STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 17-0705E

BROWARD COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A due process hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH) in Ft. Lauderdale, Florida, on March 30 and 31 and May 12, 2017.

APPEARANCES

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

For Respondent: Susan Jane Hofstetter, Esquire
School Board of Broward County
K. C. Wright Administration Building
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the Individual Education Plan (IEP) developed in January of 2017 was designed to meet the student's reading needs.

## PRELIMINARY STATEMENT

On February 1, 2017, Petitioner filed a request for a due process hearing, challenging the design of the student's IEP developed in January of 2017. On February 14, 2017, a pre-hearing telephone conference was held, wherein the undersigned advised the parties regarding the procedure for the due process hearing and coordinated the date of the due process hearing. A Notice of Hearing was issued on that same date, setting the hearing for March 30 and 31, 2017. The hearing commenced on those dates but was not concluded. By agreement of the parties, the third and final day of the due process hearing was held on May 12, 2017.

During the hearing, Petitioner presented the testimony of [redacted], the student's Exceptional Student Education (ESE) teacher for the last [redacted] school years; the student; [redacted]; [redacted], the Principal of School A; the student's father; and [redacted], ESE Specialist for School A. Petitioner's Exhibits 1 through 22 and A through R were admitted into evidence. The School Board presented the testimony of [redacted], Curriculum and Program Specialist; [redacted], Due Process Coordinator; [redacted]; [redacted]; [redacted], school psychologist; and [redacted], Program Specialist. School Board Exhibits 1 through 4, 10, 13 (pp. 486-487),

23 through 27, 29 through 33, and 39 through 40 were admitted into evidence. Official recognition was taken of 20 U.S.C. § 6368(3) and (6); and Florida Administrative Code Rule 6A-6.053.

At the conclusion of the hearing, the parties agreed to file proposed final orders 21 days after the transcript was filed. The final order was due no later than July 24, 2017. The Transcript was filed on June 12, 2017. On July 3, 2017, the parties timely filed proposed final orders. In Petitioner's proposed final order, several appendices were filed, attempting to present new evidence into the record. These appendices are sua sponte stricken from the record, and were not considered in the preparation of this Final Order.[1/]

During Petitioner's rebuttal at the due process hearing, Petitioner called into question the credibility of [redacted]. [redacted], the ESE classroom teacher who had taught the student for the last [redacted] years and had testified twice at the hearing. Based on Petitioner's belief that [redacted] had successfully impeached [redacted]. [redacted]'s testimony in its entirety, during rebuttal, Petitioner requested compensatory education for [redacted] years, which is the time the student attended School A and was taught by [redacted]. [redacted] in a [redacted] classroom. As this was a new request for compensatory education, and was formulated only after Petitioner had the opportunity to review all of Petitioner's educational records, which were made available to [redacted] during the

course of this due process hearing, the undersigned re-opened the record in this case by Order dated July 19, 2017.

The parties were permitted to introduce any evidence, either with live testimony and/or written arguments, as to the issue of a potential remedy in this case; that is, the issue of compensatory education and the length of time it could span. The School Board elected to file written argument on the remedy issue, and requested 21 days in order to do so. Petitioner objected; over this objection, the undersigned permitted both parties to file written pleadings no later than July 31, 2017. Petitioner filed a written argument as to the appropriate remedy on July 17 and July 31, 2017. The School Board filed its written argument on July 31, 2017. The parties' proposed final orders and written submissions on the limited issue of a potential remedy in this case were considered in preparation of the Final Order. The deadline for the Final Order was extended to August 7, 2017.

Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. For stylistic convenience, the undersigned will use [redacted] pronouns in this Final Order when referring to Petitioner. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

## FINDINGS OF FACT

1. The student in this case is a [redacted]-year-old who is eligible for exceptional student education due to [redacted] ([redacted]), [redacted] ([redacted]), and [redacted] ([redacted]). [redacted] also receives [redacted] as a related service.

2. Due to the severity of [redacted], [redacted] is a complex learner who requires intensive instruction and several accommodations to learn. [redacted] is well [redacted] grade level in all [redacted] areas, struggles to [redacted] and often exhibits [redacted], otherwise known as [redacted], behaviors. The student is instructed using an [redacted] curriculum.

3. For the past [redacted] years, [redacted] has attended the same [redacted] school, and [redacted] placement has been in a [redacted] classroom with only [redacted] other [redacted] students. [redacted] is with non-disabled peers for [redacted], grade level [redacted] such as [redacted], and [redacted]. [redacted] has had the same teacher, [redacted]. [redacted], for all [redacted] years of [redacted] school; [redacted] repeated [redacted] grade this last school year.

