

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

\*\* ,

Petitioner,

vs.

Case Nos. 18-3980E  
18-4459E

LEON COUNTY SCHOOL BOARD,

Respondent,

and

SCHOOL OF ARTS AND SCIENCES,

Intervenor.

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FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED] and [REDACTED], in Tallahassee, Florida.

APPEARANCES

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

For Respondent: [REDACTED]-[REDACTED], Esquire  
Ausley & McMullen  
123 south Calhoun Street  
Tallahassee, Florida 32302

For Intervenor: [REDACTED] . [REDACTED], Esquire  
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123 North Monroe Street  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues in this proceeding are whether the School Board violated the individuals with Disabilities Act (IDEA) and failed to provide the Student a free appropriate public education (FAPE) by failing to develop and implement an appropriate Individual Education Plan (IEP) placement, [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) or [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]).

PRELIMINARY STATEMENT

On [REDACTED] [REDACTED], [REDACTED], Petitioner filed a Due Process Complaint (Complaint) against Respondent Leon County School Board (District or School Board). That same day, the Complaint was forwarded to DOAH and assigned case number 18-3980E. On [REDACTED] [REDACTED], [REDACTED], the Student's parent filed an amended due process request with DOAH. Thereafter, on [REDACTED] [REDACTED], [REDACTED], the parent filed a second due process complaint against the School Board. On [REDACTED] [REDACTED], [REDACTED], the second Complaint was forwarded to DOAH and assigned case number 18-4459E. The Complaints generally alleged that the School Board and the [REDACTED] of [REDACTED] and [REDACTED], [REDACTED] ([REDACTED]), a [REDACTED] school in the Leon County school system, failed to provide the Petitioner Student with FAPE by failing to develop and implement the Student's IEP, [REDACTED] or [REDACTED].

On [REDACTED] [REDACTED], [REDACTED], Petitioner filed a motion requesting that the time during which the resolution meeting should be held be extended. By Order dated [REDACTED] [REDACTED], [REDACTED], Petitioner's motion

was granted and the resolution time period was extended to [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], after discussion with the parties, a Notice of Hearing was issued scheduling the final hearing for [REDACTED] through [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], an order consolidating case numbers 18-3890E and 18-4459 was entered. On [REDACTED], [REDACTED], a pre-hearing conference was held. At the conference, counsel for the [REDACTED] of [REDACTED] and [REDACTED], [REDACTED], made an [REDACTED] motion to intervene in the case. The motion was granted by order of the same date.

The hearing was held as scheduled. During the final hearing, Petitioner presented the testimony of five witnesses. Petitioner did not introduce any exhibits into evidence, but had marked for identification Exhibits 3, 14 and 35. Respondent did not present any testimony but offered Exhibits 7, 10, 11, 15, 16, 18 and 19, which were admitted into evidence. Intervenor presented the testimony of one witness and offered Exhibits 5, 13, 14, 15, 16, 17, 18, 20, 29, 30, 31, 34, 35, 37, 41, 42, 48, 49, 54, 56, 57, 62 and 70, which were admitted into evidence.

At the conclusion of the final hearing, a discussion with the parties occurred regarding the post-hearing schedule for filing proposed final orders. Based on those discussions, it was determined that proposed final orders should be filed on or before [REDACTED], [REDACTED], with the final order to follow by

██████, ██████. An Order memorializing these deadlines was entered on ██████, ██████.

After the hearing, Petitioner timely filed a Proposed Final Order on ██████, ██████. Respondent and Intervenor filed Proposed Final Orders on ██████, ██████. To the extent relevant, the filed proposed orders were considered in preparing this Final Order.

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

#### FINDINGS OF FACT

1. School A is a privately owned and operated ██████ school within the Leon County School system. It has been in operation for ██████ years and currently serves ██████ students in ██████ through ██████ grade. Those students include students with disabilities. School A has received an "A" grade from the Florida Department of Education for ██████ continuous years.

2. As a ██████ school, School A is operated separate from the District and employs its own personnel separate from the District. Petitioner is not privy to the contract or ██████

that governs the relationship between the District and School A. Further, by virtue of being a [REDACTED] school/[REDACTED] [REDACTED], the school is limited in the programs that it offers and the services it provides. Because of these limitations, the school provides limited ESE services as part of the District-wide continuum of placements available to students under IDEA.

3. Moreover, under Florida law the School Board serves as the Local Educational Agency (LEA) and is ultimately responsible for the provision of FAPE to an ESE student. Because the District is the LEA, School A functions as any other school within the school district. As such, the contract with the District under which School A functions is not relevant to the determination of issues, which may be raised relative to FAPE in a due process complaint filed under IDEA. Further, there was no evidence presented by Petitioner at the hearing relative to the contract between the District and School A and any such issues related to the contract will not be discussed further in this Final Order and are dismissed.

4. During the time period relative to this hearing (the [REDACTED]-[REDACTED] school year), the Student was a [REDACTED]-year-old enrolled in School A. [REDACTED] had been enrolled in School A since [REDACTED]. The Student's exceptionalities at the time of hearing included [REDACTED] [REDACTED] [REDACTED] ([REDACTED]), [REDACTED] [REDACTED] ([REDACTED]), and [REDACTED] [REDACTED] [REDACTED] ([REDACTED]). The Student

was found eligible for the [REDACTED] exceptionality on [REDACTED] [REDACTED], [REDACTED].

