

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 24-2601E

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

On October 17 and 18, 2024, this cause came before Administrative Law Judge Nicole D. Saunders of the Division of Administrative Hearings (DOAH) for a final hearing held live in Jacksonville, Florida.

APPEARANCES

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

For Respondent: Kelly Hebden Papa, Esquire
 Rebekah Gleason Hope, Esquire
 Office of General Counsel
 117 West Duval Street, Suite 480
 Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

Whether the School Board failed to implement Petitioner's individualized education plan (IEP) from August 15, 2022, through August 8, 2023;

Whether the School Board failed to issue prior written notices (PWNs) regarding the removal of Petitioner's positive behavioral support plan, occupational therapy consultation, language therapy consultation, and long term post-secondary goal to become a bus driver; and, if so, whether such

alleged procedural violations resulted in a denial of a free and appropriate public education (FAPE);

Whether the School Board failed to assess Petitioner's eligibility for emotional/behavioral disability;

Whether the School Board failed to conduct a functional behavioral assessment (FBA);

Whether Petitioner's IEP, dated September 15, 2022, is designed to provide FAPE;

Whether the School Board failed to implement Petitioner's IEP, dated September 15, 2022, during the 2022-2023 school year¹; and lastly,

What remedies, if any, are appropriate.

PRELIMINARY STATEMENT

On July 11, 2024, Petitioner filed a request for due process hearing (Complaint) with the School Board, which the School Board forwarded to DOAH the next day. On July 15, 2024, the undersigned issued a Case Management Order, detailing the deadlines and procedures governing this case. Then, on July 16, 2024, Attorney Hope filed a Notice of Appearance.

On July 22, 2024, the School Board filed a Response to the Complaint and an Uncontested Motion for Extension of Time to Hold Resolution Meeting

¹ The Amended Notice of Hearing issued on October 3, 2024, includes another issue for determination — “[w]hether the School Board failed to implement Petitioner's IEP during the 2021-2022” school year. But during the final hearing, Petitioner's mother orally withdrew that issue and stipulated that the School Board provided Petitioner FAPE until August 15, 2022.

(Motion for Extension). That same day, the undersigned granted the Motion for Extension, giving the parties until August 6, 2024, to complete the resolution session and directing the School Board to file a status report no later than August 6, 2024.

Then, on August 7, 2024, the School Board filed a Notice of Outcome of Resolution Meeting and Motion to Extend Resolution Timelines, which the undersigned granted the same day. On September 3, 2024, the School Board filed a Notice of Impasse, explaining that the parties had yet to hold a resolution session, and requesting a pre-hearing conference. Later that day, the undersigned issued a Notice, setting a telephonic pre-hearing conference for September 11, 2024. The day before the conference was scheduled to occur, Petitioner filed a Response to Respondent's Notice of Impasse.

The telephonic pre-hearing conference occurred as scheduled. During that conference, the parties agreed to hold a live hearing in Duval County, but requested time to confer regarding the hearing dates. Later that day, the undersigned issued an Order, directing the parties to provide mutually agreeable hearing dates no later than September 16, 2024. When the parties failed to timely respond, the undersigned issued an Order Requiring Response, giving the parties until September 19, 2024, to provide hearing dates.

On September 17, 2024, the School Board filed a Status Update, stating that the parties had selected October 16 through 18, 2024.² Thus, on September 19, 2024, the undersigned issued a Notice of Hearing, setting the final hearing for October 17 and 18, 2024.

² The parties later agreed to hold the hearing on October 17 through 18, 2024.

Then, on October 14, 2024, Petitioner's mother filed an Emergency Motion to Quash Subpoena for Testimony and Protective Order to Prohibit Appearance (Motion to Quash), seeking an order barring Petitioner's presence and testimony at the final hearing. A motion hearing was held on the following day. The Motion to Quash was granted without prejudice.

The hearing occurred as scheduled. At the hearing, Petitioner's mother presented testimony on Petitioner's behalf and called one witness—[REDACTED], Petitioner's transition specialist. The undersigned admitted Petitioner's Exhibits 2 through 5; 5a; 6; 7; 9 through 16; 18; 20; 24 through 26; 33, pages 14 through 30; 36; 41; 42, pages 1 through 90; 48; and 50, pages 1 through 93.

