**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS**
**STATE OF GEORGIA**

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| [redacted], Plaintiff, v. GWINNETT COUNTY SCHOOL DISTRICT, Defendant. | Docket No.: OSAH-DOE-SE-0830219-Gatto 08-092767 |
| [redacted], Plaintiff, v. GWINNETT COUNTY SCHOOL DISTRICT, Defendant. | Docket No.: OSAH-DOE-SE-0830220-Gatto 08-092769 |
| [redacted], Plaintiff, v. GWINNETT COUNTY SCHOOL DISTRICT, Defendant. | Docket No.: OSAH-DOE-SE-0830223-Gatto 08-092772 |



## OPINION AND ORDER[1]

COUNSEL: Rachel Platt, for Plaintiffs.

Victoria Sweeny, Catherine Followill, for Defendant.

JUDGE: GATTO. J.

## I. INTRODUCTION

In these consolidated actions, Plaintiffs, [redacted]., [redacted]., and [redacted]. (hereinafter referred to by consent of Plaintiffs' parents as "[redacted]," "[redacted]," and "[redacted]") filed suit against

[1] The captions on the above-styled cases were re-styled in numerical order based upon the docket numbers. The parties are directed to correct the style accordingly.

Defendant Gwinnett County School District on May 13, 2008 alleging procedural and substantive violations of the Individuals with Disabilities Education Act ("IDEA" or "Act"), 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300, as well as violations of Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*[2] Plaintiffs allege that Gwinnett County failed to provide them with a free appropriate public education ("FAPE") for the 2005-2006, 2006-2007, and 2007-2008 school years. Plaintiffs' parents [redacted] and [redacted] also allege that they have been retaliated against by Gwinnett County for advocating on behalf of their children in violation of Section 504 and the ADA.[3] For the reasons indicated below, Plaintiffs' claims and requested relief are **DENIED** except as to their relief sought related to necessary reintegration plans.

## II. FINDINGS OF FACT

### A. Medical Diagnoses

Plaintiffs all share many of the same diagnoses with multiple medical conditions, mostly stemming from genetic and neurologic disorders. [redacted] is a nineteen-year-old student diagnosed with global developmental delays (including severe mental retardation), Joubert's Syndrome (a neurologic genetic condition that causes hypotonia or very low muscle tone),

[2] Although each Plaintiff was assigned a separate docket number, one Complaint was filed on behalf of all three Plaintiffs.

[3] Plaintiffs are seeking compensatory education and related services for [redacted], [redacted], and [redacted] for the 2005-2006, 2006-2007 and 2007-2008 school years. Plaintiffs are also seeking reimbursement for their parents' out-of-pocket expenses in the amount of $1,050.00 for Applied Behavior Analysis evaluations and $15,000.00 for equipment and supplies. Furthermore, the Plaintiffs are also seeking a ruling that their individualized education programs ("IEP") completed on March 17, 2008, which determined that they are medically able to attend school, be found inappropriate and an order that they continue to receive homebound services from Gwinnett County. Plaintiffs are also seeking relief under Section 504 of the Rehabilitation Act due to the failure of Gwinnett County to provide them with more than three hours of educational services.

allergic rhinitis, eczema, severe febrile seizures, bilateral hip dysplasia, ataxia (a movement disorder), microcephaly (a small skull, implying a small brain) and a nonspecific immune deficiency.[4] He is described as a gentle, sweet, motivated young man. [redacted] is non-verbal, walks with an unsteady gait, and is not toilet-trained. He has a short attention span and has difficulty remaining on task. [redacted] is eligible to receive special education services from Gwinnett County pursuant to the IDEA. [redacted] has received homebound services from Gwinnett County for the majority of his school history based upon the medical report of his pediatrician, Dr. [redacted].[5] (Trial Transcript "Tr." pp. 17-20, 24-27, 276-279, 288, 365, 525-526; H.J. Ex.[6] pp. 0023, 0076-0077, 0182; J.C. Ex. p. 0053.)

[redacted] is a thirteen-year-old student with multiple medical conditions including severe mental retardation, global developmental delays, olivopontocerebellar atrophy disorder (causing ataxia, a movement disorder), hypotonia, microcephaly, allergic rhinitis, and a nonspecific immune problem. [redacted] is functionally non-verbal although he uses some signs and has some verbalizations. He is an energetic and active young man. He is distractible and has a short

[4] The extent of any immune defect is disputed among Plaintiffs' own physicians. The Plaintiffs' pediatrician, Dr. [redacted], has diagnosed them with a "nonspecific immune problem," indicating that their immune deficiency "is nonspecific because it has not been fully elucidated" but that she is "sure that their immune system will improve just like anybody." However, Dr. [redacted], an immunologist hired by Plaintiffs' parents to evaluate the Plaintiffs after the present litigation was filed, stated in a letter after her evaluations that "we can prove no bonafide immune defect." Dr. Keyserling, an expert in pediatric infectious disease testified that because the Plaintiffs "never had any severe or unusual diseases" or "any severe or unusual infections", any problems with their immune systems would be mild. Plaintiffs take no medication for immune problems but [redacted]'s parents do give him multiple herbal supplements. (Tr. pp. 24-25, 241, 278-279, 337, 400-401; Def.'s Ex. 1.)

[5] [redacted] was enrolled at the Buice Center, a preschool, early on in his education. His mother also took him to Pinckneyville Middle School on one occasion but left after five or ten minutes when she noticed that another child appeared to be sick. (Tr. p. 26.)

[6] The parties conferred and consolidated many exhibits prior to the trial. The joint exhibits introduced into evidence were identified as [redacted] Joint), [redacted] Joint), [redacted] Joint), and J.C. (Joint Correspondence) followed by a page number.

attention span. [redacted] is eligible to receive special education services from Gwinnett County pursuant to the IDEA. Gwinnett County has provided homebound services to [redacted] for many years based on Dr. [redacted]'s medical report. (Tr. pp. 97, 277-278, 366, 523-525, 642-643; J.J. Ex. pp. 0046-0047, 0104-0105; J.C. Ex. p. 53.)

[redacted] is an eleven-year-old girl who shares many of the same diagnoses as her older brothers including microcephaly, severe mental retardation, global developmental delays, hypotonia, and a nonspecific immune problem. [redacted] has emerging verbal skills and demonstrates more oral language than her older brothers but is not yet a functional communicator. [redacted] is distractible and has a short attention span. She is eligible to receive special education services from Gwinnett County. Dr. [redacted] and [redacted]'s parents were proactive with [redacted] in recommending homebound services and [redacted] has never attended public school. Dr. [redacted] made this recommendation in part because she did not want [redacted] to go to school and bring illnesses home to her brothers.[7] (*See e.g.* Tr. pp. 98-99, 239-240, 278, 288-289, 366, 526-527, 640; S.J. pp. 0144-0145; J.C. Ex. p. 0053.)

**B. [redacted]'s IEPs**

**1. [redacted]'s IEP for 2005-2006 school year**

During the 2005-2006 school year, [redacted] received all of his educational services in the home setting pursuant to Dr. [redacted]'s recommendation.[8] These services consisted of three hours per week of direct 1:1 instruction from a teacher, thirty minutes per week of direct 1:1 speech

[7] [redacted], [redacted] and [redacted] reside at their home with their parents and their sister [redacted] [redacted] is fifteen years old, non-disabled and is home-schooled by [redacted]. [redacted]. testified that the family made the decision to home-school [redacted] in part because she started bringing germs home when she attended school. (Tr. pp. 230-233.)

[8] Although the IEP team met and developed an IEP for [redacted] for the 2005-2006 school year on June 2, 2005, since Plaintiffs commenced the present litigation on May 13, 2008, this Court limits its consideration to those claims arising on or after May 13, 2006.

instruction from a speech-language pathologist, and one hour per week of direct 1:1 instruction on sign language from a sign instructor. [redacted]'s mother signed his IEP for the 2005-2006 school year and understood that her signature indicated she agreed to his placement and the implementation of the IEP developed for him.[9] (Tr. p. 250, H.J. Ex. pp. 0003-0022.)

All of [redacted]'s goals and objectives were addressed and implemented during the three hours of direct 1:1 instruction.[10] [redacted]'s teacher, Natalie Watson,[11] testified that the amount of services was appropriate to implement his goals and objectives and that [redacted] benefited from those services. Carol Quinn, an expert in creating curriculum for students with cognitive disabilities and teaching children with cognitive disabilities, also testified that these services were appropriate for [redacted]. (Tr. pp. 375-376, 387, 659-660, 686.)

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[9] Notably, [redacted]. is a trained advocate with Partners in Policymaking, an advocacy group for individuals with disabilities which focuses on assisting the disabled gain independence outside of the home in a community setting. [redacted]. received this training in 2004. Aware of her rights, she signed each of Plaintiffs' IEPs and consent for placement forms in 2005 and 2006. Therefore, the Court does not find [redacted].'s testimony credible that she did not agree with the 2005 and 2006 IEPs, particularly since the parents did express disagreement with [redacted] and [redacted]'s 2007 occupational therapy and physical therapy IEPs. (Tr. pp. 49-50, 59, 223-224; J.J. Ex. pp. 0009, 0011, 0055, 0069, 0088, 0114; S.J. Ex. pp. 0026, 0030, 0048, 0061, 0077-0084; H.J. Ex. pp. 0008, 0020, 0033, 0044, 0056, 0058.)

[10] The Present Levels of Performance indicated that [redacted] "made significant progress this year with using sign language. He now uses sign language as his primary means of communication. [redacted] can independently maneuver the mouse to operate computer programs." Under Cognitive/Academic/Play Skills, the IEP states, "[redacted] can match and sort objects. He can match money and numbers. He can pick his name out of a group of names." Under Social/Emotional Skills, the IEP states, "[redacted] enjoys interactions with others. He is a happy teenager." Under Self Help/Daily Living, the IEP states, "[redacted] has difficulty manipulating fasteners. He is on a toileting schedule for trip training. [redacted] can independently feed himself. He requires assistance with dressing." (H.J. Ex. pp. 0003-0004.)

[11] Watson has taught children with cognitive disabilities for eleven years, both in a homebound setting and as a classroom teacher. She has a B.A. in mental retardation and is certified by the Professional Standards Commission in mental retardation for grades K through 12. (Tr. pp. 379-380.)

[redacted]'s 2005-2006 IEP included a recommendation for an occupational therapy (OT) evaluation and a physical therapy (PT) evaluation. This recommendation was made at the request of his teacher, who believed that he would benefit from OT and PT. However, the OT and PT evaluations of [redacted] were not performed by Gwinnett County during the 2005-2006 school year due to scheduling difficulties involving the parents. (Tr. pp. 386-387; H.J. Ex. pp. 0003-0022, 0050-0051.)

**2. [redacted]'s IEP for 2006-2007 school year**

[redacted]'s annual IEP meeting to develop an IEP for the 2006-2007 school year was convened on June 5, 2006.[12] [redacted].'s concerns regarding the lack of OT and PT services during the previous school year were discussed and documented in the IEP. [redacted]'s IEP team developed a plan to make up the missed services during the upcoming school year. [redacted]. participated in developing the plan to make up for the missed services and signed [redacted]'s IEP and consent for placement for the 2006-2007 school year. The parties stipulated that the missed OT and PT services have since been made up by Gwinnett County and provided to [redacted]. (Tr. pp. 251-252, 429-430; H.J. Ex. pp. 0025-0046.)

Dr. [redacted] again recommended homebound services for the 2006-2007 school year. The IEP developed for [redacted] for the 2006-2007 school year included three hours per week of direct 1:1 educational services from a teacher, direct 1:1 services from a speech-language pathologist, direct 1:1 sign language instruction from a sign language instructor, direct 1:1 instruction from an Applied Behavior Analysis ("ABA") therapist, and the completion of OT and PT evaluations. [redacted]'s mother signed the IEP for the 2006-2007 school year and understood

[12] On December 1, 2006, the IEP team reconvened to discuss the OT and PT evaluations and determined that [redacted] needed 12 hours yearly of direct/consultation of OT services and needed 6 hours per week of direct/consultation of PT services. [redacted]. attended this meeting and signed the IEP. (H.J. Ex. pp. 0025-0046, 0048-0075.)

that her signature indicated she agreed to his placement and the implementation of the IEP. Caroline Whitten, an expert in teaching students with cognitive disabilities and adapting curriculum for children with cognitive disabilities testified that this amount of services was appropriate given Plaintiffs' short attention span, which required instruction to be given in short time increments, and the limitations of the home setting, which necessitated teachers and therapists to teach skills to Plaintiffs in isolation.[13] (Tr. 252-253, 520, 573; H.J. Ex. pp. 0025-0046.)

[redacted] made progress on his speech goals and objectives during the 2006-2007 school year. Debra Cruce, Gwinnett County's speech-language pathologist who provided services to [redacted] in the home, testified as an expert in the provision of speech and language services for children with disabilities and in identifying the services that are appropriate for children with disabilities.[14] Cruce testified that [redacted]'s communication goals and objectives for the 2006-2007 school year were appropriate and that she had adequate time to implement these goals and objectives. Although [redacted]'s pediatrician recommended homebound services for the 2007-

[13] [redacted]'s present levels of performance stated "[redacted] is a non-verbal 16 year old participating in a functional curriculum. Due to his medical condition, [redacted] has received homebound services this past year. [redacted] enjoys learning. [redacted] continues to use sign language as his primary means of communication. [redacted] can independently maneuver the mouse to operate computer programs." This is nearly identical to the present levels of performance for the 2005-2006 school year. Under Cognitive/Academic/Play Skills, the IEP states "[redacted] can match and sort objects. He can match money and numbers. He can pick his name out of a group of names." This is identical to the IEP completed in June 2005. Under Social/Emotional Skills, the IEP states, "[redacted] enjoys interactions with others. He is a happy teenager." This is identical to the IEP completed in June 2005 except in the June 2006 IEP, it also states "He has a very good sense of humor." Under Self Help/Daily Living, the IEP states, "[redacted] has difficulty manipulating fasteners. He is on a toileting schedule for trip training. [redacted] can independently feed himself. He requires assistance with dressing." This is identical to the IEP completed in June 2005. (H.J. Ex. pp. 0025-0026.)

[14] Cruce has worked as a speech-language pathologist for 27 years, holds a Masters' degree and a clinical certificate of competence (CCC) in the area of speech-language pathology. She is licensed by the State Board of Examiners to deliver speech and language therapy. (Tr. pp. 627-628.)

2008 school year, she noted that his prognosis was "good" and she did not recommend any health safety precautions. (Tr. p. 627, 631-632; H.J. Ex. pp. 0076-0077, 0413-0439.)

**3. [redacted]'s IEP for 2007-2008 school year**

[redacted]'s IEP team convened in May 2007 to devise an IEP for the 2007-2008 school year and to hold a reevaluation conference for [redacted]. [redacted]'s IEP team requested permission to conduct a formal evaluation of [redacted], but [redacted]'s parents refused to sign a consent form. Due to some delays and interruptions in services during the previous school year, the IEP team recommended extended school year ("ESY") services for [redacted]. [redacted]'s parents declined the offered ESY services, however, stating that [redacted] needed a break just as regular education students need a break over the summer.[15] [redacted] also indicated that the family was planning a family vacation, which ESY services would prohibit. (Tr. pp. 52-53; H.J. Ex. pp. 0101-0148.)

