STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 17-2306E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A due process hearing was held before Administrative Law Judge Diane Cleavinger on [redacted] through [redacted], [redacted], and [redacted] through [redacted], [redacted], in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Petitioner
(Address of Record)

For Respondent: [redacted], Esquire
Miami-Dade County Public Schools
1450 Northeast 2nd Avenue
Miami, Florida 33132

STATEMENT OF THE ISSUES

The issues in this proceeding are:

a. Whether, prior to the [redacted] school year, the Miami-Dade County School Board (School Board) failed to properly evaluate the Student to determine the student's eligibility.

b. Whether, prior to or during the [redacted] school year, the School Board incorrectly identified the Student as eligible

under [redacted] ([redacted]), when, in fact, the Student should have been determined eligible under [redacted] and [redacted] and [redacted] and [redacted]([redacted]).

c. Whether, immediately prior to or during the [redacted]-[redacted] school year, the School Board failed to develop an appropriate individualized education plan (IEP) for the Student in that the subject IEP failed to provide appropriate services, accommodations, and support for a student who is [redacted] and [redacted] and diagnosed with [redacted] [redacted] [redacted] ([redacted]).

d. Whether, during the [redacted]-[redacted] school year, the Student's placement in the [redacted] and [redacted] setting violated the least restrictive environment requirement (LRE).

e. Whether, during the [redacted]-[redacted] school year, the School Board failed to implement [redacted] services as provided on the IEP as related to services provided by a speech and language pathologist.

f. Whether the School Board failed to implement the controlling IEP in that it failed to provide the student extended school year (ESY) services, consistent with the IEP.

PRELIMINARY STATEMENT

A Request for a Due Process Hearing was filed on [redacted], [redacted]. The matter was initially assigned to Administrative Law Judge Todd P. Resavage. The request did not seek compensatory

education. A Case Management Order was issued on the same day, establishing deadlines for a sufficiency review, as well as for the mandatory resolution session. On [redacted], [redacted], Respondent filed a Notice of Insufficiency, arguing that Respondent had neither fair notice of what it must defend or a fair opportunity to resolve the issues. On [redacted], [redacted], an Order of Insufficiency, stating that Petitioner had failed to sufficiently set forth an appropriate proposed resolution of the issue. As a result, Petitioner amended the Request for Due Process Hearing on [redacted], [redacted]. On [redacted], [redacted], an Amended Case Management Order was entered, extending the deadlines for a sufficiency review, as well as for the mandatory resolution session. Respondent again filed a Notice of Insufficiency, and amended it, on [redacted], [redacted].

An Order on Respondent's Notice of Insufficiency was entered on [redacted], [redacted], finding Petitioner's amended complaint set forth sufficient allegations and a proposed resolution. That same day, Respondent filed a Motion for Enlargement of Time for Final Order and amended it that day. Respondent was seeking the final order period be enlarged to allow for proper discovery, evaluation of settlement, hearing preparation with Respondent's key witnesses, and a telephone conference to discuss discovery and dates for a final hearing. Additionally, on [redacted], [redacted], Respondent filed a Motion for Protective Order, and amended it the same day, arguing that Petitioner's subpoenas for records were not issued utilizing

proper procedure and sought to quash those subpoenas. An Order on Pending Motions was entered on [redacted], granting the Motion for Protective Order, quashing the subpoenas directed to Respondent, but denying the motion to the extent it sought an order requiring Petitioner to engage in formal discovery to obtain educational records related to the Student. Following a telephonic conference between both parties on [redacted], an Order of Specific Extension of Time for Final Order was entered on [redacted], granting Respondent's Amended Motion for Enlargement of Time for Final Order, giving the parties until [redacted], to conclude discovery, and until [redacted], to provide a status report on the matter.

On [redacted], Respondent served Petitioner with a Notice of Production from Non-Parties with [redacted] attached subpoenas. The subpoenas were objected to in Petitioner's Objection to Respondent's Notice of Production for Subpoena of Records on [redacted]. On [redacted], Respondent filed a Motion for Ruling on Petitioner's Objection to Respondent's Subpoenas for Records, seeking a resolution as to the issue of the notice of production. This motion was granted in part and denied in part on [redacted], when an Order on Petitioner's Objections to Respondent's Subpoenas for Records was entered, granting Petitioner’s objection with respect to the issuance of a subpoena

directing [redacted] to produce any records, but allowing said subpoenas for all other non-parties.

On [redacted], Petitioner filed a Motion to Compel Production of Records, but did not include a certification that Petitioner had conferred or attempted to confer with Respondent in good faith. An Order Denying Motion to Compel was entered [redacted]. On [redacted], Petitioner filed a Request for Enlargement of Time for Discovery and Final Order. Petitioner did not specify, however, the specific relief sought and whether Respondent had any opposition to the request. Petitioner was ordered on [redacted], by an Order Requiring Response to notify in writing of the specific extension of time sought and whether Respondent had any objection to the same, on or before [redacted]. Petitioner provided this response, and absent Respondent's objection, an Order of Specific Extension of Time was entered on [redacted], giving the parties until [redacted], to conclude the resolution period. On July 10, 2017, Petitioner served Respondent with Notice of Production for Subpoena of Non Parties for records from [redacted] and [redacted]. Respondent objected, and on [redacted], an Order Requiring Submission of Documents for In Camera Review, amended that same day, ordered that Respondent shall, on or before, [redacted], deliver to the undersigned, by hand-delivery or U.S. mail, all

pertinent test protocols that have been administered to Petitioner and that are at issue.

An Order on Petitioner’s Motion to Compel was entered on [redacted], in response to Petitioner's 2nd Request for Motion to Compel Production of Records, filed on [redacted]. On [redacted], an Order of Specific Extension of Time was entered, granting Petitioner’s Amended Request for Enlargement of Time for Final Order, filed [redacted], giving the parties until [redacted], to conclude the resolution period.

On [redacted], a Notice of Transfer was entered, transferring the case to the undersigned for all further proceedings. On [redacted], Petitioner filed a Motion to Vacate Order on Petitioner's Motion to Compel and Request Ruling on Petitioner's 2nd Request for Motion to Compel, and that same day filed a Motion for Ruling on Pending Motions. These were both denied by Order Denying Motion to Vacate and Request for Ruling, entered on [redacted].

On [redacted], an Order on Petitioner’s Third Request for Motion for Enlargement of Time for Final Order was entered, incorporating denials for mootness on Petitioner's 3rd Request for Motion to Compel Production of Records, filed [redacted], and the multiple objections, responses, and amendments that followed. Following the filing of Petitioner’s Notice of Production for Subpoenas of Non Parties on [redacted], and the subsequent

responses and objections by Respondent and Petitioner, an Order on Respondent's Objections to Petitioner's Subpoenas for Records was entered on [redacted], [redacted], sustaining the objection and thus quashing the subpoenas to [redacted]. [redacted] and [redacted]. [redacted] requested by Petitioner. An Amended Order on the Third Request for Motion for Enlargement of Time for Final Order was entered on [redacted], [redacted], denying the motion as moot, since the records which Petitioner had not identified to this tribunal had been tagged and identified between the parties and produced by Respondent. Petitioner filed a 4th Request for Enlargement of Time on [redacted], [redacted], which was granted that same day in an Order of Specific Extension of Time and Case Management Order, giving the parties until [redacted], [redacted], to conclude discovery and establishing a telephonic case management conference to be held on [redacted], [redacted].

On [redacted], [redacted], an Order Denying Petitioner's Motion for Second Request for Production from Non-Parties was entered. That same day, an Order on Petitioner's Motions to Compel and Protective Order was entered establishing that the 11 documents and information produced by Respondent, in camera, were placed under a protective order and that such materials would be sealed and maintained as confidential. Petitioner objected to the protective order and filed a Request for Assignment of New Administrative Law Judge on [redacted], [redacted]. The request was

denied on [redacted], [redacted], in an Order Denying Request for Assignment of New Administrative Law Judge. Subsequently, after conferring with the parties, the hearing was set for [redacted] through [redacted], [redacted]. Petitioner filed a Motion for Records Used During Deposition on [redacted], [redacted]. The motion was denied on [redacted], [redacted], in an Order Denying Petitioner's Motion for Records. That same day, Petitioner also filed a 2nd Request for Transcripts from Depositions Obtained by Respondent, which was also denied in an Order Denying Petitioner's Request for Deposition Transcripts.

