

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
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Petitioner,)
)
vs.) Case No. 12-2829E
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LEON COUNTY SCHOOL BOARD,)
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Respondent.)
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_____)

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on October 1-2 and October 10-12, 2012, in Tallahassee, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rosemary N. Palmer, Esquire
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Tallahassee, Florida 32309

For Respondent: Opal McKinney-Williams, Esquire
Erik Matthew Figlio, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Leon County School Board (Respondent or School Board) denied Petitioner, ██████████ (Petitioner, the student, or ██████████), who is an Exceptional

Student Education (ESE) student, a free, appropriate public education (FAPE) within the meaning of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., and, if so, the relief to which [REDACTED] is entitled. More specifically, the issue may be summarized as whether the Individualized Education Plans (IEP) developed by [REDACTED] IEP team from August 23, 2010 through June 4, 2012, contained inadequate goals and provisions to address [REDACTED] language and physical impairments, and to provide an educational benefit to [REDACTED]

PRELIMINARY STATEMENT

On or about August 16, 2012, Petitioner filed a Request for Due Process with Respondent. The request was forwarded to the Division of Administrative Hearings (DOAH) on August 20, 2012, for a formal administrative hearing. The case was initially set for hearing on October 1-3 and October 11-12, 2012.

On September 19, 2012, Respondent filed a Motion for Partial Summary Final Order, which requested the dismissal of that portion of Petitioner's claim based on section 504 of the Vocational Rehabilitation Act of 1973. That Motion was granted by Order dated September 26, 2012.

On September 28, 2012, Petitioner filed a Notice of Stipulations advising the undersigned of a number of factual stipulations agreed upon by Respondent. Those stipulations were

confirmed at the final hearing, and have been incorporated in this Final Order to the extent that they are relevant.

The final hearing commenced on October 1, 2012, as scheduled. Pursuant to an Emergency Motion for Continuance filed by counsel for Petitioner, the October 3, 2012, date on which the hearing was to take place was cancelled, and October 10, 2012 was added to the scheduled hearing. The hearing was concluded on the revised schedule.

At the final hearing, Petitioner called the following witnesses: Tammy Moyes, Petitioner's kindergarten teacher for the 2010-2011 school year; Lakeisha Johnson, a speech and language therapist who provided services to Petitioner during the 2010-2011 school year^{1/}; Freda Hayes-Dupree, Petitioner's first-grade teacher for the 2011-2012 school year; Kathryn Kellogg, an occupational therapist who provided services to Petitioner from August 2010 until December 2010; Corvetta Ashe, a para-professional who assisted with reading and math in Petitioner's first-grade class in January 2012; Gwendolyn Cooper, a first-grade teacher who taught reading to Petitioner from January, 2012 until May, 2012; Sharon Sams Thomas,^{2/} an ESE teacher for academic skills in reading, writing, and math; Amber Swearingen Klappas,^{3/} an occupational therapist who provided services to Petitioner from January 2011 through the date of the final hearing; Denise Kearse, a speech/language pathologist who

provided language therapy services to Petitioner during the 2010-2011 school year; Jennifer Dubose, a speech/language pathologist who has provided speech therapy services to Petitioner beginning in the 2010-2011 school year; Paula Mischler, a reading coach at Petitioner's school; Patty Dod, Petitioner's first-grade teacher for the current 2012-2013 school year; Jennifer Nagel, an ESE teacher who is providing reading and writing services to Petitioner in the 2012-2013 school year; Melissa Barton, an ESE program specialist; Robyn Rennick, Program Coordinator at Woodland Hall Academy; Melissa Peoples-Fullmore, principal of Petitioner's school; Beverly Owens, who was, at all times pertinent to this proceeding, Divisional Director for ESE Operations; Margot Palazes, Respondent's program specialist and Section 504 coordinator for the School District; Jo Wenger, Respondent's Director of Student Services; Stuart Greenberg, Respondent's Director of Accountability; Susan Barnes, Respondent's corporate representative related to dyslexia services; [REDACTED] Petitioner's mother; [REDACTED] Petitioner's step-father; and Raymond King, Jr., Respondent's Director for Primary Reading and Support.

Ms. Rennick was accepted as having an expertise in the general traits of dyslexia and learning disabilities. Petitioner's Exhibits 1-25, 27-28, and 30-39 were received in evidence by stipulation. Petitioner's Exhibit 31, pages 359 through 362,

and Petitioner's Exhibit 34 were admitted as public record or business record exceptions to the hearsay rule.

Respondent re-called the following witnesses in its case-in-chief: Margot Palazeski; Melissa Barton; Lakeisha Johnson; and Melissa Peeples-Fullmore. Respondent's Exhibits 1-99 were received in evidence by stipulation.

On October 19, 2012, Respondent filed a Supplemental Statement of Stipulated Facts advising the undersigned of additional factual stipulations agreed upon by Respondent. Those stipulations have been incorporated in this Final Order to the extent that they are relevant.

The ten-volume Transcript was filed on October 19, 2012. Pursuant to a series of motions filed by Petitioner, the time for filing proposed final orders was extended to November 16, 2012. On that date, Respondent filed its Proposed Final Order, and Petitioner filed a document entitled "Petitioner's Proposed Final Order, Incomplete." On November 19, 2012, Petitioner filed "Petitioner's Proposed Final Order Final." The final Proposed Final Order filed by each party has been considered in the preparation of this Final Order.

All statutory references are to Florida Statutes (2012).

FINDINGS OF FACT

1. [REDACTED] was born on [REDACTED] [REDACTED]. At all times relevant to this proceeding, [REDACTED] has been, and continues to be

enrolled at a public elementary school operated by the School Board.

2. The School Board is responsible for the operation, control, and supervision of all free public schools in the county school district (School District or District). See Art. IX, §4(b), Fla. Const.; § 1001.32(2), Florida Statutes.

3. █████ is eligible for and receiving services from Respondent's ESE program in the area of language impairment.

4. █████ attended an elementary school pre-kindergarten program during 2008-2009 school year. During the period of enrollment at the school, an Individual Education Plan (IEP) was developed and implemented to provide ESE services for developmental delay and speech impairment.

5. █████ attended a Head Start program during the 2009-2010 school year. Head Start is not part of the system of public schools administered by the School Board.

6. █████ enrolled at a public elementary school kindergarten program at the start of the 2010-2011 school year. August 23, 2010 Individual Education Plan

7. On August 23, 2010, upon █████ enrollment at the School District-operated elementary school, a meeting was held to develop an IEP for █████ for the upcoming school year. The IEP meeting was held immediately upon █████ enrollment in the public school, and was timely under the IDEA.

8. The August 2010 IEP was intended to be an interim plan, designed to allow for a fuller understanding of [REDACTED] needs, and the means by which those needs could be addressed. The decision to develop an interim IEP, which was to include evaluation of [REDACTED] as part of the authorized services, was appropriate since [REDACTED] had not been enrolled in a public school for more than a year, and was not a procedural or substantive violation of the IDEA.

9. The School Board representatives of the IEP team consisted of Principal Melissa Fullmore; District representative, Margot Palazesi; ESE teacher, Patricia Joyce; occupational therapist, Kathryn Kellogg; speech and language therapist, Lakeisha Cooper; and ESE program specialist, Melissa Barton.

10. The Mother did not attend the August 23, 2010, meeting. At the request of the Mother, the Mother's agent participated as a member of the IEP team on her behalf.

11. The Mother's agent provided the IEP team with a document, entitled Parent Proposed IEP, in which she presented what she believed to be [REDACTED] current levels of performance, [REDACTED] strengths, the goals and outcomes that she believed should be achieved during the course of the 2010-2011 school year, the accommodations that she believed to be necessary to meet the goals, and the specific services requested. The

evidence indicates that the IEP team gave serious consideration to the Parent Proposed IEP in the deliberations and discussions leading up to the development of the August, 2010 IEP.

12. The Mother's agent also provided the IEP team with a Parent Notice and Consent for Re-Evaluation signed by the Mother, bearing a signature dated August 23, 2010. The Notice requested a reevaluation of [REDACTED] impairments, and contained a list of evaluation methods and other instruments that the Mother wanted to be used in the evaluation process.

13. At the conclusion of the IEP meeting, an IEP was developed and approved for [REDACTED] by the IEP team. The IEP was for the period from August 23, 2010 through October 22, 2010, and included the following services that were in addition to the regular curriculum:

Assistance with academic skills for reading, writing, and math, for 30 to 100 minutes daily;

Speech therapy for 30 minutes (typically) four times per week;

Occupational therapy consult for 2-50 minutes one time per week; and

Physical therapy consult for 2-50 minutes one time per week.

14. The IEP team proposed an updated evaluation to determine the student's current impairments. The updated evaluation was to be performed during the interim period in which the August 2010 IEP was to be effective.

15. [REDACTED] kindergarten teacher for the 2010-2011 school year, Ms. Moyes, was unable to attend the August 23rd IEP meeting. Ms. Moyes was provided with a copy of the IEP and instruction on the services that were to be provided to the student.