Since [redacted]'s parents declined ESY services over the summer, the IEP team devised a plan to provide the ESY services during the 2007-2008 school year to make up for missed services during the previous school year. This plan consisted of 39 hours of direct homebound instruction, 5 hours of sign instruction, 2 hours of OT services, 1 hour of PT services, and a functional assessment from an ABA provider. *Id.* In addition, [redacted]'s IEP for the upcoming 2007-2008 school year included three hours per week of direct 1:1 education from a teacher, 2 hours per week of direct 1:1 speech language services, 6 hours per month of ABA therapy, thirty minutes per week of direct 1:1 instruction from a sign language instructor, two hours per month

[15] Although Plaintiffs' parents historically declined ESY services from Gwinnett County for each of the Plaintiffs, they did allow private therapy services over the summer months. (Tr. pp. 137, 192, 425.)

of OT and one hour per month of PT.[16] [redacted]'s parents did not agree with or sign this IEP. (H.J. Ex. p. 0106-0108.)

Carol Quinn has known [redacted] since he was four years old and testified that the hours of services were appropriate given the limits of the home setting. Caroline Whitten concurs that the services provided to [redacted] was appropriate given his short attention span. (Tr. pp. 520, 573, 659-660, 686; H.J. Ex. pp. 0101-0148.)

Whitten completed an Assistive Technology Evaluation on [redacted] on October 17, 2007. On December 19, 2007, the IEP team reconvened to discuss the results of the Evaluation. Whitten thought it "would be wonderful to be able to use the technology through the computer in order to be able to increase some cognitive and academic skills. And so, [she] suggested a IntelliKeys keyboard, which is an adaptive keyboard that has a variety of overlays." In addition to assigning a computer, she also suggested Tech/Talk 8, "which is an augmentative device with the capability to have eight levels." She also recommended a Point and Chat. (Tr. pp. 549-551; H.J. Ex. pp. 0091-0097, 0149.)

**C. [redacted]'s IEPs**

**1. [redacted]'s IEP for 2005-2006 school year**

[16] The Present Levels of Performance state "[redacted] is a non-verbal 17 year old participating in a functional curriculum. Due to his medical condition, [redacted] has received homebound services this past school year. [redacted] enjoys learning. [redacted] continues to use sign language as his primary means of communication. [redacted] enjoys working on the computer and can use the mouse to maneuver through programs." This is nearly identical to the Present Levels of Performance in the past two IEPs completed. Under Cognitive/Academic/Play Skills, the IEP states "[redacted] can match and sort objects. He can match money and numbers. He can pick his name out of a group of names." This is identical to the two IEPs previously completed. However, this IEP does add "[redacted]'s performance is impacted by his interest level in the academic tasks. Therefore, his performance level varies between homebound sessions depending on his interest level." Under Social/Emotional Skills, the IEP states, "[redacted] enjoys interactions with others. He is a happy teenager. He has a very good sense of humor." This is identical to the June 2006 IEP. (H.J. Ex. pp. 00102-00103.)

[redacted] received all of his educational services in the home setting pursuant to Dr. [redacted]'s recommendation during the 2005-2006 school year. Dr. [redacted] issued no health safety precautions for school providers to take when teaching [redacted]. She marked the return date to school as "n/a" or "not applicable." For the 2005-2006 school year, [redacted] received three hours per week of direct 1:1 homebound instruction from a teacher, thirty minutes per week of direct 1:1 speech instruction from a speech-language pathologist, and one hour per week of direct 1:1 instruction on sign language from a sign instructor. An OT evaluation was recommended to be conducted in the fall of 2005. [redacted]. signed [redacted]'s IEP for the 2005-2006 school year as well as a consent for his placement. (Tr. pp. 257-258, 332-333, 353-354; J.J. Ex. pp. 0003-0036, 0044, 0046-0067.)

All of [redacted]'s goals and objectives were addressed and implemented during the three hours of direct 1:1 instruction and his teacher, Natalie Watson, testified that three hours per week was sufficient time to implement his goals and objectives and that [redacted] benefited from those services.[17] Quinn agrees that the services provided in the home to Plaintiffs were appropriate, as does Caroline Whitten. (Tr. pp. 375-376, 387, 520, 573, 659-660, 686.)

Although [redacted]'s IEP for the 2005-2006 school year recommended an OT evaluation, the evaluation was not performed during the school year, also due to scheduling difficulties involving the parents. On May 3, 2006, [redacted]'s IEP team met to develop an IEP for the 2006-2007 school year. [redacted]'s concerns regarding the lack of OT services during the previous school year were discussed and documented in the IEP, and the IEP team developed a plan with

[17] The Present Levels of Performance stated "[redacted] is a curious and energetic eight year old who is working on a functional curriculum. Due to his medical condition, he has received homebound instruction this school year. [redacted] exhibits interest in learning new things. [redacted] has made significant improvements in his communication skills this year. He can independently sign and vocalize simultaneously the word for several objects/concepts." It further states, "[redacted] has an undefined immune deficiency and is unable to attend school."

[redacted]'s participation to make up for the missed services. The team offered ESY services but [redacted] also declined these services stating that [redacted] needed a break just as regular education students need a break. Thus, the IEP team decided to make up the missed services in the form of ESY during the school year. The parties stipulated that the missed OT services have since been provided to [redacted]. (Tr. pp. 426, 429-430; J.J. Ex. pp. 0048-0075; J.C. Ex. pp. 0049-0075.)

**2. [redacted]'s IEP for 2006-2007 school year**

Dr. [redacted] again recommended homebound services for the 2006-2007 school year. The IEP developed for [redacted] for the 2006-2007 school year included three hours per week of direct 1:1 educational services from a teacher, 1.5 hours per week of direct 1:1 services from a speech-language pathologist, 1 hour per week of direct 1:1 sign language instruction from a sign language instructor, 1.5 hours per week of direct instruction from an ABA therapist, and the completion of an OT evaluation. [redacted] signed [redacted]'s IEP and consent for placement for the 2006-2007 school year. [redacted] demonstrated progress on his speech goals and objectives during the 2006-2007 school year. [redacted]'s speech-language pathologist, Cruce, testified that [redacted]'s communication goals and objectives for the 2006-2007 school year were appropriate. Cruce also had adequate time each week with [redacted] to implement these goals and objectives. (Tr. pp. 257-258, 634-654; J.J. Ex. pp. 0049-0075, 0508-0546.)

[redacted]'s OT evaluation was conducted in the fall of 2006 and [redacted]'s IEP team convened in January 2007 to add OT services to [redacted]'s IEP. [redacted] attended this meeting but did not agree with the IEP. A PT evaluation was also recommended due to IEP team members' concerns about [redacted]'s positioning. [redacted]'s PT evaluation was completed in February 2007 and reviewed at an IEP meeting in April 2007. At that time PT services were added to [redacted]'s IEP. The parents did not agree with this IEP. The IEP team also discussed that there

were no ABA services from December 18, 2006 until February 6, 2007. (J.J. Ex. pp. 0077-0102, 0107-0124.)

**3. [redacted]'s IEP for 2007-2008 school year**

[redacted]'s IEP team convened on April 19, 2007 and May 2, 2007 to devise an IEP for the 2007-2008 school year. Dr. [redacted] again recommended homebound services for the 2007-2008 school year, although she noted that his prognosis was "good" and she did not recommend any precautions be taken with him. Dr. [redacted] again noted that [redacted]'s medical conditions caused reduced efficiency, an inability to attend to a full schedule, and an inability to attend to tasks for the same length of time as peers. Since Gwinnett County was unable to resolve Plaintiffs' parents' concerns at previous meetings, Susan White, Gwinnett County's Executive Director of Special Education and Psychological Services, attended both meetings. The minutes reflect that both meetings were at times contentious, as Plaintiffs' parents were unhappy with lapses in service the previous school year. Lapses in services were documented in the minutes of the meeting and the IEP team devised a plan to make up for the missed services. [redacted] agrees that missed OT and PT services have since been provided. (Tr. pp. 52-52, 429-430, 727-728; J.J. Ex. pp. 0104-0105, 0108-0159.)

Following [redacted]'s IEP meeting on April 19, 2007, White wrote a letter addressing Plaintiffs' parents' concerns and asked for more information from the parents in an effort to assuage their concerns. White sent the letter via both regular and certified mail; she did not receive a response from Plaintiffs' parents. White also made several telephone calls to Plaintiffs' parents' home during this time in an effort to speak with the parents regarding their concerns. Although White left messages, she was not successful in reaching Plaintiffs' parents. (Tr. pp. 729-731; J.C. Ex. p. 0006.)

White followed up with another letter to Plaintiffs' parents on May 9, 2007,[18] in which she reiterated her desire to receive input from the parents. White continued to solicit Plaintiffs' parents' input and participation. White informed Plaintiffs' parents that although the IEP team had not received further information from them, the team had determined that ESY services would be provided to address any lapses during the 2006-2007 school year. White again invited the parents to contact her to discuss their concerns. White did not receive a response from Plaintiffs' parents. At the IEP meetings in the spring of 2007, ESY was again offered but was declined by Plaintiffs' parents. As a result, the IEP team recommended providing these ESY services during the 2007-2008 school year and a plan for the implementation of these services was developed. (Tr. pp. 52-52, 727-728, 739-742; J.C. Ex. pp. 0011-0012; J.J. Ex. pp. 0108-0159.)

In addition to the plan for compensatory services developed by the IEP team, [redacted]'s IEP team also developed an IEP for the 2007-2008 school year which called for three hours per week of direct 1:1 education from a teacher, 1.5 hours per week of direct 1:1 speech language services, 6 hours per month of ABA therapy, thirty minutes per week of direct 1:1 instruction from a sign language instructor, 2 hours per month of OT and one hour per month of PT. [redacted]'s IEP team also recommended an assistive technology evaluation of [redacted]. [redacted]'s parents did not agree with or sign this IEP, although they did not file a due process complaint until the following year, in May of 2008. In December 19, 2007, the IEP team met to review [redacted]'s progress and to review the results of the Assistive Technology Evaluation. The parents did not attend this meeting. It was determined that [redacted] needed assistive technology. (J.J. Ex. pp. 0108-0159, 0173-203.)

[18] This letter was sent to the parents via regular and certified mail. The certified mail copy was delivered on May 12, 2007. (Def.'s Ex. 4; J.C. Ex. pp. 0011-0012.)

**D. [redacted]'s IEPs**

**1. [redacted]'s IEP for 2005-2006 school year**

Similar to her brothers, [redacted] received all of her educational services in the home setting pursuant to her pediatrician's recommendation during the 2005-2006 school year. Dr. [redacted] decided to be proactive with [redacted] and recommended homebound education when [redacted] became school age. Dr. [redacted] issued no health safety precautions for school providers to take when serving [redacted] and marked the return date to school as "n/a" or "not applicable." (S.J. Ex. pp. 0020-0039; J.C. Ex. 0053-0054.)

For the 2005-2006 school year, [redacted] received three hours per week of direct 1:1 homebound instruction from a teacher, thirty minutes per week of direct 1:1 speech instruction from a speech-language pathologist in addition to fifteen minutes per month of consultative service, and one hour per week of direct 1:1 instruction on sign language from a sign instructor. An OT evaluation and a PT evaluation were recommended to be conducted in the fall of 2005. [redacted]'s parent [redacted] signed [redacted]'s IEP for the 2005-2006 school year and a consent for her placement. All of [redacted]'s goals and objectives were addressed and implemented during the three hours per week of direct 1:1 instruction. [redacted]'s homebound teacher, Natalie Watson testified that the IEP provided sufficient time to implement all of [redacted]'s goals and objectives. [redacted] benefited from her educational services. Carol Quinn and Caroline Whitten concur that these were appropriate services. (Tr. pp. 258, 375-376, 387, 573, 686; S.J. Ex. pp. 0020-0038.)

The IEP team recommended OT and PT evaluations but they were not conducted that year due to scheduling difficulties with the parents. [redacted]'s IEP team convened for an annual review on May 3, 2006. [redacted] wrote a statement to be added to [redacted]'s present levels of performance concerning the lack of OT and PT services during the 2005-2006 school year, and

[redacted]'s statement was made a part of [redacted]'s IEP. [redacted]'s IEP team developed a plan with [redacted]'s participation to make up for the missed services. The team offered ESY services but [redacted] declined these services stating that [redacted] needed a break just as regular education students need a break. The IEP team decided to make up any missed services in the form of ESY during the school year. The parties stipulated that the missed OT and PT services have since been provided to [redacted]. [redacted] signed the IEP and consent for placement for the 2006-2007 school year which included the plan to make up for any missed service hours. (Tr. pp. 429-430; S.J. Ex. pp. 0042-0068.)

**2. [redacted]'s IEP for 2006-2007 school year**

Dr. [redacted] continued to recommend homebound services for the 2006-2007 school year. [redacted]'s IEP developed for the 2006-2007 school year with [redacted]'s participation included three hours per week of direct 1:1 educational services from a teacher, 1.5 hours per week of direct 1:1 services from a speech-language pathologist in addition to consultative services, 1 hour per week of direct 1:1 sign language instruction from a sign language instructor, 1.5 hours per week of direct instruction from an ABA therapist, and the completion of an OT and PT evaluation. [redacted] fully participated in the development of the IEP and signed it along with the consent for placement for the 2006-2007 school year. (Tr. pp. 258-259; S.J. Ex. pp. 0042-0068.)

[redacted] demonstrated progress on her speech goals and objectives during the 2006-2007 school year. Cruce, [redacted]'s speech-language pathologist, testified that [redacted]'s communication goals and objectives for the 2006-2007 school year were appropriate. Cruce also had adequate time each week with [redacted] to address and implement [redacted]'s goals and objectives. (Tr. p. 635; S.J. Ex. pp. 0415-0439.)

[redacted]'s OT and PT evaluations were conducted in the fall of 2006. [redacted]'s IEP team convened in January 2007 to review [redacted]'s OT and PT evaluations and to add OT and PT services to [redacted]'s IEP. Two hours a month of OT services and five hours[19] per year of PT services were added to [redacted]'s IEP in addition to the other services she was receiving at home during the 2006-2007 school year. The minutes reflect that the PT and OT providers believed this amount to be adequate as the PT would be supporting two of [redacted]'s goals and the OT would be supporting five of [redacted]'s goals. [redacted] did not agree with this IEP and noted her disagreement on the document. (S.S. Ex. pp. 0070-0096.)

**3. [redacted]'s IEP for 2007-2008 school year**

[redacted]'s IEP team convened May 9, 2007 and May 17, 2007 to develop [redacted]'s IEP for the upcoming 2007-2008 school year. Once again [redacted]'s pediatrician, Dr. [redacted], recommended homebound services for the 2007-2008 school year and this form was presented to Gwinnett County. Dr. [redacted] listed [redacted]'s expected return date to school as "n/a" or "not applicable," stated that there were no health safety precautions for staff to take, and listed [redacted]'s prognosis as "good." The Executive Director of Special Education and Psychological Services, Susan White, attended both meetings in an effort to understand and address the parents' concerns. The minutes reflect that both meetings were difficult as Plaintiffs' parents were extremely hostile and angry. The minutes also reflect that the parents fully participation in the development of the IEP. (Tr. pp. 52-52, 728-729, 732; S.J. Ex. pp. 0097-0145.)

