deficient, and that compensatory educational services are necessary to place the child in the same place the child would have been absent [the] violation of the Act." *J.N.,* 12 F.4th at 1365. The parent must present evidence on the specific form of compensatory relief sought, as well as why that relief is due and appropriate. *Id*. at 1368. If that burden is not met, relief may be denied. *Id*.

V. <u>Statement of Facts</u>

A. This Child's Educational Needs

This is a [age] Child with significant educational needs related to [petitioner's] severe autism and associated behavioral, communication, and other developmental needs. [Petitioner] turned [age] and became eligible for special education services on February 14, 2024. By then, [petitioner] had already been identified with major delays in communication, socialization, transitions, eating, following directions, comprehension, and adaptive functioning. [Petitioner's] history also included left-sided weakness, hip dysplasia, toe walking, feeding concerns, and sensory needs. Private evaluations described a child with no spontaneous or functional speech, limited joint attention, nonfunctional play, poor frustration tolerance, and profound needs in communication, regulation, and adaptive functioning. [Psych], a licensed psychologist, diagnosed Autism Spectrum Disorder with intellectual and language impairment, Level 3, requiring very substantial support. She recommended a preschool program with supportive therapies, intensive Applied Behavioral

Analysis ("ABA") therapy, and services to address this Child's profound deficits in speech, language, motor skills, and feeding.

In anticipation of entering this final decision, the hearing officer scheduled a conference call with both attorneys after receiving the reassignment. During that conference call, the parties agreed to how they wished to proceed to conclude this matter. The parties agreed that they would submit proposed orders by 5:00 p.m. on May 6, 2026. The Hearing Officer agreed to review the transcripts of the 5-day hearing and all exhibits that were admitted into evidence by Hearing Officer Gholston. Some facts are set forth in this final decision in order to provide a general timeline and some context. But, importantly, not all of the facts that were drawn from and considered from the record in rendering this final decision are necessarily cited or detailed below.

B. The period before the 2023-24 school year.

In October 2022, [Psych], Ph.D., a [City]-area psychologist, conducted a private psychological evaluation of the student. (RE, pp. 1-6.) The student was about [age] years old then. Following her review, she diagnosed the student with "Autism Spectrum Disorder with Intellectual and Language Impairments, Level 3, Requiring Very Substantial Support," as well as "Delayed Milestone in Childhood (global delays secondary to underlying genetic mutation)." (RE, p. 5.) She provided recommendations. (*See* RE, pp. 5-6.) This first report was shared with the school district at some point before February 2024.

C. The 2023-24 school year.

Because the student would turn [age] years old in February 2024, the student, in October 2023, was referred from "early intervention" to the school district. The referral was to determine possible eligibility and involvement in Part B programming. (RE, pp. 36-41.) In response, an initial referral meeting was held; the parent attended and participated. (*See* RE, p. 40.) The school district accepted the referral, and the parent provided informed consent for a full and individual initial evaluation. (*See* RE, pp. 42-44.)

The school district evaluated this Child. In doing so, the school district factored information from multiple sources, including, without limitation, assessments that were performed, parent input, and [Psych]. The eligibility report reflects all of this, and the scope and depth of information that was gathered was consistent with the areas that were identified during the earlier referral meeting and in the consent that the parent provided. (*See* RE, pp. 36-44, 82-87.) On February 9, 2024, the eligibility team met to review the evaluation results and determine IDEA eligibility. The record includes advanced meeting notice. (*See* RE, pp. 62-23.) The record also reflects that the parent participated by phone. (RE, p. 86.) During the meeting, the team found all eligibility criteria were met, and the student was placed under the disability category of "developmental delay." (RE, p. 86.) The rationale for this was explained, and the explanation included, for instance, acknowledgment of [Psych's] findings. (*See* RE, p. 86.) Immediately after the eligibility team meeting, the IEP team convened, on February 9, 2026, to develop and offer an initial IEP. The record includes advanced meeting notice, reflects the parent participated by phone, and reflects the parent provided input relative to the IEP content. (*See* RE, pp. 64, 96-97.) For the school district, [Special Education Teacher, SET2] (special education teacher), [GEPT]. (regular education teacher), [SLP2]. (SLP), and an LEA representative participated.[3] An IEP was, in fact, developed and offered. (RE, pp. 89-97.) The IEP contained, among other things, multiple goals, corresponding special education service times, "related services" in the area of language, and AT. (*See* RE, pp. 92-95.) It was contemplated that the student would attend the [Preschool Program] preschool program for one hour per week, on Friday mornings, during the rest of the 2023-24 school year.

