STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs. Case No. 22-3335E

DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

FINAL ORDER

A due process hearing was held before Jessica E. Varn, an administrative law judge with the Division of Administrative Hearings (DOAH), on February 7, 8, and 16, 2023, in a hybrid format. The hearing was held live in Tallahassee, Florida, with virtual access for counsel and witnesses.

APPEARANCES

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STATEMENT OF THE ISSUES

Whether the Florida Department of Corrections (FDC) failed to provide a free and appropriate public education (FAPE) by failing to provide the student an Individualized Education Plan (IEP) with appropriate supports and services to meet his unique needs; and

Whether FDC refused to provide the student access to the general education curriculum; and

Whether FDC limited the student's education to only a General Education Diploma (GED) preparatory instruction, thereby predetermining the student's curriculum based on a general policy; and[1]

[1] Petitioner did not explicitly use the word "predetermination" in his due process complaint, however the allegation of predetermination was clear from the pleadings, the examination of witnesses, and the evidence introduced by both parties. Specifically, Petitioner's due process complaint stated: "FLDOC did not perform any individualized assessment of [**] in deciding to remove him from the general education curriculum and provide him only GED exam prep. Instead, FLDOC has a general policy of providing all students only GED exam prep. It simply implemented that policy at the IEP meeting." (Pet'r's Due Process Compl., at ¶ 14.)

The IDEA requires the party requesting a due process hearing to "state all of the alleged deficiencies in the IEP in their initial due process complaint." *C.F. ex rel. R.F. v. New York City Dept. of Educ.*, 746 F.3d 68, 77-78 (2d Cir. 2014). That said, this rule "is not to be mechanically applied," and the IDEA "does not require that alleged deficiencies be detailed in any formulaic manner." *Id.* at 78; *see also Brooks v. U.S.*, 723 Fed. App'x 703, 706 (11th Cir. 2018) ("motion practice is not talismanic, and we do not require petitioners to recite magic words."); *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1226 (11th Cir. 2016) ("a plaintiff

Whether, if Petitioner proved any of the alleged violations, Petitioner is entitled to any relief.

PRELIMINARY STATEMENT

On October 28, 2022, Petitioner filed a request for a due process hearing and mediation (Complaint) with FDC, which promptly forwarded the Complaint to DOAH.

On November 15, 2022, a Notice of Telephonic Scheduling Conference was issued for November 17, 2022. Following the Scheduling Conference, on November 17, 2022, Petitioner filed an unredacted Complaint, and FDC filed an unredacted Response to Petitioner's Complaint. The same day, FDC filed a status report indicating that the parties had participated in a resolution meeting on October 28, 2022, and that the parties had not reached a resolution. A Notice of Hearing and a Case Management Order were issued, setting the case for February 7 and 8, 2023.

On January 6, 2023, Petitioner filed a Motion for Partial Summary Judgment and Memorandum of Law, requesting summary judgment on two of three issues raised by Petitioner. On January 20, 2023, FDC filed a Cross Motion for Summary Final Order and Response in Opposition to Petitioner's Motion for Partial Summary Judgment and Memorandum of Law. On January 24, 2023, an Order denying both parties' motions for summary judgment was issued.

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need not use magic words to express a request for accommodation") (internal quotation marks omitted); *Platinum Estates, Inc. v. TD Bank, N.A.*, 11-60670-CIV, 2012 WL 760791 (S.D. Fla. Mar. 8, 2012) ("The Court will not dismiss an action simply because Plaintiffs fail to use 'magic words' when the pleading is otherwise sufficient.").

On January 31, 2023, the parties filed a Joint Statement of Undisputed Facts and Stipulated Exhibits. The due process hearing was held in part on February 7 and 8, 2023.

On February 10, 2023, an Order Granting Petitioner Transport to Hearing and an Order Scheduling Additional Day of Hearing and Extending the Time for Final Order were issued. The final day of hearing was set for February 16, 2023.