5. Throughout most of the [REDACTED]-[REDACTED] [REDACTED]-grade school year, the Student was in a general education class with approximately [REDACTED] other students. The evidence showed that for most of the school year, the Student was very quiet. At times, [REDACTED] was withdrawn, but would smile and whisper to staff with whom [REDACTED] felt safe and connected.

6. Additionally, the evidence showed that the Student was comfortable in the classroom, handled daily routines, participated with groups, and responded to verbal direction and visual support. The evidence also showed that, with support, the Student participated in all areas of [REDACTED] education, including [REDACTED] and [REDACTED].

7. The Student's [REDACTED]-grade IEPs, dated [REDACTED] [REDACTED], [REDACTED], and [REDACTED] [REDACTED], [REDACTED], respectively, included provisions for specialized instruction in [REDACTED], [REDACTED], and [REDACTED] four times per week and [REDACTED] [REDACTED] three times per week. A well-qualified ESE teacher provided "[REDACTED]-[REDACTED]" services to the Student. [REDACTED]-[REDACTED] services occur when specialized instruction is provided directly to the Student during regular class time. [REDACTED]-[REDACTED] [REDACTED] [REDACTED] services were also provided by a well-qualified and [REDACTED] [REDACTED] and [REDACTED] [REDACTED] ([REDACTED]).

8. In April of [REDACTED], upon returning to school from spring break, the Student began to exhibit [REDACTED] and [REDACTED] behaviors that had not occurred at school prior to spring break. The evidence demonstrated that the Student was highly [REDACTED], [REDACTED] [REDACTED], [REDACTED] around the [REDACTED], [REDACTED] under [REDACTED], [REDACTED] like a [REDACTED], [REDACTED], [REDACTED], [REDACTED] other [REDACTED], [REDACTED] [REDACTED] out from [REDACTED] other students, [REDACTED] the door so [REDACTED] [REDACTED] [REDACTED] avoid [REDACTED] and intruded upon [REDACTED] [REDACTED] by fiddling with [REDACTED] [REDACTED]. Additionally, the Student had [REDACTED] [REDACTED], [REDACTED] [REDACTED], and [REDACTED] [REDACTED]. The Student also no longer communicated with others, showed [REDACTED] [REDACTED] [REDACTED], and had [REDACTED] [REDACTED] [REDACTED]. The change in the Student's behavior was dramatic and prompted school staff to contact the District's [REDACTED] specialist around [REDACTED] [REDACTED], [REDACTED].

9. On [REDACTED] [REDACTED], [REDACTED], the [REDACTED] specialist conducted an observation of the Student at School A. The specialist observed the Student [REDACTED] on the [REDACTED], acting like a [REDACTED], and [REDACTED] at [REDACTED] instructor. On [REDACTED] [REDACTED], [REDACTED], the District's [REDACTED] specialist met with the parent and School A's [REDACTED] [REDACTED] [REDACTED] Analyst ([REDACTED]) to discuss implementing a behavior plan. They also discussed starting the observation and data collection process to create a [REDACTED] and [REDACTED].

10. On [REDACTED] [REDACTED], [REDACTED], the [REDACTED] specialist and School A staff developed a [REDACTED] [REDACTED] Supplemental Behavior Plan. A [REDACTED] [REDACTED] Behavior Plan is not intended to serve as a [REDACTED] and is considered a pre-cursor to a [REDACTED] under the Multi-Tiered System of Supports (MTSS) intervention strategies used by District schools. School A also utilized crisis prevention strategies should such strategies be necessary.

11. The evidence showed that the [REDACTED] [REDACTED] Behavior Plan was appropriate for the Student and appropriately implemented with fidelity by School A staff who worked with the Student. Additionally, the evidence showed that observations and data collection for development of an [REDACTED] was begun. The evidence, also, showed that the parent was provided the [REDACTED] [REDACTED] Behavior Plan and generally agreed with the plan.

12. On [REDACTED] [REDACTED], [REDACTED], because Petitioner was struggling in the class [REDACTED] was currently in, the Student was moved to [REDACTED] [REDACTED] class. [REDACTED] [REDACTED] is a well-qualified teacher. The evidence showed that a change in classrooms was warranted to try to encourage the Student toward better [REDACTED]. However, by [REDACTED] [REDACTED], [REDACTED], the Student's [REDACTED] had reached the point where [REDACTED] was not regulated enough to attend to classwork. The school's [REDACTED], with agreement from the [REDACTED] parent, eliminated all pencil/paper work for the rest of the year and implemented the use of [REDACTED] as an instant reward when Petitioner made safe



decisions. Unfortunately, at some point because of the Student's [REDACTED], the class had to be evacuated to avoid injuries to others and to try to safely [REDACTED]-[REDACTED] the Student.

13. On [REDACTED] [REDACTED], [REDACTED], the Student's parent withdrew the Student from School A. However, because of the withdrawal, the school was unable to collect data and conduct observations in order to complete an [REDACTED]. The uncontroverted evidence demonstrated that, even with the Student's [REDACTED] [REDACTED], the Student was provided FAPE and made reasonable progress on the majority of [REDACTED] IEP goals during the [REDACTED]-[REDACTED] school year.

14. In August of [REDACTED], prior to the start of the [REDACTED]-[REDACTED] school year, the Student was permitted to re-enroll at School A for the [REDACTED] grade. [REDACTED] was placed in [REDACTED] [REDACTED] class, a blended [REDACTED] and [REDACTED]-grade class containing [REDACTED] to [REDACTED] students, with an additional associate teacher co-teaching the class. The uncontroverted evidence demonstrated that School A staff implemented with fidelity all provisions in Petitioner's IEPs during the [REDACTED]-[REDACTED] school year. The uncontroverted evidence also demonstrated that school staff implemented with fidelity all of the Student's behavior plans throughout the school year.

