

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

** ,

Petitioner,

vs.

Case No. 18-0604E

BROWARD COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held before Administrative Law Judge Diane Cleavinger on [REDACTED] through [REDACTED], [REDACTED], in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire
Disability Independence Group, Inc.
2990 Southwest 35th Avenue
Miami, Florida 33133

[REDACTED], Esquire
[REDACTED] and [REDACTED], P.L.
Suite 108A
911 East Atlantic Boulevard
Pompano Beach, Florida 33060

For Respondent: [REDACTED], Esquire
School Board of Broward County
K. C. Wright Administration Building
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

The issues in this proceeding are:

a. Whether the School Board failed to provide a free appropriate public education (FAPE) when two paraprofessionals used physical methods to redirect the Student's behavior.

b. Whether the School Board failed to provide FAPE by not evaluating the Student, and/or developing an appropriate individual education plan (IEP) with necessary related services.^{1/}

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) with Respondent ██████████ County School Board (School Board) on ██████████ █, ██████████. The Complaint generally alleged that Respondent failed to provide FAPE to Petitioner. The Complaint was forwarded to the Division of Administrative Hearings (DOAH) on ██████████ █, ██████████. The letter from the district limited the referral to a "Request for Due Process Hearing Pursuant to Fla. Admin. Code R. 6A-6.03311(9)." The referenced rule relates only to the Individuals with Disabilities Education Act (IDEA) claims. No other requests to hold an impartial hearing under other federal statutes were made. A Case Management Order was issued on ██████████ █, ██████████, establishing deadlines for a sufficiency review, as well as for the mandatory resolution session.

On ██████████ █, ██████████, Respondent filed a motion to challenge the sufficiency of Petitioner's due process hearing request,

alleging that Petitioner had failed to state specific facts relating to the nature of the issues, thus depriving the School Board of notice as to what specifically was to be litigated. That same day, an Order on Notice of Insufficiency was entered, noting that the Complaint did not satisfy the pleading requirements stated by law. The Order also allowed Petitioner to amend the Complaint to include specific facts relating to the issues no later than [REDACTED] [REDACTED], [REDACTED].

On [REDACTED] [REDACTED], [REDACTED], Petitioner filed a Motion to Reconsider the Finding of Insufficiency and to Strike Certain Claims. Additionally, on [REDACTED] [REDACTED], [REDACTED], an Amended Request for Due Process Hearing was filed. The amended Complaint alleged that the IEP was not appropriate and that the [REDACTED] by the paraprofessional resulted in a denial of FAPE to the Student, in violation of the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA) and section 1983 of the U.S. Code. Thereafter, Respondent filed a second notice challenging the sufficiency of Petitioner's amended Complaint. On [REDACTED] [REDACTED], [REDACTED], an Order denying Petitioner's motion to reconsider the earlier finding of insufficiency was entered. That same day, a Second Order on Notice of Insufficiency was entered denying Respondent's second motion to challenge the sufficiency of Petitioner's amended due process complaint. Subsequently, an Amended Case Management Order was entered on

█████ █, █████, and clarified on █████ █, █████, when a Clarified Amended Case Management Order was filed. The clarified Order established a new deadline for the mandatory resolution session.

On █████ █, █████, Petitioner notified the court that both parties had waived the resolution meeting and filed a request for a hearing date. The Respondent filed a Status Report, reiterating the same, as well as identifying and filing a motion to confirm due process issues on █████ █, █████. After conferring with the parties, the hearing was subsequently set for █████ █ through █, █████. The Notice of Hearing notified the parties that DOAH was hearing the case based on its hearing authority under section 1003.57(1)(c), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311, both of which relate only to IDEA claims. No further referrals for an impartial hearing were made.

On █████ █, █████, Petitioner filed a motion to strike and request for judicial notice, arguing that Respondent had not admitted or denied any facts in the Complaint, and thus sought to admit all listed facts as a result. The motion was denied by an Order on █████ █, █████. On █████ █, █████, Petitioner filed a Motion to Compel and Motion for Sanctions, and requested a hearing for both these motions, which was held on █████ █, █████. Following the hearing, Petitioner's motion to compel was granted in part and denied in part that same day. On █████ █, █████, the

due process hearing was subsequently rescheduled for [REDACTED] [REDACTED] through [REDACTED], [REDACTED]. Due to the rescheduling, on [REDACTED] [REDACTED], [REDACTED], the deadline for the final order was extended until [REDACTED] [REDACTED], [REDACTED]. Petitioner then filed two emergency motions to compel and motions for sanctions on [REDACTED] [REDACTED], [REDACTED], and requested an emergency hearing on the two emergency motions. An emergency hearing was held and the emergency motions were denied on [REDACTED] [REDACTED], [REDACTED].

At the final hearing, Petitioner offered the testimony of the parent and [REDACTED] additional witnesses, as well as entered the deposition testimony of [REDACTED]. Additionally, Petitioner offered Exhibits numbered 4 through 6, 8, 9 (page 127), 10 (page 149), 11 through 15 (page 353), 16, 18, 19 (pages 396 through 416), 20 (pages 419 through 426, 428, 429, 439 through 441, 449, 458, 465, 470, 476 through 483, 479 through 483), 21, 27 (pages SP 1416 through 1422, SP 1758 through 1760, SP 1826 through 1832, SP 1839, SP 1843, SP 1852 and 1853, SP 1860 through 1862, SP 1864 through 1869), and 31, which were admitted into evidence. Respondent presented the testimony of [REDACTED] witnesses and offered Exhibits numbered 1 (pages 20, 24 through 26), 3 (pages 68 through 70), 4 (pages 93, 97 and 98), 5, 13, 14, 16, 22, 23, 26, 27, 32, 46, 47, which were admitted into evidence.

Following the conclusion of the hearing, a discussion was held with the parties regarding the post-hearing schedule. Based

on that discussion, an Order was issued extending the deadline for proposed final orders until [REDACTED] [REDACTED], [REDACTED], with the final order to be entered on or before [REDACTED] [REDACTED], [REDACTED]. The post-hearing schedule was extended at the request of the parties, with the proposed final orders to be filed on or [REDACTED] [REDACTED], [REDACTED].

After the hearing, Petitioner timely filed a Proposed Final Order on [REDACTED] [REDACTED], [REDACTED]. Likewise, Respondent filed a Proposed Final Order on the same date. To the extent relevant, the filed proposed orders were considered in preparing this Final Order.

Further, unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Petitioner. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The Student in this case has been enrolled in the Broward County School District since [REDACTED]. Currently, [REDACTED] is [REDACTED] years old with a date of birth of [REDACTED] [REDACTED], [REDACTED], and is in [REDACTED] grade at School B. The Student was formally evaluated by the School Board around November [REDACTED]. [REDACTED] is, and always has been, eligible for exceptional student

education (ESE) services in the category of [REDACTED] [REDACTED] ([REDACTED]).

