

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

Case No. 19-5252E

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A due process hearing was held before Jessica E. Varn of the Division of Administrative Hearings (DOAH) on [REDACTED] through [REDACTED], [REDACTED], live in Jacksonville, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire  
Three Rivers Legal Services, Inc.  
3225 University Boulevard South, Suite 220  
Jacksonville, Florida 32216

For Respondent: [REDACTED], Esquire  
Stanley M. Weston, Esquire  
Office of General Counsel  
City of Jacksonville  
117 West Duval Street, Suite 480  
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STATEMENT OF THE ISSUES

Whether the School Board denied the student a free and appropriate public education (FAPE) by failing to implement the student's individualized education plans (IEPs); and

Whether the School Board denied the student FAPE by failing to ensure that the student make adequate progress; and

Whether the School Board denied the student FAPE by failing to place the student in the least restrictive environment (LRE); and

Whether the denial of a request for a facilitated IEP meeting resulted in a denial of procedural safeguards.<sup>1</sup>

#### PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on [REDACTED], which was forwarded to DOAH on [REDACTED]. The School Board timely filed its Response to the Complaint and held a resolution session. The parties were not able to resolve the matter but jointly requested more time to continue exploring the possibility of settlement. The parties requested, and were granted, an extension of time until [REDACTED], to file a status report.

On [REDACTED], a telephonic pre-hearing conference was held, wherein the parties agreed to schedule the due process hearing for [REDACTED] through [REDACTED]. The due process hearing was conducted as scheduled. The parties stipulated to the admission of all of Petitioner's Composite Exhibits 1 through 13 and School Board Exhibits [REDACTED] Stamped 1 through 1101. The parties also stipulated to the admission of Joint Exhibits A and B. Testimony was heard from Petitioner's [REDACTED]; [REDACTED], Communication Social Skills (CSS) Site Coach; [REDACTED], Lead American Sign Language (ASL) teacher; [REDACTED] Educational Audiologist; [REDACTED], [REDACTED]

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<sup>1</sup> The issue regarding the School Board's denial of a request for a facilitated IEP meeting was raised in the Complaint, but barely mentioned during the due process hearing and completely omitted as an issue in Petitioner's Proposed Final Order. Although it could fairly be considered an abandoned issue, this Final Order will nonetheless address the issue.

teacher; [REDACTED], [REDACTED] teacher; [REDACTED] [REDACTED], SAT/ACT teacher; [REDACTED] [REDACTED], [REDACTED] teacher; [REDACTED], School Psychologist; [REDACTED] [REDACTED], Assistant Principal of Curriculum; [REDACTED], Instructional Support for CSS; [REDACTED] [REDACTED], School Counselor; [REDACTED] [REDACTED], Case Manager; [REDACTED] [REDACTED], Exceptional Student Education (ESE) Supervisor; [REDACTED] [REDACTED], ESE [REDACTED] teacher and Swim Coach; and [REDACTED] [REDACTED], Behavior Analyst.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders on [REDACTED], and for the undersigned to enter the Final Order by [REDACTED]. The due process hearing Transcript was filed with DOAH on [REDACTED]. On [REDACTED], the parties jointly requested that the deadline for proposed orders be extended to [REDACTED]. The request was granted, resetting the deadline for this Final Order to [REDACTED]. On [REDACTED], the parties requested that the deadline for the proposed orders be extended to [REDACTED]. This request was also granted, and extended the deadline for the Final Order to [REDACTED]. The parties timely filed proposed orders, which were considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. 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. This case concerns a [REDACTED] [REDACTED] [REDACTED] diagnosed with [REDACTED]

[REDACTED]  
[REDACTED]. [REDACTED] is described as a [REDACTED] [REDACTED] whose

██████████ are, by all accounts, spectacular. ██████ is eligible for ESE pursuant to the ██████ and ████████████████████ categories.

### Factual Stipulations

Prior to the due process hearing, the parties stipulated to the following facts:

2. At the time of the ██████████ ██████ ██████, IEP (██████████ ██████ ██████) meeting, the student had not failed but was at risk of failing.

3. While the ██████████ ██████████ course may be designed to accomplish other goals, the ██████████ IEP indicates that the ██████████ ██████████ course is “to improve time management and self-determination skills.”

4. At the time of the ██████████ IEP, the IEP indicates that the student “will increase [██████] transition & organizational skills during ██████████.”

5. The meeting notes for the ██████████ IEP indicate the following: “[a] foreign language waiver was discussed by ██████████.” This individual is not listed on this page as a member of the IEP team.

6. The student’s reading lexile score in ██████████ was ██████.

7. The ██████████ goal on the ██████████ IEP was to demonstrate ██████████ ██████████ at the ██████ grade level.

8. The ██████████ ██████████ level for ██████ grade is ██████ to ██████.

9. The ASL instructor was ██████████ ██████████.

10. The student ██████████ one semester of ASL; and, at the request of the parents, ██████ withdrew from the course.

### Background information

11. According to the ██████████, the student has struggled with academic work since the very beginning of ██████ educational career, but ██████ successfully progressed through ██████████ school with the assistance of an organized system of communication between the school and the ██████████.

12. Specifically, the student’s ██████████ cited a system of planners, which were filled out mostly by staff, as the key to the student’s success in ██████████ school. During the hearing, the student’s ██████████ explained:

A: Well, the planner actually dates back to [REDACTED] school, where many things were tried but we were making great progress with the planner. The planner was simply, like, a spiral notebook calendar that was quartering off each subject for each day, where initially a facilitator was to go over the assignment with [REDACTED] and put it down in a way that [REDACTED] understood and in a way that the parents would understand. The planner would also show a deadline. And then the planner, on the day that it was turned in, that would be an activity that was reported as well. The — if there was no homework assignment, we would think [REDACTED] didn't get [REDACTED] notes that day, so we requested they put an N/A in the sections that there was no homework. I mean, that was basically...

Q: You said initially, was that the extent of the plan?

A: Well, no. The plan would be to — for [REDACTED] gradually to independently fill out the notebook for [REDACTED] and to eventually not need the planner anymore, but it was sort of baby steps.

Q: So in [REDACTED] school, did [REDACTED] get to a point where [REDACTED] was filling out the planner by [REDACTED]?

A: Right. It was — got to that stage where it was very successful. But, also, [REDACTED] was keeping up with [REDACTED] work, because we knew at home what [REDACTED] had to do. So that was part of the success.

13. Once the student transitioned to [REDACTED] school, organizational challenges immediately emerged, increasing the [REDACTED] questions and requests for assistance from the school staff. And so began a [REDACTED] relationship consisting of a [REDACTED] who was relentless in [REDACTED] pursuit of answers and data regarding the student's time at school; a [REDACTED] who supported school staff decisions and thought that the student was receiving too many accommodations; a [REDACTED] school student who is described by all school staff as ambivalent, unmotivated, yet capable of much more than what

█ was willing to do; and school staff who diligently instructed and supported the student while managing the steady stream of the █ emails, requests, and suggestions.

14. The █ are █, causing the student to █ with the █ evenly. Understandably, living in █, with two different approaches to academic demands, could have contributed to the student's challenges.

█ Grade (█ - █)

15. The IEP for the student's █ grade year identified, in addition to core academic areas, "organizational skills, sustained attention, and task initiation within the classroom setting using self-monitoring" as priority educational needs. The organizational skills benchmark, or short-term objective, was that "when provided with 2 binders (A-Day and B-Day), that include a homework log and folder with 'to do' and 'turn in', [\*\*] will organize [█] work independently by placing papers in the █ on 5 out of 5 days as measured by teacher observation and recorded data."

16. Another benchmark, or short-term objective, was that "[\*\*] will be able to show [█] can identify at least 3 strategies to assist with task initiation and implement them." Lastly, "[The student] will be able to explain the organizational system [█] uses to organize class materials effectively. (█ etc. Plan daily, time to arrange/organize materials)."

