

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

\*\* ,

Petitioner,

vs.

Case No. 18-1717E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

A due process hearing was held in this case before Jessica Enciso Varn, an Administrative Law Judge with the Division of Administrative Hearings, from [REDACTED] [REDACTED] through [REDACTED], [REDACTED], in Sanford, Florida.

APPEARANCES

For Petitioner: [REDACTED] [REDACTED], Esquire  
[REDACTED] [REDACTED], P.A.  
Suite 101  
1220 Commerce Park Drive  
Longwood, Florida 32779

For Respondent: [REDACTED] [REDACTED], Esquire  
School Board of Seminole County, Florida  
400 East Lake Mary Boulevard  
Sanford, Florida 32773

STATEMENT OF THE ISSUE

Whether the School Board failed to provide a free and appropriate public education (FAPE) by failing to properly implement the student's Individualized Educational Plan (IEP); by

failing to design an IEP that included End of School Year (ESY) and [REDACTED] and [REDACTED] ([REDACTED]) services; by failing to complete an [REDACTED] evaluation; and by failing to respond without unnecessary delay to the student's request for an independent educational evaluation (IEE) in the area of [REDACTED].

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on [REDACTED] [REDACTED], [REDACTED], alleging that the School Board had failed to provide a FAPE to a [REDACTED] [REDACTED] student. After a telephone conference with the parties, the due process hearing was scheduled for [REDACTED] [REDACTED] through [REDACTED], [REDACTED], and the hearing was held on those dates.

During the hearing, testimony was heard from: the student's [REDACTED]; [REDACTED] [REDACTED], teacher; the student; [REDACTED] [REDACTED], teacher of students with [REDACTED] [REDACTED] ([REDACTED]); [REDACTED] [REDACTED], clinical social worker; [REDACTED] [REDACTED], professor; [REDACTED] [REDACTED], supervisor at [REDACTED] [REDACTED] [REDACTED] [REDACTED] for the [REDACTED] [REDACTED]; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], [REDACTED]; [REDACTED] [REDACTED], [REDACTED]; [REDACTED] [REDACTED], technology instructor; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], ESE administrator; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], assistant principal; [REDACTED] [REDACTED], teacher; [REDACTED] [REDACTED], principal at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]; [REDACTED]

██████████, assistant principal; ██████████ ██████████, technology support; ██████████ ██████████, IDEA compliance administrator; and ██████████ ██████████, administrator of ██████████ services at ██████████ ██████████ ██████████.

The School Board's Joint Exhibits 147, 177, and 197 were admitted into the record; and Petitioner's Joint Exhibits A, C, E, K, L, Q (pages 31 through 49), R, S (Sections 4 and 15), U (Tinkle Input), and W (parts 1, 3, and 5) were admitted into the record. The School Board's Exhibits 1, 2, 6, 8, 9, 14, 18 through 21, 24, 29-35, 37, 38, 40, 61, 62, 65 through 68, 71, 73, 74, 76 through 82, 84, 90, 96, 98 through 106, 108, 112, 123 through 125, 127 through 129, 132 through 134, 138, 141, 145, 148, 150 through 153, 157, 158, 160, 163 through 166, 173 through 175, 178 through 193, 196, and 198 were admitted into the record; and Petitioner's Exhibits B, D, F through J, M through O, P (sections 2 and 4), S (sections 1 through 3, 5, 6 (pages 2 and 3)), T, U (Delong, Darling, and Boucher Teacher Input), V (page 3), Y, and Z (pages 11 through 14) were admitted into the record.

The Transcript was filed on ██████████ ██████████, ██████████. By agreement of the parties at the conclusion of the due process hearing, the proposed final orders were due on ██████████ ██████████, ██████████; and the Final Order was due on ██████████ ██████████, ██████████. By Order dated ██████████ ██████████, ██████████, and with the agreement of the parties, the deadline for the Final Order was extended to ██████████ ██████████, ██████████. The parties' proposed

final orders were considered in the preparation of this Final Order.

