STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 18-3867E

LEON COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Todd P. Resavage, an Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH), on [redacted] and [redacted], in Tallahassee, Florida.

APPEARANCES

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

For Respondent: [redacted], Esquire
Ausley & McMullen
123 South Calhoun Street
Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., in failing to offer Petitioner an Individualized Education Plan (IEP) that was reasonably calculated to enable Petitioner to make

progress appropriate in light of Petitioner's circumstances with respect to [redacted] and [redacted]; and in finding Petitioner ineligible for special education services under the eligibility category of [redacted] ([redacted]); and, if so, to what remedy is Petitioner entitled.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Exceptional Student Education Due Process (Complaint) on [redacted]. The Complaint was forwarded to DOAH on [redacted], and assigned to the undersigned for all further proceedings. The parties attempted to resolve the matter at a resolution meeting on [redacted], and held an IEP meeting on [redacted].

On [redacted], Petitioner filed a Motion for Leave to Amend Complaint with an attached Amended Complaint. On [redacted], an Order was issued granting the motion and accepting the Amended Complaint. The parties convened a resolution meeting on [redacted]; however, as the parties required additional time, the parties convened again on [redacted]. On [redacted], Petitioner advised that the parties had not been able to reach a resolution and requested a final hearing.

A telephonic conference was conducted on [redacted], wherein the parties mutually agreed upon the hearing dates of [redacted] and [redacted]. Accordingly, a Notice of Hearing was

issued for said dates. The hearing was conducted as scheduled. The final hearing Transcript was filed on [redacted]. The identity of the witnesses and exhibits and the rulings regarding each, are as set forth in the Transcript.

Upon the conclusion of the final hearing, the parties stipulated that the proposed final orders would be filed no later than [redacted], and that this Final Order would issue on or before [redacted]. The parties timely submitted proposed final orders, which have been considered in this Final Order.

Unless otherwise indicated all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use [redacted] pronouns in this Final Order when referring to Petitioner. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is currently [redacted] years old. In the [redacted]-[redacted] school year, Petitioner was a [redacted]-grade student enrolled at School A, a public middle school in Leon County, Florida.

2. Prior to [redacted] enrollment in School A, Petitioner had previously been determined eligible and has thereafter received exceptional student education (ESE) services under the [redacted] [redacted]([redacted]) eligibility category.

3. The [redacted]-[redacted] school year began on [redacted], [redacted]. Apparently, Petitioner was [redacted] schooled for a significant period of time the prior year. It appears the parties agreed that Petitioner would slowly acclimate [redacted] to the public school environment as [redacted] began [redacted] [redacted]-grade year on a part-time basis. Initially, [redacted] attended for one period per day, and then two periods per day. From the evidence presented, it appears that Petitioner did not attend School A on a full-time basis until the latter part of October or the beginning of November [redacted].

4. An IEP meeting was properly noticed and conducted within [redacted] days of the new school year, on [redacted], [redacted]. By the date of this meeting, Petitioner had been present for [redacted] of [redacted] school days. The IEP team consisted of the required school staff, as well as Petitioner's [redacted].

5. During the August [redacted] IEP meeting, the IEP team reviewed Petitioner's present levels of academic achievement and functional performance and how Petitioner's disability affects [redacted] involvement and progress in the general curriculum.

6. Of significance to this proceeding, the IEP team identified several priority educational needs. First, it was determined that, in the domain of [redacted], Petitioner needed to be able to complete [redacted] assignments successfully and [redacted]; and needed to [redacted] assignments

that require [redacted] in order to complete them in a timely manner. Commensurate with that need, the IEP team developed [redacted] annual goals, which were to be monitored by mastery of associated benchmarks.

