

STATEMENT OF THE ISSUES

Whether the District's communication practices with the parent resulted in a denial of a free and appropriate public education (FAPE);

Whether the District allegedly denied to provide compression shirts, and whether that denial resulted in a denial of FAPE;

Whether the student's current individualized education plan (IEP) was reasonably calculated to provide FAPE; and

Whether the student should access his education on the Access Points curriculum and be administered the Florida State Alternative Assessment (FSAA), despite the student's parent withdrawing consent for the same.¹

PRELIMINARY STATEMENT

The student filed a request for a due process hearing (Complaint) with the School Board on September 16, 2024; and on that same day, the School Board referred the case to DOAH. The Complaint was assigned DOAH Case No. 24-003493E. A Case Management Order was issued on September 18, 2024. On September 23, 2024, the School Board filed a Motion to Dismiss in Part and Response to Due Process Request. The School Board moved to dismiss portions of the Complaint because the Complaint sought redress for allegations made in two previous cases, allegations that the parties resolved through a settlement agreement or a final hearing, which at the time were pending a final order. On October 2, 2024, the undersigned issued an Order determining that the issues for the final hearing would not include allegations previously addressed in the other requests for due process.

¹ In its proposed final order, Petitioner addressed additional issues beyond those noticed for final hearing. These issues are not addressed in this Final Order.

The School Board filed a request for a due process hearing with DOAH on September 30, 2024, and was assigned DOAH Case No. 24-003644E. A Case Management Order was issued on October 1, 2024.

A telephonic scheduling conference was held on October 14, 2024. During the conference, the School Board moved to consolidate both matters, and on October 16, 2024, the undersigned issued an Order of Consolidation. The parties agreed to schedule the hearing on December 11 and 12, 2024.

The final hearing was held via Zoom conference as scheduled. Additional time was needed to complete the hearing, so it was continued to February 6, 2025. Through his parent, the student presented the testimony of these witnesses: [REDACTED] and the student's mother. The School Board presented the testimony of these witnesses: [REDACTED], School Psychologist; [REDACTED], School Principal; [REDACTED], Speech-Language Pathologist; [REDACTED], Board-Certified Behavior Analyst; [REDACTED], Program Staffing Specialist; [REDACTED], Occupational Therapist; and [REDACTED], ESE Director. The student's Exhibits 1 through 19, 21 through 32, 35 through 37, 39, 41 through 43, and 84 were admitted into evidence.² School Board Exhibits A through C and H through N were also admitted.

The issue of whether the District denied the student compression shirts and whether such a denial resulted in a denial of a FAPE was dismissed after the student's case-in-chief. During the hearing, the School Board moved to dismiss the issue on the grounds that the student presented no evidence related to the alleged request for, use of, or denial of compression shirts. The motion was granted, and the issue was dismissed.

² As reflected in the Transcript, only portions of Exhibit 42 were admitted into evidence.

The final hearing Transcript was filed at DOAH on February 20, 2025. An Order Extending Deadline for Final Order was issued on February 21, 2025, indicating that the proposed final orders were due by March 13, 2025, and the Final Order would be entered no later than April 3, 2025. The School Board filed its proposed order on March 13, 2025. On March 14, 2025, the student's parent requested to extend the proposed final order deadline to March 17, 2025. On the same day, the undersigned issued an Order granting the request and extending the proposed final order deadline to March 17, 2025. The final order deadline was likewise extended to April 7, 2025. The student's proposed order was filed on March 17, 2025. Both proposed orders were considered in preparing this Final Order.

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

FINDINGS OF FACT³

1. At the time of the due process hearing, the student was a [REDACTED] grader at School B, a school within the Highlands County School Board.
2. The student is eligible for ESE in the categories of Autism Spectrum Disorder (ASD) and Language Impairment (LI). He accesses instruction through a modified curriculum called Access Points.
3. The student's current educational placement is an ESE classroom for students with intellectual disabilities. He is instructed by an experienced ESE teacher, [REDACTED]. The student's disability affects his behavior.

³ The Findings of Fact do not refer to every witness who testified, but all testimony and all exhibits entered into the record were considered.