At the due process hearing, Petitioner presented the testimony of the student's mother; the student; [redacted], M.Ed., a Senior Consultant for [redacted] and a State-Sponsored IEP Facilitator contracted by the Florida Department of Education (FDOE); and [redacted], Ph.D., a Managing Director and Primary Consultant of the Education, Discipline, and Justice Group. FDC presented the testimony of [redacted], an art therapist hired by the Florida State University and contracted by FDC; [redacted], an inmate worker at [redacted]; [redacted], an inmate worker at [redacted]; [redacted], a Special Education Aide at [redacted]; [redacted], an Academic Teacher at [redacted]; [redacted], an Academic Teacher at [redacted]; [redacted], a Special Education Teacher at [redacted]; and [redacted], a Special Education Supervisor at [redacted]. The exhibits admitted into evidence, including those that were officially recognized, are accurately reflected in the Transcript.

On March 8, 2023, the transcript of the due process hearing was filed with DOAH. At the end of the due process hearing, the parties agreed to file proposed final orders 14 days after the filing of the transcript. Accordingly, the parties' proposed final orders were due on March 22, 2023. The parties

also agreed that the final order would be due 28 days after the filing of the transcript. Accordingly, the deadline for the final order was April 5, 2023. Both parties timely filed proposed final orders, which were considered in preparing this final order.

Unless otherwise indicated, all rules and statutory references are to the version in effect at the time of the alleged violations.

FINDINGS OF FACT[2]

1. The student is [redacted] years old, and is incarcerated at [redacted], a prison under the control of FDC.

2. The student is eligible for Exceptional Student Education (ESE) services under the educational category of Autism Spectrum Disorder (ASD). He has been diagnosed as having autism, attention deficit/hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). In addition, the student described himself as suffering from bipolar disorder, anxiety, depression, asthma, and unexplained fever spikes.

3. Throughout the student's educational journey, he has had the support of his mother, who consistently attended his IEP meetings, even after he turned [redacted] and his educational rights had transferred from the parents to the student.

4. Despite the personal and educational hurdles he has faced, before entering FDC, the student had steadily progressed through high school level classes, and at the time of the hearing, he only needed to complete four credits to earn an 18-credit high school diploma. He enjoys fishing and animals, and he aspires to work in the field of veterinary science when he completes his sentence.

[2] The Findings of Fact do not reference every witness who testified, but all of the transcript was reviewed and the testimony of all fact witnesses was considered. Petitioner presented the testimony of two expert witnesses, whose testimony was not given any weight, due to the lack of specific knowledge regarding this individual student.

5. After his arrest, he was housed at [redacted] County Jail. The first IEP team meeting at the jail took place on September 24, [redacted]. The student's curriculum remained on track for a 24-credit high school diploma until a year later, when it was switched to an 18-credit high school diploma. At the time, the global pandemic required all educators to pivot to alternative means for delivering instruction; this pivot, of course, was also forced onto students who were incarcerated. Rather than in-person instruction, the student completed his courses through a distance learning program and would meet with his teacher twice a week by telephone. He also received weekly mental health counseling via telephone.

6. While in jail, the student completed his Economics course and much of his Government course. He was also on track to begin a Critical Thinking and Career Management course, and was planning to take English 3 after completing his Government course.

7. On April 5, [redacted], the student was transferred to [redacted], a Florida prison. He is scheduled for release in 2035.

8. One month later, on May 6, [redacted], his first IEP meeting took place at the prison. By this time, the student was completing the [redacted] grade. The only evaluation conducted of the student was the Test for Adult Basic Education (TABE), which is utilized to determine the student's readiness to pass the GED exam. The TABE is administered to all youthful offenders who have yet to attain a high school diploma or a GED when they enter [redacted]. If an inmate's TABE scores fall at a middle school grade level, he can opt to receive vocational education or Adult Basic Education (ABE). If, like the student here, the TABE score reflects high school level aptitude, the inmate can choose vocational education, ABE, or a GED curriculum. No inmates can choose a standard 18- or 24-credit high school diploma, because that curriculum is not offered.