17. The IEP also identified "self-advocacy skills related to increasing persistence and self-management through goal setting" as a priority educational need. Notably, the student's thoughts were memorialized in the Present Levels of Performance (PLOP) IEP section as:

[The student] has expressed that [█] feels a need for greater autonomy and independence just such [sic] as [█] peers. . . [\*\*] indicated that [█] rarely talks at [█] IEP meetings. [\*\*] also stated that [█] does not feel important. [█] also stated that [█] is not involved in planning [█] weekend activities or school-related activities.



STOP statement: When [\*\*] is engaging in target [REDACTED] requiring a response, the teacher should deliver contingent instructions in a 3-part format. Direct [\*\*] to STOP a specific problem [REDACTED], e.g. “[\*\*], put away your [REDACTED] X. START statement: after a brief (1-2 second) pause, describe the appropriate [REDACTED] that [\*\*] should START, e.g. “Open your book to page 28 and begin the end of chapter questions 1-5.” [REDACTED] for compliance as [\*\*] begins to.

20. The [REDACTED] stated that the plan itself was aligned with the IEP in the social/emotional domain, and included a related annual goal of:

By the IEP review date, given a developmentally appropriate activity, [\*\*] will actively engage in activity (e.g., focus on given task, use materials for intended purposes, etc.) without displaying socially unacceptable behaviors for 40 minutes in 4 out of 5 opportunities as measured by teacher observation and recorded data implemented by ESE and General Education teachers.

21. As to [REDACTED], the [REDACTED]-grade IEP noted that the student had been enrolled in [REDACTED] as a [REDACTED] grader, which was the first year of a 2-year [REDACTED] class. [REDACTED] would then take [REDACTED] during [REDACTED]-grade year. [REDACTED] received instruction using the standard academic curriculum with accommodations in the general education setting. [REDACTED] was pulled out for small group instruction on a regular basis, twice a week, receiving support facilitation services. In the PLOP section of the IEP [REDACTED] domain, it was noted that in [REDACTED], the student demonstrated mastery of grade level concepts when provided small group instruction, and when [REDACTED] was given fewer problems and extended time. [REDACTED] was described as follows:

When [\*\*] is focused and on task, [REDACTED] picks up on new [REDACTED] skills fast. [\*\*] is able to complete [REDACTED] and [REDACTED] facts quickly without a [REDACTED]. [\*\*]’s effort level in [REDACTED] has increased tremendously from the beginning of the school

year. However, there is still a [REDACTED] of [REDACTED]

22. [REDACTED] had already earned passing grades in the three quarters of [REDACTED]; and, given [REDACTED] demonstrated [REDACTED] skills, the priority educational [REDACTED] need was to continue to increase [REDACTED] thinking. The IEP reflects, though, a dependency on adult assistance and the student [REDACTED] reporting that [REDACTED] did not prefer to work independently. Ultimately, the [REDACTED] goal was to reach grade level [REDACTED] skills by the end of [REDACTED] grade.

23. In the area of [REDACTED] was more independent. The PLOP describes [REDACTED] as follows:

[\*\*] feels [REDACTED] works best on assignments and projects when [REDACTED] completes them by [REDACTED]self... Baseline [REDACTED] score in [REDACTED] was [REDACTED]. [REDACTED] has shown a [REDACTED] point gain, placing [REDACTED] ending score for the [REDACTED] school year at a [REDACTED].

24. [REDACTED] had passing grades in [REDACTED] and in [REDACTED], and [REDACTED] main struggle was not that [REDACTED] needed or wanted adult assistance; rather, it was that [REDACTED], and [REDACTED] often [REDACTED] on assignments, which in turn caused [REDACTED] to feel [REDACTED] and eventually [REDACTED]. As reported in the IEP, the student explained that if an assignment was too long, [REDACTED] would [REDACTED]. If [REDACTED] was “ [REDACTED] or overcome by [REDACTED], [REDACTED] will not respond to prompts, put [REDACTED] [REDACTED], and/or [REDACTED] recording homework assignments in [REDACTED] agenda. [\*\*] reported that [REDACTED] struggles with task initiation and does not like to engage in assignments that take too long.”

25. The student’s priority educational need in the [REDACTED] domain was to continue to increase [REDACTED] skills in [REDACTED] and [REDACTED] details in order to obtain a passing grade on the Florida Standards Assessments (FSA)<sup>2</sup> [REDACTED]

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<sup>2</sup> The [REDACTED] are exams that measure whether students in the state of Florida are making progress in terms of curriculum standards set by the state.

portion in [REDACTED] grade year. The reading goal was to reach a [REDACTED]-grade level.

26. With this detailed IEP in place, the student's [REDACTED]-grade year began with immediate organizational challenges. Due to the [REDACTED] frequent requests for data and explanations as to the daily happenings at school, the student's file had been transferred to [REDACTED], an [REDACTED] [REDACTED], who played the role of a go-between for the teachers, the student, and [REDACTED] parents. In an email to [REDACTED] dated [REDACTED], the [REDACTED] wrote:

Hope you survived [Hurricane] Irma ok. During the hurricane break [\*\*] is trying to catch up on some work. I do not see where [\*\*]'s homework log is being used yet. Can you tell me what the status is? All I have to go on is FOCUS.<sup>[3]</sup> As you know FOCUS updates can be delayed by 10 days so I don't know how reliable it is. [\*\*] expressed confusion and doubt over several of the line items. Please review notes below and perhaps forward to [REDACTED] and [REDACTED] teachers to see if they can comment or clear up these issues for [\*\*] and me.

[REDACTED] Due [REDACTED]. [\*\*] says [REDACTED] turned in during class. Did [REDACTED]?  
[REDACTED] Due [REDACTED] [\*\*] says [REDACTED] turned in during class. Did [REDACTED]?  
[REDACTED] Due [REDACTED]. [\*\*] says the words are on board and [REDACTED] didn't copy down so [REDACTED] can't do at home. Are vocabulary words and other assignments displayed on board part of [REDACTED] accommodation to be given class notes [sic]. No mention in [REDACTED] homework log either.  
[REDACTED] Project [REDACTED] Due [REDACTED]. [\*\*] says [REDACTED] turned in during class. Did [REDACTED]?  
[REDACTED] Quiz. Grade [REDACTED] [\*\*] says no alternate testing method available for [REDACTED] tests. Is this correct?

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<sup>3</sup> FOCUS is an online forum to access grades in real time. According to testimony at the hearing, teachers have a 10-day window to enter a grade for every entry.

- [redacted] [redacted] [redacted] Notes. Due [redacted] Missing. [redacted] doesn't know about this. Was [redacted] in class and given the notes?

- [redacted] [redacted] Quiz. Due [redacted] [redacted]. [redacted] doesn't know if this is still active, when it is due, or how to go about finishing.

- [redacted] [redacted] Assignment [redacted]. May I get a copy of the graded assignment?

- [redacted]. Did you receive note from [redacted] re: grading (sic) [redacted]

- [redacted] first attempt complete another activity as enrichment. [redacted] has no idea what "another activity" means. Can you be more specific?

- [redacted] pg 8 Due [redacted] [redacted] does not think [redacted] can do it at home. [redacted] thinks it can only be done in class and may be too late.

- [redacted] pgs 3-8 [redacted] Due [redacted] [redacted] says [redacted] didn't do. Was [redacted] in class for this assignment?

- [redacted] [redacted] due [redacted] [redacted] has no idea what this is. Was [redacted] in class, given notes?

- [redacted] [redacted] Due [redacted] [redacted] has no idea what this is. Has [redacted] been given materials yet?

Also, [redacted] was issued an [redacted] book and a [redacted] book on orientation day. Does [redacted] need these books with [redacted] at school? [redacted]'s trying to convince me [redacted] doesn't need these books during class probably because they are too heavy to carry around. [redacted] also believes [redacted] may have the wrong [redacted] and [redacted] book because of the schedule mix up earlier. Might this be true?

