STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

PETITIONER,

vs. Case No. 23-3403E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for final hearing held via Zoom conference over the course of 14 non-consecutive days beginning on November 16, 2023, and concluding on September 17, 2024.

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of Record)

For Respondent: Stephanie K. Stewart, Esquire
The School Board of Seminole County, Florida
400 East Lake Mary Boulevard
Sanford, Florida 32773

STATEMENT OF THE ISSUES

Whether the student's individualized education plans (IEPs) developed during the [redacted] and [redacted] school years were reasonably calculated to enable the student to make progress in light of his circumstances; and

Whether the student's IEPs were materially implemented during the [redacted] and [redacted] school years.

PRELIMINARY STATEMENT

The request for a due process hearing (Complaint) was filed with the School Board on September 12, 2023. The School Board filed the Complaint with DOAH on the same date, and a Case Management Order was issued on September 15, 2023. The parties participated in a scheduling conference on October 11, 2023, and agreed to schedule the final hearing for November 16 and 17, and December 14, 2023.

The due process hearing was held via Zoom conference as scheduled. Additional time was needed to complete the hearing, so it was continued to February 2 and 16, 2024. Upon completing the two additional days, more time was needed to complete the hearing, so it was continued to April 5, 29, and 30, 2024. The parties continued to need more time to complete the hearing, so it was continued to June 12, 17, and 19; July 22; August 14; and September 17, 2024.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders 30 days after the School Board filed the Transcript and for the final order to be entered 30 days after the filing of the proposed final orders. The complete Transcript of the due process hearing was filed on October 15, 2024. Proposed final orders were due by November 15, 2024, and the deadline for the Final Order was December 15, 2024. The parties both filed timely Proposed Final Orders, which the undersigned considered in drafting this Final Order.

The identity of witnesses and the exhibits entered into the record are memorialized in the hearing Transcript. 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 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.

FINDINGS OF FACT[1]

1. At the time of the due process hearing, the student was [redacted] years old and attending post-secondary education.

2. The relevant period for this matter is the student's [redacted] and [redacted] school years, encompassing the [redacted] and [redacted] school years.

3. The student was eligible for exceptional student education (ESE) under the categories of Orthopedic Impairment (OI), Language Impairment (LI), and Visual Impairment (VI).

4. Despite facing significant physical disabilities, the student demonstrates remarkable intelligence. Communicating primarily through adaptive technology, the student has mastered complex subjects and excelled in his coursework.

5. The student communicates assisted by an iPad, which he controls using his nose. The student's visual impairment is cerebral and, as such, fluctuates daily. What he may be able to see one day, he may be unable to see the next day. This requires the staff to adapt consistently and for the student to advocate when he cannot see any materials.

6. The student faced significant challenges in accessing education and daily school activities due to his disabilities. While in school, he required extensive support from his one-on-one paraprofessional and ESE teacher. Due to his visual impairment, materials needed to be adapted so that the student could access the content either visually, auditorily, or both.

7. The student began high school at [redacted] ([redacted]) during the [redacted] school year. In the Spring of [redacted], when the COVID-19 pandemic started, the student began to access his [redacted] teachers and course

[1] The Findings of Fact do not refer to every witness who testified, but all testimony and all exhibits entered into the record were considered.

material at home through videoconferencing. This platform was known as "Seminole Connect."

8. During the [redacted] school year, Seminole Connect was available to all students. The student completed his [redacted]-grade year through Seminole Connect. The student had notable achievements while completing his coursework through Seminole Connect, earning more high school credits that year than during any other year of high school.

9. For his [redacted]-grade year, Seminole Connect was no longer an option. All students needed to attend in-person or enroll in one of the School Board's virtual schools.

10. Additionally, during this period, the Governor issued an Executive Order which left the decision to wear facial masks to each parent and prohibited school districts from instituting district-wide mask mandates.

11. In preparation for the student's return to in-person learning, Petitioner's mother sent a letter requesting that everyone who was near the student, including students, wear a mask. Since the student communicates by typing with his nose, wearing a mask was not feasible. In response, the school offered to do the following:

> "The seating chart will be arranged so that the students electing to wear masks will be placed in the area closest to your students and those electing not to wear masks will not be seated within proximity to your student. Student dividers/barriers will be utilized to provide a physical barrier as well. The classes will be reminded of health and safety recommendations, which include the potential benefits of wearing masks. Our employees will continue to wear masks as required. [**] will also transition at times when there are less students in the corridors during class changes."

12. Subsequently, there were several communications back and forth between the family, the school, and district administrators regarding the

denial of the parent's requested accommodation that all students in the classroom must wear a mask.