9. During the hearing, the student expressed his desire to continue his high school curriculum and earn

10. a standard high school diploma:

> I've overcome a lot of bullies in my life, people saying I'm not nothing, I'll always be a dropout, going to be a deadbeat. I want to prove to them that I can do that, that I'm not retarded like people think.

11. During the May IEP meeting, the student's mother was present. Unlike all the previous IEP meetings the mother had attended for her son, including the IEP meetings held while the student was in jail, the May IEP meeting was different in that there was only one curriculum option for him. That the student had completed all but four credits to receive a standard high school diploma was not considered and was rendered irrelevant. The student also recalled that he was only offered GED preparation, and he knew he was no longer going to be allowed to work toward a standard high school diploma. The only option on the table was a GED, with no regard to this student's prior curriculum and his prior educational goals.

12. The IEP team gathered to amend the IEP in July 2022. At this point, the IEP team knew that the student attended the academic classes regularly, and that he had written several essays with good organization and sound reasoning. The IEP team, which did not include any mental health professionals, also agreed that the student needed mental health counseling. Mental health counseling at [redacted] is not considered educationally related; therefore, the practice is to refer the inmate to the mental health counseling staff, and this was done for the student.

13. The IEP also included 120 minutes of specially designed instruction and related services. This instruction comprised of direct instruction in language arts and independent and employment life skills; and the related services were in handwriting and behavioral support services. The IEP also included three hours, Monday through Friday, of GED classroom instruction.

14. The IEP noted the student's difficulties with self-advocacy and taking initiative, and that he could stray from his school work based on how he felt,

sometimes blowing up and reverting to negative self-talk when facing challenges in the classroom. The IEP team agreed to allow the student the use of a tablet to listen to music while in the classroom. The team also agreed that he needed a functional behavior assessment (FBA) and a positive behavior intervention plan (PBIP), but none were included in the IEP.

15. The tablets and computers that the inmates may use only access [redacted] intranet, which includes music, educational programming, and other reading materials.

16. Several witnesses at the due process hearing described the devotion of the educators at [redacted]. One witness likened the setting to that of an old-fashioned schoolhouse, where students of multiple grade levels receive education alongside each other based on their individual skill level. The student's classes typically had about 20 students total; and at one point, the student was the only student with an IEP.

17. By all of the accounts of the [redacted] staff and the inmates who testified, the teachers and peer tutors are able to deliver effective in-person instruction unique to any student's needs. As an example, one of the student's teachers testified that he had noticed the student enjoying the Harry Potter book series. Based on this observation, the teacher asked the student to write an essay about one of those books. The teacher's goal was to garner the student's interest and assess the student's ability to organize large amounts of information with proper grammar. The student completed the assignment and did well.

18. The inmate teaching assistants are also a great resource built into the classroom at [redacted]. The inmates receive training to become certified peer tutors, allowing them to work as aides to the teachers. One of the inmate teaching assistants at [redacted] has a doctorate in nursing and was previously a professor at the University of Florida. This is more access to in-person assistance than most students enjoy in a regular high school.

19. The overwhelming weight of the evidence established that [redacted] possesses the staff and the ability to access all the necessary resources to teach the four high school credits this student needs to complete a standard high school diploma, and place him back on the same diploma track he was on from Kindergarten to 11th grade, including his time in jail.

CONCLUSIONS OF LAW

20. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 944.801(9), 1003.57(1)(a), and 1003.5715(5), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

21. Petitioner has the burden of proof as to each issue presented. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

22. FDC receives funding under the Individuals with Disabilities Education Act (IDEA), and "[i]n exchange for the funds," it must "comply with a number of statutory conditions." *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 993 (2017).

23. Parents and students with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. v. Rowley,* 458 U.S. 176, 205-06 (1982). Among other protections, parents have a right to examine their child's records and participate in meetings concerning their child's education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint related to any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), (b)(6).