Unless otherwise noted, all statutory and rule citations are to the versions in effect at the time the alleged violations took place. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this 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 in this case is a [REDACTED]-year-old [REDACTED] [REDACTED] [REDACTED], eligible for exceptional student education (ESE) in the [REDACTED] [REDACTED] ([REDACTED]) category. [REDACTED] has also been diagnosed with [REDACTED], a [REDACTED] [REDACTED] where the [REDACTED] make [REDACTED] and [REDACTED] [REDACTED], as well as [REDACTED] and [REDACTED]. [REDACTED] has no [REDACTED] or [REDACTED] difficulties, [REDACTED] is educated in general education classes, and she is working toward earning a standard [REDACTED] school diploma.

2. The student is a [REDACTED] [REDACTED] [REDACTED] because [REDACTED] has [REDACTED] [REDACTED] [REDACTED]; [REDACTED] can [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED] [REDACTED] or [REDACTED], and [REDACTED] prefers [REDACTED] [REDACTED] [REDACTED] for [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]) and [REDACTED].

3. By most accounts, and corroborated by the observations made by the undersigned during the due process hearing, the student is [REDACTED], [REDACTED], [REDACTED] [REDACTED], [REDACTED] to [REDACTED], and

has an [REDACTED] [REDACTED] [REDACTED]. Throughout [REDACTED] school, [REDACTED] earned a "[REDACTED]" [REDACTED], [REDACTED] general [REDACTED] [REDACTED] with the [REDACTED] of a [REDACTED].

4. During the summer before [REDACTED] school, which was the summer of [REDACTED], the student's [REDACTED] made several requests for a meeting so that [REDACTED] could confirm that the [REDACTED] school, School A, was prepared to handle a [REDACTED] student, and to make sure all teachers would be prepared to manage the accommodations that were necessary for [REDACTED] [REDACTED] to access [REDACTED] education.

5. Because the [REDACTED], who was assigned to the student for [REDACTED] [REDACTED] year, [REDACTED]. [REDACTED], is not contractually obligated to work over the summer, the School A staff did not agree to meet with the student's parent until two days before the student's first day of [REDACTED] school. At that much anticipated meeting, the [REDACTED] was told that all [REDACTED] concerns would be handled properly because the student had an IEP in place.

6. And so began this student's first day of [REDACTED] school: with an IEP in place (that was finalized on [REDACTED] [REDACTED], [REDACTED]), and assurances that it would be implemented as written. The IEP describes the student in this manner:

When given a choice of activities by a teacher [REDACTED] will often appear [REDACTED] about what choice to make, as it appears [REDACTED] wants to please and make it easier on the teacher by letting the teacher choose for [REDACTED]. [REDACTED] may defer to the teacher even

if [ ] has a preference in [ ] desire to be both cooperative and polite . . . .

[ ] generally does a good job in making teachers aware of [ ] needs, however, at times [ ] appears reluctant to request accommodations available to [ ] . . . .

[ ] seems to experience some difficulty in making decisions. During initial meeting with [ ] and [ ] [ ], [ ] deferred to [ ] [ ] % of the time when asked a question.

7. As to [ ] [ ] in [ ], the IEP highlighted [ ]

[ ] [ ] as a priority educational need:

[\*\*] needs to improve [ ] [ ] rate by at [ ] % by [ ] current [ ] of [ ] to at [ ]. [ ] needs to become aware of the changes being implemented with the impending implementation of [ ] ( [ ] ). [ ] needs to become a [ ] and [ ] user of all [ ] that allows [ ] equal access to [ ] and to continue to advocate for [ ] in the classroom.

8. Indeed, the IEP team was well-intentioned in focusing on three goals that [ ] ( [ ]- [ ], [ ] [ ], and [ ] in using [ ] [ ] ): this student, who hesitates to bother adults and has difficulty insisting on help from those around [ ], would become more independent if [ ] learned how to self-advocate, if [ ] could master [ ] [ ], and if [ ] could master the [ ] [ ] that is intended to make [ ] world more accessible. But, as detailed in

the IEP, [REDACTED] needed help from the staff to achieve these educational goals. Specifically, the IEP [REDACTED] [REDACTED] [REDACTED], [REDACTED]. [REDACTED], with helping [REDACTED] reach all of [REDACTED] IEP goals.

