

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

■,

Petitioner,

vs.

Case No. 13-3181E

CITRUS COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

A formal due process hearing was held in this case before Lawrence P. Stevenson, Administrative Law Judge of the Division of Administrative Hearings, on September 18 and 19 and October 31, 2013, in Inverness, Florida.

APPEARANCES

For Petitioner: ■, Petitioner's mother
(Address of record)

For Respondent: R. Wesley Bradshaw, Esquire
Bradshaw and Mountjoy, PA
209 Courthouse Square
Inverness, Florida 34450

STATEMENT OF THE ISSUE

Whether Petitioner, a student eligible for special education services under the Individuals with Disabilities Education Act ("IDEA"), would be provided a free appropriate public education ("FAPE") in the placement proposed by the Citrus County School Board (referred to herein as the "School

District" or the "District," in keeping with the parties' usage at the hearing)^{1/} in the individualized education program ("IEP") dated August 5, 2013.

PRELIMINARY STATEMENT

This matter commenced upon the filing with the School District of a due process request by Petitioner's mother, ■■■, on August 5, 2013, at the conclusion of an IEP team meeting held to develop Petitioner's IEP for the upcoming 2013-2014 school year. At the time of the filing, Petitioner was entering the ■■■ grade and had been attending ■■■■■■■■■■ for the previous four school years, though Petitioner had only entered the Citrus County School District in November 2012.

The due process request that the School District forwarded to the Division of Administrative Hearings ("DOAH") on August 20, 2014, consisted of two handwritten pages. The first page stated that due to the School District's refusal to provide the ■■■■■■■■■■ to Petitioner, ■■■ intended to seek private placement in ■■■ at public expense. The second page demanded "stay put" in ■■■ and a due process hearing because of the School District's "refusal . . . to provide an IEP with specific measureable annual goals for all areas of educational need" and because of the School District's refusal to continue Petitioner in ■■■.

Also on August 20, 2013, the School District filed a Notice of Insufficiency of the due process request pursuant to 34 C.F.R. § 300.508(d)(2) and Florida Administrative Code Rule 6A-6.03311(9)(g). On August 22, 2013, the undersigned entered an Order finding that the due process request did not meet the requirements of 34 C.F.R. § 300.508(b) and rule 6A-6.03311(9)(d) and granting Petitioner 14 days in which to file an amended due process request.

On August 23, 2013, Petitioner filed a more detailed document styled "Due Process Complaint" (hereinafter referenced as the "Petition").^{2/} The Petition states as follows:

Nature of Problem:

- 1) Citrus County has refused to write measurable annual goals to address all of the needs of the child to allow [the child] to receive educational benefit. A single goal for language services is not sufficient to address [the child's] needs.
- 2) Citrus County has refused to write a behavior intervention plan despite [the child's] ongoing behavior difficulties.
- 3) Citrus County employee who is not part of the IEP team predetermined a removal from child's educational program (████) that [the child] has been in for four (4) years.
- 4) Citrus County is basing its denial of provision of assistive technology (word processor/printer, dictation software) on parent's choice of virtual school instead of [the child's] need for these devices which would be supported by [the] listed accommodations.

- 5) Parent would request in depth review of evaluations.
- 6) Child needs remediation for basic skills [the child] is lacking (add, subtract, multiply, spell).
- 7) Parent requests consult and training to address child's needs at home and in the virtual setting.
- 8) Child has been removed from [the] virtual education program that [the child] has been attending and making great progress for the last four years. Child has no educational placement sufficient for [the child's] needs.

Proposed Resolution:

- 1) Write annual goals that are specific and measurable.
- 2) Convene a behavior team to review and update Behavior Intervention Plan.
- 3) Placement in [redacted] through direct contract with [redacted] or through another district that already contracts with [redacted]. Placement decisions should not be made by nonteam members.
- 4) Conduct an assessment of child's assistive technology needs to include all areas of child's disabling conditions and especially to consider word processor/printer and dictation software--see accommodation in IEP to allow student to type responses and to serve as an alternative to using a scribe for written daily work.
- 5) Meetings to review and discuss specific recommendations from each specialty who evaluated the child on how best to address them.

6) Provide remediation AT NO COST TO PARENT.

7) Provide training and consultation services to parent as learning coach.

8) Enroll student in [REDACTED] through direct contract with [REDACTED] or through another district as soon as possible since school starts on August 7, 2013. Child is denied FAPE in LRE.

On August 30, 2013, the School District filed its Response to Petitioner's Due Process Complaint, stating as follows:

1. Petitioner has a current IEP with annual measurable goals for language services which are provided by a Speech Language Pathologist at the school site.

2. The IEP committee did not determine a need to address behavior in a formal behavior intervention plan as behavior is not a concern when Petitioner is in attendance at the school site.

3. The School Board contracts with [REDACTED] County Public Schools to provide virtual school option for all Citrus County students. [REDACTED] County Public Schools no longer uses [REDACTED] Virtual School as a virtual school provider and instead uses [REDACTED] County Virtual School. The School Board is not denying Petitioner a virtual school option, and has encouraged Petitioner's Parent to enroll Petitioner in the [REDACTED] County virtual school program

4. The School Board has previously offered to administer an Assistive Technology evaluation of Petitioner and is willing to provide such evaluation.

5. The School Board has previously reviewed recommendations from each area contained in the [Petition] at the last IEP meeting and

is willing to have another IEP meeting to review recommendations from each area.

6. Petitioner is eligible to attend ESE classes at the school site for instruction and remediation at no cost to the parent.

7. Petitioner's parent is and has been encouraged to participate in all parent activities that are offered at no cost to the Parent. However, the School Board is under no legal obligation to provide any training to Petitioner's parent.

8. The School Board has encouraged Petitioner's Parent to enroll Petitioner in the contracted ██████████ County Virtual School program which would be at no cost to the Parent. Petitioner has not been denied FAPE by the School Board as the School Board has not denied any service to the Petitioner.

Also on August 30, 2013, the School Board filed a Motion to Strike and/or Dismiss, arguing that Petitioner's request that the School Board be required to provide access to a specific virtual school be dismissed or stricken from consideration as a matter of law.

During a telephonic hearing on August 30, 2013, the parties indicated that they would enter into a mediation session on September 5, 2013.^{3/} Also on August 30, 2013, the undersigned issued a notice setting the case for hearing on September 18, 2013, in Inverness.

At the outset of the hearing, argument was heard on Respondent's Motion to Strike and/or Dismiss. The undersigned denied the motion without prejudice. The hearing was not

completed at the end of the day on September 18. Because all parties were available the following day, the hearing was extended to September 19, 2013. The hearing was still not completed at the end of the day on September 19. A conference call was convened on September 24, 2013, during which the parties agreed to schedule the remainder of the hearing on October 17 and 18, 2013. A notice to that effect was issued on October 2, 2013.

On October 14, 2013, Petitioner filed a motion for continuance, which was granted by an Order dated October 15, 2013, which rescheduled the hearing for October 31 and November 1, 2013. The hearing was completed on October 31, 2013.

At the final hearing, [REDACTED] testified on Petitioner's behalf and presented the testimony of the following witnesses: [REDACTED], the School District's coordinator of Exceptional Student Education ("ESE"); [REDACTED], the School District's director of research and accountability; [REDACTED], an occupational therapist who works under contract for the School District; [REDACTED], a school psychologist employed by the School District; [REDACTED], a School District speech language pathologist; [REDACTED], a speech language therapist who works under contract for the School District; [REDACTED], an ESE specialist for the School

District; [REDACTED], a physical therapist for the School District; [REDACTED], an ESE specialist for the School District; [REDACTED], a guidance counselor with the [REDACTED] County Virtual School; and [REDACTED], an advisory teacher with [REDACTED]. Petitioner's Exhibits 1 through 64 were admitted into evidence.

The School Board presented the testimony of [REDACTED], the principal of [REDACTED] County Virtual School; [REDACTED], a school nurse for the School District; [REDACTED]; and [REDACTED]. The School Board's Exhibit 1 was entered into evidence.

At the close of the hearing, Petitioner's motion to extend the page limit on proposed final orders was granted and a 60-page limit was agreed upon. The parties agreed that the filing of proposed final orders would occur no later than 60 days after the filing of the transcript, thus extending the time for the filing of the final order.

The five-volume Transcript of the hearing was filed at DOAH on November 25, 2013.^{4/} On the same date, Petitioner filed a "Motion to Append Record," seeking relief including a new hearing based on an undisclosed conflict of interest: the owner of the court reporting service that was used at the hearing is the sister-in-law of counsel for the School District. The School District filed a response on December 2, 2013, that noted

the court reporter who actually attended and transcribed the hearing was unrelated to counsel or anyone else working for the School District. Even without considering the School District's response, the undersigned was unconvinced that Petitioner had identified an actionable conflict where there was no dispute with the accuracy of the actual transcription of the hearing, save for a relatively low number of typographical errors and failures to correctly spell certain names, acronyms, and terms of art, e.g., "BASC" and "SADL." By Order dated December 2, 2013, the undersigned denied Petitioner's motion.

Several motions for extension of the deadline for submitting proposed final orders were granted. On March 3, 2014, a telephonic hearing was held on Petitioner's ore tenus motion to expand the page limits on proposed final orders and/or memoranda of law from 60 to 250 pages. Counsel for the School District strenuously objected to the motion. In an Order dated March 3, 2014, the undersigned granted the motion, directing that proposed final orders be filed on March 10, 2014, but giving the School District the option of filing a responsive addendum to its proposed final order after it had the opportunity to review Petitioner's lengthy submission. The Order required the School District to inform this tribunal no later than March 18, 2014, of its intention to file an addendum.

The parties filed their proposed final orders on March 10, 2014. Petitioner's Proposed Final Order was 93 pages long and was accompanied by a 147-page memorandum of law. The School District's Proposed Final Order was 42 pages long. On March 18, 2014, the School District filed its election to file an addendum to its Proposed Final Order and requested 25 days in which to make the filing. Over Petitioner's objection, the undersigned granted the School District's request and gave it until April 14, 2014, to file its addendum. The School District's addendum was timely filed.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following findings of fact are made:

1. Petitioner was [REDACTED] years old at the time of the hearing. Petitioner has been found eligible for services as a child with a disability under the IDEA, 20 U.S.C. § 1400 et seq.

Petitioner's primary exceptionality is [REDACTED], and Petitioner's secondary exceptionality is [REDACTED].

2. Petitioner transferred to the School District from [REDACTED] County in November 2012. Petitioner's [REDACTED] courses were transferred from [REDACTED] County to the School District on November 26, 2012.

