

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
)
Petitioner,)
)
vs.) Case No. 11-3772E
)
ST. JOHNS COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

On December 7 through 9, 2011, a duly-noticed hearing was conducted in Switzerland, Florida, before Administrative Law Judge W. David Watkins of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Beverly Oviatt Brown, Esquire
Three Rivers Legal Services, Inc.
Suite C
1725 Oakhurst Avenue
Jacksonville, Florida 32208

Nancy E. Wright, Esquire
By Limited Appearance
3231 Northwest 47th Place
Gainesville, Florida 32605

For Respondent: Terry Joseph Harmon, Esquire
Heather N. Tyndall-Best, Esquire
Sniffen and Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301-7607

STATEMENT OF THE ISSUE

Whether the St. Johns County School Board (SJCSB) has provided to [REDACTED] a free appropriate public education as required by the Individuals with Disabilities Education Act (IDEA).

PRELIMINARY STATEMENT

This case arose on July 28, 2011, when Petitioner filed a request for due process hearing with SJCSB. On July 29, 2011, the matter was referred to the Division of Administrative Hearings for assignment of an administrative law judge.

On August 15, 2011, an Order Requiring Status Report was issued, requiring the parties to advise the undersigned regarding the results of any mediation or resolution session and the dates for a pre-hearing conference. A Prehearing Conference was held on August 25, 2011. On September 6, 2011, the undersigned issued a Notice of Hearing, setting the case for final hearing on October 10 and 11, 2011. However, on September 14, 2011, the parties jointly moved for a continuance, and on September 15, 2011, an order cancelling the scheduled hearing was issued. Thereafter, on October 4, 2011, an Order Rescheduling Hearing was issued, setting the matter for final hearing on December 7 through 9, 2011.

The final hearing was held at [REDACTED] Middle School (St. Johns County), as scheduled. Petitioner was not present at

hearing but was represented by counsel. Petitioner presented the testimony of four witnesses and offered 17 exhibits in evidence. Respondent called ten witnesses and offered 18 exhibits in evidence.

The proceedings were transcribed and the Transcript was filed with the Division on January 10, 2012. Both parties filed Proposed Final Orders on March 9, 2012, and they have been carefully considered in the preparation of this Final Order.

Also on March 9, 2012, the parties filed an "Amended Joint Statement of Facts." To the extent they are relevant and not subsumed within other findings of fact, those stipulated facts have been incorporated below and are identified with an asterisk (*).

FINDINGS OF FACT

Background

1. Petitioner ([REDACTED]) is a resident of St. Augustine, Florida, where [REDACTED] resides with [REDACTED]'s mother (Ms. [REDACTED]) and grandmother.
2. Petitioner was born on [REDACTED].
3. Ms. [REDACTED] suspected Petitioner was developmentally delayed when [REDACTED] failed to talk until age three.
4. Upon moving to St. Johns County from California, Ms. [REDACTED] accessed services for Petitioner through the Florida Department

of Health's Early Steps Program. In the spring of 2005, Petitioner transitioned to the SJCSB Exceptional Student Program for the remainder of the school year for services in speech and language.

5. Following the few months of services provided by SJCSB in early 2005, [REDACTED]'s mother accessed and paid for intensive speech and language therapy for 90 minutes, four days each week. These services prior to kindergarten and continuing through the kindergarten school year were provided by A+ Therapy, where Petitioner received services in speech and language, occupational therapy, and physical therapy. At A+ Therapy, [REDACTED] worked with board-certified speech-language pathologist ("SLP") Jennifer Burton. Ms. Burton completed a speech/language evaluation dated June 5, 2007, and a reevaluation dated November 6, 2007.

6. Petitioner attended the school located within the St. Johns County school district from 2007-2011, for kindergarten through third grade.

7. *Petitioner was found eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA").

8. *SJCSB provided Petitioner with Individual Education Plans ("IEP") every year [REDACTED] was enrolled in the district.

9. *Petitioner's mother attended and participated in each IEP team meeting at which ■■■'s IEPs were developed and revised, with the exception of the IEP team meeting held in October 2011. Petitioner's mother approved and signed each of ■■■'s IEPs, with the exception of the IEP drafted in fourth grade.

Kindergarten (2007 - 2008)

10. ■■■ began kindergarten at the school where ■■■ had "a difficult time" due to social issues and language deficits. One of ■■■'s kindergarten teachers, Ms. Fisher, made the following written observations about Petitioner in November 2007: "My main concern about (■■■) is that (■■■) has an extremely hard time processing information and directions," stating that (■■■) cannot make a choice for lunch or take a simple direction. She continued, "Socially, I am concerned because (■■■'s) behavior around others is inappropriate. (■■■) often touches others or pushes/hits others and then (■■■) covers (■■■'s) glasses with (■■■'s) hands (almost hiding so (■■■) doesn't get in trouble)."

11. Kathy Cook, a guidance counselor at the school, discussed with Ms. ■■■ the need for ■■■ to be evaluated on several occasions. Upon receiving Ms. ■■■'s consent for the evaluation, Lynelle Jackson, Certified School Psychologist, conducted a psychoeducational evaluation of ■■■. Based on the results of multiple test assessments and classroom observations, Ms. Jackson prepared a report dated April 15, 2008. ■■■'s

intellectual functioning was determined to be in the average range, and ██████'s academic skills were considered commensurate to Petitioner's overall ability. However, Ms. Jackson also found that with respect to processing tests, ██████ displayed weaknesses in language skills, phonological awareness, and short-term memory. ██████ was found to be rated clinically significant in the areas of Atypicality and withdrawal which "may interfere with (██████'s) ability to learn and to socialize appropriately."

12. ██████ was found eligible under the IDEA on May 14, 2008, as a result of an identified language impairment. SJCSB promptly completed the full IDEA referral process as part of its evaluation.

13. Ms. Burton's reevaluation dated November 6, 2007, and the psychoeducational evaluation were considered in the development of ██████'s kindergarten IEP. The IEP addressed, among other things, spoken language, verbal skills, memory, social skills, and expressive language skills.

14. *In kindergarten, Petitioner was on grade level in reading and math all 4 quarters and below grade level in written expression for the first 3 quarters. Petitioner was on grade level in written expression for the 4th quarter.

15. SJCSB timely conducted an initial evaluation of ██████ under the IDEA in kindergarten and a re-evaluation in third

grade. Petitioner was evaluated for but did not meet eligibility criteria for a specific learning disability.