7. Petitioner's second priority educational need, in the [redacted] and [redacted] domain, was to develop [redacted] for [redacted] responses in content areas, learning [redacted] skills, and an improvement in [redacted]. A [redacted] annual goal was provided by the IEP team that provided "[g]iven grade-level work, [Petitioner] will independently complete [redacted] assignments using [redacted] and [redacted] and mechanics in [redacted] out of [redacted] assignments by the duration on the IEP." The IEP document does not set forth a specific benchmark of how Petitioner's progress toward meeting the annual goal would be measured, however, when reviewing the IEP in totality, that information can be discerned.

8. Finally, the IEP team determined that increasing Petitioner's "[redacted]/[redacted] skills while [redacted] throughout the school day with [redacted] and [redacted]" to be a priority educational need. A measureable annual goal was established that, "[i]n core subject area classes, [Petitioner] will use [redacted]/[redacted] strategies for organizing [redacted] ideas for [redacted] based on the reading audience and topic in [redacted] out of [redacted]

opportunities." This goal was to be measured by [redacted] grades and annual goal progress reports throughout the duration of the IEP.

9. The August [redacted] IEP set forth the special education and related services to be provided Petitioner. Specifically, Petitioner was to receive the following ESE services: [redacted]-[redacted] training ([redacted] per [redacted]) in a small group setting; [redacted] [redacted] [redacted] to monitor academics ([redacted] per [redacted]) in the [redacted] [redacted] classroom; and instruction in [redacted] [redacted] and [redacted] ([redacted]) in the ESE classroom and regular education classroom. Petitioner also was to receive the related services of [redacted] [redacted] [redacted] in written expression ([redacted] per [redacted]) in the [redacted] room and/or ESE classroom and [redacted] [redacted] ([redacted] per [redacted]) in the [redacted] [redacted] classroom and/or [redacted] room.

10. The August [redacted] IEP further provided a statement of the program modifications, accommodations, or supports to help Petitioner access [redacted] education. Specifically, the IEP provided [redacted] strategies (preferential seating), [redacted] [redacted] strategies, and [redacted] [redacted] strategies. Specific to the issues in this matter, the [redacted] accommodations provided Petitioner with the ability to use [redacted] to [redacted]; [redacted] of [redacted] [redacted] responses; [redacted] on [redacted], not on [redacted], in [redacted] classes; and the ability to respond [redacted], or by [redacted] responses or [redacted].

11. During the August [redacted] IEP meeting, it was determined by the team that Petitioner's least restrictive environment was that of a [redacted] classroom, wherein [redacted] would spend more than [redacted] percent of the time with [redacted].

12. The IEP team reconvened on [redacted], [redacted]. Since the [redacted], [redacted], meeting, Petitioner had been [redacted] (under the [redacted] schedule) for [redacted] out of [redacted] school days. Petitioner's [redacted] levels of [redacted] were again discussed. The IEP conference notes set forth, in part, the discussions of the team. At this time, it was noted that Petitioner was not doing any work in [redacted]; refused all [redacted] in [redacted]; and refused to complete [redacted] in [redacted]. On the positive side, [redacted] was performing well in [redacted]; appeared to enjoy and was participating in [redacted]; and while in [redacted] ([redacted]) was able to perform [redacted] out of [redacted] letters in [redacted].

13. During this meeting, Petitioner's [redacted] was fully afforded an opportunity to provide input and made numerous requests and demands. With the passage of time, and the ability to observe Petitioner in the school environment, the IEP was amended to reflect Petitioner's evolving needs. [redacted] ESE services were modified to include [redacted] with [redacted] to [redacted] ([redacted] per [redacted]) in the [redacted] classroom and [redacted] in [redacted] and [redacted] (for [redacted] minutes per

[redacted]) in the [redacted] classroom. [redacted] related services were amended to provide [redacted] minutes per week of [redacted] [redacted] ([redacted] [redacted] [redacted] [redacted])and [redacted] [redacted] ([redacted] [redacted] [redacted] [redacted] and [redacted]) was increased to [redacted] minutes per week (over [redacted] [redacted]). Also, a new [redacted] accommodation was added to provide [redacted]-[redacted] [redacted] and time in the teacher's [redacted] or other agreed upon "[redacted] [redacted] to [redacted]."

