STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs. Case No. 17-1134E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a due process hearing was conducted before Administrative Law Judge Jessica Varn of the Division of Administrative Hearings (DOAH) in Sanford, Florida, on June 28 and 29, 2017, and July 10, 2017. The final day of the hearing was held via webcast on July 20, 2017, with sites in Tallahassee and Sanford, Florida.

APPEARANCES

For Petitioner: Jamison Jessup, Qualified Representative
1642 North Volusia Avenue, Suite 201
Orange City, Florida 32763

For Respondent: Stephanie K. Stewart, Esquire
School Board of Seminole County
400 East Lake Mary Boulevard
Sanford, Florida 32773

STATEMENT OF THE ISSUES

Whether the School Board denied the student a free and appropriate public education (FAPE) by failing to design

individualized education plans (IEPs) that were reasonably calculated to provide the student with a meaningful educational benefit, and whether the student should be placed at [redacted] ([redacted]), which is a residential facility.

PRELIMINARY STATEMENT

On February 16, 2017, Petitioner filed a request for a due process hearing (Complaint) alleging that the School Board had failed to design IEPs that were reasonably calculated to provide a meaningful educational benefit to the student because the IEPs did not adequately record the level of [redacted] the student exhibited, did not provide a sufficient amount of [redacted] interventions and [redacted] procedures, and did not place the student at [redacted]. The parents also requested that the undersigned recognize [redacted] as a qualified representative, pursuant to Florida Administrative Code Rule 28-106.107; the School Board filed no objection to that request. In an Order dated March 9, 2017, the undersigned accepted [redacted] as Petitioner's qualified representative.

The parties jointly requested an extension of time to hold the resolution session, which was granted. An Order Extending the Deadline for Final Order was issued, extending the deadline to May 12, 2017. On March 28, 2017, after the parties were unable to resolve the issues during a resolution session, a telephone conference was held wherein the parties agreed to

schedule the due process hearing for June 1 and 2, 2017; the deadline for this Final Order was once again extended and set to be determined at the conclusion of the due process hearing.

On May 30, 2017, during a telephone conference, Petitioner filed an ore tenus motion for emergency continuance asserting that due to [redacted], [redacted] was unable to present the case as scheduled. The School Board did not object to the emergency continuance, and the hearing was rescheduled for June 28 and 29, 2017, and July 10, 2017.

The hearing did not conclude on the scheduled days, and was eventually finished on July 20, 2017. During the hearing, testimony was heard from [redacted], paraprofessional; [redacted], bus driver; [redacted], school bus monitor; [redacted], staffing resource specialist and guidance counselor; [redacted], paraprofessional; [redacted], instructional teacher; [redacted], speech pathologist; [redacted], mental health counselor; [redacted], school principal; [redacted], the student's mother; [redacted], school principal; [redacted], deputy sheriff and school resource officer; [redacted], deputy sheriff and school resource officer; [redacted], social worker; [redacted], executive director of exceptional student education (ESE) services; [redacted], child psychiatrist; [redacted], attorney; [redacted], the student's father; [redacted], teacher; [redacted], area ESE

director, [redacted], school psychologist; [redacted], teacher; [redacted], education coordinator; [redacted], behavior analyst; [redacted], speech pathologist; [redacted], IDEA compliance administrator; [redacted], speech language pathologist; and [redacted], behavior analyst. Petitioner Exhibits 1 through 11, 14, 15, 35 through 38, 41, 57 through 59, 61, 63 through 66, 71, 72, 76, 78, 81, 89, 92, 94 through 96, and 98 through 100 were admitted into the record; School Board Exhibits 1, 3, 5, 6, 10 through 16, 19 through 22, 25, 26, 36, 38 through 40, 43, 44, 46, 48, 49, 51, 54 through 63, 65, 67, 70 through 72, 75, 76, 78 through 80, 83, 85 through 87, 98, and 100 were admitted into the record.