The School Board called five witnesses: [REDACTED]; [REDACTED], the Site Coach at Petitioner's high school; [REDACTED], the School Board's School Psychologist Supervisor; [REDACTED], Petitioner's exceptional student education (ESE) teacher; and [REDACTED], ESE Supervisor for the School Board. The undersigned also admitted School Board Exhibits 1 through 3, 5, 6, and 11 through 13.

At the close of evidence, the parties agreed to submit proposed final orders by no later than November 1, 2024; and the undersigned agreed to issue this Final Order no later than November 8, 2024.

On October 29, 2024, the two-volume Transcript was filed with DOAH. Both parties timely submitted proposed final orders, which were considered in preparing this Final Order.

Unless otherwise indicated, rule and statutory references are to the versions in effect when Petitioner filed the Complaint.

For stylistic convenience, this Final Order uses male pronouns when referring to Petitioner. These pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is a ■■■-year-old student who is eligible for ESE services based on a diagnoses of Autism Spectrum Disorder (ASD) and Language Impairment (LI). Historically, Petitioner also received occupational therapy (OT) as a related service. Although Petitioner met the general education graduation requirements in May ■■■, he opted to defer receipt of his diploma; and his diploma remains in deferment. Moreover, because of recent issues involving his mental health, Petitioner's mother is his current legal guardian.

2. While in high school, Petitioner participated in his school's communication and social skills (CSS) program for students with ASD. As part of the program, Petitioner received special instruction in social skills, preparation for adult living, and learning strategies. Petitioner's high school experience was a success. He regularly submitted grade level work, had good attendance, and earned passing grades in his general education classes. He also was a leader in his CSS program. He also served as his high school's mascot.

3. However, along with his successes, Petitioner also experienced challenges. Academically, he struggled to remain organized and manage his time effectively. He also required support facilitation in language and mathematics. Behaviorally, Petitioner, at times, engaged in work refusal and attention-seeking behaviors. To address these challenges, Petitioner received services under various IEPs throughout high school.

4. He also had a Positive Behavior Support Plan (PBSP), which was drafted on May 3, ■■■. The PBSP identified Petitioner's maladaptive behaviors (mostly work refusal). It also noted the antecedents (reprimand or

correction), consequences (delay in activity, positive attention), function (teacher attention), and hypotheses for each behavior. Furthermore, the PBSP included prescribed interventions and a fidelity plan, for ensuring proper implementation. Finally, the PBSP contained a Focus Check to assist Petitioner in self-monitoring his behavior.

5. On September 16, [REDACTED], shortly after Petitioner began his senior year of high school, his IEP team—consisting of Petitioner, his parents, [REDACTED], [REDACTED], and Petitioner’s speech-language pathologist, occupational therapist, and general education teacher—gathered to plan Petitioner’s educational services.

6. The team discussed, among other things, deferral of Petitioner’s diploma, the transfer of his rights under the Individuals with Disabilities Education Act (IDEA) upon his [REDACTED] birthday, and the standard diploma requirements. The School Board provided Petitioner’s parents a copy of the extended transition referral options, an extended transition application packet, a flyer for Vocational Rehabilitation (VR),³ a pre-employment transition services flyer, and a standard diploma requirements academic advisement form.

7. As the school-based members of the IEP team explained, to defer, a student must meet all credit, grade point average, and testing requirements for the standard diploma; and the student must have an IEP in place that prescribes special education and related services through age 21. Upon deferment, the student must enroll in one of the School Board’s five Adult Transition Programs (ATPs).

8. By way of background, ATPs help students with disabilities master transition skills based on their unique level of ability. These programs utilize community-based and classroom instruction, vocational training, community

³ VR is a state program that provides pre-employment skills, training, and support to people with disabilities.

integration, travel or mobility training, functional academic skills development, social skills development, self-advocacy, self-determination skills development, technology skills, and assistance with paying and preparing for the Driver's License Test to successfully transition students into adult living. Upon exiting an ATP, students become VR clients.

9. The School Board offers five ATPs. Frank H. Peterson (FHP) is one of them. FHP has four academic tracks—cosmetology, culinary, automotive, and childcare. Students attending FHP must also participate in the school-based car detailing enterprise, the Flying Eagles Car Wash. Through that program, students learn employability skills.

