STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 09-2998E
	)	
MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on July 20 through 24 and 27, 2009, in Miami, Florida, and on November 23, 2009, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lilliam Rangel-Diaz
Qualified Representative
Center for Education Advocacy, Inc.
5973 Southwest 42nd Terrace
Miami, Florida 33155

For Respondent: Mary C. Lawson, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUES

The issues for determination are (1) whether the School Board failed to implement the Child's current Individual Educational Plan (IEP) dated May 6, 2008, by failing to properly and consistently implement the Fast ForWord reading comprehension software program (FFW Program) and the Visualizing/Verbalizing reading comprehension program (V/V Program) and by failing to provide the Child with the supplementary aids and services, related services and support needed for the consistent implementation of the IEP; (2) whether the School Board improperly interfered with the Child's access to the FFW Program representative and/or to [redacted] FFW Program account; and, hence, (3) whether the School Board failed to provide the Child with a free appropriate public education (FAPE) in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

On June 1, 2009, this matter was referred to the Division of Administrative Hearings as a result of the School Board receiving a Request for Due Process Hearing and Mediation (DPH Request) on May 22, 2009, from the Parents of the Child.[1] The parties agreed to hearing dates for the due process hearing, and the hearing dates were beyond the 45-day decision requirement; as a result, the 45-day decision requirement was extended.

At hearing, the Parents presented the testimony of three witnesses, including one of the Child's Parents, and entered 21 exhibits (Petitioner's Exhibits numbered A, B, C, H, I, J, K, L, N, O, P, Q, R, S, T, U, V, W, X, Y, and EE) into evidence. The School Board presented the testimony of 11 witness and entered 17 exhibits (Respondent's Exhibits numbered 1; 2 (2A, bate stamped 21 through 44; 2B, bate stamped 45 through 86; and 2C, bate stamped S-86-1 through S-86-20); 3; 4; 5; 6; 7A; 7B; 7C; 7D; 8; 9; 10; 11; 12; 13A; and 14) into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was extended and, based upon an expected time period for filing of the transcript, set for September 14, 2009, thereby, extending the 45-day decision requirement. The transcript of the proceeding was not filed as expected. With input from the parties, the undersigned issued an order directing the parties to file their post-hearing submissions within 17 days of the filing of the transcript.

The Transcript, consisting of seven volumes, was filed on September 14, 2009. The parties' post-hearing submissions were due to be filed on or before October 1, 2009; again, extending the 45-day decision requirement. The parties timely filed their post-hearing submission. The Parents' post-hearing submission was more than 40 pages, and the Parents moved for leave to

extend the length of the post-hearing submission beyond 40 pages.[2] After being afforded an opportunity to respond to the request, the School Board chose not file a response to the request. The Parents' request was granted, and its post-hearing submission was accepted as filed. The 45-day decision requirement was appropriately extended to November 17, 2009.

The undersigned was notified that another volume of the Transcript was not filed, increasing the volumes of the Transcript to eight. The eighth volume of the Transcript was filed on November 2, 2009.

By Order issued November 2, 2009, the due process hearing was re-opened for a limited purpose to address the number of missed speech-language therapy sessions and address whether the missed sessions constituted a denial of FAPE. The due process hearing was scheduled for November 20, 2009. At hearing, the Parents presented the testimony of four witnesses, including one of the Child's Parents, and entered three additional exhibits (Petitioner's Exhibits numbered II, KK, and LL) into evidence. The School Board presented the testimony of no witness and entered no exhibits into evidence. The 45-day decision requirement was extended to January 20, 2010.

The Transcript of the re-opened due process hearing, consisting of one volume, was filed on December 8, 2009. The parties' post-hearing submissions were due to be filed on or

before December 18, 2009. The School Board filed its post-hearing submission, Supplemental Proposed Final Order, addressing only the issues in the re-opened due process hearing. The Parents' post-hearing submission, Amended Proposed Final Order, addressed all the issues in the original due process hearing and in the re-opened due process hearing and was more than 40 pages. The Parents moved for leave to extend the length of the post-hearing submission beyond 40 pages.[3] The School Board filed a response in opposition and moved to strike the Parents' Amended Proposed Final Order. The Parents' request was granted; the School Board's request was denied; and the Parents' post-hearing submission was accepted as filed. The School Board was provided an opportunity to file an amended post-hearing submission, but chose not to do so.

Subsequently, the School Board filed a Notice of Supplemental Persuasive Authority. The Parents were provided an opportunity to file a response and did file a response in opposition. In light of the new matters being presented, the 45-day decision requirement was extended to February 24, 2010.

The parties' post-hearing submissions were considered in the preparation of this Final Order.[4]

FINDINGS OF FACT

1. At all times material hereto, the Child attended one of the School Board's elementary schools.

2. The Child is eligible for the Exceptional Student Education (ESE) program on the basis of Autism Spectrum Disorder and Language Impairment. The Child's education is governed by the Individuals with Disabilities Education Act (IDEA).

3. One of the Child's Parents is an [redacted] teacher at one of the School Board's middle schools. At the time of the due process hearing, the Parent had been employed with the School Board as an [redacted] teacher for 18 years and had been at the same middle school for 16 years. During the Parent's tenure with the School Board, the Parent has written IEPs; attended staffings for IEPs; updated IEPs, including goals of IEPs; implemented IEPs; and been responsible for overseeing the implementation of IEPs.

4. The Child's current IEP is dated May 6, 2008, and was developed at an annual review of the Child's IEP. At that time, the Child was in the [redacted] grade.