[3] While no subpoena was issued, it is the hearing officer's understanding that neither [SET2] nor the administrative

representative were available at the time of hearing.

This schedule made sense; it fully aligned with efforts to address concerns that the record reflected the parent shared, namely, that the student be "slowly introduce[ed]" to peers in a preschool. (*See* RE, p. 97.)

[Preschool Program] is a collaborative, inclusion preschool program and located at one of the school district's schools, [Elementary School]. In terms of [Preschool Program], the educators who testified at hearing provided detailed accounts of the program purpose, program construct, program schedule, day-to-day structure, and high staff-to-student ratio—all of which are purposeful in nature. (*See, e.g.,* Tr., I, pp. 233-38; Tr. IV, pp. 13-19.) But, in general, [Preschool Program] is collaborative; it is structured to ensure half or more of the preschool-aged students in the class are non-disabled. (*Id.*) This, in turn, enables IDEA eligible students to engage with typical peers in a structured setting and way. (*See* Tr. IV, pp. 18-19.) As the school district's special education director [SED] and others explained at the hearing, there is no defined limit on how many days per week or how long an IDEA eligible student may be scheduled to attend [Preschool Program]; scheduling and length is dependent on need, ability, and appropriateness. (*See* Tr. I, p. 231; Tr. IV, pp. 19.)

On the Friday mornings that the student was slated to attend [Preschool Program] during the 2023-24 school year, the student was the only IDEA eligible student—a circumstance that provided great structure while also ensuring a measured avenue to acclimate the student to school and peers. (*See* TR. III, pp.508-509.) The student proceeded in [Preschool Program] through the school year, as planned. [SET2], [GEPT], and [SLP2], as well as classroom paraprofessional support, all engaged with the student in this span.

The record reflects that, in June 2024, [Psych] shared with the school district an updated report from a past parent interview. (RE, pp. 105-111.) There, [Psych] continued the autism diagnosis but added diagnoses relative to feeding and behavior. (RE, p. 111.) In anticipation of the 2024-25 school year, the school district reconvened the IEP team in July 2024. The record includes advanced meeting notice. (RE, p. 120.) The parent attended and participated in-person, and a new IEP was developed and offered. (*See* RE, pp. 124-32.) The same participants attended, except [SLP2] (*Cf.* RE, p. 96 *with* RE, p. 132.) The IEP generally continued and revised annual goals, special education service times, language services, and AT. (*Cf.* RE, pp. 127-31 *with* RE, pp. 92-95.) For the upcoming school year, it was contemplated that the student would attend [Preschool Program] on Tuesdays and Thursdays, in the afternoon, for multiple hours. (*See* Tr. I, pp. .)

D. The 2024-25 school year.

The student started in [Preschool Program] during the 2024-25 school year as planned. But, in addition to private services and outside therapies that were being pursued, the parent, in August 2024, enrolled the student in an Head Start program five days per week. So, the school district reconvened the IEP team in mid-August to provide special transportation between Head Start and [Preschool Program] on the afternoons of attendance. (*See* RE, pp. 159, 169.) The record also reflects that special education service times during times of [Preschool Program] attendance was reduced. (*Cf.* RE, pp. 130 *with* RE, pp. 165.)

In addition to paraprofessional support, [SET2], [GEPT], and [SLP2] all continued to engage with the student in [Preschool Program] for a time during the 2024-25 school year. But, mid-year, [SET1] replaced [SET2] as a special education teacher in [Preschool Program].

The school district reconvened the IEP team in February 2025. (RE, pp. 181-90.) The record reflects that the purpose of the meeting was to afford the parent an opportunity to express concerns about matters outside of [Preschool Program]—the student’s behavior at Head Start.

(*See* RE, p.190.) The parent attended and participated. (RE, p. 190.) And, while the IEP was not amended, minutes were kept. (RE, p. 190.)

The student proceeded at [Preschool Program], in the afternoons on Tuesdays and Thursdays, through the 2024-25 school year.

In anticipation of the 2025-26 school year, the school district reconvened the IEP team in May 2025. The record includes advanced meeting notice and reflects that the parent participated via phone. (*See* RE, pp. 201-202, 214.) During the meeting, a new IEP was developed and offered; in general, it continued to offer programming aimed to address the areas of need addressed in the past IEPs. (*See* RE, pp. 205-14.) But, before that May meeting was held, the parent independently applied for the student to be accepted into a full-day First Class Pre-K class (FCPK) at [Elementary School] for the 2025-26 school year.[4] When the IEP team met in May, it did not know if the student would be accepted into FCPK; the spots are limited, acceptance is determined by neutral lottery after May, and a waitlist is developed for those who desire a spot but are not accepted via the lottery. (*See* Tr. I, pp. 116, 260-61; Tr. III, p. 327-38.)