10. When the IEP team held the September 16, [REDACTED], meeting, Petitioner wanted to attend FHP, though he had not applied or been accepted. However, with Petitioner's desire in mind, the team carefully crafted an IEP to address Petitioner's academic and behavioral needs. The IEP set out Independent Functioning, Communication, Social/Emotional, and Curriculum & Learning goals for Petitioner. Each goal had an end date of September 16, [REDACTED], and required quarterly reporting. At the time of the September 16, [REDACTED], meeting, Petitioner's goal was to obtain a commercial driver's license (CDL) to become a charter bus driver.

11. Then, in February [REDACTED], Petitioner applied to FHP. When he applied, his teacher, [REDACTED], explained to him that FHP did not have a charter bus driver program. Petitioner elected to apply anyway.

12. Two months later, Petitioner's IEP team met again to amend his IEP. The amended IEP reflected changes in Petitioner's present levels of performance and services. It indicated that Petitioner had met graduation requirements and elected to defer receipt of his diploma. It also reflected changes to Petitioner's transportation.

13. Finally, it laid out the special education services Petitioner would receive along with beginning and ending dates: group or individual therapy from September 16, [REDACTED], through September 16, [REDACTED], for 15 minutes

monthly via consultation; instruction in Social Skills from September 16, [REDACTED], through May 26, [REDACTED], twice every grading period via consultation; and instruction in academic/learning strategies from September 16, [REDACTED], through May 26, [REDACTED], via resource pullout twice weekly. Under that IEP, Petitioner also received instruction in replacement behaviors, from September 16, [REDACTED], through May 26, [REDACTED], via resource pullout twice weekly; instruction in organizational skills from September 16, [REDACTED], through May 26, [REDACTED], via resource room pullout twice weekly. Also, to improve his reading and mathematics skills, Petitioner would receive guided practice for reading comprehension and mathematical strategies from September 16, [REDACTED], through May 26, [REDACTED], via resource pullout twice weekly. Finally, the IEP provided Petitioner breaks during assignments, proximity control, and the ability to submit work electronically from September 16, [REDACTED], through September 16, [REDACTED].

14. As reflected above, the IEP team agreed that Petitioner would receive instruction in social skills, academic/learning strategies, replacement behaviors, organization, and reading and mathematics skills only through the end of his senior year of high school. But his access to therapy and ability to submit work electronically carried over to his time at FHP. This was because when the September 16, [REDACTED], IEP meeting occurred, Petitioner had mastered certain skills, such as self-determination, and required less support in those areas. All members of Petitioner's IEP team agreed with the content of the September 16, [REDACTED], IEP.

15. With these services in place, Petitioner completed the first semester of his [REDACTED] year of high school. Then, on April 21, [REDACTED], Petitioner's IEP team met to draft an addendum to his IEP. That addendum extended Petitioner's instruction in functional reading and mathematics strategies through September 16, [REDACTED]. It similarly extended Petitioner's instruction in socially appropriate dialogue and academic/learning strategies through September

16, [REDACTED]. Like the September 16, [REDACTED], IEP, the addendum called for quarterly progress monitoring.

16. In May [REDACTED], Petitioner met the standard diploma graduation requirements; and on July 10, [REDACTED], he was officially accepted into FHP for the [REDACTED] program year. Among other things, his acceptance letter notified him that classes were to start on August 15, [REDACTED]. During the summer of [REDACTED], Petitioner worked two jobs while preparing to attend FHP. Additionally, as the parties stipulated at the final hearing, Petitioner received FAPE through August 15, [REDACTED], the day he started at FHP.

17. However, within days of arriving at the program, Petitioner began to struggle. He failed to timely complete his assignments on Electude, FHP's platform for completing work. He also struggled with his teacher. On August 23, [REDACTED], Petitioner's mother emailed [REDACTED]—the head of FHP's automotive program—informing [REDACTED] of Petitioner's difficulties.

18. About a week later, the School Board issued a meeting participation form, setting an IEP meeting for September 15, [REDACTED]. As noted on the form, the meeting served three purposes: to consider Petitioner's postsecondary and career goals, to identify Petitioner's transition needs, and to update Petitioner's IEP. The day before the scheduled meeting, Petitioner's teacher emailed his mother a rough draft of the proposed IEP.