13. The IEP team met on September 22, [redacted]. By this point, the student had missed about 22 days of school. The purpose of the meeting was to discuss classroom accommodations, review the re-evaluation of the student's vision report, update the IEP, and discuss the student's graduation requirements. During the meeting, [redacted], Compliance Coordinator, discussed the parent choice options available to all parents in place of in-person learning. These options included homeschooling, Seminole County Virtual School (SCVS), and Florida Virtual School (FLVS).

14. At this meeting, the parent presented a physician's letter strongly recommending that all teachers and students wear face masks and that students be spaced at least six feet from any child or staff member who cannot wear a mask. The parent requested information about SCVS and whether the platform had accessible technology. The team did not make any final determinations at the meeting, nor did they finalize the annual IEP.

15. The team met again several times throughout October to finalize the IEP. During the meetings, the parents decided to enroll the student at SCVS, considering the circumstances. The School Board did not choose or recommend SCVS for the student. The School Board's free and appropriate public education (FAPE) offer was for the student to attend [redacted] with accommodations.

16. During the meetings, the team discussed that the platform used by SCVS would not be compatible with the student's iPad because it required a Windows-based device. Still, staff would support access to the curriculum by providing the following: "...large monitor, iPad, a dedicated ESE teacher for support facilitation and accessibility, and a dedicated paraprofessional to support accessibility."

17. The student would also receive support from his vision teacher, [redacted]. Additionally, the student would have two scheduled

in-person classes, Learning Strategies and Reading. The student would be co-enrolled in SCVS and [redacted]. The Learning Strategies class's purpose would be to trial different methods for accessing content and materials more independently and receiving Occupational and Physical Therapy. A designated classroom would provide the in-person services, and everyone in the room would wear masks. Petitioner's mother disagreed with the co-enrollment between both schools.

18. The student began SCVS in late October [redacted]. Accessibility was a significant concern from the start. The student could not independently access coursework on SCVS. When provided with a human reader and enlarged images, the content was more accessible.

19. The images in the SCVS curriculum caused a significant challenge. When the images were enlarged so the student could see them, they were often too pixelated to understand. Staff tried to find alternative images online and would also provide an oral description of the image to the student. The assistive technology specialist, [redacted], went into the student's home to test the technology and trial different ways to provide more accessibility.

20. The student made very little progress on his coursework from Fall [redacted] to Spring [redacted]. This was partly because of accessibility concerns and partly to the student not logging in for his courses regularly. Staff would send daily reminder emails to the student and his mother to remind him to log in to WebEx to receive assistance, yet the student did not log in regularly. Additionally, the student never attended [redacted] to obtain in-person services.

21. An IEP meeting took place on April 6, [redacted], to review the student's progress and address the student's concerns. The school-based team expressed concerns over the student's lack of progress in virtual classes and recommended that the student return to in-person learning or reduce the course load. The student and his family disagreed and requested in-person instruction in the student's home. The school board denied this request.

22. The student's attendance in his virtual courses improved after the April meeting. He logged in regularly throughout April and May [redacted]. Despite regularly logging in, the student completed very little coursework during this period. He was often distracted and preferred to complete riddles with the ESE teacher, [redacted]. The student had made minimal progress by the end of the [redacted] school year.

23. The IEP team met again in May [redacted]. The team agreed that the student would attend in-person summer school to complete an English and Math course. [redacted] served as the student's designated ESE teacher, and the student also received the support of a paraprofessional. [redacted] provided staff training and provided other technology-related support. The student's summer was very successful, earning credits in both courses.

24. The student began his senior year at [redacted] ([redacted]). Before the start of the year, he met with the school administration to discuss the upcoming school year. The guidance counselor and the school administrator reviewed the student's academic progress across various educational platforms, including Plato, the credit recovery system. They assessed the quantity of work completed, the student's progress, and his demonstrated proficiency in those subjects. School policy allows the principal to grant credits if substantial work is completed and proficiency is evident. Based on the review, the administrator approved additional credits for the student, as the work met the required standards. This resulted in the student remaining on track for graduation by the end of the [redacted] school year.

25. The IEP team first met on October 4, [redacted], to update the annual IEP. The team then met about three other times to finalize the plan. Beyond the IEP team meetings, [redacted] met with the student and his mother several times to review the proposed IEP in an accessible format. The proposed IEP was presented to the student on a large monitor so he could read it independently, and [redacted] also presented the IEP orally.

The IEP was finalized on February 8, [redacted]. The student's independent reading skills were a significant point of contention.