The Transcript was filed on August 2, 2017; by agreement of the parties, proposed final orders were due on August 23, 2017; and the final order was due on September 13, 2017. On the day the parties' proposed orders were due, Petitioner filed an unopposed request for a five-day extension of time in which to file the proposed orders. The request was granted, and the parties were instructed to file proposed final orders by August 28, 2017; the deadline for the final order was extended by the same number of days and was due on September 18, 2017. The State of Florida was declared a state of emergency by Governor Rick Scott in anticipation of Hurricane Irma, and state offices were closed from Friday, September 8, 2017, through Tuesday,

September 12, 2017. On September 13, 2017, the undersigned entered an Order Extending Final Order Deadline Due to Hurricane Irma, providing for an additional week to prepare this Final Order.

The parties' proposed final orders were considered in the preparation of this Final Order. For stylistic convenience, the undersigned will use [redacted] pronouns in this Final Order when referring to Petitioner. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

Unless otherwise noted, all statutory and rule citations are to the versions in effect at the time the alleged violations took place.

FINDINGS OF FACT

1. The student is a [redacted]-year-old who was in the [redacted] grade for the 2016-2017 school year, attending School A, which is a separate day school serving mostly students with [redacted]. [redacted] is eligible to receive ESE services as a student with an [redacted] ([redacted]), [redacted] ([redacted]), and a [redacted].

2. [redacted] been diagnosed with [redacted], [redacted] [redacted] [redacted] ([redacted]), [redacted], [redacted] [redacted] [redacted] ([redacted]), and [redacted] [redacted] [redacted] ([redacted]). [redacted] described as having poor impulse control, poor judgement,

often [redacted], and sometimes [redacted]. [redacted] can have [redacted], has difficulty [redacted] others, finds it difficult to develop [redacted], and can be highly [redacted] and become [redacted] interests.

3. The student's behaviors can be [redacted] in nature, including [redacted] on teachers or other personnel, [redacted], [redacted] from the school campus, [redacted], and [redacted] property.[1/] [redacted] behavior at home is described as being highly [redacted], [redacted], [redacted], and [redacted].

4. During [redacted] four years of [redacted] school, the student has attended [redacted] different schools, and has been [redacted] to a [redacted] institution [redacted] times. [redacted] attended School A for most of [redacted] second year of middle school ([redacted] grade), and all of [redacted] [redacted] year (repeating [redacted] grade).

5. Twice during these [redacted] school years, the student was [redacted] to [redacted]. The first visit was from [redacted], [redacted], through [redacted]; the second visit was exactly one year later, from [redacted], to [redacted]. During both of [redacted] stays at [redacted], the primary goal was to treat the student's [redacted] and [redacted] needs; the student's [redacted] was not a primary goal.

6. During [redacted] initial stay at [redacted], which lasted approximately [redacted] days, [redacted] was discharged because [redacted] reached all treatment goals. After [redacted] discharge, [redacted] returned to School A

and completed the school year. [redacted] father, when asked to describe how the time at [redacted] had helped the student, or why [redacted] felt the student "did well" at [redacted], answered:

> By the time we got [redacted] back [redacted], [redacted] was in a much more controlled situation. [redacted] was learning to develop what they call [redacted] skills. And the [redacted] skills are things they're teaching [redacted] how to deal with [redacted] [redacted], how to [redacted] [redacted] [redacted]. And [redacted] been working with a [redacted] at the facility, and a [redacted], and they were providing [redacted] some guidance and [redacted] exhibited pretty good. We were kind of angry because the insurance company abruptly came and arbitrarily, in our opinion, decided that they were not going to provide coverage. So they suspended coverage and we had to bring [redacted] [redacted].

7. The student then spent the next school year, which was the 2015-2016 school year, at a private school. [redacted] was re-enrolled at [redacted] for [redacted] second visit there, this time from late [redacted].

8. When [redacted] was admitted the second time to [redacted], [redacted] completed [redacted] treatment goals--the program had resulted in "the absence of [redacted] and [redacted] behaviors." The discharge summary stated: "[redacted] has benefitted from weekly individual and family [redacted] to address [redacted] poor [redacted] and [redacted] management. [redacted] also participated in [redacted] programming and [redacted] training facilitating a decrease in [redacted] behaviors and [redacted] final transition back [redacted]."[2/] As compared to the other students residing at [redacted], the student's behaviors were

described as being significantly XXXXXXXXXXX. After this second visit, the student's father recalled that the student's grades were "good" while [redacted] was at [redacted], and that [redacted] once again learned [redacted] skills.