3. Petitioner's last ██████ County IEP was written on November 13, 2012, in anticipation of Petitioner's move to Citrus County. Under the heading of "initial considerations," the IEP noted that Petitioner participated in a classroom behavioral management program and that Petitioner had the following medical conditions: ██████, ██████, ██████, ██████, ██████, and ██████. Petitioner was noted as taking the following medications: ██████ for ██████; ██████ medications; ██████, ██████ and an ██████ for ██████; and an ██████ for ██████. The considerations noted that Petitioner requires the use of a word processor as assistive technology.

4. The ██████ County IEP stated that Petitioner was currently a ██████ attending ██████. Petitioner had an above average IQ and scored a Level 4 in Math and Level 3 in Reading on the 2011-2012 FCAT. Petitioner's placement was in a regular classroom with accommodations and Petitioner was progressing toward a standard diploma. The IEP noted that Petitioner's ██████ "contributes to great deficits with spatial relations when writing." Petitioner "struggles with spelling and how to appropriately place a word within a sentence structure." The IEP stated that Petitioner would be superior in writing skill if allowed to keyboard rather than write by hand.

5. The IEP further noted that Petitioner requires supplemental tutoring support for math. Petitioner struggles with multiplication, which Petitioner performs by counting, leading to time difficulties. Petitioner is easily distracted and cannot maintain focus while reading. The IEP suggested that Petitioner's comprehension would improve with the use of recorded books that would allow the student to read along as the text is spoken.

6. The IEP set forth detailed present levels of academic achievement and functional performance in five educational domains: curriculum and learning; independent functioning; social/emotional behavior; health; and communication.

7. As to curriculum and learning, the IEP stated that Petitioner's reading and math skills are on or above grade level, though Petitioner struggles with mental manipulation of numbers. Petitioner's Broad Math Cluster score was well above grade level, but Petitioner struggles with applied problems in measurement, money, and time, and preferred to use "manipulatives" (i.e., counting) to performing mental addition and subtracting.

8. Petitioner's writing skills were 23 points below Petitioner's current IQ. The Woodcock-Johnson III Test of Achievement indicated that Petitioner's reading skills were one and one-half grades above grade placement, but reading speed

fell into the 24th percentile. Petitioner's writing was two grade levels below placement and constituted Petitioner's weakest academic area. Petitioner's writing skills were "impaired and slowed," with multiple spelling errors and almost no punctuation, though the sentences were complete, made sense and were "even somewhat creative." Petitioner struggled with listening comprehension and oral comprehension.

9. As to independent functioning, Petitioner showed no notable deficits in normal activities such as sitting at a desk, moving around the classroom, running, stopping and starting on command, and opening doors.

10. As to social and emotional behavior, Petitioner was given the Weiss Functional Impairment Rating Scale for the purpose of determining whether the [REDACTED] was creating a functional impairment in this area. The IEP described the results as follows:

This scale determined there to be a maximal functional impairment in the area of family relations of 2.77. Anything over 1.5 would be considered significant with 3 being the maximum for the test. Dysfunctional behavior in the area of school relations including learning and behavior equivalent to a 2.33. [Petitioner] has difficulty keeping up with schoolwork. Dysfunctional was also shown in life skills at 2.4 level. Other concerns are in the area of self-concept (2.0) and social activities (2.0).

11. The Social Responsiveness Scale was completed for Petitioner. Petitioner's parents reported that Petitioner was "very uncomfortable in social situations, naïve in understanding people's manipulations, and [having] a narrow range of interests." Petitioner has difficulty making friends, difficulty with changes in routine, and has several preoccupations. The IEP noted that Petitioner has displayed "obvious sensory issues." The IEP team did not believe that Petitioner's social skills would improve without continued social skills group therapy.

12. As to health, the IEP noted that the Adolescent Symptom Inventory-4 was administered and that Petitioner met the criteria for [REDACTED] plus [REDACTED], the latter "highlighted by occasional intimidating behavior as well as the tendency to start physical fights with . . . parents."

13. As to communication, the IEP stated that Petitioner had recently been evaluated in the areas of speech and language using the Comprehensive Assessment of Language ("CASL") and the Lindamood Auditory Conceptualization Test-3 ("LAC-3"). The majority of subtests and the core composite score of the CASL were within normal limits for age and grade level, though Petitioner's scores on the nonliteral language and inference subtests were "significantly lower." Petitioner's score on the

LAC-3 was "well within normal limits for . . . age and grade level."

14. The present levels section of the [REDACTED] County IEP concluded with a statement regarding how the student's disability affects progress in the general curriculum and a statement regarding the student's priority needs. These statements concluded that Petitioner continued to need ESE services for [REDACTED] and that Petitioner's involvement and progress in the general education curriculum was limited in the areas of social skills, writing, and independent functioning. Petitioner needed to improve independence and keep pace to meet curriculum goals, to improve social interaction skills with peers and adults, and to improve writing skills.

15. The [REDACTED] County IEP established nine measurable annual goals and short term objectives for Petitioner, two in independent functioning, five in curriculum and learning environment, and two in social and emotional behavior.

16. The two annual goals for independent functioning were:

[Petitioner] will remain on task and work independently with minimal reminders during 4 out of 5 opportunities by the end of the school year.

[Petitioner] will demonstrate on-task behavior as specified during class time on a daily basis during 4 out of 5 opportunities by the end of the school year.

17. Petitioner's "learning coach" was designated as the person responsible for evaluating progress toward these goals on a monthly basis. Because Petitioner was in virtual school, Petitioner's mother was the learning coach.

18. The five annual goals for curriculum and learning environment were:

[Petitioner] will complete a 2 to 3 sentence writing assignment using adequate spacing with minimal reminders on 4 out of 5 opportunities by the end of the school year.

[Petitioner] will write short responses to online virtual school assignments independently on 4 out of 5 opportunities with 80% accuracy by the end of the school year.

When completing a written/typed assignment, [Petitioner] will use the necessary punctuation with 80% accuracy by the end of the school year.

When provided with a reading passage containing figurative expressions [Petitioner] will identify those expressions and demonstrate understanding of figurative language by matching written figurative sentences to sentences with literal meaning discussed on 8 out of 10 oral/written language tasks.

When presented with a reading passage or short story, [Petitioner] will perceive, explain or use hidden unstated verbal meanings to grasp inferences, outcomes or make predictions based in information read and/or discussed with at least 80% accuracy on 4 out of 5 opportunities.

19. The learning coach and the [REDACTED] teacher were designated as the persons responsible for monitoring Petitioner's progress toward these goals. The first three goals were to be evaluated on a monthly basis via teacher observation and a checklist. The final two goals were to be evaluated each grading period via teacher observation, checklist, and a curriculum-based assessment.

20. The two annual goals for social and emotional behavior were:

When engaged in a conversation with adults or peers, [Petitioner] will use appropriate transitional cues to change topics (allowing conversational partner to finish talking, using transitional words such as: excuse me, etc.) with fading cues/prompts on 4 out of 5 opportunities in the classroom setting.

When speaking with adults and peers, [Petitioner] will maintain a topic through up to 3 conversational exchanges without irrelevant statements and with minimal verbal prompts on 4 out of 5 observations in the classroom setting.

21. Petitioner's speech language pathologist and ESE teacher were to monitor Petitioner's progress on these goals, with an evaluation to take place each grading period via teacher observation and checklist.

22. The [REDACTED] County IEP listed two special education services: specialized instruction in social/personal skills and strategies, to be taught five times per week by the ESE teacher

in the ESE classroom for the entire school year, and language therapy in pragmatic skills and strategies, to be taught for 48 minutes per week by the speech language pathologist in the ESE classroom for the entire school year. The language therapy component was also listed in the IEP as a "related service."

23. The ██████ County IEP listed two accommodations for Petitioner's standard courses: increased instructional time and variation in instructional methods, for which the learning coach and the ██████ teacher were responsible.

24. The ██████ County IEP listed a series of accommodations for course assessments that focused on giving Petitioner extra time for assignments and tests, flexibility in scheduling and presentation, frequent breaks, and immediate reinforcement for on-task behavior. Due to Petitioner's difficulties with writing, Petitioner was to have a scribe and be provided with a word processor.

25. Petitioner's mother, ██████, testified that the IEP team in ██████ County did not write new goals based on the recent evaluations because the team knew that Petitioner was moving to Citrus County and felt that it should not obligate the new district to provide services based on these evaluations. ██████ stated that this IEP was essentially a reiteration of previous ██████ County IEPs.

26. ■ testified that when she enrolled Petitioner in the School District, she provided copies of Petitioner's most recent IEP, Behavior Intervention Plan ("BIP"), and evaluations to School District ESE specialist ■.

27. ■ contended that the School District did not implement the ■ County IEP upon Petitioner's arrival in Citrus County. ■ testified that the School District did nothing until it convened an IEP meeting "almost two months later," on January 9, 2013. It is noted that the period from November 26, 2012, until January 9, 2013, was a good deal shorter than two months and that the winter break took place during that period.^{5/}

28. ■ confirmed that ■ received from ■ a flash drive that contained evaluations and IEPs. ■ testified that ■ reviewed the evaluations with speech language therapist ■ prior to Petitioner's first IEP meeting in the School District. ■ testified that ■ had informed ■ that Petitioner would be enrolled in virtual school and that Petitioner's interaction with School District personnel would be limited to ESE services for language impairment. Therefore, ■ did not circulate the evaluations to anyone other than the speech language therapist.

29. An IEP team meeting was convened on January 9, 2013. Present at the meeting were Petitioner, ■, ■, and ■

██████████. Attending the meeting by telephone was ██████████, a representative of ██████████. ██████████ testified that the IEP resulting from this meeting was primarily based on the recent ██████████ County IEP.

30. The School District's January 9, 2013, IEP stated that Petitioner's eligibility categories were ██████████ and ██████████ and that Petitioner required specially designed instruction in the area of language skills. The IEP limited its statement of present levels of educational performance to the area of language skills. The present levels were stated as follows:

[Petitioner] participates in the Virtual School Program. An IEP was initiated in ██████████ County 11/13/12, and [Petitioner] was deemed eligible for language therapy. All standardized test results reported in the ██████████ County IEP were average and above average ranging from 95 [to] 125 for phonology, reading, math, language, spelling. [Petitioner] would not qualify for language therapy based on [Petitioner's] above average psychoeducational test scores. The educational team in ██████████ concluded that [Petitioner's] central diagnosis is ██████████, and that [Petitioner] meets the criterion for ██████████ based on distractability [sic], physical hyperactivity, disorganization, and obsessive-compulsive tendencies.

31. The January 9, 2013, IEP stated that Petitioner's disability affects progress in the general curriculum in that "[Petitioner] is disorganized, has difficulty with transition, and unscheduled events, interprets language literally." The IEP

states that Petitioner's "priority educational needs" are to "[p]ractice pragmatic skills to engage in turn-taking, on-topic participation in the classroom."