A telephonic motion hearing was set for [redacted], [redacted]. On [redacted], [redacted], Petitioner filed a Motion for Continuance. During the telephonic motion hearing, Petitioner's motion was granted. An Order Granting Continuance was entered on [redacted], [redacted], establishing [redacted], [redacted], as the date of a telephonic scheduling conference. After conferring with the parties, the hearing date was set for [redacted] through [redacted], [redacted]. On [redacted], [redacted], Petitioner filed a Request for Hearing Location, which was denied in an Order Denying Petitioner's Request to Change Hearing Location that same day. Petitioner filed a Request for Re-consideration of Hearing Location on [redacted], [redacted], which was also denied in an Order Denying Petitioner's Request for Reconsideration of Hearing Location on [redacted], [redacted]. The hearing was partially held on the scheduled dates. After

conferring with the parties, the continuation of the hearing was set for [redacted] through [redacted] and [redacted], [redacted]. Petitioner filed a Request for List of Exhibits Entered into Evidence on [redacted], [redacted], but the request was denied in an Order on [redacted], [redacted]. The continued hearing was held on [redacted], [redacted], and finished on [redacted], [redacted].

At the final hearing, Petitioner presented the testimony of the parent and four additional witnesses, as well as entered the deposition testimony of [redacted], [redacted]. Petitioner's Exhibits 3, 4, 8, 10-13, 15, 16, 16A (pages 181-182), 17, 18, 20, 24, 25 (pages 200-243), 26-37 (pages 379, 380, and 386-413), 39, 41, 42, 43, 58, 61 (page 709), 63, 67, 70, 75, 76, 78-80, 84, 86 (excluding pages 1039-1065), 87-89, 96, 103 (pages 1419-1435), 106 (pages 1477-1487), 109, 111, 116 (pages 1756-1764), 119, 129, 133 (pages 126-135), and 139 were admitted into evidence.

Respondent presented the testimony of 10 witnesses. Respondent's Exhibits 1, 2, 5, 7-10, 13, 14, 19-21, 22, 26, 27, 30, 33, 36, 40-43, 45, 46, 50, 54, 61, 63, and 118 (pages 1797-1800 and 1809-1813) were admitted into evidence.

Following the conclusion of the hearing, a discussion was held with the parties regarding the post-hearing schedule. Based on that discussion an Order Establishing Deadlines for Proposed Orders and Final Order was entered on [redacted], [redacted]. The order was amended on [redacted], [redacted], because the length of the transcript

required more time to transcribe than originally had been anticipated. The amended order extended the deadline for filing proposed final orders to [redacted], [redacted]. The deadline for entering the final order was extended to [redacted], [redacted].

After the hearing, Petitioner timely filed a Proposed Final Order on [redacted], [redacted]. Likewise, Respondent filed a Proposed Final Order on the same date. To the extent relevant, the filed proposed orders were considered in preparing this Final Order.

Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. For stylistic convenience, the undersigned will use [redacted] pronouns in this Final Order when referring to Petitioner. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The Student in this case has been enrolled in the Miami-Dade County School District (District) since [redacted] ([redacted]). During that time, the Student attended ESY services in the summer of [redacted], [redacted], and [redacted]. ESY services during those years are not at issue in this proceeding.

2. At the time of the hearing, the Student was [redacted] years old, born [redacted], [redacted]. The Student was withdrawn from

public school in [redacted] and has been enrolled in private school since that time.

3. Initially, the Student was categorized in [redacted] under the category of [redacted]. Before beginning [redacted] the Student was determined eligible for exceptional student education (ESE) services in the categories of [redacted] and [redacted]. The [redacted] designation was primarily based on the Student's [redacted]. The parent has vehemently disagreed with the [redacted] eligibility, asserting that the Student should be eligible in the categories of [redacted] ([redacted]), [redacted] ([redacted]), and [redacted]. The parent firmly believes that the Student's poor [redacted] are caused by the Student's [redacted] difficulties.

4. In infancy, the Student was diagnosed with [redacted], [redacted], and [redacted]. [redacted] can cause a variety of conditions like [redacted], including [redacted] and [redacted]; and [redacted], including [redacted] and [redacted]. In [redacted] [redacted] years, the Student's [redacted] was monitored with a [redacted] log and over time has improved in the quantity and types of [redacted] the Student would [redacted]. The Student continues to have issues with the [redacted] of certain [redacted].

5. Due to the Student's disability, the Student has [redacted] issues. [redacted] is extremely [redacted], [redacted] on

[redacted] and [redacted]. The Student requires [redacted] for [redacted] because [redacted] has [redacted] of the [redacted] in [redacted]. Additionally, the Student requires [redacted]. [redacted] demonstrates [redacted] or [redacted] of [redacted], [redacted], or [redacted], with [redacted], and [redacted]. The Student does not [redacted] with them.

6. Although the parent disputes that the Student exhibits [redacted], the better evidence demonstrated that the Student exhibits [redacted] and often [redacted] that are [redacted]. The Student also engages in [redacted] and [redacted], [redacted], [redacted], as well as, [redacted] or [redacted], while [redacted].

7. Additionally, the Student will [redacted] teachers or other students. The Student also has a [redacted].[1/] The Student communicates [redacted], [redacted], [redacted], and [redacted].

8. The evidence also demonstrated that the Student's [redacted] falls in the [redacted] range and that [redacted] is capable of learning. However, given [redacted], the evidence

demonstrated that expected educational progress was, and will be, [redacted] than [redacted], but can be made by the Student. As such, the Student has had an IEP since [redacted] and continues to have an IEP to date.

9. The Student receives additional therapies outside of school including [redacted], [redacted] and [redacted] therapy, along with [redacted] ([redacted]) [redacted].

10. The parent, who at the hearing was observed to be [redacted] and [redacted] at times, was a highly active participant in every IEP, eligibility, and reevaluation plan meeting; advocated and had others advocate for the Student; and otherwise actively communicated with school staff. While the parent testified that [redacted] did not believe [redacted] was a full participant, the better evidence demonstrated the school met the procedural requirements under the Individuals with Disabilities Education Act (IDEA) for parent participation. In fact, the evidence was clear that the parent had a great deal of input during IEP meetings, eligibility meetings, and reevaluation plan meetings; brought other individuals to meetings; and otherwise fully participated in all meetings and IDEA-related educational decisions concerning the Student.

[redacted]

11. In [redacted], the Student was attended School A for [redacted] and remained enrolled in a District school until [redacted], when,

as indicated earlier, the Student was [redacted] from the public school system. Throughout the Student's [redacted] years, the Student had the same teacher and attended the same school.

12. In [redacted], the Student attended a special class known as "[redacted]" for [redacted] years, including the Student's last [redacted] in [redacted]. The [redacted] class contained approximately [redacted] to [redacted] children with [redacted], along with [redacted] to [redacted] [redacted]. The class was designed to provide [redacted] students a [redacted] with [redacted], as well as with [redacted] [redacted] within the classroom and throughout the day (0-40 percent of the time). Credible teacher testimony demonstrated that the Student needed a [redacted] classroom setting in order to receive all of [redacted] accommodations and [redacted]. The evidence also demonstrated that the Student's placement was appropriate for [redacted] given the impact of [redacted] disability on [redacted] education.

13. During the Student's [redacted], the Student received [redacted], [redacted] and [redacted] in school as related services; however, [redacted] did not receive [redacted].

14. Additionally, the evidence showed that the Student's [redacted] teacher credibly testified that the Student was at a "[redacted]" [redacted] and [redacted] during [redacted] final [redacted]. [redacted] also required a [redacted]

[redacted] and [redacted] to keep [redacted] [redacted].

15. The Student also required [redacted] to [redacted] in [redacted]. [redacted] loved [redacted] but [redacted] at the beginning of the school year. As a result, the Student was taught how to use [redacted], as well as how to use [redacted] and the [redacted]. These items were the Student's main reinforcers.

16. The better evidence also showed that the Student [redacted] [redacted] with [redacted]. [redacted] [redacted].

17. The Student needed [redacted], including a [redacted], [redacted], and [redacted], [redacted] as [redacted], to attend to activities in [redacted] ESE class without [redacted] or seeking to [redacted]. [redacted] IEP contained a provision for [redacted] to [redacted] because the Student was [redacted] in [redacted] environment. Towards that end, the [redacted] classroom paraprofessional [redacted] with the Student.

18. During [redacted], credible teacher and staff testimony showed that the Student was [redacted] for more than [redacted] minutes at a time. The Student's [redacted] continued in [redacted]. Further, the Student had [redacted] with [redacted]. [redacted] also could not [redacted]

[redacted]; [redacted]; did not [redacted]; would [redacted], [redacted] teachers, or other students; and needed [redacted], and a [redacted], to [redacted]. [redacted] IEPs contained [redacted], [redacted], [redacted], and [redacted] to assist [redacted] with these [redacted].

19. The evidence demonstrated that, during the time period relevant to this case, the Student's [redacted] and [redacted] were well understood by school staff and have generally been appropriately addressed through the Student's IEPs and classroom management techniques used in the Student's classroom.

