STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 17-1502E

ST. JOHNS COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on September 26 and November 8, 2017, in St. Johns, Florida.

APPEARANCES

For Petitioner: Petitioner
(Address of record)

For Respondent: Terry Joseph Harmon, Esquire
Sniffen & Spellman, P.A.
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Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the School Board violated the Individuals with Disabilities Education Act (IDEA) and failed to provide the Student a free appropriate public education (FAPE) by failing to develop an appropriate Individual

Education Plan (IEP) placement in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

On March 10, 2017, Petitioner filed a Due Process Complaint (Complaint) against Respondent St. Johns County School Board. That same day, Respondent forwarded the Complaint to DOAH.

At the final hearing, Petitioner testified on [redacted] own behalf and offered the testimony of the parent. Additionally, Petitioner offered exhibits numbered 1 through 6, which were admitted into evidence. Respondent presented the testimony of 10 witnesses and offered exhibits numbered 1 through 41, which were admitted into evidence.

At the conclusion of the final hearing, a discussion with the parties occurred regarding the post-hearing schedule for filing proposed final orders. Based on those discussions, it was determined that proposed final orders should be filed on or before December 22, 2017, with the final order to follow by January 22, 2018. An amended Order memorializing these deadlines was entered on November 20, 2017. The post-hearing schedule was extended at the request of the parties by Order Extending Deadlines for Proposed Orders and Final Order dated December 18, 2017, with the proposed final orders to be filed on or before January 22, 2018, and the final order to follow by February 19, 2018.

After the hearing, Petitioner timely filed a Proposed Final Order on January 22, 2018. Likewise, Respondent filed a Proposed Final Order on the same date. To the extent relevant, the filed proposed orders were considered in preparing this Final Order.

Further, in this Final Order, unless otherwise indicated, all rule and statutory references are to the version in effect at the time the subject IEP was drafted. Additionally, for stylistic convenience, [redacted] pronouns in the Final Order will be used when referring to the Student. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to the Student's gender.

FINDINGS OF FACT

1. At the time of the final hearing, Petitioner was a [redacted] year-old student. [redacted] was not enrolled in the St. Johns County School District (District). Previously, around the start of the [redacted] school year, on August 10, 2016, the Student was enrolled in the District at School A for [redacted]. At that time, the Student was new to the District, was not an exceptional education student, and did not have an exceptional student education (ESE) or 504 plan. Additionally, at the time of enrollment, and even though the parent was very aware of the Student's [redacted] and [redacted] behavior at home and in [redacted] ([redacted]) prior to enrollment in the District, the parent did not indicate on the Student's enrollment

forms, or to school staff, that the Student had [redacted], which impacted [redacted] education.

2. In that regard, the evidence showed that the Student was [redacted], but evinced a variety of [redacted] behaviors, including [redacted]; [redacted]; [redacted], including [redacted]. As indicated, the Student engaged in such behavior prior to [redacted] enrollment at school and, as described below, engaged in such behavior after [redacted] enrollment in Respondent's school. The better evidence also demonstrated that the Student was [redacted] by others.

3. Currently, the Student is properly identified as an ESE student, under the [redacted] ([redacted]) exceptionality category, having been determined to be eligible on [redacted].

4. On August 10, 2016, the Student began [redacted] of [redacted] in a general education class taught by a qualified teacher with one paraprofessional in the classroom. The class consisted of [redacted] students for whom the teacher implemented a class-wide positive behavior plan.

5. At first, the Student behaved [redacted] in class with [redacted] behavior. However, within a [redacted] of the start of school, the Student's behavior [redacted] towards the behaviors outlined above. As a consequence, the teacher created an individualized positive behavior plan for the Student.

6. The plan was placed on the [redacted] during class and was implemented throughout the day. However, the Student continued to [redacted] the class and [redacted] the general education environment of the class by frequently being [redacted], using [redacted], [redacted] [redacted] at others, [redacted] the classroom, [redacted] students' desks, and [redacted] students. At multiple times throughout the day, the teacher and the paraprofessional redirected the Student in the classroom in an attempt to keep [redacted] from [redacted] and [redacted] students. They also had to stop teaching and attempt to [redacted] the Student to [redacted] or [redacted] the Student from [redacted]. Such behavior was [redacted] and eventually became [redacted]. The evidence demonstrated that the Student's behavior significantly interfered with the ability of the other students to learn, as well as significantly endangered their safety.