9. The IEP team also memorialized the student's need for [REDACTED] [REDACTED] in order to meet [REDACTED] IEP goals and objectives. The IEP called for the use of a [REDACTED] [REDACTED]-[REDACTED] [REDACTED], a [REDACTED] [REDACTED]/[REDACTED] [REDACTED]/[REDACTED] [REDACTED], a [REDACTED]/[REDACTED] [REDACTED], and [REDACTED]/[REDACTED] [REDACTED] [REDACTED].

10. As to the accommodations needed for every [REDACTED] school class [REDACTED] was taking, the IEP required that every [REDACTED] [REDACTED] teacher and the [REDACTED] make certain that [REDACTED] [REDACTED] [REDACTED] be prepared for the student in [REDACTED] [REDACTED] with [REDACTED] [REDACTED] [REDACTED], and that [REDACTED] [REDACTED] [REDACTED] would be prepared in either [REDACTED] or [REDACTED] ([REDACTED] [REDACTED] [REDACTED]) [REDACTED]. Obviously, this accommodation required pre-planning on the part of the [REDACTED] [REDACTED] teachers. They each had to make sure that all of the materials presented to the [REDACTED] students, without fail, were accessible to the student-- [REDACTED] had every reason to expect that for every class, [REDACTED] would be provided materials she could access at the same time [REDACTED] [REDACTED] peers received their materials.

11. Any misstep in this process would cause delay for [REDACTED]-- while the [REDACTED] students were working on something, [REDACTED] would be left to do nothing, and forced to wait for the material to be

accessible. As [REDACTED] school classes move daily through subject matter material, there is no "pause" button to freeze the instruction in the classroom and wait for the student to catch up. The instruction moved on, and if [REDACTED] was not able to access the materials at the exact time that [REDACTED] [REDACTED] peers received their materials, [REDACTED] would perpetually find [REDACTED] behind the pace of the class, behind all of [REDACTED] [REDACTED] peers. It was, therefore, imperative that each classroom teacher work closely with the [REDACTED] to make the materials [REDACTED] [REDACTED] of the time.

12. Understandably, this demand on the general education teachers, who have no training in how to teach [REDACTED] students, was likely met with some trepidation. The role of the [REDACTED] and the effectiveness of the [REDACTED], then, are crucial for the proper delivery of services to this student. If the [REDACTED] is not proficient, fails to do [REDACTED] job, or has a poor working relationship with the student, faculty, staff, the student's educational needs would likely not be met.

13. The IEP called for [REDACTED] [REDACTED] [REDACTED] to be taught in the [REDACTED] classroom, via [REDACTED] instruction provided by the [REDACTED], [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED] was also responsible for [REDACTED] services, but these services were limited to the school campus, because the School Board's insurance policy would not allow for community-based [REDACTED] [REDACTED] or instruction.



14. ESY services were not provided for in the IEP; the staff on the IEP team told the student's [REDACTED] that ESY services would be considered later in the school year.

15. The student kept track of materials that were inaccessible to [REDACTED] throughout [REDACTED] year, and [REDACTED] sent several emails explaining that materials were not accessible to the student. Materials were presented to the student in a fashion that was not accessible to [REDACTED] on multiple occasions, across multiple subject areas, all year long. The record is replete with [REDACTED] of materials that were too [REDACTED], [REDACTED] [REDACTED], or not [REDACTED] properly into [REDACTED]. In one class, the student did not receive the correct [REDACTED] version of a textbook until well into the semester.

16. [REDACTED]. [REDACTED] testified at the hearing. [REDACTED] corroborated the testimony given by the student and the student's [REDACTED] in that [REDACTED] admitted that during the [REDACTED] class, when the IEP called for the student to work on [REDACTED] [REDACTED] and [REDACTED] skills, [REDACTED] instead made up classwork and assignments. If the materials had been properly prepared in advance of the classes, the student would have been able to complete the work at the same time [REDACTED] [REDACTED] peers completed the work; instead, [REDACTED] was doing schoolwork in the [REDACTED] class because [REDACTED] was so [REDACTED].