5. The Child's current IEP dated May 6, 2008, is the stay-put IEP.[5]

6. At the time the due process hearing request was received on May 22, 2009, the Child was in the [redacted] grade.

7. At the time of the due process hearing in July 2009, the Child was assigned to the [redacted] grade.

8. Prior to the filing of the due process hearing request in the instant case, the Child's Parents had filed another due

process hearing request in 2007. The Parents and the School Board engaged in mediation in the prior case and entered into a mediation agreement in 2007, which provided for and authorized, pertinent to the instant case, a reading comprehension software program (the FFW Program) to be used to assist the Child. The School Board ordered the FFW Program from the company (Company) that owned the rights to the FFW Program, thereby purchasing the licensing rights to the FFW Program for use during the 2007-2008 school year.

9. The Child's IEP of May 6, 2008, indicated, among other things, that Child's educational placement was general education class 80 percent to 100 percent. Further, the IEP indicated, among other things, that the Child's Priority Educational Needs (PEN) were (1) Reading Skills; (2) Receptive/Expressive Language Skills; (3) Written Communication Skills; (4) Social Skills; and (5) Test Taking Skills.

10. Additionally, the Child's IEP of May 6, 2008, provided, among other things, for supplementary aids and services consisting of consultation by the ESE teacher, paraprofessional assistance, and consultation by the speech and language pathologist (SLP).

11. Also, the Child's IEP of May 6, 2008, provided, among other things, for related services consisting of counseling,

assisted technology—software, occupational therapy, and occupational therapy observation.

12. Further, the Child's IEP of May 6, 2008, provided, among other things, for support needed for the IEP's implementation consisting of the general education teacher, all teachers working with the Child, the paraprofessional, the counselor, and the SLP.

13. The Child's IEP of May 6, 2008, provided in the Conference Notes section, among other things, that language therapy would not be one 90-minute session, but two, 45-minute sessions or three 30-minute sessions; that the Child would continue to use the FFW Program, during the 2008-2009 school year, after school and not during the school day; and that weekly reports generated by the FFW Program would be sent home.

14. Additionally, the Child's IEP of May 6, 2008, provided in the Additional Conference Notes section, among other things, that the V/V Program would be used by the speech and language pathologist and supported by the autism support teacher.

15. The implementation period of the IEP of May 6, 2008, was May 6, 2008, through May 5, 2009.

16. The assisted technology devices provided to assist the Child included Reading Plus, FCAT Explorer, Forget-To-Read, Voyager Learning, FFW Program, V/V Program, and Writing With Symbols.

17. The Child has a paraprofessional, who has been providing support for the Child for several years. The paraprofessional accompanied the Child on a full-time basis. Support provided by the paraprofessional to the Child included providing support during all classes, e.g., music, reading, and physical education; therapies, e.g., occupational therapy, speech and language on the V/V Program, and reading programs, including the FFW Program; with schedules, visual cards, checklist, and task cards; during chorus; and counseling.

18. The parties agree that occupational therapy is not at issue in this due process hearing.

19. Academically, the Child made the School's honor roll for the first, second, and third nine weeks. The Parents had no indication that the Child was not doing well and was not progressing.

Collaboration/Consultation Log

20. The Child's ESE teacher and general education teachers completed a Collaboration/Consultation Log (CC Log), which is required by the School Board to be maintained. The CC Log was completed for the Child by the teachers whenever ESE support services were provided, consisting of (1) instructional planning, (2) instructional delivery, (3) instructional support, (4) behavioral intervention, (5) monitoring student progress, (6) observation/data collection, and (7) accommodations.

21. The ESE teacher and the Child's reading teacher met on a weekly basis.

FFW Program and Progress Tracker for the FFW Program

22. The FFW Program is an intervention tool and a diagnostic tool. The FFW Program requires the constant monitoring of data and the interpreting (analyzing) of data.

23. Reports, including intervention reports, would be generated by the FFW Program. The FFW Program would monitor difficulties experienced by a child and provide interventions, which were generic and general.

24. Persons using the FFW Program must be trained on it. If one is not trained on it, one is unable to use the FFW Program.

25. For the 2008-2009 school year, the School Board's official who was responsible for ordering the FFW Program was contacted and was requested to order the FFW Program. The official considered the FFW Program as assisted technology, which is a tool to access the curriculum. Regarding assisted technology, the official's interpretation of the IDEA was that the IDEA did not require the name of the tool to be written into the IEP. The School Board's policy was that the specific name of the tool was not written into the curriculum and that an IEP team did not have the authority to and should not specifically name a supplementary intervention tool in an IEP. The FFW

Program was on the School Board's supplementary intervention list for the school district.

26. Because of the official's interpretation of the IDEA and the School Board's policy, the official was not aware that the FFW Program was specifically made a part of the Child's IEP. Not being aware that the FFW Program was specifically a part of the Child's IEP, the official did not immediately order the FFW Program when the contact was initially made to order the FFW Program. However, when the official was again contacted, due to the FFW Program's not being received by the Child's school (School), and was advised that the FFW Program was a part of the Child's IEP, the official immediately ordered the FFW Program. The official used the School Board's normal process for ordering such programs. There was a considerable delay in obtaining the FFW Program. The FFW Program was not timely ordered.

27. However, because of the School Board's policy regarding supplementary intervention tools being specifically named in an IEP, the School Board's official should have been made aware, at the time that she was requested to order the FFW Program for the 2008-2009 school year, that the FFW Program was specifically a part of the Child's IEP. The evidence fails to establish a reasonable explanation as to why the School Board's official was not made aware that the FFW Program was a part of the Child's IEP at the time that the contact was made to order

the FFW Program. No evidence was presented that the Parents contributed to the FFW Program not being timely ordered. Hence, the untimely ordering and obtaining of the FFW Program was entirely the fault of the School Board.

