STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 12-3961E
	)	
BROWARD COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

A final hearing was held in this case before Edward T. Bauer, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on January 15-16, 2013, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: [redacted], parent
(Address of Record)

For Respondent: Barbara J. Myrick, Esquire
Broward County School Board
600 Southeast 3rd Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

The issues in this proceeding are: whether Respondent, the Broward County School Board ("School Board") failed to implement certain provisions of Petitioner [redacted] individualized education plan ("IEP") during the 2011-2012 school year, thereby depriving the child of a free, appropriate public education ("FAPE")

within the meaning of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, et seq.; whether certain aspects of the IEPs of May 30, 2012, and November 29, 2012, are reasonably calculated to confer some educational benefit to [redacted] ; whether the IEP of November 29, 2012, places [redacted] in the least restrictive setting; whether the School Board correctly determined that [redacted] should be exempt from state and district assessments; and whether the School Board committed various procedural violations of the IDEA during the 2011-2012 and 2012-2013 school years.

PRELIMINARY STATEMENT

On December 10, 2012, the parents of [redacted] the Petitioner in this cause, filed a Request for Due Process Hearing that raised various procedural and substantive claims pursuant to the IDEA. The School Board promptly forwarded the parents' request to DOAH for further proceedings.

Subsequently, on December 19, 2012, the parents filed an Amended Request for Due Process Hearing ("Amended Request"), which was accepted by written order on the same date.[1/] Organized into 14 paragraphs (some of which contained one or more sub-parts), the Amended Request included the following claims: (1) an objection to the School Board's utilization of a "non-phonics-based reading program"; (1)(a) a request that the School Board continue to utilize the "Wilson Reading Program";

(1)(b) an allegation that the IEP of November 29, 2012, does not provide [redacted] reading instruction in the least restrictive environment; (1)(c) a request that [redacted] be provided "Wilson Reading Instruction" by a "Wilson Certified Instructor"; (2) an allegation that the IEP of November 29, 2012, does not provide [redacted] math instruction in the least restrictive environment; (2)(a) a request that the School Board utilize "grade level strategies" with respect to [redacted] math instruction; (3) & (3)(a) a claim that certain statements in the May 30, 2012, IEP are inaccurate, as well as a separate allegation that [redacted] should be returned to a standard diploma track; (4) & (4)(a) an objection to [redacted] schedule, which requires her to miss two class periods per week to receive speech and language services; (5) & (5)(a) a request that a "Peer Buddy Program" be implemented to reduce [redacted] dependence on prompts; (6) an allegation that the School Board lacked parental consent to interview [redacted] during the IEP process; (6)(a) a claim that the mother's parental input has been "tampered with" or otherwise excluded from IEP documents; (7) a request that the School Board provide [redacted] with a non-milk substitute during lunch; (8) a challenge to "many of the . . . goals that were created at the 5/30/12 [and] . . . 11/29/12" IEP meetings; (8)(a) an allegation that, in May 2012, IEP goals were "closed out" without parental input; (8)(b) a request that "AR records" be taken into consideration in evaluating [redacted] reading

abilities; (8)(c) a claim that the School Board prevented [redacted] mother from fully participating in the IEP process; (8)(d) a request that the "original goals be brought back to the table"; (9) an allegation that [redacted] has been prevented from using her assistive technology; (10) a claim that the School Board scheduled the November 29, 2012, IEP meeting in such a manner that [redacted] father and advocate were unable to participate fully; (11) a request that [redacted] not be "interviewed, tested, assessed or removed from the general education classroom without her permission"; (12) an allegation that a change in school location "might" be necessary if the staff of Parkway Middle School continues to treat [redacted] as if the child "can't function" and fails to provide [redacted] with her supports and services; (13) a non-specific allegation that the School Board has failed to provide [redacted] with a free, appropriate public education ("FAPE"); (14)(a) a claim that [redacted] "transitional rights" have been violated by virtue of the child's removal from a standard diploma track; and (14)(b) a request that the Division of Vocational Rehabilitation be involved in [redacted] career planning.

On December 21, 2012, the School Board filed a Notice of Insufficiency directed to the Amended Request, wherein it argued that issues 1, 4, 5, 6, 7, 11, and 12 should be stricken in their entirety and, further, that issues 8, 10, and 13 were insufficiently pleaded. Subsequently, on December 21, 2012, the

undersigned issued an order deeming sufficient issues 1b, 2, 2a, 3, 3a, 8a, 8b, 8c, 8d, 9, 10, and 14; striking issues 1, 1a, 1c, 4, 4a, 5, 5a, 6, 6a, 7, 11, and 12; and deeming insufficient issues 8 (excluding subparts 8a, 8b, 8c, 8d) and 13.

With the undersigned's leave, the parents filed amendments to issues 8 and 13 on January 4, 2013. In response, the School Board moved, in a pleading filed January 7, 2013, for the entry of an order: finding, with respect to issue 8, that the parents had abandoned their challenge to the goals contained in the May 30, 2012, IEP document; and construing the parents' amendment to issue 13. Thereafter, on January 7, 2013, the undersigned entered an order that provided:

> 1. With respect to Issue 8, Petitioner shall be limited to a challenge of Goals 1, 2, 3, 4, 5, 13, 18, and 20 of the November 27, 2012, IEP. Petitioner's amendment to Issue 8 is further construed as an abandonment of any claim related to the goals included in the May 30, 2012, IEP document.
>
> 2. The amendment to Issue 13 is interpreted as raising the following allegations in support of Petitioner's contention that FAPE was denied during the 2011-2012 school year: (a) [redacted] was graded on [redacted] "effort" by one or more of her instructors; (b) Respondent failed to hold an interim IEP meeting between March 10, 2012, and May 30, 2012; (c) [redacted] mathematics teacher failed to collaborate with the child's parents, contrary to the provisions of the IEP; (d) Respondent modified [redacted] IEP in May 2012 to reduce parent-teacher collaboration from five days per week to one day per week; and

(e) the school principal censored parental e-mails and otherwise interfered with the ability of [redacted] parents to collaborate with teachers.

