STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 17-5575E

**,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Todd P. Resavage, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on December 1, 2017, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

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

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

STATEMENT OF THE ISSUE

Whether the proposed change of the subject student's ("the Student") placement to an exceptional student education [redacted] represents the [redacted] ("[redacted]") within the

meaning of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, et seq.

## PRELIMINARY STATEMENT

On October 11, 2017, Petitioner, Broward County School Board, filed a request for a due process hearing that sought approval to place the Student in an exceptional student education [redacted].[1/] Petitioner's hearing request was necessitated by the Student's parent's (hereinafter "Respondent") refusal to provide consent to the proposed placement as recommended in the Student's Individual Education Plan ("IEP") dated [redacted].

On October 20, 2017, Respondent filed a motion for extension of time to conduct the hearing. After conducting a telephonic conference with all parties, the undersigned granted the extension by 14 days. Thereafter, a Notice of Hearing was issued scheduling the final hearing for December 1, 2017. The final hearing proceeded as scheduled. At the conclusion of the final hearing, the parties stipulated that proposed final orders would be filed on or before December 15, 2017, and the undersigned's final order would be issued on or before December 22, 2017.

The final hearing Transcript was filed at DOAH on December 11, 2017. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript. Petitioner timely filed a Proposed Final Order,

which has been considered in preparing this Final Order. Respondent did not file a proposed final order. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time the subject IEP was drafted.

For stylistic convenience, the undersigned will use [redacted] pronouns in the Final Order when referring to the Student. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student was enrolled in School A, a public [redacted] school in Broward County, Florida, for the 2016-2017 school year. At that time, the Student was in [redacted]. During the [redacted] and [redacted] school years, the Student was not in the [redacted].

2. The Student had been previously determined, in the public school system, to be eligible for exceptional student education ("ESE") services under the eligibility category of [redacted] ("[redacted]").[2/]

3. As the Student had not been in [redacted] for two years, an IEP meeting was conducted on [redacted], to develop a new [redacted] Individual Education Plan ("[redacted]"). At that time, it was noted that the Student was working towards a standard high school diploma and receiving support and services and accommodations for [redacted].

4. As reflected in [redacted], [redacted] ("2016 [redacted]"), due to the Student's [redacted], [redacted] academic test averages may be impacted in comparison to [redacted] general education peers. It was further noted that [redacted] occasionally [redacted]; however, not on a consistent basis, which causes [redacted] test grades to fluctuate. Additionally, it was noted that the Student benefits from [redacted] and [redacted], [redacted], and/or [redacted] to improve [redacted] study skills and increase [redacted] academic test score averages.

5. The 2016 [redacted] provided for a number of supplementary aids and services, such as flexible setting—[redacted]; flexible responding—[redacted], [redacted], [redacted], [redacted]; flexible presentation—[redacted]; flexible scheduling/timing—[redacted]; and [redacted], [redacted], and [redacted].

6. The 2016 [redacted] further provided for special education services to include [redacted] in all academic areas [redacted] times per [redacted] and [redacted] in independent functioning [redacted] times per [redacted]. The [redacted] were to be provided via individual and/or group service, on a general education campus. Specifically, [redacted], an ESE support facilitator, was assigned to provide the Student the [redacted] services.

7. Significant to this matter, the [redacted] [redacted] provided that the Student's placement was in a [redacted] education/inclusion

classroom wherein [redacted] would spend [redacted] percent of [redacted] time with nondisabled peers. No [redacted] or [redacted] issues were noted in the 2016 [redacted], and there was no indication that [redacted] impeded [redacted] learning or that of others.

8. Based on the evidentiary presentation, it appears that the Student's first semester was [redacted], and [redacted] received [redacted] grades ([redacted]) in all subject areas.

9. Unfortunately, on [redacted], the Student was voluntarily admitted to the [redacted] at [redacted] following an [redacted]. It was reported that the Student attempted to [redacted] with a [redacted]. It is unclear from the record evidence exactly when the Student was discharged.

10. The Student returned to School A in [redacted]. On the second day of [redacted] return, a meeting was conducted with the Student's mother, the guidance counselor, and [redacted]. Ostensibly, the Student's mother shared the information concerning the [redacted].

11. In addition to, or in conjunction with, information provided by the Student's parents, Petitioner received a referral from the [redacted] ("[redacted]"), a multiagency network for students with [redacted]. [redacted], an ESE specialist at School A, testified that upon receipt of a [redacted] referral, Petitioner

initiates the procedures to conduct a reevaluation plan addressing the needs set forth in the referral.