White wrote a letter to the parents following the May 9, 2007 meeting, which had been tabled by Plaintiffs' parents because they were angry. In this letter White attempted to outline the concerns she heard the parents' voice during the meeting and again invited them to meet to

[19] The IEP explains that the five hours per year of PT services are to be implemented from January 16, 2007 to May 17, 2007, which equates to approximately one hour per month of PT services for the remainder of the 2006-2007 school year.

discuss all of their concerns. Because White believed that the number of people at the IEP meetings was perhaps causing frustration to the parents, she offered to meet with them individually. Plaintiffs' parents did not respond to White's letter. Because [redacted]'s May 9, 2007 IEP meeting was tabled by Plaintiffs' parents, White sent the parents a letter on May 10, 2007 containing two dates and times to meet to complete [redacted]'s IEP. White again invited Plaintiffs' parents to contact her with any additional questions or concerns. White did not receive a response from Plaintiffs' parents. (Tr. pp. 732-744; J.C. Ex. p. 0008, 0013-0014.)

[redacted]'s IEP for the 2007-2008 school year was completed on May 17, 2007. [redacted] was present at the meeting. The minutes reflect that [redacted]. was angry and upset at this meeting. [redacted]'s IEP team devised a plan to make up for any missed services. [redacted]'s IEP team offered to provide compensatory services over the summer, which [redacted]. refused on grounds that [redacted] needed the same summer break that regular education students receive and summer services would interfere with a family vacation. As a result, the IEP team recommended providing these ESY services during the 2007-2008 school year and a plan for the implementation of these services was developed. (Tr. pp. 52-52, 727-728; S.J. Ex. pp. 0099-0142.)

In addition to the plan for compensatory services developed by the IEP team, [redacted]'s IEP team developed an IEP for the 2007-2008 school year that called for three hours per week of direct 1:1 education from a teacher, 1.5 hours per week of direct 1:1 speech language services, 6 hours per month of ABA therapy, thirty minutes per week of direct 1:1 instruction from a sign language instructor, 2 hours per month of OT and one hour per month of PT. Carol Quinn and Caroline Whitten concur that these were appropriate services. [redacted]'s parents did not agree with or sign this IEP, although they did not file a due process complaint until the following year, in May of 2008. (Tr. pp. 52-52, 573, 686, 727-728; S.J. Ex. pp. 0099-0142.)

**E. Speech Services**

Kelly Hetzel with Aurora Strategies testified as an expert in diagnosing and providing speech and language services.[20] Hetzel provided speech services to the Plaintiffs for several years and supervised other therapists who also administered speech services to the Plaintiffs. Hetzel stopped seeing the Plaintiffs because of logistical reasons and due to the change in payor source, not because the Plaintiffs did not need speech services. At the time Hetzel provided services to the Plaintiffs, they were receiving all of the services that Medicaid would allow. However, "for children at the first percentile who have severe impairments, the level of intensity should be much greater than that. And so, when you count all of the hours of available therapy, they could have used three or four hours a day of speech therapy on a regular basis, five days a week, in order to make progress and maintain that progress." Hetzel also testified that if there was a lapse in speech services, you would expect "regression in skills" and that it would not be appropriate to have a lapse in services for several months. In Hetzel's expert opinion, she feels that the Plaintiffs continue to need extensive speech and language services. (Tr. pp. 109-110, 113, 126, 132.)

Hetzel testified that [redacted] has a

> severe speech and language impairment. He's nonverbal for the most part, functionally. The oral-motor challenges, low tone which, low muscle tone in his oral-motor area translates to difficulty with chewing and swallowing and eating as well as making speech sounds. And so, you combine all of those with receptive and expressive language challenges and communication skills, and he has even less than a first percentile overall communication skills and oral-motor skills, although oral-motor was ranked higher than communication skills. But severely impaired in terms of functional communication.

[20] Hetzel has a Masters Degree in Speech Pathology and currently works for Aurora Strategies, which is a therapy center providing occupational, speech, and physical therapy. She is the owner of the Center and also does speech therapy and diagnostics. She has been a Speech Pathologist since 1988. She is professionally affiliated with the Georgia Speech and Hearing Association, American Speech and Hearing Association, and the American Academy of Private Practice and Audiology. (Tr. pp.105-109, 130.)

Hetzel also testified that [redacted] "is similar to [redacted] in that he also has low tone in the oral-motor area, severe receptive language and expressive language impairment. Gestural skills and his ability to communicate through gestures and pointing and body language were stronger than [redacted], so the receptive language skills were higher. His knowledge base was higher." He has also "initiated more attempts to communicate in terms of pointing at what he wanted to do and using picture types of communications devices." [redacted] has "emerging language skills" but "very few actual words." Hetzel testified that [redacted] also has low muscle tone. She has an "eagerness to communicate and great eye contact and reciprocity of interaction...but, still, her receptive language and expressive language skills were very delayed, and her oral-motor skills impacted her articulation." (Tr. pp. 110-111.)

During the time that Hetzel provided speech services to the Plaintiffs, "they still had a significant need for therapy, for intervention." In 2006, Hetzel performed evaluations on the Plaintiffs and found "no significant global changes." Although they had "improvement in auditory processing and sensory processing areas," they still had "challenges that were significant in terms of being moderately to severely impaired in those areas such as processing and auditory processing." Based on these evaluations, Hetzel recommended intensive speech and language therapy services. Hetzel also testified that the amount of speech services and consultative services offered to each Plaintiff over the 2005-2006, 2006-2007 and 2007-2008 school years was not appropriate.[21] (Tr. pp. 114, 123, 125.)

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[21] In Hetzel's expert opinion, forty-five minutes of speech services with fifteen minutes of consultative services for [redacted] would "never" be appropriate and two hours of weekly services of speech plus fifteen minutes of consultative services would not be appropriate for [redacted]. In Hetzel's expert opinion, thirty minutes per week of speech services plus fifteen minutes of consultative speech services would not be appropriate for [redacted] and one and a half hours of speech services per week plus fifteen minutes of consultative services would still not be "near enough" services for [redacted]. In Hetzel's expert opinion, thirty minutes per week of speech services plus fifteen minutes of consultative services would not appropriate for [redacted] and

**F. Applied Behavior Analysis (ABA)**

**1. North Georgia Autism Center**

Jessica Pugh testified as an expert in behavior analysis on Plaintiff's behalf.[22] Pugh and the North Georgia Autism Center provide services based on the principles of ABA to the Plaintiffs. The principles of ABA are applied when a teacher teaches "the children skills through behavior as a target for change," such as "self-help skills, academic skills, functional skills, working on things from zipping jackets and identifying letters and various other skills." Pugh also testified that in her opinion, a gap in services would result in possible regression of acquisition and behaviors. (Tr. pp. 144-145, 147, 160.)

On April 9, 2008, Pugh did an intake appointment with [redacted] and [redacted] and on April 23, 2008, did an intake appointment with [redacted]. Based on these intake appointments, Pugh testified that the amount of ABA services offered by Gwinnett County was not appropriate for the Plaintiffs, and recommended 10 to 15 hours per week of ABA for [redacted] and 15 to 20 hours per week of for [redacted] and [redacted], regardless of whether or not the services are provided in a school setting or in a home-based setting. (Tr. pp. 152, 153, 172; Pls.' Notebook, Tabs 5, 11, 17.)

Pugh testified that [redacted] is working on skills to try to create as much independence as possible. He is working on "drinking out of a cup, sorting silverware, zipping up his jacket. So, some pretty simple skills as far as what you would typically see with a typically 19-year old." Pugh further testified that "[redacted] has some good academic skills. Out of the three, he

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one and a half hours per week of speech services plus fifteen minutes per month of consultative services would not be appropriate for [redacted]. (Tr. pp. 125-126.)

[22] Pugh has ten years of experience as a behavior analyst. She has a Masters Degree in psychology with a specialization in applied behavior analysis and developmental disabilities. She is currently a board certified behavior analyst and works for the North Georgia Autism Center. (Tr. pp. 144-145, 154, 173.)

probably has the most receptive language ability and ability to identify ABLLS and to be able to categorize items into different categories. He has some language, although it is hard to understand him." Finally, with respect to [redacted], Pugh testified that "[redacted] has the most expressive language out of the three, the easiest to understand. She's working on letters and money with her, and some academic skills, and moving more towards trying to get those functional skills to create as much independence as possible." (Tr. pp. 147-148.)

**2. Southern Behavioral Group**

Jeff Hine testified on behalf of Gwinnett County. He works for Southern Behavioral Group (SBG) and is a board-certified behavior analyst and provided ABA services to the Plaintiffs for one and a half hours per week per child. Hine did discrete trial teaching (DTT), which was "running multiple trials based on their goals." Hine collaborated with other team members via email. The other members would take their data sheets home, enter them into the computer, and then send it to Hine. He would then run the percentages and write progress reports. (Tr. pp. 464-466, 470-471.)

SBG began providing ABA services to [redacted] in March 2007. They provided monthly progress reports to the school, who in turn gave them to the parents. In April 2007, the SBG Progress Report indicated that a Preference Assessment was completed. It also indicated that [redacted] was working on 15 DTT programs.[23] The next progress report is September 2007. This

[23] The summary states that [redacted] has currently worked on 11 of his 15 DTT programs. He has made minimal progress on two programs; trace vertical line and copy vertical line. [redacted] has made good progress to follow instructions. No progress has been made on manipulate fasteners and receptive labeling. Further analysis of the remaining six programs show variability associated with a chance selection of the correct response. Therefore, his correct responses do not necessarily show progress but most likely are explained by the fact that in any array of three items [redacted] will select the correct response on average 33% of the time. Analysis of baseline and DTT data suggest that the goals and objectives may not be aligned with his current level of performance and an assessment of his abilities is warranted.

Progress Report indicates that [redacted] has 16 DTT programs. On average, 13 programs are taught during one 1.5 hour session. The summary states, "[redacted] is making little to no progress on the majority of his programs. He has mastered one step of one program. Due to length of discrete trial training sessions, several of [redacted]'s goals are not addressed during each session. His lack of progress on some programs in DTT may suggest that objectives are too difficult for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (H.J. Ex. pp. 0216-0226, 0280-0288.)

The next progress report provided by SBG is October 2007. This report indicates that [redacted] is working on 16 DTT programs, and on average, 12 programs are taught during one 1.5 hour session. The summary states "[redacted] is making progress on receptive name identification, community signs and matching numbers. [redacted]'s other programs show inconsistent or declining data trends. Due to length of his sessions, some of [redacted]'s goals are not addressed during each session. His lack of progress on some programs in DTT may suggest that objectives are too difficult for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (H.J. Ex. pp. 0294-0302.)

The next progress report is November 2007. This report indicates [redacted] has 16 DTT programs, and on average, 12 programs are taught during one 1.5 hour session. The summary states "[redacted] is making progress on matching sizes. [redacted]'s other programs show inconsistent or declining data trends. Due to length of his sessions, some of [redacted]'s goals are not addressed during each session. His lack of progress on some programs in DTT may suggest that objectives are too difficult for his present levels of performance. In order to assess current

skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (H.J. Ex. pp. 0314-0322.)

Hine admitted that the graphs show that [redacted] was not making progress on the "answer who or what" goal, on the "answer yes or no questions" goal, on the "community signs" goal, on the tracing goal, and it even appeared that he was regressing on some of his goals. Hine admitted that it appeared that [redacted] was making some progress on some goals but was not making progress on other goals, but that there is really no explanation in the summaries, which was provided to the parents, of how [redacted] is really doing. Furthermore, in November 2007, it appears that [redacted] was actually only making progress on one goal out of a total of 14, which Hine admitted was not actually making global progress at all. (Tr. pp. 484-488.)

The next progress report is December 2007. This report indicates [redacted] has 16 DTT programs, and on average, 12 programs are taught during one 1.5 hour session. The summary states, "[redacted] is making progress on matching sizes and signing. [redacted] has mastered one step on two programs; matching sizes and signing. [redacted]'s other programs show inconsistent or declining data trends. Due to length of his sessions, some of [redacted]'s goals are not addressed during each session. His lack of progress on some programs in DTT may suggest that objectives are too difficult for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (H.J. Ex. pp. 0328-0335.)

In December 2007, [redacted] was working on 16 DTT programs, and he was not making progress on the tracing goal or on the "answer yes or no questions" goal. [redacted] was making progress on only two goals out of a total of 16, which does not constitute overall progress. The

progress report does not indicate why [redacted] was not making progress and no ABLLS was ever conducted in November 2007 or December 2007 for Hakeem. (Tr. pp. 488-490.)

SBG began providing ABA services to [redacted] in March 2007. They provided monthly progress reports to the school, who then in turn gave them to the parents. The first progress report for Jeremiah is April 2007. The report indicates that [redacted] has 18 DTT programs, and on average 6-7 programs are taught during each 45 minute session. The summary states, "For the remaining seven programs, [redacted] had made little to no progress. His lack of progress on some programs in DTT may suggest that objectives are too difficult for his present levels of performance. Without a current assessment (i.e. the Assessment of Basic Language and Learning Skills) (ABLLS-R) of his academic skills, it is difficult to draw definitive conclusions. It is recommended that a new skills assessment (ABLLS) be completed in order to determine [redacted]'s current level of performance." (J.J. Ex. pp. 0331-0342.)

The next progress report is not given until September 2007. [redacted] still has 18 DTT programs, and on average, 7 programs are taught during each two 45-minute sessions per visit. The summary states, "[redacted] is making little to no progress on the majority of his programs. Due to length of the discrete trial training sessions, several of [redacted]'s goals are not addressed during each session. [redacted] has not mastered any steps of any program. His lack of progress on some programs in DTT may suggest the objectives are too lofty for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (J.J. Ex. pp. 0368-0377.)

The next progress report was October 2007. [redacted] has 18 DTT programs, and on average, 9 programs are taught during each two 45-minute session. The summary states,

"[redacted] is making progress on two programs, prepositions and name identifications. The remainder of the programs show inconsistent trends and do not indicate that progress is being made. Due to length and frequency of his sessions, several of [redacted]'s goals are not addressed during each session. [redacted] has not mastered any steps of any program. His lack of progress on some programs in DTT may suggest the objectives are too lofty for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (J.J. Ex. pp. 0383-0391.)

The next progress report is November 2007. [redacted] had 18 DTT programs, and on average, 9 programs are taught during each two 45-minute sessions. The summary states, "[redacted] is making progress on two programs, receptive identification of letters of his name and name identification. The remainder of the programs show inconsistent trends. Due to length and frequency of his sessions, several of [redacted]'s goals are not addressed during each session. [redacted] has not mastered any steps of any program. His lack of progress on some programs in DTT may suggest the objectives are too lofty for his present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (J.J. Ex. pp. 0399-0407.)

Hine began working with [redacted] in November 2007. [redacted] was working on 18 DTT Programs and is not making progress on many of the goals. In fact, [redacted] was making progress on only two out of 18 goals. Furthermore, the Progress Report states, "[redacted] has not mastered any steps of any program." (Tr. pp. 490, 492-493.)

The next progress report is December 2007. [redacted] had 18 DTT programs. In December 2007, [redacted] continued to work on 18 DTT programs, but still was not making

progress on many of his goals. He was still making progress on only two of the 18 DTT programs, which does not equate to overall progress. Nothing in the reports explain why [redacted] was not making progress and no ABLLS was ever conducted in November 2007 or November 2007 on [redacted]. (Tr. pp. 494-495; J.J. Ex. pp. 0444-0449.)