27. The [redacted] received detailed responses from the individual teachers on these issues, and as [redacted] closed, received a lengthy, two-page reply from [redacted] (sent on a Saturday evening), which included the following:

[redacted] and [redacted] spent an hour and ten minutes together yesterday. [redacted] had [redacted] empty [redacted] bookbag out completely. [redacted] was [redacted], so [redacted] reminded [redacted] that [redacted] had complete control over this situation happening in the future. [redacted] smiled and

said, “I know.” I first asked [redacted] to pull out [redacted] A-Day and B-Day binders. I grabbed the A-Day binder and I gave [redacted] the B-Day binder. [redacted] sat directly across from [redacted]. I asked [redacted] to summarize [redacted] organization system for me. [redacted] was able to tell me the following:

“I have an A-Day and a B-Day binder, homework logs, [redacted] notebook, and [redacted] notebook.”

I asked [redacted] where [redacted] [redacted] log was and [redacted] said I don't know. When I asked [redacted] to hand me [redacted] book bag, [redacted] then said... “Oh yeah, here it is” and handed it to [redacted]

*I asked [redacted] when [redacted] should be completing [redacted] homework logs, and [redacted] said, “In my classes.” I also asked [redacted] if teachers prompt [redacted] to write in [redacted] log, and [redacted] said, “yes.” I asked [redacted] why [redacted] was not doing it consistently, [redacted] said, “I don't know. Sometimes I just don't want to.”*

I modeled how to organize [redacted]'s A-Day binder as [redacted] mirrored [redacted] with [redacted] B-Day binder. I found several homework logs crumpled up in the bottom of [redacted] bag with some assignments written in. What I noticed with [redacted] [redacted] are the [redacted] [redacted] do not stay shut. If [redacted] are able to purchase two new two-inch binders that would be great. If not, I think I have some. If I do not, I can grab them Monday evening. [redacted] taped down, on the front cover pocket “Turn into teachers.” On the back cover, [redacted] taped down a copy of [redacted] accommodations. [redacted] also discussed [redacted] accommodations and ways to request them when [redacted] needs them (email, raising hand, informing support facilitator in class, asking the teacher, speaking with [redacted] case manager).

Next, I placed sticky notes with each academic class around [redacted] office and asked [redacted] to place all [redacted] loose papers in the appropriate place under the sticky notes. [redacted] was able to decipher [sic] what went with what, especially when [redacted] used focus

[sic] to clarify what classes a few assignments belonged to. Then [redacted] asked [redacted] to go through the stacks and [redacted] any papers that needed it. [redacted] had [redacted] place all [redacted] papers behind the correct tab in each folder. [redacted] discussed doing this during class and at home. [redacted] also went over a few scenarios in classes such as only having out on [redacted] desk what [redacted] needed for that particular class, walking in and looking at the board, opening up to [redacted] homework log and writing down what the homework was before the teacher needed to prompt [redacted], and placing papers immediately behind the tab they belong. [redacted] then said, “[redacted] really do not think that this is going to work.” [redacted] then asked [redacted] if stuffing papers in [redacted] books and in [redacted] book bag was currently working. [redacted] pondered for a minute, then said, “maybe not.” [redacted] discussed the importance of organization and how it will help [redacted] become more independent. [redacted] has really matured over the summer. [redacted] spoke about out how [redacted] needs to make sure [redacted] gets better at this. [redacted] praised [redacted] for acknowledging the importance of organization. (emphasis added)

28. In [redacted], the student’s [redacted] passed away. By all accounts, [redacted] caused [redacted] for the student’s [redacted], and, as would be expected, this affected the student’s [redacted] [redacted]

29. Despite having mastered one of the short-term objectives in the organizational domain of the IEP; that is, the student was able to “explain the organizational system [redacted] uses to organize class materials effectively. ([redacted], etc. Plan daily, time to arrange/organize materials)”; the student’s organizational challenges continued, which in turn affected the student’s grades. In [redacted], the student’s case manager, [redacted] [redacted], emailed both [redacted] regarding the [redacted] folder:

[The student] did a great job on [redacted] [redacted] project! [redacted] turned it in for [redacted] yesterday morning. Do you know if [redacted] was able to locate [redacted] [redacted] folder? If [redacted] can’t find it, [redacted] will be glad to

start another one for [REDACTED]. Please advise. (emphasis added)

30. The [REDACTED], in responding to the email, took the opportunity to address alternative grading standards, which were not addressed in the IEP:

Thanks. [\*\*] is proud of [REDACTED] project. [REDACTED] like to comment that [REDACTED] had a very difficult time “re-wording” the descriptions for the [REDACTED] of the parts as required by the instructions. In [REDACTED] attempts to edit utilizing [REDACTED] own words, the descriptions often became erroneous. [REDACTED] intervened in hopes [REDACTED] could teach [REDACTED] how to better paraphrase. Still some of the descriptions remain very close to their original state or are a compilation of information from the worksheet, book, and internet. However, [\*\*] impressed me by [REDACTED] oral ability to verbally describe the [REDACTED] of each part. When [REDACTED] completed the project, [REDACTED] had [REDACTED] tell me the function of each part. [REDACTED] ran down all 13 parts rather quickly and painted a vivid and lengthy picture of what goes on in each. [REDACTED] only had trouble with 3 and had to refer to [REDACTED] notes but even those [REDACTED] put in [REDACTED] own words. On one occasion, [REDACTED] said “This is the way my teacher likes to describe it...” [REDACTED] *mention this because [REDACTED] want to reiterate [REDACTED] feel [\*\*]’s grades should be a reflection of what [REDACTED] learns and not necessarily how well [REDACTED] is able to take a written test.*

[REDACTED] looked for the black folder at [REDACTED] house and can not [sic] find it, [\*\*] is with [REDACTED] [REDACTED] this week so hopefully [REDACTED] will find it and get back to you later today. (emphasis added)

31. As is readily apparent by the high volume of communications between the [REDACTED] and the school staff, the student was surrounded by a cast of adults who completed tasks for the student. When [REDACTED] did complete most non-preferred assignments, it was with ample assistance. Even after completing an assignment, a teacher would often turn it in for [REDACTED]. During the frenzy of adult actions on behalf of the student, the record leaves a distinct impression

that the student rarely, if ever, completed any non-preferred task without prompting or without an adult completing the task on [REDACTED] behalf.

32. By [REDACTED] of [REDACTED], midway through the student's [REDACTED]-grade year, [REDACTED] received the following advice from [REDACTED], who consistently advocated for the student to become more independent:

If the emails from [REDACTED] become too much, call a parent meeting to address [REDACTED] questions and invite the teachers.

[REDACTED] suggest pointing to the IEP for what the "teachers task" is. [REDACTED] may also want to remind [REDACTED] about what we spoke about at the IEP meeting. *[The student] should be emailing [REDACTED] teachers with guidance and then fading prompts out. If [REDACTED] continues to do it for [REDACTED], it creates prompt dependency and [REDACTED] will then retract to relying on [REDACTED] parents to do all the communicating. [REDACTED] should be working towards independence. In the past, [REDACTED] cc'd [the student] on the emails. (emphasis added)*

33. On [REDACTED], the IEP team met because the student was not making adequate academic progress during the fall semester. When the [REDACTED] forms were sent out, the student was at risk of failing some core academic classes. Fortunately, by the time the meeting was held in [REDACTED], the student had passed all [REDACTED] classes. The IEP team decided to "trial [the student] with [REDACTED] to help increase [REDACTED] sustained attention and minimize [REDACTED] activities." The team was hoping to give the student "fill in the blank" notes, where the student needed to stay on task during a class; that is, [REDACTED] needed to follow along and fill in blanks in the guided notes. This approach had been working in [REDACTED] class.

