

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 24-3496E

vs.

MIAMI-DADE COUNTY SCHOOL
BOARD,

Respondent.

_____ /

FINAL ORDER

On March 3 through 5, 2025, Administrative Law Judge (ALJ) Nicole D. Saunders of the Division of Administrative Hearings (DOAH) conducted the final hearing via Zoom conference.

APPEARANCES

For Petitioner: Joseph William Montgomery, Esquire
 Montgomery Law Group, PLLC
 631 U.S. Highway 1, Suite 202
 North Palm Beach, Florida 33408

For Respondent: Gabrielle L. Gonzalez, Esquire
 School Board of Miami-Dade County, Florida
 1450 Northeast Second Avenue, Suite 430
 Miami, Florida 33132

STATEMENT OF THE ISSUES¹

Whether Petitioner's individualized education plan (IEP), dated December 5, 2022, is designed to provide a free appropriate public education (FAPE);

Whether Petitioner's IEP, dated November 16, 2023, is designed to provide FAPE;

Whether the School Board failed to implement Petitioner's December 5, 2022, IEP;

Whether the School Board failed to implement Petitioner's November 16, 2023, IEP;

Whether the School Board failed to conduct a functional behavioral assessment (FBA) on Petitioner; and if so, whether such failure constituted a denial of FAPE;

Whether the School Board failed to create a positive behavior intervention plan (BIP) for Petitioner; and if so, whether such failure constituted a denial of FAPE;

Whether the School Board failed to create a safety plan for Petitioner; and if so, whether such failure constituted a denial of FAPE;

¹ At the final hearing, Petitioner's counsel raised an issue about an alleged incident that occurred in February 2025. But he did not seek to amend the complaint to include that allegation. In addition, the Notice of Hearing by Zoom Conference identified the scope of the issues. Thus, the undersigned does not address any issues relating to the alleged February 2025 incident in this Order.

Whether the School Board discriminated based on Petitioner's disability, in violation of Section 504;² and lastly,

What remedies, if any, are appropriate.

PRELIMINARY STATEMENT

On September 16, 2024, Petitioner, through counsel, filed a request for due process hearing (Complaint) with the School Board, which the School Board forwarded to DOAH the next day. On September 18, 2024, the undersigned issued a Case Management Order, detailing the deadlines and procedures governing the case. On September 26, 2024, the School Board responded to the Complaint.

On October 4, 2024, Petitioner filed a Status Report, requesting a scheduling conference. The undersigned conducted the conference on October 14, 2024. During that conference, the parties moved to place this case in abeyance for 30 days to continue their negotiation efforts. Later that day, the undersigned issued an Order, placing the case in abeyance for 30 days, and requiring the parties to file a status report by November 14, 2024.

The parties timely filed the report and moved to extend the abeyance by 20 days. The next day, the undersigned issued an Order continuing the case in abeyance until December 5, 2024.

On December 5, 2024, Petitioner filed a Status Report, stating that the parties had not reached an agreement and requesting to set the case for a final hearing. The next day, the undersigned issued a Notice, scheduling a telephonic scheduling conference for December 10, 2024. At that conference,

² The Rehabilitation Act of 1973, 29 U.S.C. § 795, *et seq.* (Section 504).

the parties selected March 3 through 6, 2025, as the final hearing dates. The undersigned then issued a Notice of Hearing (Notice of Hearing) by Zoom Conference, outlining—among other things—the issues to be heard at the final hearing.

Then, on December 18, 2024, Petitioner moved to modify the issues in the Notice of Hearing (Motion). The School Board objected to the Motion; and the undersigned conducted a motion hearing on January 14, 2025. At the motion hearing, the undersigned heard arguments from counsel for both parties. On January 17, 2025, the Motion was denied.

The final hearing began on March 3, 2025. Petitioner's counsel called two witnesses—Petitioner and [REDACTED], the School Board's Instructional Supervisor for the Office of Educational Services and Exceptional Student Education (ESE) (Supervisor [REDACTED]). After calling Supervisor [REDACTED], Petitioner's counsel moved for a one-day continuance to subpoena several witnesses (Motion to Continue). The School Board did not object; and the undersigned granted the Motion to Continue. Later that day, the undersigned conducted a telephonic conference with the parties to discuss the issue involving the subpoenas.

The hearing reconvened on March 4, 2025. Petitioner called [REDACTED], a private Neuropsychologist who evaluated Petitioner; [REDACTED] and [REDACTED], two of Petitioner's ESE teachers; and [REDACTED], Petitioner's paraprofessional. The undersigned admitted Petitioner's Exhibits 5 through 12; 18, pages 13 through 18; 19, pages 1 through 20, 22 through 27, 29 through 41, and 44 through 48; 27; 42; and 43. Petitioner also offered School Board Exhibits 4; 5; and 8, page 114, which the undersigned admitted into evidence.

At the end of the day on March 4, 2025, the School Board moved to quash the subpoena Petitioner directed to School Board Superintendent, [REDACTED] (Motion to Quash). Petitioner filed a written response the morning of March 5, 2025. At the start of the third day of hearing, the undersigned granted the Motion to Quash. Petitioner proceeded with his case. After calling two more witnesses, [REDACTED], the School Board's School Psychologist, and Petitioner's parent, Petitioner rested.

