



What relief, if any, is appropriate.

PRELIMINARY STATEMENT

On September 22, 2023, Petitioner filed a request for due process hearing (Complaint) with the School District (District); and, the District filed the Complaint with DOAH the same day. On September 25, 2023, a Case Management Order was issued, setting forth the deadlines and procedures governing this proceeding. The District filed a response to the Complaint on October 2, 2023; and, on October 4, 2023, the parties attended a resolution session, but did not come to a resolution. The undersigned conducted a telephonic scheduling conference on October 13, 2023, and tentatively scheduled the final hearing in this matter for November 9 and 10, 2023.

On October 16, 2023, the undersigned issued an Order Requiring Status Report, requesting new hearing dates as one of the previously scheduled dates fell on a federal holiday. On October 19, 2023, the District filed a status report. A second telephonic scheduling conference was held on October 24, 2023. During that conference, the hearing was scheduled for November 9, 2023.

On November 3, 2023, the School Board requested a telephonic pre-hearing conference to discuss discovery-related matters and to confirm Petitioner's parents' intent to appear at the final hearing. The undersigned conducted the pre-hearing conference on November 6, 2023. During the conference, Petitioner moved, *ore tenus*, to continue this matter to conduct additional discovery. The District did not object; and, the undersigned rescheduled this matter for December 14, 2023.

Then, on December 6, 2023, the District moved to continue the case—on Petitioner's behalf—and requested a telephonic conference to select a new

hearing date. Thus, on December 11, 2023, the undersigned conducted another telephonic scheduling conference and issued an Order Granting Continuance and Rescheduling the Hearing by Zoom Conference for January 29, 2024.

On January 29, 2024, the final hearing took place as scheduled. At the end of the day, the parties requested an additional hearing day to complete the presentation of evidence. The undersigned granted that request, and the hearing concluded on January 30, 2024.

At the hearing, Petitioner presented testimony from [REDACTED], the District's Exceptional Student Education Services (ESE) Compliance Coordinator. He also presented testimony from the following teachers from [REDACTED] High School: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Petitioner's mother also testified. Furthermore, Petitioner's Exhibits 1; 2 (pages 116 through 118); 3; 4 (pages 3 through 24); 5<sup>1</sup> (pages 2 through 25 and 15 through 18); 7; 8; 9 (pages 2 and 3); 11, 12 (pages 3 through 25); and 13 were admitted into evidence.

For its part, the District presented testimony from [REDACTED], Principal of [REDACTED] High School; [REDACTED], ESE Coordinator for the District's Central Region; [REDACTED], a teacher at [REDACTED] High School; and, [REDACTED], Ed.D, ESE Coordinator for the District's Northern Region. The undersigned admitted District's Exhibits 3 through 5; 11; 13; 16 through 24; 26 (pages 403 and 410 through 429); and 27 into evidence.

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<sup>1</sup> Petitioner labeled several documents "Exhibit 5." The Transcript memorializes each of Petitioner's Exhibit 5's that were admitted into evidence.

At the close of the hearing, the parties agreed to file proposed final orders 30 days after the filing of the Transcript with DOAH; and, the undersigned agreed to issue this Final Order no later than 45 days after the Transcript was filed. The Transcript was filed on February 28, 2024. The parties had an opportunity to file proposed final orders by March 29, 2024.<sup>2</sup> This Final Order was due by April 15, 2024.

All references to statutory or regulatory provisions are to the provisions in effect when the Complaint was filed in this case. For stylistic convenience, the undersigned uses male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

#### FINDINGS OF FACT<sup>3</sup>

1. Petitioner is a [REDACTED]-year-old, [REDACTED] grade student who is pursuing a standard high school diploma. Petitioner is a bright kid and an avid reader who is eligible for ESE services based on the following disabilities: Specific Learning Disability, Other Health Impairment, and Language as a related service. With the exception of his Math and English Language Arts classes—for which he receives direct instruction in a separate ESE classroom—Petitioner accesses his education in a general education setting.

2. Petitioner's disabilities negatively "impact [his] success in the general education classroom." Specifically, his impairments in decoding, written language, and executive functioning slow his processing speed and impede his ability to timely complete and submit schoolwork. Moreover, when presented with a non-preferred task, Petitioner may shut down and require prompting and assistance to begin and complete the assignment.

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<sup>2</sup> On April 1, 2024, Petitioner filed a Motion for Extension of the proposed final order deadline (Motion). The Motion was denied.

<sup>3</sup> These Findings of Fact do not incorporate references to every witness who testified, but all testimony was considered in preparation of this Final Order.

Furthermore, Petitioner's difficulty with time management and propensity to work on preferred activities cause him to fall behind in his schoolwork, even when provided with extended time.

3. To address these deficits, Petitioner has received special education and related services pursuant to various IEPs for years, including during his time at ██████ Middle School (██████). While at ██████, Petitioner received weekly support facilitation in English Language Arts, Math, Science, and Social Studies; and, 45 minutes per day of direct instruction in Spelling and Writing. He also received language therapy as a related service.