E. The 2025-26 school year.

The school district and the parent learned on or about August 8, 2025, that the student would be accepted into FCKP via waitlist. (*See* Tr. I, p. 261.) So, things changed for everyone very quickly. (*See* Tr. II, p. 291.) As a result, the school district made interim efforts to transition the student to FCPK with direct teacher or paraprofessional support—for a least some parts of the day—on August 11-13, 2025. (*See* Tr. II, pp. 286-87.) But, to compound matters, the parent and

[4] For background, FCPK is a grant-funded preschool program for students who are four years of age. (Tr. I, pp. 230.) The Alabama Department of Early Childhood Education oversees grant-related requirements and compliance with those requirements. (*Id.*) The school district had multiple FCPK classes during the 2025-26 school year. Notably, the school district will not have any FCPK classes for the 2026-27 school year; it has not pursued grants for multiple reasons. (*See* Tr. III, pp. 395-96.)

student left school on the afternoon of August 13 to travel to Birmingham for the student to undergo [medical procedure]. (*See* Tr. II, pp. 287-88.)

While the accounts differ greatly, it suffices to say, here, that on the morning of August 21, 2026, the parent arrived at school to return the student to FCPK—[wearing medical device]. The educators were, in a word, concerned, but the parent did not believe those concerns and efforts to address them were reasonable. (*See* Tr. V, pp. 82-85.) When the parent arrived, the parent, [SED], and [SLP2] met briefly in-person at [Elementary School]. Following that meeting, the parent left, and the student did not return that day. The accounts of the parent, [SED] and [SLP2] regarding this meeting are detailed in the hearing transcript, as well as the account of a related phone call that afternoon between the parent and [SED]. The parent recorded that call without notice (notice is not legally required in the State of Alabama) as well; it is included in the record. (*See* Tr. V, pp. 86-87; RE 256.)

Another brief in-person meeting was also held on August 28, 2025 at [Elementary School]. The parent, [SED], [SLP2] and [Elementary School] Principal [P/FCPKD] all participated—their accounts of this additional meeting are detailed in the hearing transcript, too. The parties' accounts also differ greatly. But, in general, the educators who attended were left with the impression that the parent would not return the student, and a withdrawal notice was prepared and entered. (*See* Tr. III, pp. 384-85; Tr. IV, pp. 32-33; RE 258.) The parent also expressed the same sentiments to the school district's superintendent, [Superintendent, S], and an administrator, [Director of Student Services, DSS], when the parent met with them on the afternoon of August 28, 2025. (*See* RE 257.) Like the August 21 call, the August 28 meeting with [S] and [DSS] was recorded without notice. The second recording is also included in the record. (*See* Tr. V, pp. 90-92; RE 257.)

In October 2025, the parent filed the complaint. For practical purposes and despite efforts, the student has not returned to any school-based programming -—FCPK or [Preschool Program]— since attending [Preschool Program] briefly on August 28, 2025. (*See* Tr. V, p. 94.)

VI. <u>Claims</u>

As noted, a final statement of the issues that were to be heard and decided was not presented to the parties before the hearing. Instead, a statement was recited on the record after the hearing had started. (Tr. I, pp. 27-28.) Based on the hearing officer's review of the complaint, the parties' pre-hearing submissions, and the statement at hearing—all of which are in the record—the claims and related issues for decision are appropriately framed as follows:

- <u>Claim #1 – FAPE [Content Claim].</u> The parent alleges the IEPs that the school district offered during the 2023-24, 2024-25, and 2025-26 school years fell short of the *Endrew F.* standard. (*See* Pet.'s Comp., p. 12, ¶ 50.a. (alleging failure to service "all of [the student's] educational needs"); *see also* p. 6, ¶ 26 (describing special education as "grossly insufficient"); p. 11, ¶ 48 (alleging failure "to adequately provide special education supports and services"); p. 12, ¶ 50.a. (alleging failure to service "language" needs); p. 5, ¶ 24 (alleging failure to consider or offer occupational and physical therapy); p., 9, ¶¶ 38-39 and 13, ¶ 50.c. (alleging lack of assistive technology in furtherance of "language" needs).) To support this conclusion the parent alleges that, in the IEPs, the school district did not offer appropriate amounts of preschool and special education service time, did not offer appropriate amounts of language services, did not offer assistive technology (AT), and did not offer "related services" in the form of occupational therapy (OT) and physical therapy (PT). (*Id.*) On related procedural points, the parent also alleges that the school district erred in the disability category that was used at the time eligibility was determined; the school district was required to consider the use of certain behavior-related interventions, supports, or strategies, but did not do so; and the school district did not revise the IEPs when the IEPs were reviewed. (*See* Tr. I., p. 28.)