4. In [redacted] classroom, there were [redacted] students, some with [redacted] and [redacted] needs, and some [redacted] students.

5. According to all who have taught [redacted] or assessed [redacted], [redacted] is eager to learn, [redacted] likes school, [redacted] is a hard worker,

and [redacted] is teachable. The undersigned notes that during the student's testimony at the hearing, [redacted] repeatedly requested to be [redacted], indicating an eagerness to be there.

6. Petitioner's father credibly testified that the student [redacted] progress in [redacted] reading skills while in [redacted] school. But since entering [redacted] school, where [redacted] has only received instruction from [redacted]. [redacted] for [redacted] years, [redacted] has made [redacted] progress in the different components of reading. The student remains at an [redacted] school level for reading, [redacted] reading levels as when [redacted] entered [redacted] school, despite [redacted] eagerness to learn and [redacted] work ethic.

7. Petitioner's expert witness also provided credible evidence that the student's reading skills ranged from [redacted] to [redacted] grade in different reading areas; notably, [redacted] was at a [redacted] grade or [redacted] in the area of comprehension. Even the School Board characterizes [redacted] reading progress as "[redacted]."[2/]

8. [redacted]. [redacted] explained that because [redacted] was the student's ESE teacher, [redacted] was responsible for developing the student's IEP. [redacted]. [redacted] was tasked with identifying the student's strengths and weaknesses, [redacted] selected the reading goals, [redacted] identified the type of reading instruction the student needed, [redacted] worked on helping the student reach IEP goals, [redacted] administered the reading assessments, and [redacted] tracked the

student's reading progress on [redacted] IEP goals with [redacted] progress reports.

9. During the first two days of hearing, [redacted]. [redacted] testified that [redacted] had made a mistake, or typo, in drafting one of the reading goals on the January 2017 IEP. [redacted] explanation was that [redacted] had placed the student at a [redacted] grade level ([redacted] grade) in terms of [redacted] reading level, when in actuality, [redacted] was reading at a [redacted] grade level ([redacted] grade). [redacted] further explained that the goal was therefore also a mistake, or typo, because it was set for [redacted] grade levels higher ([redacted] grade), rather than drafting the goal to meet [redacted] grade standards, which was more appropriate given the student's pace in learning reading skills.[3/]

10. [redacted]. [redacted] testified a second time on the final day of the hearing, which was held over a month after the first two days of the due process hearing. On [redacted] second attempt to explain the apparent discrepancies in the reading goal on the IEP, [redacted]. [redacted] testified that [redacted] had, upon further review, not made any mistake as to the student's grade level for reading. During the month between hearing dates, [redacted] had suddenly remembered that [redacted] had assessed the student's grade level with several assessments, and that looking at all of the assessments as a whole, the student was actually reading at a [redacted] grade level; therefore, the IEP

goal which was aimed at achieving a [redacted] grade level was indeed appropriate, and not a mistake or typo.[4/]

11. During her second day of testifying, [redacted] also provided a great amount of detail in explaining the [redacted] IEP data sheets [redacted] utilized to track the student's progress on [redacted] various IEP goals. [redacted] enthusiastically noted that [redacted] either took the data while [redacted] was working with the student, or would complete the sheet during lunch period, or at the end of a school day. At the latest, [redacted] would be sure to complete the sheets by the following day. An "I" indicated that the student had completed a task independently, and "V" signified that the student had needed verbal prompting to complete the task. The (+) and (-) symbols were used to denote whether the task was completed or not.[5/]

12. Upon review of the school calendars for the last [redacted] years, which mark holidays, as well as weekdays when school was closed, coupled with credible information provided by Petitioner as to dates when the student was on vacation or school was cancelled due to a hurricane warning, it is evident that [redacted]. [redacted]'s data sheets are inaccurate. Among the data sheets that were entered into evidence, a minimum of [redacted] entries were completely false.[6/]

13. These false entries date back to the fall of 2013, and include weekend days, days when the school was closed due to teacher planning days, days when the student was on vacation, and

days when the school was unexpectedly closed for a hurricane warning. These IEP data sheets, cast in the most favorable light, could be characterized as careless mistakes; or, cast in the least favorable light, the false data sheets could be seen as a deliberate attempt to mislead the parents of a [redacted] disabled student, who is incapable of [redacted] with ease. Without passing judgment on [redacted]'s intent, the evidence clearly showed that the IEP data sheets contain false information.

14. [redacted]'s testimony, in its entirety, was disjointed, inconsistent and not credible. As would be expected, the remainder of the School Board's witnesses based their professional opinions and their actions or inaction on what [redacted], the student's teacher, reported to them. Sadly, because the other professionals relied on [redacted]'s veracity, no action was ever taken to address the student's [redacted] in reading.