14. On [redacted] [redacted], [redacted], the IEP team met to review the IEP, determine whether Petitioner was eligible to receive services under the additional ESE category of [redacted], and to discuss potential reevaluations of Petitioner. [redacted]-[redacted] school days had passed since the last IEP meeting, however, Petitioner had only been fully present for [redacted] days. During that time period, [redacted] had [redacted] excused absences, [redacted] unexcused absences, and had been tardy [redacted] times.

15. [redacted] lack of consistent attendance remained a focal point of discussion. Indeed, pursuant to the conference meeting notes and the testimony at hearing, the school-based members of the IEP team had significant concerns regarding [redacted] attendance and [redacted] willingness to engage in the education process.

16. Again, it was noted that Petitioner would not participate or engage in [redacted], refused to complete assignments in [redacted], and advised staff that [redacted] did not want to do the assigned work. With respect to [redacted] [redacted], it was noted

that it required approximately [redacted] minutes of staff time to produce [redacted] minutes of effort on behalf of Petitioner, and, therefore, Petitioner was not [redacted] through the [redacted] since [redacted] would not [redacted]. [redacted], the licensed speech language pathologist (SLP) assigned to Petitioner, credibly testified that Petitioner's engagement ranged from [redacted] minutes to [redacted] minutes out of the daily time allotted.

17. Notwithstanding Petitioner's lack of engagement and participation to date, the school-based members of the IEP team developed an "[redacted]" in further effort to have Petitioner meet [redacted] and functional [redacted]. This plan included, but was not limited to, the following: 1) have Petitioner [redacted] for [redacted] periods on a [redacted]; 2) review [redacted]; 3) adjust the [redacted] schedule to provide [redacted]-[redacted]-[redacted] interventions in [redacted] and [redacted] to increase Petitioner's [redacted], and 4) a consult with [redacted] personnel to find an [redacted] program for Petitioner to use [redacted] to [redacted] to get content and then practice [redacted] and [redacted].

18. On [redacted], [redacted], an eligibility determination meeting was also conducted to determine whether Petitioner was eligible as a student with a [redacted], pursuant to Florida Administrative Code Rule 6A-6.03018.[1/] The relevant members of the team to make such a determination were present. Based upon

the available information, the school-based members of the eligibility team determined that Petitioner did not meet the eligibility criteria as a student with a [redacted]. Petitioner's [redacted] disagreed with this conclusion.

19. While it is undisputed that Petitioner's academic performance is [redacted] for [redacted] chronological age or to meet grade-level standards in the area of [redacted], the school-based members of the team credibly could not determine (at that time) that the same was not primarily the result of an [redacted] of [redacted] or classroom [redacted].

20. So concluding, the school-based members of the IEP team requested consent to reevaluate Petitioner to determine whether special considerations, such as [redacted] or [redacted], are interfering with Petitioner's [redacted] or whether there is a need to [redacted] the IEP or [redacted] in the [redacted] curriculum. Petitioner's [redacted] did not provide [redacted] for the same. Additionally, the team proposed considering Petitioner for another [redacted] category, [redacted] ([redacted]), and explained to Petitioner's [redacted] that a [redacted] was a prerequisite to such a [redacted].[2/]

21. On [redacted], a meeting was held to develop a [redacted] ([redacted]) for Petitioner. The documented purpose of the [redacted] was to "[redacted]

to [redacted] and achieve [redacted] IEP goals," and was to serve as a replacement for any previous [redacted] developed. The [redacted] addressed [redacted] target [redacted]: [redacted] [redacted] and [redacted] [redacted] [redacted] [redacted].

22. Petitioner's next IEP meeting was convened on [redacted], [redacted]. Since the last IEP meeting, Petitioner was fully present for [redacted] out of [redacted] school days--approximately [redacted] percent of the time. Although properly noticed and invited, Petitioner's parents did not attend this meeting. The primary amendment to the IEP concerned a change in the frequency of [redacted] [redacted]. Specifically, [redacted] [redacted] (instruction in [redacted] [redacted] and [redacted]) was to be provided [redacted] minutes per week; [redacted] was to be provided [redacted] minutes weekly; and [redacted] [redacted] (instruction in [redacted] [redacted]) was to be provided [redacted] minutes weekly.

