STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,		
vs.		Case Nos. 22-1835E
		23-0250E
DUVAL COUNTY SCHOOL BOARD,		
Respondent.		
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FINAL ORDER

A due process hearing was held in this matter before Brittany O. Finkbeiner, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on March 23 and 24, 2023, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Beverly Oviatt Brown, Esquire

Three Rivers Legal Services, Inc.

3225 University Boulevard South, Suite 220

Jacksonville, Florida 32216

Daniel Marshall, Esquire Southern Legal Counsel, Inc. 1229 Northwest 12th Avenue Gainesville, Florida 32601

For Respondent: Kelly Hebden Papa, Esquire

Rebekah Gleason Hope, Esquire Office of the General Counsel 117 West Duval Street, Suite 480 Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

Whether Respondent, Duval County School Board ("Respondent" or "School Board"), designed an Individualized Education Plan ("IEP") which

provided a free and appropriate public education ("FAPE") to Petitioner; and whether the School Board failed to implement Petitioner's IEP, thereby denying the student FAPE.

PRELIMINARY STATEMENT

On June 22, 2022, Petitioner filed a Request for Due Process Hearing ("Request"). The relief requested by Petitioner in the initial complaint was "[p]rovide compensatory services for denials of FAPE. Place Petitioner in an appropriate school. Provide for independent evaluation." On August 2, 2022, the undersigned scheduled the due process hearing by Zoom conference for October 11 and 12, 2022. On September 14, 2022, Respondent filed an Uncontested Motion for Continuance, requesting additional time to resolve the matter, as two of the three remedies requested by Petitioner had been offered and accepted by Petitioner, and the last remedy requested, that of compensatory services, would be based on the Independent Educational Evaluation that was being completed. After the undersigned granted several continuances to afford the parties more time to confer and attempt resolution, Petitioner filed an Unopposed Motion to Set and Status Report on January 17, 2023.

Petitioner filed another Request with DOAH, involving one week of extended school year services, in DOAH Case No. 23-0250. On January 24, 2023, Petitioner filed an Unopposed Motion to Consolidate Cases 22-1835 and 23-250. On January 27, 2023, this Tribunal entered an Order of Consolidation. Although a number of various issues were mentioned in the Requests and at the due process hearing, the undersigned construes the remaining issues between the parties in this case to be as set forth in the Statement of the Issues section above.

At the due process hearing, Petitioner presented the testimony of Petitioner's father,

Respondent called	Joint
Exhibits Bates numbered 1-996 were filed. Respondent objected to	Exhibits
Bates numbered 740-933 based on the applicable statute of limitation	ons. Those

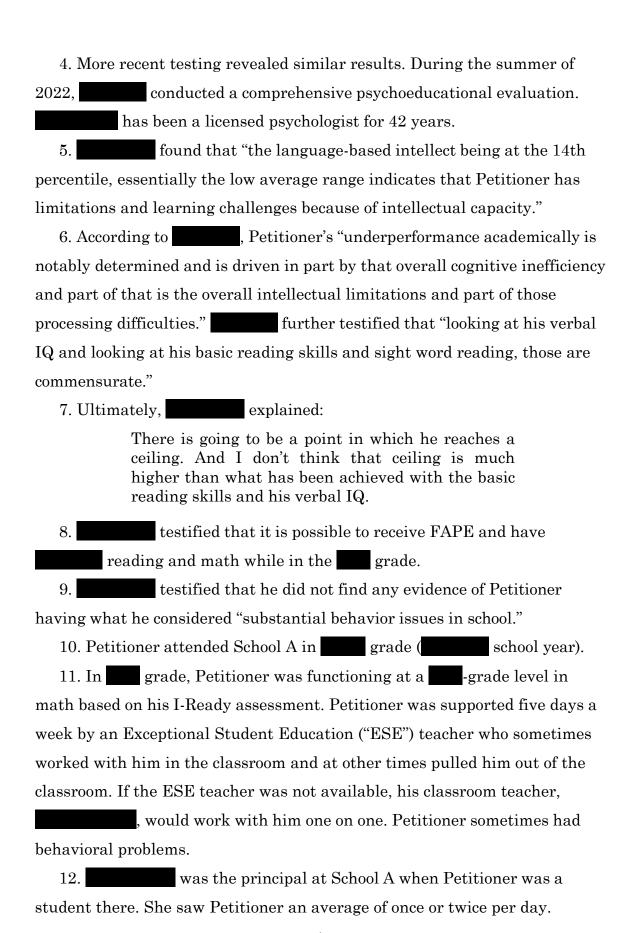
For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to petitioner's actual gender.