2. Due to [REDACTED] [REDACTED], the Student has [REDACTED] [REDACTED] issues and does not [REDACTED] well with [REDACTED] [REDACTED] and [REDACTED]. [REDACTED] also has limited [REDACTED] [REDACTED], with little [REDACTED] [REDACTED], and a limited [REDACTED] to [REDACTED]. [REDACTED] [REDACTED] primarily through [REDACTED] [REDACTED], [REDACTED] and [REDACTED], including [REDACTED] [REDACTED]. The Student has only begun to [REDACTED] [REDACTED] [REDACTED] and through [REDACTED]. The evidence demonstrated that expected educational progress was, and will be, [REDACTED], but can be made by the Student. As such, the Student has had an IEP since [REDACTED] and continues to have an IEP to date.

3. The Student receives additional [REDACTED] outside of school, including [REDACTED], [REDACTED], along with [REDACTED].^{2/} The evidence demonstrated that during the time period relevant to this case, [REDACTED] [REDACTED] and [REDACTED] were well understood by school staff and have generally been appropriately addressed through the Student's IEPs and [REDACTED] [REDACTED] techniques used in the Student's [REDACTED] class.

4. The Student also suffers from [REDACTED] and a [REDACTED]. The [REDACTED] was diagnosed in [REDACTED]. The parent reported these [REDACTED] to the school on various student

information forms, but did not indicate any educationally relevant [REDACTED] for these [REDACTED]. The parent also told the school at a [REDACTED] [REDACTED] IEP meeting about the [REDACTED], but the evidence was not clear whether the parent communicated that [REDACTED] was required to manage the [REDACTED] at school. There was no evidence that the Student had experienced any [REDACTED] [REDACTED] to [REDACTED] at school. Additionally, the evidence showed that the Student's [REDACTED] and [REDACTED]-grade teacher was aware of the Student's [REDACTED]. However, and although raised as potential issues, the evidence did not demonstrate that these [REDACTED] or the [REDACTED] were educationally relevant for the Student and the issues will not be further addressed in this Order.

5. The evidence also showed that the parent was an active participant in every IEP and reevaluation plan meeting and otherwise actively communicated with school staff. The parent testified that [REDACTED] repeatedly requested evaluations and did not receive them; was given Procedural Rights Safeguard booklets, which no school personnel explained; and was given Parent Participation Forms that were not explained. However, the better evidence demonstrated the school met the procedural requirements under IDEA. In fact, the parent had input during IEP meetings and reevaluation plan meetings, signed all the forms indicating that the parent had been allowed to provide input, brought other

individuals to meetings, and could have requested an explanation of the procedural safeguards throughout the Student's school years relevant in this case. Further, the evidence showed that the parent agreed with the IEPs and reevaluation plans until [REDACTED] of the Student, discussed later in this Final Order, were made over a period of months in late [REDACTED] and early [REDACTED].

6. In [REDACTED], the Student began attending School A in [REDACTED] and remained there until the end of January [REDACTED], during [REDACTED]-grade school year when [REDACTED] was transferred to School B. School A has grades [REDACTED], with approximately [REDACTED] students.

7. Since beginning [REDACTED] school, the Student has been placed in a [REDACTED] classroom with [REDACTED] as a related service and [REDACTED] with [REDACTED]. The Student also is not on [REDACTED], but instead is on [REDACTED], a [REDACTED]. [REDACTED] are the [REDACTED] that are [REDACTED] depending on the skill level of the student. There are [REDACTED] levels: [REDACTED]. Currently, the Student is working on [REDACTED] due to the [REDACTED] has on [REDACTED].

educational performance. The evidence demonstrated that an [REDACTED] [REDACTED] [REDACTED] was appropriate for the Student. The evidence also demonstrated that the Student's placement was appropriate for [REDACTED] given the [REDACTED] [REDACTED] [REDACTED] on [REDACTED] education.

[REDACTED]

8. On [REDACTED], [REDACTED], the Student's private [REDACTED] from [REDACTED] provided the parent with a letter stating that [REDACTED]

[REDACTED]

[REDACTED] of [REDACTED]. The letter further indicated that appointments for such [REDACTED] were scheduled for [REDACTED] days out of the [REDACTED] in order to fulfill the [REDACTED] recommendation. The letter was informational in nature regarding the provision of [REDACTED]. Notably, the letter did not indicate that additional [REDACTED] services were needed in school and did not request or recommend such services be provided at school. Based on the evidence, the letter did not form a basis for the school to evaluate the Student in the area of [REDACTED] therapy or perform a [REDACTED] assessment. Similar informational letters were provided regarding [REDACTED]

[REDACTED]. As with, the [REDACTED] therapy letter, those letters did not request or recommend such services be provided at school and did not otherwise form a

basis for the school to evaluate the Student in the areas of [REDACTED], [REDACTED].

9. On [REDACTED], the required three-year reevaluation plan meeting was held, with an annual IEP meeting immediately following the reevaluation meeting. The parent attended both meetings and brought the Student's [REDACTED] [REDACTED] to the meetings, as well.

10. During a reevaluation plan meeting, the IEP team, including the parent, meets to discuss any concerns or requests for evaluations and any need to reevaluate. The better evidence showed that, at the reevaluation plan meeting, the necessity for reevaluations in multiple areas, including [REDACTED], was discussed along with current information regarding the Student. The team determined, and the parent agreed, that reevaluation of the Student was not needed at the time. However, at the parent's request, a referral for an [REDACTED] screening was completed at the time of the meeting. The evidence was not clear as to whether the Student was screened by the [REDACTED] and there was no documentary evidence that such screening occurred. Further, the evidence showed that there were no unknown issues regarding [REDACTED] found by the IEP team during the reevaluation meeting, and no [REDACTED] evaluation was recommended. On the other hand, the School Board's failure to conduct the [REDACTED] screening was a procedural irregularity, since the parent did not agree that

further reevaluation in the area of [REDACTED] was not necessary at the three-year reevaluation review. The evidence did not establish that the irregularity was material to the education of the Student, since [REDACTED] IEP contained appropriate goals to address [REDACTED] ability to [REDACTED], etc. The evidence showed that the Student made [REDACTED] and [REDACTED] progress in those areas.

11. The parent input section of the [REDACTED], IEP states:

[The parent] . . . is concerned about [the Student's] current [REDACTED] and would like some collaboration between the school and [REDACTED] . . . [has] some concerns regarding some [REDACTED] [REDACTED] that tend to occur in the classroom setting. [The parent] has noted some [REDACTED] when [the Student] is [REDACTED] at something from a [REDACTED]. Parents have requested that [REDACTED] teachers only work on [REDACTED] goal at a time.