15. [redacted], the ESE Specialist for School A, oversees the ESE services provided at School A. [redacted] deferred entirely to [redacted] on how the IEP reading goals were drafted, which programs were utilized to coordinate the student's curriculum, and on how the student was progressing on [redacted] IEP reading goals. [redacted] never indicated that the student was making [redacted]; therefore, [redacted] never became aware

that [redacted]. [redacted] needed more support or that there was ever a need for a change to the IEP reading goals.

16. [redacted]. [redacted], a Curriculum and Instruction Specialist for the ESE department for the School Board of Broward County, testified regarding the scope of reading programs available for ESE students. [redacted] deferred to [redacted]. [redacted], as the student's classroom ESE teacher, on which programs were selected to meet the student's reading needs, and relied on [redacted]. [redacted] to indicate that the student was [redacted] reading progress in order to intervene on behalf of the student. [redacted]. [redacted] never informed [redacted]. [redacted] that the student was [redacted] in [redacted] reading skills; therefore, [redacted]. [redacted] never reviewed the effectiveness of the student's reading curriculum.

17. Similarly, [redacted]. [redacted] explained during [redacted] testimony that classroom teachers, in this case, [redacted]. [redacted], draft the IEP reading goals, select the different reading programs to be used for a student's curriculum, administer reading assessments, track a student's reading progress, and report the gathered information to the parents.

18. Finally, [redacted]. [redacted], a Program Specialist for the School Board of Broward County, also agreed that the classroom teacher, [redacted]. [redacted], is charged with determining, based on the assessments of [redacted] students, which instructional methodology would be most effective in meeting a student's reading needs.

19. As all the School Board witnesses agreed, [redacted]. [redacted] was responsible for teaching the student, tracking [redacted] reading progress, assessing [redacted] reading levels, identifying [redacted] strengths and weaknesses, and developing the reading goals on the IEP. The IEP reading goals were based entirely on the truthfulness of [redacted]. [redacted]'s records. Since the reading goals were all designed utilizing unreliable information, the design of the IEP as it pertains to the student's reading needs is by default not calculated to address the student's actual reading needs.

20. Petitioner also brought forth credible evidence that the student was not provided with sufficient accommodations to decrease [redacted] and [redacted] [redacted] in the classroom. Again, [redacted]. [redacted] is the only witness who could testify as to the actual accommodations that were utilized to facilitate the student's learning. Since [redacted] testimony is found to be lacking in credibility, the undersigned is not persuaded that necessary accommodations to decrease [redacted] and [redacted] [redacted] were in fact implemented, or that a [redacted] [redacted] was ever employed with fidelity.

21. Based on the evidence, the undersigned is left wondering whether any of the IEP reading goals, which were drafted for the last [redacted] years based on potentially more false records, were ever designed to meet the educational needs of the student, whether they were faithfully implemented, and whether

the reading assessments were true measures of the student's abilities. Given the lack of credibility of the sole classroom teacher for the last [redacted] years, the remaining School Board witnesses (who deferred to [redacted]. [redacted] on all matters of substance) and documentary evidence (authored entirely by [redacted]. [redacted], or completed based on [redacted] direction or [redacted] input), the evidence in this case is not persuasive and falls short of establishing that the IEP goals were reasonably calculated to meet the reading needs of this student.

CONCLUSIONS OF LAW

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

23. Petitioner bears the burden of proof with respect to each of the issues raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005)("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.").

24. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] 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 is 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).

25. Parents and children with disabilities are accorded 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 are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

26. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school

system has provided a child with FAPE. First, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Id. at 206-07. A procedural error does not automatically result in a denial of FAPE. G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to a FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 (2d Cir. 2012); Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

27. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with a 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).

28. The central mechanism by which the IDEA ensures a FAPE for each child is the development and implementation of an IEP. 20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of

Educ., 471 U.S. 359, 368 (1985) ("The modus operandi of the [IDEA] is the . . . IEP.")(internal quotation marks omitted). The IEP must be developed in accordance with the procedures laid out in the IDEA, and must be "reasonably calculated to enable the child to receive educational benefits." Bd. of Educ. v. Rowley, 458 U.S. 176, 207 (1982).[7/]

29. In assessing an IEP's substantive adequacy, deference should be accorded to the reasonable opinions of the educators. Sch. Dist. of Wisc. Dells v. Z.S., 295 F.3d 671, 676-77 (7th Cir. 2002) ("Administrative law judges . . . who hear IDEA cases are, we grant, specialists . . . and are not required to accept supinely whatever school officials testify to. But they have to give that testimony due weight."). Here, the educators' opinions were based on [redacted]. [redacted]'s veracity, and on [redacted] accuracy in keeping educational records on the student's progress. Since the records contain false information, and [redacted]. [redacted] is found to be lacking in credibility, the undersigned gives no weight to the testimony of any of the School Board's witnesses as to the adequacy of the IEP.