During the final hearing, three witnesses testified on [redacted] behalf: [redacted], the child's father; [redacted], the child's mother; and Jeanette Ramos. Petitioner introduced nine exhibits into evidence, numbered 1-9. (Petitioner's Exhibit 7 consists of Respondent's Exhibits 1-51.) The School Board introduced 51 exhibits, numbered 1-51, and called the following witnesses: Danielle Coll; David Kramb; Jen Brodsky; Jeff Allagood; Maria Petrucci; Chiantae Jones; Shannon Wavde; Deana Maxwell; Lou Ruccolo; and Janice Koblick.

The final hearing transcript was filed on February 4, 2013. Both parties timely submitted proposed final orders, which the undersigned has considered in the preparation of this Final Order.[2/]

For stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to [redacted] The female pronouns are neither intended, nor should be interpreted, as a reference to [redacted] actual gender.[3/]

FINDINGS OF FACT

A. Background

1. [redacted] is a [redacted], sixth-grade student who presently attends [redacted] School in the Broward County

School District. [redacted] began her academic career as a pre-school student at [redacted] [redacted] Elementary School ("[redacted]"), which is also located in Broward County.

2. At all times relevant to this proceeding, [redacted] who has a medical diagnosis of Down syndrome, received special education services pursuant to the following eligibility categories: Intellectual Disability ("InD"); Language Impaired ("LI"); Occupational Therapy ("OT"); and Speech Impairment ("SI").

3. By all accounts, [redacted] is a sweet, sociable, well-behaved child who enjoys school. [redacted] ability to learn is impeded, however, by her level of cognitive functioning, which has been measured in the very low range. Indeed, the School Board's most recent intelligence testing of [redacted] which was administered by a school psychologist using the Kaufman Assessment Battery for Children (Second Edition), yielded a non-verbal index of 54——a score that places the child at the 0.1 percentile.

4. By virtue of [redacted] disabilities, and in an effort to educate the child satisfactorily in the general education setting, the School Board has implemented extensive modifications and accommodations. Such modifications and accommodations include, for example, affording [redacted] additional time to complete tasks; permitting [redacted] to respond with a computer or word processor; requiring teachers to repeat and

clarify directions; breaking lesson content into smaller segments; and requiring [redacted] teachers to collaborate with her parents.

5. Over the years, [redacted] parents have been largely satisfied with the content of their child's IEPs and the manner in which educational services were delivered. As detailed below, however, the parents' relationship with school personnel began to deteriorate during the 2011-2012 school year.

B. 2011-2012 School Year

6. The 2011-2012 school year, which was [redacted] second academic year as a fifth-grade student at [redacted] [redacted] (the child was retained at the end of 2010-2011), began promisingly enough: on September 23, 2011, an annual IEP was developed that [redacted] ([redacted] mother) describes as "picture perfect." Pursuant to the terms of the IEP, [redacted] continued to receive instruction in the general education setting with the provision of numerous modifications and accommodations. Notably, one such accommodation was a requirement that [redacted] teachers collaborate with the child's parents five times per week.

7. As the school year progressed, [redacted] became convinced that Ricky Grimaldo, the new school principal, was censoring——or otherwise interfering with——e-mail communications between herself and [redacted] teachers. The record is, however, devoid of any persuasive evidence that bears out this allegation. On the

contrary, credible testimony was elicited from Jeff Allagood, Jen Brodsky, and David Kramb——respectively, [redacted] science teacher, intensive reading instructor, and ESE specialist——that Mr. Grimaldo did nothing to discourage parent-teacher communication.

8. Nevertheless, there is credible, unrebutted evidence that [redacted] math instructor, Ms. Danielle Casale, failed to collaborate fully with the parents to the extent that she neglected to provide timely, appropriate responses to requests for copies of the child's tests and quizzes during the latter portion of the academic year.

9. On March 20, 2012, [redacted] sent an e-mail to Mr. Kramb requesting an interim IEP meeting to discuss [redacted] "supports and services" (an issue that, in the past, had been addressed for [redacted] at interim IEP meetings toward the end of each school year), as well as the child's supervision during an upcoming field trip. In relevant part, the e-mail provided:

> It's that time of year again . . . need to set up an interim IEP for [redacted] to discuss her ESE Supports & Services . . . and her field-trip support.
>
> * * *
>
> I would like to have an interim IEP to discuss exactly what to expect and from who and what adult supervision & supports will
>
> be in place for [redacted] during the long field trip to Kennedy Space Center.

10. Although Mr. Kramb ultimately assuaged [redacted] concerns regarding the field trip, he correctly determined that neither issue warranted an interim IEP meeting. However, in late April or early May, Mr. Kramb notified [redacted] by e-mail that an annual IEP meeting would be convened for [redacted] in late May, notwithstanding that the child's existing IEP was valid until September. (Pursuant to School Board policy, annual IEP meetings are scheduled at the end of the school year for children who are set to transition to a new level——e.g., from elementary to middle school——and whose IEPs are due to expire before November.)

11. Thereafter, on May 11, 2012, [redacted] parents were provided with written notice that an annual IEP meeting would be convened on May 30, 2012. The notice read, in pertinent part:

> To the Parents of [redacted]:
> Your participation is valuable. You will be given opportunities to participate in meetings about the identification, evaluation, and educational placement of your child, and other matters relating to your child's free appropriate public education (FAPE).
>
> * * *
>
> A meeting has been scheduled . . . on 5/30/12 [at] 9:00 a.m. The purpose of the meeting is to develop a new Individual Education Plan (IEP) or Transition Individual Education Plan (TIEP). Your child's existing IEP/TIEP will be reviewed, goals and objects will be developed, and

placement options will be discussed.

(emphasis added).