7. Due to the Student's behavior, during the [redacted] week of school, on August 16, 2016, the school moved to the next step in the educational process and created a Tier 2 behavior plan to

address the Student's [redacted] and [redacted]. The school psychologist completed an appropriate peer comparison document to provide data for creation of the Tier 2 behavior plan. The peer comparison document compared the Student's behavior to other grade-level peers. The comparison document reflected that, as of August 16, 2016, the Student had almost [redacted] the number of referrals compared to every other student in [redacted], combined. The data clearly supported the need for the Tier 2 behavior plan that was developed for the Student.

8. After the behavior plan was implemented, the school worked with the parent on various accommodations, including [redacted] the Student's [redacted] to allow the Student to [redacted] at optimal times, engaging in [redacted], a systematic approach to teaching a child through repetition of desired, appropriate replacement behaviors, and providing [redacted] throughout the day. Additionally, the school continued to monitor and collect data on the Student's behavior. Towards that end, the teacher prepared various appropriate ABC behavior data sheets throughout August of 2016.

9. On August 24, 2016, the teacher also completed a formal classroom observation document, identifying [redacted] behavior [redacted] with the Student in class. [redacted] data after [redacted] redirections was also recorded in August of 2016.

The data reflected the Student continued to be [redacted] to [redacted] times per day.

10. On August 25, 2016, the school psychologist completed a formal classroom observation. The school psychologist observed the Student [redacted], use a [redacted] as a [redacted], and [redacted] the classroom pretending to [redacted]. The psychologist also observed the Student use [redacted] to make a [redacted] at a friend, [redacted] students [redacted] students' [redacted] on the [redacted] from [redacted], and [redacted] the classroom [redacted].

11. On September 6, 2016, because of the Student's ongoing behavior [redacted], the Student's Response to Intervention (RTI) team met to discuss progress on [redacted] Tier 2 behavior plan. Data reflected that the Student continued to display [redacted] behavior [redacted] to [redacted] times per day. Data further reflected that the Student did not make progress with [redacted] and [redacted], was not performing academically, and was suspended [redacted] for [redacted] staff and peers.

12. As a result of the Student's continued [redacted] behaviors, the RTI team appropriately moved to the next step in the educational process and developed Tier 3 interventions for the Student. The interventions included the development of a Functional Behavioral Assessment (FBA) and formal Behavior Intervention Plan (BIP) to address the Student's [redacted]

and [redacted]. The BIP, among other interventions, included several appropriate interventions for the Student, including [redacted], [redacted] with various tasks, [redacted] meetings with a guidance counselor, and [redacted].

13. An ESE teacher also worked with the Student at School A and implemented the BIP. The ESE teacher worked with the Student in small group settings and during other parts of the day. The ESE teacher, among other things, [redacted] and provided [redacted] to help the Student to [redacted].

14. The evidence demonstrated that the Student's FBA and BIP were appropriately implemented by school staff. The interventions used by staff caused minor improvement in the Student's behaviors. However, the Student's behavior continued to be [redacted] to the classroom environment and impaired the learning of both the Student and others. The parent was aware of the Student's behavior and admitted the Student demonstrated [redacted], [redacted]; did not [redacted]; and was suspended [redacted] times for [redacted] behavior.

15. On September 8, 2016, the ESE behavior specialist conducted an in-class observation of the Student. During the observation, the Student was [redacted] percent of the time and was [redacted] others [redacted] times. The ESE behavior specialist suggested that the teacher meet with

administration to determine if a [redacted] should be called after [redacted] for the safety of other students. Paraprofessionals also raised concerns to the school principal about the Student [redacted] them.

16. Data sheets regarding the Student's behaviors were completed in September and reflected the Student's ongoing [redacted] behavior. Data reflected the Student, even though [redacted] supervised, engaged in [redacted] behavior [redacted] to [redacted] times per day and was [redacted] other students multiple times per day, on a daily basis. The evidence also demonstrated that the Student was not [redacted] due to [redacted] behavior in school.