23. On [redacted] [redacted], [redacted], the IEP team met as part of a resolution meeting, in another matter, and to review and revise the IEP, if necessary. In the [redacted] school days that had transpired since the last meeting, Petitioner was fully present at school for [redacted] days. During this intervening period, [redacted] had [redacted] excused absences, and [redacted] unexcused absences.

24. During this meeting, due to parental complaints and requests, [redacted] [redacted] was removed as the person responsible for Petitioner's [redacted] [redacted] and [redacted]. In [redacted] stead was

now a general education [redacted] teacher, [redacted].

[redacted] continued in a consultative basis with [redacted].

25. As a result of Petitioner's [redacted] requests and School A's acquiescence, the IEP was modified to document that although Petitioner's [redacted] was requesting ESE services, [redacted] was further requesting the same be provided by a non-ESE teacher, [redacted]. Accordingly, the IEP now provided that Petitioner was to receive assistance in [redacted] and [redacted] with [redacted] for [redacted] minutes per week and [redacted] with [redacted] to [redacted] academics, [redacted] and [redacted], and [redacted] in organization and [redacted] by [redacted]. The ESE related services were amended to reflect that [redacted] was no longer providing [redacted] instruction in [redacted] and [redacted].

26. The last IEP meeting of the [redacted] school year occurred on [redacted], [redacted]. The purpose of this meeting was consideration of [redacted] ([redacted]) services for Petitioner during the summer break. It was determined that Petitioner was eligible for such services for [redacted] and [redacted]. An [redacted] program was designed specifically for Petitioner. [redacted] provided those services.

27. Respondent's monitoring program, AIMSWEb, demonstrated that for [redacted] expression during the [redacted] school year, Petitioner consistently scored below the [redacted] percentile.

Petitioner's report card for the [redacted]-[redacted] school year reflects academic progress as the year progressed. For the first academic quarter, Petitioner obtained an [redacted] in math, a [redacted] in learning strategies, an [redacted] in language arts, an [redacted] in World History, an [redacted] in physical education, and an [redacted] in science. By the fourth academic quarter, Petitioner demonstrated significant improvement. While regrettably [redacted] maintained an [redacted] in math, [redacted] earned an [redacted] in research, a [redacted] in language arts, a [redacted] in World History, an [redacted] in physical therapy, and a [redacted] in science. Ultimately, [redacted] was promoted to [redacted] grade.

28. The IEP team met prior to the beginning of the [redacted]-[redacted] school year on [redacted], [redacted], and then again on [redacted], [redacted]. It appears the IEP was completed on [redacted], [redacted]. This IEP appropriately documents Petitioner's present levels of performance and how [redacted] disability affects [redacted] involvement and progress in the [redacted] curriculum. This IEP provides measureable annual goals and a description of how [redacted] progress towards meeting the goals will be measured. Said IEP appropriately sets forth who is responsible for implementing the goals, and provides an appropriate statement of the ESE services, related services, program supports, modifications, accommodations and strategies that will be utilized in attempting to implement the plan.

29. Petitioner presented the testimony of [redacted], a former ESE teacher with [redacted] years of experience, who is now working as a private [redacted]. [redacted] was retained by Petitioner to review the above-referenced IEPs and opine as to whether the same contained appropriate goals and objectives. [redacted] first opined that the IEP goals regarding [redacted] and [redacted] were consistently unattainable, based on Petitioner's present levels of performance. [redacted] opinion was primarily based on prior evaluations conducted in January [redacted], wherein it was concluded that Petitioner was performing at the [redacted] percentile in [redacted] and the [redacted] percentile in [redacted].