24. To satisfy the IDEA's requirements, FDC must provide all eligible students with FAPE, which is defined as:

> [S]pecial education services that –
>
> (A) have been provided at public expense, under public supervision and direction, and without

> charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

25. The IDEA does not exempt prisons from these requirements. Prisons have the same duties as other local education agencies that receive IDEA funding, save for three exceptions. 20 U.S.C. § 1414(d)(7) specifically addresses students in adult prisons, providing that prisons may forgo transition planning, decline to offer certain standardized assessments, and modify a student's IEP or placement without adhering to all of the IDEA's procedural safeguards if the prison "demonstrates a bona fide security or compelling penological interest that cannot otherwise be accommodated." 20 U.S.C. § 1414(d)(7).

26. Here, FDC has not argued, nor did it present any persuasive evidence, demonstrating a bona fide security or compelling penological interest that cannot otherwise be accommodated. To the contrary, FDC provided overwhelming evidence that it can provide the last four credits needed for this student to reach his educational goals, with its in-person individualized classroom structure.

27. FDC instead argues that under Section 1412(a)(1)(B) of the IDEA, states may waive FAPE requirements and decide which students receive FAPE. Then, FDC asserts that Florida has exercised that discretion and does not require FDC to comply with FAPE's secondary-school education requirement. Both arguments are unavailing.

28. Section 1412(a)(1)(B) does not allow states to waive the FAPE requirement or select which students receive FAPE. And even if it did,

Florida law requires FDC to provide this student FAPE, in accordance with Section 1401(9).

29. Section 1412(a)(1)(B) has two parts, section 1412(a)(1)(B)(i) and (ii). Section 1412(a)(1)(B)(i) states: "The obligation to make [FAPE] available to all children with disabilities does not apply with respect to children . . . aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice." 20 U.S.C. § 1412(a)(1)(B)(i). Under that provision, if a state does not educate students aged 3 to 5 or 18 to 21, it does not have to provide FAPE to students in those age groups. *K.L. v. R.I. Bd. of Educ.*, 907 F.3d 639, 642 (1st Cir. 2018) ("§ 1412(a)(1)(B)(i) means that a state may only deny FAPE to students with disabilities ages 18 through 21 to the extent it also abstains from providing 'public education' to students without disabilities of the same ages."); *E.R.K. v. Haw. Dep't of Educ.*, 728 F.3d 982, 987 (9th Cir. 2013) ("[W]e interpret § 1412(a)(1)(B)(i) to mean that [a state] cannot deny special education to disabled students aged 18 through 21 if it in fact provides 'free public education' to nondisabled students in that range of ages.").

30. Section 1412(a)(1)(B)(ii) sets forth a narrow exemption for certain incarcerated students. It states that the FAPE obligation does not apply to children "aged 18 through 21 to the extent that State law does not require that special education . . . be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility . . . did not have an individualized education program." 20 U.S.C. § 1412(a)(1)(B)(ii).

31. Florida has chosen to open the doors of public education to 18- to 21-year-olds, so it must provide all students with disabilities in that age group FAPE, save those incarcerated students to whom section 1412(a)(1)(B)(ii) applies. Under Florida law, "[a]ll students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education." § 1003.5716, Fla. Stat.; Fla. Admin. Code R. 6A-6.03028(1). Consistent with

Section 1412(a)(1)(B)(ii), Florida law exempts only "[s]tudents aged eighteen (18) through twenty-one (21) who, in the last educational placement prior to their incarceration in an adult correctional facility . . . [w]ere not actually identified as being a child with a disability . . . and [d]id not have an [IEP]." Fla. Admin. Code R. 6A-6.03028(1)(b). Section 1412(a)(1)(B)(ii) does not apply to this student here because he had an IEP before he was incarcerated.