16. On August 26, 2010, the Mother was sent a letter by the School District explaining elements of the IEP, and offering to schedule a second meeting of the IEP team on September 1, 2010, at which the Mother and Ms. Moyes could be in attendance. The Mother was provided with a Parent Invitation/Participation Form for the September 1, 2010, meeting.

17. On August 30, 2010, the School Board sent an Informed Notice of Refusal to Take a Specific Action to the Mother. The Notice reaffirmed the School District's intent to reevaluate [REDACTED], but indicated that it was declining to implement the specific assessment evaluations requested by the Mother, or to provide specific therapy session notes related to the assessment.

18. On August 31, 2010, the Mother declined the offered September 1, 2010, meeting. The e-mail made a number of other requests regarding desired levels of occupational therapy to be provided to [REDACTED]

19. On September 3, 2010, the School Board sent a second Informed Notice of Refusal to Take a Specific Action to the

Mother indicating that it was declining to implement the items contained in the August 31, 2010, e-mail.

20. The evidence was insufficient to prove that the services authorized for [REDACTED] under the August 23, 2010, IEP were inappropriate to address [REDACTED] disability, or that [REDACTED] required additional or different services to receive FAPE. Thus, the August 23, 2010, IEP did not violate the IDEA.

Fall 2010 Re-Evaluation

21. [REDACTED] underwent re-evaluation for academic, speech, language, physical therapy, and occupational therapy. [REDACTED] was found to be in the lower extreme for the comprehensive achievement composite; below average in letter and word recognition; average in math computation; below average in math concepts and applications; in the lower extreme in written expression and oral expression; and below average in listening comprehension.

November 15, 2010 Individual Education Plan

22. Upon completion of the re-evaluation, the School District attempted to schedule a re-evaluation conference and IEP meeting on October 18, 2010. The Mother could not attend on that date.

23. The School District rescheduled the re-evaluation conference for October 25, 2010, which was the Monday following the Friday, October 22, 2010, expiration of the August 2010,

IEP. A Parent Invitation/Participation Form was sent home in the backpack of [REDACTED] brother on October 8, 2010, and was mailed to the Mother on October 18, 2010. On the day of the meeting, the Mother advised Jennifer Dubose that she was not aware of the meeting, and could not attend. The meeting was cancelled.

24. The School District rescheduled the re-evaluation conference for November 5, 2010. The Mother was advised of that meeting date by telephone on October 25, 2010, and a Parent Invitation/Participation Form was mailed to the Mother on October 25, 2010, and again on October 29, 2010. At the request of the Mother, the meeting was cancelled.

25. The School District rescheduled the re-evaluation conference for November 15, 2010. [REDACTED] step-father was advised of that meeting date by telephone on November 5, 2010, and a Parent Invitation/Participation Form was mailed to the Mother on that date.

26. By letter dated November 10, 2010, the School District, noting the difficulty in scheduling a meeting, proposed extending the expiration of the August 2010, IEP until May 31, 2011, and again advised the Mother that an IEP meeting was scheduled for November 15, 2010.

27. The IEP meeting was held as scheduled on November 15, 2010. The School Board representatives of the IEP team

consisted of Principal Melissa Fullmore; District representative, Margot Palazesi; ESE teacher, Patricia Joyce; [REDACTED] kindergarten teacher, Tammy Moyes; occupational therapist, Kathryn Kellogg; physical therapist, Mary Pope; speech and language therapist, Lakeisha Cooper; and ESE program specialist, Melissa Barton.

28. The Mother did not attend the November 15, 2010, meeting because she had a toothache. At the request of the Mother, the Mother's agent participated as a member of the IEP team on her behalf.

29. The Mother's agent provided the IEP team with a document entitled Parent Proposed IEP, in which she recited the various evaluations of [REDACTED] that had been performed by the School District and by Headstart; presented what she believed to be [REDACTED] current levels of performance; [REDACTED] strengths and the goals and outcomes that she believed should be achieved during the course of the 2010-2011 school year; the accommodations that she believed to be necessary to meet the goals; and the specific services requested. The pages were signed by the Mother, with the handwritten statement "I want this for [REDACTED]." The evidence indicates that the IEP team gave serious consideration to the Parent Proposed IEP in the deliberations and discussions leading up to the development of the November 15, 2010, IEP.

30. At the conclusion of the IEP meeting, an IEP was developed and approved for [REDACTED] by the IEP team. The IEP was for the period from November 22, 2010 through November 14, 2011, and included the following services that were in addition to the regular curriculum:

Assistance with academic skills for reading, writing, and math, for 30 to 100 minutes daily;

Speech therapy for 30 minutes (typically) two times per week;

Occupational therapy two times per week; and

Language therapy for 30 minutes (typically) two times per week.

31. In addition to the IEP, a list of Program Modifications and Accommodations, and a document entitled, "Annual Goals & Benchmarks or Objectives," was provided to the Mother's agent.

32. On November 19, 2010, the School Board sent an Informed Notice of Refusal to Take a Specific Action to the Mother indicating that it was declining to implement the Parent Proposed IEP, and indicating that the services and accommodations proposed for [REDACTED] in the November 2010, IEP were appropriate for [REDACTED] needs based on the results of the re-evaluation.

33. The evidence was insufficient to prove that the services authorized for [REDACTED] under the November 15, 2010, IEP

were inappropriate to address [REDACTED] disability, or that [REDACTED] required additional or different services to receive FAPE. Thus, the November 15, 2010, IEP did not violate the IDEA.

Student Progress - 2010-2011 School Year - Kindergarten

34. At the beginning of the kindergarten year, [REDACTED] knew few letters or letter sounds; had few pre-reading skills; could not write Petitioner's name; and was understandable between 30-35 percent of the time.

35. Ms. Moyes provided accommodations including seating [REDACTED] at the front of the class to minimize distractions and allow Ms. Moyes to provide help when needed; breaking material into small, more easily understood "chunks"; and cueing [REDACTED] for correct sounds and pronunciation.

Educational Interventions

36. During the 2010-2011 school year, [REDACTED] received assistance with academic skills for reading and math from Ms. Moyes and Ms. Joyce. Ms. Joyce assisted [REDACTED] on a daily basis during center time, at which she would rotate with one or two other students in the classroom during the 45-minute reading block. The services were "push in" services, meaning that they took place in the regular classroom. Reading programs offered at the kindergarten level were the Imagine It, Successmaker, and Lexia programs.

37. [REDACTED] was struggling with the overall kindergarten curriculum before the Christmas break in 2010. There were others in the class who were struggling as well, especially in reading.

38. [REDACTED] made significant progress in speech and language skills over the course of the year.

39. [REDACTED] uppercase letter recognition went from three letters in September 2010, to 26 letters by March of 2011.

[REDACTED] lowercase letter recognition went from 10 letters in November 2010, to 26 letters by March of 2011. [REDACTED] letter sound recognition went from non-existent at the beginning of the 2010-2011 school year, to recognition of 23 sounds by the end of the year.

40. In October of 2010, [REDACTED] could not recognize any sight, number, or color words. By the end of kindergarten, [REDACTED] knew 31 of 76 kindergarten-level sight words, nine number words and seven color words, and was able to write [REDACTED] first and last name.

Speech and Language Therapy

41. During the 2010-2011 school year, [REDACTED] received speech therapy twice per week and language therapy twice per week from Ms. Johnson, a speech-language pathologist. Each session lasted approximately 30 minutes. [REDACTED] was pulled out of the classroom for speech services, which sessions occurred at the start of the

school day, and occurred in a small group of three to five students. Language therapy was provided just with [REDACTED], and was "push in," so the goals were embedded in the activities that were happening in the classroom.

42. Ms. Johnson worked on a variety of outcomes designed to make [REDACTED] speech clear and intelligible, and the use of language articulate. Ms. Johnson utilized a number of strategies and interventions to allow [REDACTED] to produce the ending sounds of words; to produce 'k' and 'g' sounds; to say every syllable in multisyllabic words; to reduce "fronting," which occurs when sounds that should be produced at the back of the throat are produced at the front of the mouth; and to reduce the incidence of stopping or cutting short sounds.

43. Ms. Johnson found that [REDACTED] made progress in speech and language skills over the course of the year. Her testimony is credited.

44. Ms. Johnson entered time entries for Medicaid billing for the speech and language therapy services. There was no admissible evidence presented as to the total number of sessions that would have been contemplated on a four-times-per-week schedule, but the number 144 was discussed by counsel for Petitioner. The time entries indicated that Ms. Johnson provided approximately 103 speech and language therapy sessions to [REDACTED] during the 2010-2011 kindergarten year. [REDACTED] would have

missed sessions when there were scheduled field trips; school testing; or on days when [REDACTED] was absent from school. There was no evidence of the number of times speech and language therapy sessions were missed for those reasons. In addition, Ms. Johnson missed one or two sessions due to her wedding, and a few sessions due to complications related to the extraction of her wisdom teeth.