34. In late [REDACTED], as reflected in the tenor of the email chains, the [REDACTED] was becoming increasingly annoyed with the student's [REDACTED] with organization and [REDACTED] academic performance. With every tweak to the services, came a demand for data; and, as was the pattern in the student's

life, ■ and the adults supporting ■ oscillated between allowing the student to be dependent on adult assistance and helping the student become independent. The ■ emailed ■:

■ not certain if all these questions should be directed toward ■ or if some should go to others. Could ■ please address what ■ can and forward the rest to the appropriate teachers and ask them to respond?

a. Could ■ please send me the details of the system and guidelines for the system and guidelines in place for [\*\*]'s homework logs.

b. [The student] completed an ■ homework assignment involving 4 ■ a week ago. It is still in [■] backpack. ■ *would like for [■] to turn it in without special prompting at next class but if [■] fails to do so please remind [■] to turn it [sic]. Please show [■] how [■] is expected to record it on [■] homework log.*

There are a couple of questions still pending from my email dated ■.

c. ■ would like to know how ■ can access the metrics for all of [\*\*]'s online assignments to see how long each session was and % of work completed.

d. It is my understanding that notes in ■ will now be given to [\*\*] with “fill in the blanks” modeled after [■] ■ notes. This will be done on a trial basis which will be measured to see if it improves [\*\*]'s engagement in class and comprehension. What date (will this be/was this) implemented and what data will be collected and measured? (emphasis added)

35. As was always the case, ■ collected information to satisfy the ■ requests; ■ produced data in the form of graphs, charts, and communications with the staff and the parents. In fact, data was attached to

every one of the IEPs reviewed in this matter, and was collected on a regular basis. The ██████████ constant communication with the school staff produced volumes of data regarding IEP goals and accommodations listed on the IEP, which reflect a faithful implementation of the IEP with some success in reaching the IEP goals.<sup>4</sup>

36. In ██████ of ██████, the final month of the student's ██████-grade year, the IEP team met to design the IEP for the student's ██████-grade year. The student had passed all of ██████-grade classes. The ██████ IEP memorialized the parents' view of the student in this manner:

[\*\*] is very intelligent. [██] is also very ██████. [██] enjoys ██████ ██████ and ██████. [\*\*] is inquisitive in a positive way. [██] also has a great sense of humor and stays out of trouble. ██████ states that ██████ wants [\*\*] to be motivated to complete work. ██████ states that ██████ works with [\*\*] and is concerned that [\*\*] does not understand the consequences of completing work.

37. The teachers described the student in this manner:

[\*\*] has grown academically throughout the school year. [████] is starting to vocalize ██████ academic needs to teachers and staff...[\*\*] has demonstrated improvement in self-management...socialization... work habits...and sustained attention. [\*\*]'s teachers report that [██] is beyond capable of completing work, [██] is intelligent and gets excited (sic) with ██████ does well. Due to [██] disability, [\*\*] struggles in the area of organization. Prompting from a teacher/staff can cause [\*\*] to become irritated and vocal about [██] not wanting to be bothered. [\*\*] states that [██] does not want to use the homework logs as they are a waste of time. Per observations, [\*\*] waits to be prompted by

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<sup>4</sup> To the extent that there is conflicting evidence, which consisted of the ██████ testifying that not all accommodations were implemented properly or consistently, the undersigned finds the testimony of the school staff to be credible, more persuasive, and consistent with the documentary evidence.

staff to complete the homework logs at the end of day checkout.

38. The IEP identified the student's priority educational needs as: continue increasing organizational skills, sustained attention, and task initiation within the classroom setting using self-monitoring; improving [REDACTED] skills for success in the general education curriculum; improving [REDACTED] and [REDACTED] skills for success in the general education curriculum; increasing on-task behaviors by using [REDACTED] acquired strategies, decrease latency of task; and increasing self-advocacy skills.

39. Notably, the student passed the FSA End of Course [REDACTED] Exam, taken in [REDACTED] of [REDACTED], demonstrating [REDACTED] ability to perform grade level [REDACTED] in a general education setting with support facilitation. [REDACTED] [REDACTED] goal, then, for the upcoming [REDACTED]-grade year, was to reach grade level work utilizing all of the accommodations listed in the IEP. At this point in time, all data points suggested that the student was placed in the LRE for [REDACTED] instruction.

40. As to [REDACTED] and [REDACTED], the student had made gains in [REDACTED], and had finished the year with a score of [REDACTED]. [REDACTED] struggled with [REDACTED] [REDACTED]. The IEP goal was to reach grade level [REDACTED] utilizing the menu of accommodations listed in the IEP.

41. In the area of organization, the IEP goal was for the student to independently write assignments in a planner or homework log. After two years of [REDACTED] school, the organizational [REDACTED] continued, and although the [REDACTED] and the school staff were in constant communication as to how to motivate the student to engage in the organizational model created by the adults in [REDACTED] life, the student showed no interest in progressing in this regard. This ambivalence was certainly enabled by well-intentioned adults surrounding [REDACTED]; consequently, by the end of [REDACTED] grade, the student passed

all of [REDACTED] school classes with adults assisting [REDACTED] with even the most simple of tasks: turning in a completed assignment.

42. The IEP contained a long list of accommodations that were available in all settings: preferential seating, extra set of core academic books for home use, adherence to a [REDACTED], proximity control, individual testing when the student used an alternative response method, paraphrasing of instructions and requirements, repetition/clarification/ summarization of directions, one-on-one testing when dictating responses, small group testing, allowing alternate responses, allowing testing in separate locations, extending time for assignments and assessments, allowing the student to mark answers directly on assignments/tests, dividing long-term assignments into sections, providing breaks during assignments/tests, providing encouragement without cueing the response, providing the student with a copy of class notes and outlines, and requiring fewer questions to measure all required content or skills.

43. Once again, the IEP team included a [REDACTED], which described the student's [REDACTED] as:

[REDACTED]

44. This [REDACTED] usually occurred when a teacher was providing academic instruction or when the student was working with a small group of students. The teacher would then have to [REDACTED] or [REDACTED] the student, and the other students would [REDACTED], or [REDACTED]. The staff believed that the student [REDACTED] in this type of [REDACTED] to [REDACTED].

45. The plan was to address this behavior in [REDACTED] class and instruct the student using differential reinforcement of [REDACTED], with the goal of replacing the [REDACTED] with the [REDACTED].

[REDACTED] Grade, [REDACTED]

46. Given the student's reported [REDACTED]—that the IEP requirements of a homework log to achieve some level of organization and the constant prompting by teachers were “a waste of time” and annoying-- it should not have come as a surprise that the student immediately began to fail [REDACTED]-grade classes. On [REDACTED], the [REDACTED] took a photo of the student's backpack, sent the photo to [REDACTED] and [REDACTED], and wrote:

The attached photo is of the contents stuffed in [REDACTED]'s backpack as of this evening. It would have taken a table-top twice this size to unstack all the papers to really illustrate how much [REDACTED] is carrying after only 3 weeks of school. None of the papers are grouped or in files. They are just floating loosely. [REDACTED] think you will agree that it's past the point of overwhelming to [REDACTED]. What assistance is [REDACTED] receiving for organization.[sic] [REDACTED] would like to see if more can be done. [REDACTED] recall in the latest IEP meeting we agreed on specifics regarding how often someone would go through [REDACTED] backpack with [REDACTED].

[REDACTED] am also anticipating an updated recommendation from the school with the objective of helping [REDACTED] stay current with [REDACTED] assignments:

In [REDACTED] [REDACTED] has an “[REDACTED]” or “[REDACTED]” on [REDACTED] of [REDACTED] assignments/tests- Grade [REDACTED]%

In [REDACTED] out of [REDACTED] assignments/tests [REDACTED] has 1 “[REDACTED]” plus [REDACTED] “[REDACTED]”s including [REDACTED]- Grade [REDACTED]%

In [REDACTED] assignments/tests are labeled “[REDACTED]” or “[REDACTED]”- Grade [REDACTED]

In [REDACTED] out of the [REDACTED] assignments/tests are “[REDACTED]”- Grade [REDACTED]

47. [REDACTED] replied the next day, explaining that when [REDACTED] chatted with the student regarding [REDACTED] organizational plan, the student stated that [REDACTED] was not using [REDACTED] [REDACTED] and [REDACTED] binders because [REDACTED] thought they were too large. [REDACTED] promptly gave [REDACTED] smaller [REDACTED]. [REDACTED], who was training to become a [REDACTED] at this time, consulted with one of [REDACTED] [REDACTED] to see if there was a better approach to the student’s ongoing organizational challenges. [REDACTED] wrote back to the [REDACTED]:

*When [REDACTED] discussed it with [REDACTED] [the [REDACTED]], [REDACTED] stated, as [REDACTED] have in the past, [the student] has to be willing to also participate in the process. [REDACTED] suggested making sure [REDACTED] teach the skill again using task analysis using a planner or calendar. The possible goal may look like this: [The student] will independently write the assignments in [REDACTED] planner on the due date, write the dates of the upcoming activities, and determine when [REDACTED] will complete the assignments. The plan for completing assignments should also be written in the planner.*

Target criteria: [REDACTED] prompts for [REDACTED] consecutive days across [REDACTED] people

Data collection: prompt data (number and type of prompts)

Materials: Planner, assignments, list of upcoming activities and reinforcement.