17. [REDACTED]. [REDACTED] was the only witness who described the student in negative terms; [REDACTED] dislike of the student, the student's [REDACTED], and [REDACTED] job assignment as the student's [REDACTED] was evident during [REDACTED] testimony. [REDACTED] explained that [REDACTED] had requested to be removed from the [REDACTED] assignment with the student, and that [REDACTED] had almost had a [REDACTED] [REDACTED] working with the student that school year. The student credibly testified that [REDACTED]. [REDACTED] was difficult to approach, that [REDACTED] often made it seem that making materials accessible was an inconvenience, and that [REDACTED]. [REDACTED] had a negative attitude toward the student. The student's description of interactions with [REDACTED]. [REDACTED] are found credible, and were corroborated by the defensive and hostile attitude [REDACTED]. [REDACTED] demonstrated during [REDACTED] testimony.

18. Given the key role that the [REDACTED] had in meeting the student's educational needs, and in implementing the IEP with fidelity, it comes as no surprise that the IEP was not properly implemented--record evidence and the testimony of the student, [REDACTED] [REDACTED], and [REDACTED] [REDACTED] establish the failure to provide accessible materials to the student throughout [REDACTED] [REDACTED] year.

19. Where there is contradictory testimony and evidence on the issue of the accessibility of materials, the undersigned finds the testimony of the student, [REDACTED] [REDACTED], and [REDACTED] [REDACTED], corroborated by the student's planner, which detailed many instances of materials being inaccessible for [REDACTED]/ and by

multiple emails sent by the [REDACTED] expressing concern over the accessibility of materials for [REDACTED], to be credible.

20. As to the IEP's requirements in the realm of [REDACTED], School A failed in this regard as well. Record evidence established that during [REDACTED] year, the student did not receive proper training on the [REDACTED]-[REDACTED] [REDACTED], [REDACTED] never received [REDACTED] [REDACTED] [REDACTED] that worked, and [REDACTED] did not receive proper training for the software in order to use it during [REDACTED] [REDACTED] [REDACTED]. Once again, to the extent there is contradicting testimony presented at the due process hearing, the testimony provided by the student, [REDACTED] [REDACTED], and [REDACTED] [REDACTED] is found credible.

21. The IEP team developed a second IEP in January, midway through the student's [REDACTED] year. The student's first semester grades included [REDACTED] "[REDACTED]" and [REDACTED] "[REDACTED]." The IEP team noted that the student's [REDACTED] [REDACTED] had regressed between [REDACTED] [REDACTED] and [REDACTED] school, and that [REDACTED] was [REDACTED] [REDACTED] grade level in [REDACTED] [REDACTED]. [REDACTED] was also unfamiliar with [REDACTED] [REDACTED], which is used for [REDACTED] and [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED] is usually mastered before students enter [REDACTED] school).

22. The student's educational needs were described as:

[REDACTED] needs to improve [REDACTED] [REDACTED] [REDACTED] rate by a minimum of [REDACTED] % by increasing [REDACTED] current [REDACTED] of [REDACTED] [REDACTED] per [REDACTED] to at [REDACTED] [REDACTED] per [REDACTED]. [REDACTED] needs to become a consistent and proficient user of all

██████████ ██████████ that allows █████ equal access to learning media. █████ needs to become a more ██████████.

23. On this IEP, the ██████████ ██████████ remained the same, as did ██████████ (limited to the school campus), and ESY services were indicated as needed, and would be addressed in ██████████ of ██████████, at the conclusion of the school year. The student's ██████████ requested an IEE in the area of ██████████, and was denied the request based on the School Board's position that it had never conducted an initial ██████████ evaluation.

24. At the conclusion of ██████████ ██████████ ██████████, the student had ██████████ ██████████ ██████████ classes, ██████████ and ██████████. Due to having to take the summer classes for the failed classes, ██████████ was not given ESY services. To make matters worse, the platform used for the summer ██████████ class was completely inaccessible to the student; therefore, the student's ██████████ agreed to ██████████ all material to the student to have ██████████ complete the summer class for ██████████ school credit.

25. Because ██████████. ██████████ requested to be removed from ██████████ position as a ██████████ for the student, the ██████████ for ██████████ ██████████ ██████████ was ██████████. ██████████. During the fall of ██████████, the School Board agreed to provide distance learning tutoring sessions with ██████████ ██████████, who had completed an evaluation of the student in the summer of ██████████ and who was asked to teach the student ██████████ ██████████ skills with the ██████████ ██████████, and to teach ██████████

██████████ ██████████. This tutoring was done for seven weeks.

