STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 22-2502E

OSCEOLA COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A due process hearing was held on October 17, 2022, by Zoom conference before Todd P. Resavage, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of Record)

For Respondent: Kristine A. Shrode, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq*., as alleged in the Petitioner's request for due process hearing (Complaint). Specifically, the undersigned construes Petitioner's Complaint as setting forth the following issues:

(a) Whether Respondent should have conducted a Battelle Developmental Index (BDI)[1];

(b) Whether Petitioner's Individual Healthcare Plan (IHP) was appropriate and whether staff working with Petitioner were appropriately trained on Petitioner's IHP and;

(c) Whether there was appropriate training with respect to Petitioner's Behavior Intervention Plan (BIP).

PRELIMINARY STATEMENT

Respondent received Petitioner's first Complaint on March 7, 2022. Respondent forwarded the Complaint to DOAH on March 8, 2022, and the matter (DOAH Case No. 22-0717E) was assigned to the undersigned. Ultimately, the due process hearing in that matter was scheduled for September 1 and 2, 2022.

On August 5, 2022, Respondent received a separate due process complaint filed by Petitioner. Respondent forwarded the Complaint to DOAH on August 8, 2022, and the matter (DOAH Case No. 22-2335E) was assigned to the undersigned. On August 9, 2022, Petitioner filed a motion to consolidate DOAH Case Nos. 22-0717E and 22-2335E. An Order of Consolidation and an Order Rescheduling Hearing by Zoom Conference (providing additional dates of September 7 and 8, 2022, to conduct the consolidated hearing) were issued on August 12, 2022.

On August 9, 2022, Petitioner filed yet another due process complaint that forms the basis of this Final Order, which was styled as "Petitioner's Complaint for Due Process Hearing Under IDEA 2004 School Board of

[1] Petitioner's parent withdrew her request for Respondent to conduct a BDI during the presentation of her testimony, and, therefore, this Order shall not include any findings of fact or conclusions of law regarding this claim.

Osceola County, Florida Amended 5, 29, 30." Following Respondent's Motion for Case Management Conference, filed August 16, 2022, a telephonic case management conference was conducted on August 22, 2022, with all parties in attendance.

During the telephonic conference, Petitioner was advised that, pursuant to Florida Administrative Code Rule 6A-6.03311(9)(h), if Petitioner's August 9, 2022, Complaint was accepted by the undersigned as an amended complaint to DOAH Case Nos. 22-0717E and 22-2335E, the timelines for the resolution session and the 30-day time period to resolve the complaints, as amended, would begin again. Petitioner, however, remained unequivocal in the desire to proceed with the consolidated hearing as scheduled, without delay. Respondent, for its part, did not consent in writing to the purported amendment, and presented its arguments at the case management conference. Accordingly, on August 24, 2022, an Order Denying Amended Complaint was issued, wherein Petitioner was denied the amendment to the prior consolidated cases, and the August 9, 2022, filing was deemed a separate due process complaint. On September 20, 2022, the due process hearing was scheduled for October 7, 2022.

On the date of the hearing, Petitioner filed his Motion to Reschedule Hearing Due to a Medical Necessity. A telephonic conference was conducted on October 7, 2022, prior to the hearing start time. Petitioner's mother represented that the subject student was ill and in the hospital. Counsel for Respondent had no objection to a brief continuance; however, she requested the matter be abated pending the matter being reconvened. Having determined that existence of an emergency and good cause for rescheduling the hearing, the hearing was canceled and the parties were ordered to provide several mutually agreeable dates to conduct the hearing.

Ultimately, the hearing was rescheduled for October 17, 2022, and proceeded, as scheduled. At the beginning of the hearing, the parties agreed and stipulated to the evidentiary record previously presented in the due process hearing conducted for the consolidated cases (DOAH Case Nos. 22-0717E and 22-2335E), and, therefore, no further proof was required of the same. Accordingly, the evidentiary presentation was limited to those "new" issues or claims set forth solely in this due process hearing request.

Upon the conclusion of the hearing, the parties agreed to the submission of proposed final orders within ten days after the filing of the transcript at DOAH and the issuance of the undersigned's final order within ten days after the parties' proposed final order submissions. The hearing Transcript was filed on November 2, 2022. The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript.