What do you think about the above? (emphasis added)

48. The student’s [REDACTED] agreed that a planner was a good idea, but [REDACTED] wanted to amend the goal to include assistance from a teacher or a paraprofessional in each class because [REDACTED] needed to be “re-taught” how to use the planner for each class during the day. [REDACTED] insisted that the parents

needed to know exactly what work was assigned and when it was due, so that the parents could “be more instrumental in motivating [the student] to complete [redacted] assignments.” This task of motivating the student, which was assigned to the adults surrounding the student, proved to be elusive throughout the student’s time in [redacted] school. Undaunted, the [redacted] proposed that the IEP specifically list the use of a planner, and include these benchmarks:

Benchmark 1: In each class, teacher will initial planner to make sure that [the student] has written assignment properly, prior to 5 minutes before class dismissal. If [the student] has not written properly, teacher will prompt [the student] to enter the assignment until accomplished and then teacher will initial. When there is no assignment, [the student] will enter “N/A” and teacher will initial. A parent will initial planner for each class after school. [The student] will turn in all assignments by the due date (we are honoring [the student’s] extended time). When an assignment is turned in, a check mark will be placed next to the assignment by teacher in the planner. Teacher will alert [the student] and note in planner when any assignments are missing if not turned in by due date. With 90% success over 5 weeks.

Benchmark 2: [the student] will bring the planner for initials to make sure [the student] has written assignment properly prior to 5 minutes before class dismissal. If [the student] has not approached the teacher and/or has not written the assignment properly, teacher will prompt [the student] to enter the assignment until accomplished. When there is no assignment, [the student] will enter “N/A”. Teacher will initial.\* A parent will initial planner for each class after school. [The student] will turn in all assignments by the due date (we are honoring [the student’s] extended time). When an assignment is turned in, a check mark will be placed next to the assignment by [the student] in the planner. [The student] will ask teacher if there

are any missing assignments and record them in the planner. With 90% success over 5 weeks.

\*Long term assignments will be “chunked” with portions entered with specific due dates in planner.

49. In response to the [REDACTED] recommendation, [REDACTED] promised to take the student to each class and show [REDACTED] where the assignments were posted, and [REDACTED] would remind the teachers to prompt the student to write assignments in [REDACTED] planner, but [REDACTED] noted that the student was resistant to any type of reward for complying with this plan. During the hearing, [REDACTED] described what should not have been surprising to anyone—the student was irritated when pulled out of [REDACTED] daily routine to then walk through all of [REDACTED] classes while those classes were being conducted. [REDACTED] also did not want to be singled out by each teacher, or a paraprofessional who entered to only assist [REDACTED], in every class. Stated another way, the student knew that [REDACTED] needed to be organized, understood the organizational plan, put forth no effort to follow the plan, and [REDACTED] adults insisting that [REDACTED] follow the plan.

50. Since the [REDACTED] had proposed a new goal and corresponding benchmarks for the IEP goal, [REDACTED] insisted that [REDACTED] suggestions be included in the IEP or that the school staff formally refuse to amend the IEP as [REDACTED] suggested. The planner had been given to the student, the teachers had been instructed to prompt the student to use it in every class, and the student was encouraged to download the “Remind” application for [REDACTED] phone, which was used by the teachers to remind students about assignments; but, there was confusion as to whether this procedure had become part of the IEP. [REDACTED] began the process of convening an IEP meeting to address amending the IEP with the suggested organizational goals and benchmarks.

51. On [REDACTED], the IEP team met to amend the IEP and to address the student’s struggles in [REDACTED] and [REDACTED]. The student was

passing all of [REDACTED] other classes, including [REDACTED]. The following is how [REDACTED] summarized the IEP changes for the teaching staff:

Today we had an Addendum meeting for [the student]. In the meeting, we discussed a possible Foreign Language Waiver, [REDACTED] for [REDACTED], and problems with organizational skills. [REDACTED] parents will consider their options with regard to the [REDACTED] and the [REDACTED] for [REDACTED]. A simple adjustment was made to [REDACTED] organization page. We are helping [REDACTED] work on [REDACTED] organizational skills. To help with this, ESE staff will make sure of the following:

[REDACTED] Addendum:

To assist [the student] with [REDACTED] organization skills, the planner will be used to help with organization.

[The student] will write [REDACTED] assignments in [REDACTED] planner no later than five minutes prior to dismissal.

[The student] will be prompted to complete [REDACTED] planner by ESE staff.

When there is no assignment, [the student] will enter N/A into [REDACTED] planner.

Parents will initial the planner nightly.

If [the student] has a support facilitator in the class, the SF will be responsible. If there is no SF in the class, a Para will be used to ensure this recording assignment will be completed. For [REDACTED] and [REDACTED], the ESE teacher will be responsible.

52. In an email sent the following day, [REDACTED] added that the teachers were to initial the planner when an assignment was turned in.

53. At this point, [REDACTED] also referred the student to a Florida Department of Education, Division of Vocational Rehabilitation, on-the-job training program. [REDACTED] was accepted into the program and was assigned a job at a [REDACTED], where [REDACTED] was taught how to [REDACTED]. The student worked at the store two days a week after school, and demonstrated an ability to follow directions, remain on task, and complete projects in a timely manner. The final report on [REDACTED] performance stated:

The primary challenge that occurred during [the student]'s training was learning how to properly process the [REDACTED] and increase [REDACTED] production rate. During [REDACTED] training, the TC coached the client on creating the best method for [REDACTED] the [REDACTED] and also provided [REDACTED] with tips to increase [REDACTED] production by setting a goal, staying focused, and tracking [REDACTED] progress. At the completion of the client's training, [REDACTED] was [REDACTED] [REDACTED] per shift. *The managers stated that [the student] did an excellent job, and [REDACTED] built more [REDACTED] than anyone in the store. [REDACTED] is a skill that one has to perfect and it takes patience, attention to detail, focus, self-motivation, and manual dexterity.* (emphasis added)

54. On [REDACTED], after the addendum plan had been implemented, the [REDACTED] wrote:

Please note, [the student] complained to [REDACTED] that a person who helps with [REDACTED] planner ([REDACTED]) is very loud, obnoxious and hostile when prompting [REDACTED]. Could [REDACTED] please look into this and perhaps ask [REDACTED] to be more discreet, amicable, and positive. . . [REDACTED] *advice is not only to get [the student] to log assignments but also to make sure [REDACTED] understands assignment and has the materials. . . [REDACTED] suggest after a period of time, [REDACTED] days in this case, [REDACTED] requires a refresh and should be prompted to produce the materials/handout when jotting down the task.* (emphasis added)

55. Even after [REDACTED] suggestions for the planner were added to the IEP, the [REDACTED] now wanted the staff to also ensure (in every class, before the last five minutes of class) that the student *understood* the assignment and had all the necessary materials. Rather than assisting in organization skills, this suggestion now bled into the student's capacity to *understand* directions, which had never been identified as an area of concern for this student. In addition to this new task, the [REDACTED] also wanted the school staff to refresh the student's memory of the assignment and ensure that [REDACTED] still had possession of the required materials after a week had passed from the initial assignment. Meanwhile, the student had demonstrated that [REDACTED] was more than capable of understanding and following directions when [REDACTED] chose to participate in the vocational training program.