20. As indicated, the Student was categorized as [redacted] for ESE purposes, since [redacted] was under the age of [redacted]. The educational [redacted] category is used for young [redacted] under the age of [redacted] because of the [redacted] for ESE eligibility under that age. As a student approaches the age of [redacted], Florida's IDEA regulations (Florida Administrative Code Rule 6A-6.03027) require a student to be reevaluated and receive a new ESE eligibility designation prior to turning [redacted]. Because the Student was approaching the age of [redacted] during the 2014-2015 school year, the school alerted the parent and the team that the Student should be reevaluated to determine her eligibility category for continued

ESE services. The parent was also very interested in ensuring that appropriate services were in place to help the Student [redacted] from [redacted] to [redacted] the next school year. As a consequence, a reevaluation team meeting was scheduled with the parent for [redacted], [redacted].

21. On [redacted], [redacted], the reevaluation team, which included the parent, met to discuss the reevaluations that should be performed to determine eligibility for the Student. The team determined that reevaluation was necessary in the areas of [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and any other area deemed necessary by the school psychologist. The evidence did not demonstrate the school psychologist determined any other areas needed to be screened. The team did not determine that [redacted] should be screened because the Student [redacted] by [redacted] teachers and peers. As a result, [redacted] was not an educationally relevant area for reevaluation. The better evidence supported the team's decision regarding [redacted]. The [redacted] consented to the evaluations at the meeting and signed the consent form.

22. Around mid-[redacted], the [redacted] decided to withdraw [redacted] consent to the [redacted] reevaluation because [redacted] thought it was premature given the Student's [redacted] level. By the end of [redacted], after discussion with school

staff, the parent again provided consent for the [redacted] reevaluation.

23. The school psychologist conducted the [redacted] reevaluation on the Student over the course of [redacted] and [redacted]. The school [redacted] observed the Student in school and reviewed [redacted] and [redacted] records on the Student. Those records reflected, and [redacted] observed, that the Student exhibited [redacted], such as [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. The school psychologist also observed some of the same [redacted] during testing, as well as the Student's documented [redacted].

24. In addition to the school psychologist's observations and review of records, [redacted] administered a variety of normed and valid assessments and rating scales to determine the Student's abilities, strengths, and weaknesses across a variety of educationally relevant domains. The assessments and rating scales [redacted] administered were the [redacted] ([redacted]); [redacted], Second Edition ([redacted]); [redacted] Form; [redacted], Second Edition ([redacted]); [redacted], Second Edition

([redacted]); [redacted], Third Edition; [redacted] ([redacted]); [redacted], Sixth Edition; [redacted], [redacted] ([redacted]); [redacted], Second Edition [redacted] ([redacted]); [redacted] ([redacted])--[redacted] and [redacted] ([redacted]); and the [redacted], Second Edition ([redacted]). The evidence was clear that the [redacted] reevaluation was comprehensive with information obtained from multiple sources and across multiple settings, as well as complied with the Department of Education rules regarding such evaluations. It reflected a valid picture of the Student at the time it was performed.[2/]

25. As indicated above, the [redacted] was administered as part of the [redacted]. The [redacted] measures everyday behaviors associated with specific domains of [redacted], [redacted] and [redacted] related to [redacted] and [redacted]. The Student's [redacted] teacher completed the [redacted]. The overall rating reflected that the Student had [redacted] scores, as compared to [redacted] and indicated [redacted] in the individual indexes of the inventory.

26. The [redacted] and [redacted] were also completed by the [redacted] teacher and the parent. The [redacted] is a rating system designed to identify [redacted], i.e., school and home. The [redacted] is used to [redacted] a child that are associated with [redacted]. The scale provides a total score, as well as ratings in [redacted] and [redacted].

27. The [redacted] completed by the teacher showed the Student to have [redacted] scores in the [redacted], with the Student being "[redacted]" and [redacted] rather than [redacted] and [redacted] in an [redacted]. [redacted] was also found and to have [redacted] scores in the [redacted], including [redacted] in the [redacted] and [redacted] with the Student exhibiting [redacted] in [redacted] and [redacted], especially in the areas of [redacted], as well as [redacted] and [redacted].

28. The [redacted] total score, based on the teachers' input, rates the Student in the [redacted] and [redacted] the Student has [redacted]. The [redacted] and the [redacted] also rated the Student in the [redacted] and indicate the Student manifests [redacted], [redacted], and [redacted].

29. The parent's input of [redacted] the home setting on the [redacted] and the [redacted] was consistent with the teacher's ratings, although the parent's rating was reflective of [redacted] in the home setting. The [redacted] total score reflected the presence of [redacted]. Such rating differences are not unusual between a school environment, where more demands are placed on a student, and the home environment, where a student is generally more comfortable with less demands. Additionally, the same [redacted] need not be, and are not necessarily, expected to be the same between the school environment and the home environment.

30. The [redacted] provides objective and quantifiable ratings based on [redacted] observation from multiple [redacted]. The Student's score of [redacted] indicates that the Student displays [redacted] at the [redacted] compared to [redacted] children.

31. Additionally, the [redacted] was administered to the parent on [redacted], [redacted]. The [redacted] assesses the degree of [redacted] in the [redacted] of [redacted] required for [redacted] and [redacted]. Relative to the Student's ESE eligibility, the [redacted] corroborated, and was consistent with, [redacted], since the Student scored [redacted] in the [redacted].

32. The Student's [redacted] teacher credibly testified that the Student evidenced [redacted] when [redacted] had [redacted] at school when faced with [redacted]. The teacher also described other [redacted] and [redacted] that the Student displayed during [redacted]. Although the teacher did not always mark every [redacted] on every [redacted] assessment, the teacher presented credible testimony that the Student did exhibit such [redacted].

33. The parent claimed that the Student stopped having [redacted] long ago and that her [redacted] [redacted] were [redacted] or [redacted]. However, the records of the Student's private behavior therapist contradict the parent's position. The records of the private behavior therapist who worked with the Student in public school and in private school, contained many references to [redacted] and made numerous notations of the Student's continuing need for [redacted], including [redacted], [redacted], and the need for [redacted]. Additionally, as indicated, school staff credibly testified, contrary to the parent's view of the Student's [redacted], that the parent was very aware of the Student's [redacted] which were discussed at IEP meetings.

34. In sum, the [redacted] evaluation supported a finding that the appropriate eligibility category for the Student

was [redacted]. The report was presented and explained to the IEP team, including the parent, at the IEP/eligibility team meeting on [redacted]. The team appropriately considered the information of the report, including the parent's rejection of the proposed [redacted] eligibility.

35. [redacted], [redacted] Therapy [redacted], and [redacted] Therapy [redacted] reevaluations were also performed by the District. The [redacted] and [redacted] evaluations are not at issue in this proceeding. Because the parent believed the Student should be made eligible in [redacted] and [redacted], and not in [redacted], the parent insisted that a [redacted] reevaluation be completed by the District, even though the findings of the District evaluator indicated that one was not necessary. As a result, a [redacted] reevaluation for [redacted] was conducted on [redacted], [redacted], by the District.

36. The [redacted] reevaluation was initially completed on [redacted], [redacted]. At the request of the parent, a second [redacted] reevaluation was conducted on [redacted], [redacted]. Both [redacted] reevaluations consistently showed that the Student did [redacted] relevant [redacted] issues, with [redacted] for [redacted], [redacted], [redacted], and [redacted]. The reevaluations consistently showed that the Student needed [redacted] therapy because of [redacted] in [redacted]. Additionally, and although the Student has

[redacted] and [redacted], credible testimony by the District chairperson for [redacted] and [redacted] therapy demonstrated that those [redacted] are not a [redacted], but are [redacted] to the Student's [redacted].[3/] For these reasons, the Student needs [redacted] therapy as a related service, in addition to the program and services that are provided to address [redacted] later-determined primary eligibility areas of [redacted] and [redacted]. In other words, the [redacted] minutes per week of [redacted], [redacted] therapy provided in the therapy room to implement the Student's [redacted] goals was a related service ancillary to the IEP goals addressing the Student's other [redacted]-related educational needs.[4/]

37. The [redacted] reevaluation also was consistent with the [redacted] reevaluations and showed that the Student's [redacted] were observed to be [redacted] for [redacted]. The Student did not exhibit a need for educationally relevant [redacted] therapy. The [redacted] was administered as part of the [redacted] reevaluation. The [redacted] by the Student's performance on the [redacted] were considered [redacted] and something the Student [redacted]. The [redacted] evaluation also contained observations by the evaluator, thereby assessing the Student in different formats. The reevaluation confirmed what was already

known about the Student's [redacted], i.e., [redacted] was [redacted] for the Student.

38. As indicated, following the completion of the Student's [redacted] reevaluations, an eligibility team meeting was held on [redacted], [redacted], to review the results of the reevaluations. The parent was an active participant in the meeting.

39. As with the [redacted] reevaluation, the [redacted] reports met evaluation standards for [redacted] reevaluations, and were considered and discussed with the IEP team at its meeting on [redacted], [redacted]. However, because the parent had provided additional, selected [redacted] records regarding the Student's [redacted], the multidisciplinary team (M-team) needed time to review those records and perhaps obtain more information from the [redacted] providers. Consents for mutual exchanges of information were signed to allow the District to obtain further [redacted] information, if needed.

