

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

vs.

Case No. 22-1512E

ORANGE COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A due process hearing was held on October 26, 2022, by Zoom conference, before Todd P. Resavage, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:     Petitioner, pro se  
                              (Address of Record)

For Respondent:     Sarah Wallerstein Koren, Esquire  
                              Orange County Public Schools  
                              445 West Amelia Street  
                              Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, by failing to implement Petitioner’s individualized education program (IEP) with respect to “Daily/Weekly reporting and collaboration with the parent.”

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Exceptional Student Education Due Process (Complaint) on May 20, 2022. Respondent forwarded the Complaint to DOAH on May 23, 2022, and the matter was assigned to the undersigned.

Pursuant to Respondent's Notice of Resolution Meeting, filed June 3, 2022, Respondent advised that a resolution meeting occurred on June 2, 2022; however, the parties requested the matter be placed in abeyance until August 8, 2022. The request was granted and the matter was placed in abeyance.

Following a telephonic status conference conducted on August 19, 2022, the due process hearing was scheduled for September 30, 2022. On September 28, 2022, Respondent filed a motion for continuance due to the approach of Hurricane Ian and the resulting school closure. The motion was granted and the due process hearing was rescheduled for October 26, 2022. The due process hearing was conducted as scheduled.

Petitioner's mother testified and Petitioner's Exhibits 1A and B, 2A through N, 3A through J, 4A and B, 5A through C, 6A and B, 7A through G, and 8A and B were admitted in evidence. Respondent presented the testimony of [REDACTED] and Respondent's Exhibits 5, 20 through 25, and 27 through 31 were admitted in evidence.

Upon the conclusion of the hearing, the parties agreed to the submission of proposed final orders within seven school days after the filing of the transcript at DOAH and the issuance of the undersigned's Final Order within seven school days after the parties' proposed final order submissions.

The hearing Transcript was filed on November 8, 2022. Respondent filed a Proposed Final Order, which have been considered in the preparation of this Final Order. Petitioner did not file a proposed final order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violation. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

#### FINDINGS OF FACT

1. Petitioner is currently [REDACTED] years old.
2. In the 2020-2021 school year, Petitioner was a [REDACTED]-grade student at a school in Broward County, Florida.
3. Petitioner enrolled at School A, a public elementary school in Orlando, Florida, shortly after the 2021-2022 school year began.
4. Petitioner, at some time in the past, had been found and determined to be eligible for exceptional student education (ESE) under the eligibility category of Autism Spectrum Disorder, and for the related service of language therapy.
5. On October [REDACTED], 2021, an IEP meeting was conducted. Of relevance to the issue here, at the meeting, Petitioner's parents expressed concerns regarding the daily note sent home from the school and opined that the communication was "basic." Pursuant to the conference notes from the meeting, Petitioner's parents indicated they wanted to share the form previously used in Broward County. The school-based members of the IEP team invited the parents to share the document(s) and the same would be considered for future use.
6. The IEP documented the "Classroom/Instructional Accommodations" with respect to "Presentation" to include "Daily/Weekly reporting and collaboration with the parent." The IEP documents the frequency of this

accommodation as “Daily.” The IEP does not provide any specifics as to what information is to be reported.

7. A meeting was held on January [REDACTED], 2022, to discuss data tracking for Petitioner. Petitioner’s parents again raised concerns regarding Respondent not utilizing the prior form used in Broward County. Ultimately, it appears that Respondent concluded that the form being utilized and anecdotal logs were sufficient communication.

8. Petitioner’s mother testified that Respondent failed to properly provide the daily/weekly reporting. She further testified as follows:

The daily/weekly reporting and collaboration with parents is instrumental in ensuring [Petitioner’s] struggles and achievements are shared between parents and school team, it promotes active participation from both parties and ultimately it ensures academic, nonacademic and functional information about [Petitioner] being monitored. [Petitioner] benefits from this communication, because [his] team can make more informed decisions pertaining to [his] social, academic, independent functioning and communication concerns.

9. Respondent presented the testimony of Petitioner’s [REDACTED]-grade general education teacher at School A, [REDACTED]. [REDACTED] has a bachelor’s degree in elementary education and a master’s degree as a reading specialist. [REDACTED] is certified by the Florida Department of Education in general education, grades kindergarten through sixth grade.

10. [REDACTED] credibly testified that Petitioner was supported in [REDACTED] classroom, that his IEP was implemented, and that Petitioner thrived in [REDACTED] classroom. Petitioner’s report card from the end of the 2021-2022 school year reveals that [REDACTED] received an “A” in social studies and science; a “B” in language arts (ELA) and mathematics (Math), an “S” (Satisfactory 70-89) in art, music, and physical education; and an “O” (Outstanding 90-110) in health.