The School Board declined to present a case. Thus, the hearing ended on March 5, 2025. At the end of the hearing, the parties agreed to file proposed final orders 20 days after the Transcript was filed with DOAH, and to extend the final order deadline to 15 days after the proposed final orders were due.

The Transcript was filed on April 7, 2025. Thus, the proposed final orders were due on April 28, 2025; and this Final Order is due on May 12, 2025.

Both parties timely filed proposed final orders, which were considered in preparing this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect during the relevant period. For stylistic convenience, the undersigned uses male pronouns when referring to the student. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is a kind and fun [REDACTED]-grader who enjoys discussing birthdays, washing machines, and dryers. He is eligible for ESE services under the category of Autism Spectrum Disorder (ASD). He also has Intellectual Disability, Attention-Deficit/Hyperactivity Disorder (Combined

Type), Sensory Integration Disorder; Anxiety; a semantic pragmatic language disorder; and a speech and language delay.

2. Cognitively, Petitioner's intelligence quotient (IQ) is 44, in the very low range. He lags significantly behind his peers in working memory, fluid reasoning, verbal comprehension, visual spatial index, and processing speed. Academically, Petitioner struggles to comprehend course materials; and requires constant prompting to begin and complete schoolwork.

3. Due to his disabilities, Petitioner has a longstanding need for intensive ESE services. He is educated on a modified curriculum and accesses his education in a separate class.

4. Throughout his academic career, Petitioner has received ESE services under various IEPs. Two of those IEPs are at issue here.

5. The first IEP, dated December 5, [REDACTED], was drafted when Petitioner was in [REDACTED] grade. At that time, his IEP team included himself; his parents; his ESE teacher, [REDACTED]; his general education teacher, [REDACTED]; and [REDACTED], an ESE teacher and evaluation specialist.

6. When the team met, Petitioner was at a [REDACTED]-grade level in Math and a [REDACTED]-grade level in Reading. He had tested out of phonological awareness and high frequency words. He could also decode common three and four syllable words, understand basic vocabulary, and identify cause and effect relationships between words and pictures. Yet, he struggled to write legibly.

7. At the meeting, the team reviewed Petitioner's previous IEPs, status updates, district and statewide assessments, evaluation and reevaluation data, report cards, and BIP. It also considered input from Petitioner, his parents, and teachers.

8. After evaluating the data, the team drafted the updated IEP, which identified Petitioner's priority educational needs (PENs)—reading skills, writing skills, math skills, social skills, on-task behavioral skills, impulse control skills, task completion skills, fine motor skills, organizational skills, and communication skills. For each PEN, the IEP listed measurable goals

and benchmarks, as well as the person responsible for monitoring Petitioner's progress.

9. The IEP also prescribed various accommodations, such as individual testing, extended time, appropriate consequences, a visual schedule, and specialized instructions. It outlined Petitioner's special education services in Language Arts, Math, Reading, Science, and Social Studies; and described where such instruction would take place—a separate class. The IEP included a litany of supplementary aids and services, such as assistance with communication, learning activities, and supervision for physical safety.

10. In sum, the December [REDACTED] IEP was detailed, thorough, and particularized to Petitioner's unique needs, including his requirement for constant support, supervision, and redirection. As the IEP notes explain:

[Petitioner] is in need of intensive support and accommodations in the classroom and on assessments. [Petitioner] is in need of extensive creat[i]on of special materials, tex[t]books, and assignments in order to meet [his] educa[t]ional needs. *[Petitioner] is in need of continuous assistance for [learning] activities.* (Emphasis added).

[***]

[Petitioner] can become very upset at times and will hit himself in the head. *[Petitioner] also has a hard time remaining on task unless a person is sitting right next to [him] at all times.* Socially, [he] will not play with other students. *[Petitioner] is in need of one to one intervention for behavior in order to [access].* [Petitioner] is in need of [specialized] instruction for social and emotional skills in order for [him] to access [his] education. (Emphasis added).

[***]

[Petitioner] has difficulty completing classwork independently and require[s] prompting and

redirection. [Petitioner] struggle[s] with fine motor skills... *[Petitioner] is in need of continuous support to do any work. If someone is not sitting next to [him], [he] will not continue to work.* [He] is not able to organize [his] materials, put folder in bookbag and zip bag without sup[p]ort. [Petitioner] is in need of support with time management and organization of items. [He] needs constant redirection and prompting. [Petitioner] is in need of constant and continuous supervision throughout the school day. (Emphasis added).

11. Overall, the December [REDACTED] IEP is littered with references to Petitioner's need for one-to-one assistance to access his education. As the IEP notes show, and the School Board agrees, the December [REDACTED] IEP required Petitioner to receive assistance from a one-to-one paraprofessional to complete schoolwork. Yet, Petitioner did not get a dedicated paraprofessional at that time. As the evidence shows, this failure resulted from the School Board's inability to fill the paraprofessional position rather than the IEP team's determination that Petitioner did not require such assistance.