SBG began providing ABA services to [redacted] in March 2007. They provided monthly progress reports to the school, who then in turn gave them to the parents. The first progress report provided was April 2007. The report indicates that [redacted] has 13 DTT programs, and on average, 6-7 programs are taught during each 45-minute session. The summary states, "[redacted] demonstrated little or no ability to perform the objectives presented. The lone exception to this was the following direction program, which [redacted] demonstrated mastery of during baseline. Similarly, during DTT [redacted] continues to demonstrate limited to no ability to perform steps independently. The exception to this is the consonant-vowel program. During this program, [redacted] displays the ability to imitate the word 'me' with an average of 63% accuracy. Analysis of the baseline and DTT data suggests that the objectives identified for instruction might be too advanced for her present levels of performance. If this is the case, [redacted] might become frustrated with the current instructional routine. An assessment (i.e., Assessment of Basic Language and Learning Skills-ABLLS-R) of [redacted]'s current abilities is warranted to develop more appropriate goals and objectives." (S.J. Ex. pp. 280-290.)

The next progress report was not until September 2007. [redacted] had 14 DTT programs, and on average, 12 programs are taught during each two 45-minute sessions per visit. The summary states, "[redacted] is making progress on one program and has mastered the current step in another program. All other programs do not indicate progress is being made at this time. Due to length of discrete trial training sessions, some of [redacted]'s goals are not addressed during each

session. Her lack of progress on some programs in DTT may suggest that objective are too complex for her present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (S.J. Ex. pp. 0309-0316.)

The next progress report was October 2007. [redacted] had 14 DTT programs, and on average, 12 programs are taught during each two 45-minute sessions per visit. The summary states, "[redacted] is making progress on receptive object identification and consonant vowel combinations. There is no indication of progress on [redacted]'s other programs because of inconsistent data trends. Due to length of discrete trial training sessions, some of [redacted]'s goals are not addressed during each session. Her lack of progress on some programs in DTT may suggest that objective are too complex for her present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (S.J. Ex. pp. 0322-0329.)

The next progress report was November 2007. [redacted] had 14 DTT programs, and on average, 12 programs are taught during each two 45-minute sessions per visit. The summary states, "[redacted] is making progress on receptive object identification and consonant vowel combinations. There is no indication of progress on [redacted]'s other programs because of inconsistent data trends. Due to length of discrete trial training sessions, some of [redacted]'s goals are not addressed during each session. Her lack of progress on some programs in DTT may suggest that objective are too complex for her present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." (S.J. Ex. pp. 0335-0342.)

Hine began working with [redacted] in November 2007. [redacted] was working on 14 DTT programs but was not making progress on many of her goals. In fact, she was making progress on only two of the 14 programs, which does not demonstrate overall progress. The next progress report was December 2007. Sarah had 14 DTT programs, and on average, 12 program are taught during each two 45-minute sessions per visit. The summary states, "[redacted] is making progress on consonant vowel combinations. There is no indication of progress on [redacted]'s other programs because of inconsistent data trends. Due to length of discrete trial training sessions, some of [redacted]'s goals are not addressed during each session. Her lack of progress on some programs in DTT may suggest that objective are too complex for her present levels of performance. In order to assess current skill levels, it is suggested that the Assessment of Basic Language and Learning Skills-Revised Edition (ABLLS-R) be completed." In December 2007, [redacted] was still working on 14 DTT programs and is not making progress on many of her goals. No ABLLS was ever conducted in November 2007 or December 2007 on [redacted]. (Tr. pp. 498-501; S.J. Ex. pp. 0355-0362.)

The progress reports for all three children were done based on the data Hine provided to Meaghan Timko. These are the only reports that were supplied to Gwinnett County, who then provided them to the parents. No additional data or documentation was supplied to explain why the Plaintiffs were not making progress or what changes should be made to improve their performance. (Tr. pp. 502-503.)

**G. Physical Therapy Services**

Dana Kessler testified as an expert in evaluating gross and fine motor skills and administering physical therapy. [24] Kessler worked with [redacted] and [redacted] for five and a half

[24] Kessler graduated from the University of Pittsburg in 1978 with a degree in 1978. She has been working as a physical therapist continually since that time. She currently works for All

years. She currently sees [redacted] and [redacted] for sixty minutes each, two times per month, due to Medicaid restrictions. She testified that if Medicaid and payment were not an issue, [redacted] and [redacted] would each require sixty minutes, one time per week of PT. Since Kessler has been working with the Plaintiffs, they have made progress. However, Plaintiffs continue to need therapy and the amount of PT services proposed for the Plaintiffs by Gwinnet County is not appropriate. (Tr. pp. 178-184, 187-188.)

Kessler testified that "[redacted] has some coordination, muscle coordination deficits. He has an abnormal gait pattern where he flexes at the knees and leans in one direction. The elbows are flexed and abducted...He's unable to jump, skip, and hop. It's difficult for him to, say, step off of a step without hand support. His balance responses are delayed. Speech is delayed." In November 2006, [redacted] required "moderate assistance to travel over a ladder bridge. He had difficulty with motor planning, his balance. He needed minimal assistance to do climbing and moderate assistance to climb down." (Tr. p. 183, 185.)

With respect to [redacted], Kessler testified that "[redacted], not only does she have the coordination issue and balance deficits – those are more severe...she also has some aversions to some physical activities which are challenging." In November 2006, Kessler observed that [redacted] "was walking with a wide base of support, arms abducted, hips and knees flexed. She is able to walk independently in level and on uneven surfaces, going up and down a moderate incline. She is able to catch and return a 12-inch ball five times with appropriate eye contact. She can catch and return a 28-inch ball three times with appropriate eye contact." (Tr. p. 183, 185-186.)

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about Kids as a contract physical therapist, going into people's homes and doing physical therapy with children. She currently administers physical therapy approximately forty hours per week. She also evaluates gross motor and fine motor skills, social skills and cognitive abilities. Kessler's hourly rate is $50.00 per visit. (Tr. pp.178-182, 187.)

**H. 2007-2008 School Year**

Gwinnett County encountered difficulties establishing a schedule of service providers in the home that satisfied Plaintiffs' parents at the start of the 2007-2008 school year. Plaintiffs' parents limited the number of providers in the home to two individuals at a time and limited the hours when providers could be in the home. Plaintiffs' parents tightly controlled ingress and egress from the home. While school staff was in the home, the front door was key-locked and, typically, [redacted]. kept the key on her person. (Tr. pp. 474-475, 559, 572, 601, 603-605, 670-671, 688-689; J.C. Ex. p. 0022.)

Except for a few isolated instances, Plaintiffs' parents controlled the schedule so as not to permit collaboration among providers.[25] Even when collaboration had proven to be successful with Plaintiffs on one of the rare occasions it was allowed, Plaintiffs' parents orchestrated the schedule[26] so that "when we reentered for the next therapy session, the schedule was structured again to be one-on-one direct instruction." Plaintiffs' parents also controlled to a large degree the instructional materials used with Plaintiffs. Providers found themselves having to use the instruction time, which was already limited by the parents' scheduling requirements, to discuss whether the materials demanded by the parents should be used versus materials brought for use by the providers. In one instance, Rifton chairs were brought in to assist Plaintiffs with

[25] Collaboration is a team approach to teaching, whereby therapies and related services for a student are delivered in a classroom or natural setting. Each professional is an expert in his/her particular field, and they are able to work together in a small group setting to solve problems and to address behaviors as they occur in the natural environment. Hine, Buono, Cruce, and Whitten testified that collaboration is more motivating and beneficial for students than teaching skills in isolation. (Tr. pp. 467-471, 542-545, 566-567, 586-589, 637-640.)

[26] Plaintiffs' parents' limitation on permitting only two providers in the home at a time and requiring services to end by 1:00 p.m. on Monday, Tuesday, Wednesday, and Friday made scheduling services for Plaintiffs difficult. (Tr. pp. 670-671; J.C. Ex. pp. 0022-0023.)

positioning; however, [redacted]. did not like the chairs and took them out to the driveway. (Tr. pp. 369, 373-374, 468-471, 566-567, 587-590, 596-599, 637-689.)

The delivery of instruction in the home was hindered by multiple distractions. Plaintiffs' parents only permitted instruction to be given in the kitchen or the bonus room. The kitchen was a high traffic area and the bonus room provided distractions that made maintaining Plaintiffs' attention difficult and required extensive time to get Plaintiffs back on task once distracted. [redacted] also frequently engaged in dialogue with teachers during their instructional time, often showing them her educational materials and questioning the materials the teachers brought to use with Plaintiffs. (Tr. pp. 370-371, 373-374, 593-595, 648, 636.)

Plaintiffs' IEP teams began considering lesser restrictive placements in 2007 after a change in the special education regulations made a doctor's referral of homebound only one piece of information that the IEP team considered when determining a least restrictive environment ("LRE"). Prior to that change in the regulations, IEP teams were encouraged by the Georgia Department of Education not to question a physician's referral of homebound education and IEP teams "were pretty much at the mercy of whatever the doctor wrote on the homebound referral form." (Tr. pp. 667-668.)

During the course of the 2007-2008 school year, Carol Quinn made numerous attempts to contact Plaintiffs' parents in an effort to set up a meeting to discuss the Plaintiffs' placements. These efforts included telephone calls that went unanswered, voice mail messages that were not returned, and letters sent several different ways, including registered mail and hand delivery, which were often unclaimed and unanswered.[27] (Tr. pp. 668-669.)

[27] Contacting Plaintiffs' parents by email was not an option, as Plaintiffs' parents preferred that Gwinnett County not email them. (Tr. p. 669.)

Following the conclusion of [redacted], [redacted], and [redacted]'s annual IEP meetings in the spring of 2007, White wrote yet another letter to Plaintiffs' parents in July inviting them to an IEP meeting to discuss whether additional compensatory education should be provided. White testified that she wanted to "find out what they needed and provide [it]" whether "it [the parents' calculation of missed hours] was right or wrong." White additionally invited Plaintiffs' parents to meet with her informally over coffee to discuss their concerns. White did not receive a response from Plaintiffs' parents to the letter. (Tr. pp. 748-750; J.C. Ex. pp. 0017-0018.)

Quinn became aware that [redacted] was dissatisfied with the schedule of providers in her home in the fall of 2007. In response, Quinn called [redacted] and left a voice mail in an attempt to set up a meeting to work on the schedule together. Quinn did not receive a reply from [redacted]. On September 24, 2007, Quinn sent Plaintiffs' parents a letter offering to meet them at their home or another convenient location to discuss the schedule or for Plaintiffs' parents to send Quinn a schedule and "we would send people at those times." Quinn does not recall receiving a response from Plaintiffs' parents to this letter.[28] (Tr. pp. 670-672; J.C. Ex. pp. 0021, 0023.)

On October 30, 2007, Quinn sent Plaintiffs' parents another letter in an effort to set up a meeting to discuss Plaintiffs' recently completed assistive technology evaluations and to modify Plaintiffs' IEPs to include recommended assistive technology equipment as necessary. Quinn provided the parents with eleven (11) different dates during which the meetings could be held. Quinn did not receive a response from Plaintiffs' parents to this letter.[29] (Tr. pp. 672-673; J.C. Ex. p. 0025.)

Over a month passed without Quinn receiving a response from Plaintiffs' parents concerning scheduling IEP meetings for Plaintiffs. On December 4, 2007, Quinn sent another

[28] A copy of the letter was delivered by certified mail on October 19, 2007. (Pls. Ex. 1.)
[29] A copy of the letter was delivered to Plaintiffs' parents by certified mail on November 1, 2007. (Pls. Ex. 2.)

letter to Plaintiffs' parents regarding scheduling an IEP meeting to review the assistive technology evaluations. Quinn gave Plaintiffs' parents six different dates during which the meetings could be held and asked for a reply. Plaintiffs' parents did not respond. (Tr. pp. 672-673; J.C. Ex. p. 0026.)

Quinn sent yet another letter to Plaintiffs' parents on December 13, 2007 informing them that since they had not responded to her previous attempts to schedule the meetings, the meetings would be held on December 19, 2007. Having now informed Plaintiffs' parents that a meeting had been scheduled, Quinn received her first response of the school year from Plaintiffs' parents on December 17, 2007, when they wrote her a letter informing her that "time will not allow us to attend the meetings" and asking that they be provided with additional dates. (Tr. pp. 673-674; J.C. Ex. pp. 0027-0028.)

Following the repeated attempts to schedule a meeting with the parents, and without the presence of the parents, Plaintiffs' IEP meetings were held on December 19, 2007 to review their assistive technology evaluations. Quinn testified that she believed it was important to hold the meetings because (1) the assistive technology evaluations had been completed some time ago, (2) the parents had been given multiple opportunities to participate in the meetings by selecting a convenient date, and (3) goals and objectives could be modified in time for the start of a new semester. Quinn advised Plaintiffs' parents of what occurred at the meeting by sending them copies of the IEPs and minutes following the meeting and advised Plaintiffs' parents to contact her with questions or concerns. Quinn did not receive a response back from Plaintiffs' parents. (Tr. pp. 676-678.)

The IEP and minutes reflect that among the matters discussed at the IEP meetings on December 19, 2007 was the need for additional medical information to determine whether a

school placement could be appropriate. The IEP teams additionally amended some of the ABA goals, reviewed assistive technology evaluations, reviewed progress, and discussed the need to collaborate within the educational setting. (Tr. pp. 678-679; H.J. Ex. pp. 0149-0179; J.J. Ex. pp. 0173-0203; S.J. Ex. pp. 0156-0185.)

Plaintiffs' parents inappropriately and increasingly directed their anger and frustration about Gwinnett County towards the school personnel who were in the home providing services to Plaintiffs.[30] As principal of Oakland School, Quinn was responsible for the homebound program that sent staff into Plaintiffs' home. During the 2007-2008 school year, several staff members reported to Quinn that they felt they were in a hostile work environment in the

[30] For purposes of illustration, the Court notes the following examples:

- In January 2008, Jeff Hine provided ABA services in the Plaintiffs' home and was confronted by Plaintiffs' father who believed that Hine had taken photographs of [redacted]. Although Hine advised [redacted]. that he had not taken pictures of [redacted], [redacted]. continued arguing with Hine and got in Hine's face. Hine testified that he "had never been met with that type of hostility working with somebody's children. And I was uncomfortable because of how aggressive [his] nature was towards me." Hine could not leave Plaintiffs' home during this encounter until [redacted]. or [redacted] let him out of the home because he did not have a key. Hine reported this incident to his supervisor, Mike Mueller, via email, after returning to the office. (Tr. pp. 474-475; Ex. D. 50.)
- Caroline Whitten described an incident in the Plaintiffs' home during the 2007-2008 school year in which Plaintiffs' parents became very upset at Whitten and her colleague Joanna Scoggins while they were at the home as part of Plaintiffs' assistive technology assessments. [redacted] became very upset that Whitten and Scoggins did not bring additional equipment to use during the assessment and called for [redacted]. Whitten testified that [redacted] and [redacted]. "were yelling and screaming at us, that we were the experts, we had wasted their time and their children's time, [and] we didn't know what we were doing." Whitten and Scoggins tried to leave the home but [redacted] "was in the doorway right by the steps coming down into the kitchen. And he was walking back and forth, and they were screaming at us. It was explosive screaming." Because Whitten and Scoggins were locked in the home, they were unable to exit until the parents "finally calmed down enough to let us go. And they unlocked the door." (Tr. pp. 557-559.)
- Amanda Miller Buono who provided OT services in the Plaintiffs' home testified that Plaintiffs' parents expressed open hostility towards Gwinnet County and became angry enough that she felt intimated in their home. Compounded with Plaintiffs' parents' hostility was "the fact that you were not allowed to leave without permission due to the doors being locked." (Tr. pp. 600, 604-605.)