Historically, he has engaged in maladaptive behaviors such as physical aggression, spitting, and property destruction. The student has a behavior intervention plan (BIP) to assist with his behaviors.

4. Along with his IEP and BIP, the student has a sensory plan to teach him how to use sensory techniques to improve his self-regulation skills. The student also receives occupational and language therapies as related services.

5. In recent years, the student has undergone two educational evaluations: one conducted by [REDACTED], an independent evaluator, and another by [REDACTED], a School Board psychologist.

Student's IEP

6. The student's current IEP was developed on April 26, [REDACTED], and amended on September 24, [REDACTED].

7. The IEP describes the student's current levels of achievement in the domains of curriculum and learning, social/emotional behavior, independent functioning, and communication. His IEP contains fourteen annual goals in the various domains and the accommodations he receives throughout the school day. The IEP also includes the following special education services: daily direct specialized instruction in all academic areas for 1,500 minutes per week, as well as 30 minutes daily of direct instruction focused on social-emotional support, specifically targeting behaviors such as hitting, spitting, and following classroom rules and procedures. Additionally, the student receives weekly services in adaptive physical education and language therapy, each for 60 minutes. He also receives 60 minutes per week of occupational therapy as related services.

8. Portions of [REDACTED] observations and recommendations are included in the student's IEP, specifically in the domains of curriculum and learning and social/emotional behavior. The parent seeks to have every recommendation in [REDACTED] report adopted by the IEP team and therefore included in the student's IEP. The better evidence established minimal disagreement regarding the student's needs; the disagreement lies in how

those needs should be addressed. The School Board has addressed those needs based on their established curriculum and instructional methodologies, which differ from [REDACTED] recommended resources.

Academics

9. The student is reading between a kindergarten and first-grade level.

10. The School Board utilizes TeachTown as the designated curriculum for students receiving instruction through Access Points. Based on data from nine TeachTown Benchmark Assessment Progress Reports, the student has shown measurable progress in seven benchmarks. In the remaining two, the student exhibited no progress in one area and regression in another. Still, the student is making consistent academic gains—though gradual, the progress is incremental and reflects a positive overall trajectory.

11. Because the student is being instructed on a modified curriculum, he participates in the FSAA. The FSAA is a yearly test for students with significant cognitive disabilities. Assessment becomes more difficult as the grade levels progress. As such, it becomes harder each year to reflect academic growth. In the student's case, he has consistently scored at a high level one, with one exception: he scored a level two in math. His performance suggests that while the test increases in difficulty each year, he has shown steady performance, maintaining similar gains yearly.

Language Therapy

12. The student receives at least 60 minutes of weekly speech therapy. He has been working with [REDACTED], the speech-language pathologist, for the past two school years. The student has not had maladaptive behaviors during his therapy sessions this school year.

13. The student has shown significant improvement this year, particularly in his ability to communicate with peers and adults in the classroom. He is relying less on picture cards and increasingly using verbal communication, now producing three-to-five-word phrases—an advancement from last school year when he was working on expanding single-word utterances. Picture

cards and other visual cues are still used as alternative communication tools, providing the student with a quick and efficient way to express his wants, needs, and feelings. Even so, their use has decreased as his expressive and receptive language skills continue to develop.

Occupational Therapy

14. The student is also making progress during his occupational therapy sessions. He consistently engages in sessions, follows directions well, and increasingly initiates verbal communication and observations without prompts. His attention span has improved significantly, requiring fewer breaks and less sensory input to stay focused.

15. Unlike last school year, when the student could only remain seated and engaged for brief periods before requiring movement breaks, he can now sustain attention and participate for most of his 30-to-45-minute occupational therapy sessions.

16. The student has had only one incident of physical aggression during therapy this school year. There, staff redirected him within minutes, and he could resume his work—marking a significant improvement compared to last school year, when similar incidents required hours of redirection.

Behavior

17. The student began the school year with a BIP, initially developed on August 14, [REDACTED], by [REDACTED], the behavior analyst. The plan focuses on reducing five maladaptive behaviors: physical aggression, inappropriate behavior, property destruction, classroom disruptions, and non-compliance. [REDACTED] offers training and models strategies for staff to implement the BIP effectively. [REDACTED] also maintains ongoing communication and support to ensure that staff implements the BIP with fidelity.

