STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],

Petitioner,

vs. Case No. 15-2287EDM

HIGHLANDS COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Todd P. Resavage, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on May 18, 2015, in Sebring, Florida.

APPEARANCES

For Petitioner: Petitioner, Pro se
(Address of record)

For Respondent: James V. Lobozzo, Jr., Esquire
McClure and Lobozzo, L.L.C.
211 South Ridgewood Drive
Sebring, Florida 33870-3340

STATEMENT OF THE ISSUES

The issues in this case are whether the Respondent's placement of Petitioner ("the Child") in an interim alternative educational setting deprived Petitioner of a free, appropriate public education ("FAPE") within the meaning of the Individuals

with Disabilities Act ("IDEA), 20 U.S.C. § 1400, et seq.; and, if so, to what remedy is Petitioner entitled.

PRELIMINARY STATEMENT

On April 20, 2015, the parents of the Child, Petitioner in this cause, filed a Request for Expedited Due Process Hearing ("Complaint"). Respondent Highlands County School Board promptly forwarded the Complaint to DOAH for further proceedings. This cause was initially assigned to Administrative Law Judge ("ALJ") Edward T. Bauer. The final hearing was scheduled for May 18, 2015.

On April 27, 2015, Respondent filed a Notice of Insufficiency. On May 4, 2015, ALJ Bauer issued an Order of Sufficiency, ordering that the Complaint was sufficient insofar as it challenged the appropriateness of the interim alternative educational setting.

On May 7, 2015, the case was transferred to the undersigned for all further proceedings. The final hearing proceeded, as scheduled, on May 18, 2015. The final hearing Transcript was filed on May 22, 2015. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript.

Respondent timely filed a Proposed Final Order on May 28, 2015, and the same has been 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 alleged violations. For stylistic convenience, the undersigned will use [redacted] pronouns in the Final Order when referring to the Child. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to the Child's actual gender.

FINDINGS OF FACT

Background

1. The Child is currently [redacted] years old. At the time the instant Complaint was filed, the Child had been deemed disabled under section 504 of the Rehabilitation Act of 1973, as amended, and Respondent had provided [redacted] with a 504 plan. The 504 plan was not admitted into evidence.

2. It appears undisputed from the record that the basis for the 504 plan was a prior diagnosis of [redacted].The Child receives [redacted], [redacted], to treat the symptoms of this condition.

3. Prior to the filing of the instant Complaint, Respondent had stipulated that it was deemed to have knowledge that the Child was a student with a disability, pursuant to Florida Administrative Code Rule 6A-6.03312(10)(a). At the time the Complaint was filed, however, Respondent had not completed its evaluation process to determine if the Child is, in fact, eligible for special education and related services under the

IDEA. Accordingly, the Individual Educational Plan ("IEP") Team had not met, and an IEP had not been developed for the child.[1/]

[redacted] Incident

4. The Child attended a public [redacted] school in the Highlands County School District during the 2014-2015 school year. On March 3, 2015, the Child brought and displayed on school grounds a [redacted].

5. On March 4, 2015, the [redacted] school [redacted] advised [redacted], [redacted] of Schools for Highlands County ("[redacted]"), that [redacted] was recommending [redacted] of the Child from the [redacted] school.

6. On May 5, 2015, a stipulation was entered into by and between the Child and [redacted]. The stipulation memorialized that the parties, pursuant to section 120.57(2), Florida Statutes, were entering into the stipulation in lieu of administrative proceedings. The stipulation provided the following admission of facts by the Child: "During the 2014-2015 School year, the [Child] did commit the following infraction of the Highlands County Code of Student Conduct: [redacted]."

7. The stipulation further provides in pertinent part, as follows:

4. Based on the facts admitted and stipulated to by the [Child], the [Child's] academic placement in the public school system of Highlands County shall be subject to this Stipulation for the 2014-2015 school year.

The [Child] is hereby [redacted]. In exchange for the Respondent entering into this Stipulation, the Superintendent shall recommend that the Board expunge this [redacted] in connection with the aforesaid misconduct at such time as the Respondent complies with the terms and conditions of this Stipulation, which are as follows:

The [Child] will complete [redacted].

5. The [Child] hereby waives the right to a hearing on this matter.

6. The [Child] agrees to be bound by the terms and conditions of this Stipulation and foregoes any and all right to attend public schools with the School District of Highlands County, except as described herein.