56. The [REDACTED] teacher, [REDACTED], provided a detailed response to the [REDACTED] email. [REDACTED] explained that assignments, rubrics, deadlines, and extended time deadlines had been given to the student in various forms, including orally, hard copy, and electronic versions uploaded to [REDACTED] website and to FOCUS. [REDACTED] suggested that *the student* log in daily to FOCUS and remediate any missed assignments. [REDACTED] noted that honor students came into the classroom once a week to work one-on-one with students, which offered yet another way to turn in assignments while in class. As to online [REDACTED] quizzes, [REDACTED] explained that all of [REDACTED] students could access those quizzes at their convenience and submit their scores via email, phone photo, or hard copy. [REDACTED] honored [REDACTED] IEP accommodations and documented that on FOCUS. At the hearing, [REDACTED] explained that roughly [REDACTED] percent of [REDACTED] students had IEPs, and that [REDACTED] percent of them passed [REDACTED] class, including students who were [REDACTED]. [REDACTED] also testified that even when the student was given the opportunity to demonstrate [REDACTED] skills by mimicking the teacher, [REDACTED] would refuse to do so. [REDACTED] added [REDACTED] perspective on the student:

First, [REDACTED] have observed that the planner paras have been patient, polite, and discreet when interrupting instruction. However, [the student] becomes frustrated when asked to produce the resources or record notes, though it seems attempts are being made to try and abbreviate [REDACTED] time off task from instruction. [REDACTED] frequently have to stop class activities to reprint, summarize, redisplay instructions, etc., so being discreet is challenging for everyone involved. [REDACTED] *do not know how it works in other classes, but during [REDACTED], [the student] is being gruff with the person assigned to assist so [REDACTED] is probably not gaining the clarification [REDACTED] needs. . . [REDACTED] am fairly sure [the student] understands what is required however [REDACTED] seems to struggle with getting the activities completed and submitted. Maybe [the student] can clarify what [REDACTED] thinks [REDACTED] needs to do [sic] help [REDACTED] achieve [REDACTED] goals. [REDACTED] know we would all be willing to help [REDACTED] if [REDACTED] would attempt the tasks at hand...* (emphasis added)

57. The credible and persuasive testimony from [REDACTED] established that [REDACTED] implemented the IEP as written, and that despite the employment of all of the IEP accommodations, and all of the additional assistance not encompassed in the IEP, the student was failing [REDACTED] because [REDACTED] gave little to no effort.

58. Given [REDACTED] academic struggles in [REDACTED] and [REDACTED], the parents agreed to place the student in a [REDACTED] for [REDACTED] starting in the Spring Semester, and to withdraw from [REDACTED] and sign a foreign language waiver, allowing the student to earn a 24-credit [REDACTED] school diploma without satisfying the [REDACTED] requirement. The record reflects that the [REDACTED] knew the consequences of the [REDACTED], which were clearly set forth on the actual form, and signed it. The IEP was properly amended to reflect the adjusted time spent out of the general education setting.

59. In [REDACTED], [REDACTED] was replaced by [REDACTED] as the student's case manager. In an email to [REDACTED], the [REDACTED] described what had occurred regarding the [REDACTED] class:

[The student] was very resistant to switching [REDACTED] classes because it meant [REDACTED] would no longer see [REDACTED] very [REDACTED] at lunch. [REDACTED] stated that [REDACTED] was being deprived of the main reason [REDACTED] liked school. As [REDACTED] it was a very difficult decision placing academics above the lesson and life skills [REDACTED] was learning by developing and maintaining [REDACTED] friendship. Even [REDACTED] and [REDACTED] concurred that the socialization aspect would be of greater importance in [REDACTED]'s development. *[The student] was given ample opportunity to be the master of [REDACTED] fate by making up [REDACTED] work. [REDACTED] thought [REDACTED] would be motivated to do it. When [REDACTED] failed we had no choice other than to make the switch.* (emphasis added)

60. Just two weeks later, the [REDACTED] reported that the change in lunch caused by the change in [REDACTED] class was no longer an issue because the student no longer desired to spend time with the lunch friend.<sup>5</sup> It is important to highlight here that the parents were hesitant to place the student in a more [REDACTED] for this one [REDACTED] class; that is, the entire IEP team, including the parents, always agreed that the student should be in general education classes for [REDACTED] core academic classes. In fact, the general

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<sup>5</sup> Unfortunately, the student, who was one month from turning [REDACTED] at the time of the due process hearing, did not attend the hearing, and did not testify. A portion of a letter written to [REDACTED] provides the only glimpse of the student's thoughts, in [REDACTED] own words. In the Spring of [REDACTED] year, [REDACTED] wrote:

[REDACTED]

education setting was appropriate given the student's academic capabilities, but, despite the general education [REDACTED] teacher implementing the accommodations in the IEP, the student was failing to turn in [REDACTED] work. The placement in the [REDACTED] classroom was presented to the student as a consequence for [REDACTED] failure to turn in [REDACTED] work—that is, the threat of being moved was used as motivation to prompt [REDACTED] to complete and turn in [REDACTED] work. [REDACTED] never turned in the work in the general education [REDACTED] class, was moved to the more [REDACTED] for [REDACTED], passed the class, and passed the [REDACTED].

61. From [REDACTED], to [REDACTED], the student once again participated in the vocational on-the-job training program. [REDACTED] was assigned the same [REDACTED] store, and was trained to be a [REDACTED]. [REDACTED] learned how to [REDACTED]. [REDACTED]. [REDACTED] also successfully addressed a work issue in a professional manner and advocated for [REDACTED]. For [REDACTED] first two shifts [REDACTED] had been assigned to [REDACTED] old post, which was [REDACTED]. [REDACTED] wanted to learn a new skill; therefore, [REDACTED] asked management and the program coordinators to place [REDACTED] in a more advanced position. In the final report, the vocational trainer noted that the student had mastered all of the new skills, and had also learned the importance of [REDACTED].

62. On [REDACTED], the [REDACTED] once again demanded specific data on various IEP goals and accommodations. The following is a portion of an email [REDACTED] sent to [REDACTED]:

[REDACTED] have some questions about [\*\*]'s progress as well as some general questions that [REDACTED] cannot find in the Parent Portal or in [the student]'s progress reports.

What is the [REDACTED] grade [REDACTED] level? The IEP goal states that [the student] will [REDACTED] at an [REDACTED]



states that the school will “  
” How often does [\*\*] receive these  
? What exactly do the  
look like for [\*\*]? What is [\*\*]’s response to the  
?

How often does [\*\*] earn the outlined in  
the ? How many days last week did earn  
the ? What were the specific  
last week? You shared a chart for [\*\*]’s  
. Can you tell me how long each  
observation is? Who is doing the observations?  
During one observation, [\*\*] had  
on the low side and on the high side?  
Which setting were these observations conducted?

65. response was once again detailed and lengthy—a 2-page email containing explanations on how data is collected, who collected the data, and when the data was collected. Where data was not collected, offered to collect data by conducting a probe with the teachers.

66. At the close of the student’s -grade year, had passed all of classes in the LRE, and had successfully completed two vocational programs where followed directions, worked independently, stayed focused, tracked own progress, advocated for, and excelled.

67. In of, the IEP team, which now consisted of 22 people, convened to design the IEP for the student’s year. The parents had changed their mind on the, and even though the was voluntarily signed and understood by the parents when signed, the school staff nonetheless attempted to help the student satisfy the requirement by searching for an online class, and by searching for any teacher in the county who could instruct the student.