32. Unlike the ██████████ County IEP, which stated general curriculum goals that addressed Petitioner's difficulties in writing, understanding of figurative language, and ability to make inferences, and required monitoring of Petitioner's progress in these areas by the virtual school teacher and learning coach in the general education setting, the January 9 IEP included no explicit goals related to the general curriculum.

33. Rather than the nine measurable annual goals and short term objectives included in the ██████████ County IEP, the January 9 IEP included one measureable annual goal and three "benchmarks or measurable short term objectives." The annual goal was stated as follows:

[Petitioner] will practice and demonstrate appropriate behavior for social interaction for turn-taking, complimenting, waiting, negotiating, sharing ideas, respecting personal space of others, discriminate literal and non-literal language, 4 out of 5 opportunities.

34. The benchmarks or measureable short-term objectives were stated as follows:

1. [Petitioner] will participate in turn-taking activities in small group setting to share ideas, role play, and [Petitioner]

will judge [Petitioner's own] communication as on-topic (with visual reinforcement) accurately 4 out of 5 times.

2. From multiple choice answers, [Petitioner] will choose the sentence that best matches the meaning of an idiom 4 out of 5 times.

3. [Petitioner] will write a sentence using an idiom 4 out of 5 times.

35. The January 9 IEP stated that progress toward the annual goal would be evaluated each grading period "based on a review of therapy progress notes and/or target skill data collected by the Speech Language Pathologist."

36. The January 9 IEP listed the following accommodations for Petitioner's general curriculum program: flexible scheduling and setting, reduced responses, immediate reinforcement for on-task behavior, cues and gestures to stay on task, access to the word processor, scribe, tests taken by paper and pencil, frequent breaks and movement, printed notes, and use of a white board. The IEP stated that no related services were required.

37. The ██████████ County IEP had listed two special education services: specialized instruction in social/personal skills and strategies five times per week in the ESE classroom, and language therapy in pragmatic skills and strategies taught once per week for 48 minutes by the speech language pathologist. The January 9 IEP stated that Petitioner would receive

instruction in "language skills" for 45 minutes per week, presumably from a speech language therapist. The January 9 IEP did not explain whether the specialized instruction in social/personal skills and strategies had been eliminated or whether it was being subsumed under "language skills." In any event, Petitioner's ESE services were greatly reduced by the January 9 IEP.

38. [REDACTED], the ESE specialist, testified that [REDACTED] did not know how to write goals for a student in the virtual setting because there would be no way for School District personnel to monitor the student's progress outside of the brick-and-mortar school setting.

39. [REDACTED], the School District's ESE coordinator, similarly testified that the School District writes IEP goals only "to address student needs that are being provided in the school setting." [REDACTED] referred to the difficulty of writing and monitoring goals "for private providers," conflating the virtual public school with a private school because in each case the parent has made the decision to pull the child out of the brick-and-mortar public school.

40. Neither [REDACTED] nor [REDACTED] addressed how [REDACTED] County had managed to write measurable goals for Petitioner in the virtual [REDACTED] setting and to provide for the means of monitoring Petitioner's progress toward those goals.

The idea of coordinating tasks with the virtual provider seems not to have occurred to the School District, despite ██████ County's example.^{6/}

41. ██████ testified as to ██████ dissatisfaction with the January 9 IEP meeting and resulting work product. ██████ complained that only an ESE specialist, a speech language therapist, and a ██████ representative were present. ██████ stated that none of Petitioner's recent reviews and evaluations were discussed and that many of Petitioner's goals and accommodations were eliminated without discussion.^{7/} ██████ repeatedly requested a new IEP meeting to address what she perceived as the shortcomings of the January 9 IEP.

42. The School District scheduled a second IEP team meeting on May 15, 2013. Present at this meeting were Petitioner, ██████, ██████, ██████, ██████ (via telephone), and another School District ESE specialist named ██████, who did not testify at the hearing and was not mentioned by any other witness as playing a role at the meeting.

43. The meeting lasted approximately two to three hours. ██████ recalled long conversations about behavior. ██████ remembered long silences over the phone line during which the participants on the other end were writing what ██████ assumed were updated goals for Petitioner.

44. [REDACTED] also testified that [REDACTED] believed the team was developing and writing annual goals for Petitioner. [REDACTED] testified that it was only after the final IEP was printed that [REDACTED] realized the "goals" that the School District personnel were writing had been included only as notes in the present levels section of the IEP.

45. The lone goal stated in the January 9 IEP remained the only goal in the May 15 IEP. The three short-term objectives or benchmarks were altered somewhat:

[Petitioner] will participate in turn-taking activities in small group setting to share ideas, role play; and [Petitioner] will judge . . . communication as on-topic (without visual reinforcement) accurately 4 out of 5 times.

[Petitioner] will self-monitor waiting [Petitioner's] turn to talk, during class discussions accurately 4 out of 5 times with peers.

[Petitioner] will self-monitor waiting [Petitioner's] turn to talk, during class discussions accurately 4 out of 5 times with the teacher.

46. The May 15 IEP set forth more specific general education accommodations than did the January 9 IEP. Under the heading "Presentation," the May 15 IEP stated that: Petitioner would receive visual cues and gestures to stay on task with a timer, both in class and on statewide assessment; items not testing reading may be orally presented to Petitioner, in class

and on statewide assessment; and Petitioner would be allowed to retest to improve the grade in math in the classroom.^{8/} Under the heading "Responding," the May 15 IEP stated that: Petitioner would be allowed to demonstrate mastery of subject matter with a reduced number of responses or a reduced length of response, in the classroom; Petitioner would be allowed to dictate responses (as opposed to handwriting them) both in the classroom and on statewide assessments; and large assignments would be broken into smaller sections in the classroom. Under the heading "Scheduling," the May 15 IEP stated that: Petitioner would be allowed extended response time and frequent breaks with movement in the classroom and on statewide assessments; and Petitioner would be given an additional two weeks to complete coursework and be allowed to block schedule courses rather than move from class to class as in the brick-and-mortar school.

47. The May 15 IEP noted that Petitioner would be allowed to use a word processor in the classroom and on statewide assessments as allowed by state requirements.

48. One problematic aspect of the May 15 IEP, as well as the subsequent August 5, 2013, IEP, is that the IEP team treated the fact that Petitioner's was a "transition IEP" as a reason not to use the IEP form's five listed educational domains in assessing Petitioner's present levels of academic achievement

and functional performance: curriculum and learning environment; independent functioning; communication; social/emotional behavior; and health care.^{9/}

49. [REDACTED] testified that "because [Petitioner is] at the age of transition, this was a transition IEP, so we don't necessarily look at the domains, we look under the column of transition services activity areas. So anything that's checked 'yes' there we would address in the IEP." The referenced "transition service activity areas" on the IEP form were: instruction; related service; community experience; employment; post-school adult living; daily living, if appropriate; functional vocational evaluation, if appropriate. The only listed area that was checked "yes" was the area of "instruction."

50. The transition service activity areas would be of some concern to a middle school student transitioning into high school but are a more appropriate focus for an older child about to transition into post-secondary education or the adult workforce. Transition planning is required for the first IEP that will be in effect when the student turns 16. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

51. Petitioner will not reach the age of 16 until [REDACTED], well after any IEP discussed in this Order has expired. The IEP team had the discretion to include transition planning

in Petitioner's IEP, but nothing in statute or rule supports the School District's concept that a "transition IEP" considers transition services to the exclusion of any other aspect of a regular IEP. Even after deciding that it was appropriate to include transition services as a component of Petitioner's IEP, the IEP team should nonetheless have established present levels with reference to the five educational domains in addition to the transition services activity areas.

52. ██████ testified as to ██████ ongoing frustration with the IEP process and the School District's lack of support following the May 15 IEP. ██████ complained that Petitioner's accommodations were not adequately addressed and assistive devices were not provided. The School District refused to replace Petitioner's defective computer, despite the IEP's express accommodation for a word processor. ██████ had been playing the role of scribe for Petitioner in the ██████ classroom, but ██████ own physical infirmities were making it extremely difficult to maintain that role. ██████ requested the School District to consider providing dictation software to help with Petitioner's writing deficit, but was again refused.

53. Less than one week after the May 15 IEP was written, ██████ was informed that the ██████ County School District, with which the Citrus County School District contracts for the provision of virtual school services pursuant to section

1002.45(1)(c)3., Florida Statutes, had decided to drop the [REDACTED] [REDACTED] from its list of offerings for virtual school.^{10/} [REDACTED] testified, "I immediately began a campaign of phone calls and emails to try to ensure that [the] [REDACTED] would continue to be provided." [REDACTED] described the School District's response as hostile. [REDACTED] repeated requests to reconvene the IEP team to address what [REDACTED] saw as a change of placement were rebuffed until August 5, 2013, two days before the first day of school for the 2013-2014 school year.

54. The August 5 IEP team included [REDACTED]; [REDACTED]; occupational therapist, [REDACTED]; school psychologist, [REDACTED]; speech language pathologist, [REDACTED]; physical therapist, [REDACTED]; ESE specialist, [REDACTED]; [REDACTED]; and [REDACTED] County virtual program guidance counselor, [REDACTED]. No regular education teacher of Petitioner was included on the IEP team, presumably because [REDACTED] was no longer Petitioner's virtual school and [REDACTED] would not consider another virtual school.

55. [REDACTED], the occupational therapist, testified that at the IEP meeting, [REDACTED] reviewed an occupational therapy ("OT") evaluation and intervention plan for Respondent prepared by a private provider, [REDACTED], on September 20, 2012. [REDACTED] was given nothing to review in preparation for the meeting, though [REDACTED] agreed that such preparation is important.

56. The [REDACTED] report recommended that Petitioner receive OT services two to three times per week for 45 to 60 minutes per session with a therapist specializing in sensory integration techniques. The report recommended that Petitioner continue to receive accommodations in the school setting and continue with behavior therapy. It also recommended a typing course, the consideration of dictation software, and the use of Mead RediSpace notebook paper to provide spatial boundaries for writing shorter assignments by hand.^{11/}

57. [REDACTED] testified that the IEP team discussed some of the strategies contained in the report, but that the IEP team determined that Petitioner was not eligible for direct OT services through the IEP. No OT goals were written for Petitioner. [REDACTED] stated that, despite Petitioner's ineligibility for OT services, she could provide supports and consultation to Petitioner.

58. School psychologist [REDACTED] testified that [REDACTED] was given no evaluations or reports to review in preparation for the IEP meeting. At the meeting, [REDACTED] reviewed an independent educational evaluation ("IEE") performed by clinical psychologist [REDACTED] on October 2, 2012, and a psychoeducational evaluation report prepared by the [REDACTED] County School District on May 4, 2011. [REDACTED] testified that when a student transfers in from another Florida school

district, the IEP team reviews the last IEP developed by the former school district, not evaluations or reports that predate the last IEP. Because criteria from one Florida school district to the next are usually the same, the IEP team assumes that the former district properly used the evaluations in developing its IEP.