12. Still, to attempt to fill the gap, Petitioner received support from different classroom paraprofessionals throughout the school day. These paraprofessionals were responsible for assisting Petitioner's entire class of high-need students, and were not specifically assigned to him. Also, at the hearing, there was no persuasive evidence presented that the paraprofessionals assisting Petitioner were specifically trained to work with him in meeting his IEP goals. Thus, on September 8, [REDACTED], Petitioner's parent emailed the school for updates on the assignment of a one-to-one paraprofessional. The school did not respond at that time.

13. As the school year progressed, the School Board continued to support Petitioner through rotating classroom paraprofessionals while it sought to fill the one-to-one role. The School Board also increased its services to Petitioner by conducting an FBA. The FBA, completed on November 5, [REDACTED], identified

Petitioner's behavioral antecedents and targeted behaviors, and provided de-escalation techniques. It also included a data collection form, and a follow-up meeting schedule.

14. Then, on November 16, [REDACTED], ESE teacher [REDACTED] drafted Petitioner's BIP. The BIP listed Petitioner's target behaviors, such as talking out of turn, physical aggression, and self-injurious behaviors; and the function of such behaviors. It also outlined the antecedents or triggers for the target behaviors and provided replacement behaviors. It laid out proactive, educative, and functional interventions; and contained a crisis management plan, which included de-escalation strategies. Finally, the BIP included a progress monitoring graph and tasked Petitioner's ESE teachers with collecting behavioral data.

15. As [REDACTED] credibly testified at the hearing, implementation of the BIP did not require training, as there were teachers at the school that could implement all parts of the BIP.

16. On the same day [REDACTED] completed the BIP, Petitioner's team updated his IEP. By this time, the team had expanded to include his Speech Language Pathologist [REDACTED], Occupational Therapist [REDACTED], and two other team members, [REDACTED] and [REDACTED]. As before, Petitioner's mother, [REDACTED], [REDACTED], and [REDACTED], attended.

17. Petitioner, now a [REDACTED]-grader; was experiencing marked challenges in accessing his education. He remained at a [REDACTED]-grade level in Reading and was still unable to write legibly. In terms of Math, he now functioned at a [REDACTED] level for numbers and operations, and a [REDACTED]-grade level in algebra, measurement/data, and geometry.

18. Like the December [REDACTED] IEP, the November [REDACTED] IEP outlined Petitioner's PENs—Math, Reading, Writing, Conforming Behavior, Social Skills, On-Task Behavior, Self-Advocacy, and Communication—and provided for weekly evaluations through graded work samples, classroom and

standardized tests, and performance demonstration. It also outlined periodic benchmarks and identified those responsible for progress monitoring.

19. Regarding accommodations, the IEP called for a visual schedule, individual testing, extended time, giving directions in small steps, assessing for understanding; preferential seating; cueing Petitioner to stay on task; minimizing distractions; alerting Petitioner several minutes before transitioning from one activity to another; and using individualized progress reports for home and school communication. It also provided specialized instruction in Language Arts, Math, Science, and Social Studies in a separate ESE classroom. It included many supplementary aids, and provided related services of adaptive Physical Education and Occupational Therapy (OT).

20. The November [REDACTED] IEP also reiterated Petitioner's need for one-to-one intervention to access his education. In the area of independent functioning, the IEP notes state:

[Petitioner] has difficulty completing classwork independently or even starting the work and requires prompting and redirection at all times. [Petitioner] is in need of continuous support to do any work. If someone is not sitting next to [him], [he] will not continue to work and will ball up into [his] lap and sleep. [He] will also not ask for assistance if [he] needs help doing something rather [he] will just go to sleep.

21. At the IEP meeting, Petitioner's parent again expressed frustration that the School Board had yet to hire a full-time one-on-one paraprofessional at that time. During this time, Petitioner began having incidents of physical harm at school. He received scratches and bruises. But because of his limited language abilities, he could not accurately report how these injuries occurred.³

³ At the final hearing, Petitioner's counsel described these incidents as instances of bullying. That said, Petitioner presented no credible evidence describing how these incidences occurred.

22. As the evidence presented at the final hearing showed, the School Board ultimately did not hire a full-time one-on-one paraprofessional for Petitioner until August [REDACTED] at the beginning of Petitioner's [REDACTED]-grade year.

23. Then, in January [REDACTED], Petitioner's parents hired [REDACTED] to conduct a neuropsychological evaluation on Petitioner. Throughout [REDACTED] 20-year career, [REDACTED] has conducted nearly one thousand such evaluations on children with cognitive and developmental disabilities.

24. This evaluation occurred on January 9, 17, and February 20, [REDACTED].⁴ As [REDACTED] testified, to conduct the evaluation, [REDACTED] synthesized information from different sources, such as existing records and collateral reports from those working with Petitioner. [REDACTED] also gathered data on Petitioner's functioning and compared it to other [REDACTED] his age. To do so, [REDACTED] performed five assessments, including the Weschler Intelligence Scale for Children—Fifth Edition, the Behavior Assessment System for Children—Third Edition, and the Woodcock-Johnson Test of Achievement. [REDACTED] conducted a records review and an assessment of Petitioner's educational and social/emotional history. [REDACTED] also observed Petitioner during his Spanish class on January 9, [REDACTED]. When [REDACTED] saw Petitioner, he engaged in none of the targeted behaviors outlined in his November 16, [REDACTED], BIP.