First Grade (2008-2009)

16. Petitioner's first grade teacher was Karen Prevatt.

17. ██████ received an IEP on May 12, 2009, following an IEP team meeting. At the IEP team meeting, the team considered all evaluations obtained the previous year, ██████'s performance in kindergarten, and a private evaluation from SLP Dana Merritt dated February 13, 2009.^{1/} The IEP team considered ██████'s social behaviors and needs.

18. ██████'s first-grade IEP included a Communication domain that reflected ██████ had difficulty with, among other things, social language skills, appropriate interaction with peers, and participation and success in the classroom. The priority educational need identified was ██████'s ability to learn and use age appropriate expressive and social language skills. These priority educational needs were addressed by Ms. Lynn Votaw, a licensed speech pathologist. During small group instruction (60 minutes per week), Ms. Votaw worked on, among other things, direct modeling, role playing, rehearsal, and appropriateness with social instructions. Ms. Votaw worked on these skills with ██████ in kindergarten through third grade.

19. ██████'s IEP included measureable annual goals, short-term objectives, and benchmarks to address ██████'s Communication

needs. One short-term objective was demonstration of pragmatic skills of active listening, commenting, asking questions, and appropriately entering and exiting conversations with peers.

█████ made adequate progress towards meeting IEP goals. █████ spent 97 percent of the time in regular education and three percent of the time with Ms. Votaw in a small group to improve language skills.

20. During first grade █████ was also receiving services contracted by Ms. ███ for auditory and visual processing through Merritt Speech and Learning. These services consisted of one hour of therapy daily.

21. █████ was on grade level in reading, written expression, and math all year and demonstrated positive character and social development.

Second Grade (2009-2010)

22. Petitioner's second-grade teachers were John Ackerman, Lauren Cooper, and Laurie Hodgdon.

23. Don Campbell, the principal at the school, recommended that Petitioner receive tutoring after school to aid in academic growth. Consistent with this recommendation, tutoring was provided by a teacher from the school, Pamela Lareau.

Ms. Lareau was paid by Petitioner's mother for this service.

24. During second grade, █████ continued receiving services

contracted by Ms. ■ for auditory and visual processing through Merritt Speech and Learning.

25. In November 2009, ■ received an IEP following an IEP meeting convened to discuss academic concerns with ■'s reading and writing skills. ■'s teachers did not want ■ to fall behind. Ms. Hagan was also involved in the meeting since Assistant Principal Eberhard felt ■ might benefit from additional ESE services. Ms. Votaw also thought it was a good idea for ■ to work with Ms. Hagan in a smaller group.

26. During this time, Ms. ■ was particularly concerned with ■ feeling good about ■, coming to school, and making academic progress. Specifically, Ms. ■ expressed concerns to teachers and school administrators about ■'s social skills, self concept, lack of independent functioning, failure to understand personal space, failure to communicate appropriately, lack of friends, and teasing/bullying^{2/} from other children. In response to these concerns, ■'s teachers and school officials communicated almost daily with Ms. ■

27. The IEP noted improvement in social skills, but that weaknesses remained. The IEP included not one, but two domains: (1) Communication; and (2) Curriculum and Learning Environment. The Communication domain reflected ■'s difficulty with, among other things, language delays, social skills, following multistep directions, expressing ■ clearly, staying focused

during instructional time, working independently, and remaining on pace with ██████'s grade level peers in the classroom.

28. ██████'s second-grade IEP also included measureable annual goals, short-term objectives, and benchmarks in both domains. Included were goals to address ██████'s pragmatic/social communication skills and following directions. In addition, goals addressing ██████'s reading comprehension were included.

29. The IEP included the following specially designed instruction: (1) language therapy to improve language skills for 60 minutes per week on school campus; and (2) specialized instruction in language arts for 150 minutes per week on school campus. ██████ was also provided numerous classroom accommodations. Petitioner was required to participate in general education for academics, lunch, resource, recess, field trips, and assemblies to obtain grade level academics and acquire peer/age appropriate social interactions.

30. Ms. Votaw provided language therapy twice per week for 30 minutes each session. Ms. Hagan provided ██████'s specialized instruction in language arts for 30 minutes each morning in Ms. Hodgdon's class with approximately 4-5 other students. Ms. Hagan also worked with ██████ and other students on writing skills in Ms. Hodgdon's class in the afternoon. The entire class worked on writing skills at that time.

31. According to Ms. Hagan and Ms. Votaw, █████ did not have social or emotional behaviors that impeded █████'s learning or the learning of others. Ms. Hagan observed █████ in the classroom and in school hallways. █████ did well with other students and exhibited no behavior concerns other than task avoidance with academics. Ms. Hagan observed that Petitioner's mother made excuses for █████ and claimed certain assignments were too hard for █████; however, Ms. Hagen felt █████ had the capability to complete the assignments.

32. Throughout second grade at the school, Petitioner exhibited social skills issues and behavioral difficulties in large group settings. However, there were fewer such problems in a small group setting, according to Ms. Votaw, █████'s speech/language teacher who worked with █████ in a small group setting with a few other students. █████ was sent to Ms. Cook (the Guidance Counselor) on occasion during the year to address undesirable classroom behaviors. Nevertheless, █████'s behavior from first to second grade showed observable signs of improvement, such as walking in a line, understanding personal space, and understanding appropriate distances with others.

33. Principal Campbell told Ms. █████ he was taking █████ on as his "personal project" to help █████ be successful at school. Principal Campbell mentored █████ throughout █████'s time at Ward's Creek. During first and second grade, Principal Campbell

discussed appropriate personal space and role-played with [REDACTED] to improve [REDACTED]'s social skills and peer relations. When Principal Campbell worked with [REDACTED] on a particular undesirable behavior it would often disappear.

34. Principal Campbell noticed a pattern of [REDACTED]'s seeking attention by making comments to Petitioner's mother who would in turn contact Principal Campbell with unspecified complaints.

35. As of January 2010, [REDACTED] was making social progress and improvement was shown in [REDACTED]'s confidence, self-esteem and academic performance. [REDACTED]'s language arts grades improved throughout the year.

36. As of March 18, 2010, [REDACTED] continued to show improvement with language skills in all areas, demonstrated more appropriate social skills, and was an active participant during therapy, needing minimal prompts to pay attention to an activity or complete a task. Petitioner also had more frequent age-appropriate interaction, showed positive self-confidence growth, had a better attitude, and improved in other academic areas.^{3/}

37. [REDACTED] began attending Learning Rx in March 2010, continuing through September 2011. Learning Rx is a cognitive therapy training center for persons over age five. Trainers provide cognitive therapy and are not required to be licensed in any particular field.