30. Lacking credible evidence based on educator opinion, a student's lack of progress can also be an important factor in determining whether a challenged IEP was reasonably calculated to confer some educational benefit. M.S. v. Fairfax Cnty. Sch. Bd., 553 F.3d 315, 326-27 (4th Cir. 2009); see also Lexington Cnty.

Sch. Dist. One v. Frazier, 2011 U.S. Dist. LEXIS 107813, *23-24 (D.S.C. Sept. 22, 2011) (citing M.S. for the proposition that "progress or lack thereof" is a factor in determining educational benefit). Here, the student is certainly challenged by [redacted]; however, [redacted] is teachable, [redacted] is a hard worker, and [redacted] does not suffer from an [redacted]. For [redacted] years of [redacted] school, with the same ESE teacher for all [redacted] years, [redacted] has essentially remained [redacted] in [redacted] reading progress.

31. Based on the totality of the evidence, the undersigned is not convinced that the reading goals on the IEP were properly designed to meet the student's educational needs. [redacted]. [redacted] developed the IEP, and [redacted] sadly lost [redacted] credibility when creating false educational records. Absent from this record is independent evidence supporting [redacted]. [redacted]'s rendition of the student's reading progress, [redacted] actual reading abilities, and [redacted] reading assessment results. The data taken to support the student's reading needs and reading progress was proven to be false, the teacher's testimony was not credible, and the student has made [redacted] in [redacted] years of [redacted] school.

32. Further, credible testimony was presented by the father and [redacted] expert witness establishing that the student made [redacted] in reading after [redacted] years of [redacted] school, despite the student's eagerness to learn, [redacted] capacity to learn, and [redacted] work ethic.

33. The undersigned also cannot find with any certainty that the student's [redacted] issues, both [redacted] and [redacted], were properly minimized in order to facilitate reading, given that the only direct evidence establishing that the [redacted] was utilized came from [redacted]. [redacted]. The [redacted]'s testimony that the [redacted] issues were never properly addressed is credited as true, and is uncontroverted.

34. The School Board therefore denied this student FAPE for the last [redacted] years, and the student is entitled to compensatory education.

35. In calculating an award of compensatory education, the undersigned is guided by Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 523 (D.C. Cir. 2005), wherein the D.C. Circuit emphasized that IDEA relief depends on equitable considerations, stating, "in every case . . . the inquiry must be fact specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." Id. at 524. The court further observed that its "flexible approach will produce different results in different cases depending on the child's needs." Id. at 524.

36. This qualitative approach has been adopted by the Sixth Circuit and a number of federal district courts. See Bd. of

Educ. v. L.M., 478 F.3d 307, 316 (6th Cir. 2007) ("We agree with the district court . . . that a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the child's] educational problems successfully."); Petrina W. v. City of Chicago Pub. Sch. Dist., 2009 U.S. Dist. LEXIS 116223, *11 (N.D. Ill. Dec. 10, 2009) ("Because a flexible, individualized approach is more consonant with the aim of the IDEA . . . this Court finds such an approach more persuasive than the Third Circuit's formulaic method"); Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007) (holding that, in formulating a compensatory education award, "the Court must consider all relevant factors and use a flexible approach to address the individual child's needs with a qualitative, rather than quantitative focus"), aff'd, 518 F.3d 1275 (11th Cir. 2008); Barr-Rhoderick v. Bd. of Educ., 2006 U.S. Dist. LEXIS 72526, *83-84 (D.N.M. Apr. 3, 2006) (holding that an award of compensatory education "must be specifically tailored" and "cannot be reduced to a simple, hour-for-hour formula"); Sammons v. Polk Cnty. Sch. Bd., 2005 U.S. Dist. LEXIS 45838, *21-22 (M.D. Fla. Oct. 7, 2005) (adopting Reid's qualitative approach).