Plaintiffs' home. Staff members reported safety concerns regarding being locked in the home. This created a serious safety issue, as educators are trained on the importance of knowing how to exit a location and how to safely get children out in case of a fire or other emergency. (Tr. pp. 475, 555-559, 600-605, 649, 689-691.)

In response to receiving reports that some staff members were considering filing a grievance with Gwinnett County concerning having to work in a hostile work environment, Quinn immediately contacted Human Resources, as is protocol for principals. Quinn then contacted Susan White. White and Quinn immediately scheduled a meeting with homebound staff who were serving Plaintiffs and a representative from Human Resources. (Tr. pp. 689-690, 753-754.)

At the meeting White and Quinn listened to the staff members' concerns about being in the Plaintiffs' home in an effort to discern conditions in the home that were making the staff members uncomfortable versus conditions in the home that were unsafe or outside of the scope of the employees' jobs. Central among the concerns was the safety hazard of being locked in the home without a way to exit on one's own volition. A physical therapist in the home reported that she was so concerned for her safety that she called her husband as she entered the home and called her husband when she left the home. Another staff member had inquired as to whether she would lose her job if she refused to go back to the home. (Tr. pp. 753-756.)

At the meeting White asked the staff members what needed to happen in order for the staff to be able to provide services to the Plaintiffs' in the home in a reasonable way that would continue to benefit the Plaintiffs. White drafted a letter to Plaintiffs' parents containing the points that the staff members articulated as needing to occur in the home for the staff to feel safe

and to be able to do their jobs. Being locked in the home and unable to exit was of paramount concern. (Tr. pp. 753-754; J.C. Ex. pp. 0029 – 0040. )

Based on staff members' reports that the door was locked and no key was left in the door because of concerns that [redacted] would take it out, White wrote in her letter of January 25, 2008 that each staff member was required to have a key to exit the home during the duration of the instructional/ therapy sessions in the home. White testified that her intent was for Plaintiffs' parents to give a staff member a key when they entered the home, the staff member would keep the key in their pocket or in their possession.[31] "And then when they left, they would turn the key back in. So, that way I thought they can protect the kids. The kids won't leave. The kids won't take the key. Everybody can get out." (Tr. 756; J.C. Ex. pp. 0029 – 0040.)

White additionally informed Plaintiffs' parents that they must interact with staff members in a civil and courteous manner and that providers would leave the home if treated in a hostile or threatening manner. At the time the letter was sent, of course, staff members did not have this option. Moreover, White sought permission for Gwinnett County to consult with Dr. [redacted] to obtain more information regarding Plaintiffs' medical conditions, as the current information provided was insufficient for the IEP team to recommend the continuation of homebound services in light of the change in special education regulations. (Tr. p. 758; J.C. Ex. pp. 0029 – 0040.)

Plaintiffs' parents refused to comply with the conditions set forth in Gwinnett County's January 25, 2008 letter. When staff members phoned Quinn from outside the home and reported additional concerns in February, Quinn instructed them to return to the school. The last day

[31] Quinn testified that the staff member was to keep a key on their person while in the home and return the key to Plaintiffs' parent as the staff member left the home so that the individual would be able to exit the house in an emergency without having to depend on Plaintiffs' parents to let them out of the house. (Tr. pp. 692.)

services were provided to Plaintiffs by Gwinnett County was February 19, 2008. Acknowledging that it was critical to have an IEP meeting to discuss services for Plaintiffs in light of Plaintiffs' parents' refusal to comply with the terms of the January 25, 2008 letter, Quinn wrote a letter on February 14, 2008 scheduling an IEP meeting for Plaintiffs on February 27, 2008.[32] While Plaintiffs' parents did not immediately respond to Quinn, they did write a letter to White inquiring as to the purpose of another IEP meeting. (Tr. Pp. 680-681, 692.; J.C. Ex. Pp. 0041-0042.)

On February 25, 2008, two days before the February 27, 2008 IEP meetings were to convene, Plaintiffs' parents wrote a letter to Quinn informing her that "there has been another death in my family and we will not be able to attend the IEP meeting on February 27, 2008." Although their children were not receiving any educational services at that time, Plaintiffs' parents wrote that they would not be available to attend IEP meetings until "March 31, 2008, April 21, 28, and May 5, 12, or 26." They also indicated that the meetings would need to be held separately at each of the Plaintiffs' neighborhood schools "and that the dates would soon become unavailable." Despite the explanation provided by the parents for their inability to attend except for the dates provided by the parents, Quinn sent another letter scheduling an IEP meeting for March 4, 2008 for [redacted], March 5, 2008 for [redacted], and March 7, 2008 for [redacted].[33] Plaintiffs' parents did not respond to Quinn's letter. (Tr. pp. 681-682; J.C. Ex. pp. 0045-0046.)

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[32] White sent the January 25, 2008 letter because she believed she could work with Plaintiffs' parents to work through the issues that personnel were having in delivering services to Plaintiffs in the home. When it became clear that this would not happen, it became imperative to schedule an IEP meeting right away to provide services to Plaintiffs. (Tr. p. 759.)

[33] [redacted] testified that, although her children were not receiving any educational services at the time she wrote her letter on February 25, 2008 she would only be available one day at the end of March for an IEP meeting to discuss services for her children "because I was having to go to Memphis, Tennessee" for a death in her family "and my mom had a heart attack . . . and I was still dealing with the estate of my father who passed. And we were having court dates that were

On March 4, 2008, [redacted]'s IEP team gathered at North Gwinnett High School to hold an IEP meeting. When Plaintiffs' parents failed to appear after 30 minutes, Quinn called the Plaintiffs' home. Quinn left a voice mail for Plaintiffs' parents informing them that the team was gathered for [redacted]'s meeting and asked the parents to please call the school. The team waited another 30 minutes before departing without holding the meeting. Quinn never received a return telephone call from the Plaintiffs' parents. (Tr. p. 682.)

On March 10, 2008, Quinn sent a letter to the Plaintiffs' parents notifying them that IEP meetings for Plaintiffs had been rescheduled and would be held on March 17, 2008, again a date that that Plaintiff's parents had not proposed since they were out-of-state. Quinn informed them that the purpose of the meeting was to discuss educational placement. Again, Plaintiffs' parents did not attend the IEP meetings. Gwinnett County proceeded with the meetings without the parents in attendance on March 17, 2008 and determined that, given the medical information available to them, the LRE for Plaintiffs was a school based setting. (Tr. p. 683.)

The IEP team determined that [redacted] would attend the transition class at Oakland Meadow School, [redacted] would attend a moderate intellectual disabilities class at Lanier Middle School, and [redacted] would attend a moderate intellectual disabilities class at Riverside Elementary School. Quinn sent the Plaintiffs' IEPs and a letter of prior written notice to Plaintiffs' parents following the meetings. Although Plaintiffs' parents notified Quinn on March 21, 2008 that they disagreed with the March 17, 2008 IEPs, they did not file a due process complaint until May 10, 2008. At that time, Gwinnett County offered to provide educational

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back and forth . . . and I had to be in Memphis and could not meet on these times because of handling the estate of my father." (Tr. pp. 83-84; J.C. Ex. pp. 0045.)

services in the home, but Plaintiffs' parents declined services.[34] (Tr. pp. 422, 425, 683-684; J.C. Ex. pp. 0048-0050; H.J. Ex. pp. 0181-0190E; J.J. Ex. pp. 0208-0243; S.J. Ex. pp. 0187-0129.)

[redacted]'s teacher, Natalie Watson, a teacher with eleven years of experience teaching children with cognitive disabilities both in the home setting and in the school setting, did not find Plaintiffs' needs to be any different from the intellectually disabled children she taught in the school setting.[35] Watson believes that the appropriate and least restrictive setting for Plaintiffs is a school-based setting. (Tr. pp. 379-380, 387.)

Whitten, an expert in the areas of teaching students with cognitive disabilities, adapting the curriculum for children with cognitive disabilities, the assessment of their needs of assistive technology, and integrating assistive technology in the curriculum for children with cognitive disabilities, also believes that a school-based setting is appropriate for Plaintiffs. Such a setting provides Plaintiffs the opportunity to consistently implement the skills they are learning in naturally-occurring settings and to generalize those skills across environments, which is of critical importance as children with cognitive disabilities often are unable to effectively learn skills in isolation. (Tr. pp. 520, 534.)

Carol Quinn, an expert in creating curriculum for children with cognitive disabilities and teaching children with cognitive disabilities, testified that [redacted]'s, [redacted]'s, and [redacted]'s March 2008 IEPs provide appropriate services and that they can be safely educated at Oakland Meadows School, Lanier Middle School, and Riverside Elementary School, respectively. (Tr. pp. 659-660, 666, 686-687.)

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[34] Plaintiffs, however, received services from their private providers during the summer of 2008. (Tr. p. 425.)

[35] One difference Watson did note, however, was that she did not observe the infection-control measures employed in Plaintiffs' home that are employed in the school setting. (Tr. pp. 385-386.)

Significantly, the March 17, 2008 IEPs did not contain a reintegration plan to assist Plaintiffs in re-entering a school environment, even though [redacted] and [redacted] had not attended school in many years and [redacted] had never attended school. (H.J. Ex. pp. 0181-0190E.)

**I. Medical Considerations**

The parties do not dispute that Plaintiffs suffer from neurologic problems and are eligible to receive special education services from Gwinnett County. However, the parties disagree as to the appropriate placement for the Plaintiffs, and more specifically, whether the Plaintiffs may appropriately be educated in a school-based setting. Gwinnett County has provided Plaintiffs with homebound services for many years based on the medical report of Dr. [redacted]. Dr. [redacted] testified that the basis of her recommendation for homebound services is her clinical observation over time that Plaintiffs are healthier when they stay home. Dr. [redacted] explained that due to their severe developmental delays and neurological problems, Plaintiffs do not understand the concept of hygiene, they drool, and they put their hands in their mouths, making them more susceptible to illness. (Tr. pp. 279, 282-283, 396-397.)

Dr. [redacted] admitted that she has never prescribed any medication to Plaintiffs for their nonspecific immune problems because she has never found any abnormalities with their immune systems. She also admitted that she has never recommended that any of the Plaintiffs have a complete immunological work up because she does not believe their immune problem to be severe, but rather, was mild and nonspecific.[36] Plaintiffs' parents also initiated an

[36] Dr. [redacted] testified that she uses the term "nonspecific immune problem" interchangeably with the term "nonspecific immune disorder." Although many of the medical reports she submitted for Plaintiffs to receive homebound therapy use the term "nonspecific immune problem" in describing Plaintiffs' diagnosis, neither diagnosis is found in the ICD-9 code book, a standard book of diagnoses used by the medical community. Rather, the accepted diagnosis in the ICD-9 book is "nonspecific immune deficiency." (Tr. pp. 281, 331-334; J.C. 0053-0054; H.J. Ex. pp. 0023; H.J. Ex. pp. 0076; S.J. Ex. 0039; S.J. 0144; J.J. Ex. 0046; J.J. 104.)

allergy/immunology evaluation for Plaintiffs with [redacted], M.D, who issued a report on September 12, 2008, stating that she could prove no bona fide immune defect. (Tr. pp. 333, 339-342; Def.'s Ex. 1.)

Pursuant to agreement of the parties after the commencement of the present litigation, Dr. Harry L. Keyserling, an expert in pediatric infectious diseases, also reviewed Plaintiffs' medical records provided by Dr. [redacted] and consulted with Dr. [redacted].[37] Dr. Keyserling concluded that Plaintiffs do not have an inherent immune disorder in responding to infection. Specifically, Dr. Keyserling concluded that Plaintiffs' lack of seriously invasive or unusual infections demonstrate that if they do have a problem with their immune systems it would be categorized as mild.[38] Dr. Keyserling testified that the only time isolation would be recommended medically are if a child is born with combined congenital immune deficiency[39] and does not have most of the significant arms of the immune system or if a child requires a bone marrow transplant; otherwise, the

[37] Significantly, Dr. Keyserling was the only physician qualified as an expert in pediatric infectious disease that testified at trial. He received his undergraduate degree at Johns Hopkins University, received his M.D. from Georgetown University School of Medicine, and completed his pediatric residency and fellowship in pediatric infectious disease and immunology at Emory University. Dr. Keyserling has been on the faculty at Emory University since 1982 and continues to treat pediatric patients with infectious diseases in many capacities including as outpatients, as new patients at Egleston Children's Hospital, Hughes Spaulding Children's Hospital, and Grady Hospital, and as patients participating in research studies. Dr. Keyserling is a member of multiple professional organizations including the American Academy of Pediatrics, the Infectious Diseases Society of America, and the Pediatric Infectious Disease Society. Dr. Keyserling is widely published in professional journals and books including having written a chapter on Infectious Diseases in "Medical Care for Children and Adults with Developmental Disabilities," Rubin, Crocker (Eds.), Brooks Publishing, 2006. (Tr. pp. 391-393; S.S. Ex. pp. 323-330.)

[38] Notably, none of the many teachers and therapists who went into the home to provide services to Plaintiffs reported any protocols required by Plaintiffs' parents to guard against the spread of germs other than [redacted]'s request to call and cancel if the provider was ill. Generally, providers entering the home were not asked to wash their hands, to wash or sterilize the materials they brought to use with Plaintiffs, or to take off their shoes. Most providers came to the home directly after serving other children. (Tr. pp. 134-136, 169, 385-386, 561, 593.)

[39] The condition is popularly known as the "boy in a bubble syndrome." (Tr. p. 399.)

medical community recommends normal activity even for children who are immuno-compromised and in need of an organ transplant or have AIDS. Dr. Keyserling recommended no restrictions on Plaintiffs' activities, including school. The Court finds Dr. Keyserling's testimony very persuasive. (Tr. pp. 397-401.)

Furthermore, Gwinnett County provides services in the school setting to a myriad of students who exhibit severe disabilities,[40] including approximately 1,500 students who have neurological conditions, over 9,500 students who have a type of endocrine or immune system problem, and over 16,000 students who have respiratory conditions. To guard against the spread of germs and infection among this population of students, many of whom, like Plaintiffs, may have weak immune systems owing to their neurological conditions, Gwinnett County's school nurses train teachers, paraprofessionals, support staff, bus drivers, and anyone who provides any services to a child with a weakened immune system, on infection control procedures, hygiene, respiratory etiquette, and sanitization. The school nurses collaborate with the parents and physicians in developing a plan specific to that student's condition and train staff accordingly.[41] Infection-control measures regularly implemented by staff include frequent wiping down of materials with Salvo, a disinfectant, assigning each student his or her own set of materials, and

[40] Among the students whom Gwinnett County accommodates in the school setting include students who have degenerative illnesses and have become immuno-compromised as a result, students who have received organ transplants and take immuno-suppressive drugs, students with developmental disabilities who are respiratorily compromised, students who require breathing treatments, and students who are tube-fed. (*See e.g.* Tr. pp. 528-531, 590, 619-620, 661-662.)