12. At the IEP meeting, the [REDACTED] "requested a [REDACTED] [REDACTED]." The better evidence demonstrated that the parent acquiesced in the [REDACTED] request for a [REDACTED], but did not request a [REDACTED] at the IEP meeting. The team determined, based on team input, that there was no need for an individualized [REDACTED], since the reasons for the Student's [REDACTED] were known, and the Student's [REDACTED] were able to be managed in the classroom through classroom [REDACTED], including [REDACTED],

employed by school staff.^{3/} Under the IEP, the Student continued to remain eligible under the [REDACTED] category and eligible to receive [REDACTED] instruction for curriculum, [REDACTED], [REDACTED], and [REDACTED] in a [REDACTED] program setting, with a [REDACTED] for [REDACTED] purposes. [REDACTED] peer interaction was provided in [REDACTED] classes like [REDACTED]. [REDACTED]. Extended School Year (ESY) services on the September IEP were left open, so that they could be determined later in the school year. The evidence demonstrated that after fully participating in the meeting, the parent agreed with the Student's IEP. Further, there was no evidence that the IEP was inappropriate for the Student or was not implemented by the school.

13. The Student's IEP was updated on [REDACTED], to provide for [REDACTED] services. The goals identified for [REDACTED] by the IEP team, including the parent, were essentially the same goals as contained in the September [REDACTED] IEP. The parent agreed to the March interim IEP and the IEP was implemented over the summer. There was no substantive evidence introduced at the hearing that the goals, even though the same as the September IEP, were inappropriate for [REDACTED], since the purpose of [REDACTED] is to prevent [REDACTED] over the [REDACTED].

██████████, with a ██████████ for ██████████ purposes. ██████████ peer interaction continued to be provided in special classes like ██████████ and ██████████, ██████████, ██████████, and ██████████. ESY services on the September IEP were ██████████ left open, so that they could be determined later in the school year. Goals were updated based on the Student's present levels of performance for each domain and in general were different and ██████████ more advanced than the year before. The parent agreed with the IEP and the IEP was implemented during the year. The better evidence demonstrated the IEP was appropriate for the Student and provided the Student with FAPE given the impact of the Student's disability on ██████████ educational performance.

17. ██████████ was the Student's teacher during the ██████████-██████████ school year until April of ██████████ when ██████████ became the Student's teacher. The evidence showed that both teachers cared about the Student and were not indifferent to ██████████ needs.

18. ██████████ is a well-qualified and experienced ESE teacher who has taught students with disabilities for at least ██████████ years. ██████████ received ██████████ board certification as a ██████████ ██████████ in May ██████████. ██████████ current position is the ██████████ ██████████ at School A.

19. As the ██████████ teacher for the Student in the ██████████-██████████ school year, ██████████ wrote lesson plans for the instruction

provided in [REDACTED] classroom and provided guidance to the [REDACTED] in [REDACTED] classroom daily. At the time, there were [REDACTED] students and [REDACTED] adults in the classroom. The classroom was designed to address the Student's, and other student's, [REDACTED] needs.

20. In school, the Student followed [REDACTED] own [REDACTED] schedule on a daily basis. The Student, along with [REDACTED] class, rotated every [REDACTED] minutes to different centers [REDACTED] in the [REDACTED], with each [REDACTED] working on [REDACTED] skills and standards based on [REDACTED] instruction. While the Student worked in the [REDACTED], there were supports in place, such as [REDACTED], [REDACTED], and a variety of [REDACTED] utilized to keep [REDACTED] calm. [REDACTED] interventions and strategies, including [REDACTED] techniques, were also in place for the Student during the [REDACTED]-[REDACTED] school year. Such interventions and strategies included [REDACTED]
[REDACTED]. These strategies were also implemented in the [REDACTED]-[REDACTED] school year, as well. These strategies worked well with the Student and the Student's [REDACTED] was able to be [REDACTED] while at school.

21. During the school year, the Student exhibited [REDACTED] in the classroom. [REDACTED] also would [REDACTED] the classroom and [REDACTED] to [REDACTED] or [REDACTED]

evidence did not demonstrate a need for [REDACTED] to be provided as a separate related service.

23. [REDACTED] collected data on the IEP goals for the Student throughout the school year. The data was used to document mastery on IEP goals and was presented to the IEP team and the parent. The data showed [REDACTED] progress on the Student's goals. [REDACTED] also administered the [REDACTED] [REDACTED] with the Student. [REDACTED] is an assessment of individual strengths and weaknesses. It looks at a student's ability to [REDACTED], [REDACTED], and assists with determining where a student needs more support.

24. [REDACTED] received training in administering the [REDACTED] during [REDACTED] program at college. The assessment was selected for the Student by [REDACTED] in order to provide a clear picture of [REDACTED] needs and focus [REDACTED] instruction.

25. There are [REDACTED] levels and a [REDACTED] of categories within the [REDACTED]. The assessment may be administered by going through levels or categories. [REDACTED] administered the [REDACTED] to the Student by going through the [REDACTED] of the assessment with the Student in an effort to minimize [REDACTED]. The results of the [REDACTED] assessment were presented at the IEP meeting and were documented in the present levels of performance in the [REDACTED], IEP.

26. [REDACTED] also participated in the [REDACTED], IEP meeting and provided input. [REDACTED] conducted a [REDACTED] assessment with the Student in preparation for the IEP meeting. The assessment was used to measure [REDACTED] progress, as well as to assist in creating goals. The [REDACTED] assessment identified the need for a goal on [REDACTED], and the [REDACTED] motor goal of [REDACTED]. As a result, appropriate goals were established in those areas.

27. Neither [REDACTED] nor the IEP team recommended that a [REDACTED] be created for the Student during the [REDACTED]-[REDACTED] school year, or in the May IEP meeting, because the Student's IEPs had [REDACTED] goals designed to address [REDACTED] areas of [REDACTED] need in the educational setting. The [REDACTED] that [REDACTED] exhibited in school were not out of the ordinary or unable to be addressed. Similarly, neither the IEP team nor [REDACTED] recommended evaluation or services for the Student in the areas of [REDACTED], as they did not identify a need for any evaluations or services in these areas.

28. The evidence demonstrated that the Student's [REDACTED] [REDACTED], IEP was reasonably calculated for [REDACTED] to make progress, taking into consideration [REDACTED] specific educational needs. The parent agreed with the May IEP and the IEP was implemented. The evidence also demonstrated that the Student was making adequate and [REDACTED] progress under [REDACTED] IEP and that [REDACTED] was

managed while at school. The evidence did not demonstrate a need to reevaluate or further evaluate the Student and the school did not seek evaluations during the [REDACTED]-[REDACTED] school year.

Additionally, the evidence demonstrated that the Student made [REDACTED] progress appropriate for [REDACTED] and that FAPE was provided to the Student during this time.

[REDACTED]-[REDACTED]

29. During the [REDACTED]-[REDACTED] school year, the Student's [REDACTED]-grade school year, [REDACTED] was again the Student's [REDACTED] teacher. [REDACTED] is a well-qualified [REDACTED] teacher with a [REDACTED] degree in [REDACTED] education. [REDACTED] also has a [REDACTED] degree in [REDACTED], with a concentration in [REDACTED]. [REDACTED] has experience working with students in a [REDACTED] [REDACTED] and [REDACTED] providing [REDACTED] for students with [REDACTED].