45. Given the progress made by [REDACTED] as set forth herein, and the evidence as a whole as to the provision of speech and language therapy services to [REDACTED], and their relationship to [REDACTED] progress towards meeting the goals of the IEP, it is found that Petitioner failed to prove, by a preponderance of the evidence, that the School District failed to implement substantial or significant provisions of the IEP, or that [REDACTED] was denied a meaningful educational benefit as a result of any missed speech or language therapy sessions.

Occupational Therapy

46. After the August 23, 2010, IEP was developed, Ms. Kellogg performed the required occupational therapy services to evaluate [REDACTED] for subsequent therapy. The consultations included an evaluation of such things as handwriting and hand function; holding a pencil; holding a spoon; and using clothing closures. The consultation indicated that [REDACTED] was "emerging,"

meaning that the student was close but could not yet complete the tasks.

47. After the November 15, 2010, IEP was developed, Ms. Swearingen worked with [REDACTED] on improving motor skills. The sessions were provided one-on-one, and focused on the skills observed in connection with Ms. Kellogg's consultation, along with such things as using scissors; accessing art materials; and opening food containers. By February, 2011, [REDACTED] could copy Petitioner's name and demonstrate good letter form and sequence four out of five times. By the end of the year, [REDACTED] could independently write, though still needing reminders for the first and last name, and struggled with letter placement and orientation of letters on the line. Although [REDACTED] did not master the Independent Functioning goals, progress was made.

48. Ms. Swearingen found that [REDACTED] made progress in motor skills that were the subject of the occupational therapy sessions over the course of the year. Her testimony is credited.

49. Ms. Swearingen provided approximately 42 occupational therapy sessions to [REDACTED] from December 2010 through the remainder of the 2010-2011 kindergarten year. Petitioner has asserted that there should have been 46 sessions during that time period. As noted above, [REDACTED] would have missed sessions when there were scheduled field trips; school testing; or on

days when [REDACTED] was absent from school. Ms. Swearingen's Therapy Attendance Report - School Year 2010-2011, shows that [REDACTED] was absent on two days; that [REDACTED] was unavailable on one day; and that Ms. Swearingen had a "consult/collaboration/monitor" on one day.

50. Given the progress made by [REDACTED] as set forth herein, and the evidence as a whole as to the provision of occupational therapy services to [REDACTED], and their relationship to [REDACTED] progress towards meeting the goals of the IEP, it is found that Petitioner failed to prove, by a preponderance of the evidence, that the School District failed to implement substantial or significant provisions of the IEP, or that [REDACTED] was denied a meaningful educational benefit as a result of any missed occupational therapy sessions.

Recommendation Regarding Promotion

51. By the time the 2010-2011 school year was coming to a close, [REDACTED] had not mastered many of the Sunshine State standards. Ms. Moyes testified that although [REDACTED] was not on grade level at the end of the kindergarten year in reading, math, or writing, the student was showing progress. Nonetheless, [REDACTED] struggles with the kindergarten curriculum led her to believe that the student might benefit from being retained in kindergarten. Ms. Moyes recommended that [REDACTED],

along with two or three other children in the class, be retained.

52. About a week prior to April 11, 2011, Ms. Moyes called the Mother and discussed with her the recommendation that [REDACTED] be retained. Kindergarten retention is a teacher recommendation, but is a parent option. The Mother refused retention. [REDACTED] was thereupon, at the insistence of the Mother, promoted to first grade.

May 13, 2011 Individual Education Plan

53. On April 11, 2011, the Mother requested an IEP to consider an increase of services, including Extended Year Services, to prepare [REDACTED] for first grade. The letter was written in response to the discussion the Mother had with Ms. Moyes regarding the recommendation that [REDACTED] be retained in kindergarten.

54. On April 14, 2011, Ms. Fullmore wrote to the Mother and asked that she contact Patricia Joyce, [REDACTED] ESE teacher, to arrange the requested IEP meeting.

55. The School District mailed a Parent Invitation/ Participation Form to the Mother on May 3, 2011, and again on May 10, 2011, to advise her that an IEP meeting was to be convened, and set May 13, 2011, as the date for the meeting. On May 12, 2011, the School District called "at work" to remind the Mother of the May 13, 2011, meeting, although the record is not

clear as to whether the call was made to the workplace of the Mother, or to that of the step-father.

56. The IEP meeting was held as scheduled on May 13, 2011. The School Board representatives of the IEP team consisted of Margot Palazeski; Lakeisha Cooper; Amber Swearingen; Patricia Joyce; Tammy Moyes; Jennifer Ricardo, who attended as the school principal's designee; and Melissa Barton.

57. Despite having been provided with adequate notice, neither the Mother, nor any representative or agent of the Mother attended the May 13, 2011, IEP meeting.

58. The IEP team reviewed █████ progress during the preceding year. With regard to progress on the November 15, 2010, IEP educational performance goals for the Curriculum and Learning Environment, █████ was found to have mastered the goal of recognition of upper and lower case letters, and was found to have made progress or be likely to achieve goals of number recognition, legibly writing the student's name, recognition and correct pronunciation of letters, and writing upper and lower case letters.

59. The IEP team determined that █████ had not made progress on the use of manipulatives, and had not produced a written product that achieved a score of three on the kindergarten rubric for Writes Upon Request, a timed writing assessment. The goal regarding the use of manipulatives was not

included in [REDACTED] Annual Goals & Benchmarks or Objectives, and the writing goal was adjusted to provide for a topic sentence rather than a complete written product.

60. As a result of the review of [REDACTED] IEP Annual Goal Progress Report Form, and discussion amongst the members of the IEP team, [REDACTED] remaining educational performance goals for the Curriculum and Learning Environment, based on the progress towards meeting the November 15, 2010, IEP goals, were either removed as having been substantially met; modified to allow for continued progress; or left unchanged. The goals were not modified to require mastery or performance at grade level by the end of the 2011-2012 school year. Given the progress made during the preceding year, the curriculum and learning environment goals for the 2011-2012 school year were appropriate and designed to provide educational benefit to [REDACTED]

61. With regard to the November 15, 2010, IEP educational performance goals for Communication (speech), [REDACTED] made considerable progress, and was likely to achieve each of the five goals, though none was mastered. The goals included the elimination of "fronting;" the elimination of final consonant deletion; elimination of syllable reduction; eliminate stopping by producing "v", "z," "ch," and "dg" sounds; and speaking intelligibly with unfamiliar listeners.

62. Each of the goals was maintained for the 2011-2012 school year, with some upward adjustment in the goals and expectations for the following year. Given the progress made during the preceding year, the Communication (speech) goals for the 2011-2012 school year were appropriate and designed to provide educational benefit to [REDACTED]

63. With regard to the November 15, 2010, IEP Independent Functioning goals, [REDACTED] made progress throughout the year regarding use of clothing fasteners; cutting with scissors; holding pencils; and opening containers, although those skills were not mastered.

64. The goal for the 2011-2012 school year was adjusted to provide for independent living skills on a par with [REDACTED] peers. Given the progress made during the preceding year, the independent living goals for the 2011-2012 school year were appropriate and designed to provide educational benefit to [REDACTED]

65. With regard to the November 15, 2010, IEP educational performance goals for Communication (language), [REDACTED] made considerable progress, and was likely to achieve each of the four goals, though none was mastered. The goals included the identification of objects in pictures; the identification of an item that did not belong in a group of items; the formulation of a four-or-five-word sentence to describe an item; and the identification of similarities among items in a group of items.

66. The goal of identifying items in a picture was sufficiently achieved so that it was not included in the May 13, 2011, IEP as a separate goal. The remaining three goals were maintained for the 2011-2012 school year, with some upward adjustment in the goals and expectations for the following year. Given the progress made during the preceding year, the Communication (language) goals for the 2011-2012 school year were appropriate and designed to provide educational benefit to [REDACTED].

67. In addition to the goals carried over from the November 15, 2010, IEP, the IEP team added a Social/Emotional Behavior domain to the May 13, 2011, IEP. The goals were designed to improve [REDACTED] skills at conversing and interacting with others. The Social/Emotional Behavior goals for the 2011-2012 school year were appropriate and designed to provide educational benefit to [REDACTED].

68. The IEP team determined that [REDACTED] would be placed in the regular classroom for more than 79 percent of the time, but proposed that [REDACTED] receive some ESE services in an ESE classroom. The reasons for receipt of services in an ESE classroom working were listed as possible frustration in receiving such services in the regular classroom, and a lack of prerequisite skills.

69. The IEP team also considered whether [REDACTED] should receive Extended School Year (ESY) services. The team applied the various data provided by Ms. Moyes and [REDACTED] therapists to the School District ESE Indicators for ESY Services, and determined that [REDACTED] did not meet the criteria for ESY services.