[41] Intermittent homebound services are provided to these students with weakened immune systems as necessary. Oakland School, where [redacted] would attend, has full-time teachers set aside to provide intermittent homebound services and these teachers are sent to the home often within 24 hours of a parent notifying the school that the child is sick. Intermittent home services would be provided to Plaintiffs as their needs require. (Tr. pp. 376-379, 666, 765.)

stringent hand-washing.[42] Jennifer Ross, an expert in school nursing and providing protocols for children with disabilities who are susceptible to illness that reduce their exposure to germs in the environment, testified that Gwinnett County can create an appropriate environment for Plaintiffs in the school setting. (Tr. pp. 385-386, 530-533, 592, 618-620.)

## III. CONCLUSIONS OF LAW

### A. IDEA

The IDEA requires States receiving federal funding to make a FAPE available to all children with disabilities residing in the State, 20 U. S. C. § 1412(a)(1)(A). The IDEA creates a federal grant program to assist state and local agencies in educating disabled children, *see Cory D. v. Burke County School District*, 285 F.3d 1294, 1295-96 (11th Cir. 2002), and guarantees students a FAPE. *See Loren F. v. Atlanta Independent School System*, 349 F.3d 1309, 1311-12 (11th Cir. 2003); *School Board of Collier County v. K.C.*, 285 F.3d 977, 979 (11th Cir. 2002). A FAPE is defined as special education services that:

> (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 preschool, elementary, or secondary school education in the State involved; and
>
> (D) are provided in conformity with the [IEP] required under section 1414(d) . . . .

[42] Natalie Watson and Caroline Whitten, who have taught classes for students with intellectual disabilities in Gwinnett County, the type of classrooms contemplated by Plaintiffs' March 2008 IEPs, testified that they had sinks with hot water in their classrooms, and each classroom at Oakland Meadow School, where [redacted] would attend, has a sink, a bathroom, and a shower with hot water in the room. Additionally, the classrooms have an extremely low student-to-adult ratio, as Watson's moderate intellectually disabled class contained four adults and six children. (Tr. pp. 99. 381, 384-385, 532-533, 662.)

§1401(8). "To provide a FAPE, a school formulates an [IEP] during a meeting between the student's parents and school officials. An IEP must be amended if its objectives are not met, but perfection is not required."[43] *Loren F.*, 349 F.3d at 1312 (quotations and citations omitted).

The Supreme Court has developed a test for determining whether a school board has provided FAPE in cases arising under the IDEA: "(1) whether the state actor has complied with the procedures set forth in the IDEA, and (2) whether the [IEP] developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefit." *CP v. Leon County Sch. Bd.*, 483 F.3d 1151, 1153 (11th Cir. 2007); *Sch. Bd. v. K.C.*, 285 F.3d 977, 982 (11th Cir. 2002) *citing Bd. of Educ. v. Rowley*, 458 U.S. 176, 200, 206-07, 102 S. Ct. 3034, 3051 (1982). This standard, that the local school system must provide the child "some educational benefit," *Rowley*, 458 U.S. at 200, 102 S. Ct. at 3048, has become known as the *Rowley* "basic floor of opportunity" standard. *JSK v. Sch. Bd.*, 941 F.2d 1563, 1572-73 (11th Cir. 1991) ("The . . . educational outcome need not maximize the child's education. If the educational benefits are adequate based on surrounding and supporting facts, [IDEA] requirements have been satisfied.") (Internal citations omitted).

**B. Plaintiffs' March 2008 IEPs**

**1. Alleged Procedural Violations.**

The Plaintiffs allege that Gwinnett County failed to comply with the IDEA's procedural requirements. To succeed in this procedural challenge, the Plaintiffs must show that the Defendant either failed to provide educational benefit or restricted Plaintiffs' parents' ability to participate fully in their child's education. *Sch. Bd. v. K.C.*, 285 F.3d at 982. The Plaintiffs' parents attempt the latter, alleging that they have been denied the opportunity to participate fully

[43] An IEP is an education plan tailored to a child's unique needs that is designed by the school district in consultation with the child's parents after the child is identified as eligible for special-education services. See §§ 1412(a)(4), 1414(d).

in Plaintiffs' education when Gwinnett County proceeded with Plaintiffs' IEP meetings on March 17, 2008, without the Plaintiffs' parents in attendance.

The IDEA requires school districts to develop an IEP for each child with a disability with parents playing "a significant role" in this process, *Schaffer v. Weast*, 546 U.S. 49, 53, 126 S. Ct. 528 (2005). Thus, the IDEA mandates that parents be afforded "[a]n opportunity . . . to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a [FAPE] to such child." § 1415(b)(1). The IDEA accords parents additional protections that apply throughout the IEP process. See, *e.g.*, § 1414(d)(4)(A) (requiring the IEP Team to revise the IEP when appropriate to address certain information provided by the parents); § 1414(e) (requiring States to "ensure that the parents of [a child with a disability] are members of any group that makes decisions on the educational placement of their child"). The IDEA also sets up general procedural safeguards that protect the informed involvement of parents in the development of an education for their child. See, *e.g.*, § 1415(a) (requiring States to "establish and maintain procedures . . . to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a [FAPE]"); § 1415(b)(1) (mandating that States provide an opportunity for parents to examine all relevant records). See *generally* §§ 1414, 1415.

Federal regulations also imposed an affirmative obligation on Gwinnett County to "take steps to ensure that one or both of the parents . . . are present at each IEP Team meeting or are afforded the opportunity to participate, including . . . [s]cheduling the meeting *at a mutually agreed on time and place.*" 34 C.F.R. § 300.322(a)(2) (emphasis added). Furthermore, the federal regulations required Gwinnett County to "use other methods to ensure parent

participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation)." 34 C.F.R. § 300.322(c).

Under these regulations, Gwinnett County was entitled to proceed with the March 17, 2008 IEP meetings without the parents only if it had been "unable to convince the parents that they should attend," 34 C.F.R. § 300.322(d), and could produce "a record of its attempts to arrange a mutually agreed on time and place, such as . . . telephone calls . . . correspondence . . . and . . . visits made to the parent's home or place of employment," *id. See also* 64 F.R. 12587 (1999) (explaining that "[t]he *key factor* in § 300.345(a) is that public agencies effectively communicate with parents about the up-coming IEP meeting, and attempt to arrange a mutually agreed upon time and place for the meeting") (emphasis added); *id.* ("Section 300.345(d) . . . is intended to enable a public agency to proceed to conduct an IEP meeting if neither parent elects to attend, *after repeated attempts by the public agency to ensure their participation*") (emphasis added).

In the present case, the Court finds that Plaintiffs' parents were *not* given the opportunity to, and in fact did not participate in the decision-making process regarding the development of their children's 2007-2008 IEPs. Specifically, Gwinnett County proceeded with Plaintiffs' IEP meetings on March 17, 2008, without the parents in attendance, even though the parents had previously notified Gwinnett County that there has been a death in the family and they would not be available to attend any IEP meetings until March 31, 2008, April 21, 28, 2009, or May 5, 12, or 26, 2009. The record does *not* reflect that Gwinnett County satisfied its obligation to try to arrange the IEP meetings at a *mutually* convenient time. Rather, having received a response from the parents that the first day they would be available to attend any IEP meetings was March

31, 2008, the burden remained on Gwinnett County to take steps to contact the parents to arrange the IEP meetings at a mutually convenient time.

To be clear, this Court does "not hold that the regulations require school boards to continue to accommodate an infinite number of parental requests for an alternative time." *"M" v. Ridgefield Bd. of Educ.*, 2007 U.S. Dist. LEXIS 24691 (D. Conn. Mar. 30, 2007). However, the record reflects *no* effort by Gwinnett County to negotiate a *mutually* agreeable time for the meeting, despite the parents' express notice of their unavailability due to a death in the family. It is clear that Plaintiffs' parents wished to participate in the IEP meetings but were unable to do so due to the death in the family and offered additional dates when they would be available. Therefore, the Court finds no merit in Gwinnett County's argument that the parents had "refused" to attend and thus they were entitled to convene the IEP meetings in their absence. The absence of the Plaintiffs' parents is particularly significant since the IEP team determined that the LRE for the Plaintiffs would be a placement in the school setting rather in the home.

Citing the Eleventh Circuit's opinions in *Weiss v. School Bd. of Hillsborough County*, 141 F.3d. 990 (11th Cir. 1998) and *Doe v. Alabama Dept. of Educ.*, 915 F.2d 651 (11th Cir 1990); Gwinnett County argues that conducting the March 17, 2008 IEP meetings in the parents' absence did not result in denial of a FAPE unless the parents could show actual harm. The Court does not agree. The IDEA provides that in matters alleging a procedural violation, the Court may find that the Plaintiffs did not receive FAPE if the procedural inadequacies significantly impeded their parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Plaintiffs. *See* § 1415(f)(3)(E)(ii)(II). The Court therefore concludes that Gwinnett County failed to provide FAPE to the Plaintiffs when Gwinnett County significantly impeded their parents' opportunity to participate in the decision-making process

regarding the provision of FAPE to Plaintiffs for the 2007-2008 school year in violation of § 1415(f)(3)(E)(ii)(II).

As to the relief available for this violation, IDEA "requires 'appropriate' relief, and "the only possible interpretation is that the relief is to be 'appropriate' in light of the purpose of the Act." *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985). Here, the relief Plaintiffs' parents are seeking is a ruling that the March 17, 2008 IEPs, which determined that Plaintiffs are medically able to attend school, be found inappropriate and an order that Plaintiffs continue to receive homebound services from Gwinnett County. The Court does not find that such relief is appropriate in this case since the Court has found, as indicated *infra*, that the March 17, 2008 placement decisions were appropriate.[44] However, the Court concludes that the March 17, 2008 IEPs did fail to include necessary reintegration plans to assist Plaintiffs in re-entering a school environment since [redacted] and [redacted] had not attended school in many years and [redacted] had never attended school. Therefore, the Court concludes that the appropriate relief is to require Gwinnett County to hold new IEP meetings, which include the Plaintiffs' parents, and to include in the IEPs reintegration plans to assist Plaintiffs in re-entering a school environment. The IEP team is nonetheless bound by this Court's decision that the LRE and most appropriate placement is in the school setting rather than in the home.

[44] Although Gwinnett County significantly impeded the Plaintiffs' parents' opportunity to participate in the March 17, 2008 IEP process, the parents nonetheless have fully and actively participated in the decision-making process regarding the provision of FAPE to their children over the course of this trial held on May 13-15, 2009, and provided the Court with a substantial amount of evidence, which the Court reviewed *de novo*, much of which would not have been considered in the March 17, 2008 IEP meetings.

**2. Alleged Substantive Violations.**

Plaintiffs argue that homebound placement is the LRE appropriate to meet their educational needs. Prior to July 1, 2007, the Georgia LRE rule contained *no* provision allowing an IEP team to consider factors other than a medical report regarding the necessity of homebound placements. *See* Ga. Comp. R. & Regs. 160-4-7-.08 (effective July 1, 2000). That changed when the Georgia rules were revised in 2007 to allow the IEP team the flexibility to determine the appropriate educational services and setting for a student upon review of medical information. Ga. Comp. R & Regs. 160-4-7-.07 (effective July 1, 2007). The 2007 LRE rule *requires* the IEP team to "convene to review the IEP and consider the medical referral information to make necessary changes to the IEP including placement in the hospital/homebound setting as appropriate." *Id.* The rule further mandates that the "IEP Team must consider the information *as part of the process of determining educational services and settings for the student. The IEP Team makes any final determination of services, setting* and method for delivering services." *Id.*[45]

Thus, once the Georgia LRE rule was changed, Gwinnett County was required to consider the continuum of placements in conjunction with the medical recommendation, and with the IEP team making the final determination as to the setting and method of delivering

[45] There also still exists a more general Hospital/Homebound Instruction state rule that provides that the school district provide hospital/homebound instruction upon receipt of a medical referral. Ga. Comp. R & Regs. 160-4-2-.31 (effective January 3, 2002). Unlike the LRE rule, this rule is not specific to students eligible under the IDEA. While the LRE rule applying to special education students was amended in July 2007 to require the student's IEP team to consider the medical referral but make the final determination as to delivery of services, the older Hospital/Homebound Instruction rule remains unchanged. To the extent the LRE Rule and the Hospital/Homebound Instruction Rule conflict, the Court concludes that the LRE Rule controls in this instance since it directly applies to IDEA eligible students, as opposed to the Hospital/Homebound Instruction rule which is not IDEA-specific and applies to both general and special education students.

services. Ga. Comp. R. & Regs. 160-4-7-.07. Furthermore, the Court concludes that the IDEA provides no authority to allow an IEP team to delegate its duty to ensure an IEP in the LRE to Plaintiffs' pediatrician since under the IDEA, Gwinnett County has a duty to mainstream special education students to the maximum extent appropriate. *See* § 1412(a)(5)(A)-(B).

Here, Gwinnett County solicited additional medical information from Plaintiffs' parents throughout the fall of 2007 and the spring of 2008, but each and every request went unanswered. The Court concludes that since Plaintiffs' parents refused to allow Gwinnett County's professional staff to speak with the Plaintiffs' physician, the IEP team did not have enough credible evidence to support such a restrictive placement. Furthermore, the referral forms presented for the 2007-2008 school year listed no precautions that needed to be taken; provided no diagnosis; and stated that the prognosis was good. The Court agrees with Gwinnett County that based upon the information Plaintiffs' IEP teams had available to them in March of 2008,[46] the IEP teams would have been deficient in their obligation to ensure that Plaintiffs are educated in the LRE were they to continue to recommend homebound placement for Plaintiffs.

Furthermore, Plaintiffs' and Gwinnett County's experts agree that to the extent Plaintiffs have an immune problem, it is mild. Put simply, no medical reason exists for Plaintiffs to remain segregated in the home. Plaintiffs' failed to present *any* expert testimony from an immunologist or infectious disease physician suggesting that Plaintiffs have an immune disorder that prohibits them from attending school. Plaintiffs' mother testified that she is fearful that her children will become sick if they attend a school-based setting. Such a fear, although perhaps understandable,

[46] With respect to timing, it is important to note that in addition to Defendant's requests to the parents for more medical information since the fall of 2007, Defendant's attempts to convene IEP meetings with the parents to discuss these important matters had similarly been unsuccessful since the fall of 2007.

does not relieve Gwinnett County of its responsibility to offer Plaintiffs FAPE in the LRE appropriate to meet their individual needs. *See* § 1412(a)(5)(A)-(B).

Plaintiffs' IEP team recommended placement for [redacted] in the transition class at Oakland Meadow School; placement for [redacted] in a moderate intellectual disabilities class at Lanier Middle School; and placement for [redacted] in a moderate intellectual disabilities class at Riverside Elementary School. Plaintiffs will additionally receive direct speech-language therapy, ABA therapy, OT and PT services and sign instruction. The weight of the evidence in the record convinces the Court that the LRE for Plaintiffs in which they can receive meaningful educational benefit is found in the opportunities available to them in the school setting.