15. On [REDACTED] [REDACTED], [REDACTED], the IEP team met at School A, prior to the start of the [REDACTED]-[REDACTED] school year. The IEP team included the parent, the parent's attorney and all appropriate

participants, as well as the District [REDACTED] specialist from the previous school year. The purpose of the meeting was to discuss conducting a reevaluation to determine suspected [REDACTED] eligibility, as well as the need for continuation of the previous year's [REDACTED] [REDACTED] interventions from the start of the year until the reevaluation was complete. Additionally, development of an [REDACTED] and [REDACTED] was discussed. The evidence showed that the parent was a full participant during the meeting and had input into the decisions made by the team. There was no evidence presented at the hearing showing that the meeting did not comply with IDEA.

16. The team determined that reevaluation would consist of a [REDACTED] evaluation by a District [REDACTED], as well as a variety of academic assessments. In addition, the team appropriately determined that the [REDACTED] [REDACTED]

Behavior Plan that was used for the Student during the latter part of the prior school year would remain in place at the beginning of the [REDACTED]-grade year. The District [REDACTED] Specialist would prepare and supplement the [REDACTED] [REDACTED] plan if needed after the beginning of school, as well as, complete observations and data collection for an [REDACTED] and [REDACTED].

17. Thereafter, on [REDACTED] [REDACTED], [REDACTED], the April [REDACTED] [REDACTED] [REDACTED] Behavior Plan was updated. It identified desired [REDACTED], targeted [REDACTED] and antecedent [REDACTED]. The plan also

provided interventions and strategies to redirect the Student's [REDACTED] toward desired [REDACTED], as well as provided for crisis intervention strategies and monitoring of the Student's progress under the plan. The evidence showed that the parent was familiar with the [REDACTED] [REDACTED] behavior plan and its update. The evidence also showed that the parent generally agreed with the [REDACTED] [REDACTED] and the evaluation plan. Further, the evidence showed that the plan provided FAPE to the Student and complied with IDEA.

18. Additionally, in anticipation of the start of school, school personnel developed an internal document known as a first week school safety plan, which was separate from the [REDACTED] [REDACTED] and did not address targeted [REDACTED]. The purpose of the safety plan was to make sure that school personnel were aware of procedures for addressing safety issues created by the Student's [REDACTED]. The plan was not intended to supplement the [REDACTED] [REDACTED] Behavior Plan or function as a substitute for the [REDACTED] [REDACTED] 1. The safety plan was later updated on [REDACTED] [REDACTED], [REDACTED]. Nothing in the update supplemented or substituted for the developing [REDACTED] or [REDACTED]. Further, the safety plans did not interfere with or impede implementation of the [REDACTED] [REDACTED] Behavior Plan, [REDACTED] or [REDACTED] and did not interfere in the provision of FAPE to the Student. Further, not disclosing the safety plans immediately to the parent did not violate IDEA since the purpose of the plans was to inform personnel about safety procedures that were already in place at

the school for [REDACTED] [REDACTED] situations.

19. On [REDACTED] [REDACTED] and [REDACTED], [REDACTED], the [REDACTED] evaluation was conducted by the District's [REDACTED] [REDACTED] and School A's [REDACTED] [REDACTED], who were both well qualified to conduct such evaluations. The [REDACTED] [REDACTED] report was finalized on [REDACTED] [REDACTED], [REDACTED].

20. The evaluation utilized the [REDACTED] and [REDACTED] [REDACTED] [REDACTED] ([REDACTED]), Second Edition, a recognized standardized test instrument for language evaluations which includes an assessment of pragmatic abilities. The results of the [REDACTED] showed listening comprehension in the [REDACTED] range and oral expression in the [REDACTED] [REDACTED] [REDACTED] range. The standard scores reflected that the Student had a [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] related to using [REDACTED] in [REDACTED] [REDACTED]. The evidence demonstrated that the language evaluation was appropriate and complied with IDEA.

21. In addition to the administration of the [REDACTED], the [REDACTED] [REDACTED] [REDACTED] [REDACTED] for [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) was administered. The [REDACTED] serves as a guide in observing the presence of atypical [REDACTED] (those [REDACTED] [REDACTED] if ever displayed in [REDACTED] [REDACTED] [REDACTED]), as well as the absence of typical [REDACTED] (those [REDACTED] [REDACTED] [REDACTED] by [REDACTED] [REDACTED] [REDACTED]). It includes the Summary of Teacher Interview (SIRF), which provides a similar

checklist for the teacher to use in observing a student. The [REDACTED] was administered by the speech pathologists who administered the [REDACTED]. The Teacher Interview was completed by [REDACTED] [REDACTED], the Student's [REDACTED] [REDACTED] teacher.

22. The evidence showed that during observations for the [REDACTED], the Student often exhibited [REDACTED] [REDACTED] when [REDACTED], sometimes had [REDACTED] with maintaining [REDACTED] [REDACTED] to other people, often had [REDACTED] maintaining [REDACTED] [REDACTED], often had difficulty with [REDACTED], sometimes engaged in atypical or [REDACTED] [REDACTED] ([REDACTED] and [REDACTED]) and often engaged in [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The behavior reported by all three reporting individuals was similar and consistent among observers. As such, the [REDACTED] reflected that the Student demonstrated behaviors commonly exhibited by students who have [REDACTED]. Further, the evidence demonstrated that the evaluation was appropriate and complied with IDEA.