68. The online class which was eventually found has proven to be a difficult task to complete because the student has to complete two years of

█ in a span of a year. This █ issue turned out to be the turning point for the student's █—in █ testimony at the hearing, █ explained that █ had always supported the school staff's positions, and believed that the student received too many accommodations. In fact, the student's █ is the person who had shared the student's letter, which was written to the █, with the school staff. As █ explained, when █ saw █ caused by the online █ requirements, █ blamed █ and the rest of the school staff for █ the parents, and not clearly explaining the consequences of the █. Specifically, █ was upset that the student could not immediately enroll in a █; although █ could enroll in a █. Inexplicably, this consequence, which was spelled out clearly on the █, angered the student's █ and turned █ against the school staff.

█

69. The █ year IEP included, as all the █ school IEPs had, a █ plan. This █ plan, though, given the student's success in the vocational program, included the following language:

[The student] is █ years old in the █ grade pursuing the 24-credit standard diploma. [\*\*] will receive instruction in self-determination and self-advocacy to better enable [█] to make choices for self-sufficiency. [\*\*] is also enrolled in a █ class to increase [█] skills in transition and a █ class to increase [█] █ skills and meet █ expectations across school settings (e.g. scheduled classes, transitions, cafe., etc.) [\*\*] requires support from a █ program to continue being successful and work towards future academic and career goals.

[\*\*] has been referred to vocational rehabilitation for █ services prior to █. [\*\*] will explore post-secondary education programs

within [redacted] ( [redacted] County Public Schools), [redacted]  
( [redacted] ), [redacted] ( [redacted] )

The agency may offer testing to determine eligibility, a counselor will be assigned to [redacted] and family to determine appropriate career path.

70. Due to the change of mind on the [redacted], and in a generous act of goodwill, the district offered [redacted] to the student for [redacted]. The goal was to help the student complete the [redacted] requirement even though there was a properly signed and enforceable [redacted] of the district's requirement to provide this instruction.

71. In the area of [redacted], the IEP team noted that the student's [redacted] score at the close of [redacted] [redacted] year was [redacted]. This represented a [redacted]-point increase in one academic year. [redacted] goal, then, was to reach a [redacted] level of [redacted], which represented an [redacted]-grade level of [redacted]. [redacted] teacher noted that [redacted] biggest challenge was staying on task, and completing and turning in assignments.

72. As to [redacted], the student had taken a [redacted] baseline assessment at the beginning of the school year and scored [redacted] higher than the class, school, and district average. In [redacted] [redacted]-grade year, [redacted] had passed [redacted] [redacted] class with an average of a [redacted], but had [redacted] the [redacted] [redacted]. Apparently, this assessment is challenging for many students, as the school-wide passage rate was only 58 percent, and the county-wide passage rate was only 63 percent. The credible and persuasive testimony provided by [redacted] established that the student received all of [redacted] IEP accommodations and support facilitation services for the class, and [redacted] mastered the core [redacted] concepts despite the student's lack of effort. [redacted] described the student as more than capable of doing the coursework, but [redacted] felt that the student was unmotivated to do the required work. For the EOC assessment preparation, the students were all given a

packet to complete over the course of a month. The student completed the packet, but did not follow the directions, which included [REDACTED].

However, when one lesson involved [REDACTED], which included [REDACTED], [REDACTED] was motivated to try. This project required the use of [REDACTED], [REDACTED], and [REDACTED] as well; but, because the student was interested in this lesson, [REDACTED] completed the project and earned an [REDACTED].

73. Given that the student at this point had passed [REDACTED], passed the [REDACTED], and passed [REDACTED] with a [REDACTED] average, the [REDACTED] goal was to increase [REDACTED] skills specifically related to [REDACTED] [REDACTED], two areas where the EOC assessment revealed weakness. Based on the student's mastery of grade level [REDACTED], the IEP team had no evidence pointing to a need for a more restrictive environment; consequently, the student was placed once again in a general education classroom with support facilitation.

74. Lastly, and most importantly, this last IEP for the student addressed [REDACTED] organizational and self-advocacy challenges. [REDACTED] PLOP in this area stated, in part:

[The student] has been observed and is able to physically input required homework into an agenda correctly and without mistake. [\*\*] is able to place materials into the correct folders and/or turn in due assignments in the correct places in the classroom setting independently. [REDACTED] is currently receiving vocational rehabilitation services with [REDACTED] [REDACTED]. Through these services, [REDACTED] receives on the job training by a job coach. [The student] indicated [REDACTED] feels more confident as a whole and likes feeling more independent.

*According to [the student], [REDACTED] explained that [REDACTED] does not like the planner organization system. Data supports that [\*\*]'s [REDACTED] increases when prompted to participate in the organization plan put into place by request of [REDACTED]. [\*\*] stated in a one-on-one consultation, [REDACTED] am organized on my own standards. [REDACTED] can see what is organized in my bag*

while most other people see clutter.” [The student] has expressed that [ ] is not aware when [ ] send emails to teachers asking about [ ] assignments. . .When asked if [ ] reviews the planner and/or schoolwork with [ ] [\*\*] stated no that [ ] just goes through [ ] book bag without [ ]. [The student] has been observed engaging in refusal to fill in [ ] agenda/planner in order to assist [ ] with organizing [ ] required homework. When [\*\*] engages refusal [ ] will ignore teacher and para prompts, becoming argumentative (escape) with teacher or para, and/or say “okay, [ ] will” and not complete the request. (emphasis added)

75. For the first time in the [ ] school IEPs, there was no mention of [ ] and [ ], or of a homework log or planner. And, for the first time, the PLOP focused more on what the student described as [ ] own strengths and weaknesses; it also reflected the student’s preferences on accommodations. The IEP organizational goal was for the student to carry out a plan to reach a goal by obtaining the resources [ ] needed, and to complete tasks in four out of five opportunities. This goal would be measured by teacher observation, documentation, and recorded data. The short-term objectives included guided instruction and a checklist.

76. The IEP contained the same list of accommodations across all settings, and added the use of a [ ] for [ ], allowing the use of a cellphone to take a photo of assignments, and a reduction of the amount of work required to meet standards. [ ] credibly testified that [ ] are available in all of the [ ] classes; therefore, it had never been added as an accommodation in the student’s IEP. The addition of the [ ] as an accommodation was simply to appease the [ ].

77. A [ ] was once again placed in the IEP, listing [ ] as the [ ]. The plan was to replace these [ ] by instructing the student during [ ] and [ ] classes on how to request accommodations, and teachers would

model [REDACTED] The staff would also verbally remind the student that [REDACTED] could [REDACTED] with preferred items ([REDACTED] [REDACTED]) by [REDACTED]. [REDACTED] would also receive verbal reminders that [REDACTED] accommodations are always available.

78. In [REDACTED], the [REDACTED] requested a state-facilitated IEP meeting and a re-evaluation of the student. The Florida Department of Education received the request, but since [REDACTED] County has a large number of trained neutral facilitators, the request was denied. The IEP team also noted that it had been three years since the student had undergone evaluations; therefore, the school staff agreed with the parent request to re-evaluate the student in all relevant areas, which included academic achievement and [REDACTED] [REDACTED]

79. At the beginning of the student's [REDACTED] year, [REDACTED] was evaluated by two different providers—one private provider and one school-based provider. [REDACTED], a school psychologist, conducted [REDACTED] evaluation in early [REDACTED], and, unlike the private provider, [REDACTED] testified at the hearing.

80. [REDACTED] noted that the student knew that [REDACTED] was being evaluated at [REDACTED] [REDACTED] request, and appeared anxious when the evaluation began. While [REDACTED] was being tested, [REDACTED] expressed [REDACTED] dislike of [REDACTED] testing and asked [REDACTED] if [REDACTED] could just skip [REDACTED] questions [REDACTED] had no knowledge of. When [REDACTED] responded yes, the student jokingly pushed the test back to [REDACTED]. Once [REDACTED] began the [REDACTED] portion of the test, [REDACTED] was given a [REDACTED] to use for [REDACTED]. [REDACTED] never used the [REDACTED].