Presently, Plaintiffs are receiving no socialization beyond persons in the home. The learning environment in the home is distracting for Plaintiffs who have trouble attending under the best of circumstances. Plaintiffs do not have proper equipment to assist in their learning, such as the Rifton chair, and Plaintiffs' parents will not allow it to be used in the home and removed it and other materials from the home. Socialization and communication skills are crucial and are learned through interacting in small groups. The Court agrees with Gwinnett County that the prognosis for Plaintiffs, who are presently non-verbal, of acquiring the ability to become functional communicators, whether verbally or with the use of assistive technology, is grim if they continue to remain in isolation and are not presented with opportunities to want and need to communicate in natural settings with peers.

Two experts in teaching children with cognitive disabilities – Quinn and Whitten – testified that school placement is appropriate for Plaintiffs. Plaintiffs failed to present any expert testimony from any educator to the contrary. Indeed, the only educator who testified on behalf of Plaintiff, Watson, likewise testified that she believes that the appropriate and LRE for

Plaintiffs is a school setting. Much testimony was provided that the parents have done an admirable job with their children who are significantly disabled. However, the Court must determine whether the March 2008 IEPs offered Plaintiffs a placement in the LRE. The Court concludes that they did.

Plaintiffs are presently deprived of these rich opportunities, and while the Court recognizes that Plaintiffs' parents are entitled to choose to educate their children as they see fit, so long as Plaintiffs remain eligible for special education services from Gwinnett County, Gwinnett County is obligated to educate them in the LRE. Indeed, the overwhelming weight of testimony suggests that Plaintiffs can safely and appropriately be educated in the school setting. Extensive testimony was presented regarding the protocols taken in the school setting to prevent the spread of germs. Gwinnett County safely educates in school-based settings close to 1,500 students with neurological conditions; over 9,500 students with immune system conditions; and 16,000 students with respiratory conditions. Gwinnett County's school nurses train teachers, paraprofessionals, support staff, bus drivers, and anyone who provides any services to a child with a weakened immune system, on infection control procedures, hygiene, respiratory etiquette, and sanitization and collaborate with the parents and physicians in developing a plan specific to that student's condition. The Court therefore concludes that Gwinnett County can create an appropriate environment for Plaintiffs in the school setting and that Plaintiffs can appropriately be educated in a school-based setting.

**C. Reevaluation Refused / Services Forfeited**

The Court agrees with Gwinnett County that Plaintiffs were foreclosed from redress under the IDEA once Plaintiffs' parents refused to allow Gwinnett County to reevaluate Plaintiffs. Gwinnett County has a right to condition continued provision of special education

services on a reevaluation of Plaintiffs by a qualified professional. See *M.T.V. v. DeKalb Co. Sch. Dist.*, 446 F.3d 1153 (11th Cir. 2006). In reviewing a case factually similar to this one, the Fifth Circuit determined that parental refusal of a school system's request for consent to reevaluate a student is equivalent to the refusal of special education services. *Shelby S. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5th Cir. 2006). In *Shelby S.*, the student, eligible to receive services under IDEA, suffered from a rare autonomic nervous system disorder making her medically fragile; consequently, educational services were provided primarily in her home. Upon the student receiving a medical release from her doctor to return to school, the IEP committee met to develop an educational program for her. School personnel requested consent to speak with the student's physician, but the consent was limited by the student's guardian. *Id.* The school system subsequently requested consent for an outside medical evaluation after determining it needed additional information in order to develop an appropriate educational program. The student's guardian refused to consent to the evaluation, claiming that it would cause the student serious harm. The court determined that "a reevaluation is warranted when the school district requires evaluation materials that are essential to assessing a child's special education needs." *Id.* at 454. Further, the court found the student's argument that allowing a medical evaluation without consent violated her right to privacy to be without merit, holding that the student was free to decline special education rather than submit to the evaluation. *Id.*

In addition, Gwinnett County has a right to choose the professional to conduct the evaluations and Plaintiffs' parents have no right to place unreasonable restrictions upon the evaluation procedures. In *M.T.V., supra*, the court noted that "[e]very court to consider the IDEA's reevaluation requirements has concluded '[i]f a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and

they cannot force the school to rely solely on an independent evaluation.' *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178-179 (5th Cir 1995.)" *M.T.V.*, 446 F.3d at 1160.

Where the parent refuses to make the child available for the evaluation, the parent cannot complain about the services provided to the child. *Doe v. Eagle-Union Community Sch. Corp.*, 2 Fed.Appx. 567, 569 (7th Cir 2001); *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176 (5th Cir. 1995); *Gregory K. v. Longview Sch. Dist.*, 811 F. 2d 1307, 1315 (9th Cir 1987); *Dubois v. Connecticut State Bd. of Educ.*, 727 F.2d 44, 48 (2nd Cir. 1984); *Vander Malle v. Ambach*, 673 F.2d 49, 53 (2d Cir. 1982). To hold otherwise would require districts to develop IEPs based on "unsubstantiated claims of handicaps" so that the IDEA would become a "generalized provision requiring schools to develop individual education plans for students upon request, regardless of their *current* mental or physical condition." *Schwartz v. The Learning Center Academy*, 2001 WL 311247, *7 (W.D. Mich. 2001). This clearly is not the intent of the Act.

In the case at bar, Gwinnett County's repeated efforts to evaluate Plaintiffs are well documented. On May 9, 2007, Susan White sent a letter to Plaintiffs' parents requesting consent to reevaluate; again, no consent was provided. A reevaluation conference for [redacted] was convened on May 18, 2007 but the parents continued to refuse consent to evaluate. At Plaintiffs' IEP meetings convened in December 2007, Gwinnett County yet again sought permission to evaluate, this time in the form of an independent medical evaluation. But again, no consent from Plaintiffs' parents followed. On January 25, 2008, White wrote a letter to Plaintiffs' parents seeking permission to consult with Dr. [redacted]. Predictably, Plaintiffs' parents refused, instead providing Gwinnett County scant medical information in the form of a letter from Dr. [redacted]. When White contacted Dr. [redacted] in response to Dr. [redacted]'s letter of February 21, 2008 inviting communication if White had questions or concerns, Dr. [redacted] refused to talk to White, although

Dr. [redacted] did suggest that perhaps a telephone conference with the parties and herself could be arranged. White subsequently requested a telephone conference via letter on April 7, 2008, yet Plaintiffs' parents refused and no consultation with Dr. [redacted] was permitted. Counsel for Gwinnett County sent letters to Plaintiffs' counsel on January 1, 2008, August 4, 2008, and August 11, 2008 again requesting permission for Gwinnett County to evaluate Plaintiffs. These requests were similarly either rejected or ignored.

Gwinnett County ultimately filed a motion with this Court seeking to obtain evaluations. Subsequently, the parties reached an agreement and as a result Plaintiffs' parents agreed to allow the requested evaluations. Despite the agreement, Plaintiffs' parents failed to follow through with the agreement. Consequently, the Court was forced to issue an Order on November 10, 2008, requiring Plaintiffs' parents to provide the requested medical records, present Plaintiffs for evaluation, allow a home visit by the evaluator, and complete the required paperwork. *See* Order of November 10, 2008. The Court ordered further that the failure to comply with any one of its provisions would forfeit Plaintiffs' right to special education services and due process proceedings under the IDEA. *Id.*

During the period beginning in the spring of 2007 through November 2008, Plaintiffs' parents' refusal to allow reevaluations effectively resulted in a refusal of special education services. *See M.T.V., supra.; Shelby S., supra.* Even so, Gwinnett County consistently attempted to schedule IEP meetings after services ceased in February 2008. Plaintiffs are therefore foreclosed from complaining about the special education services provided to them by Gwinnett County from the spring of 2007 until November of 2008, when this Court compelled Plaintiffs' parents to produce Plaintiffs for evaluation. The Court therefore concludes that the March 2008 IEPs were designed to provide Plaintiffs with FAPE in the LRE. Moreover, Plaintiffs' parents'

actions resulted in a refusal of special education services so that Plaintiffs were not entitled to services during the period of their parents' refusal to consent to evaluation and Plaintiffs have no right to complain about the services provided.

**D. Plaintiffs' 2005-2006, 2006-2007, and 2007-2008 IEPs**

Plaintiffs complain that their IEPs for the 2005-2006, 2006-2007, and 2007-2008 school years (prior to the March 2008 IEPs) failed to offer them FAPE. The Court finds no merit in the contentions.

**1. Alleged Procedural Considerations.**

The substantial weight of the evidence reveals that Plaintiffs' parents were instrumental in the development of the IEPs for each of the three Plaintiffs. Plaintiffs' parents attended each of the IEP meetings during the 2005-2006 and 2006-2007 school years, and [redacted]. signed each of the IEPs and consent for placement forms for those years. [redacted]., a trained advocate, testified that she understood that her signature indicated her consent for placement and implementation of the IEPs. A parent may not fail to place in issue the appropriateness of the IEP or some part thereof during the IEP process (even going so far as to express in writing their agreement with the plan) and thereafter request relief. *M. C. v. Voluntown Bd. of Educ.*, 226 F.3d 60 (2d Cir. 2000).

In addition to their participation in Plaintiffs' IEPs for the 2005-2006, 2006-2007, and 2007-2008 school years, Plaintiffs' parents were also, in part by virtue of the location of the delivery of Plaintiffs' services (that is, in the home setting) intimately involved in and cognizant of all aspects of their children's educational programming each year Gwinnett County was in the home. Plaintiffs' parents, in fact, attempted to control the educational materials to be used with their children, the methodology they wished the instructors to use, and in some instances the instructors themselves. Additionally, the number of providers allowed in the home at any given

time was controlled by the parents; a very restricted scheduling of services was instituted by the parents; the parents controlled what educational materials could be utilized with Plaintiffs; and the parents controlled the entering and leaving of the home to the extent that educators and services providers felt that they were in an unsafe position. Any claim that the parents were not intimately involved in Plaintiffs' educations is disingenuous.

In light of this high degree of involvement in Plaintiffs' educational programming, Plaintiffs' parents cannot be said to have been anything less than active and informed participants in their children's educational programming; the Court thus concludes that Plaintiffs have failed to prove any procedural violation in their IEPs for the 2005-2006, 2006-2007, and 2007-2008 school years (prior to the March 2008 IEPs).

The Court does not find compelling Plaintiffs' contention that they should be reimbursed for materials used in the home during instruction. Abundant testimony was presented that the instructors brought appropriate materials necessary to implement Plaintiffs' goals and objectives to the home; to the extent any of Plaintiffs' materials were utilized, they were used in an effort to accommodate [redacted]'s desires and in order to avoid discussion during Plaintiffs' instructional time of the merits of the school's materials versus [redacted]'s materials.

**2. Substantive Considerations**

The Court concludes that the special education programming developed for Plaintiffs were appropriate to meet their needs, given the parents' strict requirements, and Plaintiffs made progress on their goals and objectives demonstrating educational benefit. Much testimony was put before this Court concerning the adequacy of the amount of service given the limits of the home setting as well as the Plaintiffs' distractibility and attention span.

The Eleventh Circuit has explained that the decision as to educational benefit is "based on whether [the student is] receiving *any* educational benefit." *J.S.K.* 941 F.2d at 1572. "If the educational benefits are adequate based on surrounding and supporting facts, EAHCA [now IDEA] requirements have been satisfied. While a trifle might not represent 'adequate' benefits, maximum benefit is never required. Adequacy must be determined on a case by case basis in light of the child's individual needs." *Id.* at 1573 (internal citation omitted); So long as the child's IEP provides some educational benefit under the IDEA, there is no entitlement to the "best" program. See *M.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Co.*, 437 F.3d 1085, 1102 (11th Cir.2006).

While "adequacy of services must be determined in light of Plaintiffs' individual needs," Plaintiffs failed to present *any* substantive evidence as to Plaintiffs' individual needs. *J.S.K.* 941 F.2d at 1572. Plaintiffs' failure to present evidence as to the particulars of their individualized needs and any evidence showing that their needs required more educational services in order to receive some benefit forecloses this Court from finding a failure to deliver FAPE. *Rebecca S. v. Clarke Co. Sch. Dist.*, 22 IDELR 884 (M.D. Ga. 1995); *B.F. v. Fulton County School Dist.*, 2008 WL 4224802, at *2 (N.D. Ga. 2008). The evidence before this Court in fact suggests the contrary – that Plaintiffs' needs were appropriately met by Gwinnett County.[47] Importantly, Plaintiffs' own witness, the students' homebound teacher for the 2005-2006 school year, testified that she was able to implement all of Plaintiffs' goal and objectives – goals and objectives to which Plaintiffs' parents agreed – during her weekly time with Plaintiffs and that the Plaintiffs

[47] Contrary to Plaintiffs' assertion that they received the minimum amount of services as provided by the Hospital/Homebound state rule, examination of the IEPs in question for the 2005-2006, 2006-2007, and 2007-2008 school years reveal that each Plaintiff received substantially more than three hours per week of direct instruction (academics/speech-language/PT/OT/sign instruction/ABA therapy) and the hours increased over time in many instances as their needs dictated. Consequently, Plaintiffs' contention is without merit.

benefited from the services she provided them. Tr. pp. 375, 387. Plaintiffs failed to present *any* evidence from any experts in educating children with cognitive or intellectual disabilities suggesting that the services provided in the 2005-2006 IEPs were not adequate.

Further, testimony from experts in teaching children with cognitive disabilities testified that the amount of instruction was appropriate in light of the limits of the home setting and the Plaintiffs' needs. The Court finds that the limitations of the home as an educational setting were such that even if Gwinnett County's teachers were to have provided more hours of instruction per week to Plaintiffs, it is unlikely that Plaintiffs would have derived any more educational benefit because of the very things that were missing from the home setting: interaction with peers and the availability of peer models, a variety of settings in which to practice skills both within a classroom and within the school itself, materials to stimulate communication (such as photographs placed throughout the classroom and on the wall), and collaboration among the educational providers and therapists in the students' natural setting, to cite but a few.[48] In contrast, due to the inherent limitations of the home setting and the requirements imposed by Plaintiffs' parents,[49] instruction was delivered in isolation, often in contrived activities at the kitchen table or at a card table.

While Plaintiffs seem to imply that they would have benefited from *more* services that is not the proper inquiry before this Court. Rather, this Court must determine whether Plaintiffs

[48] By way of illustration, the Court finds useful Plaintiffs' witness Watson's example that she could teach [redacted] in a one-on-one setting in the home to identify himself by using his identification card when asked, but she had no way of testing whether [redacted] could use this skill in the community or with another adult.

[49] As discussed more extensively in the Findings of Fact, these parental requirements included not allowing collaboration or small group interaction among the Plaintiffs during instruction; requiring instruction to be given in isolation in a setting that contained multiple distractions; not allowing materials (such as the Rifton chair) that the educational professionals believed would benefit Plaintiffs; and not allowing the professionals to modify the educational environment – such as by placing photographs on the walls.

received *any* educational benefit. *J.S.K.* 941 F.2d at 1572; *Doe v. Ala. Dept. of Educ.*, 915 F.2d 651 (11th Cir. 1990); *M.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade County*, 437 F.3d 1085, 1102 (11th Cir. 2006). In light of the deference which must be owed to educators as well as the considerable uncontradicted expert testimony put before this Court that the duration of instruction was appropriate and Plaintiffs benefited from the instruction, this Court determines the 2005-2006 IEPs offered Plaintiffs a FAPE from which they received some benefit.