30. During the year, the Student's parent and [REDACTED] had a positive relationship and communicated regularly. Primarily, communication was through [REDACTED] and the [REDACTED] [REDACTED].

31. In [REDACTED] class, the Student learned by using [REDACTED] [REDACTED], such as [REDACTED], [REDACTED] [REDACTED], and [REDACTED] [REDACTED]. As such, the Student [REDACTED] in [REDACTED] goals through the use of these techniques. Further, as indicated earlier,

utilized classroom and strategies similar to those used by during the - school year. For example, during the school year, the Student in the educational setting. Initially, used to a work task presented or . Through appropriate intervention, the in about weeks.

32. Other included . These were observed in both school years when the Student was in class. Such would typically occur when the Student was that to do. Through the use of strategies, techniques and interventions, including techniques, the Student's was managed to get by providing the Student with for any positive behaviors, such as completing and and when occurred. Other strategies like were also used to help the Student progress on IEP goals. As in the past, these strategies were successful with the Student and made progress though the school year.

33. Daily lesson plans outlined how the class was taught standards based on the curriculum, as well as a

student's individualized goals. [REDACTED] differentiated [REDACTED] lessons based on each individual student's present levels of performance. As indicated earlier, the Student was appropriately receiving an [REDACTED] curriculum on the [REDACTED].

34. In the classroom, the Student was provided [REDACTED] [REDACTED] to address [REDACTED] needs. [REDACTED] worked [REDACTED] using a [REDACTED]. [REDACTED] would first do a [REDACTED] [REDACTED] task and then receive a reward. Additionally, the Student would utilize a [REDACTED] on the school campus. There were items in the [REDACTED], such as a [REDACTED] and [REDACTED] [REDACTED] for breaks. There was also a [REDACTED] area in the [REDACTED] that the Student could utilize.

35. During the school year, the Student was working on [REDACTED] [REDACTED], such as [REDACTED] with a [REDACTED] and staying [REDACTED]. These tasks develop [REDACTED] needed to get the Student to [REDACTED] be able to [REDACTED].

36. Under the teacher's lesson plans, when [REDACTED] mastered a skill, [REDACTED] moved forward to [REDACTED] the next skill. In this case, the evidence demonstrated that the Student had [REDACTED] [REDACTED], was working on [REDACTED], and was otherwise [REDACTED] progressing on [REDACTED] IEP goals.

37. During the School year, [REDACTED] occasionally observed the Student in the lunchroom during the [REDACTED]-[REDACTED] school

year. As indicated, the lunchroom was one of the areas where the Student could [REDACTED] and, in part, attempt to become [REDACTED] to lunchroom [REDACTED].

38. While in the lunchroom, [REDACTED] observed the Student [REDACTED] and [REDACTED] to not [REDACTED]. Similar [REDACTED] were observed in the classroom setting. In order to address the Student's [REDACTED] to lunchroom [REDACTED], the Student was provided with [REDACTED] [REDACTED] and [REDACTED] to use [REDACTED]. Additionally, the Student was [REDACTED] while in the lunchroom and [REDACTED] to eat [REDACTED] lunch. These strategies were appropriate to address the Student's [REDACTED] in the lunchroom. [REDACTED] did not observe the Student being [REDACTED] [REDACTED], [REDACTED], or being [REDACTED], including [REDACTED] [REDACTED], the classroom aide. More importantly, the evidence showed that the Student was able to [REDACTED] at lunch, where, as in the past, [REDACTED] lunch on most days at School A from [REDACTED], through [REDACTED], [REDACTED]. At school, [REDACTED] did not significantly change in the lunchroom or the classroom. The parent testified that, during this period of time, the Student while at home in the morning would throw [REDACTED], but has since ceased. The [REDACTED] was not exhibited at school and, based on the evidence, appears to be a [REDACTED] of

██████████ about something unknown. Notably, such a transient expression of ██████████ by the Student does not establish that the school failed to provide FAPE to the Student.

39. ██████████ was the principal of School A beginning in the ██████-█████ school year. ██████ was responsible for supervising staff and communicating with families. Additionally, ██████████, along with ██████ teachers, assigned students to classrooms. ██████ also assigned aides to the classrooms or students.

40. As in years past, an ██████ was assigned to the Student ██████████ and ██████████ the Student to lunch. The ██████ in the classroom for this school year was ██████████.

41. ██████████ was an employee at School A when ██████████ became the principal. ██████████ met the criteria for ██████ position as a classroom ██████████ and was trained by ██████████ to fulfill the duties of a paraprofessional in the cafeteria. Further, prior to August of ██████, ██████████ had no concerns and had no reason to be concerned regarding ██████████ treatment of students at the school.

42. Around ██████████, the better evidence, including video evidence showed that while eating lunch in the very active cafeteria ██████████, the ██████████ ██████████ the Student by placing ██████████ on ██████████ and ██████████ ██████████ down in ██████████ at the lunch table. The evidence

did not demonstrate that such [REDACTED] did not comply with the school's [REDACTED] policies or the Student's IEP. The evidence showed that the [REDACTED] actions were intended to redirect the Student's [REDACTED] away from [REDACTED] toward [REDACTED] and [REDACTED] lunch. The evidence did not show the incident to be violent or intended to [REDACTED] to the Student. In fact, the evidence did not demonstrate that the Student was [REDACTED] by the [REDACTED]. Further, the evidence did not demonstrate that any adult in authority in the cafeteria witnessed the incident since their focus was on other students they were supervising. Again, the evidence did not demonstrate that the District or any other personnel were aware of the [REDACTED], incident and did not have reason to investigate or notify the parent regarding the incident.

43. On [REDACTED], before either the parent, teachers, or school administrators had knowledge of the [REDACTED], incident, the school communicated to the parent that a change in the Student's classroom to another teacher's class might be appropriate. The reasons for the proposed change were to [REDACTED] the classrooms. The proposed classroom change was discussed during a conference with the parent held on [REDACTED]. The Student's parent expressed concerns about the change. As such,

the Student's classroom was not changed and [REDACTED] remained with [REDACTED].

44. Around [REDACTED], the better evidence, including video evidence, demonstrated that [REDACTED] lightly [REDACTED] the student [REDACTED] times on [REDACTED] in order to redirect [REDACTED] away from [REDACTED] toward [REDACTED] and [REDACTED] lunch. Such [REDACTED] did not comply with the school's [REDACTED] policies or the Student's IEP. The [REDACTED] appeared to be for the purpose of getting the Student's attention and did not appear [REDACTED] or [REDACTED] to cause the Student [REDACTED]. The [REDACTED] did not cause any [REDACTED] to the Student. The evidence did not demonstrate that the incident was [REDACTED] or even [REDACTED] to the [REDACTED]. Further, the evidence did not demonstrate that any adult in authority in the cafeteria witnessed the incident since their focus was on other students they were supervising. In short, the evidence did not demonstrate that the District or any other personnel were aware of the [REDACTED], incident and did not have reason to investigate or notify the parent regarding the incident.