12. On March 14, 2017, Petitioner issued a Parent Participation Notice, advising the Student's parents that a meeting had been scheduled at School A for March 30, 2017, to review the current [redacted], discuss the Student's progress, and develop the reevaluation plan. The meeting was conducted, as scheduled, with the Student's mother in attendance. During the meeting, it was noted that the Student "has recently been [redacted] subsequent to attempting to [redacted]," and that the Student "has [redacted] remaining in school for the [redacted]."

13. At the March 30, 2017, meeting, the [redacted] team recommended that the Student be reevaluated in the following areas: [redacted] functioning, [redacted] functioning, and/or [redacted] assessment. On that date, the Student's mother provided consent for the same.[3/]

14. On April 15, 2017, [redacted], a school social worker, completed a [redacted] Assessment Report regarding the Student. This report was based on, inter alia, a review of the Student's cumulative file, parent information, parent rating scales, consultation with the Student's teachers and staff at School A, an interview of the Student and observation of the Student, and consultation with the Student's mother.

[redacted]'s report notes that the Student was diagnosed in the [redacted] with [redacted], recurrent, severe with [redacted] features. [redacted] further noted that the Student continues to report that, on occasion, [redacted] has [redacted] thoughts and fears [redacted] will [redacted].

15. [redacted] ultimately recommended an additional staffing meeting to review all of the completed assessments and determine the most appropriate education plan; continuing [redacted] current academic assistance and additional interventions; ongoing parental involvement and communication with school staff; continuation of [redacted]; continuing with [redacted] [redacted] and [redacted].

16. On April 27 and May 4, 2017, the Student was evaluated by [redacted], a certified school psychologist for Petitioner. The purpose of the evaluation was to consider the possible presence of an [redacted] ("[redacted]"). At the time of [redacted] report, on May 11, 2017, [redacted] documented that the Student had [redacted] absences, [redacted] tardies, and [redacted] early dismissals. [redacted]'s report, and final hearing testimony affirming the same, recommended the following:

> 1. [The Student's] risk for [redacted] should be considered of primary concern at this time. Given [redacted] presenting profile, every effort should be made to secure [redacted] home [redacted] from [redacted] or items that could be [redacted] for [redacted].

> 2. Within the school setting, [the Student] will benefit from ongoing educational support through participation in a structured educational program with a consistent [redacted] component.
>
> 3. As [the Student] is presenting at a high risk for [redacted], close contact between the school and the home is recommended in order to facilitate close monitoring of [redacted] [redacted].

17. Following the Student's [redacted], and as the reevaluation process was underway, [redacted]'s role expanded considerably. Specifically, upon being advised of the Student's [redacted], the Student's [redacted] was informally modified to change [redacted] [redacted] services from a total of [redacted] times per [redacted], to unlimited [redacted] [redacted].

18. A "[redacted]" was provided to the Student, whereupon anytime [redacted] was feeling [redacted] [redacted], [redacted] could report to [redacted]'s office. [redacted] credibly testified that the Student utilized the [redacted] extensively. Indeed, [redacted] credibly testified that, on a [redacted] basis, [redacted] would present to [redacted] office for the majority of every class period, excepting [redacted] class.

19. When [redacted] would present to [redacted] office, [redacted] would attempt to provide [redacted] to the Student and assist with [redacted] [redacted]. At times, this would include words of [redacted], [redacted] around the [redacted], and having the Student [redacted] to [redacted] [redacted] [redacted]. On those occasions where

[redacted] confided information or thoughts of [redacted] and [redacted] that were concerning, [redacted] would seek further assistance from the school social worker or [redacted] for strategies. [redacted] also kept an open line of communication with the Student and the Student's mother. In addition to the typical means of communication, [redacted] provided the Student and [redacted] mother with a [redacted], wherein they could communicate on an instant basis, if needed. The Student availed [redacted] of that opportunity [redacted].

20. Although the Student had access to all materials and assignments, [redacted] inability to remain in class, due to [redacted], contributed to a [redacted] from the prior semester in [redacted] academic performance. By the third quarter of the school year, the Student had the following scores and grades: [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; and a [redacted] ([redacted]) in [redacted].

21. Just four days after [redacted] last evaluation with [redacted], on May 8, 2017, the Student was again admitted at [redacted]. On this occasion, the Student was [redacted] by a professional clinician. The chief complaint upon admission was [redacted], [redacted], and the Student advising that [redacted] "sees [redacted]." [redacted] met the criteria for a diagnosis of

[redacted], and the plan was to admit, stabilize on [redacted], [redacted], [redacted], and [redacted].