28. The Progress Tracker for the FFW Program was a part of FFW Program, showing the weekly progress of the user of the FFW Program. The Progress Tracker identifies, among other things, the lack of progress in order for strategies for improvement to be identified and implemented. The Company provides suggested strategies for improvement.

29. The Progress Tracker was provided to the Child during the 2007-2008 school year. The Parents received weekly Progress Tracker reports during the 2007-2008 school year. On or about August 23, 2008, the Parent contacted the School requesting the School to contact the Company to re-establish the Progress Tracker, so that the Parent could monitor the progress of the Child on the FFW Program. The School agreed to do so.

30. The CC Log reflects that the impending expiration of the licensure for the Progress Tracker was discussed on August 27, 2008.

31. The School Board's official was also requested to order the Progress Tracker for the FFW Program. Around August or September 2008, the official was contacted by the principal of the School and indicated that the purchase agreement for the

Progress Tracker was about to expire. The official informed the principal that there was no money to purchase the Progress Tracker for the Child. However, when the principal later advised the official that the Progress Tracker was a part of the Child's IEP, the official began the process to purchase the Progress Tracker.

32. The Parents had not received a Progress Tracker report since the end of September 2008.

33. The CC Log reflects that the licensure expiration was discussed on October 1 and 8, 2008. On October 8, 2008, the CC Log reflects that nothing could be done until the School Board purchased another license.

34. On or about November 20, 2008, the Parent again contacted the School regarding an update on the Progress Tracker. The Parent had not been receiving the Progress Tracker's weekly reports even though the Child was using the FFW Program.

35. In March 2009, the Parents were notified that the Progress Tracker had been ordered.

36. Again, the School Board's official should have been made aware, at the time that she was requested to order the Progress Tracker for the Child, that the Progress Tracker was a part of the Child's IEP. The evidence is insufficient to establish a reasonable explanation as to why the School Board's

official was not made aware that the Progress Tracker was a part of the Child's IEP at the time that she was contacted to order the Progress Tracker. No evidence was presented that the Parents contributed to the Progress Tracker's not being timely ordered. The untimely ordering and obtaining of the Progress Tracker was entirely the fault of the School Board.

37. The ESE teacher was trained on the FFW Program and oversaw the FFW Program. The ESE teacher was responsible for contacting the Company if any problems were encountered with the FFW Program. Additionally, the ESE teacher received all the reports generated by the FFW Program.

38. Each day after school for 15 minutes, the Child used the FFW Program. The Child's paraprofessional at the School was responsible for implementing the FFW Program and attended the FFW Program sessions with the Child. The paraprofessional was trained on the FFW Program by a Company representative.

39. If the Child was experiencing difficulty on the FFW Program and needed assistance, the paraprofessional would contact the ESE teacher for assistance. The Child's reading teacher at the School was only responsible for monitoring the Child's use of the FFW Program; and would, therefore, walk around the classroom and observe the Child to ensure that the Child was on task regarding the FFW Program, consult with the paraprofessional, and develop strategies.

40. The Child's reading teacher at the School was trained on and informed of the FFW Program by the School's ESE teacher. The ESE teacher also advised the Child's reading teacher about the FFW Program's strategies, but the Child's reading teacher considered the strategies to be the same strategies already being used in the reading class.

41. On a daily basis, the computer would provide points on items in which the Child was engaged on the FFW Program. The Child's reading teacher would review the points and discuss them with the paraprofessional. The computer indicated that the Child was having difficulty with the reading exercise of Quick Splash, which improves the skill of passage comprehension, in that the Child was receiving zero points even though the Child was completing Quick Splash. The difficulty was noted on the CC Log as early as September 18, 2008.

42. On or about February 26, 2009, the Parents received Progress Tracker reports for the missing time period. At that time, the Progress Tracker had not been available to show the progress of the Child for approximately five months; and, as a result, the Parents were unable to monitor the Child's progress through the Progress Tracker for approximately five months.

43. The Progress Tracker reports provided showed that the reading exercise of Quick Splash, which improves the skill of passage comprehension, was zero percent progress since the week

of August 25 through 29, 2008. Even though the FFW Program was being used, the Parents had received no information from the School indicating that the Child was making zero percent progress in the reading exercise of Quick Splash.

44. The School should have been concerned that the Child was making zero progress in the reading exercise of Quick Splash. Even though the Child was engaging Quick Splash, a zero percent progress should have alerted the School to first check the computer to make sure that the computer was operating appropriately; and then communicate with the Company to ascertain whether and assure the School that the Company was receiving the Child's performance reports for evaluation.

45. Also, the School should have been concerned that a problem existed when the Progress Tracker report for the week of September 22 through 26, 2008, showed a completion of three percent when the goal was a completion of six percent. The School failed to realize that a problem existed.

46. The School failed to recognize that a problem existed in the FFW Program as represented by the Progress Tracker reports for the period of time from August 25, 2008 through September 26, 2008. Furthermore, such failure by the School showed that the School was not monitoring and interpreting the data. The evidence demonstrates that the FFW Program was not properly implemented.

47. In early May 2009, the FFW Program started over again, instead of continuing with the existing reading program for the Child. Everything on the FFW Program had been erased. The ESE teacher, the computer repair person for the School, and a FFW Program representative were all contacted for assistance, but nothing could be done. The FFW Program was believed to have been accidentally restarted at the previous reading level of the Child.

48. The Parents attempted to communicate with the Company regarding the problem with FFW Program. However, the Company would not or could not provide the Parents with the information that the Parents wanted. The evidence is insufficient to demonstrate that the School Board improperly interfered with the Parents' communicating with the Company regarding the FFW Program, including obtaining information regarding the FFW Program's account.