8. The Stipulation was signed by the Child and [redacted] parents.

[redacted] Background

9. The [redacted] at [redacted] ("[redacted] ("[redacted]") is a [redacted] school offering alternative to [redacted] education for Highlands County students in grades [redacted] through [redacted]. The program offers instruction focused in the areas of [redacted]. The [redacted] component,

referred to by several witnesses as the [redacted]," is provided through an [redacted].

10. Respondent's Code of Conduct addresses the "District Alternative Discipline Program," and provides in pertinent part, as follows:

> Upon the Board's decision that the student has successfully completed a district [redacted], the student's [redacted] shall be expunged. The student shall be permitted to [redacted] under such conditions and restrictions as provided in a [sic] district [redacted] regulations. The [redacted] shall thereafter be deleted from the student's discipline record.

11. The [redacted] program constitutes a "disciplinary program" pursuant to Florida Administrative Code Rule 6A-6.0527. The [redacted] program further meets the definition of an [redacted] ("[redacted]").[2/]

12. The students assigned to the [redacted] are referred to as [redacted]. [redacted] are assigned to either a [redacted], depending upon the recruit's Code of Conduct [redacted]. As a result of the Child's [redacted], [redacted] was assigned to the [redacted], which is [redacted].

13. Although the record is unclear, it appears that the Child began [redacted] on or about [redacted].

14. Prior to beginning the program, a limited [redacted] occurs with the Child and [redacted] parents. [redacted], a licensed counselor for the [redacted], explained that through discussion with

the [redacted] and [redacted] family, the following occurs at [redacted]: (1) gathering information on the reason the [redacted] is [redacted]; (2) a discussion of the stipulation process (described above); (3) student background; (4) medical history which is primarily focused upon medications and known allergies.

[redacted] Physical Training

15. The [redacted] participate in [redacted], as well as [redacted].[3/] [redacted], a resource assistant at the [redacted], oversees this component of the program. [redacted] explained that on the first day [redacted] undergo an initial physical examination that entails running one or two laps on the [redacted] track. Based on their performance, [redacted] assesses their physical abilities.

16. A typical day at the [redacted] begins with the [redacted] arriving via bus between 9:00 and 9:30 a.m. The [redacted] are required to wear uniforms, which are inspected daily. After uniform inspection and reciting the Pledge of Allegiance, the [redacted] are marched to the physical training field. There, the [redacted] perform various drills and exercises. If the [redacted] cannot perform a particular exercise, they are given an alternative physical exercise. [redacted] credibly testified that the [redacted] are not punished if they are unable to complete a drill or exercise.

17. [redacted] provided unrefuted testimony that the Child had no problems concerning the physical component of the program. To the contrary, the Child was one of the program's fastest runners at the time. According to [redacted], the Child did not exhibit any significant behavioral issues during the physical training. The physical training concludes at noon, and the [redacted] are then marched to the dining hall for lunch.

[redacted] Counseling

18. On Monday through Thursday, from 1:00-3:00 p.m., the [redacted] participate in counseling sessions. The typical group contains 15 [redacted] whose ages range from [redacted] through [redacted]. [redacted] credibly testified that the topics of discussion are determined by the students' needs. Counseling topics include, but are not limited to: [redacted]. [redacted] also provided individual sessions with the Child to address behavioral issues related to [redacted] siblings.

19. [redacted] was aware that the Child had a 504 plan and was aware that [redacted] needed seating up front, prompting, clear and precise instruction, and encouragement to become part of the group counseling process. [redacted] had also reviewed [redacted] discipline referrals and "the rest of [redacted] file." [redacted] was unaware of

any disabilities the Child may possess, aside from [redacted] and [redacted] for the same.

20. [redacted] further opined that the counseling addressed the Child's known behaviors of [redacted] by addressing responsibility for one's action, self-respect, respect for others, boundaries, self-confidence, and staying on task.

21. [redacted] opined that through [redacted] counseling sessions with the Child, [redacted] observed behaviors that would meet the criteria for [redacted] and [redacted]. [redacted] further observed, however, that compared to a previous stint at the [redacted], the Child was more comfortable communicating with peers and adults and was less introverted.

22. At the conclusion of the counseling sessions, [redacted] have "snack" until 4:00 p.m. During this time, the [redacted] eat a snack and review study sheets, which set forth certain responsibilities, discipline procedures, stretches, and exercises the [redacted] must master to successfully complete the program. At 4:00 p.m., the [redacted] are led to the computer lab to begin the academic component of the program.