17. On September 28, 2016, the RTI team met and appropriately determined that the Student was not making adequate progress and needed to intensify [redacted] behavior plan. The RTI team recommended that the Student be considered for ESE eligibility and consent to evaluate was sought from the parent.

18. On September 29, 2016, the Student [redacted] of a student and [redacted] the student [redacted].

19. On October 4, 2016, the parent consented to the school conducting a formal evaluation under the IDEA.

20. On October 10, 2016, the school's principal conducted a formal classroom observation of the Student. Because the Student could not [redacted] for more than [redacted] and was

[redacted] other students, the observation took place in a [redacted] [redacted] room. During the observation, the Student was [redacted], [redacted], and [redacted] appropriate [redacted] with peers.

21. In October 2016, the school psychologist timely completed an evaluation of the Student, including review of the Student's RTI and behavioral data, as well as parent, teacher, and paraprofessional completion of the Behavior Assessment System for Children (BASC). During the evaluation, the parent disclosed that within the past year, the Student was [redacted], exhibited [redacted], [redacted], [redacted], [redacted], a need for a lot of [redacted], a [redacted], [redacted], frequent peer and family [redacted], and a [redacted] to [redacted]. The parent also disclosed that the parent was concerned about the [redacted], including [redacted], around the Student outside of school. The results of the BASC uniformly placed the Student's [redacted] in the "[redacted]" range.

22. On October 18, 2016, the Student [redacted] a student to the [redacted].

23. On November 2 and 15, 2016, the IEP team met to create the Student's initial IEP. The team was comprised of appropriate personnel and included the parents, one of whom attended by telephone. The team also included a representative from

School B, a regular general education school with some small group, specialized educational classes for students with serious behavior issues, [redacted].

24. During the meeting, a [redacted] document was prepared by a multidisciplinary team, agreed to by the parent, and was presented at the meeting. The document outlined the steps taken by the school prior to an ESE eligibility determination and the evidence on which an ESE eligibility determination was being found. Additionally, both the parents and the Student's teachers expressed concerns about the Student's [redacted] and [redacted] behaviors. Data reflected that [redacted] incidences occurred an average of [redacted] times per [redacted]. Concern was also expressed by both the parent and the teachers that the Student's [redacted] would be [redacted] due to behaviorally caused [redacted] in the classroom.

25. The evaluation completed by the school psychologist was reviewed and discussed at the meeting. The team determined that School A had exhausted all the resources it had for the Student and the representative from School B described a specialized behavior classroom at School B that the evidence showed was [redacted] and could provide more resources and behavioral support to the Student in an attempt to [redacted] the Student's behavior.

26. The parents were adamantly opposed to placement at School B and were uncomfortable making decisions regarding School B without first visiting the [redacted]. As indicated, the meeting did not finish and was continued to November 15, 2016.

27. In the interim, on November 4, 2016, the Student [redacted] a student with [redacted]. On November 8, 2016, the Student [redacted] a paraprofessional [redacted].

28. On November 15, 2016, the IEP team reconvened after one of the parents visited School B. The IEP team discussed the Student's progress since November 2, 2016, and recommended that the Student's educational needs be met within the specialized behavioral classroom at School B. The parents were not in agreement with placement at School B. However, as an alternative, and because this was the Student's initial IEP and the Student [redacted], the IEP team agreed to keep the Student in the general education setting at School A until December 16, 2016, to provide ESE supports and see how the Student responded.

29. The IEP team agreed to meet again at the [redacted] of that [redacted] to discuss the Student's progress. Thus, the Student's November 15, 2016, IEP, placed the Student in the general education setting located at School A with [redacted] minutes spent with nondisabled peers. However, the IEP also noted that the Student continued to have [redacted] behavior; [redacted] of [redacted], [redacted], and [redacted]; required

[redacted] support from adults; [redacted] when [redacted] inside and outside the classroom; and [redacted] for the [redacted] of the Student's day for safety.

30. The IEP also noted that the Student required behavioral supports and a [redacted]. Because of these needs, the IEP provided [redacted] adult supervision for safety on school campus; [redacted] from an ESE teacher in [redacted] and [redacted]; appropriate and individualized present levels of performance goals; and specially designed instruction with supplementary aids, services, and accommodations. The parent consented to trial placement in the general education class at School A on November 15, 2016. The evidence demonstrated that, under the facts of this case, such a trial placement was appropriate for the Student and offered the Student an opportunity to progress in the general education setting at School A.