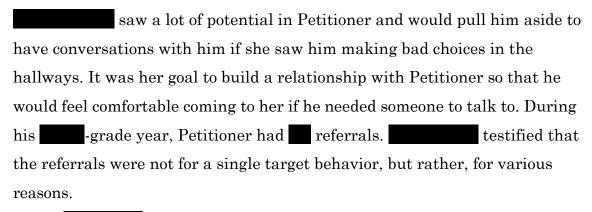
Exhibits were admitted to develop background and to refresh Petitioner's

father's recollection.

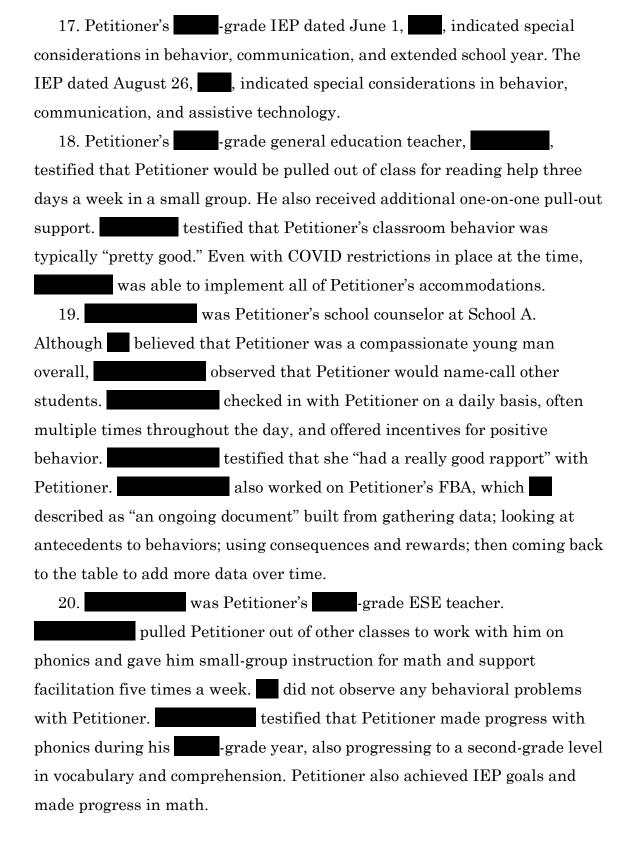
FINDINGS OF FACT

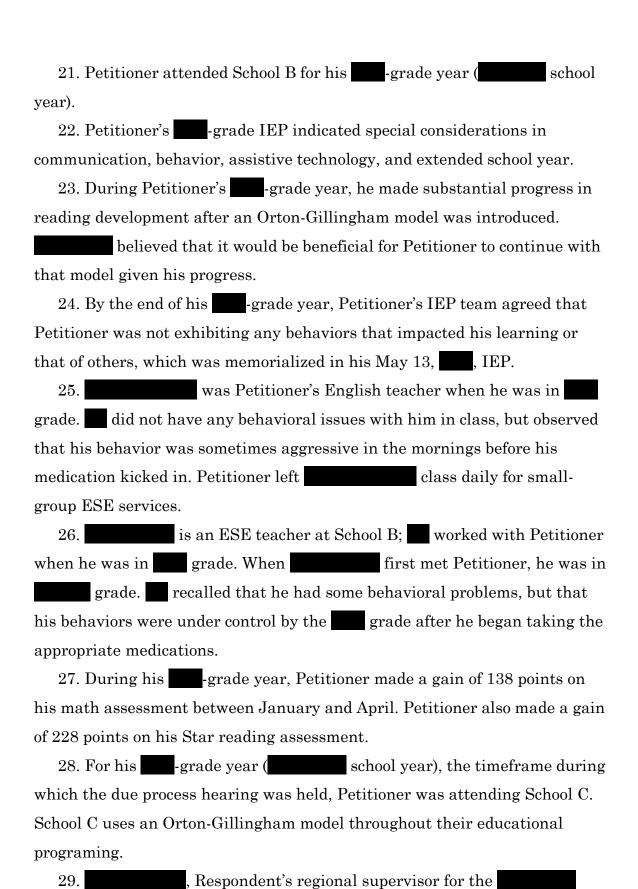
- 1. Petitioner meets eligibility requirements to receive services under the Individuals with Disabilities Education Act ("IDEA") as a student with a Language Impairment ("LI").
- 2. Petitioner has Attention Deficit Disorder, which is a disorder that has a broad limiting effect on learning, living, and problem solving.
- 3. On February 27, School Psychologist conducted a psychoeducational re-evaluation of Petitioner. found that Petitioner's cognitive skills were in the Very Low range. Among other things, recommended academic interventions targeted at deficit areas, and made recommendations that included "involv[ing] as many senses as possible in learning activities."