12. Owing perhaps to her frustration that an interim IEP had not been scheduled, [redacted] did not react favorably to this news: on May 7, 2012, she notified Mr. Kramb by e-mail that she would "not be agreeing" to hold an annual IEP meeting. In the same e-mail, [redacted] requested a copy of the School Board policy that had prompted Mr. Kramb's decision to convene an annual, as opposed to interim, meeting.

13. In an e-mail response the following day, Mr. Kramb advised [redacted] that it was the School Board's "responsibility to do an annual/matriculation IEP when the child's annual due date is before 11/1 of the following year" and that [redacted] IEP would be "updated as an annual accordingly." Later the same day, [redacted] e-mailed the following response:

> I am **not agreeing to an ANNUAL IEP** for my daughter [[redacted]], but I do agree to a matriculation INTERIM to update her IEP.
>
> * * *
>
> I am again letting you know I will not be agreeing to an ANNUAL IEP for [[redacted]] because her ANNUAL IEP date is not until September 20, 2012. **Please provide me with any Broward ESE POLICY** that pertains to what you mentioned that all IEP's that are before Nov. have to be now be held before the close of a school year because the student may be
>
> matriculating into a different level, like Middle or High school matriculation.

(emphasis in original).

14. Subsequently, on May 16, 2012, [redacted] returned the IEP meeting notice to school personnel. The notice, which [redacted] signed, included the following handwritten notations:

> I AM REQUESTING THIS TO NOT BE [redacted] ANNUAL IEP.
>
> I am NOT agreeing to hold an Annual IEP – I AM agreeing to an Interim/Matriculation IEP for this meeting.
>
> I am agreeing by signing to hold an Interim/Matriculation & NOT an Annual IEP for THIS MEETING on 5/30/12.

15. Unhelpfully, the School Board made no reply to the foregoing notations, nor did it respond to [redacted] previous requests for a copy of the relevant district policy. This likely contributed, at least to some degree, to [redacted] faulty assumption that only an interim IEP meeting would be held.[4/]

16. Needless to say, the May 30 proceedings did not begin smoothly. At the meeting's outset, [redacted] was once again informed, much to her distress, of the School Board's intention to draft a new, annual IEP for [redacted] Bickering ensued (an audio recording of the meeting's first ten minutes is included in the record), during which [redacted] threatened to "walk out" unless the other team members acceded to her demand to conduct an interim meeting. Notably, and in response, at least one team member clearly warned [redacted] that, with or without her, an annual IEP

meeting would be held at that time. [redacted] and her advocate left the meeting shortly thereafter, never to return. Contrary to the allegations contained in the Amended Request, there is no persuasive evidence that School Board personnel "bullied" [redacted] from the meeting or otherwise discouraged her participation.

17. True to their word, the team proceeded without [redacted] and developed a new IEP for [redacted] A detailed exposition of the IEP's content is unnecessary, however, as the parents challenge only two aspects of the document: the determination that [redacted] met the criteria for exemption from state and district assessments (e.g., the FCAT); and the reduction of parent/teacher collaboration from five times per week to once per week.

18. As to the first issue, the IEP team's decision was guided, correctly, by four inquiries: (1) whether [redacted] able to master the grade-level, general state content standards even with appropriate and allowable instructional accommodations; (2) whether [redacted] was participating in a curriculum based on "Sunshine State Standards Access Points" (i.e., was the curriculum being presented to [redacted] with diminished complexity?); (3) whether [redacted] required extensive, direct instruction in academic areas based on access points in order to "acquire, generalize, and transfer skills across settings"; and (4) whether [redacted] presents with a significant cognitive disability.[5/]

Only if the answer to each question is "yes" should a child be exempted from state and district assessments——an action that, if taken, results in the child's placement on a special diploma track. Relying upon teacher input, the child's prior FCAT scores, [redacted] lack of progress toward her goals, evidence of increased frustration levels, and various assessment data, the team determined, appropriately, that each of the foregoing inquiries should be answered in the affirmative.[6/] No persuasive evidence has been adduced to disturb the IEP team's conclusions.

19. As noted above, the parents' other substantive concern regarding the May 30 IEP is the reduction of parent/teacher collaboration from five times per week to once weekly. On this issue, [redacted] presented credible, unrebutted testimony that each of [redacted] IEPs since kindergarten has required collaboration at a level of five times per week. The School Board's lack of explanation for this reduction notwithstanding, the parents have failed to demonstrate that once-weekly collaboration is insufficient to afford [redacted] some educational benefit.

C. 2012-2013 School Year

20. Following her completion of fifth grade, [redacted] matriculated to Parkway Middle School ("Parkway"), a magnet program within the Broward County School District.

21. In light of the claims raised in the parents' Amended Request, the child's performance in reading and math as the year

unfolded are of particular importance. For her reading instruction, [redacted] was assigned to Ms. Deana Maxwell's[7/] intensive reading class, a general education course that utilizes the "Wilson Reading System"——a highly structured, phonics-based program in which [redacted] had participated during the previous school year at [redacted] [redacted]. On August 29, 2012, Ms. Maxwell (with the assistance of a speech pathologist) administered the Wilson Assessment of Decoding and Encoding ("WADE") to [redacted] to measure her reading and spelling abilities. When compared with [redacted] WADE scores from the end of the previous year, the test results demonstrated, troublingly, that [redacted] skills had regressed substantially. The results, which were calculated by dividing the number of correct responses by the total number of items, are as follows:

5/21/12 WADE		8/29/12 WADE	
Reading		**Reading**	
Real Words:	25%	Real Words:	6%
Nonsense Words:	11%	Nonsense Words:	2%
Sight Words:	79%	Sight Words:	56%
Total Words:	40%	Total Words:	19%
Spelling		**Spelling**	
Words:	20%	Words:	0%
Sentences:	14%	Sentences:	0%
Sight Words:	18%	Sight Words:	6%
Total Spelling:	17%	Total Spelling:	2%