31. On December 7, 2016, the Student's IEP was amended to add [redacted] as a support service.

32. Between November 15, 2016, and December 16, 2016, the clear evidence demonstrated that the Student continued to [redacted] class instruction for [redacted] and other students and that [redacted] was made by the Student during this time. The Student also was [redacted] to [redacted] and [redacted] [redacted] at home. The evidence demonstrated that the Student's behavioral issues

were impeding [redacted] ability to function within the general classroom setting in a large group. Indeed, over the four weeks preceding December 16th, the Student averaged [redacted] of [redacted]. The clear evidence demonstrated that the Student needed a small group specialized behavioral classroom like the classroom at School B.

33. On December 16, 2016, an IEP team meeting was held to discuss the Student's progress since November 15, 2016. The evidence demonstrated, and the IEP team appropriately concluded, that the Student's behaviors [redacted] impacted [redacted] ability to access his curriculum within the general classroom setting. The evidence also demonstrated, and the IEP team appropriately recommended, that the Student be placed in a specialized behavior program at School B on January 5, 2017, after the winter break. The placement included [redacted] out of [redacted] minutes with nondisabled peers. The IEP also included appropriate [redacted] instruction in the areas of [redacted], and [redacted] skills. The evidence demonstrated that the placement was needed by the Student in order to progress in school and that such placement and IEP provided FAPE to the Student.[1/] The parent consented to placement in the specialized behavior program at School B.

34. School B is a regular [redacted] school that also has specialized behavior classrooms for students needing intensive behavioral supports whose behaviors impede their ability to be successful in the general education environment. The School has [redacted] specialized behavior classrooms for [redacted] through [redacted] grade and grades [redacted] through [redacted]. Each class consists of small groups with approximately [redacted] to [redacted] students. A primary goal of School B's specialized behavior units is to help students return to the mainstream, regular classroom.

35. School B also has a de-escalation room that is [redacted] the two specialized behavior classrooms. The de-escalation room is bare and used to help students calm themselves in private when they are internalizing or externalizing behaviors. The room is kept empty for safety reasons, since students are sometimes physically violent when in the room. The door to the room has a window, and there is another window looking outside at the sky and trees. It is slightly smaller than a regular classroom. Students are never secluded or placed alone in the de-escalation room; instead, there are always at least two adults present. Students may meet in the room with a therapist or simply use it as a place to get away from others for safety reasons. The room is not used for punishment.

36. The de-escalation room is also used when students are in "crisis." Crisis means a student is having continuous high aggression, self-injurious behaviors, and/or high-magnitude disruptive behavior, as [redacted]. At School B, crisis episodes are managed by use of professional crisis management techniques. All staff using crisis management techniques at the school are trained in the use of such techniques.

37. At times of crisis, special forms of restraint are sometimes necessary to keep a student and/or others safe. Such special forms of restraint are recognized crisis management procedures and are appropriate crisis intervention tools used as a last resort to prevent harm when a student is engaging in continuous high-aggression, self-injurious behaviors, and/or high-magnitude disruptive behavior. Notably, restraint is not a form of punishment. Restraint can range from simple pressure on the arm to standing restraint, the most restrictive form of restraint allowed in [redacted] school. During a standing restraint, the student is standing with two feet on the ground with their arms at their side. The student's body is encircled by the arms of a trained staff member. Students are not dragged on the floor and the better evidence did not demonstrate that [redacted].

38. Also, during crisis, a student may require transport to the de-escalation room as part of the crisis management process. "Transporting" is a professional crisis management procedure where the student is walked into the de-escalation room using various motivational techniques ranging from no contact escorting to minor restraint involving a wrist triceps hold. The hold involves two adults standing on each side of a student while holding the students arm and walking the student to a location to calm down. As with restraint, students are not dragged on the floor and the better evidence did not demonstrate that [redacted]. Again, these transportation techniques are recognized crisis management procedures and are appropriate intervention tools when a student exhibits continuous high-aggression, self-injurious behaviors, and/or high-magnitude disruptive behaviors.