40. Although the parent, as would happen throughout the time period of this case, made several accusations of procedural violations and inappropriate behavior by team members regarding this meeting, the evidence demonstrated that the District complied with the procedural requirements of IDEA regarding the meeting. The meeting was simply adjourned, since there was no agreement on the Student's eligibility and the parent had provided the team with additional [redacted] information that needed

to be reviewed by the school as required under IDEA. As a result, the eligibility of the Student was not determined and [redacted] eligibility continued to be in the [redacted] category. The members of the M-team, who were not part of the IEP team, excused themselves from the meeting and the IEP team continued to, and did develop, an annual IEP for the Student. The IEP included [redacted] minutes of [redacted] therapy per week and ESY goals and services. Within days of the May meeting, the parent complained about perceived errors in the IEP. The Student attended ESY during the summer of [redacted].

41. Thereafter, on [redacted], the parent filed a due process complaint (Complaint) against the District raising, among other things, the proposed ASD eligibility (DOAH Case No. 15-2895). The Complaint was forwarded to the Division of Administrative Hearings (DOAH) for hearing. On [redacted], [redacted], the Complaint was voluntarily dismissed by the parent because the District agreed to schedule an IEP/eligibility meeting for [redacted], [redacted]. The case was dismissed on [redacted], [redacted].

42. Additionally, on [redacted], [redacted], the District filed a due process complaint regarding a parent-requested independent education evaluation (IEE) for [redacted] that had been denied by the District (DOAH Case No. 15-3394). The Complaint was forwarded to DOAH for hearing. On [redacted], the parent withdrew the parent's request for an IEE and the case was dismissed on [redacted], [redacted].

Subsequently, the parent again made several unfounded accusations regarding perceived procedural errors, along with demands regarding the rescheduled meeting. Additionally, the parent requested that the rescheduled meeting be directed by a Florida Department of Education (FDOE) facilitator.

43. At the state facilitated, eligibility/IEP meeting held on [redacted], [redacted], the team, including the parent, again discussed the reevaluations performed by the District. Additionally, the team considered parent-provided information that the Student's neurologist and pediatrician, [redacted], and [redacted], also diagnosed the Student with a [redacted]. Such [redacted] can include [redacted]. [redacted] also provided a [redacted] of [redacted]. Notably, the Student's parent did not tell the school psychologist, or any other District personnel, that by the time the District reevaluation and the [redacted] and [redacted], eligibility/IEP meetings had been conducted on the Student, [redacted] neurologist had [redacted] the Student with [redacted], as reflected in [redacted] date of service note on [redacted], and various [redacted] for [redacted].[5/]

44. [redacted] wrote a letter "To Whom It May Concern" dated [redacted]. The letter indicated that [redacted] was inconsistent with the Student's profile, despite the fact that [redacted] had [redacted] with autism from [redacted] through [redacted]. Under the evidence regarding the Student's [redacted] information, and the parent's

vehemence about an [redacted] eligibility, the [redacted] letter is not credible. Further, given the doctor's shifting testimony, the change in [redacted] is not given great weight. Ultimately, [redacted] could not testify that the District's decision to make the Student eligible under the category of [redacted] was [redacted] at the time the decision was made. [redacted] eventually provided a [redacted] of [redacted] for the Student. However, the evidence demonstrated that under IDEA, [redacted] is ruled out if a student [redacted] measures over [redacted]. In this case, as indicated earlier, the Student's intellectual measures were in the [redacted] range, well over an [redacted] measure of [redacted]. In fact, the better evidence demonstrated that at the time of the Student's various IEP's, the appropriate ESE category for the Student was [redacted], with [redacted] therapy as a related service.

45. [redacted] and recommendations were taken into consideration by the [redacted], [redacted], eligibility and IEP team, along with the information provided by [redacted], the Student's pediatrician. As indicated, the team determined that the appropriate eligibility category for the Student was [redacted] and [redacted], with related services of [redacted], [redacted], and [redacted] therapy. The [redacted] eligibility is not at issue in this proceeding. The parent continued to adamantly oppose the [redacted] category.

46. On X[redacted], [redacted], the IEP team agreed with the parent and proposed a placement for the Student in a [redacted] for [redacted], with a [redacted] for [redacted] and [redacted], and [redacted] for other subject areas. The placement was discussed among the team members, including the parent. The Student's [redacted] teacher had concerns about [redacted] for [redacted] and [redacted] in [redacted], but was hopeful that the Student's [redacted] would help [redacted] perform successfully in such a LRE. The IEP team's goal was to provide the Student [redacted]. Since [redacted] showed some skills and abilities, the IEP team decided that [redacted] should be given the [redacted] to try a [redacted] with a [redacted] teacher for part of the day, and a [redacted] teacher the other part of the day. The better evidence showed that the placement determination was appropriate for the Student at the time.

47. As such, the Student was placed in a [redacted] for [redacted] and [redacted], and a [redacted] for other subject areas including [redacted], [redacted], [redacted] [redacted], and [redacted]. The Student was provided a [redacted] paraprofessional to assist [redacted] at school. Additionally, the Student had additional [redacted] [redacted] interaction for lunch and special activities.

48. Although the IEP states "[redacted]" placement on the first page, the Educational Services section, and the Conference Notes to the IEP, specify the correct placement. The placement indicated on the first page of the IEP was corrected at an IEP meeting on [redacted]. The evidence demonstrated that the typographical error was insignificant to the IEP, and did not amount to a procedural violation of IDEA.

49. In the [redacted] and [redacted] classes, the Student received collaboration from an [redacted] teacher for [redacted] per week. At the time, the evidence demonstrated that the [redacted] agreed with this service.

50. Additionally, as indicated earlier, during the Student's time of enrollment in the District, the Student's various IEPs contained the related service of [redacted]. The [redacted] was delivered as a [redacted], [redacted], [redacted]. The purpose of the [redacted] was to implement the Student's IEP goals for [redacted] and was appropriate for the Student. The better evidence demonstrated that the IEP team's determinations regarding [redacted] services were appropriate and provided the Student with a free appropriate public education (FAPE). Further, the evidence demonstrated that the [redacted] services that were provided were appropriate

for the Student and that the Student appropriately progressed in [redacted] IEP goals.

51. Because the parent disagreed with the District's [redacted] reevaluation, the parent requested a [redacted] IEE. The parent's request was granted on [redacted], [redacted], after the [redacted], [redacted], eligibility and IEP meetings. The District sent the parent a list of suggested evaluators who were previously approved as independent vendors by the District. On [redacted], [redacted], almost two months after the IEE was granted, the parent elected to choose an independent evaluator, [redacted], who was not a previously approved vendor. The IEE contract with [redacted] was finalized on [redacted], [redacted]. However, due to reasons personal to [redacted], [redacted] could not perform the IEE. Petitioner was advised of [redacted] decision and asked how the parent wished to proceed.

52. Subsequently, around [redacted], [redacted], the parent selected a new private evaluator, [redacted] [redacted], to perform the IEE. The contract for [redacted] [redacted] was finalized on [redacted]. For reasons, not involving the District, but involving the waiver of HIPPA rights, the [redacted] elected not to proceed with the IEE. Notably, neither of these vendors performed an IEE and no private [redacted] evaluation was submitted to the IEP team or introduced into evidence in this

hearing. Ultimately, the parent withdrew consent for the District to exchange information with any of the private vendors the parent had selected, thereby withdrawing the parent's request for the IEE.

53. The Student's parent did not disagree with the proposed placement in the [redacted] environment with [redacted] support for some [redacted], but continued to vehemently oppose the eligibility of [redacted]. As indicated earlier, the better evidence demonstrated that the Student did meet the eligibility criteria for [redacted] and it was appropriate for the IEP team to find [redacted] eligible in that category with [redacted] therapy as a supplementary service. Ultimately, the evidence showed that the [redacted] IEP was appropriate and provided FAPE to the Student. The IEP was implemented during the upcoming school year for [redacted]. The parent's opposition to the [redacted] eligibility continued.

[redacted]

54. During [redacted], the Speech Language Pathologist (SLP) assigned to the Student kept logs of [redacted] therapy sessions and testified credibly that she delivered [redacted] minutes per week of [redacted] therapy to the Student in a [redacted]. Additionally, the SLP consulted regularly with the Student's teachers. The clear evidence demonstrated that the Student's IEP was substantially implemented. The evidence further demonstrated

that the Student reasonably progressed in school and was provided FAPE by the SLP.