23. Between the [REDACTED] [REDACTED] meeting and the end of August [REDACTED], school personnel, under the direction of the District's [REDACTED] [REDACTED], collected data on [REDACTED]-[REDACTED] behavior and [REDACTED]-[REDACTED] behavior. The data showed numerous instances of [REDACTED] and many more instances of daily [REDACTED]-[REDACTED] behaviors during a one-week period between [REDACTED] [REDACTED], [REDACTED], and [REDACTED], [REDACTED], [REDACTED]. Behaviors included [REDACTED] [REDACTED] the [REDACTED]

during instruction, [REDACTED] [REDACTED] the [REDACTED] during instruction, and [REDACTED] [REDACTED] the [REDACTED]. The behaviors generally occurred when the Student was transitioning to a non-preferred academic subject. The data showed that the Student also demonstrated some behavioral improvement and positive behaviors at the beginning of the school year in response to the behavior plan and behavior interventions utilized by school staff with the Student.

24. Thereafter, around [REDACTED] [REDACTED], [REDACTED], based on the collected behavioral data and observations, an [REDACTED] and [REDACTED] were developed. Both documents were distributed to and reviewed by school personnel on [REDACTED] [REDACTED], [REDACTED]. The documents were similar to the earlier [REDACTED] [REDACTED] behavior plan because the behaviors the [REDACTED] and [REDACTED] addressed remained consistent from the start of the school year.

25. The [REDACTED] [REDACTED] [REDACTED] identified the Student's target behaviors as: 1) repeated [REDACTED]-[REDACTED] (defined as "[REDACTED] to [REDACTED] staff redirections when [REDACTED]-[REDACTED]"); 2) active [REDACTED]-[REDACTED] (which was defined as "[REDACTED] [REDACTED] the room, [REDACTED] or [REDACTED] with items not related to academic tasks, [REDACTED] [REDACTED] the [REDACTED], [REDACTED] peers shoes, [REDACTED] and/or [REDACTED] [REDACTED] utensils or small items"); and 3) [REDACTED] peer interactions (defined as "[REDACTED] [REDACTED], [REDACTED] or holding [REDACTED] [REDACTED], or trying to [REDACTED] [REDACTED] from academic assignments"). Each of the three behaviors was found to occur when [REDACTED], during whole

group instruction, [REDACTED] and [REDACTED] assignments and during non-preferred tasks. Furthermore, the function of each behavior was to [REDACTED] [REDACTED] [REDACTED] and/or avoid [REDACTED] demands.

26. The [REDACTED] [REDACTED] [REDACTED] sought to implement the following replacement skill behaviors: 1) complete academic tasks to [REDACTED] [REDACTED] to preferred items; 2) recognize when feeling [REDACTED] and use [REDACTED] tools; and 3) appropriately communicate verbally or non-verbally using words or signals. The [REDACTED] [REDACTED] [REDACTED] also provided procedures to minimize the occurrence of "[REDACTED] [REDACTED] scenarios" and [REDACTED] [REDACTED] or replacement behaviors.

27. New strategies in the [REDACTED] included the use of a [REDACTED] [REDACTED]. A [REDACTED] [REDACTED] is a visual or pictorial flow chart that maps out the consequences of completing or not completing work. School A staff also implemented a "check-in" and "checkout" procedure with the Student to develop a connection and provide [REDACTED] with a sense of safety. Staff would check-in with the Student in the morning to see how [REDACTED] was doing and to ease [REDACTED] transition to school. At the end of the day, staff would talk to the Student again to close out the day. Staff also created [REDACTED] [REDACTED] with the Student to build rapport.

28. The evidence showed that the Student initially showed positive behavioral improvement with the strategies used under the [REDACTED]. The better evidence demonstrated that the parent agreed with the [REDACTED] and [REDACTED], but later desired that the [REDACTED] be amended to provide more supports to the Student. Further, the evidence demonstrated that the [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were appropriately implemented with fidelity by School A staff, provided FAPE to the Student and, otherwise, complied with IDEA.

29. As the year progressed, school personnel continued to appropriately monitor and collect data on the Student's behaviors. On [REDACTED] [REDACTED], [REDACTED], the data was used to develop and update the Student's [REDACTED] and [REDACTED].

30. The evidence showed that the function of the Student's behavior did not change from the [REDACTED] [REDACTED], [REDACTED], [REDACTED] to the [REDACTED] [REDACTED], [REDACTED], [REDACTED]. However, the data showed a marked increase in the frequency of [REDACTED]-[REDACTED] behaviors as compared to other students, as well as an increase in intensity and frequency of [REDACTED] and [REDACTED] behaviors towards peers and staff particularly when non-preferred academic demands were asked of the Student. The behavior reports in August showed that when the class initiated a work assignment, the Student would go [REDACTED] the [REDACTED]. As work continued, the Student would begin to [REDACTED] [REDACTED]. The Student was repeatedly [REDACTED] and [REDACTED] by



staff using █-█ techniques, and sometimes the class was █.

31. In September █, the reports indicated that the Student █, █ █, and continued to █ at staff and students. Again, in all instances, the Student was █ and █ by staff.