32. FDC also asserts that section 944.801, Florida Statutes, exempts FDC from having to comply with section 1401(9). A complete reading of section 944.801 belies FDC's argument. First, the statute does not contain a mandate requiring FDC to *only* provide ABE and GED educational programs. Instead, according to sections 944.801(3)(d)-(e), Florida Statutes, FDC is tasked broadly with approving educational programs and entering into agreements to provide educational programs. The statute also allows FDC to enter into agreements with public and private educational providers to carry out the educational programs, ensuring that these agreements meet minimum performance standards and standards for measurable objectives established by the state educational agency (SEA). *See* § 944.801(e), Fla. Stat. FDC has chosen to only provide students with an ABE program or a GED program, without any statutory mandate to do so.

33. Section 944.801(9) also contemplates compliance with the IDEA by providing all inmates under 22 years of age who qualify for ESE, under the IDEA, with the right to request a due process hearing. If FDC did not have to comply with the FAPE requirement, this provision would be meaningless because the purpose of all due process hearings is to resolve FAPE disputes. *See* Fla. Admin. Code R. 6A-6.03311(9); *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 159 (2017) ("Any decision of the [hearing] officer granting substantive relief must be based on a determination of whether the child received a FAPE.").

34. There is no dispute that in Florida, a GED is a pathway to a Florida high school diploma, equal for all state purposes to a standard high school

diploma. *See* § 1003.435(6), Fla. Stat.; Fla. Admin. Code R. 6A-6.0201. The SEA's standards for an adult secondary education in Florida include a GED. But this student's IEP team never considered which curriculum, an adult education program or a standard high school diploma, met this student's needs and offered him FAPE, which the IDEA requires.

35. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system, or LEA, has provided a student with FAPE. First, it is necessary to examine whether the LEA has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. A procedural error does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the students right to FAPE, significantly infringed the adult student's 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. 516, 525-26 (2007).

36. In this case, Petitioner's Complaint contains one alleged procedural violation: that the student was deprived of meaningful participation in the creation of the IEPs, because CCI predetermined the IEPs.

37. In *R.L., S.L, individually and on behalf of O.L. v. Miami Dade County School Board*, 757 F.3d 1173 (11th Cir. 2014), the Eleventh Circuit addressed the issue of predetermination for the first time; finding that the school district had predetermined the student's placement when it foreclosed all discussion of the placement sought by the parents, relying heavily on the Sixth Circuit's decision in *Deal v. Hamilton County Board of Education,* 392 F.3d 840 (6th Cir. 2004) (finding predetermination where the state "did not have open minds and were not willing to consider" a particular service the parents thought the child needed to access his education). The Eleventh Circuit explained that predetermination occurs when the school district makes educational decisions too early in the planning process, in a

way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team. *R.L.*, 757 F.3d at 1188; *see also*, *Deal*, 392 F. 3d at 857-59. The school district cannot come into an IEP meeting with closed minds, having already decided material aspects of the child's IEP without parental input. *R.L.,* 757 F.3d at 1188; *see also N.L. v. Knox Cnty. Schs.,* 315 F.3d 688, 694-95 (6th Cir. 2003) (finding no predetermination where school district representatives "recognized that they were to come to the meeting with suggestions and open minds, not a required course of action").

38. This is not to say that school-based members of the IEP team may not have any preformed opinions about what is appropriate for a child's education. *R.L,* 757 F.3d at 1188. But any preformed opinion the school district might have must not obstruct the parents' participation in the planning process. It is not enough, the Court explained, that the parents are present and given an opportunity to speak at an IEP meeting. *Id.*

39. The Court then explained that to avoid a finding of predetermination, there must be evidence that the school district has an open mind and might be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. *Id.* A school district can make this showing by, for example, evidence that it was receptive and responsive at all stages to the parents' position, even if it were ultimately rejected. *Id*. Those responses, though, should be meaningful responses that make it clear that the school district had an open mind about and considered the parents' concerns. *Id.* at 1189. This inquiry is inherently fact-intensive, but should identify those cases in which parental participation is meaningful and those cases in which it is a mere formality. *Id.*

40. Here, the inescapable conclusion is that the IEP was predetermined at CCI, because the starting point was an entirely different curriculum imposed on the student, without any regard for his prior educational work. The student was just four credits away from a standard high school diploma, and

he and his mother thought he could complete that goal, but were told it was simply not an option, because of a general policy. His input, as an adult student, was rendered irrelevant and was a mere formality.