19. The meeting proceeded as scheduled. Petitioner attended, along with his mother, one of Petitioner's teachers, and [REDACTED]. By that time, Petitioner was still struggling to adjust. He refused to speak to his job coach, struggled to complete assignments, and displayed poor motivation. He was also displaying highs and lows in his temperament and energy levels; at times working hard and other times sleeping in class. Moreover, current and previous observation data noted that Petitioner struggled with coping strategies when dealing with stress. As the evidence presented at hearing showed, these challenges stemmed from various factors. For example, Petitioner's mother testified that Petitioner was disappointed with the

program at FHP while the school-based members of the IEP team noted issues in the home. Despite these issues, the entire IEP team agreed that Petitioner did not require additional evaluations at that time.

20. The September 15, [REDACTED], IEP meeting resulted an IEP that outlined Petitioner's present levels of achievement and functional performance, identified two, measurable postsecondary goals—taking and passing the ASE B2 painting and refinishing certification test; and obtaining a job in the automotive industry within one year of exiting the K-12 system. It also listed the services Petitioner would receive: weekly instruction in social skills, daily instruction in auto maintenance and auto paint and refinishing, and monthly job coaching. It also called for quarterly progress reporting on each of Petitioner's goals and noted Petitioner's least restrictive environment, a regular class.

21. During the meeting, [REDACTED] shared that because of Petitioner's performance up until then, FHP would not support him in obtaining his CDL. Thus, he would need to transition to automotive programming. At this, Petitioner grew upset, shut down, and eventually left the meeting.

22. However, the rest of the IEP team continued the conversation, agreeing that Petitioner would no longer complete automotive modules and would work at a car wash instead. At the final hearing, Petitioner's mother testified that she did not understand or agree with the change in Petitioner's career goal. Yet the record refutes this assertion. For example, following the IEP meeting, Petitioner's mother emailed Petitioner's teacher and [REDACTED], praising the IEP meeting. She wrote:

[REDACTED] and [REDACTED] [.]

Thank you for the opportunity to participate in [Petitioner's] IEP meeting. It was a rocky start, but with your brilliant idea capitalizing on [Petitioner's] desire to be in a leadership role, Duties of Detail Manager saved the day!

As we discussed, please continue to pursue resume building and suggestions for [on-the-job training] in areas of interest (detailing and body shop) “outside” the program walls. I know [Petitioner] will be successful once [he] realizes the opportunities that come with the support you are able to provide in securing employment.

23. Petitioner’s mother also attached documents to the email, showing her guardianship over him. Despite this positive message, the situation quickly deteriorated. Ultimately, September 20, [REDACTED], was Petitioner’s last day at FHP. The next day, Petitioner’s mother emailed [REDACTED], informing her that Petitioner had been experiencing character changes since school began and had missed classes due to his inability to cope. She also shared that Petitioner was in an outpatient facility and would be there for six to eight weeks.

24. A few days later, [REDACTED] responded that FHP would mark Petitioner absent for two weeks. She also informed Petitioner’s mother how to get the absences excused.

25. Over the next few months, Petitioner’s mental health challenges worsened. From September 26, [REDACTED], through October 8, [REDACTED], Petitioner received treatment at [REDACTED]. Then, on October 24, [REDACTED], he was Baker Acted for several days based on a self-report of self-injury. During that visit, he was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder. He was then admitted into a treatment program outside the school district. Petitioner began another extended hospitalization on November 16, [REDACTED].

26. During this time, Petitioner remained outside the school district. He did not attend FHP at all. Unsurprisingly, throughout this time, the School Board could not conduct progress monitoring on Petitioner’s IEP goals. And, while Petitioner’s mother consistently updated the School Board about

Petitioner's ongoing health challenges, she did not inform the School Board that Petitioner was residing outside the school district.

27. Then, on November 30, [REDACTED], Petitioner's mother emailed the School Board again, asking whether Petitioner would remain eligible for the Family Empowerment Scholarship for Unique Abilities (FES-UA) if he opted to receive his diploma. After consulting the Florida Department of Education, a School Board employee replied on December 2, [REDACTED], explaining that upon acceptance of his diploma, Petitioner would be ineligible for the FES-UA.

28. The next business day, Petitioner's mother sent another School Board employee an email with the subject line, "emotional disturbance." In that email, she listed Petitioner's exceptionalities—ASD, LI, and OT—and inquired into the process for updating his IEP to qualify for Social Security Disability Insurance, services with the Agency for Persons with Disabilities, and school re-entry. Later that day, School Psychologist Jamie King wrote back, asking for Petitioner's name and date of birth as well as the hospital to which he had been admitted, and whether he was receiving long-term care.