18. The student has demonstrated substantial improvement in behavior, with a marked reduction in maladaptive behaviors from June to the time of the due process filing. While physical aggression still occurs, he is redirected

more effectively this year, and the severity of these behaviors has decreased compared to previous years.

Q So how would you compare [his] behaviors this year when compared with last school year?

A [He] has made tremendous growth. You know, last year when [he] would have an escalation or when [he] would show a maladaptive behavior, it would take us some time to redirect [him] back and get [him] back to a level state. Just last week I was able to put eyes on [him] and see.

[He] want – [he] did not want to do some schoolwork. So last year this would have been a, you know, 15 to 20 minute issue. I saw [him] come to the side room, okay, use the calming strategies that we have outlined in the plan, and within one to two minutes [he's] back in and doing the work that [he's] supposed to be doing. So I'm very happy with the progress [he's] made.

19. The data collected from August 12, [REDACTED], to November 2, [REDACTED], indicates the following: 16 incidents of physical aggression, 1 incident of spitting, and no incidents of inappropriate behavior, property destruction, or classroom disruptions. Compared to the previous school year, this represents significant progress for the student.

20. Sustained positive behavior should allow the student to make better use of instructional time and improve his focus, enabling him to stay engaged longer and make meaningful academic gains, as his behavior will no longer interfere with his learning.

Communication Plan

21. The student attended extended school year (ESY) during the summer of [REDACTED]. During ESY, the teacher sent home daily notes outlining the day's activities. The parent expected to continue to receive daily notes when the student began sixth grade.

22. The student's IEP does not outline a specific communication practice.

28. In addition to the established communication protocol, the parent receives direct communication from the classroom teacher, who provides weekly written updates. Yet, despite receiving these regular notes, the parent and █ advocate maintain that the communication remains insufficient.

29. The parent's primary concern is that, without daily written communication, █ lacks adequate insight into the student's daily educational experience, including whether the prescribed therapies are being implemented with fidelity and which de-escalation strategies are being employed in response to maladaptive behaviors. The parent asserts that █ ongoing mistrust of the school system can be mitigated only through direct observation of the student's classroom and sensory room, coupled with the provision of daily written reports.

30. The student has shown significant behavioral improvement compared to his █-grade year. Despite this progress, the parent continues questioning the reported improvements, citing █ limited direct communication with school staff. At the same time, documentation reflects that the positive trend in the student's behavior began in the summer, before implementing the current communication protocol.

31. The preponderance of the evidence does not support a finding that the parent has been denied consistent communication from school staff. Rather, the issue lies in the parent's mistrust of the information provided to █.

Modified Curriculum

32. The student has accessed his education through a modified curriculum for about seven years. At the IEP team meeting on September 24, █, the parent revoked consent for the student to continue receiving instruction through the modified curriculum.

33. The parent's sole objection to the student's continued use of a modified curriculum arises from the results of █ quantitative electroencephalography (qEEG) and █ perception that the student has not made adequate progress. These concerns, however, were not shared by the

rest of the IEP team, who maintained that the modified curriculum remains appropriate based on the student's demonstrated needs and overall educational progress.

34. [REDACTED] completed a neuropsychological evaluation of the student in April [REDACTED]. In [REDACTED] report, [REDACTED] stated that the purpose of administering the qEEG was to determine whether the student's cognitive deficits were mainly stress-related or indicative of cerebral dysfunction. The qEEG yielded an IQ score of 98, within the average range, and did not suggest the presence of a learning disability. However, the report did not address the educational implications of the qEEG results, how they relate to the student's instructional needs, or how they correspond to the student's historical academic performance.

35. Following [REDACTED] report, the School Board reevaluated the student in the Fall of [REDACTED]. The reevaluation solely focused on IQ. [REDACTED] administered the Comprehensive Test of Nonverbal Intelligence (C-TONI). It revealed a full-scale composite IQ score of 66, greater than two standard deviations below the mean of 100.