55. In [redacted], during lunch, the Student [redacted] teacher in a [redacted], known as the "[redacted]" that was created for [redacted] and included [redacted], [redacted] [redacted] students. Although the parent desired the Student to eat lunch in the [redacted], and claimed that the Student's lunch arrangements were a failure to implement the IEP, and did not provide the LRE for the Student, the evidence clearly demonstrated that, due to the Student's [redacted], the Student needed to eat lunch in the [redacted] [redacted] setting. Far from isolating or stigmatizing the Student, [redacted]. In fact, the [redacted] group was considered a desirable group to be in by the other students. The [redacted] group substantially complied with the IEP, met the needs of the Student, and provided FAPE to the Student in a creatively developed LRE designed to meet the Student's needs.

56. During [redacted], the Student continued to need [redacted] and [redacted]. The [redacted] teacher also saw a lot of [redacted] [redacted] with the Student, to the point [redacted] occurring in the classroom, credibly testifying that:

> [redacted] was very determined, you know, in what she liked. [redacted], constantly. I mean, the instructional area. Often times trying to [redacted]. Also, when she would, you know, [redacted] . . . .

As a result, the Student's IEPs contained accommodations, [redacted], [redacted], and [redacted].

57. An interim IEP was developed for the Student on [redacted] and [redacted]. The typographical error referencing the [redacted] was corrected in August. Services were adjusted to increase the [redacted] and add [redacted] for [redacted] and [redacted] [redacted]. The evidence demonstrated that these IEPs provided FAPE to the Student and otherwise complied with the requirements of IDEA.

58. The [redacted] [redacted] teacher met with the Student's teachers on [redacted], [redacted], to discuss the Student's needs and strategies to utilize with the Student. The [redacted] teacher visited the Student's school several times to provide support to teachers and staff. [redacted] observed [redacted] similar to the [redacted] the Student's teachers and staff observed.

59. At some point, the parent had obtained a third private [redacted] and [redacted] evaluation dated [redacted], [redacted]. The District had also conducted an [redacted] assessment. Because of this new information, an interim IEP meeting was held on [redacted],

2015. At the meeting, the team considered the private [redacted] evaluations dated [redacted], [redacted], [redacted], [redacted], and [redacted], [redacted]. The team also considered input from District staff who had observed the Student two times, did not observe any difficulties with the Student's [redacted], and agreed with the earlier team conclusions regarding non-eligibility for [redacted] and [redacted]. Collectively, the private evaluations corroborated the Student's need for [redacted] therapy as a related service and corroborated that the Student's [redacted]. However, the evidence demonstrated that private [redacted] SLPs are not responsible for helping the child access FAPE and that their assessment for applying evaluation results is different than the educationally based application required of the school-based IEP team for educational purposes. The better evidence demonstrated that these private evaluations did not materially add to the information the IEP team had already collected and considered regarding [redacted] services. However, the better evidence demonstrated that the IEP team's determinations regarding [redacted] services were appropriate and provided the Student with FAPE.

60. Although Petitioner wanted collaboration by the [redacted] and [redacted] [redacted] in the [redacted] classroom, the IEP team determined that the most appropriate delivery model for the Student's [redacted] therapy [redacted], [redacted]

delivered by the [redacted] pathologist in a [redacted] setting. The school [redacted] and [redacted] pathologist testified that the Student needed a small group setting for therapy, due to [redacted]. Petitioner did not refute the Student's need for a [redacted] therapy model.

61. Additionally, the only IEP goals that Petitioner disputed on the November IEP was a claimed reduction of service on two goals in the domain of Curriculum and Learning that were initially being measured by the teacher and the District'S [redacted]. The IEP team changed the method of measurement on [redacted], [redacted], to reduce the number of people measuring the goal to one person. The evidence showed that the change did not reduce services and had no impact on the Student's education. Petitioner did not agree with this change. However, the evidence demonstrated that the change did not prevent the IEP from being reasonably calculated to provide the Student with FAPE or lead to a denial of FAPE.

62. Around the [redacted] IEP meeting, the parent requested an IEE for [redacted] and [redacted]. On [redacted] and [redacted], [redacted], Petitioner filed two separate state complaints with FDOE regarding the eligibility determination by the IEP team. Later, on [redacted], [redacted], the parent filed a third state complaint with FDOE disputing the multidisciplinary

team report. The State complaints were dealt with in one determination letter under the FDOE Case No. BEESS-2016-004-RES.

63. On [redacted], [redacted], the District denied the parent's request for an IEE for [redacted] and [redacted] because multiple District and private evaluations had been completed for the Student in those areas. The evidence demonstrated that the denial was reasonable. On [redacted], [redacted], the District filed a due process complaint regarding a parent requested IEE for [redacted] and [redacted] that had been denied by the District (DOAH Case No. 16-0073). The Complaint was forwarded to DOAH for hearing. On [redacted], [redacted], the case was settled by the parties because the District granted the parent's request for an IEE. The case was closed on [redacted], [redacted].

64. On [redacted], [redacted], FDOE issued its determination letter on the FDOE State complaints filed earlier. As part of the State corrective action the District was required to reconvene an IEP team meeting to consider the Student's eligibility under the categories of [redacted] and [redacted]. FDOE did not direct any action regarding the determination that the Student was not eligible under the Category of [redacted]. Further, contrary to the parent's assertion, the District was not directed to come to a specific conclusion regarding these eligibilities at the to-be-convened IEP meeting. The District was also required to complete

a [redacted] on the Student. The [redacted] refused to consent to an [redacted] and had refused such consent since [redacted].

65. On [redacted], [redacted], an IEP meeting was held specifically to comply with the FDOE determination letter to reconsider the Student's eligibility under [redacted] and [redacted]. As the team tried to go over the information and data it had relative to eligibility under [redacted] and [redacted], the parent's advocate objected and insisted that the team had to find the Student eligible in the category of [redacted] and not eligible in the category of [redacted]. The parent and the parent's advocate, [redacted], based on a misinterpretation of FDOE's findings, demanded that the team reach a decision before going through the proper process. Because of the disagreement and the advocate's insistence on their misinformed position, the parent and the advocate, at the advice of the advocate, elected to abruptly leave the meeting before reconsideration of eligibility was complete. The advice of the advocate was a disservice to the Student.

66. No new information was presented at the meeting that changed the opinion of the District team members on the Student's eligibilities. The team reconsidered the information presented in the [redacted] and multiple [redacted] and [redacted] reports (both private and public), the teacher's reports, and the information presented by [redacted]. As indicated, the parent refused to provide consent for a [redacted]. The IEP team

proceeded with the meeting as directed and determined on appropriate evidence that the Student remained eligible in the categories of [redacted] and [redacted]. Further, the team determined on appropriate evidence that the Student was not eligible under the category of [redacted] and [redacted]. The clear evidence was that the Student's [redacted] was not educationally relevant and that the Student's [redacted], which was mostly [redacted], was related to [redacted]. The better evidence demonstrated that, in addition to classroom instruction and [redacted] regarding [redacted], the Student was appropriately provided [redacted] services as a related service to increase [redacted] and [redacted]. This eligibility complied with IDEA. The results of the meeting were reported to FDOE. On [redacted], [redacted], FDOE officially closed the State complaint based on the actions taken by the District at the [redacted], [redacted], meeting.

67. At the end of [redacted], the [redacted] expressed [redacted] desire for the Student to be placed in [redacted]. An IEP meeting was scheduled for [redacted], [redacted]. The [redacted], [redacted], meeting was the beginning of a very lengthy IEP process that continued over [redacted] and [redacted], [redacted].

68. As indicated earlier, consent to develop a [redacted] and [redacted]([redacted]), which evidence showed the parent desired, was requested of the parent on [redacted], [redacted], and again on

[redacted], [redacted]. Parental consent was finally provided on [redacted], [redacted], during the meeting. The delay in obtaining a [redacted] and [redacted] was wholly caused by the parent's attempts to dictate the process of developing a [redacted] based on the parent's misinterpretation and very rigid view of the requirements of IDEA and the parent's mistaken impression that some type of meeting needed to be held prior to the parent providing consent for a [redacted] to begin. Once consent was provided, a [redacted] and [redacted] were developed for the Student.

69. During the three days of the IEP meeting, the parent and [redacted] attorney spent a great deal of time going over accommodations, services, and sections of the IEP. [redacted] interrupted the team and would often not allow the teachers to speak. The evidence demonstrated that the parent and [redacted] attorney fully participated in the meeting. The evidence also demonstrated that the placement of the Student was not predetermined by the District.

70. The [redacted] teacher did not agree with the parent's proposed placement for [redacted] Math because, as the teacher credibly testified, the Student [redacted] [redacted] or [redacted], since the Student [redacted] [redacted] environment. The better evidence showed that

the Student [redacted] setting and [redacted]-grade [redacted] level.

71. The [redacted] teacher also attended the three-day IEP meeting in May and June of [redacted] and also did not agree with placing the Student into the [redacted] environment for [redacted]. In fact, [redacted] opinion was that the Student needed a [redacted] setting [redacted]. However, the team sided in part with the parent's request for placement in [redacted] in certain subjects. For other educational areas, like [redacted], the IEP team, based on the evidence before them, placed the Student in the [redacted] for [redacted] grade. The better evidence demonstrated that the IEP was complete and appropriate for the Student. The evidence also demonstrated that the IEP provided FAPE to the Student in the LRE.