29. At the final hearing, Petitioner's parent explained that her email entitled "emotional disturbance" establishes her claim that the School Board failed to evaluate Petitioner for an emotional disability. But as School Psychologist King explained at the final hearing, emotional disability is an educational eligibility for a student who has an underlying emotional condition that impacts his or her ability to adequately advance in the educational environment. To determine eligibility for this exceptionality, the School Board must conduct an FBA, collect data on interventions, evaluate the student's symptoms, interview the student, conduct an academic assessment, and examine the student's social developmental history.

30. But these evaluations did not occur as Petitioner was not in the school district at that time. The School Board could have requested that Petitioner's mother return him to the district to conduct appropriate testing. But when Petitioner's mother sent the December 5, [REDACTED], email, Petitioner had not

attended a program within the school district since September [REDACTED], precluding the School Board from collecting more behavioral data. He had also received extensive behavioral supports from the school district for several years. Though Petitioner had been diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder, Petitioner's mother did not include these diagnoses in her email. And, while in October [REDACTED], Petitioner's mother provided heavily redacted medical records about Petitioner's Baker Acts. School Psychologist [REDACTED] credibly testified that there was insufficient information to conduct an evaluation for emotional disability. As such, the greater weight of the evidence shows that the School Board did not fail to evaluate Petitioner for emotional/behavioral disability.

31. After the December [REDACTED] email exchanges, Petitioner continued to experience emotional challenges. He received mental health treatment outside the school district on-and-off through March 25, [REDACTED]. On March 31, [REDACTED], Petitioner's mother emailed [REDACTED], informing her that Petitioner had been discharged from treatment and was returning to Jacksonville. She also inquired into programs Petitioner could attend for job skill development, but cautioned that FHP was not an option. [REDACTED] responded, referring Petitioner's mother to the Florida State College at Jacksonville's Career Connect program. But that program ultimately did not fit Petitioner's needs.

32. During this time, Petitioner remained away from FHP and by the end of the [REDACTED] school year, he had incurred 130 absences.

33. Petitioner's mother emailed [REDACTED] again on June 1, [REDACTED], asking to continue deferment of Petitioner's diploma as he had been readmitted to the hospital. [REDACTED] agreed, but asked whether Petitioner was receiving any transition services and whether the hospital was implementing Petitioner's September 15, [REDACTED], IEP. Petitioner's mother did not respond.

34. At the end of July [REDACTED], Petitioner's mother updated [REDACTED] on Petitioner's progress: he was working at a car wash in South Florida. She also asked whether Petitioner could obtain the FES-AU scholarship to attend

a car wash program there. A few days later, [REDACTED] responded, referring Petitioner's parent to VR and reminding her that for Petitioner to continue deferment, he would need to be enrolled in the school district by October 1, [REDACTED].

35. Then, on August 8, [REDACTED], Petitioner's mother unenrolled him from FHP, and moved him to a homeschool program under the FES-AU. Petitioner's attendance records reveal that he remained homeschooled throughout the [REDACTED] school year. On May 24, [REDACTED], Petitioner's mother inquired into Petitioner's eligibility for IDEA funding under the School Board's Hospital Homebound program. But, when [REDACTED] asked whether Petitioner was in the school district, Petitioner's mother did not reply.

36. Then, on July 11, [REDACTED], Petitioner, through his mother, filed the Complaint. The next month, the School Board asked to reevaluate Petitioner to determine appropriate educational services. Petitioner's mother declined.

37. Ultimately, Petitioner failed to prove the allegations raised in the Complaint by the preponderance of the evidence. Thus, he is not entitled to relief.

CONCLUSIONS OF LAW

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

39. As the party seeking relief, Petitioner bears the burden of proving each issue raised in the Complaint. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

40. Congress passed the IDEA "to ensure that all children with disabilities have available to them [FAPE] that emphasize[s] 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. ex rel. A.C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). In enacting the IDEA, Congress intended to address 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).

41. To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

42. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents can examine their child's records and participate in meetings concerning their child's education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. See 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6). A procedural error does not automatically result in a denial of FAPE. See *G.C. v. Muscogee Cnty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, the school board only denies a student FAPE where the procedural flaw impedes the student's right to FAPE, significantly infringes on the parents' opportunity to participate in the decision-making process, or causes an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

43. Moreover, to satisfy the IDEA's substantive requirements, local school districts must provide all eligible students with FAPE, which is:

[s]pecial 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 section 1414(d) of this title.