22. The Student was discharged on May 14, 2017, after [redacted] met the criteria for termination of [redacted] treatment: no longer [redacted], able to [redacted], symptoms are [redacted], and able to function in [redacted].

23. Following [redacted] discharge, on May 15, 2017, another [redacted] referral was issued. It is unclear from the record evidence whether the Student returned to School A in May 2017 following the second [redacted]. The Student's mother withdrew [redacted] from School A on May 23, 2017.

24. At the time of [redacted] withdrawal from School A, the Student's grades had continued to [redacted]. At that time, [redacted] report card reflects the following scores and grades for the fourth quarter: [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; [redacted] ([redacted]) in [redacted]; and [redacted] ([redacted]) in [redacted].

25. [redacted] is a consulting child psychiatrist for Petitioner. [redacted] is board-certified as a child psychiatrist and adult psychiatrist. [redacted] interviewed the Student, [redacted] mother, and reviewed the psychological report, psychosocial

report, [redacted] records, as well as school social and developmental records.

26. On August 15, 2017, [redacted] issued [redacted] Memorandum. [redacted] diagnostic impressions were as follows: [redacted], recurrent, severe with [redacted]; [redacted], rule out [redacted]; and [redacted] ("[redacted]"), [redacted] type. [redacted] documented that, at the time, the Student was taking [redacted] for [redacted]; [redacted] as an [redacted] for [redacted] or [redacted]; [redacted] for [redacted]; and [redacted] to assist with [redacted].

27. [redacted] testified at the final hearing, ratifying the impressions noted in [redacted] report, and provided the following additional impressions:

> When [redacted] evaluated [redacted], [redacted] still presented with symptoms of significant [redacted]. [redacted] still presented and [redacted] reported recurrent [redacted] thoughts, [redacted] of [redacted], [redacted] sees [redacted] [redacted]. [redacted] told [redacted] and when [redacted] assessed [redacted] that it happened every time [redacted] walked into a room [redacted] had this [redacted], [redacted] said [redacted] was extremely [redacted], [redacted] said it was [redacted]. [redacted] felt very [redacted]. [redacted] had – [redacted] disclosed that [redacted] had an issue, a [redacted], that [redacted] did not have [redacted] . . . . Now in addition to that [redacted] disclosed significant [redacted]. [redacted] described [redacted] and [redacted] described, [redacted] mean literally, [redacted] described what a [redacted] looks like with the [redacted] and [redacted] said that [redacted] –[redacted] was not just [redacted], [redacted] [redacted] would go

[redacted] when [redacted] had those [redacted] and the [redacted] was usually related to the [redacted] that [redacted] was having of seeing [redacted].

28. The Student was reenrolled at School A for the 2017-2018 school year. An IEP meeting was properly noticed for [redacted]. The meeting proceeded, as scheduled, at School B, an [redacted]. The undersigned finds that the meeting was properly convened, with all required participants in attendance, and that the Student's mother was an active participant.

29. At the meeting, the IEP team determined that the Student met the requirements for eligibility in an additional category, [redacted]. A student with an [redacted] has "[redacted] or [redacted] that [redacted] in the [redacted], [redacted], [redacted], or [redacted]." See Fla. Admin. Code R. [redacted].

30. The school-based members of the IEP team further proposed that, based on [redacted] present levels of performance and current needs, the Student's placement should be amended to a [redacted] setting, School B.

31. [redacted], an ESE specialist at School B, credibly set forth those attributes found at School B, which would enable the Student to receive a free appropriate public education

("FAPE"). Specifically, [redacted] explained that School B possesses a [redacted] component with multiple licensed [redacted] on staff. Indeed, all students are assigned to a [redacted], have access to the same on a daily basis, and can request one on an emergent basis, if necessary. The typical class size at School B is 10 students with a teacher and paraprofessional. Moreover, the students are highly supervised throughout the entirety of the day.

32. [redacted] credibly testified that the ability to assess the Student, in real time, will assist in the Student being able to access [redacted] curriculum:

> [redacted] have the staff that can assess whether the [redacted] that [the Student] is having of seeing [redacted] [redacted] whether these are [redacted] because [redacted] having a [redacted], [redacted] been diagnosed with a major [redacted] with [redacted] features, or these are, these [redacted] are a result of extreme [redacted] combined with [redacted], so it will help clarify what is actually happening so that [redacted] can have a better plan for [redacted] not just in terms of [redacted] but in terms of [redacted] . . . that student can be assessed by either a Masters degree therapist, a doctorate degree therapist or [redacted], a psychiatrist, and [redacted] can determine how can [redacted] help that [redacted] then and there and [redacted] can determine whether that child requires a safe place at that time.