39. On January 5, 2017, the Student attended [redacted] first day at School B. [redacted], who is a qualified ESE teacher, was the Student's teacher and [redacted], a paraprofessional and trained behavior technician, assisted [redacted] in the classroom. [redacted] was also trained in two recognized and appropriate systems of crisis management known as Professional Crisis Management (PCM) and Crisis Prevention Institute (CPI).

40. [redacted] observed and interacted with the Student every day, all through the day. The evidence demonstrated that [redacted] and the Student got along, although the Student would sometimes [redacted], including [redacted], without [redacted]. Despite the behavioral incidents, the [redacted] always [redacted] and when the Student [redacted] "[redacted]," [redacted] would select [redacted] [redacted] of the time to associate with him. During "[redacted]," a student is given several minutes to do something fun in class to help them with stress. [redacted] spent a lot of [redacted] time with the Student to help build rapport.

41. During [redacted] first week in [redacted] class, the Student was [redacted] and [redacted]. The Student initially presented as [redacted], but after assimilating into the classroom, [redacted] began to exhibit the same behaviors that were noted at

School A. The evidence demonstrated that such a spiked pattern of behavior was the [redacted] for the Student. The evidence also demonstrated that such a spiked pattern of behavior was not an uncommon pattern for students in the behavior support classroom to follow because students often avoid learning new appropriate behavior skills and because time is necessary for students to incorporate new appropriate behavior skills into their routine.

42. While at School B, [redacted], a licensed psychologist, worked with the Student [redacted]. During such [redacted] sessions, the Student worked on [redacted], [redacted], [redacted], as well as [redacted] and [redacted]. The goal was to work on classroom success and towards mainstreaming. The Student had [redacted] in student [redacted], so [redacted] broke down the [redacted]. [redacted] utilized positive behavior reinforcement during [redacted] sessions. [redacted], a board-certified behavior analyst and behavior specialist, also worked with staff at School B on how to model appropriate behavior to help the Student reduce [redacted] behavior, [redacted], and [redacted]. Additionally, [redacted] worked on various strategies to help the Student with [redacted] behavior [redacted], including [redacted] and [redacted]. Staff also used a [redacted], and did other things throughout the day to help the Student earn incentives under the [redacted] program.

43. During [redacted] time at School B, [redacted] utilized a behavior point sheet/level system for the Student. Levels ranged from 0 to 5 with 0 being the lowest level. The evidence demonstrated that the Student [redacted] to a level [redacted] on the point sheet because interventions take time to show [redacted] results and because the Student was in a transition period at a

new school while working on [redacted] target behaviors: [redacted] and [redacted]. However, the evidence showed that the Student's behavior was [redacted] during transitions. Additionally, the [redacted] showed that the Student was [redacted] in [redacted], [redacted].

44. From January 5 through 25, 2017, the evidence did not demonstrate that the Student was [redacted] at School B. However, the evidence demonstrated that, during this period, the Student was the [redacted] student at School B, would [redacted] staff and other students, and use [redacted] like "[redacted]," "[redacted]," and "[redacted]." While at School B, the Student was [redacted] out of [redacted], [redacted], using [redacted], and [redacted] in [redacted] towards peers.

45. When the Student was [redacted] or being [redacted], School B staff first tried to [redacted] the Student's behavior. After [redacted] [redacted] on staff or children, [redacted] by qualified personnel would be used in order to protect staff and children. Often during these episodes, the Student would [redacted] to be [redacted] and [redacted] to such [redacted] by stating that, [redacted]," while continuing the [redacted] or [redacted] behavior [redacted] desired to

engage in.

46. Additionally, the Student used various [redacted] behaviors, so that [redacted] could continue [redacted] desired. For example, the Student learned that if [redacted] during a [redacted], School B staff would have to [redacted]. As soon as [redacted] was [redacted], [redacted] would continue [redacted] staff. [redacted] sat with the Student [redacted] of [redacted] and [redacted] one time. There were times when [redacted] were implemented during a [redacted] continuous [redacted] behavioral [redacted] because during crisis management, staff fade in and out of various [redacted] as staff members move away from the Student to provide the Student the opportunity to [redacted] in [redacted] behavior without [redacted]. The evidence demonstrated that such [redacted] procedures were [redacted] for the Student.