81. During [REDACTED] testimony, [REDACTED] explained that the student performed at a very low range on the [REDACTED] subtest (the peer average score was a [REDACTED] and [REDACTED] score was [REDACTED]), but that on the [REDACTED] [REDACTED] subtest, [REDACTED] scored much better (peer average score is a [REDACTED] and [REDACTED] score was [REDACTED]). The [REDACTED] subtest begins with [REDACTED] and



Ultimate findings of fact

86. The state's denial of a state-facilitated IEP meeting was not a procedural violation that resulted in a denial of FAPE to the student, as it did not deny the parents the right to meaningfully participate in the development of the student's IEP.

87. The greater weight of the evidence established that the student made adequate progress on all of ■■■ IEP goals, as evidenced by the volumes of data collected and entered into the record, the student's grades, the student's performance on standardized testing, the student's exceptional performance in vocational training, and credible teacher testimony.

88. The greater weight of the evidence established that the school staff properly implemented all of the student's IEPs, as reflected in the data collected, the extensive correspondence, and credible and persuasive teacher testimony.

89. At all times relevant, the evidence established that the school board properly placed the student in the least restrictive environment across all subject areas.

CONCLUSIONS OF LAW

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

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

92. In enacting the Individuals with Disabilities Education Act (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 Cty. 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).

93. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents 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 FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

94. 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).

95. 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. “The IEP is the centerpiece of the statute’s education delivery system for disabled children.” *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 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 *Bd. of Educ. v. Rowley*, 458 U.S. at 181). School districts must also ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. 20 U.S.C. § 1412(a)(5)(A). In other words, the school district must endeavor to educate each disabled student in the LRE. *A.K. v. Gwinnett Cty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014).

96. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a student with FAPE. As an initial matter, it is necessary to examine whether the school district 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 Cty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the students right to FAPE, significantly infringed the parents’ opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

97. In this case, Petitioner’s Complaint contained one alleged procedural violation: that the School Board failed to convene a state-facilitated IEP

meeting right before the student's [REDACTED] school. During the hearing, this issue was briefly mentioned, and in Petitioner's Proposed Final Order, it was not listed as an issue to be addressed. The record is devoid of any credible or persuasive evidence establishing that the denial of a state-facilitated IEP meeting impeded the student's right to FAPE, significantly infringed the parent's opportunity to participate in the decision-making process, or that it caused an actual deprivation of educational rights.

98. 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, 207. In *Endrew F.*, the Supreme 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.” 137 S. Ct. 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.*

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

100. Additionally, deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. *Id.* at 1001 (“This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review” and explaining

that “deference is based on the application of expertise and the exercise of judgment by school authorities.”).

101. The Complaint in this matter generally alleges that the IEPs during the relevant period were poorly crafted, but the presentation of evidence at the hearing and the proposed order focus instead on the student’s lack of progress on the IEP goals. The greater weight of the record evidence establishes that the IEPs were all appropriately ambitious in light of the student’s circumstances in all areas, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which were the areas highlighted during the hearing and in the proposed order; and, as detailed in the Findings of Fact, the student made progress in all academic areas and on all IEP goals.

102. As to the organizational issues that plagued the student throughout [REDACTED] school, and the resulting [REDACTED] issues that stemmed from them, the student also progressed. Despite [REDACTED] reluctance to use homework logs and planners, the student passed all of [REDACTED] academic classes and [REDACTED], which almost half of [REDACTED] peers also failed. [REDACTED] skills also developed, evidenced by [REDACTED] great success in the vocational training program, and the voluminous pile of data gathered by the teaching staff.

103. As to the implementation of the IEP, Petitioner’s Complaint alleges that portions of the IEP were not implemented; in particular, that accommodations were not properly implemented in all classes and that the organizational plans were not implemented.

104. In *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019), the Eleventh Circuit Court of Appeals confronted, for the first time, the standard for claimants to prevail in a “failure-to-implement case.” The court concluded that “a material deviation from the plan violates the [IDEA].” *L.J.*, 927 F.3d at 1206. The *L.J.* court expanded upon this conclusion as follows:

Confronting this issue for the first time ourselves, we concluded that to prevail in a failure-to-

implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.

*Id.* at 1211.

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

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

We also note that courts should consider implementation as a whole in light of the IEP's overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

*Id.* at 1215.

107. Here, Petitioner failed to establish any failure to implement the IEP. The overwhelming weight of the evidence establishes that the school staff implemented the IEP faithfully and meticulously documented that implementation.

108. Turning to the issue of placement, schools must consider when to educate a student in a more restrictive environment. 20 U.S.C.

§ 1412(a)(5)(A) provides as follows:

Least Restrictive Environment

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

109. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R. § 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements are available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115.

110. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

111. With the LRE directive, “Congress created a statutory preference for educating handicapped children with non-handicapped children.” *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 695 (11th Cir. 1991)(opinion withdrawn on procedural grounds and reinstated in pertinent part; *see* 956 F.2d 1025, 1026-27; *see also* 967 F.2d 470). “By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, school districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to XX special needs.” *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989).

112. In *Daniel*, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

*Id.* at 1048.

113. In *Greer*, the Eleventh Circuit adopted the *Daniel* two-part inquiry. *Greer*, 950 F. 2d at 696. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: 1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits XX will receive in a self-contained special education environment; 2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and 3) the cost of the supplemental aids and services that will be

necessary to achieve a satisfactory education for the student in a regular classroom. *Id.* at 697.

114. Petitioner's Complaint alleges that the School Board failed to place the student in the LRE for [REDACTED] and [REDACTED]. In reference to the [REDACTED] [REDACTED], the Complaint frames the issue in this manner: "[REDACTED] of [REDACTED] Petitioner was removed from one [REDACTED] class and placed in a lower level [REDACTED] class. The parents agreed to this as there was no other option given to them at the time. The school did not offer more or different services to allow Petitioner to continue in first class. Instead of building up services, they moved [REDACTED] to a lower level class. Petitioner has an [REDACTED] in the lower level class with most grades being [REDACTED] percent. For this reason, Petitioner is being denied FAPE."

115. As to [REDACTED], the Complaint alleges that the student should have been placed in a [REDACTED] classroom because [REDACTED] in the general education classroom.

116. Oddly, the focus of the LRE challenge as to [REDACTED] switched after the hearing and in Petitioner's Proposed Order, where Petitioner now agrees that the [REDACTED] was the correct placement and the LRE, and that placement for all academic areas should have been in a [REDACTED] classroom. Specifically, Petitioner now argues that [REDACTED] instruction *and* [REDACTED] instruction should have been in [REDACTED] classrooms, evidenced by the student's success in the [REDACTED] class.

117. The record evidence established that during the first three months of a year-long general education [REDACTED] class, the student was actually [REDACTED], but it was not due to the school's failure to provide supplemental services and aid; rather, [REDACTED] was [REDACTED] the class because [REDACTED] refused to attempt any work. The record establishes that the student could have been satisfactorily educated in the general classroom with the multiple aids provided by [REDACTED]. In fact, approximately one third of [REDACTED] students have IEPs and the overwhelming majority of those students pass the [REDACTED]

class. In [REDACTED] of [REDACTED], Petitioner voluntarily withdrew from the [REDACTED] class and released the School Board of any responsibility to provide [REDACTED] instruction by [REDACTED]. And yet, when requested, the School Board continued to offer alternative types of [REDACTED] instruction, despite having no obligation to do so, which Petitioner agreed to.

118. As to [REDACTED], Petitioner now agrees that the School Board properly placed the student in a more restrictive environment when the student was moved out of the general education classroom and moved to a [REDACTED] classroom, thereby abandoning the issue raised in the Complaint.

119. Lastly, as to the newly raised issue of the proper placement for [REDACTED] instruction, the record establishes, as set forth in the Findings of Fact, that [REDACTED] education was satisfactorily achieved for the student in the general education setting with support facilitation; therefore, XX was placed in the LRE. The student was mainstreamed to the maximum extent appropriate in all subject matters.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED.

DONE AND ORDERED this [REDACTED] day of [REDACTED], in Tallahassee, Leon County, Florida.

**S**

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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).