49. The Progress Tracker report for the week of May 4 through 8, 2009, showed that during that week, in only a few days, the Child had progressed five percent on the reading exercise of Quick Splash even though the Child had not made any progress on the same reading exercise during the entire school year prior to that week. A problem existed, but the School failed to attempt to identify or discern the problem and correct it. For the remaining 2008-2009 school year, the Progress

Tracker reports showed that, even though the Child was engaging Quick Splash, the Child made zero percent progress on Quick Splash. Again, a problem existed, but the School failed to attempt to identify or discern the problem and correct it.

50. The evidence demonstrates that the FFW program was not being properly implemented due to the failure of the School to identify or discern the problem and correct it.

V/V Program and Speech and Language Therapy

51. The V/V Program is a tool that addresses reading and language comprehension. If the V/V Program is implemented appropriately and consistently and worked-on at home, there should be improvement in a child's comprehension. The V/V Program yields data, but the data are the therapy notes.

52. Persons using the V/V program must be trained on it. If one is not trained on it, one is unable to use the V/V Program.

53. The School Board's speech and language pathologist (SLP), who was assigned to and worked with the Child, was trained on the V/V Program. The School Board's SLP implemented the V/V Program at the School. The Child's paraprofessional attended the V/V Program sessions with the Child.

54. Also, the Child had a private SLP, who was trained on the V/V Program. The private SLP was aware that the Child was also using the V/V Program at the School. The private speech

and language therapy (SLT) began on June 25, 2008. In June 2009, the private SLT was increased from once a week for 30 minutes to twice a week for two hours.

55. Components of the V/V Program are pictures and sample stories.

56. The School Board's SLP began providing services to the Child at the School three times a week, 30 minutes each session, totaling 90 minutes per week. The School Board's SLP provided services at the School on Tuesday, Thursday, and Friday of each week, beginning May 2008 until the end of 2007-2008 school year. The Child was not the only student to whom the School Board's SLP provided services.

57. Beginning the 2008-2009 school year, the School Board's SLP provided services to the Child twice a week, 45 minutes each session, totaling 90 minutes per week. The School Board's SLP provided services to the Child at the School on Tuesday and Friday of each week, beginning August 2008. Again, the Child was not the only student to whom the School Board's SLP provided services.

58. The Child did not master all of the three goals for speech and language, goals numbered 9, 10, and 11, in the IEP of May 6, 2008, which addressed the Child's PEN number (2): Receptive/Expressive Language Skills.[6]

59. The Child did not master speech and language goal number 9 of the IEP of May 6, 2008. This goal was a language-based goal to help with the Child's expressive language skills, targeting the Child's ability to tell stories. The School Board's SLP began with the single sentence level. The Child moved from single sentences to the multi-sentences as the reading levels increased, moving to three then to four sentences. However, the Child had difficulty and did not master goal number 9 by May 4, 2009. The status report on goal number 9 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, October, and November 2008; a "2," which was "Some progress made; anticipate meeting goal by IEP end," in January, February, and April 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

60. The Child mastered speech and language goal number 10 of the IEP of May 6, 2008. This goal's purpose was for the Child to answer the "why" questions, targeting the Child's ability to recognize "cause and effect" and "reasons." The Child mastered goal number 10 by May 4, 2009. The status report on goal number 10 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, October, and November 2008; a "2," which was "Some progress made; anticipate meeting goal by IEP end," in January, February,

and April 2009; and a "1," which was "Mastery of goal," on May 4, 2009.

61. The Child mastered speech and language goal number 11 of the IEP of May 6, 2008. This goal was the pragmatic goal, targeting the Child's conversational skill. Also, this goal was intertwined with the V/V Program. The Child mastered goal number 11 by May 4, 2009. The status report on goal number 11 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, October, and November 2008; a "2," which was "Some progress made; anticipate meeting goal by IEP end," in January, February, and April 2009; and a "1," which was "Mastery of goal," on May 4, 2009.

62. The Child missed some speech and language therapy (SLT) sessions during the implementation period of the IEP dated May 6, 2008.

63. For the remainder of the 2007-2008 school year, after the IEP of May 6, 2008, was developed and agreed upon, no SLT session was held on May 6, 2008, because that was the day the annual IEP was developed. The evidence does not demonstrate that a make-up session is required for this one missed SLT session.

64. On May 8, 13, and 16, 2008, SLT sessions were missed. The evidence demonstrates that make-up sessions are required for these three missed SLT sessions.

65. The 2007-2008 school year ended on June 5, 2008. The SLP was instructed by the School Board's Regional Supervisor not to have therapy sessions during the last two weeks of school.

66. No therapy sessions were conducted during the last two weeks of the 2007-2008 school year, consisting of May 27, 29, and 30, 2008, and June 3, 2008, totaling four sessions. The evidence demonstrates that make-up sessions are required for these four missed SLT sessions.

67. Therefore, for the 2007-2008 school year, under the IEP dated May 6, 2008, the Child missed seven, 30-minute SLT sessions for which make-up sessions are required.

68. The 2008-2009 school year began in August 2008. The SLP was instructed by the School Board's Regional Supervisor not to have therapy sessions during the first two weeks of school. During the first two weeks of school, the SLP ties up loose ends from the year, prepares reports, conducts evaluations, reviews therapy to be provided, conduct screenings, and many other tasks. As a result, no SLT sessions were held with the Child during the first two weeks of the 2008-2009 school year in August 2008, which meant that the Child missed two, 45-minute sessions per week, totaling four sessions. The evidence demonstrates that make-up sessions are required for these four missed SLT sessions.

69. Also, on August 29, 2008, an SLT session was missed. The evidence demonstrates that a make-up session is required for this one missed SLT session.

70. On September 9, 23, and 26, 2008, SLT sessions were missed, totaling three, 45-minute sessions. The evidence demonstrates that make-up sessions are required for these three missed SLT sessions.