47. The better evidence also demonstrated that the Student was not [redacted] or [redacted] during a [redacted] procedure and [redacted] of being [redacted] while at school. The evidence did demonstrate that the Student had [redacted] on [redacted] from [redacted]. Such [redacted] were not caused by the staff. All staff followed the [redacted] behavior plan both during crisis management and during classroom time.

48. On February 7, 2017, an IEP team meeting was held at School B to discuss the Student's [redacted] behaviors. Numerous

individuals were present, including appropriate school staff and the parents. The parents did not believe School B was an appropriate placement for the Student, thought the school staff was [redacted] the Student, and adamantly did not want [redacted] on the Student.

49. The team reviewed [redacted] reports and discussed the Student's IEP goals. The Student's behavior was reviewed with all data indicating that [redacted] was not [redacted] and was [redacted], including [redacted] at the teacher, [redacted] classmates.

50. During the February 7, 2017, IEP team meeting, [redacted], a board-certified behavior analyst (BCBA), discussed restraint procedures and demonstrated the crisis management techniques [redacted] to assure the parents that the Student was [redacted]. The IEP team advised the parents that it [redacted] during a crisis because of safety concerns and the very real possibility of staff and children being [redacted], [redacted]. A notice of the school's refusal to stop the [redacted] was provided to the parents. The IEP team also discussed potential interventions to include in the Student's behavior plan, including [redacted], [redacted], collecting data on [redacted], and more opportunities to access the general education

setting as a positive behavioral reinforcement.

51. After the February 7, 2017, IEP team meeting, [redacted] created data collection sheets for [redacted] to utilize as discussed at the IEP team meeting. The information was emailed to the parent, including a plan to meet again on February 23, 2017. Additionally, the Student was placed in the general education setting at select times to [redacted] on [redacted] behavior and as an incentive to [redacted]. The data collection sheets also tracked [redacted], [redacted] with an [redacted], and [redacted] in the [redacted] [redacted] room.

52. The data demonstrated that while at School B, the Student was [redacted] and [redacted] during the first few weeks of January, but [redacted] behavior had not reached [redacted] during that time. After January, the Student's behavior had reached [redacted] on [redacted] over [redacted] school days. The evidence demonstrated that the Student was [redacted] [redacted] out of [redacted] school days while at School B. The [redacted] occurred on [redacted], [redacted]. The evidence did not demonstrate that the use of [redacted] was [redacted].

53. On February 23, 2017, an IEP team meeting was held to review data and the Student's performance since February 7, 2017.

During the meeting, [redacted] shared that [redacted] had been successful since the last meeting and that the Student was exhibiting [redacted]. It was also reported that the Student's initial trials in the general education class were [redacted] with [redacted] and that the next steps would involve [redacted].

54. During the meeting, the parent was very angry over the schools continued use of [redacted] and what [redacted] believed were [redacted] caused by school staff. Ultimately, the IEP team was unable to discuss and review a proposed [redacted], because the parent indicated that the Student [redacted] and left the meeting. As a result, the IEP team's ability to discuss placement moving forward was impaired by the parent's decision to leave the meeting. The school's continued refusal to not use [redacted] was included in a document titled "[redacted]" and provided to the parent around February 23, 2017.

55. After the meeting, the Student [redacted] and was effectively [redacted] from the Respondent's school system.[2/] Overall, the Student attended a total of [redacted] school days at School B. The evidence demonstrated that the Student's behaviors were [redacted] that [redacted] school days was [redacted] to [redacted] behaviors, but that the program the school was implementing was beginning to result in [redacted]

[redacted] in the Student's behaviors. The evidence demonstrated that the Student was [redacted] in [redacted] current placement at School B and continued to need such a placement. Further, the evidence showed that the placement at School B provided FAPE to the Student and was the LRE appropriate for the Student. Finally, the evidence demonstrated that the use of restraint did not violate IDEA or deny FAPE to the Student. Therefore, given these facts, the due process complaint filed by Petitioner should be dismissed.

CONCLUSIONS OF LAW

56. DOAH has jurisdiction over the subject matter of and the parties to this proceeding. §§ 1003.57(1)(b) and 1003.5715(5), Fla. Stat.; and Fla. Admin. Code R. 6A-6.03311(9)(u).

57. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

58. In enacting the 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 is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

59. Local school systems must satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

> Special 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).