██████████. ██████████, whose testimony is credited in its entirety, also completed an ██████████ evaluation, which revealed the student's need for ██████████ services.

26. During the student's ██████████ year, the School Board also agreed to provide age-appropriate ██████████ ██████████ (presumably the insurance concerns had been resolved), which included one trip to a local store.

27. Also during the ██████████ year, the student was evaluated by ██████████. ██████████. The School Board had requested that ██████████ conduct an ██████████ evaluation. ██████████. ██████████ suggested that the ██████████ and the student be trained on the new ██████████ ██████████, once the student was proficient in the use of the ██████████ ██████████. ██████████. ██████████ testified that ██████████ could not provide an ██████████ because ██████████ worked for the School Board, but that ██████████ could provide the parties names of professionals who could perform an ██████████. Curiously, ██████████. ██████████ allowed ██████████. ██████████ to complete the evaluation, and even edit ██████████. ██████████ recommendations. There were also unusual delays in the reporting from ██████████. ██████████, causing delays that were not caused by either party, but resulted in a delay in services to the student.

28. From the summer of ██████████ through ██████████ of ██████████, the parties participated in mediations which resulted in many agreements on outstanding issues. In ██████████ ██████████, within the

request for a due process hearing, the student's [REDACTED] once again requested an IEE in the area of [REDACTED].

29. The student became more proficient in the use of the [REDACTED] [REDACTED], and also received some training with the [REDACTED] [REDACTED] and with the computer software that [REDACTED] had not previously been able to use. These trainings all occurred after the Complaint was filed.

30. The most recent IEP, developed in [REDACTED] of [REDACTED], did provide for community [REDACTED] instruction and provided for ESY services.

31. The Complaint in this case requests [REDACTED] [REDACTED] of compensatory services for [REDACTED], [REDACTED] [REDACTED] of compensatory services for [REDACTED], and [REDACTED] [REDACTED] of compensatory services in [REDACTED] [REDACTED] instruction.

#### CONCLUSIONS OF LAW

32. The Division of Administrative Hearings (DOAH) has jurisdiction over the subject matter of this proceeding and of the parties thereto. See §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

33. Petitioner bears the burden of proof with respect to each of the issues raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

34. 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 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).

35. Parents and students 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).

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

37. 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 a child to make progress appropriate in light of the child's circumstances. Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 S. Ct. 988, 999 (2017).

38. The IDEA provides that an IEP must include measureable annual goals designed to meet each of the educational needs that



result from the child's disability. 20 U.S.C.

§ 1414(d)(1)(A)(i)(II); Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221, 375 F.3d 603, 613 (7th Cir. 2004) (explaining that an IEP must respond to all significant facets of the student's disability, both academic and behavioral); CJN v. Minneapolis Pub. Schs., 323 F.3d 630, 642 (8th Cir. 2003) ("We believe, as the district court did, that the student's IEP must be responsive to the student's specific disabilities").

39. Here, Petitioner takes issue with the design of the student's IEP because it failed to provide for ESY services, and failed to properly address [REDACTED] needs. Up and until the end of [REDACTED] [REDACTED] year, the student's IEP did not address age-appropriate community [REDACTED] instruction and did not provide for ESY services. The record evidence, and the inclusion of those services in later IEPs, establishes that these educational needs did not suddenly surface in the student's [REDACTED] year--these needs existed from the moment [REDACTED] entered [REDACTED] school. The student had regressed in [REDACTED] [REDACTED] [REDACTED], was never at grade level in [REDACTED] [REDACTED] [REDACTED] or [REDACTED] [REDACTED] [REDACTED] [REDACTED], and yet [REDACTED] was not offered after [REDACTED] [REDACTED] year. Also during her [REDACTED] year, the student was denied [REDACTED] services beyond the school campus because of insurance reasons.

40. The IEPs designed during the student's [REDACTED] year of [REDACTED] school are found to be deficient for these reasons. They

did not meet every educational need, and therefore were not reasonably calculated to enable the student to make progress in light of [REDACTED] circumstances.

41. The Complaint also alleges that the IEPs were not properly implemented because School A failed to provide accessible materials to the student and failed to meet the student's [REDACTED] [REDACTED] needs.