4. On February 21, ██████, toward the end of Petitioner's ██████ grade year at ██████, his IEP team convened a re-evaluation meeting to develop his high school transition IEP for the 20█████-20█████ school year. The IEP was not completed at that time; and, the team reconvened on March 6, ██████. ██████, ESE representative from Petitioner's districted ██████ school, ██████ School (██████), attended the meeting and discussed how that school could implement Petitioner's IEP. During the meeting, Petitioner's parents inquired into him taking Advanced International Certificate Education (AICE) classes at ██████; and, Petitioner indicated an interest in applying to two ██████ school choice programs—█████ and ██████ School (██████).

5. Generally, choice programs offer targeted instruction through a variety of curriculum pathways, such as K-12 International Baccalaureate continuum, K-12 Dual Language continuum, and elementary and secondary Cambridge Academy programs. A student's selection to attend a choice program is made through a lottery process conducted in the Spring of every school year. The District offers both choice programs—specialized programs offered at public schools within the District—and full choice schools, where every student attending the school was selected through the lottery process.

6. A student's receipt of special education and related services does not factor into the lottery selection process. Instead, once a student is accepted,

the district's ESE coordinator reviews the services included in a student's IEP to determine if the choice school is capable of implementation. If there are questions or concerns based on the services, the coordinator will reach out to the school choice office regarding the student.

7. The IEP team finalized Petitioner's high school transition IEP on March 6, [REDACTED]. That IEP prescribed various supports and services. As relevant here, it called for specialized instruction in Language Arts, twice a week through support facilitation in a general education classroom; specialized instruction in Language Arts for 45 minutes per day through direct instruction in an ESE classroom; specialized instruction in Math once a week via direct instruction in an ESE classroom; specialized instruction in Math; specialized instruction in Science through support facilitation once a week in the general education classroom; specialized instruction in Social Studies once a week through support facilitation in a general education classroom; and, language therapy once a week for 45 minutes.

8. Petitioner's parents agreed with each service included on his transition IEP, except one. They requested Petitioner have ten extra days to submit assignments, instead of seven. Importantly, Petitioner's parents did not challenge the provision of direct instruction on his IEP.

9. At the time of the March 6, [REDACTED], IEP meeting, Petitioner had applied, but not been accepted, into any choice programs. Moreover, Petitioner's parents did not inquire into whether his IEP could be implemented within a choice program or school. But following the finalization of his IEP, Petitioner was accepted into [REDACTED], a highly rigorous, four-year college preparatory high school comprised of four distinct educational programs: Computer Science (CS); Innovative Interactive Technology (IIT); International Baccalaureate (IB); and Mathematics, Science, and Engineering (MSE). Each of [REDACTED] programs follows a pre-determined four-year course pathway that all students within that pathway must follow.

10. Students attending on the IB track must enroll and successfully complete core classes during their ninth and tenth grade years. These courses are designed to prepare IB students for the accelerated eleventh and twelfth grade curriculum. ██████ goal is for its IB students to receive an IB diploma, rather than a standard one. As such, Suncoast's IB curriculum is more rigorous than that required for a standard high school diploma. ██████ shares its course curriculum pathways with all applicants prior to selecting and enrolling them.

11. ██████ offers some, but not all, of the special education services available at a traditional public school. As ██████, the District's ESE Coordinator for the Northern Region, testified, this is because a school's allotment of ESE resources is proportionate to the population of children with disabilities it serves. ██████ serves approximately 37 students with IEPs, a relatively small number. Thus, because ██████ ESE student population is small when compared to other high schools in the District, so, too, are its ESE resources. For example, ██████ employs one-and-a-half ESE teachers, does not offer direct instruction for English Language Arts or Math, and only offers support facilitation part-time.

12. By contrast, ██████, Petitioner's neighborhood school, offers comprehensive ESE services. It employs approximately ten ESE teachers and a support paraprofessional. It also offers full-time support facilitation and direct instruction in Mathematics and English Language Arts.

13. Petitioner was accepted into ██████ for the 20██-20██ school year in April ██████. As a ██████ grader, Petitioner was enrolled in ██████ ██████ Years Program (MYP), the prerequisite to the IB program. Petitioner's courses included AICE English General Paper, MYP Biology, Spanish, Math, AP Human Geography, and Physical Education (P.E.).

14. School began on August 14, ██████, and issues emerged almost immediately. On August 16, ██████, Petitioner's support facilitator for English, Math, and Science, emailed Petitioner's mother, informing her that Petitioner

was sound asleep in class. Then, on August 17, [REDACTED], [REDACTED], Petitioner's AP Human Geography teacher, emailed School Counselor [REDACTED] raising similar concerns. She wrote:

Hi, a new concern this morning. I have one of your students, [Petitioner] right now . . . [He] has tried to sleep through class all days, [he] did not fill in a parent name in my student info sheet. I tried to ask [him] about it and I can tell there is more going on than [he] could say. Any chance you already [know] [his] situation? [O]r could call [him] down now and see what is going on? [He] continues to keep [his] head down and I don't want this to escalate to a discipline issue this morning, [he] is clearly not okay. I am going to send to [Assistant Principal] [REDACTED] [REDACTED].