60. "Special education," as that term is used in the IDEA, is defined as:

> [S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

> (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings . . . .

20 U.S.C. § 1401(29).

61. 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, whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "Not less frequently than annually," the IEP team must review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i).

62. Indeed, "the IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 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 Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), 102 S. Ct. at 3034)(where the provision of such special education services and accommodations are recorded).

63. In Rowley, the Supreme Court held that a two-part inquiry or analysis of the facts must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Rowley, 458 U.S. at 206-207. A procedural error does not automatically result in a denial of FAPE. See 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 free appropriate public education, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 5-16, 525-26 (2007).

64. Pursuant to the second step of the Rowley test, it must be determined if the IEP developed, pursuant to the IDEA, is reasonably calculated to enable the child to receive "educational benefits." Rowley, 458 U.S. at 206-07. Recently, in Endrew F., the Supreme Court addressed the "more difficult problem" of determining a standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." Endrew F., 13 S. Ct. at 993. In doing so, the Court held that, "[t]o 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 999. 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.

65. The determination of whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student who is "fully integrated in the regular classroom," an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. (quoting Rowley, 102 S. Ct. at 3034). For a student, [redacted], who is not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." Id. at 1000. This standard is "markedly more demanding" than the one the Court rejected in Endrew F., under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is,

an educational benefit that was "merely" more than "de minimis." Id. at 1000-1001.

66. The assessment of an IEP's substantive propriety is guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time of the IEP's formulation; in other words, an IEP is not to be judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011)(holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated."). Second, an assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008)(holding that an IEP must be evaluated as written).

67. Third, great deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound

educational policy for those of the school authorities which they review" and explaining that "deference is based on the application of expertise and the exercise of judgment by school authorities."); A.K. v. Gwinnett Cnty. v. Sch. Dist., 556 Fed. Appx. 790, 792 (11th Cir. 2014)("In determining whether the IEP is substantively adequate, we 'pay great deference to the educators who develop the IEP.'")(quoting Todd D. v. Andrews, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989), "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act."

68. Further, the IEP is not required to provide a maximum educational benefit, but only need provide a basic educational opportunity. Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991); C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1153 (11th Cir. 2007); and Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001).

69. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d Cir. 1989)(internal citation omitted); see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-534 (3d Cir. 1995); Kerkam v. McKenzie, 862 F.2d 884, 886 (D.C. Cir.

1988)("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act"). Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998); and Doe v. Bd. of Educ., 9 F.3d 455, 459-460 (6th Cir. 1993)("The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use . . . . Be that as it may, we hold that the Board is not required to provide a Cadillac . . . .").

70. To be eligible for special education, a student must be determined as:

> [H]aving mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

34 C.F.R. § 300.8(a).

71. In this case, the parent does not raise a procedural challenge, but challenges the substance of the Student's IEP only in respect to the placement of the Student in a specialized

behavioral classroom at School B and the use of restraints on the Student.

72. In that regard, the IDEA provides directives on students' placements or education environment in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A) provides as follows:

> Least restrictive environment.
>
> (A) In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

73. Notably, although not defined in the IDEA, the term "educational placement" has been interpreted by courts to mean a child's overall educational program, not the particular institution where the program is being implemented. Hill v. Sch. Bd. of Pinellas Cnty., 954 F. Supp. 251, 253 (M.D. Fla. 1997), aff'd sub nom, 137 F.3d 1355 (11th Cir. 1998).

74. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R.

§ 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. In turn, the Florida Department of Education has enacted rules to comply with the above-referenced mandates concerning the LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

75. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

76. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, School districts must both seek to mainstream handicapped children and, at the same time, must

tailor each child's educational placement and program to [redacted] special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d at 1044.

77. In Daniel, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048.

78. In Greer, infra, the Eleventh Circuit adopted the Daniel two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: 1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits [redacted] will receive in a self-contained special education environment; 2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and 3) the cost of the supplemental aids and services that will be necessary to achieve a

satisfactory education for the student in a regular classroom. Greer, 950 F.2d at 697.

79. Against the above legal framework, we turn to Petitioner's substantive claim. Here, Petitioner contends that the appropriate placement should be that of a regular general education classroom. However, the better evidence establishes that the Student cannot be satisfactorily educated in the regular general education classroom, with the use of supplemental aids and services.