42. Because these claims challenge the School Board's implementation of Petitioner's educational programming--rather than its substance--a different standard of review applies.

L.J. v. Sch. Bd. of Broward Cnty., 850 F. Supp. 2d 1315, 1319 (S.D. Fla. 2012). In particular, a parent raising a failure-to-implement claim must present evidence of a "material" shortfall, which occurs when there is "more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007). Notably, this standard does not require that the student suffer demonstrable educational harm in order to prevail. Id. at 822; Colon-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 143-44 (D.P.R. 2014); Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 40 (D.D.C. 2013). Rather, the materiality standard focuses on "the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was

withheld." Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

43. Here, the credible evidence establishes that the student did not receive all of [REDACTED] learning materials in an accessible manner, and that [REDACTED] was never trained or received proper support on the proper use of the [REDACTED] [REDACTED] devices during all of [REDACTED] [REDACTED] year, and some of [REDACTED] [REDACTED] year.

44. Applying the materiality standard detailed above, the credible evidence in the record leads to the conclusion that the School Board did not properly implement the student's IEP during all of [REDACTED] [REDACTED] year and some of [REDACTED] [REDACTED] year.

45. Because the School Board denied the student a FAPE by failing to design appropriate IEPs and also failed to implement the IEPs, the student is entitled to compensatory education.

46. 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.

47. 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) (agreeing with the district court that a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address the student’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) (noting that a flexible, individualized approach is more consonant with the aim of the IDEA, the Court found 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).

48. Guided by the above-stated principles, Petitioner is entitled to compensatory education for a period of time that could encompass the entire [REDACTED] year; however, the Complaint specifically requested [REDACTED] [REDACTED] of compensatory services for [REDACTED], [REDACTED] [REDACTED] of compensatory services for [REDACTED] services, and [REDACTED] [REDACTED] of compensatory services in [REDACTED] [REDACTED] instruction. The undersigned is aware that the parties diligently attempted to resolve all disputes, and did so with many of the problems that arose.

49. Given that the parties have negotiated terms of agreement over the course of a year and a half, and many issues were successfully resolved to the apparent satisfaction of both parties, the award of compensatory education is limited to that which has been requested.

50. The only remaining issue is the puzzling issue of the IEE in [REDACTED]. At the outset of the due process hearing, the School Board asserted that it had properly addressed the request for an IEE and provided one. Presumably, that [REDACTED] was the one conducted by [REDACTED]. [REDACTED], who testified that [REDACTED] could not provide an IEE because [REDACTED] worked for the School Board, and [REDACTED] in fact had asked [REDACTED]. [REDACTED] to complete the evaluation. Given this strange testimony, the undersigned is not satisfied that an IEE in [REDACTED]

has in fact been provided. Accordingly, the School Board is ordered to either file a request for a due process hearing to establish the appropriateness of the [REDACTED] evaluation, or make the decision to provide an IEE in [REDACTED].

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1) The School Board denied the student a FAPE by failing to design IEPs that addressed all of the student's educational needs;

2) The School Board denied the student a FAPE when it failed to properly implement the IEPs;

3) The School Board is ordered to provide [REDACTED] hours of compensatory services for [REDACTED], [REDACTED] hours of compensatory services for [REDACTED], and [REDACTED] hours of compensatory services in [REDACTED] [REDACTED] instruction;

4) The School Board has yet to respond to Petitioner's request for an IEE in [REDACTED], and is ordered to do so within the next 15 days; and

5) All other requests for relief are denied.<sup>2/</sup>

DONE AND ORDERED this 13th day of August, 2018, in  
Tallahassee, Leon County, Florida.

**S**

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JESSICA E. VARN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of August, 2018.

ENDNOTES

<sup>1/</sup> [REDACTED] and the student's [REDACTED] [REDACTED] [REDACTED] [REDACTED] teacher knew that the student was taking notes in [REDACTED] planner regarding the accessibility of her educational materials; therefore, the undersigned is satisfied that the notes contained in the planner were taken contemporaneously with the events taking place, and not simply for purposes of the due process hearing.

<sup>2/</sup> Petitioner's requests for prospective relief are denied, as those issues are not ripe for adjudication. The requests for sensitivity training and attorney's fees and costs are denied because the undersigned has no jurisdiction to award the requested relief.

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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).