25. After analyzing [REDACTED] results, [REDACTED] reached several conclusions about Petitioner's cognitive and emotional functioning, interpersonal relationships, and mood and tolerance. In short, [REDACTED] reached the same conclusion Petitioner's IEP team had in December [REDACTED] and November [REDACTED]—that Petitioner required one-to-one assistance to access his education. [REDACTED] testified:

⁴ [REDACTED] evaluation is the most current evaluation of Petitioner's functioning and needs. At the time of the hearing, the School Board had not evaluated Petitioner since February [REDACTED].

Certainly, in [Petitioner's] case, having an intellectual disability, very poor attention span, and ability to stay on-task, poor language skills that interfere with [his] ability to understand task instructions, poor persistence because of [his] self-regulation deficits, [he] is somebody who very clearly to me fits the bill for somebody in need of one-to-one assistance.

[***]

[He] sticks out among maybe the top 1 percent [for] me for almost constant redirection.

26. ██████ concluded that “[i]n the two years [Petitioner] did not have a paraprofessional, [his] disability resulted in compromised safety, regression and/or inability to progress toward [his] goals in academic, behavior, communication, independence, and socialization.”

27. As such, ██████ determined that the lack of a one-to-one paraprofessional, as prescribed in his December ██████, and November ██████, IEPs,⁵ resulted in educational harm. ██████ thus recommended the following compensatory education to make Petitioner educationally whole:

1. Social-Emotional Support. [Petitioner] requires at least 100 hours of structured social-emotional intervention to address [his] deficits in peer interactions, emotional regulation, and self-advocacy, which have interfered with [his] ability to engage with peers, manage transitions, and develop independence. [His] IEP and behavioral assessments document ongoing social withdrawal, reliance on adults for communication, difficulty initiating conversations, and self-injurious behaviors, all of which have not been appropriately addressed by the school team and have limited [his] participation in group learning and social settings. To remediate these missed opportunities, compensatory behavioral therapy, small-group

⁵ ██████ could provide no credible testimony about the appropriateness of the design of those IEPs as ██████ had not reviewed them before the final hearing.

social skills training, and community-based social programming must be provided outside of school hours, allowing [Petitioner] to build and practice essential skills without sacrificing instructional time.

2. Reading Intervention. [Petitioner] requires at least 150 hours of structured, one-on-one reading instruction using a multisensory, evidence-based reading program (e.g., Orton-Gillingham, Wilson Reading) to address deficits in comprehension and fluency. Instruction should be provided by a certified reading specialist, with parents having the flexibility to access funding for services at times convenient to [Petitioner] outside of the school day so as not to miss additional instructional time and fall further behind in [his] core academic curriculum.

3. Mathematics Remediation. [Petitioner] requires at least 100 hours of specialized math instruction focused on functional numeracy, computation skills, and real-world problem-solving. Instruction should be provided in a structured, one-on-one setting with a focus on mastery-based progress, outside of the school day, to ensure [he] does not miss critical instructional time or fall further behind. Parents should have access to the necessary funding for these services to be provided at times convenient to [Petitioner] and [his] family. This flexibility will allow [him] to fully engage in both academic remediation and structured social-emotional interventions without compromising [his] daily school-based instruction and peer interactions.

4. Writing and Communication Support. Despite receiving OT, [Petitioner's] handwriting deficits have persisted and limited [his] capacity for written expression. [He] requires at least 75 hours of structured writing intervention, incorporating speech-to-text accommodations, structured writing strategies, and handwriting instruction. Occupational therapy must integrate assistive

technology training for alternative writing methods such as typing and voice-to-text software.

5. Speech and Language Therapy. To target [Petitioner's] deficits in pragmatic communication, expressive language, and social reciprocity skills, [he] requires at least 50 additional hours of intensive speech and language therapy beyond what [his] current IEP provides.⁶ Therapy should be delivered in both small-group and individual settings to assist with skill building. The additional speech therapy must also specifically address [Petitioner's] need for structured social interactions and functional communication skills.

6. Behavioral and Social-Emotional Interventions. Given [Petitioner's] history of anxiety, self-injurious behaviors, and difficulty with transitions, [he] requires at least 100 hours of individualized behavioral support provided by a Board-Certified Behavior Analyst (BCBA). These sessions should focus on developing functional coping skills, improving frustration tolerance, and implementing structured behavior modification techniques. Training must also be provided to school staff and paraprofessionals to enable [Petitioner's] behavior intervention strategies to be consistently implemented across settings.

7. Extended School Year (ESY) Services. To prevent further regression and reinforce compensatory interventions, [Petitioner] requires one full summer (six weeks) of structured ESY programming. This program should include academic instruction, behavioral therapy, and independent living skill-building activities. In addition to the school-sponsored ESY program, parents should have the opportunity to enroll [Petitioner] in an external program that allows [him] to learn and practice engaging in meaningful peer interactions and social communication in real-world settings. These programs, which typically run for eight weeks and often continue throughout the school year, are

⁶ The IEP in place when [REDACTED] conducted [REDACTED] evaluation is not at issue.

essential for developing [Petitioner's] social-emotional skills and ensuring [he] can generalize these abilities beyond the school environment. Providing access to such programs will give [Petitioner] the opportunity to reinforce both academic and social development without compromising [his] ability to participate in school-based instruction.