70. On May 13, 2011, the School District sent the Mother a copy of the IEP, a list of Program Modifications and Accommodations, and the Annual Goals & Benchmarks or Objectives. The cover letter advised that [REDACTED], who would be six years of age when the May 13, 2011, IEP would become effective, was no longer eligible for the special education category of Developmentally Delayed, which was available only for children from zero through five years of age.

71. On June 4, 2011, the Mother wrote to Ms. Fullmore and Ms. Palazesi to express her dissatisfaction with the IEP. The Mother indicated that she was not at the May 13, 2011, meeting because "I have a hard time getting there and you didn't coordinate with [Mother's agent] as I requested and I forgot to tell her the time." The letter listed a number of areas of disagreement with the IEP, and refused consent for receipt of services in an ESE classroom, except for speech therapy. The letter included notice of the Mother's intent to enroll [REDACTED] for private services over the summer, and to seek reimbursement from the School District for the cost of the services. Finally, the

Mother requested a comprehensive Individual Educational Evaluation (IEE) of [REDACTED] for motor skills and language.

72. Principal Fullmore responded to the June 4, 2011, letter. The response indicated that the School District first received the letter on July 18, 2011 by e-mail from Mother's agent. The response itself was not dated.

73. The response addressed each of the concerns expressed by the Mother in her June 4, 2011, letter. The response noted that the results of the fall 2011 re-evaluation were incorporated into the November 15, 2010, IEP. The letter further noted that the Mother's agent had requested an IEE, to include a Comprehensive Test of Phonological Processing, during the November 2010, IEP meeting. That request had been previously denied with appropriate notice to the Mother. Principal Fullmore advised the Mother to file a new written request if she wanted the School District to reconsider the administration of an IEE, or to contact Principal Fullmore or Ms. Palazesi if she wanted to have a new IEP meeting.

74. The Mother did not request either the administration of an IEE or a new IEP meeting prior to the commencement of [REDACTED] 2011-2012 first-grade school year.

75. [REDACTED] did not receive private educational services during the summer of 2011, and the Mother did not seek reimbursement for such private services.

76. The evidence was insufficient to prove that the services authorized for [REDACTED] under the May 13, 2011, IEP were inappropriate to address [REDACTED] disability, or that [REDACTED] required additional or different services to receive FAPE. Thus, the May 13, 2011, IEP did not violate the IDEA.

Student Progress - 2011-2012 School Year - First Grade

77. [REDACTED] was assigned to Ms. Hayes-Dupree's first-grade class for the 2011-2012 school year.

78. Ms. Hayes-Dupree was provided with a copy of [REDACTED] May 13, 2011, IEP and understood the nature and frequency of the services that [REDACTED] was to receive.

79. [REDACTED] regressed over the summer. On August 30, 2011, the student was given a sight-word assessment of kindergarten-level words, and was able to recognize only three of 50 words on the test. However, by September 26, 2011, after a relatively short period of instruction, [REDACTED] kindergarten-level sight-word recognition improved to 11 of 50 words, and by November 14, 2011, had improved to 21 of 50 words. [REDACTED] made measurable progress on the recognition of kindergarten sight words during the fall semester, but remained low.

80. [REDACTED] was also behind in math when the 2011-2012 school year commenced. Ms. Hayes-Dupree instituted the Go Math! intervention for [REDACTED], in addition to the regular math curriculum. Ms. Hayes-Dupree provided additional direct

instruction to [REDACTED], including as much 1:1 instruction as possible.

Educational Interventions

81. During the course of the 2011-2012 school year, [REDACTED] ESE services related to academic skills in reading, writing, and math under the May 13, 2011, IEP were generally supervised by Ms. Thomas. Ms. Thomas was generally in Ms. Hayes-Dupree's classroom for 30 minutes per day, during which time she performed some actual academic instruction with [REDACTED], worked with the ESE aides, and spent time observing [REDACTED] in instruction with the ESE aides.

82. Beginning in January, 2012, Ms. Ashe was assigned as the ESE aide for Ms. Hayes-Dupree, and was responsible for assisting in [REDACTED] reading and math through the end of the school year. [REDACTED] also received intensive reading instruction from Ms. Cooper during that period.

83. During the 2011-2012 school year, Petitioner's school participated in the "Walk to Read" program which grouped students into a remediation group, an enrichment group, or an on-target group based on their reading ability. [REDACTED] was assigned to the remediation group. Beginning in January 2012, [REDACTED] received intensive reading instruction, which included use of the Reading Mastery program, from Ms. Cooper and Ms. Ashe.

84. In addition to the academic assistance, ██████ received speech therapy from Ms. Dubose; language therapy from Ms. Kearse; and occupational therapy from Ms. Swearingen.

Speech and Language Therapy

85. Throughout the 2011-2012 school year, ██████ received speech therapy services on an individual basis from Ms. Dubose. As a result of the speech-related interventions provided to ██████, the student progressed significantly over the course of the school year, though the specific IEP goals were not mastered.

86. Ms. Dubose provided approximately 58 speech therapy sessions during the school year. Petitioner has asserted that there should have been 72 sessions during that time period. As previously noted, ██████ would have missed sessions when there were scheduled field trips; school testing; or on days when ██████ was absent from school. There was no evidence of the number of times speech therapy sessions were missed for those reasons.

87. Given the progress made by ██████ as set forth herein, and the evidence as a whole as to the provision of speech therapy services to ██████, and their relationship to ██████ progress towards meeting the goals of the IEP, it is found that Petitioner failed to prove, by a preponderance of the evidence, that the School District failed to implement substantial or significant provisions of the IEP, or that ██████ was denied a

meaningful educational benefit as a result of any missed speech therapy sessions.

88. Throughout the 2011-2012 school year, ██████ received language therapy twice per week from Ms. Kearse. The records provided at the hearing showed entries for 36 language-therapy trial sessions during the 2011-2012 school year. However, Ms. Kearse testified that the 36 entries reflected the dates on which the trials to measure ██████ progress were performed, and not the total number of therapy sessions performed. She indicated that the total number of sessions would have been greater than the 36 trials noted in the records in evidence. The actual number of sessions would have been reflected in her attendance book, which is not in the record.

89. Despite the inadequacy of the attendance records produced at the hearing, given the progress made by ██████ as set forth herein, and the evidence as a whole as to the provision of language therapy services to ██████, and their relationship to ██████ progress towards meeting the goals of the IEP, it is found that Petitioner failed to prove, by a preponderance of the evidence, that the School District failed to implement substantial or significant provisions of the IEP, or that ██████ was denied a meaningful educational benefit as a result of missed language therapy sessions, if any.

Occupational Therapy

90. [REDACTED] continued to receive occupational therapy services from Ms. Swearingen during the 2011-2012 school year. Ms. Swearingen provided approximately 37 occupational therapy sessions during the 2011-2012 school year. The Therapy Attendance Report - School Year 2011-2012 reflects an additional three days on which [REDACTED] was absent from school, and five days on which the student was unavailable. However, the attendance record shows numerous instances in which occupational therapy was provided once a week, or weeks missed altogether, for reasons unrelated to the attendance or availability of [REDACTED].

91. Petitioner proved, by a preponderance of the evidence, that the School District failed to implement provisions of the IEP related to the provision of occupational therapy services to [REDACTED] during the 2011-2012 school year at the frequency called for in the May 13, 2011, IEP. Notwithstanding, the evidence as a whole as to the provision of occupational therapy services to [REDACTED] demonstrates that the student made progress towards meeting the goals of the IEP, and received educational benefit as a result.

Educational Assessment

92. During the fall of the 2011-2012 school year, Petitioner's school implemented the "AIMSweb" assessment, data management, and reporting system. The program is designed to

measure a student's skill level as compared to national norms, and to provide benchmarks for determining whether to provide targeted instruction to students. [REDACTED] was tested in the areas of reading and math.

93. [REDACTED] was given the AIMSweb Test of Early Literacy at designated times throughout the school year. The Test of Early Literacy consists of four subtests: Letter Naming Fluency; Letter Sound Fluency; Phoneme Segmentation Fluency; and Nonsense Word Fluency.

94. The Letter Naming Fluency and Letter Sound Fluency tests were administered in the fall of 2011. [REDACTED] scored in the average range for each, as measured against the national average. The instructional recommendation called for a continuation of the current program.

95. [REDACTED] took the Phoneme Segmentation Fluency test in the fall and winter of the 2011-2012 school year. [REDACTED] scored in the below-average range as measured against the national average, but the student's score improved from 9 to 31 over that period. The instructional recommendation called for further assessment and consideration of an individualized program.

96. [REDACTED] took the Nonsense Word Fluency test in the fall, winter, and spring of the 2011-2012 school year. The test measured [REDACTED] ability to extrapolate letter use and word building skills by applying them to "made-up" words. [REDACTED]

scored in the below-average range as measured against the national average, though the student's score improved from a score of 2 in the fall, to 29 in the winter, to 40 in the spring. The instructional recommendation called for further assessment and consideration of an individualized program. [REDACTED] was monitored for correct letter sounds on a weekly basis. Although results fluctuated week-to-week, Petitioner showed steady progress, meeting the goal of 51 correct sounds on one occasion, and approaching the goal on several others.