32. In October █, the reports indicated that the Student continued to █ materials, █ students and █ staff. On █, █, after █ manipulatives and not responding to █, the classroom teacher attempted to use the classroom phone to call for assistance, but the Student █ █ █ from █ hands and also attempted to █ remove objects from support staff's hands. █ was ultimately able to be calmed using █-█ strategies and given positive reinforcement for cleaning up the classroom.

33. The evidence showed that the Student would █ █ █ █, █ █ to students and █ them by their █ in such a way that █ them from moving away from █. █ also had to be █ at times due to █ towards staff and peers in order to █ the Student, staff and peers from █. Such █ only occurred when the Student was at █ █ █ or others and was used appropriately by School A staff. There was

no evidence presented by Petitioner that the use of such [REDACTED] was inappropriate or violated IDEA.

34. Additionally, starting in August of [REDACTED], School A personnel sent home daily email logs that covered the Student's academic and behavioral progress. The better evidence demonstrated that when the Student [REDACTED] [REDACTED] [REDACTED], School A staff engaged in the almost constant exercise of supporting, redirecting, praising, and protecting the Student, in an effort to try and reduce the student's [REDACTED]-[REDACTED] and [REDACTED]-[REDACTED] behaviors.

35. Indeed, the uncontroverted evidence demonstrated that School A staff actively and appropriately intervened in the Student's [REDACTED] behavior with strategies and interventions. There was no evidence presented by Petitioner that staff ignored the Student's behavior or did not actively use behavior strategies and interventions to redirect the Student's [REDACTED] behavior. The evidence did not demonstrate, as claimed by the Student's parent, that the Student was allowed to [REDACTED] [REDACTED] [REDACTED] with no intervention and no opportunity to learn.

36. More importantly, because of the Student's increases in [REDACTED] behavior, additional interventions were appropriately added to the [REDACTED] and included a [REDACTED] [REDACTED] chart and [REDACTED] time to give the Student a variety of preferred activities as an incentive or reward for completing work. Staff also implemented

a variety of positive behavioral affirmations to praise the Student when ■ engaged in verbal communication or made eye contact with others. The evidence showed that the updated ■ was appropriate for the Student, provided FAPE to the Student and complied with IDEA.

37. A properly noticed IEP meeting was held on ■, ■, to discuss the Student's eligibility under the ■ eligibility category, the results of the evaluations and finalization of the ■ and ■. The evidence showed that the meeting was held within a reasonable period of time given the ongoing observations of the Student and the various behavior strategies being tried by school staff. The parent attended and participated in the meeting along with counsel for the Student and parent.

38. At the meeting, the team determined the Student eligible for ■ in addition to ■ existing eligibility under ■ and ■. The evidence demonstrated that the team's decision was based on appropriate information and evaluations for ■ eligibility, and complied with IDEA.

39. The IEP team also appropriately finalized the ■ and ■. Additionally, the IEP team discussed IEP services and placement. The school's collected data showed that the Student ■ ■ functioning in a regular classroom setting, due to the Student being more ■-■ than engaged in offered instruction.

The team discussed at length that School A had exhausted all the services, supports and interventions available at School A. The team also discussed whether the Student could benefit from a [REDACTED] class wherein the student could receive more intensive services. Staff recommended that the Student be placed in a [REDACTED]-[REDACTED] classroom. However, School A staff were open to the Student's parent's belief that the Student's behaviors were getting better and the parent's desire that the Student remain in a general education setting at School A.

40. After much discussion, it was ultimately agreed to give interventions in the regular class setting at School A another try for a short interval and to shift responsibility for direct instruction of social skills to the School A SLP.<sup>1/</sup> Further, the team decided to reconvene an IEP meeting in December of [REDACTED] to readdress whether a change in placement was appropriate. The IEP was revised to formally include behavior support services as a related service and the Student's goals were revised to incorporate appropriate independent functioning and social/behavioral goals.

41. The evidence showed that the parent had reasonable input into the team's decisions regarding the Student's placement, eligibility, goals, services, [REDACTED] and [REDACTED]. Notably, there was no evidence presented at the hearing regarding the need for a paraprofessional for the Student or that the parent was

misled into believing that a paraprofessional would be provided at School A as a service in the IEP. In fact, the uncontroverted evidence showed that the IEP, [REDACTED] and [REDACTED] were implemented with fidelity, provided the opportunity for FAPE to the Student and complied with IDEA.

42. After the October [REDACTED] meeting, the District behavioral specialist continued to provide behavioral support to school personnel and checked on the Student during [REDACTED] regular visits to School A. School personnel continued to collect behavior data on the Student.

43. At some point School A staff developed an evacuation plan to provide for the safety of the Student and others when the Student was having a behavior [REDACTED] and could not be [REDACTED]-[REDACTED]. The plan involved giving the class an affirmative signal to line up with half of the class led out the front door by the lead teacher and the other half of the class led out the back door by the associate teacher. During the relevant time period in the [REDACTED]-[REDACTED] school year, the evacuation plan needed to be implemented more than [REDACTED] times. Such [REDACTED] [REDACTED] [REDACTED] were necessitated by the Student's behavior and were [REDACTED] to the education of the Student and other students in the class.

44. The School A [REDACTED] provided instruction on social thinking curriculum and a curriculum called [REDACTED]. Data was collected on how the Student responded to the social skills [REDACTED] was being taught under the curriculum.

45. Part of the data collected compared the Student to the class as a whole in four different areas: 1) ability to identify outcomes of [REDACTED] and unexpected behaviors; 2) ability to follow the group plan; 3) keeping one's own body in the group and; 4) emotional regulation and composure.