8. Paraprofessional and Transportation Support. The district must provide a dedicated paraprofessional who is available daily to support [Petitioner's] academic, behavioral, and functional needs. [Petitioner] requires a transportation aide on the bus, as provided in [his] IEP. In the event of staff absences, a written policy must be implemented to notify parents immediately and assign a trained substitute.

28. Because [REDACTED] did not review the IEPs at issue, [REDACTED] could not provide helpful information about the appropriateness of those documents. Petitioner is already receiving paraprofessional and transportation support. [REDACTED] also provided recommendations for the drafting of Petitioner's future IEPs, which are not at issue. Finally, as seen above, [REDACTED] did not recommend any compensatory education in Self-Advocacy.

29. At the final hearing, the School Board presented no evidence that [REDACTED] compensatory education calculations were inaccurate.

30. Ultimately, based on the evidence presented at the hearing, Petitioner proved that by failing to hire a dedicated one-to-one paraprofessional, the School Board materially failed to implement his December [REDACTED] and November [REDACTED] IEPs. But, Petitioner did not prove that the December [REDACTED], or November [REDACTED], IEPs were improperly designed; or that the School Board failed to conduct an FBA, BIP, or safety plan. Petitioner also did not prove that the School Board discriminated against him in violation of Section 504.

CONCLUSIONS OF LAW

31. DOAH has jurisdiction over the subject matter of this proceeding as well as the parties. *See* § 1003.57(1)(c), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

32. As the party seeking relief, Petitioner bears the burden of proving each issue raised in the Complaint. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

33. Congress passed the Individuals with Disabilities Education Act (IDEA) “to ensure that all children with disabilities have available to them [FAPE] that emphasize[s] 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. ex rel. A.C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). In enacting the IDEA, Congress intended to address 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).

34. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (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).

35. 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).

36. Moreover, to satisfy the IDEA's substantive requirements, local school districts must provide all eligible students with FAPE, which is:

[s]pecial 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 required under section 1414(d) of this title.

See 20 U.S.C. § 1401(9).

37. The IDEA defines “special education” as “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including[,] instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings” 20 U.S.C. § 1401(29).

38. The components of FAPE are recorded in an IEP, which is “the centerpiece of the statute’s education delivery system for disabled children.” *Endrew 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 *Rowley*, 458 U.S. at 181).

39. At a minimum, an IEP must identify the child’s present levels of academic achievement and functional performance; establish measurable annual goals; address the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and, specify the measurement tools and periodic reports to be used to evaluate the child’s progress. *See* 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. A child’s IEP

team must review his or her IEP at least annually. 20 U.S.C. § 1414(d)(4)(A)(i).

40. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a 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.

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

42. The IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet each of the educational needs that result from the child’s disability. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(II); *see also Alex R. v. Forrestville Valley Cmty. 12 Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004) (explaining that an IEP must respond to all significant facets of the student’s disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003).

43. Here, Petitioner raises seven claims under the IDEA—four substantive and three procedural—and one claim under Section 504. This Final Order addresses each claim in turn.

Alleged Substantive Violations

44. Petitioner asserts that his December [REDACTED] IEP is improperly designed. That is, that it is not designed to provide FAPE. This claim fails. Along with meeting the basic requirements of 20 U.S.C. § 1414(d)(1)(A)(i), the December 2022 IEP describes how Petitioner’s disabilities impact his global functioning.

It outlines seven specific PENs and provides accommodations and benchmarks, tailored to measure Petitioner's progress. Most importantly, as Petitioner argues—and the School Board concedes—the IEP specifically addresses Petitioner's need for one-on-one assistance to access his education. Ultimately, Petitioner produced no persuasive evidence that the School Board failed to properly design his December [REDACTED] IEP.

45. For similar reasons, Petitioner's claim that his November [REDACTED] IEP is improperly designed also fails. Like the December [REDACTED] IEP, the November [REDACTED] IEP meets and exceeds the requirements of 20 U.S.C. § 1414(d)(1)(A)(i). It outlined Petitioner's present levels of academic achievement and functional performance; established measurable annual goals and the tools used to measure Petitioner's performance; addressed the services and accommodations Petitioner would receive; and identified Petitioner's placement as a separate class. And like the December [REDACTED] IEP, it detailed Petitioner's need for one-on-one support.

46. In sum, the evidence establishes that the School Board properly designed the December [REDACTED] and November [REDACTED] IEPs; and Petitioner is not entitled to relief on this issue.

47. Petitioner next asserts that the School Board failed to implement his December [REDACTED] and November [REDACTED], IEPs.

