

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

Case No. 24-3088E

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

A due process hearing was held via Zoom conference on September 17, 2024, with Jessica E. Varn, an Administrative Law Judge with the Division of Administrative Hearings (DOAH), presiding over the hearing.

**APPEARANCES**

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

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

**STATEMENT OF THE ISSUE**

Whether the School Board denied the student a free and appropriate public education (FAPE) by failing to implement the student's individualized education plan (IEP) accommodations in her geometry class.

**PRELIMINARY STATEMENT**

On or about August 19, 2024, Petitioner filed a request for a due process hearing (Complaint) with the School Board. The Complaint was promptly

filed with DOAH, and a Case Management Order was issued reminding the parties of the procedural requirements for a due process hearing.

On August 28, 2024, the School Board filed a Notice of Insufficiency and Motion to Dismiss. A few days later, the undersigned entered an Order of Sufficiency, and denying the School Board's Motion to Dismiss.

On September 3, 2024, a telephonic pre-hearing conference was held, and the parties agreed to schedule the due process hearing on September 17, 2024.

The due process hearing was held as scheduled. Petitioner called two witnesses to testify: [REDACTED], an ESE Case Manager, and the student. The School Board also called [REDACTED] to testify; as well as [REDACTED], Assistant Principal; and [REDACTED], Instructional Program Support Specialist. Petitioner did not place any exhibits on the record; but School Board Exhibits 1 through 5 and 7 through 9 were admitted. Official Recognition was taken of School Board Exhibit 10.

At the end of the hearing, the parties agreed to file proposed final orders 21 days after the filing of the Transcript, and the undersigned agreed to issue this Final Order ten days after the filing of proposed final orders. The Transcript was filed on October 2, 2024. Proposed final orders were due on October 23, 2024. The parties agreed to a short extension of time, and agreed to file proposed final orders on October 28, 2024. The deadline for this Final Order was extended to November 12, 2024. The School Board timely filed a proposed final order, which was considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect during the relevant time period. For stylistic convenience, the undersigned uses female pronouns when referring to the student. The female pronouns are neither intended, nor should be interpreted, as a reference to the student's actual gender.

### FINDINGS OF FACT

1. The student attended [REDACTED], a dedicated magnet school which only offers honors level classes, during the [REDACTED] school year.

2. The student is eligible for exceptional student education services (ESE) under the Specific Learning Disability (SLD) category. Her IEP contains goals for reading and math, with a list of accommodations. Those accommodations are: breaks during assignments and tests; verbal encouragement without cueing answers; repeat and clarify and/or summarize directions; administer tests in a small group; extended time for assignments and tests; and read items aloud to student (except when testing reading).

3. Petitioner presented no credible evidence showing that those accommodations were not implemented in the student's geometry class.

4. Although the School Board did not have the burden of proof, it did provide sufficient evidence to establish that the accommodations were, in fact, implemented. School staff credibly testified that the geometry teacher documented the implementation of the accommodations, and the documentation is consistent with their testimony.

### CONCLUSIONS OF LAW

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

6. Petitioner bears the burden of proof on the issue raised. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

7. The IDEA is a comprehensive federal statutory scheme that governs how states provide special education and related services to children with disabilities. *Sch. Bd. of Miami Dade Cnty. v. C.A.F.*, 194 So. 3d 493, 495 (Fla. 3d DCA 2016). 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, which hinges 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).

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

9. Here, Petitioner has alleged one substantive violation; that is, that the student’s IEP accommodations were not implemented in her geometry class.

As to the issue of implementation of the IEPs, in *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019), the Eleventh Circuit 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.

10. While declining to map out every detail of the implementation standard, the *L.J.* court provided a few principles to guide the analysis. *Id.* at 1214. To begin, the court said that the focus in implementation cases should be on the proportion of services mandated to those 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 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.*

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

We also note that courts should consider implementation as a whole in light of the IEP’s overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though

minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

*Id.* at 1215.

12. In this case, Petitioner presented no persuasive evidence to show that the student was refused her IEP accommodations in geometry class. The evidence presented by the School Board did establish that the accommodations were implemented.

13. Accordingly, Petitioner is not entitled to any relief.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's claim is DENIED and all forms of relief are DENIED.

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

  
Case No. 24-3088E

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JESSICA E. VARN  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of November, 2024.

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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).