This matter then came before the undersigned on an untitled filing on behalf of Petitioner, filed November 21, 2022. Although the filing set forth a number of declarations and allegations, the undersigned construed the pro se filing, globally, as a motion for an extension of time to file a proposed final order. Given the unique procedural posture of this matter,[2] and finding no prejudice to Respondent, the motion for extension of time was granted, and the parties were given until November 29, 2022, to submit proposed final orders. The undersigned's deadline for issuing this Final Order was extended to December 9, 2022.

Both parties filed proposed final orders, which have been considered in the preparation of this Final Order. Unless otherwise indicated, all rule and

[2] The final hearing in the consolidated cases (DOAH Case Nos. 22-0717E and 22-2335E) was conducted on September 1, 2, 26, and 27, 2022. In those matters, the parties' proposed final orders were ultimately to be filed on or before November 15, 2022, and the undersigned's Final Order was issued on November 30, 2022.

statutory references are to the version in effect at the time of the alleged violation.

For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. As noted above, the Findings of Fact as set forth in the November 30, 2022, Final Order regarding DOAH Case Nos. 22-0717E and 22-2335E, are adopted and incorporated herein by reference as though set forth fully herein. The findings of fact set forth below are those presented at the October 17, 2022, due process hearing which are relevant to the additional issues presented in this due process hearing request.

2. Petitioner is presently a [redacted]-grade student, and at the time of the due process hearing was a [redacted]-grade student at School A, a public elementary school in Osceola County, Florida.

3. [redacted] is a Registered Nurse (RN) for Respondent. [redacted] has held that position since 2019. Amongst other duties, [redacted] reviews healthcare information obtained from parents of students in Respondent's school district and determines which students require IHPs to ensure their safety in the school environment.

4. To facilitate this process, [redacted] frequently speaks with the treating physicians of students who submit healthcare information. Parental consent is, however, a condition precedent to this communication. [redacted] credibly testified that [redacted] would like the opportunity to speak with Petitioner's treating physicians because [redacted] wants to make sure Respondent is doing everything they can to address Petitioner's multiple concerns.

5. Petitioner, however, has repeatedly refused to allow Respondent's staff to contact the numerous doctors who have written medical notes and orders for School A to consider and potentially implement. Petitioner's mother has refused to provide consent for Respondent's staff to speak with Petitioner's healthcare providers because she does not trust Respondent.

6. Petitioner had an active IHP for the commencement of the 2022-2023 school year. After updated medical orders or recommendations were submitted, [redacted] updated Petitioner's IHP twice during the relevant timeframe—once on August 5, [redacted], and again on August 8, [redacted].

7. Petitioner's mother contends that Petitioner was unsafe in School A's clinic because the cot he would rest on was too high and he could potentially fall off the cot and sustain an injury. Additionally, she testified that School A staff should have utilized a particular seizure log that she preferred.

8. [redacted] and [redacted], School A's principal, credibly testified that Petitioner is safe in the school setting with the current seizure plan and IHP. [redacted] opined that the cot in the nurse's office is safe, sufficiently low, and, that Petitioner would be supervised at all times by his one-to-one aide and school nurse.

9. Additionally, the evidence established that School A monitors any seizure activity with a seizure log; has a plan for when Petitioner has a seizure, including the administration of Diastat; and a safe place to rest after he has had a seizure. Should a medical emergency beyond what is listed in Petitioner's IHP present itself, Respondent's staff would call 911.

10. Petitioner contends that [redacted], an RN assigned to the clinic during the 2021-2022 school year, was not trained in Cardiopulmonary Resuscitation (CPR) until later in the school year. The credible evidence, however, established that numerous staff members at School A, including [redacted], are trained to administer CPR. [redacted] has trained numerous staff members at School A on Petitioner's IHP and on the administration of his prescribed seizure medication, Diastat. Both

[redacted] and [redacted] credibly testified that they would provide additional training for staff if they felt it was necessary or if staff requested such training. They credibly testified that, at this time, additional training was unnecessary to ensure Petitioner's school safety.