48. The Eleventh Circuit addressed the issue of implementation for the first time in *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019). In that case, the court outlined the standard for claimants to prevail in a “failure-to-implement case.” *Id.* The court concluded that “a material deviation from the plan violates the [IDEA].” *L.J.*, 927 F.3d at 1206. The *L.J.* court expanded upon this conclusion as follows:

Confronting this issue for the first time ourselves, we concluded that to prevail in a failure-to-implement case, a plaintiff must demonstrate that

the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or *significant* provisions of a child's IEP.

Id. at 1211 (emphasis added).

49. The court provided a few principles to guide the analysis. *Id.* at 1214. First, the court said that the focus in implementation cases should be on the proportion of services mandated to those provided, viewed in the context of the goal and import of the specific service withheld. Thus, the task is to compare the services that are delivered to the services described in the IEP itself. In turn, "courts must consider implementation failures quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole." *Id.*

50. Additionally, the *L.J.* court noted that the analysis must consider implementation as a whole:

We also note that courts should consider implementation as a whole in light of the IEP's overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

51. Moreover, as the court explained:

[B]ecause every child, and every IEP, is different; whether an implementation failure is material will therefore depend on the relevant provision's place and purpose in the IEP, as well as the overall educational context that the IEP was designed for and the extent and duration of any difference between practice and plan.

Id. at 1214.

52. Here, Petitioner asserts that by failing to provide a one-on-one paraprofessional, the School Board materially failed to implement his December [REDACTED] and November [REDACTED] IEPs.

53. The record supports this argument. As the December [REDACTED] IEP explains, Petitioner has global impairments and requires constant prompting and redirection to complete any work; that is to make progress toward his IEP goals. This fact is documented throughout his December [REDACTED] IEP. Indeed, the parents and School Board agreed that Petitioner required one-to-one assistance; so much so that the School Board sought out a part-time paraprofessional following the December [REDACTED] IEP meeting. But as Petitioner argues, and the School Board concedes, despite its best efforts, the School Board did not fill this position until August [REDACTED]. The fact that the School Board sought to fill the position is important for three reasons. First, it demonstrates its continued agreement that Petitioner required one-to-one assistance; second, it shows that it knew the rotating paraprofessionals model did not meet the requirements of the IEP; and third, it shows that Petitioner's issues with inattentiveness and low motivation persisted. As the IEP team agreed, without constant prompting and redirection, Petitioner would not complete any work; thus, he would not progress toward his IEP goals. The evidence shows that by failing to provide a one-to-one paraprofessional, the School Board failed to implement Petitioner's December [REDACTED] IEP.

54. Moreover, this failure was material given the purpose of the one-to-one paraprofessional in the IEP. Petitioner cannot begin or complete schoolwork without constant prompting and redirection. And as ██████ explained, Petitioner's global impairments require one-on-one assistance to access his education. Thus, for Petitioner, the lack of one-to-one paraprofessional support was a material failure to implement his December ██████, IEP. *See L.J.*, 927 F. 3d at 1214.

55. For similar reasons, the School Board also materially failed to implement the November ██████ IEP. Like the December ██████ IEP, the IEP notes that Petitioner continued to struggle with attention and motivation; and required constant prompting and redirection to do his classwork. Without such assistance, Petitioner would fall asleep. During this time, and until August ██████, the School Board continued the rotating paraprofessionals model while it tried to hire a full-time one-to-one paraprofessional. The School Board presented no evidence that it sought to amend the IEP to remove the provision of the paraprofessional because it deemed it unnecessary. Instead, the failure to provide a one-to-one paraprofessional stemmed from difficulty in securing such an individual rather than a data-driven decision that Petitioner no longer needed such assistance.

56. Thus, the greater weight of the evidence shows that by not providing a dedicated one-on-one paraprofessional, the School Board materially failed to implement Petitioner's December ██████ and November ██████ IEPs.

Alleged Procedural Violations

57. In addition to the substantive claims, Petitioner also asserts three procedural violations. First, that the School Board failed to conduct an FBA. This claim fails. The School Board conducted an FBA on November 5, ██████, which identified Petitioner's target behaviors as well as the antecedents and consequences of those behaviors. It also outlined de-escalation techniques;

and provided methods for tracking Petitioner's behaviors. Petitioner presented no persuasive evidence that the FBA is inaccurate or inappropriate. And, tellingly, when [REDACTED] observed Petitioner on January 9, [REDACTED], [REDACTED] did not see him engaging in any of the targeted behaviors, demonstrating the effectiveness of the FBA. Thus, Petitioner did not establish that the School Board failed to conduct an FBA.

58. Next, Petitioner argues that the School Board failed to create a BIP. This claim also fails. As the evidence shows, [REDACTED] drafted a BIP for Petitioner on November 16, [REDACTED], which identified Petitioner's target behaviors and the circumstances prompting such behaviors. It also outlined the antecedents/triggers for the target behaviors. The BIP further outlined replacement behaviors of communication of frustrations and needs, and use of self-regulation strategies; defined the function of the target behaviors and included proactive, educative, and functional interventions and methods for tracking implementation. The BIP also included a brief crisis management plan, which Petitioner's school could implement. Thus, this claim is denied.