71. On October 7, 14, 21, and 28, 2008, SLT sessions were missed, totaling four, 45-minute sessions. The evidence demonstrates that make-up sessions are required for the four missed SLT sessions.

72. On November 14, 2008, an SLT session was missed. The evidence demonstrates that a make-up session is required for the one missed SLT session.

73. On December 5 and 12, 2008, SLT sessions were missed. The evidence demonstrates that make-up sessions are required for the two missed SLT sessions.

74. On February 20 and 24, 2009, SLT sessions were missed. The evidence demonstrates that make-up sessions are required for the two missed SLT sessions.

75. On April 26, 2009, an SLT session was missed. The evidence demonstrates that a make-up session is required for the one missed SLT session.

76. Therefore, for the 2008-2009 school year until the receipt of DPH Request, under the IEP dated May 6, 2008, the Child missed 16, 45-minute SLT sessions for which make-up sessions are required.

77. Hence, during the implementation period of the IEP dated May 6, 2008, the Child missed seven, 30-minute SLT sessions and 16, 45-minute SLT sessions, totaling 23 missed SLT sessions and 930 minutes or 10.33, 90-minute SLT sessions.

Reading Goals

78. The Child was able to read on the fifth grade level with the accommodations being provided to the Child. The Child's reading teacher complied with the accommodations.

79. The Child's reading teacher and the School Board's SLP consulted with one another each week. The School Board's SLP offered some interventions to the Child's reading teacher; however, the Child's reading teacher was quite knowledgeable about interventions. Also, the School Board's SLP offered strategies for the V/V Program to the Child's reading teacher to assist with the Child's reading comprehension.

80. The Child's reading teacher was responsible for implementing goals numbered 1, 2, 3, 5, 6, 7, and 8 of the IEP dated May 6, 2008. However, the Child's reading teacher did not participate in writing the goals.

81. Regarding goal number 1, the Child did not master the goal by May 4, 2009. The status report on goal number 1 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

82. As to goal number 2, the Child did not master the goal by May 4, 2009. The status report on goal number 2 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

83. Regarding goal number 3, the Child did not master the goal by May 4, 2009. The status report on goal number 3 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was

"Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

84. As to goal number 5, the Child did not master the goal by May 4, 2009. The status report on goal number 5 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

85. Regarding goal number 6, the Child did not master the goal by May 4, 2009. The status report on goal number 6 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

86. As to goal number 7, the Child did not master the goal by May 4, 2009. The status report on goal number 7 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on

November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

87. Regarding goal number 8, the Child did not master the goal by May 4, 2009. The status report on goal number 8 was a "3," which was "Adequate progress made; anticipate meeting goal by IEP end," in June, September, and November 2008, and on November 26, 2008, and January 15, 2009; a "2," which was "Some progress made; anticipate meeting goal by IEP end," on February 18 and April 15, 2009; and a "4," which was "Insufficient progress made; do not anticipate meeting goal by IEP end," on May 4, 2009.

88. In each of the goals for which the Child's reading teacher had responsibility for implementing, the Child's reading teacher observed the Child's progress in each goal, but not to the extent that the Child mastered each goal.

89. The evidence demonstrates that the Child did not master any of the reading goals. Further, the evidence demonstrates that, during the 2008-2009 school year, the Child was expected to meet the goals at the end of the IEP period, May 5, 2009, and began the school year making "some progress"; then, in February 2009, approximately four months into the 2008-

2009 school year, moved to "adequate progress," except for one goal wherein the Child remained at "some progress"; and then, within less than one month, from April 15 to May 4, 2009, instead of moving forward, the movement is to "insufficient progress" and not expected to meet the goals at the end of the IEP period. Therefore, the evidence demonstrates that, even though progress was made by the Child, the progress was not meaningful, but was de minimus.

Counseling

90. The Child's counselor met with the Child for 30 minutes each week on a Wednesday.

91. The purpose of the counseling sessions was to address the goals of problem-solving and social interaction.

92. As to problem-solving, the Child was making progress in the counseling sessions.

93. Regarding social interaction, the Child was making improvement, but had not mastered the goal.

94. The last day that the Child received counseling was on April 1, 2009. The counselor went on maternity leave on April 14, 2009.

95. No reasonable explanation was provided by the School Board as to why the Child had not received counseling after April 1, 2009. The Child was not provided seven, 30-minute counseling sessions.

96. The evidence demonstrates that the School Board failed to provide the Child with adequate counseling service; and, therefore, demonstrates that the School Board failed to properly implement the Child's IEP as to counseling.

Autism Support Teacher

97. The Child's autism support teacher was not based at any one school and served 35 schools.

98. The autism support teacher provides autism strategies and behavior strategies for teachers.

99. The autism support teacher was at the School, per the IEP of May 6, 2008, for once a week for the first four weeks of the 2008-2009 school year; and then once a month for consultation for the remainder of the 2008-2009 school year.

100. The evidence fails to demonstrate that the autism support teacher did not properly implement the IEP of May 6, 2008.

Extended School Year (ESY) Services

101. Even though the IEP of May 6, 2008, provided for services to be provided to the Child during the period of July 2, 2008, through July 31, 2008, the Child did not attend the ESY.

Annual IEP Meeting on May 4, 2009

102. The Child's annual IEP meeting was held on May 4, 2009. At that time, all the parties agreed that the Child did not require a re-evaluation.

103. At the IEP meeting, the Parents were informed that the Child had mastered only three of the 11 goals established for the Child and had not mastered any of the reading goals. The Parents had not received any prior indication from the School that the Child would not master the established goals.

104. Among other things, the School's position at the IEP meeting was that the specific supplementary intervention tool of FFW program would not be necessary for the Child to receive FAPE during the 2009-2010 school year. The Parents disagreed with the School's position.