- Claim #2 – Evaluation; Reevaluation [Procedural Claim]. The parent asserts a procedural violation, alleging that the school district did not assess "in all areas of suspected disability" when it first evaluated. (*See* Pet.'s Comp., p. 12, ¶ 50.a.) In addition to the areas that were assessed, the school district, the parent says, should have assessed in the areas of communication, AT, OT, PT, and behavior. (*Id.*) The parent also claims that the school district should have reevaluated in these areas at later points but did not. Per the parent, these violations impeded the student's right to a FAPE and denied educational benefits, which resulted in substantive harm.
- Claim #3 – LRE [Mainstreaming Claim]. The parent asserts a procedural violation, alleging the teams that developed the IEPs that were offered should have considered a menu of placement options or did not discuss options before deciding placement. (*See* Pet.'s Comp., p. 6, ¶ 25 ("The District did not appropriately consider [the student's] appropriate LRE and need for regular and consistent interaction with typically developing peers."); p. 12, ¶ 50.b. (alleging failure to afford "appropriate LRE").) Relatedly, the parent also alleges that what was offered—placement in [Preschool Program]—violated the LRE requirement. (*Id.*)
- Claim #4 – IEP [Implementation Claim]. The parent asserts that the school district did not implement the student's IEP in the FCPK class or [Preschool Program] during the 2025-26 school year. (*See* Tr. 28.)

- Claim #5 – Participation [Procedural Claim]. The parent alleges that the school district committed procedural violations that significantly impeded the parent's opportunity to meaningfully participate in decision making. (*See* Tr. 28.) Those violations, the parent says, included not providing proper meeting notices, not offering measurable annual goals (*see* Pet.'s Comp., p. 12, ¶ 50.a. (alleging failure to offer appropriate goals)), not monitoring student progress or informing the parent of the same, and predetermining services and placement.

VII. Discussion

a. The school district provided a FAPE, and, on the record as a whole, the parent did not prove otherwise.

In Claim #1, which is largely a "content" claim, the parent alleges the IEPs that were offered during the 2023-24, 2024-25, and 2025-26 school years fell short of the *Endrew F.* standard. For support, the parent says that, in the IEPs, the school district did not offer appropriate amounts of preschool and special education time, did not offer appropriate amounts of language services, did not offer AT, and did not offer OT and PT as "related services."

First, to be substantively appropriate under *Endrew F.,* an IEP must be "reasonably calculated" to enable a student to make progress that is "appropriate in light of the child's circumstances." 580 U.S. at 398-400. Here, the IEPs, when they were drafted and based on the information that was known, offered appropriate *preschool and special education time.* Several points are consistent with a finding that the parent did not prove the IEPs failed to afford the substantive guarantee of a FAPE. For one, the parent admitted that, all along, what she has sought was the best possible program for the student. (*See* Tr. Vol. 1, p. 259.) She also conceded that she was demanding a program that would advance the student as far as possible—or maximize [petitioner's] potential. (*See* Tr. Vol. 1, pp. 259-60.) Those desires and aims are understandable, if not laudable, but they are also squarely at odds with what the law requires. The IDEA imparts a ceiling—one of appropriateness. What the parent has admittedly sought, and seeks, is more than what the law obligates an LEA to provide to an eligible student.

Another notable point is that all of the education professionals who testified explained that, given the student's age, developmental level, and disability-related needs, "appropriate" progress for the student at this stage generally meant successful transition and acclimation to a structured school environment. (*See, e.g.,* Tr. I, pp. 150, 238-39, 242; Tr. II, pp. 58-59; 181-82, 208, 212, 261-62; Tr. III, p. 23.) And, while the same substantive FAPE standard applies to preschool and school-aged children alike, *the application of that standard* is different among those ages. In other words, one cannot divorce things like age and developmental level when deciding if the aim of an IEP is, in fact, "appropriate." Those are inherent parts of a student's "unique circumstances," and the IDEA expressly requires that things such as "developmental" abilities be factored in IEP development. § 1414(d)(3)(A)(iii).