59. [REDACTED] diagnosed Petitioner with [REDACTED] and [REDACTED]. Petitioner tested with a Full Scale IQ of 113 on the Weschler Intelligence Scale for Children. Petitioner's lowest subtest scores were in processing speed, which [REDACTED] partly attributed to the fact that the processing speed tests are writing tests and Petitioner's writing was "slow, clumsy and inaccurate."

60. [REDACTED] summarized his evaluation as follows, in relevant part:

[Petitioner] is a [REDACTED] Virtual-School educated [REDACTED] grader previously diagnosed with [REDACTED]

The central problems in [Petitioner's] education appear to be [Petitioner's] resistance to completing educational tasks as well as the chaos in [Petitioner's] family environment. [Petitioner] admits to and parents confirm that [Petitioner] enjoys annoying them. These interactions escalate to meltdowns, power struggles or even physical altercations Due to obvious difficulties with social skills, reading social cues, rigidity, difficulty with transition and a narrow range of interests, [Petitioner] obviously

still continues to meet criterion for [REDACTED], which would now be called a [REDACTED] when a new DSM-V arrives. [Petitioner] does meet criteria for [REDACTED] also.

Hyperactive behavior, distractibility, restlessness and inability to due [sic] sustained focus all continue to support the (secondary) diagnosis of [REDACTED]. Remember that [REDACTED] explains more about this child then [sic] does the [REDACTED]. Note criterion is also met for [REDACTED].

Psychological test show [sic] this child's awareness and insight into the fact that [the child] provokes [the] parents. The fact that this vicious cycle has been ongoing for years suggests the fact that [Petitioner] must be getting some secondary gain plus secondary reinforcers from reactions to [Petitioner's] behavior.

Both [Petitioner] and [Petitioner's] parents fear interacting with peers (in the public) due to previous great difficulties in social skills plus bullying and degenerating social relationships from the past.

61. [REDACTED] recommendations included: intensive behavioral intervention in the home for two hours a day, five days per week; text writing software such as Dragon Speak or the use of an iPad to ameliorate Petitioner's [REDACTED]; supplemental tutoring in math; the use of recorded books to enable Petitioner to focus on reading; extracurricular activities in the neighborhood, school, and/or community; a full psychiatric evaluation and the administration of medications by

a psychiatrist; and a more efficient desk to offset Petitioner's hyperactivity, such as a drafting table with a stool.

62. The ██████████ County psychoeducational evaluation report was performed by school psychologist ██████████, who administered the Kaufman Test of Educational Achievement, Second Edition to ascertain Petitioner's level of academic achievement, select subtests of the Woodcock-Johnson III Normative Update: Tests of Cognitive Ability to test Petitioner's cognitive processing, the Behavior Assessment System for Children, Second Edition ("BASC-2") to evaluate Petitioner's behavior and self-perception, and the BASC-2 Parent Rating Scales to measure Petitioner's behavior in the home setting, as rated by the parents.

63. ██████████ "integrative summary" of ██████ testing provided as follows:

[Petitioner] is a ██████ grade ██████ County Public School Virtual School student zoned for ██████████.

[Petitioner] receives Exceptional Student Education (ESE) services due to an ██████████

██████████. [12/] A review of records indicates [Petitioner] has difficulty with social interactions, remaining focused, and completing . . . work. Results of this evaluation indicate [Petitioner's] academic skills fell in the average range.

[Petitioner] demonstrated individual strength in solving word problems and reading comprehension. [Petitioner] demonstrated individual weakness in spelling; however, all scores fell in the

Average range. An analysis of subtest scores indicate significant strength in [Petitioner's] ability to attend to auditory stimuli when competing stimuli is [sic] present. Results of the behavior rating scale completed by [Petitioner's] mother indicate [Petitioner] often displays overactive, disruptive, aggressive behaviors at home. [Petitioner] is often sad, lonely, depressed, and withdrawn. [Petitioner] engages in behaviors that are atypical in nature and may seem strange or odd to others. [Petitioner] has difficult [sic] sustaining attention for prolong [sic] periods of time. Adjusting to changes in . . . routine may be difficulty [sic] and [Petitioner] may take longer to recover from adversity when compared to others [Petitioner's] age. [Petitioner] is not usually chosen as a leader and has difficulty working with others effectively and efficiently. [Petitioner] struggles to perform daily activities independently and often needs help from . . . mother. Lastly, [Petitioner] does not often understand social situation or express . . . thoughts effectively.

Close communication between home and school should continue to support [Petitioner's] academic progress. The Student Study Team is advised to review the results of the current evaluation along with [Petitioner's] present levels of performance to determine the most appropriate educational placement.

64. [REDACTED] did not recall the IEP team discussing any of the specific recommendations made by [REDACTED] or [REDACTED]. [REDACTED] testified that the team never had a chance to discuss the evaluations because [REDACTED] invoked "stay put" to keep Petitioner in the [REDACTED] and the IEP team meeting was cut short. [REDACTED] agreed with the IEP team's consensus

that Petitioner's sole area of eligibility for direct ESE services was language therapy.

65. ██████████ conceded that the present levels statement of the August 5 IEP, set forth in Finding of Fact 79, infra, does not address Petitioner's psychoeducational testing. In response to ██████████ question of how the IEP team could possibly develop goals and services for Petitioner without fully addressing present levels, ██████████ responded: "I believe that they look at the time that we have [Petitioner] at school, based on [Petitioner's] behavior, [Petitioner's] performance and [Petitioner's] present level when [Petitioner] comes to school for speech and language."

66. ██████████, the speech language pathologist, testified that ██████████ attended the August 5 IEP team meeting on behalf of ██████████. ██████████ stated that ██████████ had to leave the meeting early and that not much about speech and language was discussed before ██████████ left. ██████████ was not at the meeting when the placement decision was made.

67. ██████████ testified that it is ██████████ usual practice to confine ██████████ pre-meeting review to the child's prior IEP. In this case, she reviewed the May 15 IEP. ██████████ testified that ██████████ had not seen the ██████████ County IEP. ██████████ also stated that before the August 5 meeting, ██████████ was informed that Petitioner's evaluations would not be reviewed. Therefore, ██████████

saw no need to review the evaluations on [REDACTED] own before the meeting.

68. ESE specialist [REDACTED] testified that [REDACTED] focus is on behavior support and that [REDACTED] attends IEP meetings in that advisory capacity. [REDACTED] did not review any evaluations or records prior to the August 5 IEP meeting. At the meeting, [REDACTED] [REDACTED] looked at a functional behavior assessment ("FBA") performed by [REDACTED] County staff on August 22, 2012, and the results of BASC-2 testing performed on May 4, 2011, by [REDACTED] County.

69. [REDACTED] testified that [REDACTED] review of these evaluations did not lead [REDACTED] to make any recommendations. [REDACTED] stated that Petitioner's behavioral issues were discussed but that the IEP team found that Petitioner was not experiencing any behavioral problems in the brick-and-mortar school setting. [REDACTED] [REDACTED] stated that [REDACTED] had never known an IEP team to write goals for behavior that occurs outside the school setting. [REDACTED] [REDACTED] understood that [REDACTED] had stated Petitioner was having difficulty with school work in the home environment and recommended that [REDACTED] contact the Centers for Autism and Related Disorders ("CARD") for assistance with behavioral issues in the home setting.

70. Physical therapist [REDACTED] testified that [REDACTED] reviewed no evaluations or records prior to the August 5 IEP

team meeting but that [REDACTED] reviewed the materials that were presented at the meeting. [REDACTED] stated that as of the date of the meeting, [REDACTED] had not seen the physical therapy assessment performed by [REDACTED] County on August 29, 2012, but had subsequently reviewed the assessment and found that the [REDACTED] County physical therapist did not recommend physical therapy.

71. Petitioner was not actively receiving physical therapy at the time of the IEP meeting on August 5. [REDACTED] stated that [REDACTED] was dismissed early from the meeting because physical therapy was not the main issue for Petitioner.

72. [REDACTED] acted as the facilitator at the August 5, 2013, IEP team meeting. [REDACTED] stated at the meeting that [REDACTED], the School District's director of research and accountability, had informed [REDACTED] that [REDACTED] County had dropped [REDACTED] from its list of virtual school providers and that [REDACTED] was therefore no longer an option for any Citrus County student, including Petitioner. [REDACTED] County continued to offer the Florida Virtual School and several other choices.

73. [REDACTED] testified that [REDACTED] had mentioned that Petitioner has [REDACTED], but that it was not apparent when Petitioner is on campus for therapy. [REDACTED] mentioned that Petitioner does "intricate artwork" that indicates Petitioner does not suffer from [REDACTED]. [REDACTED] recalled that Petitioner's [REDACTED] teacher, [REDACTED], stated concerns about

Petitioner's writing. However, these concerns were not about Petitioner's physical ability to write but about Petitioner's need to be redirected repeatedly during instruction and the need to break up lengthy assignments into smaller chunks.

74. [REDACTED] stated that the IEP's accommodation for dictation assumed that Petitioner would dictate responses to the teacher during virtual school classwork and to [REDACTED] at other times. [REDACTED] acknowledged that [REDACTED] informed the team that [REDACTED] was disabled and could act as scribe only with great difficulty, but that the IEP addressed no other way for Petitioner to dictate responses at home.

75. The August 5, 2013, IEP states that Petitioner's primary exceptionality is [REDACTED] and Petitioner's other exceptionality is [REDACTED]. Though the stated purpose of this IEP meeting was "Review/Revision/Change a Transition Individual Education Plan," the August 5 IEP retained the May 5 IEP's use of "transition service activity areas" to address Petitioner's present levels, to the exclusion of the five educational domains of curriculum and learning environment, independent functioning, communication, social/emotional behavior, and health care.

76. The August 5 IEP noted that Petitioner's FCAT scores for 2012 and 2013 were Reading Level 3 and Math Level 4.

77. The IEP form contained a list of "special considerations," explained as follows: "In considering the following factors, if the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or program modification, the IEP must include a statement to that effect in the development of the IEP."

78. The only special consideration marked "yes" by the IEP team was: "Does the student have communication needs? If yes, those needs must be addressed in this IEP." The IEP answered the following in the negative: "Does the student's behavior impede his/her learning or the learning of others?"