38. [REDACTED] was on grade level in math all year, and in written expression during the 3rd and 4th quarters. [REDACTED] was below grade level in reading all 4 quarters and below grade level in written expression during the 1st and 2nd quarters. [REDACTED] was progressing towards Sunshine State Standards in math, written expression, and science/social studies but needed to improve in reading and written expression. [REDACTED] demonstrated growth since the start of the year and improvement in Petitioner's confidence and participation in class. Petitioner's second-grade report card reflected positive character and social development.

39. Petitioner was meeting [REDACTED]'s IEP Communication benchmarks and showed satisfactory to excellent progress. [REDACTED] also demonstrated satisfactory progress toward meeting [REDACTED]'s Curriculum and Learning Environment goal.

Third Grade (2010-2011)

40. At Ms. [REDACTED]'s request, Ms. Lareau served as [REDACTED]'s third-grade teacher. Ms. [REDACTED] communicated with Ms. Lareau on almost a daily basis. [REDACTED] was very fond of Ms. Lareau.

41. Ms. Votaw communicated with Ms. [REDACTED] in-person, over the phone, and by email. Both Petitioner and Petitioner's mother felt Ms. Votaw was very supportive of [REDACTED] and worked very well with Petitioner.

42. Ms. Votaw conducted a reevaluation of [REDACTED] on August 31, 2010, and September 13, 2010. Ms. [REDACTED] consented to the reevaluation and was given a copy. The reevaluation noted [REDACTED] was currently at grade level academically but still had weaknesses with focus and attention. The reevaluation also indicated [REDACTED] should go on consult for independent functioning. [REDACTED] was again found eligible under the IDEA as Language Impaired. The reevaluation report showed improvement in [REDACTED]'s receptive/expressive language skills and [REDACTED]'s social communication skills. In addition, [REDACTED]'s awareness and attention to tasks was better and [REDACTED]'s conversational skills showed improvement.

43. [REDACTED]'s Oral and Written Language Scale (OWLS) results showed an overall score of 84 (just below average). The OWLS test demonstrated an overall standard score improvement since [REDACTED]'s kindergarten evaluation. The Test of Language Development-Primary, 3rd edition (TOLD-P3) scores reflected [REDACTED] functioned in the average range of 8-12 in all categories with the exception of sentence imitation where he scored a 7.^{4/} The TOLD-P3 results showed an overall improvement in all areas when compared to the previous evaluation conducted in 2007. [REDACTED]'s spoken language quotient score on the TOLD-P3 rose from 71 to 97 which was a significant improvement. The spoken language quotient is a combination of expressive and receptive language

skills. The results of the reevaluation confirm that [REDACTED] was showing marked improvement from prior evaluations.

44. [REDACTED] received an IEP in third grade dated October 19, 2010. The IEP was drafted after an IEP meeting to discuss an annual evaluation of [REDACTED]'s IEP, as well as the reevaluation conducted by Ms. Votaw. In addition to the IEP team from SJCSB (including Principal Campbell), Erin Morris from LearningRx also attended. At the meeting, Ms. [REDACTED] expressed a desire for [REDACTED] to independently begin and successfully complete tasks in a timely manner. Ms. [REDACTED] also expressed concerns about [REDACTED]'s reading comprehension scores. In addition to a discussion of these issues, the team also discussed behavioral and social issues, and social skills development.

45. The IEP noted positive growth in [REDACTED]'s self-confidence, improvement in [REDACTED]'s overall outlook, more pride in accomplishments, caring and kindness toward others, increased interactions with peers and more age-appropriateness, and a desire to excel. The IEP noted [REDACTED]'s language skills had improved, pragmatic and communication skills with peers and others changed for the positive, [REDACTED] initiated conversation with peers, [REDACTED] commented more appropriately and asked questions of peers more independently, and [REDACTED] was an active listener and participant during conversations.

46. Ms. ■ felt the third-grade IEP meeting was the best IEP meeting she had attended, and that the IEP developed was appropriate. Ms. Morris felt the October 2010, IEP meeting was positive.

47. The IEP indicated Petitioner's behavior did not impede ■'s learning or the learning of others.

48. ■'s third-grade IEP included two domains: (1) Communication; and (2) Independent Functioning. The Communication domain reflected ■'s language deficits may impact ■'s performance and success in language based activities in the general education classroom. ■ continued to demonstrate difficulty following multi-step oral and written directions, expressive skills relating to making inferences and predictions remained a weakness, and ■ exhibited grammatical errors in spontaneous speech.

49. ■'s third-grade IEP included measureable annual goals, short-term objectives, and benchmarks to address ■'s Communication needs. The goals included demonstration of correct use of grammar in oral/written tasks, giving correct responses to tasks requiring inferences and predictions, and following multi-step oral/written directions.

50. ■'s third-grade IEP included measureable annual goals, short-term objectives, and benchmarks to address ■'s

Independent Functioning. Included were goals to address ██████'s responses to non-preferred tasks or assignments.

51. The Independent Functioning domain was added since ██████ had difficulties timely completing tasks. The Curriculum and Learning Environment Domain was removed since the Independent Functioning domain addressed those needs. There were no gaps in Petitioner's academic progress; ██████ was able to work in the general curriculum and was functioning at grade level in all academic areas with minimal ESE support.

52. Petitioner's third-grade IEP included the following specially designed instruction: (1) language therapy for 30 minutes per week on school campus; and (2) consultative support to monitor independent functioning skills and academic progress. Petitioner was also provided numerous classroom accommodations. Petitioner's language therapy was reduced by 30 minutes per week because of ██████'s reevaluation test scores and signs of improvement.

53. The IEP team also decided that Petitioner would be put on consultative support instead of specialized instruction because of ██████'s marked improvement. Heather Keisler, an ESE teacher, provided consultative support. Ms. Keisler's consultative support services consisted of her remaining in contact with Ms. Lareau regarding ██████'s progress towards goals, ability to complete work independently, ability to stay

on task, and any difficulties that impeded ██████'s learning. Ms. Keisler communicated with Ms. Lareau approximately three times a week regarding Petitioner's progress.

54. Petitioner's mother signed Petitioner's IEP and did not disagree with the accommodations.

55. Ms. Lareau provided all accommodations in ██████'s IEP on a daily basis during instruction. Petitioner was never singled out or embarrassed in Ms. Lareau's class.