59. Finally, Petitioner asserts that the School Board failed to create a safety plan for Petitioner. But he presented no evidence at the final hearing describing the structure, purpose, or appropriateness of such a plan. Instead, Petitioner's safety-related arguments stem from the School Board's failure to provide a one-to-one paraprofessional to assist him throughout the day. As the issue of the provision of a paraprofessional is distinct from the need for a safety plan, this claim fails.

Section 504

60. Lastly, Petitioner asserts that the School Board discriminated against him based on his disability in violation of Section 504. That law provides that:

No otherwise qualified individual with a disability
in the United States, as defined in section 705(20)

[29 U.S.C. § 705(20)], shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or experience discrimination under any program or activity receiving Federal financial assistance

61. Title 29 U.S.C. § 794(b)(2)(B) defines a “program or activity” to include a “local education agency ... or other school system.” Title 29 U.S.C. § 794(a) requires the head of each executive federal agency to promulgate such regulations as may be necessary to carry out its responsibilities under the non-discrimination provisions of Section 504.

62. The U.S. Department of Education has promulgated regulations governing preschools, elementary schools, and secondary schools. 34 C.F.R. § 104.21(D). The K-12 regulations are at 34 C.F.R. § 103.31-.39. Title 34 C.F.R. § 104.33-.36 enlarge upon the specific provisions of Section 504 by substantially tracking the requirements of IDEA. Title 34 C.F.R. § 104.33 requires that School Boards provide FAPE to “each qualified [disabled] person who is in the recipient’s jurisdiction.”

63. For purposes of Section 504, an “appropriate education” is the provision of regular or special education and related aids and services that: (1) are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met; and (2) are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.33(b)(1), 104.34, 104.35, and 104.36. An “appropriate education” can also be provided by implementing an IEP that complies with the IDEA. 34 C.F.R. § 104.33(b)(2).

64. To establish a *prima facie* case under Section 504, Petitioner must prove that he: (1) had an actual or perceived disability; (2) qualified for participation in the subject program; (3) was discriminated against only because of his disability; and (4) the relevant program is receiving federal financial assistance. *Moore v. Chilton Cnty. Bd. of Educ.*, 936 F. Supp. 2d 1300, 1313 (M.D. Ala. 2013)(citing *L.M.P. v. Sch. Bd. of Broward Cnty.*, 516

F. Supp. 2d 1294, 1301 (S.D. Fla. 2007)); *see also J.P.M. v. Palm Beach Cnty. Sch. Bd.*, 916 F. Supp. 2d 1314, 1320 (S.D. Fla. 2013).

65. If Petitioner establishes a prima facie case, the School Board must present a legitimate, nondiscriminatory reason for the adverse actions it took. *Lewellyn v. Sarasota Cnty. Sch. Bd.*, 2009 WL 5214983, at *10 (M.D. Fla. Dec. 29, 2009)(citing *Wascura v. City of S. Miami*, 257 F.3d 1238, 1242 (11th Cir. 2001)). The Eleventh Circuit has stated that the respondent's burden, at this stage, is "exceedingly light and easily established." *Id.* (quoting *Perryman v. Johnson Prods. Co. Inc.*, 698 F.2d 1138, 1142 (11th Cir. 1983)). Once the School Board has articulated a nondiscriminatory reason for the actions it took, Petitioner must show that the School Board's stated reason was pretextual. "Specifically, to discharge their burden, Plaintiffs must show that Defendant possessed a discriminatory intent or that the Defendant's espoused non-discriminatory reason is a mere pretext for discrimination." *Id.*; *see also Daubert v. Lindsay Unified Sch. Dist.*, 760 F.3d 982, 985 (9th Cir. 2014).

66. Here, the parties do not dispute that Petitioner meets the first, second, and fourth prongs. Thus, the only issue is whether the School Board discriminated against him based solely on his disability. As *J.P.M.* holds, the meaning of "intentional discrimination" in the Section 504 special education context is unclear. *J.P.M.*, 916 F. Supp. 2d at 1321 n.7. In *T.W. ex rel. Wilson v. School Board of Seminole County*, 610 F.3d 588, 604 (11th Cir. 2010), the Eleventh Circuit stated that it "has not decided whether to evaluate claims of intentional discrimination under Section 504 under a standard of deliberate indifference or a more stringent standard of discriminatory animus." But in *Liese v. Indian River County Hospital District*, 701 F.3d 334, 345 (11th Cir. 2012), the Eleventh Circuit, in a case involving a Section 504 claim for compensatory damages, concluded that proof of discrimination requires a showing, by a preponderance of the evidence, that the Respondent acted or failed to act with deliberate indifference. *Id.*

67. Under the deliberate indifference standard, Petitioner must prove that the School Board knew that harm to a federally protected right was substantially likely and that the School Board failed to act on that likelihood. *Id.* at 344. As the *Liese* court explained, “deliberate indifference plainly requires more than gross negligence,” and “requires that the indifference be a ‘deliberate choice.’” *Id.*

68. Here, Petitioner argues that the School Board discriminated against him by failing to provide a trained paraprofessional and failing to conduct updated functional behavior, occupational, and language assessments. Yet these actions, without more, do not meet the stringent standard of discrimination under *Liese*. In fact, the evidence at hearing shows that although the School Board, as explained above, materially failed to implement Petitioner’s December [REDACTED] and November [REDACTED] IEPs, these failures stemmed from staffing shortages, rather than deliberate choices to discriminate against Petitioner. Moreover, in addition to properly designing IEPs, the School Board tried to address Petitioner’s behaviors through an FBA and BIP. Thus, Petitioner has failed to establish a violation of Section 504.