11. Finally, [redacted] credibly testified that, should any School A staff request additional training with respect to Petitioner's individualized education program (IEP) or BIP, the same would be provided; however, no such requests have been submitted.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and rule 6A-6.03311(9)(u).

13. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

14. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] 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 the 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).

15. Local school systems must satisfy the IDEA's substantive requirements by providing all eligible students with a free appropriate public education (FAPE), which is defined as:

> Special education services that--(A) have been provided at public expense, under public supervision and direction, and without charge;
> (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary 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).

16. "Special education," as that term is used in the IDEA, is defined 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).

17. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's "present levels of academic achievement and functional performance"; establishes measurable annual goals; addresses the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "Not less frequently than annually," the IEP team must review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i). "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 484 U.S. 305 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting

Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 181 (1982)).

18. The IDEA provides that, in developing each child's IEP, the IEP team must, "[i]n the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Fla. Admin. Code R. 6A-6.03028(3)(g)5.

19. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. A procedural error does not automatically result in a denial of FAPE. *See G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007). Here, Petitioner's Complaint is not construed as advancing a procedural argument.

20. Pursuant to the second step of the *Rowley* test, it must be determined if the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive "educational benefits." *Rowley*, 458 U.S. at 206-07. Recently, in *Endrew F.*, the Supreme Court addressed the "more difficult problem" of identifying a standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." *Endrew F.*, 137 S. Ct. at 993. In doing so, the Court held that "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 999. As discussed in

Endrew F., "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id*.

21. Whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student who is "fully integrated in the regular classroom," an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id*. For a student not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances." *Id*. at 1000.

22. Additionally, deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. *Id.* at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review" and explaining that "deference is based on the application of expertise and the exercise of judgment by school authorities.").

23. Here, Petitioner's Complaint is construed as alleging that Respondent failed to design an appropriate IEP with respect to the incorporation of Petitioner's IHP. Petitioner's parent, however, failed to provide any evidence that the IHP was inappropriate to meet Petitioner's healthcare needs in the school setting. Outside of Petitioner's parent's bald assertions, no testimony was presented to refute the appropriateness of the IHPs. The undersigned finds and concludes that Petitioner failed to meet his burden with respect to said claim.

24. Petitioner's Complaint is further broadly construed as alleging that Respondent did not implement Petitioner's IEPs with respect to providing training on Petitioner's IHP and BIP. In *L.J. v. School Board of Broward*

County, 927 F.3d 1203 (2019), the Eleventh Circuit Court of Appeals confronted, for the first time, the standard for claimants to prevail in a "failure-to-implement case." The court concluded that "a material deviation from the plan violates the [IDEA]." *Id.* at 1206. The *L.J.* court expanded upon this conclusion as follows:

> Confronting this issue for the first time ourselves, we concluded that to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.

Id. at 1211.

25. While declining to map out every detail of the implementation standard, the court did "lay down a few principles to guide the analysis." *Id*. at 1214. To begin, the court provided that the focus in implementation cases should be on "the proportion of services mandated to those actually provided, viewed in context of the goal and import of the specific service that was withheld." *Id*. (external citations omitted). "The task for reviewing courts is to compare the services that are actually delivered to the services described in the IEP itself." In turn, "courts must consider implementation failures both quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole." *Id.*

26. Additionally, the *L.J.* court noted that the analysis must consider implementation as a whole:

> We also note that courts should consider implementation as a whole in light of the IEP's overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to

> something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

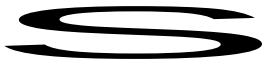
Id. at 1215.

27. Here, Petitioner failed to meet his burden in establishing that Respondent failed to properly implement his IEPs with respect to training. In the light most favorable to Petitioner, while certain staff members working with Petitioner may not have been trained prior to their first contact with Petitioner, the evidence supports the determination that Respondent did materially implement Petitioner's IEPs, with respect to providing training on Petitioner's IHP and BIP, over the relevant time period.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof with respect to the claims asserted in Petitioner's Complaint, and, therefore, Petitioner's Complaint is denied in all aspects.

DONE AND ORDERED this 7th day of December, 2022, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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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).