56. Petitioner was absent 20 days during the third-grade school year (11 excused, 9 unexcused) and tardy 78 times. During the 78 days on which ██████ was tardy, ██████ missed the opportunity to socialize with ██████'s peers in a less structured, nonacademic setting. Petitioner's mother intentionally allowed ██████ to go to school late because ██████ did not like school and was a slow eater.

57. In addition to Petitioner frequently missing instruction in the morning, Ms. ██████ pulled ██████ out of school early to attend Learning Rx, since she believed there was no learning going on at the end of the school day. To the contrary, ██████'s class worked on academics and would oftentimes go to recess which provided students more opportunities to socialize.

58. At the request of Petitioner's mother, ██████'s testing accommodation was changed later in the school year during a

meeting with Ms. ■■■, Scott Sherman, and Principal Campbell. According to ■■■'s third-grade IEP, ■■■ received testing in a small group setting; however, Ms. ■■■ wanted ■■■ to begin tests at the desk next to the teacher's area. The revised accommodation was to be used for classroom assessments and not standardized tests. Principal Campbell hand-delivered the modification to Ms. Lareau, and Ms. Lareau adhered to it.

59. At some point during third grade, Petitioner's mother expressed a concern about ■■■ being in class with another student because she thought they did not get along. However, Ms. Keisler visited Ms. Lareau's room on almost a daily basis and never witnessed any problems. Ms. Lareau never witnessed any incidents between ■■■ and the other student.

60. In October 2010, Board-Certified Behavior Analyst Darren Tagliarini, an employee of SJCSB, met with Ms. Keisler and Ms. Lareau at their request to discuss ■■■'s ability to remain on task independently. Mr. Tagliarini recommended that a classroom observation be conducted, and Ms. Keisler recommended that Ms. Lareau collect data on behavioral events, follow a behavior management system already in place, and monitor the structure and schedule of the classroom. Ms. Lareau expressed a desire to create more opportunities for ■■■ to work with less prompting in hopes of continuing ■■■'s independent functioning abilities.

61. On November 1 and 2, 2010, Ms. Lareau prepared an Antecedent Behavior Consequence (ABC) Data Collection Document regarding her observations of [REDACTED] in class. Ms. Lareau used the ABC data sheets to communicate classroom behavior to Mr. Tagliarini in order to define [REDACTED]'s target behavior.

62. On November 12, 2010, Mr. Tagliarini conducted an observation of [REDACTED] and documented his observations. Mr. Tagliarini prepared a diagram reflecting Ms. Lareau's walking pattern in class, which indicated that she was frequently helping [REDACTED]. Mr. Tagliarini's observation suggested that Ms. Lareau was reinforcing dependent behavior. Mr. Tagliarini did not see a need for a functional behavior assessment based on his classroom observation.

63. Ms. Lareau reviewed Mr. Tagliarini's suggestions and modified her classwide system for independent work and data collection. Ms. Lareau utilized the behavior tree with all students in class to encourage her students to complete tasks. The tree was on a poster in the classroom. Leaves were placed on the tree with each student's name on them. The leaves would move up or down the tree based on a student's behavior. This allowed students to be more involved in monitoring their behavior.

64. After meeting with Mr. Tagliarini, Ms. Lareau developed a checklist designed to show [REDACTED] what [REDACTED]

accomplished during the day. The checklist was in addition to the classroom behavior tree.

65. Mr. Tagliarini's involvement from November 2010, through April 2011, was minimal due to the success of the classwide behavior tree. Ms. Keisler assisted Ms. Lareau's efforts to improve [REDACTED]'s classroom behavior.

66. In February or March 2011, Petitioner's mother met with Ms. Keisler and Ms. Lareau to address [REDACTED]'s ability to complete work and other related-issues.

67. Mr. Tagliarini conducted a classroom observation in April 2011. He noted that Ms. Lareau's reinforcement of [REDACTED]'s behavior had decreased since [REDACTED] November 2010, observation. After completing the April 2011, classroom observation Mr. Tagliarini did not feel a functional behavior assessment was necessary, since [REDACTED]'s behavior did not impede or impair [REDACTED]'s learning to the point that more intrusive intervention was needed.

68. Ms. Morris, Ms. Knight, Mr. Tagliarini, Ms. Keisler, Ms. Lareau, Ms. Votaw, and Petitioner's mother met on April 8, 2011, to discuss behavior issues. [REDACTED]'s ability to work independently, follow through with tasks, and complete work in a timely manner were discussed. A more individualized behavior plan was prepared by Mr. Tagliarini to address these issues.

69. The individualized behavior plan included the classwide tree concept with specific points assigned to each target behavior. Points awarded ranged from 1-3. The new plan was an adjustment to the classwide behavior tree and allowed Mr. Tagliarini to analyze more data.

70. The new behavior plan was not a behavioral intervention plan. Ms. Lareau collected data at her desk and sent it to Ms. [REDACTED]. The data demonstrated [REDACTED] was doing better. Petitioner also reviewed the data each day. Ms. Lareau communicated with Mr. Tagliarini regularly regarding [REDACTED]'s performance on the new plan. Ms. Lareau also communicated with Ms. [REDACTED] regarding Petitioner's progress. Ms. [REDACTED] communicated with Mr. Tagliarini by telephone approximately 3-4 times per week. Data collected showed improvement in [REDACTED]'s attention and Petitioner's mother noticed improvement in [REDACTED]'s ability to complete work.

71. It is not necessary to conduct a functional behavior assessment if simple modifications or small adjustments to the classroom environment successfully address behavior. A functional behavior assessment is a more intrusive intervention that is not used if simple modifications or small adjustments are successful. A small behavior adjustment and an accompanying behavior plan do not need to be incorporated into an IEP whereas a functional behavior assessment and a behavioral plan would.

72. Petitioner's mother stopped bringing ██████ to school two weeks prior to the end of the school year. Ms. ██████ mistakenly believed there was no schoolwork being completed or teaching occurring during the last two weeks of school. In fact, Ms. Lareau did not stop teaching academics in the last two weeks but rather used this time to fill in the gaps where students needed additional attention to particular academic skills.

73. Petitioner's mother testified that Principal Campbell told her to leave the school and take a McKay scholarship to a different school. The conversation occurred between Ms. ██████, Principal Campbell, Scott Sherman, and Ms. ██████'s advocate. Principal Campbell tried to address what interventions or changes Ms. ██████ felt were necessary. After listening to Ms. ██████ complain for more than an hour without explaining what she wanted, Principal Campbell told Ms. ██████ she could look into other options, including a waiver to Mill Creek or the McKay Scholarship. Recognizing the inappropriateness of his comment, Principal Campbell immediately apologized at the meeting for making the statement. Principal Campbell never told Ms. ██████ that he did not want ██████ at the school.