9. The student then returned in the Fall of 2016 to School A, to repeat [redacted] grade. Although every member of the school staff agreed that the student exhibited [redacted] and sometimes [redacted] behavior, they credibly testified that [redacted] behavior was similar to behavior exhibited by most of the students at School A; in fact, the staff was clearly fond of the student, and felt certain that the student bonded with [redacted] education team.

10. In October of 2016, an IEP was developed for the student. It included counseling for [redacted] minutes weekly; language therapy for [redacted] minutes [redacted]; direct instruction in math computation, problem solving skills, reading fluency and comprehension, vocabulary, and social skills; and specialized instruction in behavior management and independent functioning. During the meeting, the parents presented a letter directed to the principal (who was not present at the IEP team meeting), requesting for the first time a residential placement for the student.

11. When the IEP team met in October, a meeting summary sheet was generated. As to concerns that were being addressed,

the following is stated: "Parents are concerned with **'s [redacted] towards others and property across various settings." (emphasis added). Later in the summary, the following is found: "Target behaviors include: [redacted], and [redacted]." In the section of the IEP regarding social and emotional behaviors, "[redacted]" is listed as one of the behaviors that warranted a referral to the [redacted] center. In the goals listed, one is: "Given frequent positive reinforcement and attention for positive behaviors, ** will keep [redacted] body parts/objects to [redacted] in a safe manner (with no physical aggression towards [redacted] or others with no more than two (2) verbal prompts with 80% mastery as evidence by daily data collection."

12. [redacted] credibly testified that since it was the first time the IEP team was presented with the request for placement at [redacted], [redacted] was unprepared to address it at the [redacted] IEP meeting, but agreed to reconvene once the request had been properly considered. Just two weeks later, the IEP team met again.

13. At the [redacted] IEP meeting, the IEP team doubled the language therapy time weekly, but denied the request for a residential placement. The parents filed a request for a due process hearing, which was eventually withdrawn because the

parties agreed, among other things, to have the student undergo a [redacted] evaluation, and to conduct a functional behavior assessment (FBA).

14. The [redacted] IEP documented, among many other goals, the following goals that targeted physical aggression:

> While on school campus, ** will conduct [redacted] in a manner that is not disruptive, [redacted] personal space, or does not interfere with efforts to participate in routine classroom activities while [redacted] and staff with 70% mastery as evidenced by daily data collections.
>
> While on school campus, ** will behave in a safe and compliant manner by following directions the first time given, by raising [redacted] hand, remaining in [redacted] assigned seat, and will receive instruction in small group and individual situations with 70% mastery as evidenced by daily data collections.

15. The [redacted] evaluation was conducted by [redacted]. [redacted] spoke to each parent for two hours, the student for one hour, and interviewed four school staff members for ten minutes each. [redacted] never visited School A, and never observed the student while [redacted] was in the school environment. [redacted] ultimately recommended that the student be placed in a residential facility. The undersigned finds it puzzling that a [redacted] would opine regarding an educational placement without becoming more familiar with the school, without seeing the student interact with the staff at school, without speaking with all of the staff that interacts with the student, and after only spending a total of

40 minutes with only some of the school staff. For this reason, while the undersigned does not question the medical diagnosis provided by [redacted], the undersigned does not find [redacted] evaluation as to educational placement to be particularly helpful.

16. [redacted], a mental health counselor who started to work with the student two months after the Complaint was filed, and five months after the [redacted] IEP was designed, also opined that a residential placement is appropriate for the student. [redacted] never observed the student at School A, never spoke with the school staff, and had no knowledge as to whether the IEPs or the behavior intervention plan (BIP) were being implemented at School A. Further, [redacted] admitted that [redacted] had no access to School A's handbooks or policies, did not have knowledge as to the types of restraints utilized at School A, and did not know what programs were used at School A. [redacted] and [redacted] actually disagree as to whether the student exhibits the traits of [redacted]. [redacted] does not agree with [redacted] diagnosis of [redacted], because the student exhibits a strong [redacted] to [redacted] [redacted] [redacted]. After reviewing the record as a whole,

[redacted] testimony is also not persuasive as to the decision that must be made on educational placement.