79. The August 5 IEP set forth the following as Petitioner's present levels of academic achievement and functional performance (standard language in the IEP form is underscored):

The strengths of the student related to the domain(s)/ transition service activity areas are as follows [sic]:

[REDACTED]

Information on transition needs and/or self-determination is included here as appropriate.
Based on available data, including formal and informal assessment, observations, work

samples, and age-appropriate transition assessment, including strengths, preferences and interests:

[Petitioner's] strengths are that [Petitioner] accurately judges syntax construct, grammaticality, non-literal language such as idioms. [Petitioner] can efficiently read a sentence and derive the meaning of an unfamiliar vocabulary word from context clues. [Petitioner] understands and uses idioms and non-literal language. [Petitioner] has some difficulty with pragmatic skills to judge when to take a turn in conversation, sentence starters, and conversation endings. [Petitioner] is learning the pragmatic differences between communicating with peers and adults, teachers.

Parent reports that [Petitioner] has been with [REDACTED] virtual school for the last 4 years. [Petitioner] took one class with Florida Virtual school and parent reports it was not a positive experience. She said that during virtual school time [Petitioner is] off task, delays getting started, absconding, not paying attention, and defiant. [Petitioner] also wants to be perfect. [Petitioner] works better at night as well.

[REDACTED] Virtual reports that [Petitioner] must be redirected several times during direct instruction and delays getting started or finished. They report that [Petitioner] has matured over the last 1 1/2 years. In addition, that there is discrepancy between [Petitioner's] behavior with virtual school teachers and . . . mother.

Speech language therapist reports that [REDACTED] uses a visual for on topic behavior through a graphic organizer. [REDACTED] does not have any issues with getting [Petitioner] started and is easily directed [sic]. [Petitioner] is competitive. [Petitioner] responds to the

graphic organizer redirects in every instance. [Petitioner] interacts appropriately with adults and students when in the school environment. [Petitioner] enjoys interacting with other students during the small group. Petitioner reports . . . need[ing] frequent breaks to help refocus.

The follow [sic] was recommended for home:

It was recommended that the learning environment is adjusted to allow for constant monitoring and viewing the computer screen; during the school day, they follow a 45 minute pattern and scheduling in breaks; [Petitioner's] mother to make flash cards for math facts; [Petitioner's] mother to contact a home school group for additional peer interactions; [Petitioner's] mother to contact the Virtual or the Citrus County District liaison for Virtual School for concerns about the word processor; [Petitioner's] mother to enforce planner use.

In the 13-14 school year, [Petitioner's] mother will bring in [Petitioner's] tilt table.

The school will provide information about electives (band and art) and OT will provide equipment to make [Petitioner's] work area is efficient [sic]. The school provided a school planner.

80. The "concerns about the word processor" noted in the present level statement referenced the facts that the [REDACTED] County IEP had stated that Petitioner required a word processor as assistive technology and that both the January 9 and May 15 Citrus County IEPs had listed access to a word processor as an accommodation for the general education setting, but Petitioner

had yet to be provided with a word processor by the School District.

81. ██████ testified that ██████ County had provided Petitioner with a "tilt table," a slanted surface that made it easier for Petitioner to write assignments. ██████ stated that when ██████ requested the School District to provide a new table that would be more appropriate for Petitioner's size, the School District not only "ignored" her request but "demanded" that ██████ turn in the old tilt table so that it could be returned to ██████ County. ██████ statement is supported by language in the August 5 IEP directing ██████ to "bring in [Petitioner's] tilt table."

82. The only special education service provided by the August 5 IEP was 45 minutes per week of language skills therapy in a small group. The general education accommodations in the August 5 IEP were identical to those set forth in the May 15 IEP. See Finding of Fact 46, supra. The measurable goal and short term objectives in the August 5 IEP were identical to those set forth in the May 15 IEP. See Finding of Fact 45, supra.

83. The August 5 IEP noted that the School District was declining to make the change requested by ██████ that it contract with ██████ rather than ██████ County Virtual School. The IEP stated that the only alternative that the IEP team considered

prior to making the recommendations contained therein was that Petitioner attend Citrus Springs Middle School on a full-time basis.

84. After the IEP team approved the August 5 IEP and [REDACTED] indicated [REDACTED] desire to invoke stay put and submitted the Petition, matters proceeded as indicated in the above Preliminary Statement. The final hearing convened on September 18, 2013. By agreement of the parties, it was held over to September 19. As the second and final day of the hearing drew to a close, it was apparent that at least one more day would be required to complete the hearing. The School District offered to conduct a facilitated IEP meeting during the interim between September 19 and the resumption of the hearing, in the hope that the issues remaining between the parties could be amicably resolved. [REDACTED] agreed and the meeting was held on October 2, 2013.

85. The IEP that resulted from the October 2 meeting was not dissimilar to the August 5 IEP. Under present levels, the October 2 IEP noted that Petitioner was obtaining "A" grades in all classes. It noted that [REDACTED] reported that Petitioner takes more time than most students to assimilate new material and that Petitioner has no understanding of time and money. It noted that Petitioner's oral pragmatic skills are average to above

average. The following paragraphs were added to the present levels:

When in home, doing academic work, parent and teacher reports [sic] behavioral concerns. CARD, Conscious Discipline with [REDACTED], and [REDACTED], Parent Facilitator will be consulted on collecting data and developing a present level and plan, if appropriate, to address behavioral concerns.

The occupational therapist will be consulted to find different and alternative positions for school work, such as table top easel. In addition, the occupational therapist will provide sensory strategies and find a source of Ready space [sic] paper,^{13/} large grid paper for math, and text book support.

PE, band, and art are an option for [Petitioner] to participate in and to generalize . . . motor, social, language skills.

[Petitioner] has been given a timer and planner to assist with organizational and on task skills.

86. The recommendations for the home were revised to provide as follows:

It was recommended that the learning environment is adjusted to allow for constant monitoring and viewing the computer screen; during the school day, they follow a 45 minute pattern and scheduling in breaks; [Petitioner's] mother to make flash cards for math facts and parent considering [Petitioner] coming in for SuccessMaker;^{14/} [Petitioner's] mother to contact a home school group for additional peer interaction; [Petitioner's] mother to contact the Virtual or the Citrus County District liaison for Virtual School for

concerns about the word processor; school offered an alpha smart^{15/} and encouraged [Petitioner's] mother to enforce planner use.

87. The October 2 IEP added a second special education service for Petitioner: a writing skills class for 45 minutes twice per week to be taught in the ESE classroom.

88. The list of general education accommodations was unchanged from those in the August 5 IEP. However, the October 2 IEP added a second annual goal, which was stated as follows:

When given a writing prompt, [Petitioner] will write a 4 paragraph essay on topic using grammatically correct syntax, conventions and transitions, independently in 4 out of 5 opportunities.

89. Progress toward this goal would be measured every four and one-half weeks through teacher observation of work samples and assessments. Three short-term objectives were stated for this goal:

By December, [Petitioner] will learn strategies to write a 4 paragraph essay on topic with prompting in 4 out of 5 opportunities.

By March, [Petitioner] will practice learned strategies to write a 4 paragraph essay on topic with minimal prompting in 4 out of 5 opportunities.

By May, [Petitioner] will apply learned strategies to write a 4 paragraph essay on topic with minimal prompting in 4 out of 5 opportunities.

90. [REDACTED] testified extensively about Petitioner's history of disciplinary and educational problems as a student in brick-and-mortar public schools from kindergarten through third grade, including repeated incidents of bullying. [REDACTED] testified as follows about the difference that [REDACTED] made to Petitioner:

[Petitioner] has gone from spending most of [the] week in the office and being suspended from school and barely managing on average "C" grades and being a major behavior problem for [the] teachers to becoming more independent and socially appropriate and [Petitioner] has become a straight "A" student with two minor exceptions. Although [Petitioner] still struggles with issues related to . . . [REDACTED], [REDACTED], and [REDACTED], the [REDACTED], the [REDACTED] has allowed [Petitioner] to work in the quiet setting [Petitioner] needs while still being interactive with other students in a safe setting.

91. [REDACTED] went on to praise the [REDACTED] for its flexibility in scheduling. [REDACTED] allowed Petitioner to work at a slower pace and to block schedule his classes. [REDACTED] testified that Petitioner has difficulty with transitions, which made it hard for Petitioner to focus in a brick-and-mortar classroom with 25 other students and hourly class changes. The [REDACTED] permitted Petitioner to "hyperfocus" on one topic until it was mastered.

92. [REDACTED] testified that Petitioner had registered for a typing course through Florida Virtual School during the summer between fifth and sixth grades. [REDACTED] stated that the course was

not designed to teach students to type and was "totally inappropriate" for that purpose. The course included a research paper, a spreadsheet report, a book report, a business report, statistical analysis and a PowerPoint presentation. [REDACTED] testified that the course was disorganized and "difficult to maneuver." There was no student interaction aside from posting on a bulletin board. [REDACTED] stated that Petitioner spent between six and eight hours per day completing the coursework.

93. The Florida Virtual program required the instructor to unlock new assignments and lessons after providing feedback to the student on the current assignment. [REDACTED] complained that it often took five or six days for the instructor to provide feedback, meaning that Petitioner was prevented from moving on to the next lesson for extended periods of time.

94. [REDACTED] testified that Petitioner received an "A" for the course despite the fact that [REDACTED] instructed Petitioner not to complete several assignments that [REDACTED] considered irrelevant to Petitioner's needs. This bad experience with Florida Virtual School, coupled with Petitioner's positive results in [REDACTED], caused [REDACTED] to complain when [REDACTED] County (and therefore Citrus County) dropped [REDACTED] from the list of approved virtual school vendors.

95. [REDACTED] misgivings about changing virtual schools were not assuaged by the testimony of [REDACTED], the [REDACTED] County

virtual program guidance counselor, or [REDACTED], the principal of [REDACTED] County Virtual School, neither of whom could provide much information about the specifics of [REDACTED] County's virtual offerings. [REDACTED] lack of detailed knowledge was understandable as [REDACTED] had only been in her position since early August 2013. [REDACTED] testified that [REDACTED] had received no special instruction on the needs of students in special education and that [REDACTED] had never met Petitioner or discussed Petitioner's needs with anyone. [REDACTED] seemed familiar with Florida Virtual's course offerings but stated that [REDACTED] would have to investigate whether a student could satisfy all graduation requirements by taking courses exclusively from any one of the other providers.

96. [REDACTED] testimony highlighted a conceptual distinction at the heart of [REDACTED] complaint. [REDACTED] described the offerings of the various vendors in terms of an a la carte menu of courses from which a student could choose. [REDACTED], on the other hand, sought a "program" for Petitioner, one vendor that could satisfy all of Petitioner's educational needs in the way that [REDACTED] believed [REDACTED] had done for the previous four years. During her questioning of [REDACTED], [REDACTED] parenthetically described the concept:

There's a difference in the statute between a program and a course. A program includes all of it. A course is you pick this course

you want to take, you sign up for it, you take the course. It's a stand-alone course. There's many to choose from. There's a course directory.^{16/}

97. On the same point, [REDACTED] testified as follows:

Well, I am not sure I understand what the definition would be of a program versus a course because our-- especially high school students, they don't really attend necessarily programs. All of their . . . schedule is made up of approximately seven courses [O]ur students can select from any one of our vendors any combination of those seven courses that would meet the requirements of graduation.