22. As the first half of the school year progressed, it became apparent to Ms. Maxwell and [redacted] ESE support facilitator, Ms. Maria Petrucci,[8/] that the Wilson System's

rigid, rule-based approach——which requires children to transfer learned rules from one lesson to the next——was not a good fit for [redacted] due to her poor retention skills. Ms. Maxwell and Ms. Petrucci were also concerned that [redacted] now a 14-year-old sixth grader, was making very little progress toward achieving her reading goals, which were designed to bring the child up to a second-grade level. (The Diagnostic Assessment of Reading ("DAR") was administered to [redacted] on August 24, 2012, which confirmed that the child was on or below a first-grade level in the areas of word recognition, oral reading, silent reading comprehension, spelling, and word meaning.) Ultimately, Ms. Maxwell and Ms. Petrucci concluded that [redacted] reading instruction could not be delivered adequately in a regular education setting.[9/]

23. It is also apparent, regrettably, that [redacted] continues to fall further and further behind her peers in the subject of math. Indeed, the results of the Comprehensive Mathematical Abilities Test ("CMAT"), which Ms. Petrucci administered to [redacted] on September 9, 2012, places the child's addition, subtraction, and multiplication skills below a first-grade level.[10/] Ms. Petrucci's administration of an alternative assessment (the "KeyMath3 Diagnostic") four weeks later yielded consistent results: [redacted] is operating below the first-grade level in the areas of numeration, algebra, geometry, and data analysis.

These assessment results, in combination with [redacted] lack of progress toward her current math goals, have led Ms. Petrucci and [redacted] math instructor to conclude, reasonably, that the child is in need of intensive math instruction in an ESE setting.

24. Wisely, an IEP team was assembled for [redacted] during early October 2012. Over the course of the meetings that ensued (six, to be exact), the IEP team made several substantive decisions with which the parents take issue: (1) the intended placement of [redacted] in an ESE classroom for reading and math instruction; (2) the conclusion that [redacted] continued to meet the criteria for exemption from state and district testing; and (3) the substance of some, but not all, of the goals developed for [redacted] [11/] The parents also object to certain procedural aspects of the final IEP meeting (conducted on November 29, 2012), which the undersigned will address first.

25. Prior to the final meeting, [redacted] notified the LEA representative, Ms. Chiantae Jones (an ESE specialist at Parkway), that she needed the November 29 proceedings to adjourn no later than 12:30 p.m. so she could accompany [redacted] to a dental appointment. Thereafter, and not coincidentally, Ms. Jones provided the parents with written notice that the final meeting would be held on November 29, 2012, between the hours of 9:00 a.m. and 12:30 p.m.

26. By all accounts, the start of the November 29 meeting was delayed by the tardy appearance of [redacted] advocate, who did not arrive until approximately 9:30 a.m. Oddly, 12:30 p.m. came and went without any request from [redacted] to suspend the proceedings.[12/] (The undersigned infers, based upon a careful review of the witnesses' testimony, that the IEP team made no effort to obtain [redacted] express assent to continue beyond the agreed upon ending time of 12:30.) One hour later, at 1:30 p.m., [redacted] advocate left the meeting to attend to other obligations; the advocate did, however, participate by telephone for the remainder of the day.[13/]

27. The IEP team completed its formal discussion at approximately 3:30 p.m. For the next 90 minutes or so, Ms. Jones attempted to fix various "glitches" that were apparent in the IEP document, which the team had created with a computer program known, ironically enough, as "Easy IEP." As detailed later in this order, not every glitch was remedied and, as a consequence, [redacted] was sent on her way with a flawed IEP document.

28. Turning now to the first of the three substantive claims relating to the IEP of November 29, 2012, the parents have failed to prove that reading and math instruction can be satisfactorily conferred to [redacted] in a general education setting. On the contrary, [redacted] need for instruction in an ESE setting in

these areas is demonstrated by the child's substantial lack of progress in both subjects; the results of multiple, reliable assessments (i.e., the DAR, CMAT, and KeyMath3); the input of [redacted] teachers, both of whom confirm that the child is wholly unable to keep pace in a regular setting; and the persuasive conclusions of Ms. Petrucci, who spent a considerable amount of time gathering data and interacting with [redacted] over the course of the year. Further, it has not been shown that the School Board's decision in this regard, whereby [redacted] will continue to receive instruction in a general setting for all subjects other than reading and math, fails to mainstream the child to the maximum extent possible.

29. With respect to the second issue (i.e., the team's decision that [redacted] should remain exempt from state and district standardized testing), the evidence conclusively establishes that the IEP team determined, appropriately, that the child satisfied each of the four exemption criteria——i.e., that [redacted] is unable to master the grade-level, general state content standards even with appropriate accommodations; that [redacted] is participating in a curriculum based on "access points" (that is, the Sunshine State Standards are being presented to the child in a format with diminished complexity); that [redacted] needs extensive, direct instruction in academic areas based on access points; and that [redacted] presents with a significant cognitive disability.

30. Next, the parents challenge the following goals, all of which were included in the IEP document provided to [redacted] upon the conclusion of the final meeting:

> 1. Annual Measurable Goal: Given an expository reading passage on a 2nd grade level read to her, [redacted] will orally answer who, what, where, and when questions with gestural prompting for redirection with 80% accuracy 3 out of 4 trials by May 2013.
>
> 2. Annual Measurable Goal: After [redacted] reads a passage on the 2nd grade level, [M.H.] will answer who, what, where, and when questions with 80% accuracy given redirection for task in 3 out of 4 trials.
>
> 3. Annual Measurable Goal: Given a reading passage on a 2nd grade level read to her, [redacted] will orally retell the main idea with 80% accuracy given visual supports by May 2013.
>
> 4. Annual Measurable Goal: Given a passage on a 2nd grade level, [redacted] will decode the text with 80% accuracy given prompts to redirect attention by May 2013.
>
> 5. Annual Measurable Goal: Given high frequency words at a 3rd grade level, [redacted] will decode all 41 words independently 4 out of 5 trials by May 2013.
>
> * * *
>
> 13. Annual Measurable Goal: Given a calculator, [redacted] will solve simple problems involving small quantities using language such as more, less, same and none with 80% accuracy by May 2013.
>
> * * *
>
> 18. Annual Measurable Goal: By May 2013, given visual pictorials, or manipulatives,

> [redacted] will demonstrate her understanding of the concepts using language such as more, less, same, and none with 80% accuracy.
>
> * * *
>
> 20. Annual Measurable Goal: Given task card, [redacted] will take out task card and follow 2 steps in 4 out of 5 trials by May 2013.