17. After the [redacted] IEP was drafted, [redacted], a behavior analyst, began to work with the student. [redacted] conducted an FBA and developed a BIP for the student, and [redacted] spent approximately [redacted] hours a week working with the student and the staff at School A. [redacted] meticulously charted the student's behaviors, which included [redacted], the amount of minutes the student spent in the [redacted] ([redacted]), and the amount of points earned for [redacted] behavior. The [redacted] behavior trended [redacted] throughout the year, with some [redacted] due to outside of school factors (for example, the death of an NFL football player, or returning from a holiday break), and the points earned for positive behavior trended [redacted] (the student actually had [redacted] at School A).

18. In the FBA conducted by [redacted], the problem behaviors identified are described as follows:

Non compliance: [redacted]

Invading personal space of others (IPS): [redacted]

19. The BIP developed by [redacted] is highly detailed, with specific directions for the staff members. The paraprofessionals who worked with the student felt that [redacted] provided them with very good support and specific instruction on how to mold better behavior. Both paraprofessionals credibly testified that the student was typical of all students at School A, and that while [redacted] experienced some lapses, overall [redacted] behavior improved over time.

20. [redacted], the speech pathologist who worked with the student on [redacted] language IEP goals, spent [redacted] minutes a week with [redacted], which was eventually increased to [redacted] minutes a week. [redacted] focused [redacted] therapy on social and pragmatic language, emotional vocabulary, social situations, perspective taking, observing nonverbal language, assessing social situations, and modulating behaviors.

21. [redacted], who the undersigned found to be candid and credible, recalled that at the [redacted] IEP meeting, the parents brought a letter requesting residential placement, but that since their advocate ([redacted]) was not present, the entire team agreed to reconvene the IEP team in a few weeks to discuss the requested change in placement.

22. When [redacted] first started working with the student, [redacted] was presented with the IEP from [redacted], which only provided [redacted] of language therapy in a group setting.

[redacted] designed more detailed and more comprehensive language goals, and eventually tripled the amount of minutes. [redacted] saw the student's progress in all of the IEP goals for which [redacted] was responsible.

23. Specifically, the student learned how to identify the zones of regulation, increased [redacted] emotional vocabulary, was better able to identify social issues and provide an acceptable solution for both parties, learned breathing strategies, and picked up on verbal cues given by a partner. During the hearing, [redacted] described a typical day with the student:

> Q: And if you could give an example of how you would work with ** in—and [redacted] IEP goals, and, you know, helping [redacted] meet those.
>
> A: Okay. There's many. There's so many examples. Okay. So ** is a fun kid and [redacted] needs to be dazzled a little bit. So when I would come in I would say these are your goals, [redacted] aware of what [redacted] working on. And I say what do you feel like working on today, because I don't mind where I start and I can work on goals depending on what [redacted] picks. So if [redacted] would say—-or I would say we need to read something, we could get that out of the way, read a high interest story and then answer questions, and if [redacted] knocks that out we could go to Uno [a card game used to teach the zones of regulation] and do zones of regulation type emotional vocabulary.
> There were vocabulary words on the board on a Monday and we used them in sentences and try to catch each other using them in sentences and try to explain what they were to increase [redacted] vocabulary, and by the end of the week, [redacted] be at hundred percent.

> So just little things like that. I know that when [redacted] read a high interest story and then answered questions, I would then have [redacted] retell the story to someone else to see if [redacted] could get the key points, and [redacted] has a good memory for that. And then [redacted] could write a paragraph about it or how [redacted] would change the story or add on to it. And then we'd go back and edit, because [redacted] needs work on editing strategies. And that's just a typical day. I could keep going.

24. Tracking of the student's academic progress was also done and showed improvement over the course of the academic year. Other than the parents of the student, most witnesses (including [redacted]) agreed that the student progressed academically through the year. Reading scores across all reading components steadily showed progress, although math proficiency varied depending on the day and showed less consistent progress.[3/]

25. There was no evidence presented by any witness as to what type of educational program would be in place for the student at [redacted]; in fact, [redacted] specifically stated that [redacted] was unfamiliar with the program at [redacted], and [redacted] could only provide general information as to the [redacted] benefit of residential programs.[4/] [redacted] recommendation that the student be placed there was solely based on the student's [redacted] and [redacted] needs, not [redacted] [redacted] needs.