[redacted] Educational Instruction

23. [redacted] is an exceptional student education ("ESE") certified teacher at the [redacted]. According to [redacted] unrefuted testimony, when the [redacted] enroll in the [redacted], their prior school curriculum is provided, and the [redacted] attempts to duplicate the courses as closely as possible. [redacted] explained that on Monday through Thursday nights the [redacted] attend the school until approximately 6:30 to 7:00. Each day coincides with a general topic of study. As the week progresses, there is a night dedicated to math, science, language arts, and social studies. On Monday through Thursday nights, a general education teacher and an ESE teacher are assigned to the computer lab.

24. The [redacted] work on their course of study through a computer program, with each child assigned to an individual computer. [redacted] explained that, "perhaps all the [redacted] grade language arts students on language arts night are looking at the same material."

25. [redacted] was aware that the Child had a 504 plan and had reviewed the same. [redacted] conceded that [redacted] had not reviewed the physician's recommendation that formed the basis of [redacted] 504 plan. [redacted] did not know the Child's disabilities, if any. On the second night at the [redacted], [redacted] moved the Child to be seated next to [redacted] to assist the Child in staying on task, which [redacted] construes as implementing [redacted] 504 plan.

26. [redacted] opined that the Child's performance was inconsistent; however, [redacted] could perform [redacted]-grade-level math with assistance. [redacted] was unaware of [redacted] reading level, but opined that [redacted] has demonstrated an ability to read at a [redacted] grade level, but may need assistance with comprehension. [redacted] further opined that [redacted] was more capable than [redacted] work often demonstrated and attributed [redacted] academic shortcomings to the fact that "academics are not [redacted] first priority."

27. At the conclusion of the academics, the [redacted] are loaded back on the buses and returned home. The [redacted] is also open on Friday; however, the physical component ends at 11:00 a.m. Thereafter, according to [redacted], the [redacted] receive one hour of educational instruction. The record fails to provide any specificity concerning the Friday academics. The [redacted] day ends at noon on Friday.

[redacted] Discipline

28. The [redacted] attempts to model certain aspects of the military to instill a certain esprit de corps and to foster compliance, leadership, self-discipline, and respect. The [redacted] march in military style formation; are required to say "yes, ma'am" or "yes, sir" when addressing adults; refer to other [redacted] as "[redacted] Jones" etc. when speaking to them; and must request permission to speak prior to speaking to drill instructors.

29. [redacted] explained that when the [redacted] are not compliant, [redacted] does not scream at them to obtain compliance. The [redacted] are, however, often addressed loudly. If [redacted] are not complying with commands, they are often pulled aside to determine the issue.

30. On the [redacted] grounds is an area that has been titled "[redacted]." Notwithstanding the intimidating name, [redacted] provided the following tranquil description of [redacted]:

[redacted]

31. [redacted] further explained the purpose of [redacted] as follows:

[redacted]

32. On one occasion, the Child was sent to [redacted] by

[redacted]. [redacted] trip to [redacted] was precipitated by a failure to remain properly seated and moving around during lunchtime. [redacted] gave the Child several warnings to "come on line." After the Child failed to come on line, [redacted] was then ordered to "post on the buck head," which means face the wall with one's forehead touching the wall and remaining still. The Child failed to comply with this intermediate sanction to [redacted] satisfaction. After several warnings to properly post on the buck head, and the Child's failure to do so, [redacted] was placed in [redacted]. At the time [redacted] was placed in [redacted], the balance of the [redacted] transitioned to the computer lab for educational instruction.

33. The Child was instructed by [redacted] to stay in [redacted] and if [redacted] became compliant, [redacted] could return to class. The Child did not comply to [redacted] satisfaction as [redacted] left [redacted] on four to five occasions to get water. The Child had also poured water over [redacted] and had proceeded to get mud on [redacted] body. According to [redacted], [redacted] never came on line. The record is unclear as to whether the Child was ever returned to class on that occasion.

34. There is no established period of time that a [redacted] is permitted to remain in [redacted]. If a [redacted] does not become compliant, the [redacted] can do "trial training." Trial training consists of sending the [redacted] home to [redacted] parents and

advising that if the child does not become compliant, the recruit may receive additional time at the [redacted].

[redacted] Termination

35. As discussed above, the Child enrolled in the [redacted] at the [redacted]. The Child's parents removed [redacted] from the [redacted] after [redacted], which the undersigned calculates as [redacted]. On this date, the Child's father credibly testified that the Child, upon returning home, complained of experiencing chest pain during the day. The Child's father credibly testified that [redacted] had not been notified of these medical complaints by the [redacted].