97. [REDACTED] was administered the AIMSweb Reading-Curriculum Based Measurement test in the winter and spring of the 2011-2012 school year. Petitioner scored well below average on each test as measured against the national average, although the student's scores improved from a score of 7 in the winter, to 14 in the spring. The instructional recommendation called for immediate problem solving. [REDACTED] was monitored for correct words read on a weekly basis. Petitioner's results fluctuated week-to-week and, although not approaching the goal showed modest progress.

98. [REDACTED] was administered the AIMSweb Math Computation test in the fall, winter, and spring of the 2011-2012 school year. The student scored well below average on each test as measured against the national average, although the scores, which were a score of 7 in the fall and 3 in the winter, improved to 14 in the spring. The instructional recommendation

called for immediate problem solving. ■■■■■ was monitored on math computation on an irregular, but generally weekly basis beginning on January 30, 2012. The student's results fluctuated week-to-week and, although not meeting the goal, showed steady, if modest, progress in the spring of 2012.

99. ■■■■■ was administered the AIMSweb Test of Early Numeracy, which consisted of four subtests: Oral Counting; Number Identification; Quantity Discrimination; and Missing Number, each of which were each given in the fall, winter, and spring.

100. ■■■■■ scored in the well below-average range in the Oral Counting test as measured against the national average, but the student's score improved from 35 to 62 over that period, at roughly the national rate of improvement. The instructional recommendation called for immediate problem solving.

101. ■■■■■ scored in the well below-average range in the Number Identification test as measured against the national average. Petitioner's score fluctuated, improving from 20 in the fall to 46 in the winter, and then falling back to 30 in the spring. The instructional recommendation called for immediate problem solving.

102. ■■■■■ scored in the well below-average range in the Quantity Discrimination test as measured against the national average, but the student's score improved from 6 to 22 over that

period, at roughly the national rate of improvement. The instructional recommendation called for immediate problem solving.

103. █████ scored in the well below-average range in the Missing Number test as measured against the national average, but the student's score improved from 5 to 11 over that period, at roughly the national rate of improvement. The instructional recommendation called for immediate problem solving.

2012 Reevaluation

104. In April, 2012, █████ was due for a reevaluation to determine if the student exhibited any disabilities other than a speech impairment.

105. A Parent Notice and Consent for Re-Evaluation was provided to the Mother to authorize the School District to perform a cognitive; academic achievement; vision; hearing; and speech and language evaluation. The Mother signed the form on May 4, 2012. The speech, language, and academic achievement evaluations were conducted shortly thereafter.

106. The language evaluation was conducted on May 8, 2012. The evaluation tool used, the Clinical Evaluation of Language Fundamentals 4, is a reasonable and effective means of evaluating a student's language capabilities. █████ received a language score of 60 of 100 on the test, which is more than two-standard deviations below the mean. The student's language

structure and content were also significantly below the mean. Petitioner was determined to have a moderate to severe articulation disorder which affected intelligibility. The student was also observed to be off-task; needing more redirection than other students; and to be distracted during listening activities. ■■■ had difficulty with word structure and grammar, and the student's reading was below grade level. However, ■■■ knew all upper and lower case letters and their corresponding sounds, a marked improvement from the beginning of the school year. In addition, ■■■ writing was now legible, though the student needed reminders for spacing. ■■■ interaction with other students was appropriate.

107. The speech evaluation was conducted on May 9, 2012. The evaluation tool used, the Goldman Fristoe Test of Articulation-2, is a reasonable and effective means of evaluating a student's speech capabilities. ■■■ received a score of 76, which indicated that the student continued to have a moderate speech impairment. ■■■ made progress with 'k' and 'g' sounds, but continued to have errors with other sounds.

108. A reading and math assessment was conducted on May 8-9, 2012. The evaluation tool used, the Kaufman Test of Educational Achievement, Second Edition, is a reasonable and effective means of evaluating a student's reading and math capabilities. ■■■ fell within the average range for students

of [REDACTED] age in letter and word recognition and math computation. Petitioner was below average in reading comprehension, having a score in the range of a student of 6.0 years of age (lower than Petitioner's actual 6.8 years of age), and below average in math concepts and applications, having a score in the range of a student of 5.0 years of age. [REDACTED] scores in general showed improvement from the previous testing.

109. Ms. Swearingen prepared an occupational therapy progress report on May 15, 2012. She found that [REDACTED] improved in letter formation and handwriting abilities; could write simple sentences by copying and from memory; and was able to write Petitioner's full name and keep letters on a line with mild reminders. [REDACTED] could write numbers 1-10, and the upper case letters legibly, but still needed a model for lower case letters. Ms. Swearingen reported that [REDACTED] needed minimal assistance with cutting around curves; for paper holding and proper scissor positioning; had made significant progress on clothing fasteners; and was starting to learn the steps to tying shoes. She concluded that [REDACTED] "made good progress in [the student's] IEP goals related to Occupational Therapy."

June 4, 2012 Individual Educational Plan

110. There was evidence to suggest that the Mother desired an IEP meeting in January 2012. However, the evidence introduced at the hearing indicates an attachment to a January

2012, e-mail from the Mother's agent, which contained the request, was likely not transmitted to the School District. In any event, there was no follow up by the Mother or the Mother's agent to inquire as to the reason for the failure to schedule an IEP meeting in response to the request. Based on the totality of the evidence, there was no procedural error arising from the failure to conduct an IEP meeting in January 2012.

111. At the conclusion of the 2011-2012 school year, an IEP meeting was scheduled to consider the services to be provided to [REDACTED]. The IEP meeting was initially scheduled for May 10, 2012, since the May 13, 2011, IEP was scheduled to expire on May 12, 2012. On May 4, 2012, the Mother's agent acknowledged the May 10, 2012, meeting date, and asked to review [REDACTED] records prior to the meeting. That request was granted.

112. The IEP meeting was held as scheduled on May 10, 2012. The School Board representatives of the IEP team consisted of Margot Palazeski; Amber Swearingen; Jennifer Dubose; Melissa Barton; Sharon Sams; Denise Kearse; Gwendolyn Cooper; and Melissa Fullmore. Despite adequate and actual notice having been provided, neither the Mother, nor any representative or agent of the Mother appeared at the meeting. After the team had convened, and had commenced its review of [REDACTED] present-level information, the school received an e-mail from the Mother's agent indicating that neither she nor the Mother could attend,

and asking that the meeting be postponed. The meeting was thereupon postponed at the Mother's agent's request, and rescheduled to May 14, 2012.

113. The May 14, 2012, IEP meeting was cancelled, again at the request of the Mother's agent, to allow for her to review progress-monitoring reports. The IEP meeting was rescheduled for May 24, 2012.

114. On the late morning of May 24, 2012, the Mother's agent again requested that the IEP meeting be postponed because "[the Mother's] working and I can't attend the IEP meeting today unexpectedly." The e-mail requesting the postponement included a request to reschedule to an unspecified "day next week." The IEP members were, again, told to stand down to accommodate Petitioner.

115. The IEP meeting was held on June 4, 2012. The IEP team consisted of Margot Palazeski; Melissa Barton; Jennifer Dubose; Gwen Cooper; Melissa Fullmore; and Freda Hayes-Dupree.

116. The Mother attended the June 4, 2012, IEP meeting and participated as a member of the IEP team. The Mother was accompanied by her agent.

117. The IEP team reviewed ██████ progress during the preceding year, along with results of the evaluations performed the previous month. With regard to ██████ progress on the six educational performance goals for the Curriculum and Learning

Environment established in the May 10, 2011, IEP, [REDACTED] was found to have made progress, and was determined to be likely to achieve each of the goals, although none had been mastered.

118. As a result of the review of [REDACTED] IEP Annual Goal Progress Report Form, and discussion amongst the members of the IEP team, [REDACTED] educational performance goals for the Curriculum and Learning Environment, based on the progress towards meeting the May 10, 2011, IEP goals, were significantly expanded to reflect the student's improving abilities. The goals were not modified to require mastery or performance at grade level by the end of the 2011-2012 school year. Given the progress made during the preceding year, the advanced curriculum and learning environment goals for the 2012-2013 school year were appropriate and designed to provide educational benefit to [REDACTED]

119. With regard to the May 10, 2011, IEP educational performance goals for Communication (speech), [REDACTED] made considerable progress, and was determined to be likely to achieve each of the five goals. The goals included the elimination of "fronting;" the elimination of final consonant deletion; elimination of syllable reduction; eliminate stopping by producing "v", "z," "ch," and "dg" sounds; and speaking intelligibly with unfamiliar listeners.

120. The Communication (speech) goals were significantly modified for the 2012-2013 school year, to focus not as much on the individual target phonological components, but to apply the progress in phonological process to conversational speech. Given the progress made during the preceding year, the Communication (speech) goals for the 2012-2013 school year were appropriate and designed to provide educational benefit to [REDACTED]

121. With regard to the May 10, 2011, IEP Independent Functioning goals, [REDACTED] made substantial progress throughout the year regarding use of clothing fasteners, cutting with scissors, and opening milk cartons.