74. Petitioner's final report-card grades in third grade were as follows: Language Arts - B, Math - B, Science - B,

Social Studies - A, Art - M, Music - M, and Physical Education - M.

75. In addition to above-average academic performance, ██████'s third-grade report card reflected positive character and social development. ██████ improved peer relationships and communication with peers and adults. ██████'s self-esteem grew. No persuasive evidence was presented that ██████'s social and emotional issues impacted ██████'s grades or academic performance in third grade.

76. ██████ made adequate to satisfactory progress in meeting ██████'s annual goals in Communication and Independent Functioning during ██████'s third-grade year.

77. Petitioner's mother contacted Ms. Knight prior to the 2011 FCAT to discuss where ██████ would be tested and who would be administering the test. Based on ██████'s IEP, ██████ would have taken the test in a small group. However, Petitioner was provided a one-on-one accommodation with Ms. Cook since ██████ was sick on the original testing dates. The testing environment was optimal, ██████ was given frequent breaks, and ██████ seemed to enjoy the individual testing time. Ms. ██████ was unable to present any evidence establishing that ██████ was denied accommodations during the FCAT test. ██████ was not feeling well when ██████ took the FCAT. ██████ scored a 1 in Math and a 2 in Reading. Ms. Cook called Ms. ██████ to share the good news that ██████ would advance to

fourth grade. Ms. ■ raised concerns that ■ was anxious during the FCAT. Ms. Cook explained she did not see any anxiety and the testing conditions were optimal.

Summer after Third Grade (Summer 2011)

78. On June 6, 2011, Petitioner's mother took ■ to Maureen Harper, a Licensed Mental Health Counselor, for therapy to help with social impairment, tics, sleep disorders, and crying incidents. Ms. Harper diagnosed ■ with Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS), and Anxiety. Although Ms. Harper noted that ■ manifested symptoms of anxiety, including crying, facial twitching, tongue thrusting, and trouble sleeping, ■ did not meet the criteria for a specific anxiety disorder. Moreover, the manifestations were not present during every session, and ■'s symptoms were moderate with respect to how they affected ■'s daily functioning. Ms. Harper did not review any of ■'s IEPs nor focus her treatment on educational needs. Ms. Harper did not discuss any of ■'s educational accommodations with any SJCSB employee.

79. Ms. ■ could not find a private school that conformed with her religious beliefs and by this time had lost faith in the public school system.^{5/} On July 29, 2011, she decided to file a Request for a Due Process Hearing and seek out information about Virtual School. Thereafter, Petitioner's

mother made the decision to enroll ██████ in Virtual School, beginning that summer.

80. A state-certified teacher is responsible for monitoring student progress, ensuring students master a subject area, and developing appropriate interventions if a student is struggling. ██████'s IEP team was not given notice of and had no input regarding the decision to enroll ██████ in Virtual School.
Fourth Grade (2011-2012)

81. Petitioner's mother unilaterally and without prior notification to ██████'s IEP team enrolled ██████ in K-12 Virtual School at the beginning of fourth grade, the 2011-2012 school year.

82. K-12 Virtual School employs the Florida K-12 curriculum.

83. On September 29, 2011, SJCSB contacted Petitioner's mother to secure ██████'s presence at the school to receive services identified in his IEP, including language therapy. Ms. ██████ refused to bring Petitioner. ██████ was not receiving any speech/language services as of the due process hearing.

84. In August or September 2011, Petitioner took a math performance assessment through the virtual school program, and on September 8, 2011, Petitioner took a reading performance assessment through the virtual school program. Petitioner's math assessment score was equal to the district average, and

Petitioner's reading assessment was slightly below the district average.

85. SJCSB attempted to schedule an IEP meeting with Petitioner's mother and proposed multiple dates for the IEP meeting. Ms. [REDACTED] declined to attend the meeting. An IEP meeting was held on October 7, 2011, to conduct an annual review of [REDACTED]'s IEP. Ms. [REDACTED] did not attend, understood the meeting would be held, and gave permission for the meeting to take place. While a new IEP was prepared, [REDACTED]'s IEP did not change.

86. Petitioner's fourth-grade IEP was developed during the pendency of this case, and therefore, the stay-put provisions of the IDEA applied. As such, while an annual review was conducted in October 2011, [REDACTED]'s placement did not change.

87. A "learning coach" is required for elementary students enrolled in Virtual School.^{6/} Michael Kirk and Samantha Neff were hired by Petitioner's mother to serve as Petitioner's learning coaches.^{7/} Ms. Neff testified that [REDACTED] has some tics such as tongue movements, strange noises, and full body movements. She also testified that [REDACTED] manifests anxiety by crying. As of the date of hearing, the learning coaches had been paid a total of \$3,472.00.

88. Mr. Kirk tutored [REDACTED] from June 2011, through approximately September 2011. Petitioner's mother discontinued

Mr. Kirk's services upon discovery that Mr. Kirk was skipping computer work and completing ██████'s work for ██████.

89. Learning coach Samantha Neff began working with Petitioner on September 20, 2011. ██████ worked with Ms. Neff in a one-on-one setting for 4-5 hours per day. Ms. Neff never reviewed ██████'s IEP in detail and admits to not following it. Aside from ██████'s virtual school teacher, Ms. Neff had not spoken with any of ██████'s teachers or administrators. Ms. Neff never observed ██████ work with any other children but felt ██████ needed that social interaction. Ms. Neff did not think ██████ being isolated from other children was the best situation for ██████.

90. None of the SJCSB staff that testified agreed with the decision to place Petitioner in Virtual School. Ms. Morris (Director of Learning Rx) felt a public school could accommodate ██████ depending on the program. Ms. Hagen (special-education teacher) felt ██████ would benefit socially from being in school. Ms. Lareau (██████'s third-grade teacher) felt virtual school lacks the social practice that would benefit Petitioner. Ms. Knight (assistant principal) does not believe virtual school is good for ██████ since it does not help build ██████'s independence or provide social situations. Principal Campbell does not feel virtual school is the best environment for ██████ and would love to have ██████ back at Wards Creek.

CONCLUSIONS OF LAW

91. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569, 120.57(1), and 1003.57(1)(e), Florida Statutes (2011), and Florida Administrative Code Rule 6A-6.03311(11).