30. [redacted] further opined that the benchmarks associated with the [redacted] and [redacted] goals lacked the requisite specificity of establishing how said goals were to be implemented or monitored. [redacted] also opined that Respondent failed to properly update the various IEPs to illustrate Petitioner's present levels of performance. Ultimately, [redacted] opined that, based upon [redacted] review of the progress monitoring data, Petitioner was underperforming, and was well below grade level in [redacted].

31. It appears undisputed that, pursuant to Respondent's data, Petitioner essentially remained below the [redacted] percentile on assessments concerning "[redacted]" and "[redacted]

[redacted]," and that [redacted] was between the [redacted] and [redacted] percentile in "[redacted]."

32. While the undersigned finds [redacted] competent to testify to those matters of which [redacted] was retained, the undersigned finds [redacted] review, analysis, and opinions failed to appropriately consider the totality of circumstances presented. Most significantly, [redacted] opinions failed to appropriately consider Petitioner's demonstrable lack of physical attendance at school and [redacted] consistent and documented aversion to engaging and participating in class, assessments, and prescribed therapy. Accordingly, [redacted] opinions are afforded limited weight.

33. The undersigned finds that the record evidence, as contained in the data sheets, and weekly progress notes, demonstrate that the School A staff charged with implementing Petitioner's IEPs appropriately drafted, monitored, and measured Petitioner's progress (as set forth in [redacted] respective IEPs) throughout the [redacted]-[redacted] school year and the beginning of the [redacted]-[redacted] year. While it is certainly true that the statements contained in [redacted] IEPs regarding present levels of performance and goals remained fairly static throughout the year, the undersigned finds that the same was primarily a function of Petitioner's static level of academic output, attendance, and engagement. Moreover, the undersigned finds that Respondent was proactive in fulfilling its obligation to consistently monitor, update, and

revise Petitioner's educational programming, as demonstrated by the multiple IEP meetings conducted throughout the year.

CONCLUSIONS OF LAW

34. DOAH has jurisdiction over the subject matter of this proceeding and 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).

35. 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).

36. 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).

37. 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).

38. 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).

39. "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).

40. 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).

41. "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).

42. The IDEA further provides that, in developing each child's IEP, the IEP team must, "[i]n the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i)(emphasis added).

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. Here, Petitioner's Amended Complaint is not construed as specifically raising any procedural claims.

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. at 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 Cnty. 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.").

47. Petitioner's Amended Complaint alleges that Petitioner's IEPs were not reasonably calculated to allow [redacted] to make progress in light of [redacted] circumstances with respect to [redacted] and [redacted]. It is concluded, however, that the initial August [redacted] IEP and continuum of IEPs developed over the course of the [redacted]-[redacted] and [redacted]-[redacted] school years were reasonably calculated to enable Petitioner to make appropriate [redacted] and [redacted] progress in light of [redacted] circumstances. As discussed in the Findings of Fact, while the language contained in the IEPs remained fairly static, the better evidence supports a conclusion that the same was a result of Petitioner's academic output, attendance, and engagement. Under the same rationale, Petitioner's contention that the goals set forth on the IEP were unattainable is not supported by the evidence. Accordingly, Petitioner failed to meet the burden of proof with respect to this claim.

48. Petitioner further contends that Respondent failed to properly evaluate, and ultimately determine, that Petitioner is eligible for ESE services under [redacted]. The IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." L.C. v. Tuscaloosa Cnty. Bd. of Educ., 2016 U.S. Dist. LEXIS 52059, at *12 (N.D. Ala. 2016)(quoting N.G. v. D.C., 556 F. Supp. 2d 11, 16

(D.D.C. 2008))(citing 20 U.S.C. § 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." Id. Thus, each state must put policies and procedures in place to ensure that all children with disabilities residing in the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

49. All determinations regarding eligibility for special education are therefore governed, in the first instance, by the definition of a "child with a disability." Pursuant to 20 U.S.C. § 1401(3)(A), a "child with a disability" is a child:

> (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title [20 USCS §§ 1400 et seq.] as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
>
> (ii) who, by reason thereof, needs special education and related services.