105. The IEP meeting was not concluded on May 4, 2009.

106. The DPH Request was received on May 22, 2009.

107. The School provided the Parents with a notice, dated May 4, 2009, indicating that the IEP meeting would be reconvened on May 26, 2009. The Parents requested that the IEP meeting be re-scheduled and indicated that they had requested a due process hearing on May 22, 2009. The evidence demonstrates that the Parents did not agree to forego the due process hearing and continue with the annual IEP meeting.

108. The School provided the Parents with another notice that the IEP meeting would be reconvened on June 1, 2009. The School's principal decided to reconvene the IEP meeting, even though the Parents had requested a due process hearing, based upon the staffing specialist's advising the principal that, in order for the Child to transition to the next grade level, the annual IEP for the 2009-2010 school year was required to be completed. As a result, the Parents were notified by e-mail and a written notice, dated May 26, 2009, was prepared, but not mailed "due to time constraints" that the IEP meeting was being reconvened on June 1, 2009. The Parents maintained their position of having a due process hearing, instead of continuing with the annual IEP meeting.

109. The School re-convened the IEP meeting on June 1, 2009, after the DPH Request was received, without the attendance of the Parents. The completed IEP was dated May 4, 2009, even though it was completed on June 1, 2009, after the DPH Request was received.

110. Among other things, the FFW Program was not included in the IEP of May 4, 2009.

111. The evidence does not demonstrate that the IEP of May 4, 2009, is merely a proposed IEP. The evidence demonstrates that the IEP of May 4, 2009, was intended to be the Child's new annual IEP for the 2009-2010 school year.

The Parents' Expenses

112. The Parents obtained private SLT services for the Child during the implementation period of the IEP dated May 6, 2008, for the period of time from June 25, 2008 through June 2, 2009, totaling $2,340. Prior to the private SLT sessions, the Parents had a speech evaluation performed by the private SLP in June 2008 at a cost of $250. Prior to the 2008-2009 school year, the evidence is insufficient to demonstrate that the need for private SLT was warranted; and, therefore the evidence is insufficient to demonstrate that the Parents' expenses prior to the 2008-2009 school year was warranted. Hence, the evidence demonstrates that the Parents' warranted expenses for the private SLT totaled $1,540.

113. Additionally, due to the School Board's completing the IEP dated May 4, 2009, even though the Parents had requested a due process hearing, the Parents should receive their expenses for the private SLT beyond the end of the 2008-2009 school year to the end of June 2009. Consequently, the additional expenses total $330.

114. The combined total of the private SLT expenses is $1,870.

115. Based on the IEP of May 4, 2009, indicating, among other things, that the Child was not making progress, the Parents increased the Child's V/V program to two hours a week

during the Summer of 2009, beginning June 2009, at a cost of $220 per week. The Parents' expenses for the month of June 2009 and up to and including the time of hearing in July 2009 are warranted. Therefore, the evidence demonstrates that the Parents' warranted expenses for the private V/V Program services are $1,760.

116. In June 2009, after the IEP of May 4, 2009, the Parents had a language and reading assessment performed by a speech and language pathologist at a cost of $900. The evidence is insufficient to demonstrate that the expense is warranted in that the assessment was obtained, in essence, to determine whether certain language and reading devices and services should be included in the new IEP. In the instant matter, the implementation of the IEP of May 6, 2008, was at issue. The evidence demonstrates that the Parents' expense for the language and reading assessment is not warranted.

117. The Parents purchased the license for the use of the FFW Program for the Child at a cost of $963. The evidence demonstrates that the expense is warranted based on the School Board's continuing with the annual IEP meeting on June 1, 2009, and developing the IEP of May 4, 2009, which did not contain the FFW Program; and based upon the School Board's not obtaining the license. The evidence demonstrates that the Parents' expense

for the license for the use of the FFW Program for the Child is warranted.

CONCLUSIONS OF LAW

118. The Division of Administrative Hearings has jurisdiction of these proceedings and the parties thereto pursuant to Sections 1001.42(4)(l) and 1003.57(1), Florida Statutes (2009).

119. The Parents have the burden of proof in these proceedings. Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). The standard of proof is a preponderance of the evidence. DeVine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001).

120. Section 1001.42(4)(l), Florida Statutes (2009), provides, among other things, that the School Board shall "Provide for an appropriate program of special instruction, facilities, and services for exceptional students . . . ."

121. States must comply with the IDEA in order to receive federal funding for the education of handicapped children. The IDEA requires states to establish policy which ensures that children with disabilities will receive a FAPE. Through an IEP, the educational program accounts for the needs of each disabled child.

122. Definitions applicable to the IDEA are set forth at 20 U.S.C.S. Section 1401. FAPE is defined as follows:

> (9) . . . The term 'free appropriate public education' means special education and related 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 . . . .

IEP is defined as follows:

> (14) . . . The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised . . . .

Special education is defined as follows:

> (29) . . . The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—
> (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
> (B) instruction in physical education.

123. The Code of Federal Regulations (C.F.R.) implements the federal statutes. The C.F.R. applicable to the pertinent sections of the IDEA is 34 C.F.R. Section 300 (2006) and (2008).[7] FAPE is found at 34 C.F.R. Section 300.17 and is defined as follows:

> Free appropriate public education or FAPE means special education related services that—
> (a) Are provided at public expense, under

> public supervision and direction, and without charge;
> (b) Meet the standards of the SEA [State educational agency], including the requirements of this part;
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

IEP is found at 34 C.F.R. Section 300.22 and is defined as follows:

> Individualized education program or IEP means a written statement that is developed, reviewed and revised in accordance with §§ 300.320 through 300.324.