72. Following the last meeting in [redacted], Petitioner revoked consent for the District to talk to anyone in the private sector who had worked with the Student, including IEE vendors, and persons to whom testing protocols were previously sent. The revocation prevented IEE vendors from providing information or reports to the District and the District from providing necessary information to the IEE vendors. As such, the revocation effectively served as the parent's withdrawal of [redacted] request for [redacted] and [redacted] IEEs.

73. In [redacted], the private [redacted] selected by the [redacted] completed [redacted] evaluation of the Student. The private [redacted] did not provide [redacted] evaluation to the District, since the parent had prevented [redacted] from doing so by revoking consent to share information. Because the District never received the private evaluation, the District appropriately did not pay for it and did not violate IDEA by not paying for the private evaluation.

74. As set forth in the stipulated facts, there is no dispute that the Student was made eligible for ESY services during all school years that [redacted] was enrolled in the District. Petitioner elected to have the Student attend ESY during [redacted], [redacted], and [redacted]. During those times, ESY was provided only to [redacted] Students. Similarly, ESY was provided only to [redacted] Students in [redacted].

75. Petitioner asserted that the Student should receive ESY service in the same manner in which [redacted] IEPs were implemented during the school year, i.e. in a setting that [redacted]. However, IDEA does not require school districts to create new programs as a means of providing ESY services to students in integrated settings, if the District does not provide services during summer for its nondisabled students. Since the District did not provide ESY services to nondisabled students, the District has not violated IDEA in the provision of ESY services to the Student.

76. In the end, the parent withdrew the Student from the public school in mid-[redacted]. As indicated earlier, [redacted] has since been educated in private school.

77. In sum, the evidence demonstrated that, in one school year, [redacted] IEPs were developed for the Student on [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. The evidence demonstrated that the IEPs developed for the Student were not static, but working documents that were changed according to the Student's individual requirements given [redacted] special circumstances at the time the IEP was drafted. The better evidence demonstrated that all of the Student's IEPs adequately addressed [redacted] [redacted] and [redacted], as well as [redacted]. The IEPs contained goals for each of these educational needs, as well as the related service of [redacted] therapy. The private [redacted] who testified for Petitioner agreed that the Student needed the [redacted] [redacted] therapy provided on her IEPs.

78. Further, the Student's IEPs, including [redacted] IEP dated [redacted], [redacted], had appropriate goals and services to address [redacted] unique educational needs that resulted from [redacted] disabilities. The IEPs contained numerous services to address [redacted] needs, such as: goals, specialized instruction, and related services of [redacted] therapy, [redacted]

therapy, [redacted] therapy, accommodations, [redacted] , and [redacted] support. There was nothing missing from the Student's [redacted], [redacted], IEP or subsequent IEPs that [redacted] needed for support in the [redacted] environment.

79. The IEPs also addressed the Student's [redacted] needs by providing goals related to the Student's educational needs of [redacted], [redacted], [redacted] skills, as well as [redacted] skills. The IEPs provided specialized instruction for these skills, supplementary aids and services of collaboration by an [redacted] teacher in [redacted] [redacted] subjects, [redacted], [redacted] teacher, [redacted], as well as a variety of needed accommodations. All of these services and accommodations were designed to assist with the Student's educational needs and were appropriate for the Student. In fact, one of the [redacted] with educational experience testified that, "the district was offering what the child needed in the way of services" and felt the IEP was appropriate for the Student.

80. Petitioner failed to prove that any material provision was omitted from any of the IEPs or that the implementation of any service fell significantly short of the IEPs' requirements. Petitioner's claim that [redacted] services were not delivered in accordance with the IEP was unfounded. The Student received

[redacted] minutes per week of [redacted] in accordance with [redacted] IEP. Respondent's witnesses testified credibly and consistently that the Student needed [redacted] from an [redacted]. Petitioner did not refute the Student's need to receive [redacted] in a [redacted] setting.

81. There was no dispute by Petitioner that the Student made progress as a result of [redacted] IEP services and accommodations and, in fact, the Student did make progress. The private [redacted] who testified for Petitioner acknowledged the fact the Student made significant progress after attending District [redacted] and [redacted] and [redacted] documented the progress in [redacted] evaluation.

82. The evidence demonstrated that the Student was placed in a [redacted] setting to the maximum extent appropriate. This placement was aided by collaboration from [redacted] teacher, [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and a [redacted]. The Student's supports and services were at their [redacted] placement. Petitioner failed to present evidence that it would be appropriate to place the Student in [redacted], or any additional [redacted].

83. Finally, the District [redacted] teacher who worked with the Student and [redacted] teachers during [redacted] and [redacted], the [redacted] specialist, the [redacted] teachers, the District [redacted] and [redacted] professionals, the school

psychologists, and the [redacted] teachers credibly testified that they agreed with the eligibility of [redacted] based on the Student's [redacted] at school, as well as on the reports and data they reviewed. The better evidence demonstrated that the eligibility determination made by the District was appropriate for the Student based on [redacted]. Further, there was no evidence that, as the parent believed, some conspiracy existed amongst all the professionals in the District to make the Student's [redacted] in order to justify the Student being placed in the [redacted] eligibility category.

84. In short, the better evidence demonstrated the IEP was appropriate for the Student and provided the Student with FAPE given the impact of the Student's [redacted] on [redacted] educational performance. The evidence demonstrated that the Student's goals were based on her individual needs and that reasonable progress was being made by the Student under those IEPs. As such, the evidence demonstrated that the Student's multiple IEPs over the years were reasonably calculated to provide the Student with FAPE. Further, the evidence showed that those IEPs were substantially implemented. As indicated, the Student made reasonable progress given the impact of the Student's [redacted] on [redacted] educational performance in all years of [redacted] education and was provided FAPE by the School Board. Given these facts, the Complaint filed by the Petitioner should be dismissed.

CONCLUSIONS OF LAW

85. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

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

87. 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 each 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).

88. Parents and students with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. Bd. of Educ. 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).

89. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

> [S]pecial 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).

90. The central mechanism by which the IDEA ensures FAPE for each child is the development and implementation of an IEP. 20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985)(“The modus operandi of the [IDEA] is the . . . IEP.”)(internal quotation marks omitted). The IEP must be developed in accordance with the procedures laid out in the IDEA and must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., RE-1, 13 S. Ct. 988, 999 (2017).

91. "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).

92. 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).

93. Indeed, "the IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 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, 102 S. Ct. at 3034)(where the provision of such special education services and accommodations are recorded).

94. In Rowley, the Supreme Court held that a two-part inquiry or analysis of the facts 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. Rowley, 458 U.S. at 206-207. 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).

95. In this case, Petitioner alleged that the School Board failed to meet the procedural requirements of IDEA by not properly evaluating the Student to determine the Student's eligibility, prior to the [redacted] school year. The parent further alleged that the School Board failed to meet the procedural requirements of the IDEA by finding the Student eligible under the program category of [redacted] and not eligible under the program categories of [redacted] and [redacted], immediately prior to or during the [redacted] school year. The two issues are intertwined.

96. Florida Administrative Code Rule 6A-6.03027(6) requires a student to be reevaluated for continued eligibility for ESE services prior to turning six, if a student, as the Student herein, has an eligibility based on developmental delay. Further, IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." L.C. v. Tuscaloosa Cnty. Bd. of Educ., 2016 U.S. Dist. LEXIS 52059 at *12 (N.D. Ala. 2016)(quoting N.G. v. D.C., 556 F. Supp. 2d 11, 16 (D.D.C. 2008)(citing 20 U.S.C.

§ 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." Id. Thus, each state must put policies and procedures in place to ensure that all children with disabilities residing in the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

97. However, "Child Find does not demand that schools conduct a formal evaluation of every struggling student." D.K. v. Abington Sch. Dist., 696 F.3d 233 (3rd Cir. 2012)(quoting J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011))("The IDEA's child find provisions do not require district courts to evaluate as potentially 'disabled' any child who is having academic difficulties.")(internal quotation marks omitted). Further, a school's failure to diagnose a disability at the earliest possible moment is not per se actionable, in part because some disabilities "are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all." D.K., 696 F.3d at 249 (quoting A.P. ex rel. Powers v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 226(D. Conn. 2008))(internal quotation marks omitted). Additionally, the label assigned to a particular student is less important than the skill areas evaluated. The issue is whether

the district appropriately assessed the student in all areas of a suspected disability. See, e.g., Avila v. Spokane Sch. Dist. 81, 69 IDELR 204 (9th Cir. 2017, unpublished)(noting that a Washington district had assessed a student with autism for "reading and writing inefficiencies," the court ruled that it properly evaluated the student for dyslexia and dysgraphia). See also, Lauren C. v. Lewisville Indep. Sch. Dist., 2017 WL 2813935, at *6, 70 IDELR 63 (E.D. Texas June 29, 2017).