15. The issue was not resolved; and over the following days, Petitioner's incessant sleeping in class continued, spanning nearly all of his classes and hindering his academic performance, despite implementation of certain portions of his IEP, including the accommodation of the seven-day extension for submission of schoolwork.<sup>4</sup>

16. At the end of August, the District's ESE coordinator, [REDACTED], reached out to Petitioner's parents to discuss the services on his IEP; specifically, the requirement for direct instruction and support facilitation in English Language Arts and Math. An IEP meeting was convened. At the meeting, the coordinator discussed Petitioner's needs and [REDACTED] inability to meet them. She also raised concerns regarding Petitioner's sleeping and attendance issues.

17. In response, Petitioner's parents requested that direct instruction be removed from the IEP. When the school-based IEP team members

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<sup>4</sup> As Petitioner's [REDACTED] grade IEP from [REDACTED] detailed, "[Petitioner] often reads late into the evening[,] which affects [his] sleep and thus affects [his] performance during the following day at school."



vehemently disagreed, the issue was tabled; and, Petitioner remained at [REDACTED].

18. As the weeks progressed, Petitioner's teachers kept his parents apprised of his academic difficulties. For example, on September 15, [REDACTED], Petitioner's AP World History teacher informed Petitioner's parents that she was "deeply concerned" about his grades and had received no homework notes from him all year. Eleven days later, that same teacher reached out again, expressing concern that Petitioner appeared to be copying and pasting notes, rather than using [REDACTED] preferred notetaking method—Cornell Notes.

19. Despite these warnings and frequent visits from his support facilitator, Petitioner's sleeping in class and academic struggles persisted. Petitioner also continued to go without the direct instruction prescribed by his IEP. Around this time, Petitioner's IEP team met again. This time, [REDACTED] joined the meeting. She reiterated that [REDACTED] could not provide direct instruction. She also addressed Petitioner's low grades and frequent sleeping in class. Several of Petitioner's teachers attended the meeting as well. They provided work samples, demonstrating Petitioner's academic difficulties, and presented evidence of missing assignments.

20. Again, Petitioner's parents requested that direct instruction be removed from the IEP so that he could remain at [REDACTED]. The school-based members of the IEP team disagreed and recommended Petitioner withdraw from [REDACTED] and enroll in a school better suited to meet his needs.

21. Against these recommendations, Petitioner remained at [REDACTED] for a few more weeks. During this time, he missed classes, tests, group assignments, and instruction as he could not remain awake during class time. He also declined his IEP-prescribed accommodations at times due to embarrassment. As the evidence at the final due process hearing showed, Petitioner ultimately did not progress in [REDACTED] rigorous curriculum.

22. On September 22, [REDACTED], Petitioner filed a request for due process hearing with the District, specifically challenging the portion of his IEP that called for direct instruction and asserting that [REDACTED] had failed to implement the IEP. Then, in October [REDACTED], Petitioner's parents withdrew him from [REDACTED] and enrolled him in [REDACTED] ([REDACTED]), a self-paced, home-based program.

23. At the time of the hearing, Petitioner was enrolled in three courses at [REDACTED]—Spanish, Biology 1, and English 1—and earning strong grades. Moreover, at hearing, Petitioner's parents credibly testified that they intend to enroll him in [REDACTED] in Fall [REDACTED].

24. Ultimately, Petitioner produced no credible evidence that the services on his IEP are unnecessary; that his IEP is not designed to provide FAPE; or, that his placement is inappropriate.

#### CONCLUSIONS OF LAW

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

26. 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).

27. Congress passed the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education [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).

28. To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F. 2d 651, 654 (11th Cir. 1990).

29. 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).

30. 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).

31. 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).

32. 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).

33. 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).

34. 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.

35. 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.

36. Importantly, 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.*

*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).

37. Whether an IEP meets this standard differs according to the individual circumstances of each student. For a student, like Petitioner, who is fully integrated in the regular classroom, an IEP must be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Rowley*, 458 U.S. at 206-07.

38. Here, Petitioner alleges a substantive violation of the IDEA; specifically, that the IEP was flawed in its design by including supports and services Petitioner does not need. However, Petitioner presented no credible evidence that his IEP is flawed in its design or, more specifically, that Petitioner no longer requires direct instruction. As such, Petitioner has failed to demonstrate his IEP is flawed in its design.

39. Additionally, the District conceded that [REDACTED] lacks the resources to implement Petitioner’s IEP with fidelity; informed Petitioner’s parents of such; and, provided Petitioner with an alternative placement, [REDACTED], which is capable of implementing his IEP. Accordingly, the District has met its obligations to provide Petitioner with an appropriate placement. *See* 34 C.F.R § 300.115. Thus, Petitioner is not entitled to any relief.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof regarding the claims raised in the Complaint. Therefore, the relief requested in the Complaint is denied.

DONE AND ORDERED this 8th day of April, 2024, in Tallahassee, Leon County, Florida.



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NICOLE D. SAUNDERS  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
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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).