Special education is found at 34 C.F.R. Section 300.39 and is defined as follows:

> (a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
> (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
> (ii) Instruction in physical education.
> (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
> (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
> (ii) Travel training; and
> (iii) Vocational education.
>
> * * *

> (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
> (i) To address the unique needs of the child that result from the child's disability; and
> (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards with the jurisdiction of the public agency that apply to all children.
>
> * * *
>
> (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

124. In general, a FAPE must be available to all children residing in a state between the ages of 3 and 21, inclusive. 34 C.F.R. § 300.101(a).

125. A state meets the IDEA's requirement of a FAPE when it provides personalized instruction with sufficient support services to permit the disabled child to benefit educationally from that instruction. The instruction and services must be provided at public expense, meet the state's educational standards, approximate grade levels used in the state's regular education, and correspond to the disabled child's IEP. Board of Education of Hendrick Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982).

126. Inquiry in cases involving compliance with the IDEA, which is a de novo inquiry, is twofold: (1) whether there has been compliance with the procedural requirements of the IDEA, including the creation of the IEP, and (2) whether the IEP developed is reasonably calculated to enable the child to receive educational benefits. Rowley, at 3051.

127. A state is not required to maximize the potential of a disabled child commensurate with the opportunity provided to a non-disabled child. Rather, the IEP developed for a disabled child must be reasonably calculated to enable the child to receive some educational benefit. Rowley, at 3048-3049. The disabled child must be making measurable and adequate gains in the classroom, but more than de minimus gains. J.S.K. v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990). The unique educational needs of the particular child in question must be met by the IEP. Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991) "The importance of the development of the IEP to meet the individualized needs of the handicapped child cannot be underestimated." Greer v. Rome City School District, 950 F.2d 668, 695 (11th Cir. 1991).

128. In examining an IEP, great deference is given to the educators who develop the IEP. Todd, at 1581.

129. The disabled child's education must be provided in the least restrictive environment (LRE) available. A determination of such environment requires consideration of whether there has been compliance with the procedural requirements of the IDEA and whether the IEP is reasonably calculated to enable the child to receive educational benefits. DeVries v. Fairfax County School Board, 882 F.2d 876 (4th Cir. 1989).

130. Furthermore, regarding the LRE in the placement of the child, generally, to the maximum extent appropriate, children with disabilities are to be educated with children who are non-disabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment are to occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.S. § 1412(a)(5); 34 C.F.R. § 300.114(a). Further, in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs. 34 C.F.R. § 300.116(d). An IEP must be examined as to whether it provides a meaningful education in the LRE. Pachl v. School Board of Anoka-Hennepin Independent School District No. 11, 453 F.3d 1064, 1068 (8th Cir. 2006).

131. Florida Administrative Code Rule 6A-6.03028 provides in pertinent part:

> (1) Entitlement to FAPE. All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to FAPE consistent with the requirements of the Individuals with Disabilities Education Act, 20 USC Section 1400, et. seq (IDEA), its implementing federal regulations at 34 CFR Subtitle B, part 300 et.seq. which is hereby incorporated by reference to become effective with the effective date of this rule, and under Rules 6A-6.03011 through 6A-6.0361, F.A.C. . . .
>
> * * *
>
> (m) IEP implementation and accountability. The school district, or other state agency that provides special education either directly, by contract, or through other arrangements, is responsible for providing special education to students with disabilities in accordance with the students' IEPs. However, it is not required that the school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. An IEP must be in effect before special education and related services are provided to an eligible student and must be implemented as soon as possible following the IEP meeting. In addition:
>
> 1. The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.
>
> 2. All teachers and providers shall be informed of their specific responsibilities related to implementing the student's IEP

and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

3. The school district must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed on the IEP.

4. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.

132. Florida Administrative Code Rule 6A-6.03411 provides in pertinent part:

(1) Definitions. As used in Rules 6A-6.03011 through 6A-6.0361, F.A.C., regarding the education of exceptional students, the following definitions apply:

(a) Accommodations. Accommodations are changes that are made in how the student accesses information and demonstrates performance.

(b) Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

(c) Assistive technology service. Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a student with a disability or, if appropriate, that student's family; and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

* * *

(dd) Related services.

1. General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic

> recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.
>
> * * *
>
> 3. Individual related services terms defined. The terms used in this definition are defined as follows:
>
> * * *
>
> b. Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
>
> * * *
>
> o. Speech-language pathology services includes identification of students with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, students, and teachers regarding speech and language impairments.

133. The undersigned's decision, as to whether the Child received FAPE, must be based on "substantive grounds." 20 U.S.C.S. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1). However, in matters regarding a procedural violation, the undersigned may

find that the Child did not receive a FAPE "only if the procedural inadequacies impeded" the Child's "right to a FAPE" or "caused a deprivation of educational benefit." 20 U.S.C.S. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2)(i) and (iii).

134. The evidence demonstrates that the School Board's failure to timely order and obtain the FFW Program and the Progress Tracker was entirely the fault of the School Board. The evidence further demonstrates that such failure by the School Board caused a deprivation of educational benefit to the Child.

135. Further, the evidence demonstrates that the School Board failed to properly implement the FFW Program.

136. However, the evidence is insufficient to demonstrate that the School Board improperly interfered with the Parents' communicating with the Company regarding the FFW Program, including obtaining information regarding the FFW Program's account.

137. Also, the evidence demonstrates that the School Board failed to properly implement the V/V Program through the failure to provide numerous SLT sessions in accordance with the Child's IEP. The evidence demonstrates that the Child failed to receive seven, 30-minute SLT sessions and 16, 45-minute SLT sessions for which make-up sessions are required.

138. Additionally, the evidence demonstrates that, as to reading goals, even though the Child made progress, the Child's progress was not meaningful, but was de minumus.