46. Regarding the first area, the other students in the class could consistently identify potential natural consequences and the impact that had on others (scoring a [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]). Initially, the Student could not similarly make such determinations. After intense social skills training, the Student went from not being able to identify unexpected or expected behaviors ([REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]), to being able to do so after receiving moderate cues out of context ([REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]).

47. The evidence showed that the Student was able to learn and understand the skills in a quiet setting, but was not able to generalize those skills in the general education classroom when [REDACTED] was not with the [REDACTED]. Further, the evidence showed that the Student's behaviors continued to [REDACTED] as the Student was beginning to satiate on the interventions that School A was able

to provide in the regular class. As a consequence, the interventions were becoming less effective.

48. The evidence showed that in the second area involving following directions, the class was consistently able to figure out and follow the group plan within the classroom environment similar to peers throughout the school day (scoring █ █ █ █ █ █ █ █). However, the Student was unable to follow the group plan the majority of the day (scoring █ █ █ █ █ █ █ █).

49. The evidence also showed that in the third area of staying with the group and participating, the students in the class were consistently able to keep their bodies in the group at a comfortable distance from others in the classroom and between classes (scoring █ █ █ █ █ █ █ █). However, the Student's body was consistently either too far or too close to others in the group despite prompting from School A staff (scoring a █ █ █ scale █ █ █ █).

50. Additionally, the evidence showed that in the fourth area of maintaining calm, the students in the class were consistently using strategies independently to regulate emotions and return to calm in the classroom (████████ █ █ █ █ █ █ █ █). However, the Student was consistently unable to ██████████ ██████████ in the classroom and needed full support from one or more adults to be safe (scoring █ █ █ █ █ █ █ █).

51. Moreover, between the ██████████ █ █, ██████████, meeting and the

meeting that was to follow, school personnel continued to maintain written behavior reports [REDACTED] behavior incidents involving the Student. Starting in November, the behavior reports showed a [REDACTED] [REDACTED] in the Student's behaviors.

The [REDACTED] [REDACTED], [REDACTED], report stated:

[W]hen class was moving from rug to tables, [Student] [REDACTED] [REDACTED] path with [REDACTED] legs then moved toward a student and held onto [REDACTED] legs. When teachers redirected [REDACTED] to let go of the other child, [Student] [REDACTED] the teachers.

The student was verbally redirected by staff and a calming strategy was implemented.

52. The first of two behavior reports to be written on

[REDACTED] [REDACTED], [REDACTED], stated:

[Student] was in library center with a friend as new lesson started. [REDACTED] across the room and then [Student] [REDACTED] [REDACTED] around their legs. After teacher redirected [REDACTED] to [REDACTED] the student, [REDACTED] [REDACTED] [REDACTED]. [REDACTED] came out quickly and moved [REDACTED] body towards another student - a staff person moved between and got [REDACTED]. [Student] [REDACTED] [REDACTED] and [REDACTED] another student as students were [REDACTED]. [Student] moved quickly after them. When a staff person was there [REDACTED] [REDACTED]. [REDACTED] picked up [REDACTED] [REDACTED] and [REDACTED] [REDACTED] several support staff.

As with other instances of [REDACTED] behavior, School A staff were eventually able to redirect and calm the Student.

53. A behavior report written on [REDACTED] [REDACTED], [REDACTED], stated:



When the class returned to the room for a read aloud, [Student] began [redacted], [redacted] from the floor and moving [redacted] body toward another student. The class was [redacted] and support staff were called. As they were trying to exit the room, [Student] also left the room and moved quickly toward other students. As the other students walked quickly to the playground, [redacted] redirected [Student] and blocked [redacted] path to other students. [Student] moved around [redacted] and ran up to the playground toward the other students. The class was in a circle on the playground with staff surrounding them as [Student] moved quickly towards the students the staff [redacted] [redacted] passage with their bodies. [Student] was [redacted] [redacted] towards staff while they prevented [redacted] from [redacted] students in [redacted] classroom. The [redacted] [redacted] arrived and redirected [Student], offering [redacted] additional choices to deescalate and when [Student] began [redacted], [redacted] on [redacted] feet and moving [redacted] arms and head [redacted] [redacted] and [redacted] then [redacted] [redacted] while reassuring [Student] and offering specific safe choices. After the class returned to the classroom, [Student] [redacted] [redacted] [redacted] and knocked on the door repeatedly while the class waited to safely go to car pickup. After redirection and offering additional choices, [Student] walked safely with [redacted] [redacted] to [redacted] classroom to work on a preferred activity.

Similar behaviors continued into November and December. The evidence demonstrated that the Student's behavior impeded the education of the Student and the education of others. The evidence also demonstrated that School A had exhausted all the services and interventions available at its school and that a general education environment, like the one at School A, was not

conducive to the Student's education.

54. Due to scheduling conflicts, the IEP meeting initially scheduled for December [REDACTED] was not held until [REDACTED], [REDACTED]. The evidence showed that the meeting was properly noticed and provided reasonable notice to the parent that placement would be reviewed and possibly changed. The meeting included the parent and all required participants. The evidence demonstrated that the IEP meeting complied with IDEA and that the delay in the meeting did not deny FAPE to the Student.