Regardless, the appropriateness of the IEPs that were offered, when they were offered, was buttressed by the education professionals' testimony on *actual* progress. On this point, all spoke with one voice and explained that, on the whole, the student progressed in [Preschool Program] when the student was serviced there. (*See, e.g.,* Tr. I, pp. 150, 238-39, 242; Tr. II, pp. 58-59; 181-82, 208,
212, 261-62; Tr. III, p. 23.)

Equally as important, the parent did not offer evidence at hearing that plainly established the types and amounts of overall preschool and special education service time that the IDEA obligated the school district to provide to afford a FAPE. Despite this void in the parent's evidentiary presentation, the parent did plead early on that "full-time preschool programming in an integrated classroom containing an equal proportion of students with and without disabilities" was required for a FAPE. (*See* Pet.'s Comp., p. 14, ¶ b.) To muster support for this full-time demand, the parent requested the testimony of [Psych]—a psychologist and autism specialist with almost 30 years of experience. (*See* Tr. I, pp. 183-84.) But, even on direct examination, [Psych] did not support the claim that the school district's IEPs were inappropriate, nor did she say that full-time preschool was due or even proper. Rather, [Psych]: (1) prioritized private and medically-necessary services in an Applied Behavior Analysis (ABA) clinic over time in a specialized preschool setting; (2) viewed a specialized preschool setting as a supplement to medically-necessary services; (3) suggested the primary focus of the student's involvement in a specialized preschool setting should be acclimation to the environment; (4) suggested that, in terms of preschool time, it was appropriate to start low and build from there; (5) rejected a more-is-better approach out of concern for undermining acclimation efforts and diminishing returns; and (6) indicated too much time in a specialized preschool setting may not be tolerated and could very well be too challenging for the student. (*See* Tr. I., pp. 209-10.) All of this is notable not only because [Psych] was the parents' expert, but also because the parent actually indicated that [Psych's] opinions were quite weighty. She was "comfortable" with [Psych], had "faith" in [Pscyh's] recommendations, and planned for the student to continue with [Psych's] (*See* Tr. V, pp. 98-99.)

Second, the IEPs, when drafted, offered appropriate types and amounts of *language services* relative to the student's communication needs. Two SLPs testified—[SLP1] and [SLP2] [SLP1] offered no school-based recommendations; she has not worked in a school. (Tr. I, p. 47, 50-51, 60.) But, at the same time, she also endorsed a "total communication" approach, which was used with the student in [Preschool Program]. (*See* Tr. I, pp. 59-60; Tr. II, pp. 255-56, 264-65.) Indeed, [SLP2] explained at length why the language offerings in the respective IEPs were appropriate, even though they were through direct or "related service" time at different points. In short, the parent did not present evidence that was sufficient to overcome [SLP2's] account of the propriety of the offering in the area of language.

Third, a review indicates that the school district did offer *AT* in the IEPs. One of the primary forms of AT that was provided was a speech-generating device— a device that was loaded with the "LAMP Words for Life" tool. (*See* Tr. I, p. 243.) The tool and its use were proper. (*See* Tr. II, p. 268.)

Fourth, it is true that the IEPs that were offered did not expressly provide for *OT and PT.* But sensory and motor integration were embedded in [Preschool Program]. With respect to PT, there was some testimony on the topic of the student's toe walking early on. (*See* Tr. I, p. 169; Tr. II, p. 23; Tr. V, p. 79.) But, otherwise, the record is devoid of how or why PT was supposedly needed "to assist" in benefitting from "specially designed instruction" and, thus, a required "related service."
§§ 1401(26)(A); 1401(29). Without more, the hearing officer cannot find that the parent proved the absence of OT or PT in the IEPs denied a FAPE.

The parent also raises several procedural claims that dovetail with the parent's "content" claim. For instance, there was some suggestion at the hearing that the school district erred in initially identifying the student under the disability category of "developmental delay." (*See* Tr. IV, pp. 498-500.) The suggestion was that if the student was identified under "autism," the "content" of the IEPs would have had to have been different for the IEPs to be substantively appropriate. But the student met the criteria for "developmental delay," and the classification was consistent with one of [Psych's] private diagnoses. The parent also attended and participated in that initial eligibility meeting where the disability category decision was made. (RE, p. 82-87.) Irrespective of these points, though, the IDEA provides that determinations of disability status and educational need are distinct, that a student's disability label is not one of the considerations the IEP team must factor in developing an IEP, and that needs and not labels drive IEP content. §§ 1414(b)(4)(A); (d)(3)(A); 1414(d)(3)(A)(iv). Further, the parent did not present expert or other evidence establishing that if the student had been identified under "autism," specific methodologies, such as ABA therapy, would have been absolutely required for a program to pass muster. Nor can the parent point to any controlling legal authority that provides a specific programmatic approach—like the provision of ABA therapy or the enlistment of a BCBA—is absolutely necessary for an LEA to afford a FAPE to one under "autism."[5]