37. As to how far back in time the undersigned is permitted to award compensatory education, the Court in G.L. v. Ligonier

Valley School District Authority, 802 F.3d 601, 620-21 (3d Cir. 2015) explained that 20 U.S.C. § 1415(b)(6)(B) and 20 U.S.C. § 1415(f)(3)(C) create a two-year limitations period for filing a due process complaint from the date a parent knew or should have known of IDEA violation, but that these provisions do not limit the period to be considered for compensatory remedy for cases filed within the limitation period. The Court stated that once a violation is reasonably discovered by the parent, any claim for that violation, however far back it dates, must be filed within two years of the date a parent "knew or should have known" of the violation. If the claim is not filed within those two years, all but the most recent two years before the filing of the complaint will be time-barred. If it is timely filed, then, upon a finding of liability, the entire period of the violation should be remedied. In other words, § 1415(f)(3)(C), like its synopsis in § 1415(b)(6)(B), reflects a traditional statute of limitations.

38. Guided by the above-stated principles, and given that reading skills permeate every academic subject, including mathematics, for every single day of a student's academic year, Petitioner is entitled to [redacted] years of compensatory education, including ESY services. These [redacted] years are calculated based on the number of years the student was educated in [redacted]. [redacted]'s [redacted] classroom, which amounted to [redacted] years of [redacted] school.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board of Broward County denied this student a FAPE by failing to design an IEP that was reasonably calculated to provide the student with educational benefit; specifically, the IEP failed to address the student's reading needs. Petitioner is entitled to [redacted] years of compensatory education, including ESY services. All other requests for relief are denied.

DONE AND ORDERED this 3rd day of August, 2017, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of August, 2017.

ENDNOTES

[1/] During the due process hearing, Petitioner indicated [redacted] intent to file appendices to [redacted] proposed order; the undersigned made it clear that additional documentation would not be considered if it was not properly placed into evidence during the course of the due process hearing. (Tr. p.366: lines 4-12).

[2/] School Board's Proposed Final Order, p. 24.

[3/] Q: So basically [redacted] reading now barely your [redacted] result at [redacted] and you want [redacted] next year to read at [redacted], is this my understanding real?

A: [redacted] don't know. That's—-[redacted] wouldn't have jumped [redacted] up, that must have been a mistake on my part. [redacted] don't think [redacted] would have jumped [redacted] a whole [redacted] years being that [redacted] know it took [redacted] [redacted] years to move up one level.

Q: Okay.

A: So that could have been a mistake which would be very easy to be fixed at the time of the IEP. (Tr. p.82: 12-21)

Q: When you measure something, don't [redacted] need a baseline? To measure something you need a start point or measure line, right?

A: Right.

Q: What would your baseline be here?

A: My baseline was that on [redacted] grade level that [redacted] only had the [redacted] grade. I do think that's a typo either way—

Q: Okay.

A: --so if it would have been done appropriately, it [the reading goal] would have been [redacted] grade level with [redacted] percent accuracy. It would have been that [redacted] was going to now be able to pass those words on a [redacted] grade level. (Tr. 83-84: 20-25, 1-10).

[4/] Q: With regard to this first annual goal, [redacted] had previously testified that there was a typo on the grade level based on the [redacted], [redacted] think it's [redacted] grade level, you see that?

A: Uh-huh. Right.
Q: Can you talk about the data again and see if in fact the [redacted] grade level is correct?

A: [redacted] grade level is correct. [redacted] think it was when [redacted] were asking me the question, [redacted] not really sure, [redacted] think [redacted] was answering on the [redacted] itself. Collaboration of all of this testing would be a target point of [redacted] grade is where [redacted] –-

[redacted] would make sure [redacted] spelling would be and decoding would be at the [redacted] grade. [redacted] spelling, [redacted], decoding is [redacted] grade.

Q: So your previous testimony had been that that was a typo, but now based on review of all the assessments—-

A: Yeah, it wasn't just based on the [redacted]. If [redacted] was looking just at the [redacted], then that would have been a typo, but it's not a typo. That's [redacted] level. (Tr. 701-702: 11-25, 1-6).

[5/] The School Board did not seek admission of the daily IEP data sheets into evidence, despite having the opportunity to do so when [redacted]. [redacted] testified.

[6/] Petitioner Exhibits A through N.

[7/] On March 22, 2017, (after the instant Complaint was filed) the United States Supreme Court readdressed this prong, finding that a school board must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. Endrew F. v. Douglas Cty. Sch. Bd., 137 S. Ct. 988, 991 (2017). Given that this is a substantive change to the legal standard, it is not applicable to the instant case, which was filed prior to the decision being issued. Assuming, arguendo, that it is applicable, applying the facts of this case to the Endrew standard would result in the same outcome.

[8/] Petitioner also requested that the undersigned find that the [redacted], one of a handful of programs which was used to instruct the student, is deficient. The undersigned need not reach that issue to resolve this case; however, the undersigned reiterates the well-settled proposition that school districts are granted much leeway in selecting educational methodologies.

COPIES FURNISHED:

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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).