45. On Tuesday, [REDACTED], the Student's parent was informed of the incident by [REDACTED] who was in the cafeteria at the time of the incident. That same date, the parent reported the [REDACTED] accusation to [REDACTED], the [REDACTED]

██████████. ██████████ indicated ██████████ would set up a meeting with the principal. At this point, the evidence was clear that, even though the parent did not want to rush to believe the ██████████ report about the ██████████, the parent had notice that the Student had ██████████ and was familiar with the Student's behavior, as well as, the Student's ██████████ state, since the time of the incidents, sufficiently to determine a course of action regarding the Student. The evidence did not demonstrate that the parent needed more information regarding the Student ██████████ in order to determine what course of ██████████ or ██████████ action should be taken by the parent regarding the Student.

46. On ██████████, ██████████ was informed by ██████████, that the Student's ██████████ had information regarding an incident involving the Student and an aide whom the ██████████ wanted investigated. A conference was set with the parent for ██████████, prior to the start of the school day. On ██████████, the parent met ██████████ at the school, but the informant was not present as ██████████ was unable to attend the scheduled conference. ██████████ arrived at school prior to the start of the day on ██████████, to meet with the informant and ██████████. ██████████ was identified as the ██████████ in question.

47. Upon notification of the alleged incident between the ██████████ and the Student, the principal, who was not indifferent, but

very concerned about the Student and the incidents with the [REDACTED], immediately began an investigation and, per School Board personnel policy, forwarded the matter to the School Board's Special Investigative Unit (SIU) for a formal investigation. Eventually, the investigation was assigned to [REDACTED], an investigator with SIU.

48. Additionally, the principal, who can only move or reassign staff to other areas of [REDACTED] school, but cannot remove an employee from the school, immediately removed [REDACTED] from the [REDACTED] on [REDACTED], by changing the [REDACTED] assignment to one that followed a different schedule. The [REDACTED] and the Student had no further interaction and the Student remained in [REDACTED] assigned [REDACTED] classroom, where the evidence showed [REDACTED] received FAPE.

49. [REDACTED] contacted the [REDACTED] [REDACTED] on [REDACTED], to report the incident. [REDACTED] to take the [REDACTED].

50. The next week, prior to [REDACTED], which caused the School Board's schools to be closed [REDACTED], the parent again contacted the principal. The principal told the parent that [REDACTED] had given the information to an officer for investigation and that the officer would contact the parent.^{4/}

51. In October [REDACTED], the parent again contacted the principal to follow up on the matter. The principal called back

and left a message with the investigator's number. The parent called the investigator in October [REDACTED]. The investigator appropriately told the parent that the investigation remained open and that [REDACTED] could not discuss an ongoing investigation.

52. On [REDACTED], the parent emailed the classroom teacher regarding issues related to [REDACTED] time and [REDACTED] times during lunch. Such [REDACTED] was not unusual for the Student and did not demonstrate that the Student's [REDACTED] had changed since the incidents with [REDACTED].

53. Between August [REDACTED] through January [REDACTED], the parent testified that the parent asked [REDACTED] and [REDACTED] for an IEP and reevaluation meeting, and that they said they would set up the meetings. However, [REDACTED] and [REDACTED], the [REDACTED], credibly testified that the parent never asked for an IEP meeting or a reevaluation plan meeting and that if the parent had, the meetings would have been scheduled. The evidence showed that the parent requested many meetings during the school year due to the alleged incidents with the [REDACTED]. However, the evidence was not clear on the type of meetings the parent was requesting. In this case, the better evidence showed that the parent did not ask for either an IEP or reevaluation meeting and that it was [REDACTED] who requested a reevaluation plan meeting in January of [REDACTED], specifically to gain consent to conduct an [REDACTED].

██████████ proposed an ██████████ evaluation because of ██████████ experience with the Student, who ██████████ felt was ██████████ within the classroom and wanted to develop a clearer picture regarding the ██████████ of the Student's ██████████.

54. The parent received notices on ██████████, in advance of the reevaluation plan meeting, alerting ██████████ that the date of the meeting was ██████████. ██████████ signed on ██████████, that ██████████ would attend the meeting. Thereafter, the evidence was not clear as to the precipitating events regarding the scheduling of this meeting and a subsequent call to the parent. However, the parent was called by school staff and told that the ██████████, reevaluation meeting would be held "██████████." The parent was able to attend the meeting and was able to participate in the meeting. The evidence demonstrated that the School Board complied with the procedural requirements of IDEA in scheduling the meeting.

55. On ██████████, the parents were able to view the videos of the alleged ██████████ incidents because the investigation was complete. However, the matter remained open for professional review and eventual discipline of ██████████.

56. On ██████████, a ██████████ incident was reported by ██████████ to the parent. The ██████████ alleged incident involved ██████████, an ██████████ assigned to the Student. There was no substantive evidence regarding this

incident introduced at hearing and no findings are made regarding this alleged incident.

57. In the meantime, the Student continued to be educated at School A. [REDACTED] was not alerted by any staff and the staff did not witness any significant or substantial changes in the Student's [REDACTED] following the August [REDACTED] incidents with [REDACTED] or the alleged incident with the [REDACTED]. Similarly, [REDACTED], the [REDACTED], did not notice different [REDACTED] in the Student the first [REDACTED] of school in August [REDACTED].

58. On [REDACTED], a reevaluation plan meeting occurred, specifically to address the possible need for a [REDACTED] for the Student. The meeting did not proceed as usual. Upon arrival for the meeting, the Student's parent saw the [REDACTED] who allegedly had [REDACTED] in August [REDACTED]. Because the parent was [REDACTED], [REDACTED] and [REDACTED] were unable to go over all the areas on the consent for reevaluation. However, the parent provided consent for a [REDACTED] during the reevaluation plan meeting. Additionally, an IEP meeting was scheduled for [REDACTED].

59. Following the [REDACTED], meeting, the Student's parent retained an attorney and, on [REDACTED], forwarded a 10-day notice to the School Board and requested reassignment to another school. [REDACTED] acted on this request immediately and

on [REDACTED], the parent was provided an application for reassignment to another school.

60. On [REDACTED], an IEP meeting was held at School A with the parent's attorney present. It was a long meeting. Although some of the statements are inaccurate and not substantiated by the evidence, the parent insisted that the parent input section include a statement the parent prepared. That section stated:

[REDACTED]

[REDACTED]

[REDACTED].

61. [REDACTED] again reviewed the [REDACTED] data during the IEP meeting on [REDACTED], with the parent. At no time did the parent ask [REDACTED] to contact the [REDACTED].

[REDACTED] also attended the January 31, [REDACTED], interim IEP meeting. [REDACTED] conducted informal assessments prior to the meeting. The [REDACTED] assessment was conducted twice, once in August and again in December of [REDACTED]. In August, the assessment obtained information on skills retained over the summer break and what skills might need to be reintroduced or refreshed. The December assessment was used to assess the areas where the Student was currently functioning. The information

gained from the two [REDACTED] assessments was documented in the Present Levels of Performance on the [REDACTED], Interim IEP.