122. Given the progress in using scissors and opening containers, the goals for the 2012-2013 school year were modified and designed to allow [REDACTED] to fasten the student's pants 100 percent of the time, and to tie the student's shoes. Given the progress made during the preceding year, the Independent Functioning goals for the 2012-2013 school year were appropriate and designed to provide educational benefit to [REDACTED]

123. With regard to the May 10, 2011, IEP educational performance goals for Communication (language), [REDACTED] made considerable progress, and was likely to achieve each of the three goals. The goals included the identification of an item that does not belong in a group of items; the formulation of a

four- or five-word sentence to answer inquiries; and the identification of similarities among items in a group of items.

124. The goals for the 2012-2013 school year were modified to reflect ██████ progress to require more complex measures of thought processes and conversation. Given the progress made during the preceding year, the Communication (language) goals for the 2012-2013 school year were appropriate and designed to provide educational benefit to ██████.

125. With regard to the May 10, 2011, IEP performance goals for Social/Emotional Behavior, ██████ made progress, and was likely to achieve both of the goals for that domain, although ██████ continued to exhibit a preference to do things independently. The goals included initiating conversations with students or adults, and interacting with other students during center time.

126. The goals for the 2012-2013 school year were modified to focus more on ██████ initiation of on-topic conversations with other students and adults. Given the progress made during the preceding year, the Social/Emotional Behavior goal for the 2012-2013 school year was appropriate and designed to provide educational benefit to ██████.

127. At the request of the Mother, the IEP team also considered whether ██████ should receive Extended School Year ("ESY") services. At the conclusion of the meeting, a

determination was made that [REDACTED] did not qualify for ESY services.

128. On June 4, 2012, the Mother withdrew her consent for a "test of IQ," i.e., a cognitive evaluation of [REDACTED], and none has therefore been performed.

129. At the conclusion of the IEP meeting, an IEP was developed and approved for [REDACTED] by the IEP team. The IEP was for the period from August 20, 2012 through May 9, 2013, generally corresponding to the 2012-2013 school year. The IEP included the following services that were in addition to the regular curriculum:

Assistance with academic skills for reading, writing, and math, for 30 to 100 minutes daily;

Speech therapy for 30 minutes (typically) two times per week;

Occupational therapy for 30 minutes (typically) two times per week; and

Language therapy for 30 minutes (typically) two times per week.

130. In addition to the IEP, a list of Program Modifications and Accommodations, and the modified Annual Goals & Benchmarks or Objectives were provided to the Mother.

131. On June 19, 2012, the School Board sent an Informed Notice of Refusal to Take a Specific Action to the Mother indicating that it was declining to implement several requests made by the Mother. The requests included the provision of ESY

services for summer education. The ESY request is addressed separately herein. As to the other services, Petitioner did not prove, by a preponderance of the evidence, that the services were either necessary to provide FAPE to ██████, or were services for which lawful consent had been given.

132. The evidence was insufficient to prove that the services authorized for ██████ under the June 4, 2012, IEP were inappropriate to address ██████ disability, or that ██████ required additional or different services to receive FAPE. Thus, the June 4, 2012, IEP did not violate the IDEA.

Summer 2012 Extended School Year Services

133. At the conclusion of the 2011-2012 school year, ██████ along with other underperforming first-grade students, was tested for reading skills. Students testing below the 39th percentile were eligible for the Leon County Summer Reading Academy, a five-week intensive summer program. Students eligible for the program were generally those who, at the end of first grade, were reading at or below the mid-kindergarten level. The purpose of the program is to help students retain what they learned in first grade, but was not designed for them to catch up to be successful in second grade.

134. ██████ tested at the sixth percentile, well below the 39th percentile that was the maximum score for eligibility into the Summer Reading Academy. Given the regression between

kindergarten and first grade, █████ would have benefitted significantly from ESY services in the form of attendance at the Summer Reading Academy after first grade.

135. Student retention at the first-grade level and above is done through a recommendation from the teacher, with the ultimate decision resting with the principal. The decision was made to retain █████ in first grade at the conclusion of the 2011-2012 school.

136. The School District has a policy that students who are retained may not attend the Summer Reading Academy. The policy was not well explained, but was generally that, regardless of the fact that the retained students were reading at or less than mid-year kindergarten level, they would make up for their deficiency, along with any regression that might occur over the summer, with "a full year of intervention the next year." The policy, such as it is, is ill-conceived. The undersigned finds there to be no legitimate reason for denying ESY services in the form of attendance at the Summer Reading Academy to a student who has completed first grade, but who still reads at or below the mid-kindergarten level, on the sole basis that the student is to repeat first grade. That lack of legitimate purpose is reinforced in the case of a student like █████, who had regressed between the kindergarten and first-grade years.

137. On or about June 4, 2012, a copy of the Mother's notice of intent to seek private services over the summer of 2012 was sent to the School District via an e-mail to Ms. Fullmore. In addition, ESY services were requested at the June 4, 2012, IEP meeting.

138. At the conclusion of the June 4, 2012, IEP meeting, an Indicators for Extended School Year (ESY) Services form was completed. The factors to be used in making an ESY decision include the student's "pattern of regression," along with other measures of progress. All factors relevant to ESY services were determined to be negative, and ESY services were thus refused.

139. [REDACTED] thereupon attended a private school's summer session during July of 2012.

140. The private school did not review any School District records or reports regarding [REDACTED]. Had it done so, it would have been able to ascertain the nature and extent of [REDACTED] disability without the cost of an independent assessment. Nonetheless, the private school that Petitioner attended decided to perform its own independent testing of [REDACTED] upon enrollment in the summer program, at an unnecessarily incurred cost of \$150.00. The testing showed that [REDACTED] had a language disability consistent with that identified by the School District. [REDACTED] was not diagnosed with any other disability.

141. At the private summer program, [REDACTED] received instruction in reading and phonological processing. Reading tests administered by the school showed a pattern of inconsistency, e.g., missing words that were previously identified correctly, that correlates well to the conclusions drawn by the School District for which interventions were developed in the IEPs.

142. It is reasonable to conclude that the regression exhibited by [REDACTED] at the beginning of the 2011-2012 school year was, at least in part, alleviated at the beginning of the 2012-2013 school year by enrollment in the private summer program. There is no evidence to suggest that the benefits of the private summer program were any greater than would have been received by [REDACTED] had the student been allowed to attend the District's Summer Reading Academy.

143. The tuition for the private summer program was \$1,080.00, which amount is found to be reasonable for the services provided. There were other costs, including the \$150.00 pre-enrollment assessment fee, an optional art class fee, a credit card fee, and a fee for the preparation of a final report for litigation that were not necessary or required to provide FAPE to [REDACTED], or to achieve compliance with IDEA goals.

Student Progress - 2012-2013 School Year - First Grade

144. [REDACTED] was assigned to Ms. Dod's first-grade class for the 2012-2013 school year.

145. Ms. Dod was provided with a copy of [REDACTED] June 4, 2012, IEP, and understood the nature and frequency of the services that [REDACTED] was to receive.

146. The educational interventions established in the June 4, 2012, IEP were generally implemented, although the occupational therapy sessions were still incomplete. Ms. Swearingen's "offsite meetings" are not an adequate excuse for missing a student's therapy sessions as established by the IEP.

147. At the beginning of the 2012-2013 school year, [REDACTED] knew 18 of 50 kindergarten-level words. When retested one month later, the student knew 30 of 50 kindergarten words, and 17 of 74 first-grade level words.

148. [REDACTED] was also tested on pre-primer words at the end of September 2012, and knew 24 of 40 words. Some of the 40 words were ones that had not yet been taught. Of the words that had been taught, [REDACTED] knew 17 of 20 words, with two of the words missed being ones that Ms. Dod indicated were difficult to sound out. The remaining incorrect word was one that Ms. Dod had inadvertently repeated, which she believed confused [REDACTED] since the student read the word correctly the first time.

149. [REDACTED] was able to read five sentences, making some errors that may have been due to difficulties in understanding [REDACTED] speech, rather than substantive errors. [REDACTED] was able to read 21 words per minute, which placed the student sixth in the class of 19 students.

150. In math, [REDACTED] answered 13 of 40 first-grade level questions correctly, which is typical of first-grade students at the beginning of the year. In addition, [REDACTED] answered 22 of 25 addition questions correctly on a timed test, which was a very good score. The student's numbers were well formed, with no reversals, which was better than most other students in the student's class.

151. Ms. Dod discussed the various tests and quizzes administered by her from August 24, 2012, right up to the Friday before the commencement of the final hearing. Ms. Dod's testimony, and her discussion of [REDACTED] performance on classroom assignments, demonstrated to the undersigned that [REDACTED] is making substantial progress in the 2012-2013 school year, and is thereby receiving educational benefit in the classroom.