- when Petitioner attended School A during grade. was assigned to provide support as a preventative measure based on her knowledge of Petitioner's behavioral challenges from his previous school. Initially, went to School A to conduct an observation of Petitioner, spending several hours observing him in the classroom, the cafeteria, and at recess. Based on observation, testified that if did not know which student was there to observe, would not have been able to pick Petitioner out because his behavior was on par with his peers.
- also helped support the teachers in the development of Petitioner's IEP. The IEP included a Behavior Support Plan as a safeguard because of Petitioner's reported behavioral history from his previous school. There were no significant behaviors that were being observed, so did not believe that a functional behavioral assessment ("FBA") was warranted at that time.
- 16. The behaviors of concern were verbal profanity, making threats, and verbal aggression. Petitioner's FBA showed that his behavior was worse at the beginning of the day and during transitions, while improving when working in a small group.





Elementary Support Team, assisted Petitioner's father in getting Petitioner

into School C, even contacting the principal of School C to advocate for Petitioner's enrollment after the school choice deadline had passed.

also assisted Petitioner's father in signing up for bus service to extended school year services when Petitioner's father did not initially complete the necessary paperwork for transportation. Petitioner missed the first week of his extended school year instruction because he did not have transportation. There is no evidence that would indicate that it was Respondent's fault that Petitioner did not have transportation at that time.

- 30. ______, the principal at School C, testified that School C is a parent-choice academy for students in _____ through _____ grade, specializing in teaching and working with students with dyslexia or other reading and language-based disabilities. The curriculum at School C centers around Orton-Gillingham, which is a multi-sensory methodology based on the science of reading. The same methodology is applied across subject-areas.

CONCLUSIONS OF LAW

- 32. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat.; and Fla. Admin. Code R. 6A-6.03311(9)(u).
- 33. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
- 34. At all times relevant to the Request, Petitioner was a student with a disability as defined under 34 C.F.R. § 300.8(a)(1); 20 U.S.C. § 1401(3)(A)(i); and Florida Administrative Code Rule 6A-6.03411(1)(f).

- 35. Respondent is a local educational agency ("LEA"), as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, Respondent is required to comply with certain provisions of the IDEA, 20 U.S.C. § 1401, et seq. As an LEA, under the IDEA, Respondent was required to make a FAPE available to Petitioner. Sch. Bd. of Lee Cnty. v. E.S., 561 F. Supp. 2d 1282, 1291 (M.D. Fla. 2008) (citing M.M. v. Sch. Bd. of Miami-Dade Cnty., 437 F.3d 1085, 1095 (11th Cir. 2006)); M.H. v. Nassau Cnty. Sch. Bd., 918 So. 2d 316, 318 (Fla. 1st DCA 2005).
- 36. 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); See Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th. Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990); See also Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988 (2017).
- 37. Local school systems must also satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

Special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

38. "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).

- 39. 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.
- 40. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Endrew F.*, 137 S. Ct. 988, 994 (quoting *Honig v. Doe*, 484 U.S. 305 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 181 (1982)).
- 41. 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. In this case, there are no alleged procedural violations.

- 42. 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." *Endrew F.*, 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*.
- 43. 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.").
- 44. In this case, Petitioner alleged that the IEP did not provide the student with a FAPE and that the IEP was not properly implemented.
- 45. No persuasive evidence was presented to prove the alleged deficiencies in Petitioner's IEP. The greater weight of the record evidence established that the IEPs were all appropriately ambitious in light of Petitioner's circumstances in all identified areas of need. And, as detailed in the Findings of Fact, Petitioner made progress, including with his behavioral issues.
- 46. Turning to the issue of implementation, in *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019), the Eleventh Circuit Court of Appeals articulated

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.

47. In *L.J.*, the court provided principles to guide the analysis of the implementation standard. *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.*

48. 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.

49. The record does not reflect a material failure to implement Petitioner's IEP.

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 22nd day of May, 2023, in Tallahassee, Leon County, Florida.



Brittany O. Finkbeiner Administrative Law Judge 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (850) 488-9675 www.doah.state.fl.us

Filed with the Clerk of the Division of Administrative Hearings this 22nd day of May, 2023.

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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).