11. Petitioner’s results from the Spring 2022 Florida Standards Assessments (FSA) demonstrate his education gains and progress. In the Grade 3 ELA Assessment, Petitioner scored a performance Level 5. As noted on the report, “[s]tudents who score in Level 5 demonstrate mastery of the Florida Standards for their grade level. They are highly likely to excel in the next grade level.” On the Grade 3 Math Assessment, Petitioner scored a performance Level 4, which indicates “proficiency in the Florida Standards” for the grade. A performance Level 3 or above is considered satisfactory on the FSA.

12. A review of Petitioner’s diagnostic growth on i-Ready assessments reveals that Petitioner demonstrated academic growth in both math and reading when comparing his scores from August █, 2021, to December █, 2021. █ credibly testified that, by the end of the year, the educational staff are looking for the student to improve by at least ten points. Here, in approximately four months, Petitioner increased his score from 449 to 462 in math and from 552 to 575 in reading.

13. With respect to communication, █ provided Petitioner’s parents with weekly newsletters, email correspondence, “remind” messages, and a minimum of one work sample per week. The work sample was completed homework with accompanying notes on how Petitioner performed the task and his score. Additionally, Petitioner’s parents were provided information regarding his academic performance via report cards and progress notes. Respondent also utilizes Skyward Family Access,<sup>1</sup> which is a web-based student information system, that enables parents to have access to the student’s grades, assignments, etc.

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<sup>1</sup> Petitioner’s mother testified that, for some period of time, the family did not have access to Skyward. The evidentiary record fails to provide the undersigned with any further details as to why Petitioner’s family did not have Skyward access.

## CONCLUSIONS OF LAW

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

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

16. In enacting the IDEA, Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education [FAPE] 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. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

17. Local school systems must satisfy the IDEA’s substantive requirements by providing all eligible students with a free and appropriate public education (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).

18. “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).

19. The components of FAPE are recorded in an IEP, which, among other things, identifies the child’s “present levels of academic achievement and functional performance”; establishes measurable annual goals; addresses the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and specifies the measurement tools and periodic reports that will be used to evaluate the child’s progress.

20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. “Not less frequently than annually,” the IEP team must review and, as appropriate, revise the IEP.

20 U.S.C. § 1414(d)(4)(A)(i). “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*, 484 U.S. 305 (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. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982)).

20. Petitioner’s Complaint alleges that Respondent has failed to implement Petitioner’s IEP. Specifically, the Complaint provides that “we have not received a daily/weekly home note, as documented in [Petitioner’s] IEP.” As a result of this alleged omission, Petitioner contends that the parents have missed key opportunities to collaborate and mitigate issues in relation to academic progress, academic performance, executive functioning, behavioral events, and social monitoring.

21. In *L.J. v. School Board of Broward County*, 927 F.3d 1203 (2019), the Eleventh Circuit Court of Appeals confronted, for the first time, the standard

for claimants to prevail in a “failure-to-implement case.” The court concluded that “a material deviation from the plan violates the [IDEA].” *Id.* 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.

22. While declining to map out every detail of the implementation standard, the court did “lay down a few principles to guide the analysis.” *Id.* at 1214. To begin, the court provided that the focus in implementation cases should be on “the proportion of services mandated to those actually provided, viewed in context of the goal and import of the specific service that was withheld.” *Id.* (external citations omitted). “The task for reviewing courts is to compare the services that are actually delivered to the services described in the IEP itself.” In turn, “courts must consider implementation failures both 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.*

23. 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.

*Id.* at 1215.

24. Here, the evidence supports the conclusion that Respondent provided weekly, but not daily, communication to Petitioner's parents with respect to his classroom and/or instructional accommodations. Even if the IEP is construed as requiring Respondent to provide daily communication, it is concluded that the failure to do so, in isolation, did not result in a material failure to implement Petitioner's IEP. Petitioner failed to establish that this de minimis shortfall impeded Petitioner's right to FAPE; significantly impeded his parent's opportunity to participate in the decision-making progress; or caused a deprivation of education benefits. In summary, Petitioner failed to present any evidence that this minor shortcoming resulted in a failure to implement Petitioner's IEP as a whole. To the contrary, based on the evidentiary presentation, Petitioner had a very successful school year.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof with respect to the claims asserted in Petitioner's Complaint. Petitioner's Complaint is, therefore, DENIED in all aspects.

DONE AND ORDERED this 30th day of November, 2022, in Tallahassee,  
Leon County, Florida.



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TODD P. RESAVAGE  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of November, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action, within 30 days after the date of this decision, in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03313(7)(j); or
- b) within 30 days after the rendition of this decision, files a notice of appeal with the clerk of the Division of Administrative Hearings, and files a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the appropriate state district court of appeal, in accordance with section 1003.57(1)(c), Florida Statutes (2014); section 120.68(2)(a), Florida Statutes (2011); and the Florida Rules of Appellate Procedure.