62. The IEP team agreed to hold a subsequent reevaluation plan meeting, following the Student's assignment to [REDACTED] new school.

63. The evidence showed that the IEPs developed for the Student during the [REDACTED]-[REDACTED] school year were reasonably calculated to enable [REDACTED] to make meaningful progress in [REDACTED] of [REDACTED]. The evidence also showed that the Student's [REDACTED], IEP accurately described [REDACTED] strengths and weaknesses and provided the Student with FAPE.

64. Eventually, the Student was formally reassigned to School B on [REDACTED], after the parent checked out the school. The Student successfully concluded [REDACTED]-grade year at School B where the evidence showed [REDACTED] made [REDACTED] progress under [REDACTED] IEP.

65. On [REDACTED], a reevaluation meeting was held at School B. Evaluations in multiple areas were agreed to by the School Board.

66. [REDACTED] has been the [REDACTED] at School B for [REDACTED] years. [REDACTED] supports teachers and paraprofessionals in the [REDACTED] classrooms like the class to which the Student is

assigned. [REDACTED] also provides [REDACTED], assists in writing IEPs, and develops [REDACTED].

67. Since the Student's enrollment in School B, [REDACTED] has not seen a need to put a [REDACTED] in place for the Student because the Student's [REDACTED] and [REDACTED] [REDACTED] are typical for students with [REDACTED]. As in the past, these areas of need are addressed daily in the [REDACTED] program classroom through a myriad of supports, such as [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], etc. Further, the Student had appropriate goals on the [REDACTED], IEP to address [REDACTED] [REDACTED] and [REDACTED]. Additionally, the evidence demonstrated that the Student, with the [REDACTED], was successful in the cafeteria at School B. The adjustment to [REDACTED] new school and the new cafeteria took approximately [REDACTED]. [REDACTED] exhibited [REDACTED] the [REDACTED] due to being in a new environment. Those [REDACTED] have [REDACTED] significantly. Additionally, the evidence showed that the Student made [REDACTED] progress [REDACTED] for [REDACTED].

68. In sum, the progress reports and credible witness testimony of the Student's [REDACTED] teachers for the [REDACTED]-[REDACTED] and [REDACTED]-[REDACTED] school years demonstrated that the Student was making progress on all [REDACTED] IEP goals. Witnesses testified credibly that the IEP goals were tailored to the Student's specific needs and

addressed [redacted] specific weaknesses, as well as parent concerns. Further, the behaviors the Student had, including [redacted], if any, were able to be managed with the strategies and supports used by school staff.

69. The goals of the IEPs were developed to facilitate the Student's progress, as well as address parent concerns, as indicated in the parent input section on each IEP. As seen in the chart below and comparing the various IEPs over the time period relevant to this case, as the Student moved from [redacted] ([redacted]), the [redacted] goal grew from [redacted] goals; and in [redacted] ([redacted]), the number of [redacted] goals increased from three to four:

IEP DATE	Domain: [redacted]	Domain: [redacted]	Domain: [redacted]	Domain: [redacted]
03/22/ [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
09/16/ [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
05/31/ [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/31/ [redacted]	[redacted]	[redacted]	[redacted]	[redacted]

70. While not all domains increased the [redacted], the increase in [redacted] demonstrated [redacted] being placed on the Student and [redacted] progress for the Student, given the [redacted] on [redacted] education.

71. Additionally, and more importantly, the evidence demonstrated that the Student made progress within the individual goals of the IEPs. Specifically, the [redacted];

[REDACTED]; [REDACTED]; and [REDACTED], IEPs document the Student's present levels of performance in [REDACTED] domains: [REDACTED], [REDACTED]. In the [REDACTED], [REDACTED], IEP domain for [REDACTED], the Student "[REDACTED] [REDACTED]."

By the [REDACTED], IEP, the Student could [REDACTED] [REDACTED], and [REDACTED] could [REDACTED]. In the domain of [REDACTED], the [REDACTED], IEP documents that the Student [REDACTED] and that [REDACTED].

By the [REDACTED], IEP, the Student's need for [REDACTED] continued, but [REDACTED] was [REDACTED] to [REDACTED] and would [REDACTED] when [REDACTED].

In the domain of [REDACTED], the [REDACTED], IEP indicated that the Student [REDACTED] [REDACTED] and [REDACTED] to [REDACTED] [REDACTED] and [REDACTED]. The [REDACTED], 2018, IEP reflected that the Student was able to "[REDACTED] [REDACTED] [REDACTED]" and was "[REDACTED] [REDACTED]

needs of the Student and parent input. For example, the interim IEP developed on [REDACTED], [REDACTED], was amended to provide the Student [REDACTED] services and thereby provide [REDACTED] instruction in all [REDACTED], as well as [REDACTED], during the [REDACTED]. During the annual IEP meeting of [REDACTED], [REDACTED], [REDACTED] was again recommended, as well. There was also an increase from [REDACTED], to [REDACTED], in the Student's [REDACTED] during the [REDACTED] session. The IEP developed most recently on [REDACTED], [REDACTED], specifically addressed the parent concern that the Student spends an increased amount of time with [REDACTED] and such time increased from [REDACTED].

73. The evidence demonstrated that the IEPs developed for the Student were not static but working documents that were changed according to the Student's individual requirements given [REDACTED] circumstances at the time the IEP was drafted.

74. Finally, the progress reports from [REDACTED] through [REDACTED], [REDACTED], indicate that the Student made progress with the anticipation of meeting the Student's [REDACTED] IEP goals by the IEP's end in all [REDACTED] for all goals. The comments for each goal for the most current progress report also demonstrated such progress.

75. In fact, Goal [REDACTED] required the Student, when given [REDACTED] to [REDACTED] and asked "[REDACTED]," to [REDACTED]

██████████ the ██████████ at the ██████████ with ██████████ for ██████████. The progress report comments reflected that for grading period █, the student was ██████████ to ██████████ to ██████████ Goal █. By grading period █, the progress report reflects that the ██████████ required to ██████████ Goal █ had ██████████ to █ to ██████████.

76. Goal █ required the Student, when given ██████████ of █ to █ objects, and the ██████████ of ██████████ in each ██████████ on an ██████████, to ██████████ the ██████████ by ██████████ to the ██████████ with ██████████ for ██████████. The progress report reflects that for grading period 1, the Student was given █ to ██████████ to ██████████ Goal █. By grading period █, the progress report reflects that the number of ██████████ to ██████████ Goal █ had ██████████ to █ to ██████████.

77. Goal █ required the Student, when given a ██████████ ██████████, to ██████████ the ██████████ to the ██████████ with ██████████ for four ██████████. The progress report reflects that for grading period █, the Student was given █ to ██████████ to ██████████ the task. By grading period █, the progress report reflects that the ██████████ of ██████████ required to ██████████ Goal █ had ██████████ to ██████████.