See 20 U.S.C. § 1401(9).

44. 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).

45. The components of FAPE are recorded in an IEP, which is “the centerpiece of the statute’s education delivery system for disabled children.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 108 S.Ct. 592 (1988)). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Id.* (quoting *Rowley*, 458 U.S. at 181).

46. At a minimum, an IEP must identify the child’s present levels of academic achievement and functional performance; establish measurable annual goals; address the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and, specify the measurement tools and periodic reports to be used to evaluate the child’s progress. *See* 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. A child’s IEP team must review his or her IEP at least annually. 20 U.S.C. § 1414(d)(4)(A)(i).

47. 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. First, it is necessary to examine whether the school district has complied with the IDEA’s procedural requirements. *Rowley*, 458 U.S. at 206-07. Second, it must be determined whether the IEP developed under the IDEA is reasonably calculated to enable the child to receive educational benefits. *Id.*, at 206-07.

48. 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.” 137 S.Ct. at 999.

49. The IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet each of the educational needs that result from the child’s disability. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(II); *see also Alex R. v. Forrestville Valley Cmty. 12 Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004) (explaining that an IEP must respond to all significant facets of the student’s disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003).

50. Title 34 C.F.R. § 300.43 discusses the provision of transition services under the IDEA. As relevant here, it defines transition services as: a coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes—
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

51. Transition services, such as special instruction, supportive services and related services constitute special education under the IDEA. *See Yankton Sch. District v. Schramm*, 93 F.3d 1369, 1376 (8th Cir. 1996) (“If a student is eligible under IDEA, appropriate services, including transition benefits, shall be provided.”).

52. Additionally, Florida’s K-20 Education Code provides that:

(c) A student with a disability who meets the standard high school diploma requirements . . . may defer the receipt of a standard high school diploma if the student:

1. Has an individual education plan that prescribes special education, transition planning, transition services, or related services through age 21; and

2. Is enrolled in accelerated college credit instruction pursuant to s. 1007.27, industry certification courses that lead to college credit, an early college program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or preapprenticeship program.

§ 1003.4282(5)(c), Fla. Stat.; *see* Fla. Admin. Code. R. 6A-1.09963(6).

53. Thus, as seen above, a student who receives ESE services and defers receipt of his diploma retains his rights under the IDEA. *See id.*

54. Here Petitioner, has raised three procedural and three substantive IDEA claims. This Final Order addresses each type of allegation in turn.

Alleged Procedural Violations

55. Petitioner asserts that the School Board failed to issue PWNs regarding the removal of his positive behavioral support plan, occupational therapy consultation, language therapy consultation, and long term post-secondary goals to become a bus driver.

56. This claim fails. While the School Board concedes that it did not issue PWNs for these changes, Petitioner's mother produced no evidence that this failure impeded Petitioner's right to FAPE, significantly infringed on her opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Instead, the record reveals that the School Board adequately informed Petitioner and his mother of the changes to September 15, [REDACTED], IEP; and Petitioner's mother actively participated before, during, and after the IEP drafting process. Moreover, Petitioner's mother produced no evidence that the failure to issue PWNs resulted in educational harm. As such, Petitioner is not entitled to relief on those issues.

57. The next alleged procedural violation is the failure to assess Petitioner's eligibility for emotional/behavioral disability. This is essentially a Child Find claim. Under the IDEA, Child Find "refers to a school's obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child's parents to confront them with evidence of this need." *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

58. The IDEA sets forth its Child Find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

34 C.F.R. § 300.111(a)(1).

59. To fulfill this requirement, Florida has enacted Florida Administrative Code Rule 6A-6.0331, setting forth a school district's responsibilities to evaluate students suspected of having a disability. Under that rule, school districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. Additionally, districts must ensure that all students with disabilities who need ESE services are identified, located, and evaluated, and FAPE is made available if it is determined that the student meets the eligibility criteria.

60. If the school district suspects the student is a student with a disability and needs special education and related services, it must seek consent from the parent or guardian to conduct a full and individual initial evaluation. Fla. Admin. Code R. 6A-6.0331(3)(a).

61. The Child Find duty extends to "[c]hildren who are suspected of being a child with a disability ... even though they are advancing from grade to grade." 34 C.F.R. § 300.111(c)(1). Moreover, the Child Find provision of the IDEA imposes on states a requirement that "[a]ll children with disabilities residing in the State, ... regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A).