98. Rule 6A-6.0331(3)(e) sets forth the requisite qualifications of those conducting the necessary evaluations and rule 6A-6.0331(5) sets forth the procedures for conducting the evaluations. In conducting the evaluation, the school district "must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE." Fla. Admin. Code R. 6A-6.0331(5)(a)2. To the contrary, the school district "must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student." Fla. Admin. Code R. 6A-6.0331(5)(a)1. Further, the student shall be assessed in "all areas related to a suspected disability" and an evaluation "shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability." Fla. Admin. Code R. 6A-6.0331(5)(f), (g).

99. Under Florida law, at the time the Student's psychoeducational evaluation was performed in 2015, ASD was defined in rule 6A-6.03023 as:

> (1) Definition. Students with [redacted]. [redacted] is defined to be a range of pervasive developmental disorders that adversely affects a student's functioning and results in the need for specially designed instruction and related services. Autism Spectrum Disorder is characterized by an uneven developmental profile and a pattern of qualitative impairments in social interaction, communication, and the presence of restricted repetitive, and/or stereotyped patterns of behavior, interests, or activities. These characteristics may manifest in a variety of combinations and range from mild to severe. Autism Spectrum Disorder may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, or other related pervasive developmental disorders.
>
> (2) General education interventions and activities. Prior to referral for evaluation the requirements in subsection 6A-6.0331(1), F.A.C., must be met.
>
> (3) Evaluation. In addition to the procedures identified in subsection 6A-6.0331(5), F.A.C., the evaluation for determining eligibility shall include the following:
>
> (a) Documented and dated behavioral observations conducted by members of the evaluation team targeting social interaction, communication skills, and stereotyped patterns of behavior, interests, or activities, across settings. General education interventions and activities conducted prior to referral may be used to

meet this criterion, if the activities address the elements identified in this paragraph;

(b) A comprehensive social/developmental history compiled with the parents(s) or guardian(s) that addresses the core features of [redacted];

(c) A comprehensive psychological evaluation to identify present levels of performance and uneven patterns of development in language, social interaction, adaptive behavior, and cognitive skills;

(d) A comprehensive speech/language evaluation; and,

(e) Medical information provided shall be considered.

(4) Criteria for eligibility. A student with [redacted] is eligible for exceptional student education if all of the following criteria are met:

(a) Evidence of all of the following:

1. Uneven developmental profile as evidenced by inconsistencies across or within the domains of language, social interaction, adaptive behavior, and/or cognitive skills; and

2. Impairment in social interaction as evidenced by delayed, absent, or atypical ability to relate to people or the environment; and

3. Impairment in verbal and/or nonverbal language or social communication skills, and

4. Restricted repetitive, and/or stereotyped patterns of behavior, interests, or activities; and

(b) The student needs special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C.

The [redacted] rule was amended on [redacted], [redacted]. However, the changes to the rule do not impact the findings in this case.

100. In Florida, LI is defined in rule 6A-6.0301210 as:

(1) [redacted] are disorders of language that interfere with communication, adversely affect performance and/or functioning in the student's typical learning environment, and result in the need for exceptional student education.

(a) A [redacted] is defined as a disorder in one or more of the basic learning processes involved in understanding or in using spoken or written language. These include:

1. Phonology. Phonology is defined as the sound systems of a language and the linguistic conventions of a language that guide the sound selection and sound combinations used to convey meaning;

2. Morphology. Morphology is defined as the system that governs the internal structure of words and the construction of word forms;

3. Syntax. Syntax is defined as the system governing the order and combination of words to form sentences, and the relationships among the elements within a sentence;

4. Semantics. Semantics is defined as the system that governs the meanings of words and sentences; and,

5. Pragmatics. Pragmatics is defined as the system that combines language components in functional and socially appropriate communication.

> (b) A [redacted] may manifest in significant difficulties affecting listening comprehension, oral expression, social interaction, reading, writing, or spelling. A language impairment is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

101. Notably, both the [redacted] and [redacted] categories address [redacted] issues involving [redacted] and overlap in their scope.

102. Herein, the better evidence showed that at the reevaluation plan meeting, the necessity for reevaluations in multiple areas were discussed along with current information regarding the Student and an appropriate reevaluation plan was implemented for the Student. As such, the School Board met the procedural requirements for reevaluations under IDEA. Further, the evidence was clear that the psychoeducational reevaluation was comprehensive with information obtained from multiple sources and across multiple settings, as well as, complied with DOE rules regarding such evaluations. It reflected a valid picture of the Student at the time it was performed. Similarly, the better evidence showed that, as with the psychoeducational reevaluation, the various speech/language reports met evaluation standards for speech/language reevaluations. All of the relevant evaluations evaluated the Student's skills as they related to socialization

and communication issues. The relevant evaluations were also properly considered by the IEP team.

103. Additionally, considerable evidence was presented in this matter relative to the Student's educational needs. Ultimately, the IEP team, based on the evidence before it, reasonably categorized Petitioner as [redacted] for education and IEP purposes. The team reasonably did not categorize Petitioner as [redacted] because the Student's communication issues were related to [redacted]. The evidence showed that the [redacted] category was a better fit given the impact of the Student's disability on [redacted] educational performance. As such, the Student was eligible to receive [redacted] services as a related service secondary to [redacted] primary eligibility of [redacted]. Further, the evidence did not support a need to additionally recognize the Student in the category of [redacted] and the IEP team appropriately determined the Student was not eligible in that category. As such, the School Board met the requirements of IDEA and provided FAPE to the Student regarding its evaluation and categorization of the Student during the school years relevant in this case. Therefore, the portions of the Complaint relative to the evaluation and eligibility of the Student should be dismissed.

104. In Florida, [redacted] is defined in rule 6A-6.03012 as:

(1) [redacted] are disorders of speech sounds, fluency, or voice that interfere with communication, adversely affect performance and/or functioning in the educational environment, and result in the need for exceptional student education.

(a) Speech sound disorder. A speech sound disorder is a phonological or articulation disorder that is evidenced by the atypical production of speech sounds characterized by substitutions, distortions, additions, or omissions that interfere with intelligibility. A speech sound disorder is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

1. Phonological disorder. A phonological disorder is an impairment in the system of phonemes and phoneme patterns within the context of spoken language.

2. Articulation disorder. An articulation disorder is characterized by difficulty in the articulation of speech sounds that may be due to a motoric or structural problem.

(b) Fluency disorder. A fluency disorder is characterized by deviations in continuity, smoothness, rhythm, or effort in spoken communication. It may be accompanied by excessive tension and secondary behaviors, such as struggle and avoidance. A fluency disorder is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

(c) Voice disorder. A voice disorder is characterized by the atypical production or absence of vocal quality, pitch, loudness, resonance, or duration of phonation that is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

105. The clear evidence demonstrated that the Student was not eligible under the [redacted] category, since [redacted] could be understood by others and could access her education. As such, the team's determination that the Student did not qualify for [redacted] met the procedural requirements of IDEA and provided FAPE to the Student regarding its evaluation and categorization of the Student as not eligible for [redacted] during the school years relevant to this case. Given these facts, the portions of the Complaint relative to the eligibility for [redacted] should be dismissed.

106. 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. Recently, in Endrew F., the Supreme Court addressed the "more difficult problem" of determining a standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." Endrew F., 13 S. Ct. at 993. In doing so, the 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." Id. 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.

107. The determination of whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student who is "fully integrated in the regular classroom," an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. (quoting Rowley, 102 S. Ct. at 3034). For a student, like Petitioner in this case, who is not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." Id. at 1000. This standard is "markedly more demanding" than the one the Court rejected in Endrew F., under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is, an educational benefit that was "merely" more than "de minimis." Id. at 1000-1001.

108. The assessment of an IEP's substantive propriety is guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time

of the IEP's formulation; in other words, an IEP is not to be judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011)(holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated."). Second, an assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008)(holding that an IEP must be evaluated as written).

109. Third, great deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. 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."); A.K. v. Gwinnett Cnty. v. Sch. Dist., 556 Fed. Appx. 790, 792 (11th Cir. 2014)("In determining whether the IEP

is substantively adequate, we 'pay great deference to the educators who develop the IEP.'")(quoting Todd D. v. Andrews, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989), "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act."

110. Further, the IEP is not required to provide a maximum educational benefit, but only need provide a basic educational opportunity. Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991); C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1153 (11th Cir. 2007); and Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001).

111. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d Cir. 1989)(internal citation omitted); see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-534 (3d Cir. 1995); Kerkam v. McKenzie, 862 F.2d 884, 886 (D.C. Cir. 1988)("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act"). Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 132 (2d Cir. 1998); and Doe v. Bd. of Educ., 9 F.3d 455, 459-460 (6th Cir. 1993)("The Act requires that the Tullahoma schools provide

the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use . . . . Be that as it may, we hold that the Board is not required to provide a Cadillac . . . .").

