STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs.   Case No. 23-1447E

BREVARD COUNTY SCHOOL BOARD,

Respondent.
_______________________________________/

FINAL ORDER

A due process hearing was held in this matter before Brittany O. Finkbeiner, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on May 17, 2023, by Zoom video conference.

APPEARANCES

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

For Respondent: Amy J. Pitsch, Esquire
Sniffen & Spellman
123 North Monroe Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Respondent designed an Individualized Education Plan ("IEP") which provided a free and appropriate public education ("FAPE") to Petitioner.

PRELIMINARY STATEMENT

On April 14, 2023, Petitioner filed a Request for Due Process Hearing ("Request"). The Request outlined Petitioner's disagreement with the reduction of Petitioner's services in her March 31, 2023, IEP.

At the due process hearing, Petitioner testified on her own behalf and presented the testimony of her mother. Petitioner did not offer any exhibits into evidence. Respondent presented the testimony of Petitioner's mother, [redacted], and [redacted]. Respondent's Exhibits 1 through 5, 9, 11, and 12 were entered into evidence. Respondent timely filed a Proposed Final Order, which was considered in the drafting of this Final Order.

For stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to Petitioner. The female pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is a [redacted]-grade student at School A. She meets eligibility requirements to receive services under the Individuals with Disabilities Education Act ("IDEA") as a student with a primary exceptionality of Autism Spectrum Disorder with other exceptionalities of Language Impaired and Speech Impaired.

2. Petitioner disagrees with her most recent IEP, dated March 31, [redacted], which includes a reduction in services based on the IEP team's decision that Petitioner's performance indicates that she no longer needs her previous level of support in the areas of math, speech, and language. By the agreement of Petitioner and Respondent, the IEP meeting was state-facilitated. The IEP has not been implemented, pending the outcome of the present case.

3. In developing the IEP, the IEP team reviewed progress monitoring data from the previous IEP. The team also looked at Petitioner's current grades; any assessments that she had taken; and received parent, teacher, and therapist input.

4. As part of its review of Petitioner's progress, the IEP team considered Petitioner's most recent progress report, which showed that Petitioner had mastered most of her goals. More specifically, Petitioner mastered her goals in the areas of speech, language, and math.

5. Based on all of the factors the IEP team considered, they determined that Petitioner was able to access her general education curriculum using her accommodations, and that she did not need specially-designed instruction to be successful.

6. In drafting the IEP, the IEP team considered Petitioner's MAPP, which is a nationally-normed assessment to measure academic progress specific to Algebra 1 skills. The MAPP assessment showed that Petitioner was in the average range of achievement. At the time of the final hearing, Petitioner's grade in her Algebra 1 class was an A.

7. During her testimony, Petitioner was soft-spoken, but her speech was clearly intelligible. Petitioner testified that her teachers and friends at school can understand her, but she often has to repeat herself because she talks quietly.

8. [redacted] is a speech language pathologist who has worked with Petitioner for three years. [redacted] testified that when she interacts with Petitioner, she is both intelligible and able to communicate substantively, and does not present any different than her nondisabled peers in the areas of speech and language. Ultimately, it is [redacted] opinion that Petitioner's speech and language does not impact her ability to perform in a typical learning environment.

9. Petitioner's mother asserts that, when she expressed her disagreement at the March 31, XXX, IEP meeting, she invoked "stay put," which is a

request to maintain Petitioner's then-current placement; and that Respondent had a legal obligation to enforce "stay put" effective immediately.

Conclusions of Law

10. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat.; and Fla. Admin. Code R. 6A-6.03311(9)(u).

11. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

12. Respondent is a local educational agency ("LEA"), as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, Respondent is required to comply with the certain provisions of the IDEA, 20 U.S.C. § 1401, *et seq*. As an LEA, under the IDEA, Respondent was required to make available a FAPE to Petitioner. *Sch. Bd. of Lee Cnty. v. E.S.*, 561 F. Supp. 2d 1282, 1291 (M.D. Fla. 2008) (citing *M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1095 (11th Cir. 2006)); *M.H. v. Nassau Cnty. Sch. Bd.*, 918 So. 2d 316, 318 (Fla. 1st DCA 2005).

13. 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); *See 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); *See also Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

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

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

20 U.S.C. § 1401(9).

15. "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).

16. 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.

17. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Endrew F.*, 137 S. Ct. at 988, 994 (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)).

18. 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. As an initial matter, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. In this case, there are no alleged procedural violations.

19. Pursuant to the second step of the *Rowley* test, it must be determined if the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07. In *Endrew F.*, the Supreme Court held that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. 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." *Id.*

20. Additionally, deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. *Id.* at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review" and explaining

that "deference is based on the application of expertise and the exercise of judgment by school authorities.").

21. In this case, Petitioner alleged that the March 31, ████, IEP did not provide the student with a FAPE because it provided for a reduction in services in the areas of math, speech, and language.

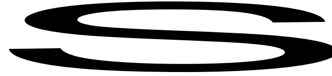
22. With respect to Petitioner's "stay-put" request, Florida Administrative Code Rule 6A-6.03311(9)(y) states that "during the time that an administrative or subsequent judicial proceeding regarding a due process hearing is pending, unless the parent of the student and the public agency, including a school district, agree otherwise, the student involved in the proceeding must remain in the then-current placement." The obligation to maintain the student in his/her "then-current placement" applies "during the time of an administrative … proceeding … ." An administrative proceeding was not pending at the time Petitioner's mother made the request.

23. No persuasive evidence was presented to prove the alleged deficiencies in Petitioner's IEP. The greater weight of the record evidence established that the IEP is appropriately ambitious in light of Petitioner's circumstances in all identified areas of need. The reduction of Petitioner's services was based on the IEP team's review of various kinds of data and credible determination that Petitioner had mastered her IEP goals.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED.

DONE AND ORDERED this 28th day of June, 2023, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of June, 2023.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

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