31. During the second day of the final hearing in this matter, Ms. Jones revealed——for the first time——to [redacted] parents, the undersigned, and School Board counsel that five of the challenged goals listed above (specifically, 1, 2, 3, 13, and 18) were not intended to be implemented——and, in fact, had been discontinued. Indeed, the word "discontinued" is handwritten next to goals 1, 2, 3, 13, and 18 on the copy of the IEP that is part of the instant record; the problem, though, aside from the inexcusable sloppiness of including discontinued goals in a final IEP document, is that the copy of the computer-generated IEP provided to [redacted] did not contain these handwritten additions, nor did it include the handwritten notations that goals 4 and 5 were "continued with revisions" in goals 16 and 19, respectively. To make matters worse, there is no evidence that it was ever explained to the parents, at any time before the second day of final hearing, that the goals at issue had been discontinued or relocated, and the undersigned declines to infer as much. Further, it is undisputed that the

parents were never provided with a corrected copy of the IEP.

32. The bottom line, then, is that the School Board provided [redacted] with a final IEP document that, on its face, listed 20 "active" goals, when in fact only 15 of the goals——or arguably 13, if goals 4 and 5 are excluded, which we now know were substantially revised and "relocated" to goals 16 and 19——were intended to be implemented. This caused the parents to believe, reasonably, yet erroneously, that goals 1, 2, 3, 4, 5, 13, and 18, to which they object on content-based grounds, were active and therefore ripe for a due process challenge.

33. With the dust settled, the parents' challenges to goals 1, 2, 3, 13, and 18 have been mooted in light of the School Board's final-hearing concession that each was discontinued; the claims that relate to goals 4 and 5 have likewise been mooted, as it is now apparent that both goals were substantially modified and relocated, respectively, to goals 16 and 19——goals that have not been challenged in the Amended Request.

34. Accordingly, the undersigned need only evaluate goal 20, which reads, "Given task card, [redacted] will take out task card and follow 2 steps in for out of 5 trials by May 2013." Notably, none of Petitioner's witnesses offered any specific testimony concerning the substance of the goal, nor was the goal referenced by any School Board witness during direct or cross-

examination. Instead, the record merely contains [redacted] conclusory opinion the IEP document as a whole sets too low a bar for her daughter——testimony plainly insufficient to establish the goal's invalidity.

CONCLUSIONS OF LAW

A. Jurisdiction

35. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

B. The IDEA

36. In enacting the Individuals with Disabilities Education Act ("IDEA"), Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th. Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the

federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

37. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

38. Local school systems must 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).

39. 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. Id. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. The team that develops an IEP must consist of, at a minimum, the parents, at least one of the child's regular education teachers, at least one special education teacher, and a qualified representative of the local educational agency. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a). "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).

40. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. First, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Id. at 206-07. A procedural

error 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. 516, 525-26 (2007).

41. Pursuant to the second step of the Rowley test, the undersigned must determine if the IEP developed pursuant to the IDEA is reasonably is reasonably calculated to enable the child to receive "educational benefits." 458 U.S. at 206-07. (1982). The Eleventh Circuit Court of Appeals has clarified that the IDEA does not require the local school system to maximize a child's potential; rather, the educational services need provide "only a 'basic floor of opportunity,' i.e., education which confers some benefit." 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)("This standard, that the local school system must provide the child 'some educational benefit,' has become known as the Rowley 'basic floor of opportunity standard'")(internal citations omitted); Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001)("[A] student is only entitled to some educational benefit; the

benefit need not be maximized to be adequate"); see also Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1313 (10th Cir. 2008)("[W]e apply the 'some benefit' standard the Supreme Court adopted in Rowley").

42. The Amended Request raises a variety of procedural and substantive issues that relate to the events of [redacted] final year at [redacted] [redacted], the development of the May 2012 IEP document, and the IEP of November 29, 2012. Each claim is discussed below by relevant school year.

C. 2011-2012 School Year

1. Procedural Claims

43. As instructed by Rowley, the undersigned will begin with a discussion of the parents' procedural allegations relating to the development of the May 30, 2012, IEP, namely: (1) the School Board's refusal to convene an interim IEP meeting when requested by [redacted] during late March 2012; (2) the decision of [redacted] [redacted] personnel to draft a new IEP for [redacted] in May 2012; (3) the IEP team's conduct, which, according to [redacted], "bullied" her from the IEP meeting; and (4) a purported failure by members of the IEP team to consider parental input. For the following reasons, each of Petitioner's procedural claims is without merit.

44. With respect to the first claim, it is apparent from the record evidence that [redacted] requests for an interim IEP

meeting were prompted by two considerations: the fact that interim IEP meetings had been held for [redacted] toward the end of previous school years; and [redacted] wish to discuss the impending field trip to Kennedy Space Center. The School Board contends, and the undersigned agrees, that these considerations did not require [redacted] personnel to convene an interim meeting, as neither related to the child's educational progress. See generally 34 C.F.R. § 300.324(b)(1)(requiring the IEP team to periodically review the child's IEP to determine if the annual goals are being met and, if necessary, revise the IEP in light of lack of progress, the results of any reevaluation, and/or the child's anticipated needs).

45. Nor was it error for the School Board to convene an annual meeting in May 2012 simply because the IEP in effect was

not due to expire for another four months. The relevant Federal regulation provides:

> (b) Review and revision of IEPs
>
> (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP team—
>
> (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
>
> (ii) Revises the IEP, as appropriate . . . .