55. At the [REDACTED], [REDACTED], meeting, the IEP team received input regarding the Student's continued difficulty with regulating behavior despite the infusion of supplemental aids and services. The IEP team discussed that the Student's behavior was getting in the way of [REDACTED] academic progress as well as the academic progress of the other students in the class. The IEP team also discussed that several [REDACTED] and [REDACTED] [REDACTED] and [REDACTED] [REDACTED] due to harm caused by the Student since the start of the [REDACTED]-[REDACTED] school year. The team also updated the [REDACTED] and [REDACTED], which added two additional target behaviors: [REDACTED] (defined as [REDACTED] [REDACTED] [REDACTED] without permission) and [REDACTED] [REDACTED] (defined as [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED] staff). The [REDACTED], [REDACTED], [REDACTED] listed the function of the new target behaviors as the Student's desire to gain access to other students.

56. After discussion, the IEP team determined that the Student's educational placement would change to one that was more [REDACTED]-[REDACTED] with the [REDACTED] providing direct instruction in her office. The clear evidence demonstrated that the change in placement was appropriate because the general education classroom environment [REDACTED] the Student and [REDACTED] could not attend to class work, even while working [REDACTED]-[REDACTED]-[REDACTED] with School A staff. The team was concerned that the Student would not meet the expectations for [REDACTED] grade since data indicated that the Student made reasonable progress on two IEP goals with "more time needed" to achieve the other [REDACTED] remaining goals.

57. Notably, the evidence showed that more time needed on goals did not indicate that no progress was made on those goals. Additionally, at the meeting, the parent was encouraged to consider other [REDACTED]-[REDACTED] offerings by Leon County School District. Again, there was no evidence presented at the hearing regarding the need for a paraprofessional for the Student or that the parent was misled into believing that a paraprofessional would be provided at School A as a service in the IEP.

58. The IEP and [REDACTED] were implemented by School A. On [REDACTED] [REDACTED], [REDACTED], the Student was withdrawn from School A by the parent and placed in a [REDACTED] [REDACTED] at School B.

59. The evidence was clear that the Student received the services set forth in the Student's IEPs, [REDACTED] and [REDACTED].

Moreover, the evidence was clear that the Student was provided a reasonable opportunity to progress in school and was provided FAPE. Unfortunately, even with the implementation of those IEPs, services and interventions, the Student was unable to progress academically or behave safely towards other students and staff. Thus, the Student was appropriately placed in a [REDACTED]-[REDACTED] classroom by the IEP team, which placement provided FAPE to the Student in the least restrictive environment (LRE) and otherwise complied with IDEA. Given these facts, Petitioner's Complaint should be dismissed.

#### CONCLUSIONS OF LAW

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

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

62. 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).

63. 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).

64. 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).

65. "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).

66. 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).

67. Indeed, "the IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 S. Ct. 988, 994 (2017)(quoting Honig v. Doe, 108 S. Ct. 592 (1988))("The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child."). Id. (quoting Rowley, 102 S. Ct. at 3034)(where the provision of such special education services and accommodations are recorded).

68. In Rowley, the Supreme Court held that a two-part inquiry or analysis of the facts must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Rowley, 458 U.S. at 206-207. A procedural error or irregularity does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to a free appropriate public education, significantly infringed the parents' opportunity to

participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 5-16, 525-26 (2007).

69. In this case, the Petitioner alleged that annual goals were removed from the Student's IEP without the parent receiving prior notice or being included in the decision. However, the Petitioner failed to present any evidence in support of these allegations. The evidence demonstrated that the parent was provided proper notice of the IEP meetings and any parentally perceived procedural deficiencies were immaterial. Additionally, the uncontroverted evidence demonstrated that the parent was in attendance at each of the three IEP meetings held during the relevant time period, and was accompanied by counsel at two of the meetings. Furthermore, the evidence demonstrated that the parent participated throughout these meetings. As such, the portions of the Complaint relative to these allegations should be dismissed.

70. Petitioner also alleged that the parent did not receive a prior written notice of the possible placement change at the October 25, 2017 meeting. However, the Petitioner failed to present evidence in support of this allegation. The clear evidence demonstrated that the parent received appropriate notice of the meeting and that the parent was aware that the purpose of the meeting was to review evaluation data and make an



eligibility/placement determination. Further, the evidence showed that any parentally perceived procedural irregularities were immaterial. Moreover, the uncontroverted evidence demonstrated that the eligibility determination was appropriate and based on appropriate information. As a result, the portions of the Complaint relative to these allegations should be dismissed.

71. 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. In Endrew F., the Supreme Court addressed the "more difficult problem" of establishing 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.

72. 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, like Petitioner in this case, who is not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." Id. at 1000. This standard is "markedly more demanding" than the one the Court rejected in Andrew F., under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is, an educational benefit that was "merely" more than "de minimis." Id. at 1000-1001.

73. The assessment of an IEP's substantive propriety is guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time of the IEP's formulation; in other words, an IEP is not to be

judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011)(holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.").

Second, an assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley 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).

74. Third, great deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review" and explaining that "deference is based on the application of expertise and the exercise of judgment by school authorities."); A.K. v. Gwinnett Cnty. v. Sch. Dist., 556 Fed. Appx. 790, 792 (11th Cir. 2014)("In determining whether the IEP is substantively adequate, we 'pay great deference to the

educators who develop the IEP.'") (quoting Todd D. v. Andrews, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989), "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act."