36. [REDACTED] is a certified school psychologist through the Florida Department of Education and a licensed school psychologist through the Florida Department of Health. At the time of the final hearing, [REDACTED] served as the lead psychologist for [REDACTED] County Schools. In this role, [REDACTED] handles complex cases and collaborates with test publishers to facilitate training for school psychologists within the district. [REDACTED] has worked as a school psychologist for 25 years and was the only expert witness to provide testimony.

37. In preparation for [REDACTED] testimony, [REDACTED] reviewed multiple sources of data, including [REDACTED] neuropsychological evaluation report, the student's FSAA results, the most recent psychoeducational evaluations conducted by the School Board, and other relevant historical records.

38. ██████ explained that when evaluating any assessment, including IQ tests, it is essential to determine whether it is reliable and valid. Reliability refers to the consistency of results—whether the same assessment administered at a different time would yield similar results. Validity, on the other hand, concerns whether the assessment accurately measures what it intends to measure.

IQ test are administered one-on-one to students by either a licensed school psychologist, certified school psychologist, or licensed clinical psychologist. And they involve several unique problem solving tasks where we look at how students' brain, like, functions and they solve these unique problems that we're giving them.

The test publishers administered these tests to thousands of students across the country representing all different ages and all different levels of functioning. The results then are distributed into, like, normal distribution or what we commonly know as a Bell Curve. This process is called norming, which explains why when we will administer different IQ tests to the same child, we typically get pretty consistent results across the different tests.

39. The C-TONI is a well-researched, reliable, and valid instrument. The assessment does not require verbal responses; the student points to the correct answers, making it particularly appropriate for students with language impairments. Because it removes the construct of language, the C-TONI serves as a generous measure of intelligence. Still, ██████ noted that language remains a critical component of learning.

40. ██████ testimony established that qEEG is not an appropriate tool for assessing intelligence in an educational setting. █ stated that while █ is somewhat familiar with qEEG tests, they do not involve problem-solving tasks or novel cognitive challenges. In █ professional opinion, qEEGs are neither valid nor reliable measures of intelligence, and in █ 25

years of experience as a school psychologist, ■■■ has not found them to hold educational relevance.

41. More significantly, the qEEG results contrast the findings from the other standardized assessments conducted by ■■■. While the qEEG reflected an average IQ score, ■■■ additional evaluations consistently identified substantial deficits across multiple areas of functioning. On the Vineland-3 Adaptive Behavior Scales, completed solely by the parent, the student received a standard score of 54—more than three standard deviations below the mean—indicating marked limitations in daily living skills. The Token Test for Children, which measures receptive language, yielded a score of less than 70, placing the student more than two standard deviations below the mean. In addition, the Beery-Buktenica Developmental Test of Visual-Motor Integration revealed performance in the significantly impaired range, three standard deviations below the mean.

42. While the qEEG reported an average IQ score, the results of the other standardized assessments—measuring adaptive behavior, language, and visual-motor integration—consistently reflect significant cognitive and functional impairments. These data align with an IQ score of 66 and are more consistent with functioning at a kindergarten to first grade level.

43. Requiring the student to participate in a more advanced curriculum that exceeds his demonstrated cognitive abilities may have detrimental consequences. If the instructional content is beyond his capacity to access or understand meaningfully, the student is at risk of becoming overwhelmed and frustrated. This change could lead to a significant regression in academic and behavioral progress, including a likely resurgence of maladaptive behaviors. This disruption would compromise the progress he has made.

44. The preponderance of the evidence established that the School Board implemented a communication protocol in response to escalating concerns and continued to provide regular updates. Despite ■■■ expressed mistrust, the record shows consistent efforts to engage with the parent. The student's

current IEP is aligned with his individualized needs and includes appropriate goals, accommodations, and services. The student has demonstrated measurable progress academically, behaviorally, and in related services. Finally, the evidence supports the continued use of the Access Points curriculum and the FSAA administration. Assessment data and expert testimony establish that this curriculum remains appropriate for the student’s cognitive and functional profile.