78. Goal [redacted] required the Student, when given a [redacted] [redacted] of a [redacted] and a [redacted] [redacted], to [redacted] the [redacted] in [redacted] out of the [redacted]. The progress report reflects that for grading period 1, the Student was given [redacted] manual [redacted] to [redacted]. By grading period [redacted], the progress report reflects that the [redacted] [redacted].

79. Goal [redacted] required that, when the [redacted] an [redacted] that is in the [redacted], the [redacted] [redacted]. The progress report reflects that for grading period [redacted], the Student was [redacted] to [redacted] with teacher [redacted] the [redacted]. By grading period [redacted], the progress report reflects that the [redacted] [redacted].

80. Goal 6 required the Student, when [redacted] with an [redacted] [redacted]. The progress report reflects that for grading

period [REDACTED], the Student was [REDACTED].
[REDACTED]. By grading period [REDACTED], the progress report reflects that the [REDACTED].

81. Goal [REDACTED] required the Student, [REDACTED].
[REDACTED].
[REDACTED]. The progress report reflects that for grading period [REDACTED], the Student was [REDACTED].
[REDACTED]. By grading period [REDACTED], the progress report reflects that the [REDACTED].

82. Goal [REDACTED] required the Student, [REDACTED].
[REDACTED], [REDACTED].
[REDACTED]. The progress report reflects that for grading period [REDACTED], the Student was [REDACTED].
[REDACTED]. By grading period [REDACTED], the progress report reflects that the Student's [REDACTED].

83. Goal [REDACTED] required the Student, [REDACTED] and [REDACTED], to [REDACTED].
[REDACTED]. The progress report reflects that for grading period [REDACTED], the Student was [REDACTED].

[REDACTED]
[REDACTED]. By grading
period [REDACTED], the progress report reflects that the [REDACTED]
[REDACTED]
[REDACTED].

84. The above comparisons demonstrate that the Student's goals were based on [REDACTED] individual needs and that [REDACTED] [REDACTED] progress was being made by the Student over the past [REDACTED] years. As such, the evidence demonstrated that the Student's multiple IEPs over the years were reasonably calculated to provide the Student with FAPE. Further, the evidence showed that those IEPs were substantially implemented. The fact that the [REDACTED] did not comply with the IEP on the [REDACTED] occasions discussed above does not demonstrate that the IEP for the [REDACTED]-[REDACTED] school year was not implemented, since the evidence demonstrated that the [REDACTED] action did not [REDACTED] or [REDACTED] the Student's education and the Student continued to make [REDACTED] progress under [REDACTED] IEP after those incidents occurred. As indicated, the Student made [REDACTED] progress given the [REDACTED] of the Student's [REDACTED] on [REDACTED] educational performance in all years of [REDACTED] education. Further, the Student was provided FAPE by the School Board. Given these facts, the Complaint filed by the Petitioner should be dismissed.

CONCLUSIONS OF LAW

85. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

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

87. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on each agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

88. Parents and students with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. Bd. of Educ. v. Rowley, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

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

[S]pecial education services that - (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

90. The central mechanism by which the IDEA ensures FAPE for each child is the development and implementation of an IEP.

20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985) ("The modus operandi of the [IDEA] is the . . . IEP.") (internal quotation marks omitted). The IEP must be developed in accordance with the procedures laid out in the IDEA, and must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Andrew F. v. Douglas Cnty. Sch. Dist., RE-1, 13 S. Ct. 988, 999 (2017).

91. "Special education," as that term is used in the IDEA, is defined as:

[S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings

20 U.S.C. § 1401(29).

92. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's "present levels of academic achievement and functional performance," establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R.

§ 300.320. "Not less frequently than annually," the IEP team must review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i).

93. Indeed, "the IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 S. Ct., 994 (2017)(quoting Honig v. Doe, 108 S. Ct. 592 (1988))("The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child."). Id. (quoting Rowley, 102 S. Ct. at 3034)(where the provision of such special education services and accommodations are recorded).

94. In Rowley, the Supreme Court held that a two-part inquiry or analysis of the facts must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Rowley, 458 U.S. at 206-207. A procedural error does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to a free appropriate public education, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation

of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

95. In this case, Petitioner has alleged that the school Board failed to meet the procedural requirements of the IDEA by not properly evaluating the Student. The parent further alleged that the School Board failed to meet the procedural requirements of the IDEA by not performing an [REDACTED] after the three-year reevaluation meeting that occurred in September [REDACTED].^{5/}

96. Section 305 of chapter 34 of the Code of Federal Regulations contains the procedural requirements for reevaluations under IDEA. The regulation states in part:

Based on its review of existing data and parental input, the team must identify what additional data, if any, are needed to determine:

- i. Whether the child continues to have such a disability and the educational needs of the child;
- ii. The present levels of academic achievement and related developmental needs of the child;
- iii. Whether the child continues to need special education and related services; and
- iv. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Rule 6A-6.0331(8) of the Florida Administrative Code adopts these requirements in Florida. Further, rule 6A-6.0331(7) governs the timing of reevaluations of students under IDEA and incorporates the reevaluation requirements contained in 20 U.S.C. § 1414. The rule states in pertinent part:

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted . . . , if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(emphasis added).

97. In this case, the evidence demonstrated that the meeting to determine if the Student should be reevaluated occurred in September [REDACTED] and was within the appropriate three-year review cycle. The better evidence showed that, at the reevaluation plan meeting, the necessity for reevaluations in [REDACTED] areas, including [REDACTED], was discussed along with current information regarding the Student. The team determined, and the parent agreed, that reevaluation of the Student was not

needed at the time. However, at the parent's request, a referral for an [REDACTED] was completed at the time of the meeting. The evidence was not clear as to whether the Student was screened by the [REDACTED] and there was no documentary evidence that such screening occurred. Further, the evidence showed that there were no unknown issues regarding [REDACTED] found by the IEP team during the reevaluation meeting and no [REDACTED] [REDACTED] was recommended. On the other hand, the School Board's failure to conduct the [REDACTED] was a procedural irregularity since the parent did not agree that further reevaluation in the area of [REDACTED] was not necessary at the three-year reevaluation review. The evidence did not establish that the irregularity was material to the education of the Student. As such, the School Board met the procedural requirements for reevaluations under IDEA.

98. Credible witness testimony demonstrated that the parent did not request reevaluation of the Student until January [REDACTED]. Further, credible witness testimony demonstrated that those who directly instructed the Student did not determine any areas that required further investigation, save possibly for a [REDACTED] in [REDACTED], because the Student was benefitting from [REDACTED] special education instruction and making progress in that education. Additionally, the better evidence demonstrated that the Student's [REDACTED] needs were addressed through [REDACTED] IEP goals. The better evidence also

demonstrated that there was no need to evaluate in areas such as ■, ■, and ■■■■■■■■■■ for related services during the Student's time at School A. These determinations were based on appropriate information and data from both teachers and the parent. As such, the School Board met the procedural requirements for reevaluation of a student during the interim three-year period for such reevaluations.