The parent also says that, when the respective IEPs were developed, no one considered the use of certain behavior-related interventions, supports, or strategies. The IDEA's procedures provide that, in developing programming, the IEP team shall "consider the use of positive behavioral intervention and supports, and other strategies" to address certain behavior. § 1414(d)(3)(B)(i). Yet the requirement turns on the existence of "behavior [that] impedes the child's learning or that of others …." *Id.* Here, the educators explained that they did not necessarily observe behaviors at [Preschool Program] that triggered any duty in this area. Still, the IEPs included annual goals that targeted social emotional needs and the student's approaches to learning—all of which had the net effect of aiming to foster desired behavior in the preschool setting. (*See* RE, pp. 89-96, 124-32, 181-89, 205-13.) So, even if behaviors did exist and an obligation was triggered, the respective teams considered and employed "other strategies" that satisfied any relevant procedural duty. Indeed, the IDEA's procedures do not prescribe or dictate that a particular path must be used here; an LEA can meet its obligations in different ways. *See*

[5] The student did receive private BCBA services. A provider, S.A., testified at hearing. However, between the time of her testimony and the conclusion of the hearing, the private provider outfit closed; the parent indicated it was due and owing to "Medicaid fraud" and financial misappropriation. (Tr. V, pp. 96-97.) S.A. no longer services the student. (Tr. V, p. 96.)

M.W. ex rel. S.W. v. New York City Dep't of Edu., 725 F.3d 131, 140-41 (2nd Cir. 2013); *Rosari M. v. Madison City Bd. of Edu.,* 325 F.R.D. 429, 438-39 (N.D. Ala. 2018).

Finally, the parent alleges that the school district did not revise the IEPs that were offered when they were reviewed. It is true that the IDEA's procedures require an LEA to ensure the team reviews and revises an IEP if there is a "lack of expected progress toward [attaining] annual goals …." § 1414(d)(4)(A)(ii)(I). But, again, the educators recounted *actual* progress at [Preschool Program]; they did not report a lack of *envisioned* progress. Giving deference to the observations and accounts, revisions were possible and perhaps prudent—but not necessarily required.

In total, the hearing officer finds that the parent did not prove the respective "content" and "procedural" claims that were embedded in Claim #1.

b. The school district's initial evaluation was appropriate in scope and depth, but, even if a procedural violation is assumed, the violation did not cause substantive harm.

In Claim #2, the parent alleges that the school district did not assess "in all areas of suspected disability" when it first evaluated. §§ 1414(a)(1)(D)(i)(I); 1414(b)(3)(B). In addition to what assessments were performed, the school district, the parent says, should have assessed in communication, AT, OT, PT, and behavior. The parent also claims that the school district should have reevaluated in these areas after the initial evaluation.

In general, a number of observations from the record are important and telling. For example, the school district, first, did assess in the area of language as a part of the initial evaluation. (See Tr. II, pp. 247-48.) The measure that was used was proper. (*See* Tr. I, p. 58.) Second, all plainly knew and understood the student's limited communication skills when programming was developed and offered, all were building from that baseline by trying to elicit *any* communication under a "total communication" model, and the record lacks evidence on what should have been gleaned from new testing because no evidence was presented on that point. Third, what AT was offered—specifically, the LAMP—was appropriate. So, the record is also unclear as to what should have been learned from an actual AT measure, as parent did not present evidence as to same. In terms of any AT-related procedural duty, the use of AT was certainly "considered"—it had to be considered in order to be provided. § 1414(d)(3)(B)(v).

With respect to behavior specifically, it appears that the parent suggests a Functional Behavioral Assessment (FBA) was due. While an FBA may be required to afford a FAPE in some scenarios, a prerequisite to the need for an FBA is, in fact, a target behavior. Again, the education professionals shared that they did not necessarily observe behaviors that triggered a duty in this area. But, even at that, an LEA may lawfully address behavior through means other than an FBA. *See M.W.,* 725 F.3d at 140-41; *Rosari M.,* 325 F.R.D. at 438-39. The school district did that.