41. This procedural violation resulted in a denial of FAPE because it significantly infringed on the student's ability to meaningfully participate in the creation of his IEP.

42. Petitioner also alleges a substantive violation; that is, that the IEP was flawed in its design and did not provide FAPE. Under the second step of the *Rowley* test, it must be determined whether the IEP developed under 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 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." 137 S. Ct. 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.*

43. The components of FAPE are recorded in an IEP, which, among other things, identifies the student's present levels of academic achievement and functional performance; establishes measurable annual goals; addresses the services and accommodations to be provided to the student; and specifies the measurement tools and periodic reports that will be used to evaluate the student's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Endrew F.,* 137 S. Ct. at 994 (quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

44. Most importantly, the IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet each of the educational needs that result from the child's disability. 20 U.S.C. § 1414(d)(1)(A)(i)(II); *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004)(explaining that an IEP must respond to all significant facets of the student's disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003)("We believe, as the district court did, that the student's IEP must be responsive to the student's specific disabilities").

45. Here, the IEP did properly identify the student's need for mental health counseling, an FBA, and a BIP, but it failed to include them in the actual IEP. And as detailed above, the IEP ignored this student's educational goal of acquiring a standard high school diploma.

46. Because [redacted] procedurally violated the IDEA by predetermining the IEP and failing to design an IEP that was reasonably calculated to enable this student to make progress appropriate in light of his individual circumstances, the student has a right to appropriate remedies.

47. In that regard, if a district court or administrative hearing officer determines that a school district has violated the IDEA by denying the student FAPE, then the court shall "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). In so doing, the court or administrative hearing officer has broad discretion. *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2001); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009)(observing that 20 U.S.C. § 1415(i)(2)(C)(iii) authorizes courts and hearing officers to award appropriate relief, despite the provision's silence in relation to hearing officers).

48. Further, appropriate relief depends on equitable considerations, so that the ultimate award provides the educational benefits that likely would have accrued from special education services the school district should have

supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005). In addition, one type of relief that a court may provide is an award of compensatory education. *Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (quoting 20 U.S.C. § 1415(e)(2)) Compensatory education is an award "that simply reimburses a parent for the cost of obtaining educational services that ought to have been provided free." *Hall v. Knott Cnty. Bd. of Educ.*, 941 F.2d 402, 407 (6th Cir. 1991); *see also Draper v. Atlanta Indep. Sch. Sys.*, 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007)(holding that, in formulating a compensatory education award, "the Court must consider all relevant factors and use a flexible approach to address the individual child's needs with a qualitative, rather than quantitative focus"), *aff'd*, 518 F.3d 1275 (11th Cir. 2008).

49. Guided by the above stated principles, Petitioner is entitled to compensatory education, designed specifically for his needs, for the period between May 2022 and April 2023.

ORDER

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

ORDERED that [redacted] did commit procedural and substantive violations of the IDEA; and is

ORDERED to:

1. Provide compensatory education for the period of May 2022 to April 2023; and

2. Within 30 days of this Final Order, conduct a comprehensive evaluation of the student, in order to design an IEP tailored to the unique needs of this student; and

3. Within 45 days of this Final Order, reconvene the IEP team, which must include behavior specialists and a mental health professional, to address all of this student's academic, emotional, and behavioral needs and consider which curriculum is appropriate for this student.

4. All other forms of relief are denied.

DONE AND ORDERED this 4th day of April, 2023, in Tallahassee, Leon County, Florida.

JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of April, 2023.

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).