92. Respondent is the governing body of the St. Johns County School District and is responsible for the control, organization, and administration of the public schools in its district. Art. IX, Fla. Const.; §§ 1001.30, 1001.33, 1001.41, and 1001.42, Fla. Stat.

93. The request for due process hearing identifies several alleged deficiencies with the services provided to Petitioner by the School Board from 2005 to present. The issues raised in the due process complaint were summarized in Petitioner's Proposed Final Order as follows:

A. Whether SJCSB failed to appropriately identify the Petitioner's disability and thereby failed to provide Petitioner with FAPE.

B. Whether SJCSB failed to provide FAPE by failing to address behavioral issues until the end of the Petitioner's third-grade year even though evidence of behavioral issues was present from pre-school until the present.

C. Whether SJCSB failed to provide FAPE by failing to provide adequately for

Petitioner's issues with social skills, anxiety, and independent functioning.

D. Whether SJCSB violated Petitioner's procedural safeguard rights by failing to include the Behavior Intervention Plan that was developed at the end of the Petitioner's third-grade year in the Petitioner's IEP.

E. Whether SJCSB violated Petitioner's procedural safeguard rights by making changes to ■'s IEP accommodations without the IEP team meeting or proper notice of the meeting which led to confusion about and delays in implementation of the accommodations.

(Petitioner's Proposed Final Order, pgs.3,4)

Petitioner has the burden of establishing each of these alleged deficiencies. Schaffer v. Weast, 546 U.S. 49 (2005).

94. As a preliminary matter, the scope of Petitioner's challenge to the sufficiency of the services provided by Respondent must be established. The petition alleges a six-year period. However, 20 U.S.C. § 1415(f)(3)(C) & (D), provide:

(C) Timeline for requesting hearing.

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to -

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

34 C.F.R. sections 300.507 and 300.511 provide the same time limitations and exceptions.

95. In this case, the parties stipulated that Petitioner's mother attended and participated in each of the IEP meetings (with the exception of the October 2011, meeting) arranged to develop individualized educational plans for Petitioner. Petitioner's mother was repeatedly notified of her due process rights. No evidence was presented to indicate that Petitioner's mother did not know what services were being offered to Petitioner. Likewise, no evidence was presented to indicate that there had been any specific misrepresentations by the School Board, or withholding from the parent of information that the federal regulations provide that parents must be provided. Therefore, only the two-year period immediately preceding Petitioner's due process petition will be considered in this case.^{8/}

96. The Individuals With Disabilities Education Act (IDEA) provides that, in order to receive federal funding, a state must insure the right of all students with disabilities to receive a free appropriate public education (FAPE). 20 U.S.C. section 1401(9) defines FAPE as follows:

The term "free appropriate public education" means 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, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section 614(d) [20 U.S.C. § 1414(d)].

97. Florida has implemented the IDEA by requiring districts to provide for an appropriate program of special instruction, facilities, and services for students eligible for those services. It is undisputed that [REDACTED] is an exceptional student with a Language Impairment for whom services under the IDEA must be provided. 20 U.S.C. § 1415; § 1003.57, Fla. Stat.

Identification and Evaluation of Petitioner's Disabilities

98. Petitioner alleges that SJCSB failed to identify and evaluate all of ██████'s disabilities under the IDEA due to ██████'s issues with receptive and expressive language, memory, anxiety, executive functioning, independent functioning, and social skills.

99. The IDEA identifies 13 disabling conditions sufficient to qualify an individual for services under the IDEA. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(c)(1)-(13). In kindergarten, ██████ was initially found eligible under the IDEA as Language Impaired and ineligible for a specific learning disability. Aside from a Language Impairment, ██████ presented no evidence or testimony that ██████ suffered from any other disability set forth in the IDEA. The undersigned notes that it is not SJCSB's burden to prove that ██████ does not suffer from a disability; rather, it is ██████'s burden to show that ██████ does and that due to ██████'s disability, Petitioner is in need of special education and related services.^{9/}

100. SJCSB conducted a timely reevaluation of Petitioner in third grade and found ██████ eligible as having a Language Impairment. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303. The reevaluation consisted of a review of existing data pertaining to ██████, evaluations and information provided by Ms. ██████, observations, and assessments. 34 C.F.R. § 300.305(a)(1)(i)-

(iii). Petitioner's mother did not object to the results of the reevaluation. During an IEP meeting to discuss the reevaluation, the IEP team addressed ██████'s educational needs, present levels of academic achievement and developmental needs, whether ██████ continued to need special education and related services, and modifications to ██████'s special education and related services to enable ██████ to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum. 20 U.S.C. § 1414(c); 34 C.F.R. § 300.305(a)(2). Petitioner did not present persuasive evidence that SJCSB failed to properly identify and evaluate Petitioner's disability.

Was Petitioner's Placement Appropriate?

101. Petitioner contends that SJCSB failed to provide an appropriate placement for ██████ "Placement" refers to the location at which a student's IEP is to be implemented and must be based on and consistent with a child's IEP. 20 U.S.C. 1415(a)(5); 34 C.F.R. § 300.116. A parent may not dictate that a student's education program be provided at a particular institution, school, or desk. L.M and D.G. v. Pinellas Cnty. Sch. Bd., 2010 US Dist. LEXIS 46796 (M.D. Fla. Apr. 11, 2010); Hill v. Sch. Bd. for Pinellas Cnty., 954 F. Supp. 251 (M.D. Fla. 1997), aff'd, 137 F.3d 1355 (11th Cir. 1998). The issue is whether the "placement [is] appropriate, not whether another

placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer.”

Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1056 (7th Cir. 1997) (internal citations omitted).

102. While the Complaint alleges placement at Wards Creek would result in “further” serious educational and emotional harm to ■■■■■, the evidence does not support such a conclusion. ■■■■■ presented no testimony or documentation, medical or otherwise, suggesting that the school or SJCSB caused any educational or emotional harm to ■■■■■. Instead, the evidence reflects that most, if not all, of Ms. ■■■■■’s concerns stem from her personal dislike of several staff members at the school, which is not a sufficient basis to determine that ■■■■■’s placement was inappropriate.