In short, the parent suggests the mere fact that the student received outside services in multiple areas obligated the school district to also assess in those areas. But the receipt of private services, alone, was not necessarily enough to mount the type of suspicion needed to trigger testing anew. And, even if it was, the type, amount, and structure of the [Preschool Program] programming mitigated any impact of an assumed procedural violation. Thus, any assumed violation did not impede the student's right to a FAPE or deprive the student of educational benefit. For these reasons, the parent did not prove substantive harm, and the hearing officer finds in favor of the school district on Claim #2.

c. The school district did not violate the LRE requirement or any related procedural obligation.

In Claim #3, the parent alleges the teams that developed the IEPs that were offered should have considered a menu of placement options or did not discuss options with the parent before placement was decided. And, relatedly, the parent alleges that what was offered—placement in [Preschool Program]—violated the LRE requirement.

On the first point, the record reflects the parties have starkly different accounts of what happened each time the IEP team met. On one hand, the educators generally shared that required dialogue was had, all options were considered, the parent provided input before and during meetings, and the parent was, overall, pleasant and in agreement with what was decided during all engagements. (*See, e.g.,* Tr. II, pp. 208-209.) On the other hand, the parent consistently indicated that while she is a heavily engaged and active parent, she consistently voiced disagreements in meetings and elsewhere, and the educators ignored her many concerns without resolve. Many of the issues that were supposedly raised and ignored, though, are simply not born out or supported by the record—particularly the exhibits. For instance, the IEPs and related meeting minutes that the parent signed do not support her perspective. (*See* RE, pp. 97-98, 133, 169, 190, 214.) And, despite the gravity of the parent's accounts, it is not clear if that the parent reduced any of the alleged proposals, demands, or disagreements to writing. (*See* Tr. IV, pp. 187-88.) Nor were any such writings offered into evidence as exhibits to bolster or legitimize her testimony. All of this to be said, the hearing officer cannot find, based on the record, that the parent proved the respective teams did not discuss the issue of placement and LRE during the IEP meetings that were held. Nor can the hearing officer find that the parent proved she did not participate in, or was denied participation in, any placement decision.

On the second point, the school district's offering in [Preschool Program] met the LRE requirement. Again, the IDEA does not define "regular class" or "regular educational environment" as it relates to preschool. At the hearing, emphasis was placed on the preschool [Dear Colleague Letter, DCL] DCL that was referenced above. The preschool DCL is not binding—a point that may be even truer today since deference to federal agency interpretations has been largely eliminated. *See Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024). Still, even if that were not the case, the preschool DCL defines "regular class" to mean "a preschool setting with typically developing peers." *DCL* at *3. And the preschool DCL says a preschool class that includes at least 50 percent of typical peers is a regular early childhood program. *Id.* at *3. The record reflects [Preschool Program] met those marks, so the school district met any LRE requirement by making a FAPE available in [Preschool Program]. *Id*. at *4. If the parent contends that the LRE-related procedures obligated the school district to discuss or offer a choice *between* types of "regular class[es]" or types of regular early childhood programs—for example, Head Start or FCPK if it assumed those programs met required definitions—circuit law suggests otherwise. *See C.B.,* 167 F.4d at 1141. That type of choice is markedly different from a choice "between a regular education class and a special education class," which is what the IDEA's LRE requirement addresses. *Id*.

The hearing officer finds that the parent did not prove Claim #3.

d. The parent's implementation claim is not actionable.

In Claim #4, the parent asserts that the school district did not implement the student's IEP in FCPK or [Preschool Program] during the 2025-26 school year. Given the student's acceptance into the FCPK in early August 2025 and the quick shift that resulted from that last-minute change, the school district's actions were not only understandable; they were also reasonable. The subsequent spat that arose after the student's departure for surgery and attempted return was, in a word, unfortunate. But the record, and in particular the parent's statements in the respective encounters with school administration that were recorded, justified the belief that the parent would not return the student to programming offered by the district. At a minimum, the school district immediately offered a return to [Preschool Program] and encouraged the parent to pursue that while things were sorted out.

The school district maintained its willingness to continue to service the student from the time of the student's departure in August 2025, to the time when the school district answered the complaint in October 2025 (*see* Resp.'s Ans., p. 6, 6.b.), to the time of hearing when [SED] testified at hearing (*see* Tr. III, pp. 630). In light of all of this, the hearing officer finds that there was no implementation failure as contemplated by the IDEA, or, if there was, any material misstep was not due and owing to the school district's actions. Accordingly, the hearing officer finds that the parent did not prove Claim #4 by a preponderance of the evidence.

e. The school district did not violate any procedural requirement related to parental participation; alternatively, the right to an opportunity to meaningfully participate in educational decision-making was never significantly impeded.