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

76. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d Cir. 1989) (internal citation omitted); see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-534 (3d Cir. 1995); Kerkam v. McKenzie, 862 F.2d 884, 886 (D.C. Cir. 1988) ("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act"). Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998); and Doe v. Bd. of Educ., 9 F.3d 455, 459-460 (6th Cir. 1993) ("The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every

handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use . . . . Be that as it may, we hold that the Board is not required to provide a Cadillac . . . ."). Further, A school does not violate the IDEA every time a student engages in problematic behaviors. L.F. v. Houston Indep. Sch. Dist., CIV. A. H-08-2415, 2009 WL 3073926, at \*18 (S.D. Tex. Sept. 21, 2009)("Ruffin argues that L.F.'s 2006-2007 IEPs were not sufficiently individualized because 'the behavior problems were still out of control, there was no behavior adjustments' . . . . This argument is unpersuasive. A school district is not required to 'cure' a disability or correct a student's behavior problems") aff'd sub nom. Ruffin v. Houston Indep. Sch. Dist., 459 Fed. Appx. 358 (5th Cir. 2012)

77. In regard to substantive issues, Petitioner alleged that Respondent failed to adequately monitor School A's implementation of the IEPs, that behavior services provided were inappropriate because School A staff was not properly trained, that somehow Respondent's development of the [REDACTED], [REDACTED], [REDACTED] and [REDACTED] was intended to facilitate the Student's removal from School A, and that Respondent and Intervenor provided behavior services in a manner in which the parent disagreed. Further, the Petitioner alleged that the placement change to a [REDACTED]-[REDACTED] setting from a general education setting was inappropriate.

Again, Petitioner failed to present any competent evidence to support these allegations.

78. In this case, the clear evidence demonstrated that Petitioner was offered an appropriate opportunity, in both a general education and [REDACTED]-[REDACTED] classroom environment, to progress during [REDACTED] educational career based on [REDACTED] unique behavioral issues that caused the Student to struggle and will likely continue to cause the Student to struggle. The evidence was clear that all teachers and staff at School A were appropriately trained and appropriately implemented the Student's IEPs, [REDACTED] and [REDACTED]. The evidence demonstrated that all of the IEPs appropriately identified the Student in all areas of [REDACTED] disabilities and recognized the Student in all [REDACTED] eligibility categories based on appropriate data, observations and evaluations. Additionally, the evidence showed that the goals, accommodations, and services of these IEPs were appropriate for the Student and offered the Student an opportunity to progress in school with a program that was reasonably challenging for the Student. As such, the IEPs, [REDACTED] and [REDACTED] provided FAPE to the Student.

79. Further, the evidence does not support Petitioner's allegation that School A permitted Petitioner to lay under a table from August of [REDACTED] through January of [REDACTED], thus depriving Petitioner of the same instructional opportunities of [REDACTED] non-

disabled peers. While Petitioner had a propensity to escape by laying under the table when transitioning to instructional time, there was no evidence presented that School A permitted [REDACTED] to remain there without any intervention. More importantly, as discussed below, the clear evidence demonstrated that placement in a [REDACTED]-[REDACTED] class was the appropriate and least restrictive placement for the Student. Given these facts, the portions of the IEP relative to its implementation should be dismissed.

80. In regards to the LRE, IDEA 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

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.

81. 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).

82. 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).

83. 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 his special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1044 (5th Cir. 1989).

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

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

education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Id. at 1048.

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

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

86. Here, the overwhelming evidence established that the Student cannot be satisfactorily educated in the regular classroom, with the use of supplemental aids and services available at School A.

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

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

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

88. In this case, the Student has received progressively more restrictive interventions and strategies on the placement

continuum, to no avail. Likewise, the staff at School A has utilized all appropriate interventions and strategies in the general education environment, to no avail. The evidence was clear that due to the nature and severity of the Student's behavior, ■ did not, or could not receive an educational benefit from said interventions and strategies in a general education, less restrictive environment. Additionally, ■ behaviors posed a significant ■ and ■ to ■ and others, and ■ classmates' ability to learn.

89. The evidence was uncontroverted and the witnesses uniformly testified, that FAPE cannot be provided to the Student absent a ■-■ class. 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.

90. In that regard, the IEP team determined that a change of the Student's placement to the next point (in terms of escalating restrictiveness) on the continuum of possible

placements was a [REDACTED]-[REDACTED] classroom. While it is undisputed that the proposed placement offers less potential for interaction with nondisabled peers, the better evidence demonstrated that the Student's daily [REDACTED] and [REDACTED] behaviors warrant such a result. Therefore, the placement of the Student in a [REDACTED]-[REDACTED] classroom mainstreams the Student to the maximum extent appropriate, provided the Student with FAPE and complied with the IDEA. Given the facts of this case, the portions of the administrative complaint relative to placement should be dismissed.

91. Finally, the balance of Petitioner's claims as asserted in the due process Complaints were not supported by the evidence, and, therefore, are dismissed.

#### ORDER

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

DONE AND ORDERED this 21st day of December, 2018, in  
Tallahassee, Leon County, Florida.

**S**

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DIANE CLEAVINGER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of December, 2018.

ENDNOTE

<sup>1/</sup> The fact that the IEP team continued to try to implement the Student's services at School A in a general education classroom for a little more than a semester does not indicate that the School Board failed to provide FAPE to the Student during this time period. Notably, attempts at lesser restrictive settings that provide a student the opportunity to succeed in a lesser restrictive setting do not violate IDEA and in fact were desirable under the facts of this case in order to provide the Student the opportunity to succeed in a regular school environment. Unfortunately, as the evidence over time demonstrated, the IEP team's attempt did not work out and the IEP team within a reasonable amount of time sought to rectify their failed attempt when it recommended placement in a more restrictive setting.

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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).