Relief

69. Having found the School Board violated the IDEA by materially failing to implement Petitioner’s December 5, [REDACTED], and November 16, [REDACTED], IEPs, the next issue is determining the appropriate relief. 20 U.S.C. § 1415(i)(2)(C)(iii). In doing so, the court or administrative hearing officer has broad discretion. *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2001); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009)(observing that 20 U.S.C. § 1415(i)(2)(C)(iii) authorizes courts and hearing officers to award appropriate relief, despite the provision’s silence in relation to hearing officers).

70. Such “appropriate” relief may include reimbursing parents for the cost of private replacement therapy; transportation expenses; credit card transaction fees and interest; and, when a trained service provider is unavailable, reimbursement for the time a parent spent in providing therapy personally. *See Bucks Cnty. Dep’t of Mental Health v. Pa.*, 379 F.3d 61, 63 (3d Cir. 2004)(“[W]e hold that under the particular circumstances of this case, where a trained service provider was not available, and the parent stepped in to learn and performed the duties of a trained service provider, reimbursing the parent for her time spent in providing therapy is ‘appropriate’ relief”); *D.C. ex rel. E.B. v. N.Y.C. Dep’t of Educ.*, 950 F. Supp. 2d 494, 516 (S.D.N.Y. 2013)(awarding reimbursement for transportation costs); *JP v. Cnty. Sch. Bd.*, 641 F. Supp. 2d 499, 506-07 (E.D. Va. 2009) (awarding parents a reasonable rate of interest to compensate them for tuition payments made on their credit cards, as well as credit card processing fees). Appropriate relief depends on equitable considerations, so that the ultimate award provides the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005).

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

72. Applying those principles here, in accordance with [REDACTED] recommendations—and consistent with the PENs in Petitioner’s December 5, [REDACTED], and November 16, [REDACTED], IEPs—he is entitled to the following relief:

- (1) 100 hours of social-emotional support in the form of behavioral therapy, small-group social skills training, and community-based social programming;
- (2) 150 hours of one-on-one reading instruction using a multisensory, evidence-based reading program such as Orton-Gillingham or Wilson Reading Instruction, provided by a certified reading specialist;
- (3) 100 hours of mathematics remediation in functional numeracy, computation skills, and real-world problem-solving, provided in a one-on-one setting with a focus on mastery-based progress;
- (4) 75 hours of writing and communication support, incorporating speech-to-text accommodations, structured writing strategies, and handwriting instruction. The OT must integrate assistive technology training for alternative writing methods such as typing and voice-to-text software;
- (5) 50 hours of speech and language therapy, therapy should be delivered in both small-group and individual settings to assist with skill building;
- (6) 100 hours of individualized behavioral support provided by a Board-Certified Behavior Analyst (BCBA). These sessions should focus on developing functional coping skills, improving frustration tolerance, and implementing structured behavior modification techniques.

73. Petitioner’s IEP team has discretion as to how and when these services will be provided based on Petitioner’s individual needs.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board violated the IDEA by failing to provide a one-on-one paraprofessional and is ORDERED to provide the following compensatory education:

1. Within 45 days of this Final Order, reconvene the IEP team, including Petitioner's paraprofessional, to address his social-emotional support, reading, writing, communication, speech and language, behavioral, and social and emotional goals.

2. The School Board must provide Petitioner:

a. 100 hours of social-emotional support in the form of behavioral therapy, small-group social skills training, and community-based social programming;

b. 150 hours of one-on-one reading instruction using a multisensory, evidence-based reading program such as Orton-Gillingham or Wilson Reading Instruction, provided by a certified reading specialist;

c. 100 hours of mathematics remediation in functional numeracy, computation skills, and real-world problem-solving, provided in a one-on-one setting with a focus on mastery-based progress;

d. 75 hours of writing and communication support, incorporating speech-to-text accommodations, structured writing strategies, and handwriting instruction. The OT must integrate assistive technology training for alternative writing methods such as typing and voice-to-text software;

e. 50 hours of speech and language therapy. Therapy should be delivered in both small-group and individual settings to assist with skill building; and,

f. 100 hours of behavioral and social-emotional interventions; and individualized behavioral support provided by a BCBA. These sessions should focus on developing functional coping skills, improving frustration tolerance, and implementing structured behavior modification techniques.

3. All other forms of relief are denied.

DONE AND ORDERED this 9th day of May, 2025, in Tallahassee, Leon County, Florida.

~~Case No. 24-3496F~~

NICOLE D. SAUNDERS
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32301-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of May, 2025.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Bryce D. Milton, Educational Program Director
(eServed)

Gabrielle L. Gonzalez, Esquire
(eServed)

Joseph William Montgomery, Esquire
(eServed)

Dr. Jose Dotres, Superintendent
(eServed)

David Chappell, Acting General Counsel
(eServed)

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).