34 C.F.R. § 300.324(b)(1)(i)-(ii)(emphasis added). As the foregoing language reflects, the School Board was not constrained to an annual review and revision of [redacted] IEP; on the contrary, it is apparent that an IEP team may convene to review a child's progress on as many occasions as the circumstances may require. See Buser v. Corpus Christi Indep. Sch., 51 F.3d 490, 494 n.6 (5th Cir. 1995)(observing that an IEP team should hold as many meetings each year as a child may need). In this instance, the IEP team made a sensible decision, consistent with School Board policy, that a new IEP should be drafted for [redacted] in light of the child's impending matriculation to middle school.

46. Petitioner's third and fourth procedural claims (that [redacted] was deprived of the opportunity to participate and that the IEP team failed to consider parental input) likewise fail,

as the School Board complied with the pertinent regulations. First, consistent with 34 C.F.R. § 300.322(a)(2), the School Board scheduled the May 30, 2012, IEP meeting at a mutually agreeable time and place. In addition, the written notice clearly advised the parents of the purpose of the meeting: to develop a new IEP, which would involve a review of the existing IEP, the development of goals, and a discussion of placement options. (Although the School Board could have done more, in the days preceding May 30, to disabuse [redacted] of her mistaken belief that only an interim meeting would (or should) be held, neither the IDEA nor its implementing regulations required it to do so.) Further, and contrary to the parents' allegations, [redacted] was not "bullied" from the May 30 meeting; indeed, several team members made genuine attempts, albeit to no avail, to convince [redacted] to remain at the meeting and participate. At that point, the IEP team was free to continue the process in the parents' absence. See 34 C.F.R. § 300.322(d)(providing that an IEP meeting may be conducted without the child's parents where the local agency is "unable to convince the parents that they should attend"). Finally, the record demonstrates that the IEP team did consider the parental input available to it——i.e., a nine-page e-mail titled "[[redacted]] IEP Parent Input," which [redacted] provided to the team prior to the May 30 meeting.

2. Substantive Claims

47. As referenced earlier, the parents raise three substantive challenges relating to events of the 2011-2012 school year and the May 30 IEP: (1) the IEP team's conclusion that [redacted] met the criteria for exemption from state and district assessments; (2) the IEP team's decision to reduce the level of parent/teacher collaboration from five times per week to once weekly; (3) and the failure by [redacted] math teacher to fully collaborate.

48. Based upon the findings of fact contained herein, the parents have not demonstrated that the IEP team erred in its determination that [redacted] satisfied the state exemption criteria; no further discussion on this point is necessary.

49. With respect to the second challenge, the parents have failed to prove that the level of parent/teacher collaboration required by the May 30 IEP——i.e., one time per week——is insufficient to enable [redacted] to achieve some educational benefit. Although dubious of the reduction, the undersigned is obligated, particularly in light of the parents' scant evidentiary presentation, to "pay great deference to the educators who develop the IEP." Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001); Sch. Dist. of Wisc. Dells v. Z.S., 295 F.3d 671, 677 (7th Cir. 2002)("The administrative law judge substituted his opinion for that of the school

administrators. He thought them mistaken, and they may have been; but they were not unreasonable.").

50. It is argued, next, that [redacted] was denied FAPE during the 2011-2012 school year[14/] due to a failure by the child's teachers to collaborate with the parents five times per week, contrary to the express provisions of the September 23, 2011, IEP document. As detailed in the findings of fact, however, the parents have demonstrated that only one of [redacted] teachers, Ms. Casale, failed to collaborate appropriately inasmuch as she neglected, during the final months of the school year, to respond to [redacted] multiple requests for copies of her child's tests and quizzes.

51. In determining whether this failure to comply with the terms of the IEP constitutes a denial of FAPE, the following standard applies:

> [A] party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failure and for providing the disabled child a meaningful educational benefit.

Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000)(emphasis added). Utilizing the foregoing standard,

which requires proof of "substantial or significant" implementation failures, the court in Bobby R. held that the school district's failure to provide speech services for four months——among other implementation deficiencies——did not constitute a denial of FAPE. 200 F.3d at 348-49.

52. Applying Bobby R. to the facts at hand, it is evident that one teacher's lack of full collaboration during the latter portion of the 2011-2012 school year, although not to be condoned, does not rise to the level of a material or substantial deviation from [redacted] IEP. See Melissa S. v. Sch. Dist. of Pittsburgh, 183 Fed. Appx. 184, 187 (3d Cir. 2006) (holding that school district's alleged failure to provide a 1:1 aide on several occasions did not constitute "the kind of substantial or significant failure to implement an IEP that constitutes a violation of the IDEA"); Savoy v. Dist. of Columbia, 844 F. Supp. 2d 23, 33-35 (D.D.C. 2012)(holding that school district's provision of 50 fewer minutes of instructional time per week than required by the child's IEP did not constitute a significant implementation failure); Corpus Christi Indep. Sch. Dist. v. C.C., 2012 U.S. Dist. LEXIS 79181 *20-21 (S.D. Tex. June 7, 2012)(holding loss of "44 minutes of general education time two days per week" was not a material deviation from the IEP).

D. 2012-2013 School Year

1. Procedural Claims

53. The parents' Amended Request alleges only one procedural violation relating to the 2012-2013 school year: the duration of the November 29, 2012, IEP meeting.

54. As discussed previously, the LEA representative, Ms. Jones, provided written notice to the parents that the November 29 meeting would be held between 9:00 a.m. and 12:30 p.m., in accordance with [redacted] prior request that the meeting conclude by 12:30 so she could accompany [redacted] to a dental appointment. It has been established, however, that the meeting lasted until 3:30 and, further, that [redacted] remained at the hearing location until approximately 5:00 while she waited for Ms. Jones to remedy the glitches apparent in the computer-drafted IEP document. While it is true, as the School Board notes, that the meeting began 30 minutes late due to the tardy arrival of [redacted] advocate, the fact remains that the Ms. Jones allowed the proceedings to continue substantially beyond the noticed ending time. This was not without some adverse consequence to [redacted], who was deprived of the in-person participation of her advocate for several hours. (As detailed earlier, the advocate was unable to stay beyond 1:30 p.m., although she did appear by telephone for the remainder of the meeting.)