139. Regarding the Child's service of counseling, the evidence demonstrates that the School Board failed to properly implement the Child's IEP as to counseling.

140. As to the support provided by the Child's autism support teacher, the evidence fails to demonstrate that the autism support teacher failed to properly implement the Child's IEP.

141. Hence, the evidence demonstrates that the School Board failed to provide the Child with FAPE.

142. Moreover, the evidence demonstrates that, even though the School Board had received the Parents' DPH Request on May 22, 2009, the School Board continued with an annual IEP meeting on June 1, 2009. On June 1, 2009, a new IEP was developed for the Child without the Parents agreeing to develop a new IEP and without the attendance of the Parents in violation of the IDEA. See 34 C.F.R. § 300.518.

143. As to expenses incurred by the Parents, the evidence demonstrates that the Parents incurred expenses because of the School Board's failure to correctly implement the Child's IEP of May 6, 2008; the School Board's action of continuing with the annual IEP meeting on June 1, 2009, and developing a new IEP

even though the School Board had received the Parents' DPH Request on May 22, 2009, and without agreement of the Parents to develop a new IEP; and the School Board's failure to timely order and obtain the FFW Program and the Progress Tracker. Consequently, the Parents' expenses that the evidence demonstrated are warranted are: private SLT sessions at $1,870; private V/V Program services at $1,760; and license for the FFW Program at $963.

144. Further, regarding the Parents' expenses, 20 U.S.C.S. Section 1412(a) provides in pertinent part:

> (10) Children in private schools. . . .
>
> * * *
>
> (C) Payment for education of children enrolled in private schools without consent of or referral by the public agency.
>
> (i) In general. . . . [T]his part does not require a local education agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.
>
> (ii) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or

> referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

145. Similarly, Florida Administrative Code Rule 6A-6.03311 provides in pertinent part:

> (7) Placement of students with disabilities in private schools by their parents when the provision of FAPE is at issue.
>
> (a) A school district is not required to pay for the costs of education, including special education and related services, of a student with a disability at a private school or facility if that school district has made FAPE available to the student and the parents elected to place the student in a private school or facility. However, the school district must include that student in the population whose needs are addressed consistent with Rule 6A-6.030281, F.A.C.
>
> (b) Disagreements between a parent and a school district regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures described in this rule.
>
> (c) If the parents of a student with a disability, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or an administrative law judge may require the school district to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the

> school district had not made FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the Department of Education and the school district.

146. 20 U.S.C.S. Section 1412(a)(10)(C)(ii) is applicable to related services. M.M. v. School Board of Miami-Dade County, 437 F.3d 1085, 1098 (11th Cir. 2006). The Parents in the instant case are eligible for reimbursement of expenses for related services in that the Child was previously receiving related services and the School Board failed to provide the Child with FAPE. Id. at 1098 and 1101.

147. Consequently, the Parents should be reimbursed for the expenses associated with the related services. Hence, the Parents should be reimbursed for the private SLT sessions at $1,870; the private V/V Program services at $1,760; and the license for the FFW Program at $963.

CONCLUSION

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

ORDERED that:

1. The School Board failed to provide the Child with FAPE.

2. The School Board failed to properly implement the Fast ForWord reading comprehension program and the Visualizing/Verbalizing reading comprehension program.

3. The School Board failed to properly provide the Child with the supplementary aids and services and related services and support of counseling. The School Board shall provide the Child with compensatory education in counseling sessions: seven, 30-minute sessions.

4. The School Board shall provide the Child with compensatory education in speech and language therapy sessions: seven, 30-minute sessions, and 16, 45-minute sessions, totaling 23 sessions and 930 minutes or 10.33, 90-minute sessions.

5. The School Board shall reimburse the Parents for the expenses associated with the related services: the private SLT sessions at $1,870; the private V/V Program services at $1,760; and the license for the FFW Program at $963.

DONE AND ORDERED this 24th day of February, 2010, in Tallahassee, Leon County, Florida.

S

ERROL H. POWELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of February, 2010.

ENDNOTES

[1/] A dispute existed as to whether the DPH Request was received by and, therefore, filed with the School Board on May 22, 2009 or May 29, 2009. This Administrative Law Judge determined that the DPH Request was received by and, therefore, filed with the School Board on May 22, 2009.

[2/] Florida Administrative Code Rule 28-106.215 limits proposed orders (post-hearing submissions) to 40 pages unless authorized by the presiding officer.

[3/] Id.

[4/] Any attempt by any party in their post-hearing submission to explain or represent the bases for this Administrative Law Judge's rulings in this matter will not be addressed. The record reflects the bases for the rulings.

Further, the School Board's "supplemental persuasive authority" was found by this Administrative Law Judge not to be persuasive. See this Administrative Law Judge's Order Vacating Ruling and Re-Opening Due Process Hearing for a Limited Purpose issued in the instant case on November 2, 2009.

[5/] During the due process hearing on July 21, 2009, this

Administrative Law Judge made an oral ruling that the IEP dated May 6, 2008, was the stay-put IEP, and, therefore, the parties were on notice, at that point in time, that the IEP dated May 6, 2008, was the stay-put IEP. At the conclusion of the hearing, the Child requested that the ruling be reduced to writing, and the request was granted. By Order issued August 3, 2009, the oral ruling was reduced to writing.

[6/] The goals of the IEP of May 6, 2008, were numerically numbered on Respondent's Exhibit 1.

[7/] Unless indicated otherwise, 34 C.F.R. Section 300 refers to the 2006 Code of Federal Regulations and amended 2008 Code of Federal Regulations.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

a) brings a civil action within 90 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
b) brings a civil action within 90 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(b), Florida Statutes; or
c) only if the student is identified as "gifted", files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(b) and 120.68, Florida Statutes.