26. The information in the record specific to [redacted] is limited to the past—-the two periods of time when the student was admitted to [redacted] and then discharged because [redacted] met the

[redacted] treatment goals. It was clear to the undersigned that both visits were intended to address the student's [redacted] state; when [redacted] successfully met [redacted] treatment goals, [redacted] was returned to School A to be educated.

27. No credible evidence was presented to establish that [redacted] can provide an appropriate education at this point in time, or even what educational plan might be put into place to meet the student's educational needs.

CONCLUSIONS OF LAW

28. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

29. Petitioner bears the burden of proof with respect to each of the issues raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

30. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational

services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on each agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

31. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. Bd. of Educ. v. Rowley, 458 U.S. 176, 205-06 (1982). Among other protections, parents may file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

32. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

> [S]pecial education services that – (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State

> involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

33. "Special education," as that term is used in the IDEA, is defined, in relevant part, as:

> [S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including -- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings . . . .

20 U.S.C. § 1401(29).

34. The central mechanism by which the IDEA ensures a FAPE for each child is the development and implementation of an IEP. 20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985)("The modus operandi of the [IDEA] is the . . . IEP.")(internal quotation marks omitted). The IEP must be developed in accordance with the procedures laid out in the IDEA, and must be "reasonably calculated to enable the child to receive educational benefits." Bd. of Educ. v. Rowley, 458 U.S. 176, 207 (1982).[5/] School districts must also ensure that, "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled." 20 U.S.C. § 1412(a)(5)(A). In other words, the school district must endeavor to educate each disabled child in the least

restrictive environment (LRE). A.K. v. Gwinnett Cnty. Sch. Dist., 556 Fed. Appx. 790, 792 (11th Cir. 2014).

35. Here, Petitioner asserts that the IEPs in [redacted] and [redacted] did not adequately describe the [redacted] behavior exhibited by the student. The undersigned disagrees. As reflected in the facts recited above, the IEPs designed for the student and the FBAs documented [redacted] satisfactorily, and established goals to address the behavior. IEPs need not detail every incident of maladaptive behavior; undoubtedly, the school staff was well acquainted with the student's behaviors and simply summarized them.

36. Petitioner also takes issue with the alleged lack of consideration given to the parents' request for a residential placement at the [redacted] IEP meeting. The undersigned rejects this argument based on the credible testimony provided by the school staff, which explained that the request was a surprise to the school staff at the [redacted] meeting, and that the parents agreed to reconvene the IEP meeting when their advocate could attend and after school staff had time to adequately consider the request.

37. As promised, the request was properly considered at the [redacted] IEP meeting. After considering [redacted] opinion, the IEP team rejected the requested residential placement, finding that the IEP was designed to meet the student's educational

needs, and that FAPE had been provided to the student up until that point in time.[6/]

38. Turning to the issue of placement, the IDEA mandates that:

> To the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A). "Educating a handicapped child in a regular education classroom . . . is familiarly known as 'mainstreaming.'" Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1039 (5th Cir. 1989). Courts have acknowledged, however, that the IDEA's strong presumption in favor of mainstreaming must be "weighed against the importance of providing an appropriate education to handicapped students." See Briggs v. Bd. of Educ., 882 F.2d 688, 692 (2d Cir. 1989).

39. In evaluating whether an IEP places a student in the LRE, a two-part test is applied:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. If it cannot and school intends to provide special education or remove the child from regular education, we ask, second, whether the school has

> mainstreamed the child to the maximum extent appropriate.

Greer v. Rome City Sch. Dist., 950 F.2d 688, 696 (11th Cir. 1991)(internal citation omitted); L.B. v. Nebo Sch. Dist., 379 F.3d 966, 976 (10th Cir. 2004); Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989).

40. To determine whether a child with disabilities can be educated satisfactorily in a regular class with supplemental aids and services (the first part of the test described above), several factors are properly considered:

> (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class.

P. v. Newington Bd. of Educ., 546 F.3d 111, 120 (2d Cir. 2008) (quoting Oberti v. Bd. of Educ., 995 F.2d 1204, 1217-18 (3d Cir. 1993)).