103. The undersigned finds that SJCSB complied with the IDEA in determining ■■■■■’s placement. ■■■■■ attended the school from kindergarten through third grade and progressed each year towards meeting Petitioner’s IEP goals. ■■■■■’s IEP team consisted of individuals who were knowledgeable about and addressed Petitioner’s needs, evaluations, and options. Petitioner’s IEPs were created at least annually during IEP team meetings, and ■■■■■ was educated in the least restrictive

environment (spending 97 percent of the time in the general education curriculum setting in second grade and 98 percent in third grade). [REDACTED] was only removed from the general education curriculum setting in order to receive specially designed instructions set forth in Petitioner's IEP. No evidence was presented reflecting that the time [REDACTED] was removed was excessive or that there was an appropriate, less restrictive environment. Thus, [REDACTED] failed to meet Petitioner's burden to establish that Petitioner's placement was inappropriate.

Did SJCSB Provide FAPE to Petitioner?

104. To determine whether a school board has provided FAPE, the Eleventh Circuit considers two factors: "1) whether the state actor has complied with the procedures set forth in the IDEA, and 2) whether the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefit." Sch. Bd. of Collier Cnty., Fla. v. K.C., 285 F.3d 977, 982 (11th Cir. 2002). The "educational outcome need not maximize the child's education. If the educational benefits are adequate based on surrounding and supportive facts, [IDEA] requirements are satisfied." JSK v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1572-73 (11th Cir. 1991). In other words, so long as the child's IEP provides some educational benefit, there is no entitlement to the "best" program under the IDEA. M.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Cnty., 437 F.3d

1085, 1102 (11th Cir. 2006). The IEP must be reasonably calculated to confer educational benefits to the student. Board of Education of the Hendrick Hudson Central Sch. Dist., 458 U.S. 176, 203-207 (1982).

105. The IDEA does not require school districts maximize each child's potential. If a student progresses in a program, courts should not examine whether another method might produce additional or maximum benefits. Sch. Dist. v. Rowley, 458 U.S. 176, 192, 207-208 (1982); O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. Dist. No. 17, 841 F.2d 824, 831 (8th Cir. 1988). The United States Court of Appeals for the Fifth Circuit has articulated a standard for determining whether a student has received FAPE. In Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., the court opined:

[A]n . . . IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and

related services which are individually designed to provide educational benefit."

118 F. 3d 245, 247-48 (5th Cir. 1997), cert. denied, 118 S. Ct. 690 (1998).

1. Did SJCSB Comply with the IDEA's Procedural Safeguards?

106. Petitioner generally alleges procedural safeguard violations, although Petitioner failed to describe with any specificity what procedural violation allegedly occurred. Petitioner has the burden of proving that SJCSB committed procedural violations and that the procedural inadequacies impeded ██████'s right to FAPE, significantly impeded ██████ mother's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66-68 (3rd Cir. 2010) ("school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents") (internal citations omitted); Knable ex rel. Knable v. Bexley City Sch. Dist., 238 F.3d 755, 765 (6th Cir. 2001), cert. denied, 121 S. Ct. 2593 (2001). "In evaluating whether a procedural defect has deprived a student of a FAPE, the court must consider the impact of the procedural defect, and not merely the defect *per se*." Sch. Bd. of Lee Cnty. v. M.M., 348 Fed. Appx. 504, 510 (11th Cir. 2009) (internal citation omitted).; Fla. Admin. Code R. 6A-6.03311(9)(v)4.

107. █████ failed to identify and presented no evidence regarding any procedural safeguard allegedly violated. The record evidence demonstrates that Ms. █████ was invited to all meetings, and in fact participated in every IEP meeting with the exception of █████'s fourth-grade meeting. Each witness with knowledge of the IEP team meetings indicated that Ms. █████ was actively involved, typically on a daily basis, with all of the decisions made regarding the educational services provided to █████ The written terms of █████'s IEPs also reflect that Ms. █████ was provided copies of procedural safeguards at each IEP meeting.

108. █████ did not assert in the Complaint that the decision to modify the IEP testing accommodation in third grade during a meeting with Ms. █████, Principal Campbell, and others was a procedural violation; however, even if the IEP modification constituted a procedural violation, no evidence or testimony was presented at hearing demonstrating that this actually resulted in any deprivation of an education benefit, substantive harm, or denial of FAPE to █████ Ms. █████ was also fully supportive of the decision. Finally, this meeting occurred in April of 2011, Principal Campbell disseminated the modification to Ms. Lareau, and █████ performed well academically following the modification.

109. Petitioner failed to meet Petitioner's burden to establish that any alleged procedural violation deprived █████ of

FAPE, significantly impeded Ms. ■■■'s opportunity to participate in the decision-making process, or caused a deprivation of an educational benefit.

2. Was the IEP reasonably calculated to enable Petitioner to receive educational benefit?

110. Petitioner received IEPs in kindergarten through third grade, each of which addressed ■■■'s strengths and concerns, evaluations, and ■■■'s academic, developmental, and functional needs. Ms. ■■■ was provided meaningful participation in all IEP meetings and never indicated that she was dissatisfied with the content of the IEPs prior to the due process hearing.

111. ■■■'s IEPs contained all necessary components mandated by the IDEA and were developed appropriately. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(VIII); 34 C.F.R. § 300.320(a)-(c); 34 C.F.R. § 300.324. Each IEP identified the Communication Domain as a continuing need and included measureable annual goals, short-term objectives, and an evaluation plan. In kindergarten through third grade, Ms. Votaw, a licensed SLP, provided ■■■ appropriate language therapy in a small group setting, observed ■■■ outside the classroom, and regularly sent progress reports to Ms. ■■■ regarding ■■■'s meeting the IEP goals.

112. Ms. Votaw, Ms. Cook, and Principle Campbell all testified that they regularly worked with ██████ to address Petitioner's social needs using role playing and modeling to strengthen ██████'s understanding of socially acceptable behavior. Numerous witnesses testified that ██████ improved peer relationships and ██████'s self-esteem continued to grow each year.

113. In second grade, in addition to addressing ██████'s Communication domain, Respondent added a Curriculum and Learning Environment domain. This newly-added IEP domain included references to data reviewed, how Petitioner's disability impacted instructional time, and annual and short-term goals. Specially designed instruction in language arts for 150 minutes per week was added to the domain which allowed Ms. Hagan to work individually with ██████ to address the language arts shortcomings. Ms. Votaw continued to work with ██████ on improving language skills through language therapy, a service that also addressed ██████'s Curriculum and Learning Environment.

114. Petitioner's third-grade IEP team added an Independent Functioning domain. The Independent Functioning domain also included annual and short-term goals and objectives designed to reduce the frequency of non-verbal reminders ██████ needed to complete a nonpreferred task or assignment.