Although several evaluations of Plaintiffs were not performed during the 2005-2006 school year due to difficulty scheduling with the Plaintiffs' parents, when the parties met in the spring of 2006 to devise IEPs for the 2006-2007 school year, [redacted].'s concerns regarding the evaluations were incorporated and made a part of Plaintiffs' IEPs. It is undisputed that Gwinnett County offered to provide the OT, PT and ABA services during the summer ESY as compensatory services, but the parent refused. Thereafter, the parties collaborated and a plan was devised to make up for the missed services for each of the Plaintiffs, and the missed OT and PT services have since been provided. Thus, to the extent Plaintiffs' seek recovery for lapses in OT and PT services during the 2005-2006 school year, those claims are moot.

Plaintiffs also complain about the adequacy of the services provided to them during the 2006-2007 school year pursuant to IEPs developed with and consented to by Plaintiffs' parents. Once again, however, while complaining that the amount of services under the 2006-2007 IEPs was inadequate, Plaintiffs failed to present *any* substantive evidence that Plaintiffs' individualized needs were not met during the 2006-2007. Again, Plaintiffs' argument that they would have made *more* progress had they had *more* direct instruction is not the proper inquiry for this Court. Instead, this Court must determine whether there is sufficient evidence before it that Plaintiffs received some educational benefit. *Id.*

Plaintiffs did not counter the Gwinnett County's experts' testimony that in light of the limitations of the home setting in which skills had to be taught in isolation without the opportunities for generalization across settings, and the method of delivery of services (that is, 1:1) the amount of instruction was appropriate. Plaintiffs failed to present sufficient evidence that the Plaintiffs did not benefit from their services; rather, the weight of the evidence convinces the Court that the 2006-2007 IEPs did confer some benefit to Plaintiffs.

**3. Implementation of Plaintiffs' IEPs**

Plaintiffs further point to some lapses in services in arguing that their IEPs failed to confer FAPE. To prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimus* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement *substantial* or *significant* provisions of the IEP. *Houston Independent Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000). "The question is not whether Petitioner's educational program could have been stronger or could have provided even greater educational benefit; but rather, did the program provide meaningful and not trivial advancement." *Georgetown Independent Sch. Dist.*, 45 IDELR 116 (SEA TX Sept. 23, 2005). "Failure to implement individual provisions of an IEP, such as falling short in a particular week on the number of hours of homebound instruction, does not constitute a denial of a [FAPE] when the overall services provided actually conferred as substantial a benefit. . . ." *Id.* (*citing Houston Independent Sch. Dist. v. Bobby R.*, 200 F.3d 341) (5th Cir. 2000).

Although arguably there was some delay in completing certain evaluations and beginning certain services, Gwinnett County recognized the potential defects and attempted to remedy them by offering services to make up for any that were missed. Beginning in the spring of 2007,

Gwinnett County made repeated efforts to elicit from Plaintiffs' parents specific information regarding their concerns generally and as they related to lapses in service. The Executive Director of Special Education personally extended multiple invitations to meet with Plaintiffs' parents in an effort to collaborate on a plan to provide compensatory services. Plaintiffs' parents did not respond to Gwinnett County's many entreaties. Gwinnett County offered to provide compensatory services during the summer of 2007, which was summarily rejected by Plaintiffs' parents.

Unable to deliver compensatory services during the summer of 2007 due to Plaintiffs' parents' rejection of services, Plaintiffs' IEP teams devised a plan with Plaintiffs' parents whereby compensatory services would be delivered during the 2007-2008 school year. While Plaintiffs' parents participated in developing plans, their actions during the 2007-2008 school year including limiting the number of service providers in the home to two individuals at a time and limiting the hours of the day during which services could be provided effectively prohibited Gwinnett County from implementing Plaintiffs' IEPs and providing the compensatory services it had identified. It was therefore Plaintiffs' parents' actions that prohibited Gwinnett County from providing the full extent of compensatory services to Plaintiffs and not Gwinnett County's unwillingness to do so.

Similarly, the missed services subsequent to February 19, 2008, when services were stopped as a result of school staff concerned about personal safety, were offered by Gwinnett County but refused by Plaintiffs' parents. When the parents refused to work with Gwinnett County to create a safe working environment, choosing instead to maintain control of all ingress

and egress while becoming more and more hostile toward Gwinnett County and its employees, the parents essentially refused special education services.[50]

Since Plaintiffs' parents significantly hindered or frustrated the development of an IEP, the Court is justified in denying equitable relief on that ground alone. See *Loren F. v. Atlanta Indep. Sch. System*, 349 F.3d 1309, 1319 (11th Cir. 2003). "The law ought not to abet parties who block assembly of the required team and then, dissatisfied with the ensuing IEP, attempt to jettison it because of problems created by their own obstructionism." *Roland v. Concord Sch. Committee, et al.*, 910 F.2d 983, 995 (1st Cir. 1990). Plaintiffs' parents' obstruction of the IEP process here is apparent. During the entirety of the 2007-2008 school year, Gwinnett County was consistently and repeatedly attempting to get Plaintiffs' parents to an IEP meeting to discuss the situation in the home as well as educational planning. The record in this matter is replete with evidence of continued attempts to communicate with Plaintiffs' parents, but the parents refused communication. Gwinnett County cannot be faulted for refusing to expose its employees to an unsafe working environment.

Thus, the Court finds that to the extent the Plaintiffs IEPs were not implemented appropriately, that defect was cured when additional services were offered to Plaintiffs' parents. Further, the Court concludes that the lapses in service did *not* result in a substantial failure to implement significant portions of Plaintiffs' IEPs, and Plaintiffs still demonstrated progress each school year.

In sum, this Court does not find Plaintiffs' complaints regarding the IEPs developed during the 2005-2006, 2006-2007, and 2007-2008 school years persuasive. As indicated ante, IDEA defines FAPE as special education and related services that are provided "in conformity

[50] Specific facts regarding Plaintiffs' parents' refusal to provide a safe working environment for school staff are set out more fully above; the Court will not restate them here.

with the IEP." § 1401(9)(D). Consistent with this definition, the three federal circuit courts that have explicitly addressed this issue have determined that in order to show a denial of FAPE as a result of IEP implementation failures, plaintiffs are required to show that the school failed to implement "substantial," "material," or "essential" IEP provisions. *See Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007); *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Neosho R-V Sch. Dist. V. Clark*, 315 F.3d 1022 (8th Cir. 2003). In the most recent of these decisions, the Ninth Circuit held in *Van Duyn* that "a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Id.* at 822.[51] Testimony from experts in educating children with cognitive disabilities established that the IEPs were appropriate. Plaintiffs provided no evidence to the contrary and thus did not meet their burden of proving that the IEPs failed to offer Plaintiffs FAPE. While there were some missed services during those school years, Gwinnett County promptly identified and offered to make up any missed services.[52] Furthermore, Plaintiffs' parents refused the compensatory services and only allowed providers in their home at certain times on a certain schedule and refused services from Gwinnett County over the summer break. In light of these determinations, the Court finds that Plaintiffs are not entitled to any relief.

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[51] The Fifth Circuit requires more than a showing of a *de minimus* failure to implement; plaintiffs must show that the school failed to implement a "substantial" or "significant" provision of the IEP. *Bobby R.*, 200 F.3d at 349. The Eighth Circuit held in *Clark* that IDEA is violated if the school failed to implement an "essential" element of the IEP that was necessary for the child to receive an educational benefit. 315 F.3d at 1027 n.3.

[52] Indeed, compensatory services for lapses in Plaintiffs' OT and PT services had been provided by the time Plaintiffs filed their complaint.

**E. ADA and Section 504 claims**

Plaintiffs have also raised claims under ADA and Section 504. Section 504 and the ADA, and their implementing regulations prohibit discrimination against disabled persons under any program or facility receiving federal financial aid solely by reason of their disability. *See* 34 C.F.R. § 100.4; 42 U.S.C. § 12203(b). The ADA and Section 504 have nearly identical requirements as to FAPE in the LRE as the IDEA.[53] In fact, the requirements are so nearly identical for compliance in a special education case that a civil action may not be brought under Section 504 or the ADA without first complying with the IDEA's exhaustion requirement.[54] *Babicz v. School Bd. of Broward Co.*, 135 F.3d 1420 (11th Cir. 1998).

To the extent that Section 504 and the ADA create essentially the same rights and obligations, the Court will apply the same analysis to determine whether Plaintiffs have stated a claim for which relief can be granted under Section 504 and the ADA. *See Zukle v. Regents of the University of California,* 166 F.3d 1041, 1045 n.11 (9th Cir. 1999)("There is no significant difference in the analysis of rights and obligations created by the ADA and the Rehabilitation Act. . . . Thus, courts have applied the same analysis to claims brought under both statutes.") (internal citations omitted).

Thus, in order to plead a claim under either Section 504 or the ADA, Plaintiffs must allege (1) they are disabled under the Act; (2) they are "otherwise qualified;" (3) they were denied benefits or services, or otherwise subject to discrimination, solely because of their disability; and (4) Gwinnett County receives federal financial assistance (under Section 504), or

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[53] "Title II of the ADA simply extends Section 504 to all programs and services provided by state and local governments." *Hope v. Cortines*, 872 F.Supp. 14, 20 (E.D.N.Y. 1995).

[54] The IDEA requires that challenges to an educational program must first be reviewed on an administrative level before a civil action may be brought. § 1415; 34 C.F.R. § 300.507.

is a public entity (under the ADA). *See id.* at 1045. In the special education context, a plaintiff must also allege "that the educational decisions relating to the student were so inappropriate as to constitute either bad faith or gross misjudgment." *Alex G. ex rel. Dr. Steven G. v. Bd. of Trustees of Davis Joint Unif. Sch. Dist.*, 387 F. Supp. 2d 1119, 1124 (E.D. Cal. 2005); *see also N.L. v. Knox County Schs.*, 315 F.3d 688, 695-96 (6th Cir. 2003) ("To prove discrimination in the education context, courts have held that something more than a simple failure to provide a free appropriate public education must be shown."); *Sellers v. Sch. Bd.*, 141 F.3d 524, 529 (4th Cir. 1998); *Monahan v. Nebraska,* 687 F.2d 1164, 1170-71 (8th Cir. 1982); *Reid v. Petaluma Joint Union High Sch. Dist.*, 2000 U.S. Dist. LEXIS 12324, 2000 WL 1229059, at *3 (N.D. Cal. 2000). Given that this Court has ruled that Plaintiffs were offered a FAPE (notwithstanding the procedural violation that impeded the parents' participation in the March 17, 2008 IEP meeting), the only remaining analysis remains whether Plaintiffs were subjected to retaliation for protected activity. The Court finds that Plaintiffs have failed to prove a prima facie claim of retaliation.

The regulations accompanying Section 504 prohibit intimidation or retaliatory acts, and the ADA similarly prohibits coercion, intimidation, threats, and interference with any individual's exercise or enjoyment of the rights granted to them under Title II of the ADA. *See* 34 C.F.R. § 100.4; 42 U.S.C. § 12203(b). Plaintiffs have alleged retaliation by Gwinnett County and Susan White, individually. The only cause of action that theoretically exists against Susan White is under the ADA. There are no provisions in the IDEA or its regulations extending its obligations to private actors or suggesting that private actors may be subject to individual liability under the statute. *See M.T.V. v. Perdue*, 2004 WL 3826047, at *11 (N. D. Ga. 2004)

(unpublished). Similarly, Section 504 is limited to those who actually "receive" federal financial assistance.[55]

With respect to the ADA retaliation claim, White, is entitled to the defense of qualified immunity, because her actions do not violate any right that Plaintiffs' parents have, such as a right to civil behavior by school officials. *See Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004); *see also Cameron v. Lang*, 274 Ga. 122 (2001).

Notwithstanding the foregoing, Plaintiffs must establish four elements in order to present prima facie claim of retaliation: (1) that Plaintiffs were engaged in a protected activity; (2) that Gwinnett County was aware of the protected activity; (3) that Gwinnett County subsequently subjected Plaintiffs to specific adverse actions; and (4) that there was a causal connection between the adverse actions and the protected activity. *See Weixel v. Board of Educ. of City of New York*, 287 F.3d 138 (2nd Cir. 2002); *Bradley v. Arkansas Dept. of Educ.*, 443 F.3d 965 (8th Cir. 2006). Plaintiffs have failed to meet this burden.

Plaintiffs did not engage in protected activity. *See* e.g. *Gupta v. Montgomery County Public Schools*, 25 IDELR 115 (D. Md. June 14, 1996) ("merely raising concerns over the

[55] The ADA incorporates by reference the remedies, procedures, and rights of Section 504. Section 504 incorporates by reference the remedies, procedures and rights of Title VI. Thus, all three statutes rely for their remedies on Spending Clause legislation. "Like the IDEA, the Rehabilitation Act is Spending Clause legislation, and it must be construed accordingly." *Taylor v. Altoona Area School Dist.*, 513 F.Supp.2d 540, 556 (W.D. Pa. 2007). Although most courts have determined that no cause of action exists against an individual under Spending Clause legislation because it involves, essentially, a contract between the federal government and some entity, the Eleventh Circuit held in *Shotz v. City of Plantation*, 344 F.3d 1161 (11th Cir. 2003), that an individual may be sued under the ADA in public services retaliation cases. The Court found that the distinction between the ADA and the other spending clause statutes is the ADA's use of the word "person" in the retaliation provision of subchapter II. "Person" is not contained in Section 504 as it is in the ADA and the *Shotz* analysis does not apply. "Congress limited the scope of § 504 to those who actually 'receive' federal financial assistance because it sought to impose § 504 coverage as a form of contractual cost of the recipient's agreement to accept the federal funds." *U. S. Dept. of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 605 (1986).

quality of [the students'] education" without more is not protected activity under § 504 and the ADA). Further, even assuming that Plaintiffs' allegations are true, Plaintiffs have not suffered any adverse action, as Plaintiffs did not experience any harm or change in their status. The ADA is not a code of civility and "not 'every unkind act' is sufficiently adverse." *Higdon v. Jackson,* 393 F.3d 1211, 1219 (11th Cir. 2004). Finally, there is no causal connection between Plaintiffs' activity and any alleged adverse action. *See Bradley v. Arkansas Dept. of Educ.*, 443 F.3d 965 (8th Cir. 2006) (plaintiffs could not show that the school's actions were "taken *in response to* protected activity. That is, they cannot show a causal connection between the two.") *Id.* at 976 (emphasis in original). To conclude, Plaintiffs have failed to establish a prima facie case of retaliation against Susan White under the ADA or against Gwinnett County under the ADA or Section 504. *See Higdon v. Jackson*, 393 F.3d 1211, 1219 (11th Cir. 2004); *Bradley v. Arkansas Dept. of Educ.*, 443 F.3d 965 (8th Cir. 2006); *Weixel v. Board of Educ. of City of New York*, 287 F.3d 138 (2nd Cir. 2002); *Gupta v. Montgomery County Public Schools*, 25 IDELR 115 (D. Md. June 14, 1996). Accordingly,

## IV. ORDER

**IT IS HEREBY ORDERED THAT** in light of the above findings and conclusions, Plaintiffs' claims and requested relief are **DENIED** except that since the March 17, 2008 IEPs failed to include necessary reintegration plans to assist Plaintiffs in re-entering a school, Gwinnett County is directed to hold new IEP meetings, which include the Plaintiffs' parents, and shall include in the IEPs reintegration plans to assist Plaintiffs in re-entering a school environment.

**SO ORDERED THIS 27th** day of **July, 2009**.

John B. Gatto

**JOHN B. GATTO, Judge**