112. In this case, Petitioner alleged that immediately prior to or during the [redacted] school year, the District failed to develop an appropriate IEP for the Student in that the subject IEP failed to provide appropriate services, accommodations, and support for a student who is [redacted] and [redacted] and [redacted]. Petitioner also alleged that, during the [redacted] school year, the Student's placement in the [redacted] and [redacted] setting violated the LRE requirement. Additionally, Petitioner alleged that, during the [redacted] school year, the District failed to implement therapy services as provided on the IEP as related to services provided by a speech and language pathologist. Lastly, Petitioner alleged that, the District failed to implement the controlling IEP in that it failed to provide the Student ESY services, consistent with the IEP.

113. Relative to the appropriateness of the Student’s IEPs, the better evidence demonstrated that the various IEPs were appropriate for the Student and provided the Student with FAPE given the impact of the Student’s disability on [redacted] educational

performance. The evidence demonstrated that the Student's goals were based on her individual needs and that reasonable progress was made by the Student under those IEPs. The better evidence also demonstrated that the Student's IEPs were "appropriately ambitious" and "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" because, as a threshold matter, they contained a statement of [redacted] current educational performance, a statement of annual goals, a statement of the specific education and related services to be provided, a statement of how much she would participate in regular education programs, and the dates for and initiation of such services. More importantly, the evidence showed that the Student reasonably progressed given the impact of the Student's disability on [redacted] educational performance in all years of [redacted] education. Additionally, the better evidence demonstrated that the Student's [redacted] needs were properly met through her IEPs and met all of her unique needs. As such, the evidence demonstrated that the Student's multiple IEPs over the years met the requirements of IDEA and provided the Student with FAPE. Thus, the portions of the Complaint relative to the appropriateness of the Student's IEPs should be dismissed.

114. As indicated Petitioner alleged that the Student's IEP was not implemented during the [redacted] school year relative

to services provided by a speech and language pathologist and the provision of ESY services to the Student.

115. Because this claim challenges the District's implementation of Petitioner's educational programming——rather than its substance——a different standard of review applies. L.J. v. Sch. Bd. of Broward Cnty., 850 F. Supp. 2d 1315, 1319 (S.D. Fla. 2012). In particular, a parent raising a failure-to-implement claim must present evidence of a "material" shortfall, which occurs when there is "more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007). Notably, this standard does not require that the student suffer demonstrable educational harm in order to prevail. Id. at 822; Colon-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 143-44 (D.P.R. 2014); Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 40 (D.D.C. 2013). Rather, the materiality standard focuses on "the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

116. Relative to the implementation of the Student's IEPs, the evidence demonstrated that the [redacted] SLP assigned to the Student credibly testified that [redacted] delivered [redacted] minutes per week

of [redacted] to the Student in a [redacted] setting as required by the Student's IEPs. Additionally, the [redacted] consulted regularly with the Student's teachers. The clear evidence demonstrated that the Student's IEP was substantially implemented in regard to [redacted] services. The evidence further demonstrated that the Student reasonably progressed in school and was provided FAPE by the [redacted].

117. Further, the evidence showed that those IEPs were substantially implemented relative to ESY. The Student was offered appropriate ESY services throughout the years of [redacted] education. The Student participated in those ESY services until the summer of [redacted] when [redacted] declined to attend ESY because ESY services were only offered to disabled students. However, IDEA does not require school districts to create new programs as a means of providing ESY services to students in integrated settings if the District does not provide services during summer for its nondisabled students. A.L. v. Jackson Cnty. Sch. Bd., 635 Fed.Appx. 774, 783 (11th Cir. 2015). Since the District did not provide ESY services to nondisabled students, the District has not failed to implement the Student's IEP and has not violated IDEA in the provision of ESY services to the Student. Therefore, the portions of the Complaint relative to the implementation of the IEP should be dismissed.

118. Finally, Petitioner alleged that, during the [redacted] school year, the Student's placement in the general education and resource room setting violated the LRE requirement of IDEA.

119. In that regard, the IDEA provides directives on students' placements or education environment in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A) provides as follows:

> Least restrictive environment.
>
> (A) In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

120. Notably, although not defined in the IDEA, the term "educational placement" has been interpreted by courts to mean a child's overall educational program, not the particular institution where the program is being implemented. Hill v. Sch. Bd. of Pinellas Cnty., 954 F. Supp. 251, 253 (M.D. Fla. 1997), aff'd sub nom, 137 F.3d 1355 (11th Cir. 1998).

121. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements.

34 C.F.R. § 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. In turn, FDOE has enacted rules to comply with the above-referenced mandates concerning the LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

122. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

123. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, School districts must both seek to mainstream handicapped children and, at the same time, must

tailor each child's educational placement and program to his special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d at 1044.

124. In Daniel, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048.

125. In Greer, infra, the Eleventh Circuit adopted the Daniel two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: 1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits he will receive in a self-contained special education environment; 2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and 3) the cost of the supplemental aids and services that will be necessary to achieve a

satisfactory education for the student in a regular classroom. Greer, 950 F.2d at 697.

126. Against the above legal framework, we turn to Petitioner's substantive claim. Here, Petitioner contends that the appropriate placement should be that of a regular general education classroom for [redacted]. However, the better evidence establishes that the Student has been mainstreamed to the maximum extent possible in general education Science, Social Studies, Reading Intervention, and Physical Education. The Student was provided a part-time paraprofessional to assist [redacted] at school. Further, the better evidence demonstrated that the Student cannot be satisfactorily educated in the regular general education classroom for the subject of [redacted], with the use of supplemental aids and services, because [redacted] is not able to handle the larger group setting and access the curriculum.

127. Accordingly, the instant proceeding turns on the second part of the test: whether the Student has been mainstreamed to the maximum extent appropriate. In determining this issue, the Daniel court provided the following general guidance:

> The [IDEA] and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services. Thus, the school must take intermediate steps where

> appropriate, such as placing the child in regular education for some academic classes and in special education for others, mainstreaming the child for nonacademic classes only, or providing interaction with nonhandicapped children during lunch and recess. The appropriate mix will vary from child to child and, it may be hoped, from school year to school year as the child develops. If the school officials have provided the maximum appropriate exposure to non-handicapped students, they have fulfilled their obligation under the [IDEA].

Daniel, 874 F.2d at 1050 (internal citations omitted).

128. In this case, during the [redacted] school year, the Student was placed in a resource room setting for [redacted]. The credible evidence provided by the educational staff demonstrated that the Student was struggling in [redacted] provided in the resource room even though maximally accommodated in that class. The evidence also showed that the Student did not work well in a large group, general education setting and could not access the curriculum difficulty at the [redacted]-grade level. In fact, the Student needed a small group, resource room setting for [redacted]. Given these facts, the Student's placement in the resource room was appropriate for the Student and provided the Student with FAPE in the LRE. Thus, the portions of the Complaint relative to the LRE should be dismissed.

129. Finally, the balance of Petitioner's claims as asserted in the Complaint were not supported by the evidence, and, therefore, are dismissed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is DISMISSED in its entirety.

DONE AND ORDERED this 17th day of August, 2018, in Tallahassee, Leon County, Florida.

S

DIANE CLEAVINGER
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of August, 2018.

ENDNOTES

1/ In fact, the District has never disputed that part of the Student's disabilities include significant language delays that impact [redacted] education. The dispute in this case has not been over the amount of [redacted], but has always been over whether such therapy should be delivered through a program eligibility in [redacted] and [redacted] or secondarily as a related service under an [redacted] program eligibility.

2/ The District's [redacted] reevaluation remains unchallenged on this record. No independent education evaluation contradicting the District's reevaluation was introduced into evidence. Similarly, no expert testified contradicting the District's reevaluation or the protocols underlying that evaluation. Other parentally introduced evidence regarding the District's evaluation was unpersuasive.

[3/] In fact, IDEA does not require that eligibility for a [redacted] program be recommended over [redacted] as a related service where the impairment is related to or results from the primary eligibility.

[4/] There was no evidence that the Student should or would receive more [redacted] or [redacted] therapy services if [redacted] was eligible for such services under separate eligibility [redacted] and [redacted] categories. The better evidence demonstrated that the Student would not receive more services. In essence, the parent's demand that the Student be evaluated and/or recognized for eligibility in the [redacted] and [redacted] program category is a distinction without a difference and not material to the provision of FAPE in this case or procedural compliance under IDEA.

[5/] The [redacted] diagnosis remained in the doctor's records through [redacted], [redacted], as reflected in the date of service note for that date.

[6/] To the extent that the three-year review period was approaching for the Student at the time of the hearing and given the Student is no longer enrolled in public school, this issue appears to be moot. T.P. by T.P. and B.P. v. Bryan Cnty. Sch. Dist., 115 LRP 29136 (11th Cir. 07/02/15).

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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).