CONCLUSIONS OF LAW

152. DOAH has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569, 120.57(1), and 1003.57(5), Florida Statutes. See also Fla. Admin. Code R. 6A-6.03311(9).

153. Petitioner has the burden of proving by a preponderance of the evidence that IDEA has been violated, thereby denying FAPE to █████ Schaffer v. Weast, 546 U.S. 49 (2005); Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1313 (11th Cir. 2003); Ross v. Bd. of Educ. Township High Sch. Dist., 486 F.3d 279, at 270-271 (7th Cir. 2007) (“[T]he burden of proof in a hearing challenging an educational placement decision is on the party seeking relief.”); Brown v. Bartholomew Consol. Sch. Corp., 442 F.3d 588, 594 (7th Cir. 2006) (“The Supreme Court recently has clarified that, under the IDEA, the student and the student’s parents bear the burden of proof in an administrative hearing challenging a school district’s IEP,”); Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289 (7th Cir. 2001); M.M. v. Sch. Bd. of Miami-Dade Cnty., 437 F.3d 1085, 1096, n.8 (11th Cir. 2006); and Sebastian M. v. King Philip Reg’l Sch. Dist., Case No. 09-10565-JLT, 2011 U.S. Dist. LEXIS 35501 (D. Mass. Mar. 31, 2011).

154. Section 1003.01(3)(a) defines an “exceptional student” as “any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who . . . [have] a speech impairment [or] a language impairment”

155. Section 1003.01(3)(b) defines “special education services” as “specially designed instruction and such related

services as are necessary for an exceptional student to benefit from education. Such services may include: . . . diagnostic and evaluation services; . . . physical and occupational therapy; speech and language pathology services; . . . and other such services as approved by rules of the state board."

156. [REDACTED] is an exceptional student and is entitled to special education services.

157. The IDEA is designed "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE). See 20 U.S.C. § 1400(d)(1)(A).

158. FAPE is defined as:

. . . special education and related 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 section 614(d) [20 USC § 1414(d)].

20 U.S.C. § 1401(9).

159. FAPE is tailored to the unique needs of the student through the evaluation of the needs of the student, and development of an individual education plan (IEP) for each

eligible student by the school district. See 20 U.S.C. § 1414; 34 C.F.R. §§ 300.320-324; Fla. Admin. Code R. 6A-6.03311(1) and (2).

160. An IEP is "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with [the IDEA]." 20 U.S.C. § 1401(14)

161. An IEP is to be developed based on relevant information by an IEP team consisting of the parents of the eligible student; at least one regular education teacher; at least one special education teacher; a qualified and knowledgeable representative of the local educational agency; and other individuals who have knowledge or special expertise regarding the child. 20 U.S.C. § 1414(d)(1)(B).

162. The development of any IEP is to be performed at a properly-noticed meeting of the IEP team, at which the parents of the eligible student are to be given an opportunity to attend and participate. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.501.

163. In developing the IEP, the IEP Team is to consider:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and

(iv) the academic, developmental, and functional needs of the child.

20 U.S.C. § 1414(d)(3); 34 C.F.R. §300.324(a); Fla. Admin. Code R. 6A-6.03028(3)(g).

164. The legal standard to be applied in determining whether a student with a disability has received FAPE is a two-pronged test described by the United States Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

165. The first prong of the Rowley standard is whether the State complied with the procedures set forth in IDEA. The second prong is whether the IEP developed through IDEA's procedures is reasonably calculated to enable the disabled child to receive educational benefit. Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. at 206.

The Rowley Procedural Prong

166. Although procedural violations will not automatically invalidate an IEP, Rowley requires the trier of fact to strictly review an IEP for procedural compliance. Dong v. Bd. of Educ., 197 F.3d 793, 800 (Fla. 6th Cir. 1999).

167. In evaluating whether a procedural defect has deprived a student of FAPE, the court must consider the impact of the procedural defect, and not merely the defect per se.

Weiss v. Sch. Bd. of Hillsborough Cnty., 141 F.3d 990, 994 (11th Cir. 1998). To constitute a denial of FAPE, a person challenging an IEP must show actual or likely harm as a result of an alleged procedural violation. Id. at 996.

168. In this case, Petitioner has raised several procedural issues related primarily to the failure of school personnel to deal directly with the Mother's designated agent.

169. The IDEA provides a multitude of procedural safeguards to the "parents" of a child with a disability. The term "parent" is defined as:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act. (emphasis added).

34 C.F.R. § 300.30(a).

170. The Mother's agent does not fall within any of the categories that would allow her to be considered as, and thereby entitled to the rights of, a "parent" under the IDEA.

171. The school personnel made sustained and significant efforts to communicate with the Mother's agent, but were under no legal obligation to treat the Mother's agent as a surrogate or replacement for [REDACTED] "parent." Their legal obligation was to provide such notices as required by the IDEA to the parents of [REDACTED]

172. The IDEA requires that the appropriate public educational agency provide notice to the parents of a child with a disability of specified actions and to provide an opportunity to participate in planning the child's education. 34 C.F.R. § 300.322(a); 34 C.F.R. § 300.501(b). The School District complied with the notice and participation requirements of IDEA in regard to each of the IEP meetings at issue in this proceeding.

173. If a public educational agency is unable to obtain the parent's participation in an IEP meeting, it must maintain a record of its attempt to arrange their involvement. 34 C.F.R. § 300.501(c)(4), Cordrey v. Euckert, 917 F.2d 1460, 1467 (6th Cir. 1990). In this case, the School District documented its multiple reasonable and good faith efforts to ensure the Mother's attendance at each of the meetings at which the

reevaluation of █████, or the provision of FAPE to █████ was discussed, including the May 13, 2011, IEP meeting.

174. The parents of █████ were given notice and opportunity to participate in the development of the IEP's for █████ required by the IDEA. The School District communicated with, and accepted information and requests from the Mother's agent at each of the IEP meetings other than May 13, 2011, meeting which neither the Mother nor the Mother's agent attended. The Mother's agent submitted parent-proposed IEP's on the Mother's behalf on two occasions. At both IEP meetings for which a parent-proposed IEP was provided, the IEP team gave good faith consideration to the Mother's input and suggestions. The School Board appropriately disagreed with many of the suggestions made by the Mother and her agent, while considering and adopting others.

175. The fact that all of the educational interventions proposed by the Mother, through her agent, were not adopted in the final IEPs is not a procedural error in the process of providing FAPE, as "[t]he right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." White ex rel. White v. Ascension Parish Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003). See also J.C. v. New Fairfield Bd. of Educ., Case No. 3:08-cv-1591 (VLB), 2011 U.S. Dist. LEXIS 34591 *48-49 (D. Conn. Mar. 31, 2011) ("Thus,

the Parents may attend and participate collaboratively, but they do not have the power to veto or dictate the terms of an IEP The mere fact that the [p]arents were unsuccessful in securing all of their wishes . . . does not equate [to] a lack of meaningful opportunity for parental involvement.").

176. For a procedural violation to rise to the denial of FAPE, a finding must be made that "the procedural inadequacies impeded the student's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or caused a deprivation of educational benefit." Fla. Admin. Code R. 6A-6.03311(9)(v)4.

177. Based on the foregoing, there were no procedural defects or violations that deprived ██████ of FAPE, nor was there any demonstrated actual or likely harm as a result of a deficiency in the School District's notices of ██████ fall 2010 reevaluation process or of any IEP meeting.

The Rowley Educational Benefit Prong

178. As to the substantive educational component of the Rowley standard, a school district satisfies its obligation to provide FAPE to a student with a disability by providing personalized instruction with sufficient support services to enable the student to receive some educational benefit. FAPE need not maximize the child's potential, but must guarantee "a

basic floor of opportunity consist[ing] of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 201-203 (1982); see also Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 248 (5th Cir. 1997).

179. The nature and extent of the educational benefits that must be made available under the IDEA has been described as follows:

Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Educational benefits 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 Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ., 938 F.2d 712 at 715, and Lachman v. Illinois State Bd. of Educ., 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 Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir.1988).

Sch. Bd. of Martin Cnty. v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999).

180. Under the standard established in the IDEA, the educational benefit must be "likely to produce progress, not regression or trivial educational advancement." Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 247-248 (Fla. 5th Cir. 1997).

181. Petitioner argues that a higher level of services, including increased 1:1 instruction, may have resulted in higher levels of improvement, and perhaps even mastery of some elements of [REDACTED] elementary education. However, under the "basic floor of opportunity" test established in Rowley and its progeny, it is well established that "under the IDEA there is no entitlement to the 'best' program." M. M. v. Sch. Bd. of Miami-Dade Cnty., 437 F.3d 1085, 1101-1102 (11th Cir. 2006). See also Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001) ("[A]student is only entitled to some educational benefit; the benefit need not be maximized to be adequate."). In an opinion in which the Sixth Circuit took some literary license, the standard for the provision of FAPE under the IDEA has been described as follows:

The Act requires . . . the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands . . . a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average . . . student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to appellant, and is therefore in compliance with the requirements of the IDEA.