50. Thus, eligibility determinations proceed in two steps. The first prong determines the existence of a disorder——here, a [redacted]. The second prong identifies whether the child with a qualifying disorder "needs" special education and related

services as a result of that disorder. Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 73 (1st Cir. 2016).

51. A SLD is defined as follows:

> (i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
>
> (ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of an intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 C.F.R. § 300.8(c)(10); see Fla. Admin. Code R. 6A-6.03018(1).

52. In Florida, a student meets the eligibility criteria as a student with a [redacted] if all of the following criteria are met:

> (a) Evidence of [redacted]. The student's parent(s) or legal guardian(s) and group of qualified personnel may determine that a student has a specific learning disability if there is evidence of each of the following:
>
> 1. When provided with learning experiences and instruction appropriate for the student's chronological age or grade level standards pursuant to Rule 6A-1.09401, F.A.C., the student does not achieve adequately for the student's chronological age or does not meet grade-level standards as adopted in Rule 6A-1.09401, F.A.C., in one or more of the

following areas based on the review of multiple sources which may include group and/or individual criterion or norm-referenced measures, including individual diagnostic procedures:

a. Oral expression;

b. Listening comprehension;

c. Written expression;
d. Basic reading skills;

e. Reading fluency skills;

f. Reading comprehension;

g. Mathematics calculation; or

h. Mathematics problem solving.

[and]

2. The student does not make adequate progress to meet chronological age or grade-level standards adopted in Rule 6A-1.09401, F.A.C., in one or more of the areas identified in subparagraph (4)(a)1. of this rule when using a process based on the student’s response to scientific, research-based intervention, consistent with the comprehensive evaluation procedures in subsection 6A-6.0331(5), F.A.C.

[and]

3. The group determines that its findings under paragraph (a) of this subsection are not primarily the result of the following:

a. A visual, hearing, or motor disability;

b. Intellectual disability;

c. Emotional/behavioral disability;

d. Cultural factors;

e. Irregular pattern of attendance and/or high mobility rate;

f. Classroom behavior;

g. Environmental or economic factors; or

h. Limited English proficiency.

Fla. Admin. Code R. 6A-6.03018(4)(a); see also 34 C.F.R. § 300.309(a).[3/]

53. For the purposes of this analysis it is assumed, arguendo, that Petitioner has a qualifying [redacted] disorder. It appears undisputed that when provided with learning experiences and instruction appropriate for [redacted] chronological age or grade level standards and when using a process based on Petitioner's response to scientific, research-based interventions, Petitioner does not achieve adequately for the student's chronological age or does not meet grade-level standards in [redacted]. The undersigned concludes, however, that at the time Respondent conducted the eligibility meeting, Respondent lacked the requisite data to find [redacted] was not primarily the result of Petitioner's [redacted] pattern of [redacted] and [redacted].

54. To the extent Petitioner is attempting to argue that Petitioner's [redacted] pattern of [redacted] and [redacted] is due to a [redacted], this argument was not supported by the

evidence. Accordingly, Petitioner failed to meet the burden of proof regarding this claim.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is denied in all respects.

DONE AND ORDERED this 26th day of December, 2018, 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 26th day of December, 2018.

ENDNOTES

[1/] The issue of Petitioner's potential eligibility and Respondent's duty to evaluate Petitioner under [redacted] was previously raised and fully litigated in DOAH Case Nos. 16-5891E, 16-7375E, and 17-0002E (consolidated). The Final Order in that proceeding is currently on appeal.

[2/] It is unclear from the record whether Petitioner's [redacted] obtained a [redacted] [redacted] or provided one to Respondent.

[3/] Florida Administrative Code Rule 6A-1.09401 sets forth the Student Performance Standards, defined as the Next Generation Sunshine State Standards, establishes core content of the

curricula to be taught, and specifies the core content knowledge and skills that K-12 public school students are expected to acquire.

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).