* * *

[I]f the question you're asking is, "Could you graduate from high school or meet all requirements for 7th grade in all of your courses from one vendor?" Is that what you're defining as "program"? Because that is . . . I don't have the functional definition of a program. We have providers, we have courses, and again our students can [make a] selection. I don't look at these as programs, necessarily, any of them.

98. [REDACTED] testified that Petitioner was identified as gifted at age three. More recent evaluations established that Petitioner no longer meets the criteria for identification as gifted. [REDACTED] contended that no school personnel have ever considered Petitioner's need for advanced academics. [REDACTED] believes that Petitioner is caught in a vicious cycle: Petitioner's [REDACTED] attributes mask the extent of Petitioner's

processing and fluency difficulties, and those difficulties tend to hide Petitioner's gifts.

99. [REDACTED] was pleased that the School District finally recognized Petitioner's writing deficit and dysgraphia and that the October 2 IEP provided for two 45 minute writing skills sessions per week. However, [REDACTED] also complained that the writing skills sessions were to be held in the ESE classroom. [REDACTED] stated that Petitioner's placement is the general education classroom. [REDACTED] objected to Petitioner's being put in an ESE classroom for any purpose.

100. [REDACTED] complained that the School District had not written an emergency health plan for Petitioner despite the need for Petitioner to have medications, [REDACTED], and [REDACTED] available while on campus. The evidence at hearing established that the School District had referred [REDACTED] information to school nurse [REDACTED], who wrote a healthcare plan for Petitioner, but at the time of the hearing had not provided the plan to [REDACTED].

101. [REDACTED], the School District's director of research and accountability, testified regarding the School District's virtual school offerings. [REDACTED] stated that as a county district eligible for the sparsity supplement pursuant to section 1011.62(7)(a), Florida Statutes, Citrus County is required to provide only one part-time and full-time virtual

instruction option. Districts not eligible for the sparsity supplement, such as ██████ County, must provide at least three part-time and full-time virtual instruction options. See § 1002.45(1)(b), Florida Statutes.

102. ██████ testified that Citrus County does not have its own virtual school. Pursuant to section 1002.45(1)(c)3., Citrus County has entered into an agreement with ██████ County to allow its students to participate in the virtual school options provided by ██████ County. Because ██████ County dropped ██████ from its offerings for the 2013-2014 school year, that school was not an option that the School District could offer to Petitioner.

103. ██████ explained that the Florida Department of Education has ruled that when a Citrus County student enrolls full-time in a ██████ County virtual school, the student must be withdrawn from Citrus County and enrolled as a ██████ County student. The student's geographic location is no longer the decisive factor in enrollment. The full-time equivalent ("FTE") funding for the student transfers to ██████ County. For accountability purposes in relation to teacher evaluations, the school grade, and the district grade, the student is considered a ██████ County student.

104. Citrus County retains an assessment role. Because the student actually lives in Citrus County, it would be

burdensome to force the child to travel to ██████ County to sit for exams. ██████ testified that part of the contractual agreement with ██████ County calls for Citrus County to provide "both formative tests, meaning tests are administered during the year to assist student and teacher with learning, and we provide them back to ██████, such as FAIR testing, the Florida Assessment for Instruction in Reading. And we also provide end of course exams and FCAT exams to all the students that are part of the shared partnership." The testing administered by Citrus County includes any test that requires a proctor, such as the ACT and the SAT. ██████ County is accountable for the exam results, but Citrus County administers the exams.

105. ██████ also noted that Citrus County students may participate part time with any county in the state. A Citrus County student could take a virtual class offered by Miami-Dade County. ██████ testified that ██████, the Florida Department of Education employee who oversees the state's virtual program, has opined that a Citrus County student would not be allowed to participate on a full-time basis in any virtual school offering other than those offered by ██████ County pursuant to its contract with Citrus County.

106. ██████ cross examination of ██████ ended with the following colloquy:

Q. Now, a Citrus County student who selects virtual option with ██████ County, who is responsible for the provision of their ESE services and preparation of IEPs?

A. That's a shared responsibility. So in essence when we have an ESE student we notify ██████ County that the student is identified as a student with disabilities, and then there's a-- we have an agent, ██████ could direct that, who serves in that role. Depending on the needs of the student-- there's some cases where no services are requested or required, and there's some cases when services are critical to the student's success. If they were critical to the student's success-- and there are also accommodations that may be made for that child. If they're critical to the student's success then we offer those in the county in addition to what the student is doing and participating in ██████ County, and that is the case right now. We have several students who are in that situation.

Q. But which county is responsible to prepare the IEP?

A. Both counties share in it. We take-- we initiate it. But both counties-- if, for example-- your question implies that one county takes ownership and the other does not. Both counties are responsible for ensuring that the outcomes outlined in the IEP are met.

Q. We're not talking about implementation. This is in the preparation, conducting the evaluations, determining the student's needs, and whether or not particular programs are going to meet those needs. Which county would be responsible for that?

A. I can't answer that question because your question splits hairs. Because school of instruction has a responsibility-- which

will be ██████ County-- has a responsibility to ensure that the learning outcomes are being met as defined by the IEP. Citrus County is still responsible because that student resides here and we hold that IEP. So it's a partnership.

107. ██████ has presented several issues for resolution regarding her child's identification, evaluation, and placement in the Citrus County public school system. The threshold question is whether ██████ was entitled to invoke the "stay put" provision of 20 U.S.C. § 1415(j) in order to keep Petitioner in the ██████ despite the fact that ██████ County, and therefore Citrus County, no longer offered ██████ to any of its virtual school students.

108. The School District has argued strenuously, both in its Motion to Strike and/or Dismiss and at the final hearing, that the withdrawal of the ██████ option did not constitute a change of placement as a matter of law. The School District cites the fundamental principle that "placement" refers to the educational program of services offered to the student, not to the methodology by which that program is delivered nor to the physical location where that program is taught. The School District cites copious case law establishing that a parent does not have right to dictate the particular school at which a student's educational program is delivered, and argues that the same principle is at play in this case. The move from ██████ to

Virtual School is merely a shift in the virtual location where Petitioner will attend school and receive the same program of services. It is not a change of placement.

109. While agreeing with the School District's statement of legal principles, the undersigned withheld ruling on the School District's motion for summary disposition because it was impossible to say that [REDACTED] could not demonstrate at the evidentiary hearing that the [REDACTED] Virtual School program was so radically different from [REDACTED] that it constituted a change of placement. "In the typical case, educational placement means a child's educational program and not the particular institution where that program is implemented." Hill by and through Hill v. Sch. Bd., 954 F. Supp. 251, 253 (M.D. Fla. 1997). See also T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 419-420 (2d Cir. 2009). However, there may be circumstances under which a change in schools or even classrooms within a school is so profound as to constitute a change of placement and a violation of FAPE. See A.K. v. Alexandria City Sch. Bd., 484 F.3d 672, 680-681 (4th Cir. 2007) (citing A.W. ex rel. Wilson v. Fairfax Cnty. Sch. Bd., 372 F.3d 674 (4th Cir. 2004) (change in the location at which special education services are provided causes a change of placement if the location change results in a dilution of the quality of the student's education or a departure from the student's least restrictive environment setting)).

110. At the hearing, however, [REDACTED] failed to prove more than that [REDACTED] prefers [REDACTED] to [REDACTED] Virtual School for [REDACTED] child. The School District did not challenge [REDACTED] testimony extolling the virtues of [REDACTED]. It is accepted that [REDACTED] met Petitioner's educational needs and satisfied the requirements of Petitioner's [REDACTED] County IEPs.

111. However, [REDACTED] offered scant evidence that the offerings of [REDACTED] Virtual School were significantly different from those of [REDACTED] or that they would fail to provide Petitioner with FAPE. [REDACTED] provided a single anecdote regarding a class that Petitioner took from Florida Virtual School. [REDACTED] signed up Petitioner for what [REDACTED] believed was a typing class but that turned out to be some kind of general business course. Instead of withdrawing the child from the course, [REDACTED] allowed Petitioner to struggle through it. [REDACTED] complained that Petitioner received an "A" in the class despite not completing all assignments, and [REDACTED] complained about the structure of the class and the lack of student interaction.

112. Even if everything [REDACTED] stated about Florida Virtual School were accepted at face value, [REDACTED] testimony is insufficient to establish that a move from [REDACTED] to [REDACTED] Virtual School would constitute a change of placement. Based on the evidence adduced at the hearing, Petitioner was not entitled to an Order requiring Citrus County to enter into a separate

contract with █████ in order to continue providing █████ services to a single student in the Citrus County school system during the pendency of this proceeding. If █████ wished for Petitioner to continue attending virtual school in Citrus County, █████ was required to choose among the offerings provided by █████ County.

113. It is understood that █████ insistence on keeping Petitioner in █████ tied the School District's hands to some extent in developing an IEP. However, it also cannot be overlooked that from the outset of its involvement with █████, even when Petitioner remained enrolled in █████, the School District took the position that █████ choice to place █████ child in virtual school absolved the School District of any responsibility for Petitioner's general education needs. This position resulted in a series of IEPs that fell short of meeting the needs resulting from the child's disability.^{17/}

114. Petitioner's last █████ County IEP set forth general curriculum goals addressing Petitioner's difficulties in writing, understanding of figurative language, and ability to make inferences. Petitioner's progress in these areas was to be monitored by █████ as the learning coach and by the virtual school teacher. Citrus County jettisoned these goals in the January 9 IEP because Petitioner was enrolled in the █████ virtual school. █████ testified that █████ did not circulate

Petitioner's evaluations to anyone other than the speech language therapist, the only School District employee who would be providing direct services to Petitioner.^{18/}

115. The evidence further indicates that in subsequent IEP meetings, the School District continued to confine its evaluation of Petitioner's educational needs to those related to the child's presence at the brick-and-mortar school. In discussing the preparation of the August 5 IEP, ██████████ testified that "We write goals to address student needs that are being provided in the school setting." ██████████ concurred that Petitioner's IEP goals addressed only the services that were being provided on the school campus and that the assessment of the child's needs was confined to those that could be observed on the school grounds. ██████████ testified that no behavior intervention plan was contemplated because Petitioner was not displaying any bad behaviors at the brick-and-mortar school.