Doe v. Bd. of Educ., 9 F.3d 455, 459-460 (6th Cir. 1993).

182. The appropriateness of an IEP cannot be judged "in hindsight; rather, we look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer . . . a meaningful benefit." Adams v. State of Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999).

183. Based on the applicable standard for determining whether the educational benefit derived by a student meets the School District's obligation to provide FAPE, it is concluded that the IEP's developed by the IEP teams on August 23, 2010; November 15, 2012; May 13, 2011; and June 4, 2012, were adequate to provide FAPE to [REDACTED]

184. The fact that the School District did not accede to each request for specified assessments, interventions, teaching methodologies, and services is not a denial of FAPE. The IDEA

guarantees an appropriate education, but "does not require that parental preferences be implemented, so long as the IEP is reasonably calculated to provide some educational benefit." Bradley v. Ark. Dep't of Educ., 443 F.3d 965, 975 (8th Cir. 2006). In that regard, "[p]arents, no matter how well-motivated, do not have a right under [the IDEA] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." White v. Ascension Parish Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003)(citing Lachman v. Illinois St. Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988)); see also AW ex rel. Wilson v. Fairfax Cnty. Sch. Bd., 372 F.3d 674, 683, n.10 (4th Cir. 2004) ("[T]he right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions."); and B. B. v. Hawaii Dep't of Educ., 483 F. Supp. 2d 1042, 1050-1051 (D. Haw. 2006) ("[T]he IDEA does not explicitly vest within parents a power to veto any proposal or determination made by the school district or IEP team regarding a change in the student's placement.").

Procedural Defects Affecting the Rowley Educational Benefit Prong

185. Petitioner has argued that certain therapy interventions were not provided at the frequency called for in

the various IEPs. The only instances that were proven were those related to Ms. Swearingen's occupational therapy sessions during the 2011-2012 school year, and those in the first month of the 2012-2013 school year. As to those sessions, Petitioner proved that occupational therapy was not provided at the level and frequency called for in the relevant IEPs. However, that conclusion does not end the analysis.

186. Deviations from an IEP not resulting in a deprivation of meaningful educational benefit do not necessarily result in a denial of FAPE. See Sumter Cnty. Sch. Dist. 17 v. Heffernan, 642 F.3d 478,484 (4th Cir. 2011) ("[T]he failure to perfectly execute an IEP does not necessarily amount to the denial of a free, appropriate public education."); Melissa S. v. Sch. Dist. of Pittsburgh, 183 Fed. Appx. 184, 187 (3d Cir. 2006) ("To prevail on a claim that a school district failed to implement an IEP, a plaintiff must show that the school failed to implement substantial or significant provisions of the IEP, as opposed to a mere de minimis failure, such that the disabled child was denied a meaningful educational benefit."); and A.L. v. New York City Dep't of Educ., Case No. 10-cv-6841(BSJ), 2011 U.S. Dist. LEXIS 85995 *26 (S.D. N.Y. Aug 2, 2011)("[E]ven where a district fails to adhere strictly to an IEP, courts must consider whether the deviations constitute a 'material failure' to implement the IEP and therefore deny the student a FAPE.").

187. In this case, the evidence demonstrated that [REDACTED] made significant and meaningful progress in the Independent Functioning goals established in the IEPs. There is no question that [REDACTED] has received substantial educational benefit in independent functioning skills as a result of Ms. Swearingen's occupational therapy sessions. Thus, although Respondent should take steps to ensure that the frequency of the occupational therapy sessions adheres to the schedules set forth in the IEPs, the undersigned concludes that [REDACTED] was not denied FAPE as a result of the deficiencies in meeting that frequency.

Extended School Year Services - Summer 2012

188. 34 C.F.R. § 300.106(a) provides:

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not-

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

189. A child is not entitled to an extended school year if it would be "merely beneficial" but is only entitled to ESY if it is ". . . a necessary component of an appropriate education for [the child]." Rettig v. Kent City Sch. Dist., 539 F. Supp. 768, 778 (N.D. Ohio 1981), aff'd in part, vacated in part on other grounds, 720 F.2d 463 (6th Cir. 1983). More specifically, ESY services "would be appropriate if it would prevent significant regression of skills or knowledge retained by [the child] so as to seriously affect his progress toward self-sufficiency." 539 F. Supp. at 778-779. As applied to a determination of whether ESY services are necessary for FAPE,

courts often focus on whether the student is likely to regress during the summer recess. See, e.g., Mark Di Buo v. Bd. of Educ. of Worcester, 309 F.3d 184 (4th Cir. 2002) (extended year services "are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.") (internal quotations omitted); Brennan v. Regional Sch. Dist., 531 F. Supp. 2d 245, 273-74 (D. Conn. 2007).

Antignano ex rel. R.A. v. Wantagh Union Free Sch. Dist., Case No. 07-2540, 2010 U.S. Dist. LEXIS 30 *34-35 (E.D. N.Y. 2010).

190. The evidence in this case demonstrated that [REDACTED] regressed significantly between the kindergarten (2010-2011) school year and the first-grade (2011-2012) school year. At the conclusion of the 2011-2012 school year, [REDACTED] was in the class

of first-grade students that qualified for the County's Summer Reading Academy, a reasonable and available intervention strategy for [REDACTED] language disability. Had [REDACTED] been promoted, Petitioner would have joined the other eligible students in the program. However, since [REDACTED] was retained in first grade, Petitioner was not allowed to attend the Summer Reading Academy, a circumstance that was not addressed in the IEP.

191. Given the regression that caused [REDACTED] to have to relearn many of the kindergarten-level reading and writing skills that occurred over the previous summer, it was reasonable to expect a recurrence without a reasonable intervention to arrest that regression. Therefore, under the standards applicable to ESY services as an element of FAPE, [REDACTED] should have been allowed to attend the County's available and effective program to prevent such regression, and to this very limited extent, [REDACTED] was denied FAPE. In order to prevent a repeat of the regression, Petitioner was reasonably enrolled in a private school's summer program.

CONCLUSION

192. An administrative tribunal may not substitute its own notions of sound educational policy for those of school authorities that are under review. Bd. of Educ. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 208 (1982); Johnson v.

Metro Davidson Cnty. Sch. Sys., 108 F. Supp. 2d 906, 914 (M.D. Tenn. 2000). Further, state and local educational agencies are deemed to possess expertise in educational policy and practice and their educational determinations predicated upon their expertise should be given great weight. Johnson v. Metro Davidson Cnty. Sch. Sys., 108 F. Supp. 2d at 914(citing Burilovich v. Bd. of Educ. of the Lincoln Consol. Sch. Sys., 208 F.3d 560, 567 (6th Cir. 2000)). The appropriateness of an educational program for educating a child is precisely the kind of issue which is properly resolved by local educators and experts and is not subject to review in a due process hearing. O'Toole By and Through O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998).

193. At all times material to this proceeding, Respondent has provided FAPE to █████ as demonstrated by the fact that the student has made educational gains and shown progress during these times. The August 23, 2010; November 15, 2012; May 13, 2011; and June 4, 2012, IEPs have provided FAPE because they have all been reasonably calculated to provide educational benefit.

194. The evidence demonstrated that the IEPs developed by the IEP teams, including the parent, were reasonably calculated to provide an educational benefit to █████, and the services identified within the IEP were, except as otherwise specified

herein, provided in accordance with the IEPs. The evidence presented at the hearing established that the Petitioner, [REDACTED], made educational progress while enrolled as a student in the public schools administered by the School Board.

WHEREFORE, based on the foregoing, it is ORDERED:

1. That the School Board has not denied Petitioner, [REDACTED], a free and appropriate public education during the 2010-2011 school year; during the 2011-2012 school year; or during that portion of the 2012-2013 school year for which Petitioner alleged violations of IDEA;

2. That for the limited denial of FAPE by denying ESY services after first grade, the School Board reimburse Petitioner the amount of one-thousand eighty dollars (\$1,080.00) in tuition payments for [REDACTED] attendance at the private school summer program, made necessary by the School Board's decision to deny [REDACTED] attendance at the appropriate and available Summer Reading Academy;

3. That the School Board take such steps as are necessary to ensure that interventions, including therapy sessions, are implemented at the scope and frequency established in the IEPs developed for [REDACTED]; and

4. That the Petitioner's Request for Due Process Hearing, and the remainder of the relief requested therein, is dismissed.

DONE AND ORDERED this 25th day of January, 2013, in
Tallahassee, Leon County, Florida.

S

E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of January, 2013.

ENDNOTES

^{1/} LaKeisha Johnson subsequently earned a doctorate degree in 2012, after the completion of the services that form the basis for this proceeding.

^{2/} Ms. Sams Thomas was known as Sharon Sams for all times relevant to this proceeding, and will be so identified in this Final Order.

^{3/} Ms. Swearingen Klappas was known as Amber Swearingen for all times relevant to this proceeding, and will be so identified in this Final Order.

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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)(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).