115. Significantly, the addition of consultative support in Petitioner's third-grade IEP led to the involvement of

Mr. Tagliarini, classroom behavior observations of ██████, modification of Ms. Lareau's classwide behavior plan and the development of a more individualized behavior plan for ██████. Credible testimony and data reports received in evidence established that the individualized behavioral plan improved ██████'s off-task behaviors and ability to work independently. Petitioner failed to credibly rebut Mr. Tagliarini's opinion that ██████'s behavior and social skills were not impeding ██████'s learning to the point that a functional behavior assessment or a formal behavioral intervention plan was necessary. Likewise, ██████ presented no evidence or testimony from any individual trained in behavior analysis to challenge Mr. Tagliarini's opinion that ██████'s behavior plan did not need to be incorporated into ██████'s IEP.

116. Competent substantial evidence established that each year, Petitioner made progress toward meeting the goals set forth in Petitioner's IEPs and earned passing grades. The greater weight of the evidence reflects ██████'s IEPs were designed to provide FAPE and were appropriately implemented. More importantly, ██████ offered no evidence suggesting that the services outlined in the IEPs were not designed to provide an educational benefit or were not consistently provided.

117. Petitioner seeks reimbursement for the costs incurred for tutoring and learning coaches to provide for services that

Petitioner contends were not provided by Respondent. The undersigned concludes that Petitioner is not entitled to reimbursement for those costs. While Petitioner unquestionably had areas of need because of Petitioner's disability, SJCSB remained steadfast in addressing these areas of concern. ■■■■■'s IEPs were properly drafted and modified to address Petitioner's educational needs in the form of revised domains, goals, and services, including one-on-one specialized instruction in language arts in second grade, consultative support in third grade, and several other significant accommodations. As the result of these efforts, ■■■■■ earned passing grades and was progressing towards meeting Sunshine State Standards. Fairly summarized, ■■■■■ has not presented any evidence supporting the contention that SJCSB should be held responsible for reimbursement for past private supplemental services or for future compensatory education.

118. Finally, the undersigned notes that ■■■■■'s current placement, determined by Ms. ■■■■■ without consulting or notifying Petitioner's IEP team, is inadequate, a detraction from Petitioner's IEP, and devoid of any language or social skills services. ■■■■■'s IEP team was not given the opportunity to explore other placement options. While Petitioner may be progressing academically in the current one-on-one environment, there has never been a showing that ■■■■■ requires such a

restrictive setting or that Petitioner is incapable of functioning in a classroom of students.^{10/}

CONCLUSION

Based on the evidence presented, the demeanor and credibility of the witnesses, the Findings of Fact and Conclusions of Law stated above, Petitioner's due process complaint is dismissed.

DONE AND ORDERED this 10th day of May, 2012, in Tallahassee, Leon County, Florida.

S

W. David Watkins
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of May, 2012.

ENDNOTES

^{1/} Ms. Merritt's evaluation reflected that **** had a mild auditory processing disorder, a mild language disorder, and a speech disorder.

2/ Based on concerns raised by Petitioner's mother, Ms. Cook provided lessons on bullying prevention and appropriate responses to all second grade classes. **** was not made a focus of, or singled out in any way in these sessions.

3/ Petitioner's mother first noticed ****'s tics (manifested as tongue biting, production of odd noises, tongue movement and body twitching) during second grade. However, this condition did not impair ****'s attention or apparent ability to function academically in school. There is no credible evidence of record to establish that Petitioner's tics resulted from any action or inaction by SJCSB.

4/ OWLS and TOLD-P3 assess expressive and receptive language abilities.

5/ Ms. ** admitted that if she does not like a professional then she does not respect their opinion(s). Ms. ** liked Ms. Votaw. Ms. ** "hated" Ms. Prevatt and did not like Principal Campbell, Ms. Hodgdon, Ms. Lareau, or Mr. Tagliarini.

6/ There is no evidence in this record that learning coaches are required to be state licensed or certified teachers. However, a state certified teacher does provide the learning coach with a daily teaching plan for the Virtual School student.

7/ Petitioner's mother testified that she was not a teacher and did not feel she could adequately serve as a learning coach. In addition, she is trying to find a job and once she does, she would not be available to serve in that capacity.

8/ This conclusion is consistent with the "Order on Motion to Dismiss" entered by the undersigned in this case on August 23, 2011. Findings of fact relating to earlier time periods are included for purposes of context only.

9/ Petitioner presented no evidence establishing that **** should have been evaluated as suffering from an "Other Health Impairment." Specifically, no evidence or testimony was provided suggesting that some other disability reduced ****'s efficiency in schoolwork and adversely affected ****'s performance in the educational environment to the extent special education and related services were necessary. Fla. Admin. Code. R. 6a-6.030152 (4) (a)-(b). "Other health impairment means having limited strength, vitality or alertness, including a

heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems. This includes, but is not limited to, asthma, attention deficit disorder or attention deficit hyperactivity disorder, Tourette syndrome, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and acquired brain injury." Fla. Admin. Code R. 6A-6.030152(1). ****'s alleged tongue thrusting, tics, and crying did not adversely affect ****'s performance to the extent additional special education and related services outside of what was already being provided were necessary, and these do not meet the definition of an "Other Health Impairment." Lastly, anxiety was not diagnosed until after **** was removed from Wards Creek.

10/ ****'s mother's unilateral decision not to bring Petitioner to the school to receive language therapy is also contrary to what is needed according to ****'s IEP.

COPIES FURNISHED:

Terry Joseph Harmon, Esquire
Sniffen and Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301
tharmon@sniffenlaw.com

Beverly Oviatt Brown, Esquire
Three Rivers Legal Services, Inc.
Suite C
1725 Oakhurst Avenue
Jacksonville, Florida 32208
bev.brown@trls.org

Nancy E. Wright, Esquire
Nancy E. Wright, P.A.
3231 Northwest 47th Place
Gainesville, Florida 32605
newright.law@gmail.com

Lindsey Granger, Program Director

Bureau of Exceptional Education
and Student Services
Department of Education
Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400

Charles M. Deal, General Counsel
Bureau of Exceptional Education
and Student Services
Department of Education
Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Dr. Joseph G. Joyner, Superintendent
St. Johns County School District
40 Orange Street
St. Augustine, Florida 32084

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 90 days in the appropriate federal district court pursuant to section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or

- b) brings a civil action within 90 days in the appropriate state circuit court pursuant to section 1415(i)(2)(A) of the IDEA and section 1003.57(1)(b), Florida Statutes.