36. Based on the Child's account of the isolated chest pain incident, the parents withdrew the Child from the program immediately. The Child thereafter saw [redacted] local pediatrician who, out of an abundance of caution, ordered that [redacted] cease taking [redacted]. According to the Child's father, a cardiologist subsequently ruled out the medication as a contributing factor to the isolated chest pain incident. The Child remained off of [redacted] medication for approximately one month.

37. Following the removal of the Child from the [redacted], the Child has been receiving compensatory education from [redacted], an ESE certified teacher.[4/] [redacted] provides the compensatory education at the Child's home, at a local [redacted]

school, and on occasion, at [redacted]. [redacted] conducts at least two sessions per week, with each session lasting two hours. Although the record is not absolute on this point, it appears that the sessions began on or about April 1, 2015.

38. [redacted] received the Child's prior curriculum from the public [redacted] school and thereafter conducted a placement assessment. Based on the assessment, the child is operating at the [redacted] grade level in reading and math; however, the Child scored on the [redacted] grade level in math when [redacted] sat next to the Child. [redacted] opines that this variance may be due to the Child's [redacted].

39. Based on the placement assessment, [redacted] generated the appropriate curriculum of instruction utilizing the Moby Max program. The instruction addresses [redacted]. [redacted] credibly testified that the Child has been successful in the one-to-one setting and that [redacted] could possibly benefit from a small classroom environment.

40. No evidence was presented concerning any additional education services that the Child has received following the parents removing the Child from the [redacted].

CONCLUSIONS OF LAW

41. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rules 6A-6.03311(9)(u) and 6A-6.03312(7)(c).

42. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. See Schaffer v. Weast, 546 U.S. 49, 62 (2005).

43. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th. Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

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

45. Local school systems must also satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

> Special education services that--(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

46. "Special education," as that term is used in the IDEA, is defined as:

> [S]pecially 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 . . . .

20 U.S.C. § 1401(29).

47. If a child engages in behavior that violates the code of student conduct prior to a determination of [redacted] eligibility for special education and related services and the public agency is deemed to have knowledge of the child's disability, the child is entitled to all of the IDEA protections afforded to a child with a disability, unless a specific exception applies. See 34 C.F.R. § 300.534; Fla. Admin. Code R. 6A-6.03312(10). As noted in the Findings of Fact, Respondent previously stipulated that it was deemed to have knowledge of the Child's disability.

48. The implementing regulations of the IDEA addressing discipline procedures for students with disabilities set forth specific instances of conduct that may trigger unilateral placement of a student with a disability in an interim alternative education setting ("IAES"). Specifically, 34 C.F.R. § 300.530(g) provides, in pertinent part, as follows:

> Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than

> 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--
>
> (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

49. Here, Respondent removed the Child from the public middle school, with the consent of the Child's parents, to the 45 school day [redacted] program, an [redacted], following the Child bringing a [redacted] to school.

50. Even where a child with a disability is removed from [redacted] current placement for disciplinary reasons under 34 C.F.R. § 300.530(g), the child must continue to receive educational services. Indeed, 34 C.F.R. § 300.530(d) provides as follows:

> Services. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--
>
> (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
>
> (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
>
> (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this

> section may be provided in an interim alternative educational setting.

51. Operating under the legal premise that the Child is a child with a disability, and that the Child is entitled to all of the IDEA protections afforded to a child with a disability, Respondent was obligated to create an IEP for the Child. 20 U.S.C. § 1414(d). The IEP must include an assessment of the child's current educational performance, must articulate measureable educational goals, and must specify the nature of the special services that the school will provide. 20 U.S.C. § 1414(d)(1)(A). It is undisputed that Respondent had not created an IEP at the time the Child was assigned to the [redacted].

52. As a presumed child with a disability, it was further the responsibility of the Child's IEP team to determine the appropriate IAES and the appropriate services to be provided by the IAES. 34 C.F.R. § 300.530(d)(5), 34 C.F.R. § 300.531. It is undisputed that, at the time the Child was removed from the public middle school, Respondent did not have an IEP team in place for the Child. Accordingly, it is further undisputed that an IEP team did not determine the [redacted] that the Child should attend for [redacted] and did not consider or determine the appropriate services to be provide to the Child by the [redacted].

53. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Id. at 206-07. A procedural error does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to a free appropriate public education, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

54. The undersigned concludes that Respondent's failure to (1) have an IEP team assemble and create an IEP; (2) determine the appropriate IAES; and (3) determine the appropriate services to be provided by the IAES, at a minimum, significantly infringed the parents' opportunity to participate in the decision-making process. Indeed, because the same did not occur, the Child's parents were given a Hobson's choice of either having the Child [redacted] from school or attending a [redacted] program without due consideration of the Child's requisite services. The undersigned concludes that these procedural flaws rise to the level of a denial of FAPE.