99. Pursuant to the second step of the Rowley test, it must be determined if the IEP developed, pursuant to the IDEA, is reasonably calculated to enable the child to receive "educational benefits." Rowley, 458 U.S. at 206-07. Recently, in Endrew F., the Supreme Court addressed the "more difficult problem" of determining a standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." Endrew F., 13 S. Ct. at 993. In doing so, the Court held that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Id. at 999. As discussed in Endrew F., "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is

whether the IEP is *reasonable*, not whether the court regards it as ideal." Id.

100. The determination of whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student who is "fully integrated in the regular classroom," an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. (quoting Rowley, 102 S. Ct. at 3034). For a student, [REDACTED], who is not fully integrated in the [REDACTED] classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." Id. at 1000. This standard is "markedly more demanding" than the one the Court rejected in Andrew F., under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is, an educational benefit that was "merely" more than "de minimis." Id. at 1000-1001.

101. The assessment of an IEP's substantive propriety is guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time of the IEP's formulation; in other words, an IEP is not to be

judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011)(holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.").

Second, an assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008)(holding that an IEP must be evaluated as written).

102. Third, great deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review" and explaining that "deference is based on the application of expertise and the exercise of judgment by school authorities."); A.K. v. Gwinnett Cnty. v. Sch. Dist., 556 Fed. Appx. 790, 792 (11th Cir. 2014)("In determining whether the IEP is substantively adequate, we 'pay great deference to the

educators who develop the IEP.'")(quoting Todd D. v. Andrews, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in Daniel R.R. v. State Board of Education, 874 F.2d 1036, 1048 (5th Cir. 1989), "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act."

103. Further, the IEP is not required to provide a maximum educational benefit, but only need provide a basic educational opportunity. Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991); C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1153 (11th Cir. 2007); and Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001).

104. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d Cir. 1989)(internal citation omitted); see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-534 (3d Cir. 1995); Kerkam v. McKenzie, 862 F.2d 884, 886 (D.C. Cir. 1988)("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act"). Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998); and Doe v. Bd. of Educ., 9 F.3d 455, 459-460 (6th Cir. 1993)("The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every

handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use Be that as it may, we hold that the Board is not required to provide a Cadillac").

105. In this case, the parent alleges that the IEPs for the [REDACTED]-[REDACTED] and [REDACTED]-[REDACTED] school years denied the Student FAPE because they generally did not substantively meet the Student's needs. However, the better evidence demonstrated that the Student's multiple IEPs over the years were reasonably calculated to provide the Student, and did provide the Student, with FAPE. Indeed, the evidence showed that the Student reasonably [REDACTED] given the [REDACTED] of the Student's [REDACTED] on [REDACTED] educational performance in all years of [REDACTED] education.

106. Additionally, the parent alleges that the School Board failed to implement the [REDACTED], [REDACTED], IEP when the [REDACTED] did not comply with appropriate [REDACTED] strategies or techniques on [REDACTED] and [REDACTED], [REDACTED].

107. Because this claim challenges the School Board's implementation of Petitioner's educational programming—rather than its substance—a different standard of review applies. L.J. v. Sch. Bd. of Broward Cnty., 850 F. Supp. 2d 1315, 1319 (S.D. Fla. 2012). In particular, a parent raising a failure-to-implement claim must present evidence of a “material” shortfall, which occurs when there is “more than a minor discrepancy between

the services a school provides to a disabled child and the services required by the child's IEP." Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007). Notably, this standard does not require that the student suffer demonstrable educational harm in order to prevail. Id. at 822; Colon-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 143-44 (D.P.R. 2014); Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 40 (D.D.C. 2013). Rather, the materiality standard focuses on "the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

108. As indicated, the allegations surround the [REDACTED] [REDACTED] of the Student on [REDACTED] occasions out of the many school days attended by the Student. Without diminishing the unusual nature of such [REDACTED], such infrequent [REDACTED] [REDACTED] does not meet the legal materiality standard and does not otherwise amount to a denial of FAPE. Further, the evidence demonstrated that, like all the IEPs at issue in this case, the May IEP was materially implemented and provided FAPE to the Student.

109. Finally, the balance of Petitioner's claims, as asserted in the due process Complaint, was not supported by the evidence, and, therefore, are dismissed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is DISMISSED in its entirety.

DONE AND ORDERED this 16th day of August, 2018, in Tallahassee, Leon County, Florida.

S

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of August, 2018.

ENDNOTES

^{1/} Petitioner has raised claims related to Section 504 of the Rehabilitation Act of 1973 (Section 504), 20 U.S.C. § 1983 (Section 1983), and the American with Disabilities Act (ADA). Unlike IDEA claims, where DOAH has state statutorily delegated jurisdiction (§ 1003.57(1)(c), Fla. Stat.), DOAH does not have state delegated jurisdiction over the above-listed claims. Claims under these federal statutes can only be referred to DOAH by contract with the agency pursuant to section 120.65, Florida Statutes. The undersigned is aware of a general contract between DOAH and Respondent agency for Administrative Law Judge services. However, that contract requires the School Board to specifically refer the legal dispute to DOAH for the purpose of hearing the case. In this case, the referral letter from the School Board was limited to "Request for Due Process Hearing Pursuant to Fla. Admin. Code R. 6A-6.03311(9)." The rule referred to in the

letter is limited to due process complaints under IDEA. The rule does not address hearings filed under Section 504, the ADA, or Section 1983. As such, this case was not referred for hearing under these non-IDEA statutes, but only under DOAH's IDEA jurisdiction. Given this limitation, allegations related to non-IDEA federal statutes will not be addressed in this Final Order, and such claims are dismissed.

^{2/} The parent testified that more than [REDACTED] years prior to the filing of the Complaint herein, the School Board declined to provide the Student with [REDACTED], telling the parent that the school did not offer these [REDACTED] to students at school. However, the testimony regarding no services was based on long ago conversations not corroborated in the record. Such testimony is not reliable. Further, the fact that the Student receives privately provided [REDACTED] is insufficient by itself to establish that such [REDACTED] is educationally relevant to the Student and otherwise necessary to provide FAPE to the Student. Finally, the evidence did not demonstrate a need for the School Board to provide such services in the school setting.

^{3/} Through the use of [REDACTED] techniques in the classroom, school staff attempted to shape [REDACTED] in a positive way by positively [REDACTED] and reducing [REDACTED] that [REDACTED] learning within the classroom. [REDACTED] strategies, techniques, interventions, and goals can be provided to students with disabilities without conducting an [REDACTED] or creating a formal [REDACTED].

^{4/} Under Florida law the investigation of school personnel is confidential and not open to the public until closed. § 1012.31(3) Fla. Stat.; and Johnson v. Deluz, 875 So. 2d 1 (Fla. 4th DCA 2004).

^{5/} To the extent multiple reevaluations and evaluations have been granted and are or have been conducted during 2018, and since the three-year review period is approaching for the Student, this issue appears to be moot. T.P. by T.P. and B.P. v. Bryan Cnty. Sch. Dist., 115 LRP 29136 (11th Cir. July 2, 2015).

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).