55. Had [redacted] or her advocate voiced an objection to proceeding onward once it was apparent that the meeting would not end on time, the undersigned would have concluded, without hesitation, that the meeting's extended length constituted a procedural violation——and a significant one at that. See 34 C.F.R. § 300.322(a)(2)(requiring that an IEP meeting be held at a mutually agreed time). However, Ms. Petrucci and Ms. Jones testified credibly that neither [redacted] nor her advocate made any request to suspend the proceedings until a later date, which led the team to believe that the parent did not object to continuing beyond 12:30 p.m. Although it would have been the better practice for the School Board to have obtained [redacted] affirmative assent to extent the meeting, the undersigned is not persuaded that it was obligated to do so.

56. Even assuming, arguendo, that a procedural violation was committed, [redacted] was denied FAPE only if the error: (1) impeded the child's right to FAPE; (2) significantly infringed the parents' opportunity to participate in the decision-making process; or (3) caused an actual deprivation of educational benefits. See [redacted] v. New York City Dep't of Educ., 685 F.3d 217, 245 (2d Cir. 2012). The parents have failed to demonstrate that the duration of the November 29 meeting impeded [redacted] right to FAPE, nor have they proven a deprivation of educational benefits. Further, there has been no showing that length of the

meeting significantly infringed [redacted] right to participate; on the contrary, the record demonstrates that the mother was actively involved in the meeting——albeit without the benefit of in-person assistance from her advocate for two hours——and that the team considered her input.

57. Before turning to the parents' substantive claims, one other procedural issue warrants discussion: the School Board's provision of a glitch-riddled IEP to [redacted] As discussed previously, the copy given to the parent contained no indication on its face that many of the goals had been eliminated or modified, nor was this fact ever explained to the parent before the second day of final hearing in this matter. Parents are, of course, entitled to a copy of their child's IEP, see 34 C.F.R. § 300.322(f), and it can hardly be disputed that providing a parent with an IEP document that radically differs from the actual educational program developed by the team, as occurred here, is tantamount to giving the parent no copy at all. At the very least, [redacted] parents are presently entitled to a corrected copy of the November 29, 2012, IEP that accurately reflects that educational program formulated for their child.[15/]

58. The undersigned is reticent, however, to adjudicate this issue fully (i.e., determine if the procedural flaw resulted in a FAPE denial), as the parents have not yet had a full opportunity to demonstrate that the error impeded [redacted]

right to FAPE, significantly infringed their opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. (Nor has the School Board had occasion to mount a defense to such a charge.) It is determined, therefore, that the question of a possible FAPE denial is one best reserved for a subsequent due process proceeding, should the parents decide to litigate this issue further.

2. Substantive Claims

59. Finally, the parents raise three substantive challenges to the November 29 IEP: the appropriateness of goals 1, 2, 3, 4, 5, 13, 18, and 20; the decision to maintain [redacted] on a special diploma track; and the placement of [redacted] in a special class for reading and math instruction.

60. The first issue requires little discussion, as the parents' objections to goals 1, 2, 3, 4, 5, 13, and 18 have been mooted. This leaves only goal 20, which provides: "Given task card, [redacted] will take out task card and follow 2 steps in for out of 5 trials by May 2013." As discussed previously, however, the parents have made no showing that goal 20 is inappropriate in any respect; their challenge therefore fails. See Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001)("The party attacking the IEP bears the burden of showing that the IEP is inappropriate").

61. The second claim is likewise unavailing, as the parents have failed to demonstrate that that the IEP team erred in its determinations that [redacted] satisfied the criteria for exemption from state and district assessments.

62. Turning to the issue of placement, the IDEA mandates that:

> To the maximum extent appropriate, children with disabilities . . . 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.

20 U.S.C. § 1412(a)(5)(A). "Educating a handicapped child in a regular education classroom . . . is familiarly known as 'mainstreaming.'" Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1039 (5th Cir. 1989). Courts have acknowledged, however, that the IDEA's strong presumption in favor of mainstreaming must be "weighed against the importance of providing an appropriate education to handicapped students." Briggs v. Bd. of Educ., 882 F.2d 688, 692 (2d Cir. 1989).

63. In evaluating whether an IEP places a student in the least restrictive environment, a two-part test is applied:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be

> achieved satisfactorily. If it cannot and school intends to provide special education or remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Greer v. Rome City Sch. Dist., 950 F.2d 688, 696 (11th Cir. 1991)(internal citation omitted); L.B. v. Nebo Sch. Dist., 379 F.3d 966, 976 (10th Cir. 2004); Daniel R.R., 874 F.2d at 1048.

64. To determine whether a child with disabilities can be educated satisfactorily in a regular class with supplemental aids and services (the first part of the test described above), several factors are properly considered:

> (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class.

P. ex rel. Mr. & Mrs. P. v. Newington Bd. of Educ., 546 F.3d 111, 120 (2d Cir. 2008)(quoting Oberti v. Bd. of Educ., 995 F.2d 1204, 1217-18 (3d Cir. 1993)).

65. Although there is little or no evidence to suggest that [redacted] presence in the general education setting for reading and math negatively affects other students, it is concluded, nevertheless, that [redacted] cannot be satisfactorily educated in a regular class for these subjects. As discussed previously, the

School Board's efforts to accommodate [redacted] have been both extensive and reasonable and it is evident that the child, now a 14-year-old sixth grader whose math and reading skills are on or below the first grade level, cannot receive, in a regular education setting, the level of direct, specialized instruction she so sorely requires. See P. ex. rel. Mr. & Mrs. P., 546 F.3d at 121 ("Although . . . there did not appear to be a significant negative impact on other students arising from his inclusion in the regular classroom, we see no error in the district court's conclusions that [redacted] could not be educated in the regular classroom full-time and that the school had made significant efforts to integrate [redacted] to the maximum extent possible. The school utilized a variety of supplemental aids . . . and modified the curriculum appropriately. Moreover, the hearing officer permissibly relied on [testimony] that [redacted] required pull-out services for reading, math, and speech therapy.").