33. The Student's mother did not consent to the proposed placement, and, therefore, the instant due process complaint was filed by Petitioner.

34. The undersigned finds that the Student, at the time of the proposed change of placement, cannot be satisfactorily educated in the [redacted] classroom with the use of supplemental aids and services. The undersigned further finds, at the time of the proposed change of placement, that the Student had been [redacted] by Petitioner to the maximum extent appropriate.

CONCLUSIONS OF LAW

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

36. 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).

37. 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).

38. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. 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).

39. Local school systems must also 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).

40. "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).

41. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's "present levels of academic achievement and functional performance," establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports 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).

42. "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 Rowley, 102 S. Ct. at 3034).

43. 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. 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.

44. 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.

45. 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. 3034). For a student 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.

46. The assessment of an IEP's substantive propriety is further 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). Third, 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."

47. In addition to requiring that school districts provide students with FAPE, the IDEA further gives 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.

48. 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 LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).[4/]

49. 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).

50. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." Greer v. Rome City School 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 1036, 1044 (5th Cir. 1989).

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

> First, [redacted] ask whether education in the [redacted] 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, [redacted] ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048.

52. 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 [redacted] classroom, supplemented by aids and services, with the benefits [redacted] will receive in a [redacted] education environment; 2) what effect the presence of the student in a [redacted] 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 [redacted] classroom. Greer, 950 F.2d at 697.

53. Against the above legal framework, [redacted] turn to the issue at hand, whether the proposed change of placement as set forth in the operative IEP is appropriate. Here, Petitioner has met its burden of establishing that the Student cannot achieve a meaningful educational benefit in the [redacted] classroom with the use of supplemental aids and services. Petitioner presented unrefuted evidence that, in the [redacted] education classroom setting, even with the nearly full-time assistance of [redacted], the Student could not achieve passing marks and advance from grade to grade. Indeed, the Student's academic success [redacted] during the Spring of 2017 due to [redacted] [redacted] issues and repeat [redacted]. Moreover, Petitioner presented sufficient evidence to establish that the requisite aids and services ([redacted]) required for the Student to address [redacted] [redacted] and [redacted] needs are not available in [redacted] current placement setting.[5/]

54. Accordingly, the instant proceeding turns on the second part of the test: whether the Student has been [redacted] 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).

55. In the 2016-2017 school year, upon reentry to School A following [redacted], Petitioner attempted to provide the Student with additional support by way of a full-time ESE support facilitator, [redacted]. As discussed above in the Findings of Fact, due to the nature and severity of [redacted], [redacted] did not, or could not receive an educational benefit from the additional support. Additionally, [redacted] continued to pose a significant [redacted] and [redacted] risk to [redacted].

56. The majority of the Student's IEP team has opined, and Petitioner's witnesses uniformly testified, that FAPE cannot be provided to the Student absent an [redacted] placement. The undersigned is mindful that great deference should be paid to the educators who developed the IEP. A.K. v. Gwinnett Cnty. 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, "[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." Daniel, 874 F.2d at 1048.

57. The August 30, 2017, [redacted] proposes a change of the Student's placement to a [redacted] placement. While it is undisputed that the proposed placement offers far less potential for interaction with nondisabled peers, from the evidence presented, the Student's [redacted] and [redacted] concerns, at this time, warrant such a result. The undersigned concludes that Petitioner's proposed placement of the Student in an [redacted] mainstreams the Student to the maximum extent appropriate. Accordingly, the proposed placement is approved.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the proposed placement to an [redacted] is approved.

DONE AND ORDERED this 19th day of December, 2017, in Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of December, 2017.

ENDNOTES

[1/] "Exceptional student education [redacted]" or "[redacted]" means a separate public school to which nondisabled peers do not have access. § 1003.57(1)(a)1.a., Fla. Stat.

[2/] It appears from the documentary evidence presented that the Student has an [redacted].

[3/] Due to an oversight, the original consent addressed evaluation by a psychologist, but not a psychiatrist. Accordingly, upon discovery of the oversight, additional consent was obtained from the Student's mother for a [redacted] evaluation on May 1, 2017.

[redacted]

[redacted]

[5/] No evidence was presented concerning the second and third prongs of the Daniel/Greer inquiry.

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).