CONCLUSIONS OF LAW

45. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 1003.57(1)(c) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

46. The burden of proof is on Petitioner to prove the claims by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1313 (11th Cir. 2003); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001). Accordingly, with respect to Issues 1 and 2—whether the District’s communication practices with the parent resulted in a denial of FAPE and whether the student’s current IEP was reasonably calculated to provide FAPE—the burden of proof rests with the student. At the same time, with respect to Issue 3—whether the student should access his education through the Access Points curriculum despite the parent’s withdrawal of consent—the burden of proof rests with the School Board, as it seeks to override the parent’s revocation of consent to ensure the student continues receiving services under the modified curriculum.

47. 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, contingent on each agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

48. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 20506 (1982). Among other protections, parents can examine their child's records and participate in meetings concerning their child's education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. *See* 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6). A procedural error does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cnty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, the school board only denies a student FAPE where the procedural flaw impedes the student's right to FAPE, significantly infringes on the parents' opportunity to participate in the decision-making process, or causes an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

49. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

[S]pecial education services that –

(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State

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

20 U.S.C. § 1401(9).

50. 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 to be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

51. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a student with FAPE. First, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. Second, it must be determined whether the IEP developed under the IDEA is reasonably calculated to enable the child to receive educational benefits. *Id.* at 206-07.

52. As discussed in *Andrew F.*, "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." 137 S. Ct. at 999.

53. The student asserts that his IEP is not reasonably calculated to provide FAPE, primarily arguing that the School Board failed to adopt all of the recommendations contained in [REDACTED] neuropsychological evaluation. The evidence does not support a finding that the current IEP is inappropriate. The IEP accurately reflects the student's present levels of performance, includes measurable annual goals across multiple domains, and offers a comprehensive range of services, including speech and occupational therapy, behavioral supports, and instruction through the Access Points curriculum. The student has documented academic, communicative, and behavioral progress under the current IEP, reinforcing that it is reasonably calculated to provide FAPE.

54. Likewise, the record does not support a finding that the District's communication practices with the parent resulted in a denial of FAPE. Although the parent voiced concerns on the adequacy of communication, the evidence shows that the School Board engaged in ongoing and structured efforts to communicate with the parent and respond to [REDACTED] inquiries. Thus, neither the content of the IEP nor the District's communication practices constituted a denial of FAPE under the IDEA.

55. Finally, with respect to the Access Points curriculum and the FSAA, Florida Administrative Code Rule 6A-1.0943(5) sets forth the criteria for assessing a student with disabilities using the FSAA and, therefore, instructing the student through a modified curriculum. Among the criteria is that the student have a *most significant cognitive disability*, which is defined as:

... global cognitive impairment that adversely impacts multiple areas of functioning across many settings and is a result of a congenital, acquired or traumatic brain injury or syndrome and is verified by either:

1. A statistically significant below average global cognitive score that falls within the first percentile

rank (i.e., a standard, full-scale score of sixty-seven (67) or under); or

2. In the extraordinary circumstance when a global, full-scale intelligent quotient score is unattainable, a school district-determined procedure that has been approved by the Florida Department of Education under paragraph (5)(e) of this rule.

Fla. Admin. Code R. 6A-1.0943(1)(f).

56. In this case, the student argues that the results of the qEEG administered by ██████████ indicate an IQ higher than 67. As a result, he should not receive instruction through a modified curriculum. But the preponderance of the evidence supports the School Board's position that continued instruction through the Access Points curriculum is appropriate. The student has received instruction through the modified curriculum for about seven years, and both recent assessment data and expert testimony confirm that this curriculum aligns with his demonstrated cognitive and functional abilities. Requiring the student to access the general education curriculum—despite cognitive data to the contrary—could result in academic and behavioral regression and jeopardize his progress. Accordingly, despite the parent's revocation of consent, the evidence establishes that continued instruction through the Access Points curriculum and participation in the FSAA are necessary to ensure the provision of FAPE.

ORDER

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

1. The student's claims are dismissed, and the relief requested is denied.
2. The School Board is authorized to continue instructing the student through the Access Points curriculum and administering the FSAA.

DONE AND ORDERED this 7th day of April, 2025, in Miami, Dade County, Florida.


Case No. 24-3493E

SARA M. MARKEN
Administrative Law Judge
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Filed with the Clerk of the
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this 7th day of April, 2025.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).