66. Turning now to the second part of the test, the evidence demonstrates that [redacted] will continue to receive instruction in a general education setting for all subjects other than math and reading, and, further, that [redacted] will spend more than 61 percent of [redacted] time[16/] with non-disabled peers. It is concluded, therefore, that the IEP mainstreams [redacted] to the maximum extent possible. See id. at 122.

CONCLUSION

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

ORDERED that:

Petitioner's Amended Request for Due Process Hearing is denied in all respects. Nevertheless, the School Board shall, within five days of this Final Order, provide the parents of [redacted] with a copy of the November 29, 2012, IEP that accurately reflects the educational program developed by the IEP team.

DONE AND ORDERED this 28th day of February, 2013, in Tallahassee, Leon County, Florida.

S

EDWARD T. BAUER
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of February, 2013.

ENDNOTES

[1/] The undersigned's order of December 19, 2012, also reset the timelines enumerated in Florida Administrative Code Rule 6A-6.03311. See Fla. Admin. Code R. 6A-6.03311(9)(g)("If a party

files an amended due process hearing request, the timelines for the resolution session in paragraph (1) of this subsection and the thirty (30) day time period to resolve the request set forth in paragraph (o) of this subsection begin again with the filing of the amended due process hearing request.").

[2/] Petitioner's Motion to Strike, filed February 8, 2013, is denied. All other outstanding motions are hereby denied as moot.

[3/] Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications.

[4/] [redacted] belief in this regard is reflected in multiple e-mails sent to School Board personnel during the weeks preceding the May 30 IEP meeting. Specifically, on May 22, 2012, [redacted] e-mailed Mr. Kramb as follows: "When can I expect to receive the Draft IEP copy sent home for [[redacted] 5/30/12] upcoming Interim/Matriculation IEP?" (emphasis added). Similar references by [redacted] to the impending meeting as an "interim IEP" were included in an e-mail to Ms. Kimberly Ednie (an ESE program specialist) on May 16, 2012, and in an e-mail to Mr. Kramb just hours before the meeting was scheduled to begin. See Pet. Exhibit 22, pp. 371 & 398.

[5/] Florida Administrative Code Rule 6A-1.0943(4) provides, in relevant part:

> (4) Participation in the statewide alternate assessment. The decision that a student with a significant cognitive disability will participate in the statewide alternate assessment is made by the IEP team and recorded on the IEP. The following criteria must be met:
>
> (a) The student is unable to master the grade-level general state content standards pursuant to Rule 6A-1.09401, F.A.C., even with appropriate and allowable instructional accommodations, assistive technology, or accessible instructional materials;
>
> (b) The student is participating in a curriculum based on the state standards

> access points, pursuant to Rule 6A-1.09401, F.A.C., for all academic areas; and
>
> (c) The student requires direct instruction in academics based on access points, pursuant to Rule 6A-1.09401, F.A.C., in order to acquire, generalize, and transfer skills across settings.

[6/] It is true, as the parents note in their Proposed Final Order, that Mr. Allagood ([redacted] science and language arts teacher) was unaware, during the May 30 IEP meeting, of the meaning of "access points." Nevertheless, it is evident that Mr. Allagood had been presenting the curriculum to [redacted] in a format with diminished complexity (i.e., "access points") and that the IEP team was so aware.

[7/] Ms. Maxwell holds a bachelor's degree in elementary education and a master's degree in learning disabilities.

[8/] Ms. Petrucci, who is certified by the Florida Department of Education in the field of Varying Exceptionalities, has been employed with the School Board for 17 years.

[9/] Contrary to the allegations contained in the Amended Request, there is no persuasive evidence that Ms. Maxwell or any member of Parkway staff has prevented [redacted] from utilizing assistive technology, such as the child's laptop computer and software.

[10/] The CMAT also tested [redacted] problem-solving and division skills. As to the former, [redacted] tested on a first-grade level; with respect to the latter, the child scored on a second-grade level.

[11/] The parents also object to the lack of participation by the Florida Division of Vocational Rehabilitation ("the Division") in the creation of [redacted] IEP. The testimony of Ms. Jones and Mr. Lou Ruccolo (a transition coordinator with the district) credibly establishes, however, that the Division is unwilling to participate in IEP development for children as young as [redacted] In any event, there is no evidence that the absence of a Division employee hindered the IEP team; on the contrary, the final IEP document includes thorough, well-thought-out transition goals that relate to [redacted] future employment, activities of daily living, and community involvement. See Respondent's Exhibit 30, pp. 602-604.

[12/] This finding is based upon the credible testimony of Ms. Petrucci. See Final Hearing Transcript, p. 310.

[13/] The parents allege in the Amended Request that the meeting's extended length (i.e., beyond 12:30 p.m.) deprived [redacted] of an opportunity to participate. This claim is belied, however, by Ms. Petrucci's credible testimony that [redacted] voluntarily excused himself from the meeting roughly an hour after it began. See Final Hearing Transcript, p. 304.

[14/] As detailed elsewhere in this Final Order, the parents also argue that [redacted] was denied FAPE during the 2011-2012 by virtue of censorship of parental e-mails by the school principal and by the refusal to hold an interim IEP meeting. The claim relating to the school principal has not been factually substantiated, and therefore requires no discussion. As to the other issue, the concerns raised in [redacted] e-mails did not obligate the School Board to convene an interim meeting.

[15/] Although the parents did not raise this issue in their Complaint (indeed, how could they in light of the School Board's in-hearing disclosure of the problem?), it would be unduly burdensome to require them to plead the claim in a subsequent due process proceeding just to receive a proper copy of the IEP.

[16/] See Pet. Exhibit 30, p. 610.

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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)(b), Florida Statutes, 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) and Florida Administrative Code Rule 6A-6.03311(9)(w).