116. This limited view of the School District's responsibilities toward Petitioner goes far toward explaining the casual approach and lack of preparation indicated by virtually everyone involved in developing the August 5, 2013, IEP. Petitioner's school records were replete with recent evaluations and historical documentation maintained by ██████████ since Petitioner's early childhood. Not one School District

participant at the IEP meeting reviewed any of the evaluations before the meeting started. See Findings of Fact 55, 58, 67, 68, and 70.

117. The testimony of the School District witnesses indicates there was an understanding among the School District employees that Petitioner's evaluations and general education needs and goals were not to be addressed in the August 5 IEP. [REDACTED], the speech language pathologist, testified that [REDACTED] was informed prior to the IEP meeting that Petitioner's evaluations would not be reviewed. [REDACTED], the school psychologist, testified that [REDACTED] agreed with the IEP team's consensus that Petitioner's sole area of eligibility was language therapy, even though she saw the extensive IEE prepared by [REDACTED] and the psychoeducational evaluation prepared by [REDACTED] for the first time on the day of the IEP meeting and [REDACTED] conceded that the IEP team did not discuss the evaluations at all. The lack of careful scrutiny of any of Petitioner's evaluations and especially the fact that some School District personnel were instructed there was no need to review the evaluations indicate that the outcome of the August 5 IEP meeting was largely predetermined.

118. The School District appeared to equate the parent's choice of virtual school with the parent's placement of the child in private school. In discussing Petitioner's situation,

██████████ expressly discussed the difficulty of writing goals for "private providers." ██████████ acknowledged that Petitioner's IEP included the accommodation of a scribe and that ██████████ disabilities rendered ██████████ unable to act as a scribe for Petitioner's home schooling. ██████████ then admitted that the School District did nothing to address this problem because it was occurring outside the brick-and-mortar school. Petitioner's behavioral problems were likewise disregarded because they were not exhibited during the 45 minutes per week that Petitioner spent on campus.

119. Despite the fact that virtual school is public school, and Petitioner was in fact residing in Citrus County, the School District essentially treated the child as a non-student except for the short periods of time Petitioner spent in the brick-and-mortar school. As noted at Finding of Fact 40, supra, the idea of coordinating IEP goals and objectives with a virtual provider apparently did not occur to the School District, even with the example of the ██████████ County IEP in hand.^{19/}

120. The United States Supreme Court has stated that the "modus operandi" of the IDEA is the IEP, which is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Sch.

Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368

(1985) (emphasis added).^{20/} The evidence presented at the hearing established that, once [REDACTED] dug in [REDACTED] heels to insist on [REDACTED], the School District made little effort to create a comprehensive IEP that addressed all of Petitioner's educational needs.

121. [REDACTED] refusal to consider any virtual school other than [REDACTED] placed the School District in a difficult situation, but did not absolve the School District from its responsibility to develop a comprehensive IEP for Petitioner, or at the very least to work with [REDACTED] to find an agreeable virtual school program that would take over the responsibility of developing a comprehensive IEP.

122. School District witnesses repeatedly alluded to the problem of evaluating needs, establishing goals, and monitoring progress when the student is not in the brick-and-mortar classroom. This might be an insurmountable obstacle if the School District were prevented from reaching outside its own walls to involve virtual school personnel in the development of the comprehensive IEP.^{21/} However, [REDACTED] County demonstrated that it was possible to involve the virtual school in the development and execution of a cooperative, comprehensive IEP.

123. Once the issue of stay put is settled, the overarching issue in this case is whether the August 5, 2013, IEP was reasonably calculated to provide FAPE to Petitioner.

The IEP team failed to consider Petitioner's recent evaluations, failed to establish present levels of academic achievement and functional performance in the five relevant academic domains, and failed to address behavior issues encountered in the virtual schooling environment. [REDACTED], the school psychologist, testified that the meeting was stopped as soon as [REDACTED] invoked stay put. The IEP that resulted from this truncated process addressed only the ESE services to be provided in the brick-and-mortar school. The IEP set forth some accommodations for the general education setting cribbed from the [REDACTED] County IEP without serious consideration of Petitioner's present levels and current educational situation.

124. Citrus County could have gone forward by enlisting [REDACTED] County's virtual school team to take the lead in the IEP process as the general education provider, initiating the shared responsibility process described by [REDACTED]. See Finding of Fact 106, supra. Indeed, section 1003.57(5) requires the full-time virtual school to "fulfill the obligations of a school district under this section for public school exceptional students who are enrolled in a full-time virtual instruction program," including the development of a comprehensive IEP. If anything, Citrus County's role should have been subordinate to that of [REDACTED] Virtual School in this process.

125. Given the strained relationship between [REDACTED] and the School District, it is safe to assume that [REDACTED] would have attempted to revoke consent had the School District collaborated with [REDACTED] Virtual School and gone forward with fashioning a comprehensive IEP without [REDACTED] approval. A due process hearing was likely to occur regardless of which route the School District chose to deal with [REDACTED] reluctance to give up [REDACTED]. However, a due process hearing involving a comprehensive IEP drafted by a cooperative team from Citrus and [REDACTED] Counties might have resulted in a more positive outcome for meeting Petitioner's educational needs than this proceeding, the result of which is to return the parties to square one.

126. Because of all these factors, the IEP that emerged from the August 5 IEP meeting addressed the ESE services piece of Petitioner's educational puzzle but fell short of being the "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services" contemplated by the IDEA. It was not reasonably calculated to enable Petitioner to receive sufficient educational benefits under all the circumstances presented.

CONCLUSIONS OF LAW

127. DOAH has jurisdiction over the subject matter and the parties of this proceeding pursuant to section 1003.57(1)(c),

Florida Statutes (2013), and Florida Administrative Code Rule 6A-6.03311(9).

128. Section 1003.57(1)(b) requires each school district to provide "an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable."

129. Section 1003.01(3)(a) defines an "exceptional student" as any student determined to be eligible for a special program pursuant to rules of the State Board of Education, including a student with an autism spectrum disorder. No party to this proceeding disputed Petitioner's status as an exceptional student under the primary exceptionality of [REDACTED] and the secondary exceptionality of [REDACTED]. Petitioner does not meet the criteria for identification as gifted.

130. The IDEA, 20 U.S.C. § 1400, provides that the local education agency must provide children with disabilities with a free, appropriate public education, which must be tailored to the unique needs of the handicapped child by means of an IEP program. Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982).

131. The determination of whether a school district has provided FAPE to an exceptional student involves a twofold inquiry as directed by the United States Supreme Court in Rowley:

First, has the State [or school district] complied with the procedures set forth in the Act [IDEA]? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State [or school district] has complied with the obligations imposed by Congress and the courts can require no more.

Id. at 206-207. See also Sch. Bd. of Collier Cnty. v. K.C., 285 F.3d 977 (11th Cir. 2002) (restating and applying the Rowley test).

132. The nature and extent of "educational benefits" required by Rowley to be provided by Florida school districts was discussed in School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999):

Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Educational benefits provided under IDEA must be more than trivial or de minimis. J.S.K. v. Hendry County School District, 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997) (citing Board of Education of Community

Consol. School District 21 v. Illinois State Board of Education, 938 F.2d 712 at 715, and Lachman v. Illinois State Board of Education, 852 F.2d 290, 297 (7th Cir. 1988)). Thus, if a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits. See Rowley, 458 U.S. at 207-208; O'Toole v. Olathe District Schs. Unified School District No. 233, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

133. Petitioner has proven no claims of significant procedural errors on the part of the School District, and therefore the first part of the Rowley test is not implicated in the instant case.^{22/}

134. The second part of the test inquires whether the IEP developed through the IDEA's procedures is "reasonably calculated to enable the child to receive educational benefits." Rowley, 458 U.S. at 206-207. In this regard, an appropriate education does not mean a "potential-maximizing education." Rowley, at 198, n.21. The issue in reviewing an IEP is whether the student has received "the basic floor of opportunity" to receive an educational benefit. J.S.K. v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1572-1573 (11th Cir. 1991); Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991). FAPE does, however, require "more than a trivial educational benefit." See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3rd Cir. 1999).

135. An IEP must provide "significant learning" and "meaningful benefit" when considered in light of a student's potential and individual abilities. Ridgewood Bd. of Educ. v. N.E., supra at 248. The IDEA creates a presumption in favor of a school system's educational plan, placing the burden of proof on the party challenging it. See White v. Ascension Parish Sch. Bd., 343 F.3d 373 (5th Cir. 2003); Teague Ind. Sch. Dist. v. Todd L., 999 F.2d 127, 132 (5th Cir. 1993).

136. Petitioner has the burden of proof to establish, by a preponderance of the evidence, that the IEP developed by the School District does not comport with the IDEA and does not provide for FAPE. Schaffer v. Weast, 546 U.S. 49 (2005).

137. The IDEA requires the School District to develop an IEP once a year for each child with a disability. 20 U.S.C. § 1414(d)(2)(A) & (d)(4)(A)(i). "The IEP, which sets forth the child's educational level, performance, and goals, is the governing document for all educational decisions concerning the child." Bd. Of Educ. v. Ill. State Bd. of Educ., 103 F.3d 545, 546 (7th Cir. 1996).

138. Florida Administrative Code Rule 6A-6.0334 provides criteria specific to the IEPs of transferring students, providing as follows, in relevant part:

- (1) Individual Educational Plans (IEPs) and Educational Plans (EPs) for students who transfer school districts within Florida. If

an exceptional education student who had an IEP or EP that was in effect in a previous Florida school district transfers to a new Florida school district and enrolls in a new school, the new Florida school district (in consultation with the parents) must provide free and appropriate public education (FAPE) to the student, which includes services comparable to those described in the child's IEP or EP from the previous Florida school district, until the new Florida school district either:

- (a) Adopts the child's IEP or EP from the previous school district; or
- (b) Develops, adopts, and implements a new IEP or EP that meets the applicable requirements of Rules 6A-6.03011 through 6A-6.0361, F.A.C.

139. In this case, after some delay following Petitioner's transfer from ██████ to Citrus County, the School District began the process of developing a new IEP for Petitioner.

140. The IEP at issue in this proceeding was written at a meeting held on August 5, 2013, after ██████ had learned that the School District would no longer provide Petitioner with access to the ██████ that Petitioner had been attending for the past four years. The decision to drop ██████ as an option for virtual school was not made by Citrus County but by its contractual virtual school provider, ██████ County.