62. In *Durbrow v. Cobb County School District*, 887 F.3d 1182, 1184 (11th Cir. 2018), the Eleventh Circuit held that to trigger a Child Find obligation and potential determination of eligibility, a student with a disability must show: (1) that the disability adversely affects the student's academic performance; and (2) "by reason thereof," the student needs special education. *See* 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(c)(9); *see also Alvin Indep. Sch. Dist. v. Patricia F.*, 503 F.3d 378, 383-84 (5th Cir. 2007).

63. Here, Petitioner's mother argues that the School Board erred when it failed to evaluate Petitioner for an emotional/behavioral disability in response to her December 5, [REDACTED], email. This claim fails for four central reasons. First, Petitioner's mother refused to allow him to be evaluated. And,

the redacted medical documents she produced in October [REDACTED] could not determine Petitioner's need for additional services. Second, at the time of the December 5, [REDACTED], email and for several months afterward, Petitioner was out of the school district. Third, the School Board already possessed significant behavioral data on Petitioner. Fourth, Petitioner was already eligible for special education and thus had access to a full range of ESE services. Therefore, the School Board was not required to evaluate Petitioner for emotional/behavioral disability.

64. Petitioner's next procedural allegation—that the School Board failed to conduct an FBA—fails for similar reasons. By all accounts, Petitioner was absent from the school district during the [REDACTED] school year while he received mental health treatment. Thus, he was unavailable for the School Board to conduct an FBA. Additionally, the School Board previously evaluated Petitioner before drafting his PBSP in [REDACTED]. That evaluation identified Petitioner's maladaptive behaviors, as well as the antecedents, consequences, and functions of those behaviors. Petitioner's mother also produced no evidence that the School Board's failure to conduct an FBA denied Petitioner FAPE. Thus, this claim is denied.

65. Having addressed the alleged procedural violations, this Final Order will now discuss the three substantive violations raised in the Complaint.

Alleged Substantive Violations

66. Petitioner asserts that the School Board failed to implement his IEP during the [REDACTED], school year, including from August 15, [REDACTED], through August 8, [REDACTED].

67. The Eleventh Circuit addressed the issue of implementation for the first time in *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019). In that case, the court outlined the standard for claimants to prevail in a "failure-to-implement case." *Id.* 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.

68. The court provided a few principles to guide the analysis. *Id.* at 1214. First, the court said that the focus in implementation cases should be on the proportion of services mandated to those provided, viewed in the context of the goal and import of the specific service withheld. Thus, the task is to compare the services that are delivered to the services described in the IEP itself. In turn, “courts must consider implementation failures 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.*

69. 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.

70. Here, Petitioner's mother bases her failure to implement arguments on the lack of progress monitoring data collected from August 15, [REDACTED], through August 8, [REDACTED], and during the [REDACTED] school year. This

argument is misplaced. Classes at FHP began on August 15, [REDACTED]. As Petitioner's September 16, [REDACTED], IEP and April 21, [REDACTED], IEP addendum provided, the School Board was required to provide quarterly progress monitoring on Petitioner's goals. Petitioner's last day at FHP was September 20, [REDACTED], just one month after classes began. Therefore, at the time Petitioner stopped attending FHP, his progress monitoring reports were not yet due. Nor did Petitioner enroll in another School Board program during the rest of the [REDACTED] school year, precluding the School Board from implementing his September 15, [REDACTED], IEP. As a result, Petitioner did not establish that the School Board failed to implement his IEPs. Petitioner is, thus, not entitled to relief on this issue.

71. Finally, Petitioner asserts that the IEP drafted on September 15, [REDACTED], is not designed to provide FAPE. This claim also fails. The September 15, [REDACTED], IEP outlined Petitioner's present levels of achievement and functional performance and identified two measurable postsecondary goals. It also outlined the services Petitioner would receive, and noted Petitioner's least restrictive environment. Finally, the IEP established a progress monitoring schedule. In short, the IEP met *Rowley's* requirements while considering Petitioner's need to develop employment skills. Thus, this claim is denied.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that that the Complaint is dismissed, and the relief requested is denied.

DONE AND ORDERED this 7th day of November, 2024, in Tallahassee,
Leon County, Florida.

Case No. 24-2601E

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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).