55. Petitioner challenges, inter alia, the hours of instruction provided by the [redacted], and thus, whether the educational services, as provided at the [redacted], enabled the Child to continue to participate in the general education curriculum. Pursuant to Florida Administrative Code Rule 6A-6.0527(3) the instruction period for a disciplinary program should be five hours per day, inclusive of both instruction and counseling. The undersigned concludes that the [redacted] program satisfies the instructional period requirement on Monday through Thursday. Based on the record evidence, the [redacted] program only provides one hour of instruction and no counseling on Fridays. There is no evidence in the record that Fridays are not counted in the [redacted] program.

56. Accordingly, the undersigned concludes that Petitioner established that the general educational curriculum hours provided at the [redacted] are deficient in the amount of four hours per week. The undersigned further concludes, however, that aside from the time deficiency, Petitioner failed to present sufficient evidence that the [redacted] program did not otherwise enable the Child to continue to participate in the general education curriculum.

57. Inasmuch as the School Board failed to create an IEP for the Child, Petitioner was precluded from presenting evidence that would establish that the educational services provided at

the [redacted] did not enable the child to progress toward meeting the goals set out in the Child's IEP.

Compensatory Education

58. Pursuant to 20 U.S.C. § 1415(i)(2)(C)(iii), the IDEA gives courts and Administrative Law Judges "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. Turner v. District of Columbia, 952 F. Supp. 2d 31, 42-43 (D.D.C. 2013)(citing Reid v. District of Columbia, 401 F.3d 516, 522-523 (D.C. Cir. 2005)); Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 244 n.11 (2009); L.M.P. v. Fla. Dep't of Educ., 345 Fed. Appx. 428, 431 (11th Cir. 2009). The "ultimate award" must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." Reid, 401 F.3d at 524. 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." Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007), aff'd, 518 F.3d 1275 (11th Cir. 2008).

59. In the instant case, the Child was removed from [redacted] public [redacted] school placement and enrolled in an [redacted] for a

[redacted] program. For the first [redacted], the [redacted] program failed to provide the Child with four hours of instruction per week. After the Child's parents voluntarily removed the Child from the [redacted] program, the record fails to provide any evidence that the child received educational services (aside from the compensatory education provided by [redacted] on account of a prior award of compensatory education) for the balance of the program. Accordingly, the School Board failed to provide the Child 25 hours per week of instruction for the remaining [redacted] of the [redacted] program.

60. The School Board shall, therefore, provide to the Child, as soon as practicable, including the present school year and, if Petitioner desires, the summer of 2015, compensatory education in the amount of 162 hours. Said compensatory education may be in the form of one-on-one or small-group tutoring by a certified teacher at school, at home, or at such other place as mutually reasonably agreeable to the parties.

ORDER

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

1. The School Board's failure to (1) have an IEP team assemble and create an IEP; (2) determine the appropriate IAES; and (3) determine the appropriate services to be provided by the

IAES denied the Child FAPE within the meaning of the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. § 1400, et seq.

2. The School Board shall provide the Child the relief set forth in paragraph 60.

DONE AND ORDERED this 1st day of June, 2015, in Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of June, 2015.

ENDNOTES

[1/] IEP means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with [the provisions of the IDEA]. 20 U.S.C. § 1414(d)(1)(A)(i); and 34 C.F.R. § 300.320.

[2/] Florida Administrative Code Rule 6A-6.03312(1)(g) defines an IAES as "a different location where educational services are provided for a specific time period due to disciplinary reasons and that meets the requirements of this rule."

[3/] While at the [redacted], the [redacted] are not given weapons training of any kind.

[4/] The compensatory education is that ordered in ** v. Highlands County School Board, Case No. 15-0985E (Fla. DOAH Apr. 1, 2015). Specifically, Respondent was ordered to provide the Child with

95 hours of compensatory education.

COPIES FURNISHED:

Liz Conn
Bureau of Exceptional Education
and Student Services
Department of Education
Turlington Building, Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

James V. Lobozzo, Jr., Esquire
McClure and Lobozzo, L.L.C.
211 South Ridgewood Drive
Sebring, Florida 33870-3340
(eServed)

Petitioner
(Address of Record)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Wallace (Wally) P. Cox, Superintendent
Highlands County School Board
426 School Street
Sebring, Florida 33870-4048
(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).