141. The School District cut short the August 5 IEP meeting when ██████ invoked the "stay put" provision of 20 U.S.C. § 1415(j) in an attempt to force the School District to contract separately with ██████. Petitioner's public school placement is

general education with accommodations. █████ failed to demonstrate that a change in virtual school providers would constitute a change in placement sufficient to invoke stay put pending the due process hearing in this case. “‘Then-current educational placement’ more generally refers to the educational program and not the particular institution or building where the program is implemented.” L.M. and D.G. v. Pinellas Cnty. Sch. Bd., 2010 U.S. Dist. LEXIS 46796, *3 (M.D. Fla. 2010) and cases cited therein. See also Ill. State Bd. of Educ., 103 F.3d at 548 (“[T]he meaning of ‘educational placement’ falls somewhere between the physical school attended by a child and the abstract goals of a child’s IEP.”); D.K. v. Dist. of Columbia, 983 F. Supp. 2d 138, 145 (D.D.C. 2013) (if a parent cannot identify a fundamental change in, or elimination of, a basic element of the education program, there has been no change in placement). At most, █████ demonstrated a preference for █████ over Florida Virtual School, based on Petitioner’s very limited exposure to the latter.

142. Though Petitioner was not entitled to stay put under the facts found above, █████ was entitled to meaningfully participate in the development of Petitioner’s IEP. R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1188 (11th Cir. 2014). The evidence produced at the hearing established that the School District predetermined that its only role in Petitioner’s

education was as to those ESE services provided at the brick-and-mortar school. "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. A state can make this showing by, for example, evidence that it 'was receptive and responsive at all stages' to the parents' position, even if it was ultimately rejected. But those responses should be meaningful responses that make it clear that the state had an open mind about and actually considered the parents' points." Id. at 1188-1189 (citations omitted).

143. In the instant case, it is clear that the School District did not enter the IEP meeting with an open mind. The IEP team did not review Petitioner's evaluations and appeared to be operating under instructions not to consider any needs, goals or progress monitoring outside of the brick-and-mortar school.

144. Alone among the School District's witnesses, [REDACTED] appeared to understand the way forward in this matter, i.e., fully involving [REDACTED] Virtual School in the development of a comprehensive IEP for Petitioner. Rather than stop the process and attempt to defend a partial IEP in this due process hearing, the School District could have gone forward over [REDACTED] objections. Though "Parental participation in the development of an IEP is the cornerstone of the IDEA," J.W. v. Fresno

Unified School District, 626 F.3d 431, 447 (9th Cir. 2010), an IEP team may reach consensus without parental agreement and still satisfy the IDEA. Rosinsky v. Green Bay Area Sch. Dist., 667 F. Supp. 2d 964, 984 (E.D. Wisc. 2009), citing Hjortness v. Neenah Joint Sch. Dist., 507 F.3d 1060, 1065-66 (7th Cir. 2007). See also K.A. v. Fulton Cnty. Sch. Dist., 2012 U.S. Dist. LEXIS 13627, *9-10 (N.D. Ga. 2012), aff'd 741 F.3d 1195 (11th Cir. 2013). A due process hearing may nonetheless have occurred, but the IEP team's work product would have been complete and thus more defensible.

145. The IEP that resulted from the August 5, 2013, IEP team meeting was not "reasonably calculated to enable the child to receive educational benefits." The IEP team made no serious effort to craft a comprehensive IEP. The August 5 IEP was a partial document, addressing only the small portion of Petitioner's education that was being provided directly by the Citrus County School District.

146. The undersigned is cognizant of case law regarding parental non-cooperation in the development of IEPs. See, e.g., Roland M. v. Concord Sch. Comm., 910 F.2d 983, 995 (1st Cir. 1990) ("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."). However, the undersigned also notes that one

person's "obstructionism" may be another person's "persistent advocacy." The School District was plainly frustrated by [REDACTED] insistence on keeping [REDACTED] child in [REDACTED] and on the development of a comprehensive IEP for [REDACTED] child. However, there was no evidence that [REDACTED] did anything other than press [REDACTED] good faith claims on behalf of Petitioner. Even after filing the Petition that initiated this case, [REDACTED] continued to work with the School District in an effort to reach an amenable resolution of the disagreement over Petitioner's educational services. A subsequent IEP was completed during a facilitated meeting held on October 2, 2013, before the completion of the evidentiary hearing.

147. Unfortunately, the October 2 IEP suffered from the same defect as the August 5 IEP: it did not comprehensively address Petitioner's educational needs.

148. The evidence at hearing demonstrated that the August 5, 2013, IEP will not provide a free appropriate public education in the least restrictive environment.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that

The August 5, 2013, IEP was not adequate to provide a free appropriate public education to Petitioner in the least restrictive environment.

DONE AND ORDERED this 7th day of October, 2014, in Tallahassee, Leon County, Florida.

S

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of October, 2014.

ENDNOTES

^{1/} There are also are places in this final order where the term "██████ County" or "Citrus County" is used as shorthand for the full name of the school district, when necessary to distinguish one from the other.

^{2/} ██████ credibly asserted that her detailed Petition had been provided to the School District on August 6, 2013, but that the School District had forwarded to DOAH only the two pages she had written at the end of the August 5, 2013, IEP team meeting. The error appears to have been unintentional and due to miscommunication between School District personnel and the School District's counsel. In any event, the complete Petition found its way to this tribunal in timely fashion.

^{3/} The mediation was delayed until September 12, 2013, and ultimately proved unsuccessful in resolving the issues between the parties.

4/ Volumes IV and V of the Transcript were submitted without line numbers. Corrected versions of those volumes were filed at DOAH on December 6, 2013.

5/ The last day of classes before the winter break was Wednesday, December 19, followed by exams and early release days on December 20 and 21. Friday, January 4 was a teacher workday and students returned to classes on Monday, January 7.

6/ In a similar vein, School District school psychologist Kathleen Shea acknowledged the discrepancy as to the number of goals between the ██████ County IEP and the School District's August 5, 2013, IEP and stated, "I believe it is because [Petitioner] was in virtual school. And they would have written goals if [Petitioner] were at our school."

7/ Both Ms. Purinton and Ms. LeGrande testified at the hearing. Both were vague as to the particulars of the January 9 IEP meeting. This inability to recall details of meetings was a theme with the School District witnesses, and bolsters ██████ contention that Petitioner was given short shrift because the child was not a full time student at a brick and mortar school. ██████ testified credibly and was the only witness who recalled the meeting in detail, leading the undersigned to rely on her testimony.

8/ ██████ explained that this accommodation was limited to math because math was the only subject in which ██████ did not automatically allow its students to retest until they achieved mastery of the material.

9/ The present levels included in the May 15 IEP were nearly the same as those included in the subsequent August 5, 2013, IEP, and will be set forth in the discussion of the August 5 IEP at Finding of Fact 79, infra.

10/ No evidence was presented as to ██████ County's reasons for dropping ██████ from its list of virtual school offerings.

11/ The report contained 16 separate recommendations. Only those most pertinent to the issues in this case are named above.

12/ ██████ County subsequently changed the OHI classification to Language Impaired.

13/ ██████ had complained that she could no longer find RediSpace paper at her Wal-Mart.

14/ SuccessMaker is a proprietary educational software program developed by Pearson Education, Inc. Aside from this mention in the October 2 IEP, no evidence was provided regarding its proposed use by Petitioner.

15/ AlphaSmart is a portable, battery powered word processing keyboard. Unlike a computer, the AlphaSmart performs no other functions.

16/ In Petitioner's proposed final order, [REDACTED] described the distinction by example: French I is a "course"; eighth grade is a "program."

17/ The School District did not raise any issue as to the appropriateness of virtual school for Petitioner. The IEP team made no express finding that full-time virtual school was appropriate for Petitioner. At the hearing, the School District's witnesses repeatedly invoked the school choice provision set forth in section 1002.20(6), Florida Statutes, to argue that the School District's hands were tied once [REDACTED] exercised her statutory option to place Petitioner in virtual school. However, section 1003.57(5), Florida Statutes, provides as follows:

(5) Each full-time virtual instruction program under s. 1002.37 [the Florida Virtual School] or s. 1002.45 [virtual instruction programs generally] must fulfill the obligations of a school district under this section for public school exceptional students who are enrolled in a full-time virtual instruction program. A student whose individual educational plan indicates that full-time virtual instruction is appropriate may be enrolled in a full-time virtual instruction program. (Emphasis added)

The same principle is found in section 1003.4282(4), Florida Statutes, which requires all public high school students to take at least one course within the 24 credits required for graduation through online learning: "This requirement does not apply to a student who has an individual education plan under s. 1003.57 which indicates that an online course would be inappropriate"

The underscored language makes it clear that it is not the parent alone but the IEP team that has the authority to determine the appropriateness of virtual instruction. Therefore, it was up to the IEP team to find that full-time virtual instruction was appropriate before Petitioner could be enrolled in a full-time virtual instruction program. In the alternative, █████ could have selected one of the full-time virtual school options offered by █████ County. The virtual school could have taken primary responsibility for development of the IEP, including the appropriateness finding, with Citrus County participating as the home school district and provider of ESE services. Because this issue was not raised at the hearing, this discussion is included as guidance to the School District going forward rather than as a finding in the main body of the final order.

^{18/} The School District did include some general education accommodations in the May 15 IEP, see Findings of Fact 46 and 47, supra, but █████ credibly testified that the School District's follow-through on those accommodations was deficient. See Finding of Fact 52.

^{19/} █████ testified that the virtual school was part of the IEP team. █████ was apparently referencing the appearance by █████ at the August 5 IEP meeting. █████ testified that █████ made no recommendations regarding Petitioner's placement. Because █████ was new to her job, █████ had little detailed knowledge of virtual course offerings and no knowledge whatever of Petitioner.

^{20/} This statement of purpose continues to have vitality nearly thirty years after its pronouncement. See, e.g., C.F. v. New York City Dep't of Educ., 746 F.3d 68, 72 (2d Cir. 2014); K.D. v. Dep't of Educ., 665 F.3d 1110, 1114 (9th Cir. 2011); C.B. v. Special Sch. Dist., 636 F.3d 981, 989 (8th Cir. 2011).

^{21/} The evidence established that █████, the █████ County virtual school guidance counselor, attended the August 5 IEP meeting via telephone as little more than a passive auditor.

^{22/} █████ complained that no general education teacher of Petitioner was present at the August 5, 2013, IEP meeting, in violation of 20 U.S.C. § 1414(d)(1)(B)(ii). This was a de minimus procedural violation, especially in light of the fact that Petitioner was not in a particular virtual school at the time of the meeting. The School District had included █████ and █████ from █████ at the previous IEP meetings on January 9 and May 15, respectively.

COPIES FURNISHED:

R. Wesley Bradshaw, Esquire
Bradshaw and Mountjoy, PA
209 Courthouse Square
Inverness, Florida 34450
(eServed)

Petitioner
(Address of Record-eServed)

Liz Conn
Bureau of Exceptional Education
and Student Services
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400
(eServed)

Sandra Himmel
Superintendent of Schools
Citrus County Schools
1007 West Main Street
Inverness, Florida 34450

Lois S. Tepper, Interim General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(b), Florida Statutes

(2011), and Florida Administrative Code Rule 6A-6.03311(9)(w); or

b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).