26. Most of the educational material was read to him for much of the student's academic history. The student's reading skills and stamina lagged behind his peers. Also, the student did not complete his [redacted]-grade in-person reading class. In an effort to remediate, the parties agreed that the student would receive reading tutoring after school. [redacted] was the student's afterschool tutor. The tutor completed a reading assessment in November [redacted]. The assessment was conducted on an iPad using Achieve 3000, a widely used reading program. That said, [redacted] observed irregularities during the exam. The student's reading pace significantly fluctuated, ranging from very fast to slow, raising concerns about the test's validity. The student received a score of 390, equivalent to a 2nd-grade reading level. Based on [redacted] professional judgment, the score did not accurately reflect the student's reading ability. [redacted] arrived at this conclusion based on the irregularities during the exam and the student's academic history. Given this context, [redacted] began working with him at about an [redacted]-grade reading level and adjusted her instructional path to align with his reading abilities.

27. [redacted] was the student's dedicated ESE teacher during his [redacted] year of high school. She also served as his IEP case manager. [redacted], along with the paraprofessional, accompanied the student to all his classes. They helped the student ensure he could see the materials presented in class and took notes for him. [redacted] also held a separate class with the student. The class contained assistive technology, including a large monitor, an iPad Pro, and an additional iPad Mini. The student received his related services and support from [redacted] and [redacted] in the separate ESE class. [redacted] support during this period focused on preparing the student for post-secondary education by working on his executive functioning skills. For example, [redacted] spent time teaching the

student how to save and retrieve files independently from OneDrive or Google Drive.

28. [redacted] also used the class to help the student complete his assignments and work on his IEP goals. During this first half of the school year, the student either mastered or made improvements on all his IEP goals from the [redacted] IEP. Once the [redacted] IEP was finalized, [redacted] credibly testified that despite the short amount of time, the student made progress on all his goals.

29. The student graduated from [redacted] in the Spring of [redacted]. The preponderance of the evidence established that the School Board materially implemented the student's IEPs and that the IEPs were appropriately designed.

CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 1003.57(1)(c) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

31. The burden of proof is on Petitioner to prove the claims by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1313 (11th Cir. 2003); *Devine v. Indian River Cnty. Sch. Bd.,* 249 F.3d 1289, 1291 (11th Cir. 2001).

32. 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 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, 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).

33. 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).

34. The IDEA defines "special education" as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including [,] instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings…." 20 U.S.C. § 1401(29).

35. 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 to 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 Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (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).

36. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 399. 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*.

37. Petitioner alleged that the IEPs developed during the [redacted] and [redacted] school years were not reasonably calculated to enable him to make progress considering his circumstances. As for the [redacted] school year, the IEP in question outlined the required components—it described his present level of performance, contained measurable goals, and specified his services and accommodations. The student's lack of progress during the school year was unrelated to the design of his IEP. In the several meetings to finalize the IEP, the team, for the most part, agreed with the student's present levels of performance, the goals, and the services.

38. Similarly, the February [redacted] IEP also contained all the required components and was tailored to the student's unique needs. Petitioner did express disagreement with the reading services outlined in the plan, yet the better evidence established that the IEP was reasonably calculated to enable the student to make progress in light of his circumstances. Thus, Petitioner failed to meet his burden of proof. Thus, this claim is denied.

39. Petitioner also alleged that the School Board failed to materially implement the IEPs during the [redacted] and [redacted] school years.

40. 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.

41. 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.*

42. 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.

43. Guided by these principles, the record establishes that the School Board materially implemented both IEPs. During the student's co-enrollment at [redacted] and SCVS, some aspects of the IEP were not implemented. This was largely because the student did not attend in person to access services and did not log in to receive support from his designated ESE teacher. Although SCVS presented notable accessibility challenges, the evidence indicates that the School Board offered multiple accommodations to mitigate these barriers. While fully independent accessibility would have been preferable, the School Board fulfilled its obligation by providing accommodations to ensure the student had access to the curriculum. The better evidence shows that both IEPs were implemented with fidelity during his senior year. The student received the services outlined on his IEP, and he made progress on all of his goals.

44. In sum, Petitioner failed to prove, by a preponderance of the evidence, that the School Board denied the student FAPE during the [redacted] and [redacted] school years.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof with respect to the claims asserted in Petitioner's Complaint. All requests for relief are denied.

DONE AND ORDERED this 12th day of December, 2024, in Miami, Dade County, Florida.

SARA M. MARKEN
Administrative Law Judge
DOAH Miami Office

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32301-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of December, 2024.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Petitioner
(eServed)

Serita D. Beamon, Superintendent
(eServed)

Bryce D. Milton, Educational Program Director
(eServed)

Stephanie K. Stewart, Esquire
(eServed)

William D. Chappell, Acting General Counsel
(eServed)

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).