41. As to whether the student should be placed in a residential facility, and when tuition reimbursement is at issue, Courts have adopted an analysis that, "[m]ust focus . . . on whether full-time placement may be considered necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are

segregable from the learning process." Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 693 (3d Cir. 1981) (emphasis added); see also Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 433 (3d Cir. 2013) (explaining that, pursuant to Kruelle, the "relevant question . . . is whether [the child] had to attend a residential facility because of [redacted] educational needs—because, for example, [redacted] would have been incapable of learning in a less structured environment—or rather, if [redacted] required residential placement to treat medical or mental health needs segregable from [redacted] educational needs."). The Kruelle test has been cited with approval by the Fourth, Sixth, Ninth, Eleventh, and D.C. Circuits. See Richardson Indep. Sch. Dist. v. Michael Z, 580 F.3d 286, 298 n.8 (5th Cir. 2009) (collecting cases); J.S.K. v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1573 (11th Cir. 1991)(defining "appropriate" education as making measurable and adequate gains in the classroom, not across settings).

42. Although Petitioner is not seeking reimbursement in this case, the undersigned is guided by the same principles articulated in the above cited cases; that is, the record here reflects that the past placements at [redacted] were motivated by the difficulties the student was exhibiting in regulating [redacted] behavior across all environments in [redacted] life, and not because the student was not receiving an appropriate education at School A.

43. The record establishes that the IEPs were reasonably calculated to address all the student's needs, both academic and behavioral, and that the student progressed in all areas while at School A. School A has provided support, intensive instruction, behavior plans, and intense individual support to the student, in an effort to provide [redacted] an appropriate education in the least restrictive environment possible at this point.

44. The evidence as a whole establishes that the nature and severity of the student's disability is such that education at School A, with the use of supplementary aids and services, can be achieved satisfactorily, and that the School Board has properly mainstreamed the student to the maximum extent possible at this juncture.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the IEPs were reasonably calculated to provide a meaningful educational benefit to the student, and the student's placement at School A is appropriate and the least restrictive environment.

DONE AND ORDERED this 25th day of September, 2017, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
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 25th day of September, 2017.

ENDNOTES

[1/] At least one incident, which occurred on the same date the Complaint was filed, resulted in the student being [redacted] and charged with [redacted].

[2/] Found in School Board Exhibit 87, page 978, which was admitted as a Joint Exhibit. The parents disagree and stated at the hearing that their insurance company declined to fund the residential stay any longer. The exhibits show otherwise and are corroborated by the testimony of the [redacted] staff person, [redacted].

[3/] School Board Exhibit 86 is replete with academic progress reports, completed with extensive detail.

[4/] The student's father testified that the student earned good grades while at [redacted]. [redacted] testified that Brevard County provided the IEP while the student was there; and, in the IEP, the team noted that placement at [redacted] was not because Brevard County Schools could not provide a proper education during the school day. No one testified as to what academic accommodations would be utilized, what educational programs would be implemented, or what strategies would be used to help the student reach academic success if placed there presently.

[5/] On March 22, 2017 (after the instant Complaint was filed), the United States Supreme Court readdressed this prong, finding that a school board must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the

student's circumstances. Endrew F. v. Douglas Cty. Sch. Bd., 137 S. Ct. 988, 991(2017). Given that this is a substantive change to the legal standard, it is not applicable to the instant case, which was filed prior to the decision being issued. Assuming, arguendo, that it is applicable, applying the facts of this case to the Endrew standard would result in the same outcome.

[6/] Both parties entered exhibits into the record and elicited testimony regarding events that occurred well past the date the Complaint was filed, and past the date the IEP was designed (November 2016). It is well-settled that an IEP must be analyzed in light of the circumstances as they existed at the time of its formulation. Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated."). As such, the record evidence concerning Petitioner's post-November behavior is irrelevant to the instant claim.

COPIES FURNISHED:

Stephanie K. Stewart, Esquire
School Board of Seminole County
400 East Lake Mary Boulevard
Sanford, Florida 32773
(eServed)

Jamison Jessup
Suite 201
1642 North Volusia Avenue
Orange City, Florida 32763
(eServed)

Walt Griffin, Superintendent
School Board of Seminole County
400 East Lake Mary Boulevard
Sanford, Florida 32773-7127

Leanne Grillot, Dispute Resolution
Program Director
Bureau of Exceptional Education
and Student Services

Department of Education
Turlington Building, Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Matthew Mears, 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)(c), Florida Statutes (2014), 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).