In Claim #5, the parent asserts that the school district committed procedural violations that significantly impeded "the opportunity" to meaningfully participate in decision making. Specifically, the parent says that the school district did not provide the parent proper IEP meeting notices, did not offer measurable IEP goals, did not monitor student progress or inform the parent of the student's performance, and predetermined services and placement.

With respect to notices, the IDEA merely requires an LEA to provide notice that will afford an "opportunity to participate" in a meeting. § 1415(b)(1); § 300.501(b)(2). The parent testified, at various points, that proper notices were not provided over a lengthy time and for many meetings. But the veracity of that account is questionable for several reasons, including those shared above. At the least, the parent was afforded "the opportunity" to meaningfully participate, and any purported notice-related issues did not undermine that "opportunity" in any significant way. Thus, the parent has not proven a violation or substantive harm in this area.

The parent also contends that annual IEP goals were not measurable, that progress was not monitored, and that these things undermined the parent's ability to participate. For one, the hearing officer does not agree that the record supports these conclusions. And, again, the parent consistently shared that she is always engaged and active. So, the hearing officer does not find that the parent proved any violation or substantive harm in this area, either.

Finally, to the extent the parent contends services or placement in [Preschool Program] was predetermined, the state of the record does not definitively support such a finding. At law, "[p]redetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team." *R.L. v. Miami-Dade Cnty Sch. Bd.,* 757 F.3d 1173, 1188 (11th Cir. 2014). Here, [GEPT's] testimony on pre-meetings is unclear and subject to multiple interpretation; some testimony suggests a pre-meeting, while other testimony suggests final decisions were made in the team setting. (*See* Tr. 1, pp. 114-33, 139-44, 227-28; Tr. II, pp. 310-13.) It is possible, if not plausible that there was confusion in this area during questioning. Indeed, this may well have been the case, because, for instance, at least [SLP2] said that they never participated in pre-meetings with [GEPT] or others where services or placement were definitively determined outside the team setting. (*See, e.g.,* Tr. II, pp. 310.))

In sum, the record reflects that the parent was an active and engaged member of the teams that developed the student's programming. At the least, the parent was afforded "the opportunity" to meaningfully participate. And the record shows that she did, in fact, participate. Thus, the hearing officer finds that the school district did not violate any participation-related procedural requirement, and that, even if a violation is assumed, any right was not significantly impeded. The parent did not prove Claim #5 and its related subparts.

VIII. **<u>Conclusion</u>**

From the hearing officer's review of the record and over 35 years of experience as a hearing officer in IDEA cases, it is apparent: that the parent loves and cares for the student; that the parent is impassioned in her efforts to support the student's education; and that the parent wants the student to receive the absolute best school program possible. Those are all commendable things. Indeed, no one can or does fault the parent for wanting to obtain for the student schooling of the highest caliber. In the end, though, many of the parent's claims and related criticisms are laser-focused on specific points to the exclusion of other points that paint a better and more holistic view of the student's needs, what is appropriate for the student, and the propriety of what was made available.

What the parent seeks is understandable but more than what the law requires. In sum, the hearing officer finds that the parent did not meet the parent's respective burdens on the claims that were presented. Therefore, the hearing officer finds in the school district's favor and denies the requested relief.

IX. **<u>Notice of Appeal Rights</u>**

Any party aggrieved by the findings and decision made herein has the right to bring a civil action in the appropriate Court under 20 U.S.C. section 1415. *The Alabama Administrative Code* 290-8-9.08(9)(c)16 provides an aggrieved party shall file a notice of intent to file a civil action with all parties to the Impartial Due Process Hearing within **<u>thirty (30) calendar days</u>** upon receipt of the decision of the Impartial Due Process Hearing Officer. The Code further provides that a civil action in a court of competent jurisdiction must be filed within **<u>thirty (30) calendar days</u>** of the filing of the notice of intent to file a civil action.

DONE and **ORDERED** this the 21st day of May, 2026.

/s/P. Michael Cole

P. Michael Cole
Hearing Officer

X. Certificate of Service

I hereby certify that a copy of this hearing decision has been forwarded to the following individuals by placing a copy of same in the regular U.S. Mail, postage prepaid, and by electronic mail, this 21st day of May 2026.

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