80. Accordingly, the instant proceeding turns on the second part of the test: whether the Student has been mainstreamed to the maximum extent appropriate. In determining this issue, the Daniel court provided the following general guidance:

> The [IDEA] and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services. Thus, the school must take intermediate steps where appropriate, such as placing the child in regular education for some academic classes and in special education for others, mainstreaming the child for nonacademic classes only, or providing interaction with nonhandicapped children during lunch and recess. The appropriate mix will vary from child to child and, it may be hoped, from school year to school year as the child develops. If the school officials have provided the maximum appropriate exposure to

> non-handicapped students, they have fulfilled their obligation under the [IDEA].

Daniel, 874 F.2d at 1050 (internal citations omitted).

81. In this case, during the [redacted] school year, the Student received at School A progressively more [redacted] interventions and strategies on the placement continuum, to no avail. Likewise, the staff at School A utilized all appropriate interventions and strategies, to no avail. As discussed above in the Findings of Fact, due to the [redacted] of the Student's disability, [redacted] did not, or could not, receive an educational benefit from said interventions and strategies in a general education classroom at School A. The evidence also showed that more [redacted] interventions could not be provided in the general education setting at School A. Additionally, [redacted] behaviors posed a significant health and safety risk to [redacted] and others, and [redacted] impacted [redacted] classmates' ability to learn.

82. Further, the Student's IEP team has opined, and Respondent's witnesses uniformly testified, that FAPE could not be provided to the Student absent a special behavior classroom at School B.

83. The Student's IEP placed the Student in the next point (in terms of escalating restrictiveness) on the continuum of possible placements. While it is undisputed that the placement

offered less potential for interaction with nondisabled peers, the better evidence demonstrated that the Student's [redacted] behaviors warrant such a result. Respondent's placement of the Student in a special behavior class at School B mainstreams the Student to the maximum extent appropriate and provides FAPE to the Student. Further, the Student has documented [redacted] and [redacted] behaviors that reach a [redacted] point where the Student [redacted] be [redacted]. School staff have observed and attempted to counter the Student's behavior during the school year through the use of appropriate BIPs. The strategies implemented have not been [redacted] and, therefore, crisis management procedures and restraint are necessary to de-escalate these behaviors and to ensure the safety of the Student, staff, and [redacted] classmates.

84. The evidence did not demonstrate that such management or restraint was abusive or accomplished inappropriately. In addition, these behaviors have interfered with the Student receiving [redacted] education, as well as interfered with the education of the other students in [redacted] classroom. Given these facts, it is appropriate that crisis management procedures, including the use of restraint, be used to manage the Student's behavior when [redacted] is in crisis and such use does not violate IDEA or fail to provide FAPE to the Student.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Due Process Complaint filed by Petitioner is dismissed.

DONE AND ORDERED this 19th day of February, 2018, in Tallahassee, Leon County, Florida.

S

DIANE CLEAVINGER
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 2018.

ENDNOTES

[1/] On December 21, 2016, after the IEP meeting and change in placement, the Student received a report card indicating that [redacted] was on [redacted] in all [redacted] areas. However, [redacted] and [redacted] notations were [redacted] and reflected that [redacted] did not [redacted]; [redacted]. However, given the overwhelming evidence discussed in this Final Order, the report card showing [redacted] does not support the conclusion that the

Student should have received a longer trial period at School A or that placement at school B did not provide FAPE to the Student in the LRE.

[2/] From February 24, 2017, through April of 2017, the Student did not [redacted]; instead, [redacted] did various learning activities with [redacted]. It was not based on a curriculum. The Student [redacted] of any [redacted] or [redacted] from February 24, 2017, through April of 2017. In April of 2017, the parent formally withdrew the Student from the District and enrolled [redacted] in the [redacted] School, a public school in Maine. The Student attended the [redacted] School from April through July, 2017. The parent admitted that the Student exhibited the same behaviors and spiked pattern of behaviors at the [redacted] School as [redacted] did at School B. In August of 2017, the Student moved back to Florida and enrolled in a private school ([redacted] School) in St. Johns County. No staff from [redacted] testified at the due process hearing, and no documents from [redacted] School were entered into evidence.

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).