STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 17-6408E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A due process hearing was held in Miami, Florida, on March 19, 2018, before Administrative Law Judge Jessica Enciso Varn.

APPEARANCES

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

For Respondent: Mary C. Lawson, Esquire
Miami-Dade County Public Schools
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

STATEMENT OF THE ISSUE

Whether the individualized education plan (IEP) developed on November 3, 2017, was reasonably calculated to provide the student with a free, appropriate public education (FAPE) where it did not provide for a [redacted].

PRELIMINARY STATEMENT

A request for a due process hearing (Complaint) was filed on November 21, 2017. A Case Management Order was issued the same day, establishing deadlines for a sufficiency review, as well as for the [redacted]. The School Board filed a Notice of Insufficiency on November 30, 2017, arguing that the Complaint did not sufficiently place the School Board on notice of a specific issue to be litigated. An Order finding the Complaint was sufficient was entered on December 7, 2017.

On December 8, 2017, a status report was filed requesting an extension of time to provide mutually agreeable hearing dates. On December 14, 2017, an Order Granting Extension of Time was entered, giving the parties until January 15, 2018, to provide mutually agreeable dates for the hearing and how many days the hearing would require. The hearing, to be held by [redacted], was scheduled for March 1, 2018. On February 21, 2018, Petitioner requested, by letter, for the hearing to be rescheduled for a later date. The hearing was rescheduled to March 19, 2018, and was held on that date.

During the hearing, testimony was heard from the student's [redacted]; [redacted], [redacted]; [redacted], Principal of School A; [redacted], teacher; [redacted], school counselor; [redacted], teacher; [redacted], teacher; [redacted], teacher; [redacted], staffing specialist;

[redacted], staffing specialist; [redacted], staffing specialist; [redacted], staffing specialist; and [redacted], instructional supervisor. Petitioner's Exhibits 1 through 5 were admitted into evidence. Respondent's Exhibits 1 through 11, and 14 through 22 were admitted into evidence. Respondent's Exhibit 13 was admitted as Joint Exhibit 1.

The Transcript was filed on May 1, 2018. On May 3, 2018, an Order Extending Deadline for Final Order was filed whereby the deadlines for the proposed orders were extended to May 31, 2018. Additionally, the deadline for the final order was extended to July 2, 2018.

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 was in [redacted] grade when the due process hearing was held, and is eligible for exceptional student education (ESE) in the categories of [redacted] ([redacted]) and [redacted] ([redacted]). [redacted] is placed, on a [redacted].

2. The student's current IEP identifies [redacted] priority educational needs in the following areas: [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. [redacted] also receives [redacted] in some areas, [redacted], [redacted] teachers, and [redacted]. The IEP also details numerous accommodations to [redacted] in the [redacted] and with [redacted].

3. The student's parents are in agreement with all aspects of the IEP, and believe their [redacted] is [redacted]; but they remain [redacted] about [redacted] future in [redacted] and requested that the IEP include a [redacted] for the student.

4. The student has never had a [redacted] assigned to [redacted]; put another way, no IEP team throughout all of [redacted] has opined that [redacted] needed a [redacted] to assist [redacted] in accessing [redacted] education. Due to the parents' concern, staff observed the student to assess [redacted].

5. During observations, it was noted that the student has occasions of "[redacted]" when [redacted], and can sometimes get [redacted]. [redacted] is, however, [redacted]. [redacted] has had [redacted], particularly in subjects that [redacted]

[redacted]. [redacted] also, at one point, made a habit of [redacted] than necessary ([redacted] does legitimately [redacted] to use [redacted]), and [redacted] to address both of these issues. The student explained that [redacted], which causes [redacted] to [redacted] during subjects that [redacted] does not like.

6. Every staff member who works with the student and administrators who have observed the student [redacted] that the student has no need for a [redacted]. The school witnesses credibly testified that the student follows the school routines without issues, [redacted] gets along well with [redacted] peers, [redacted] is [redacted] and has several responsibilities in class, [redacted] responds to teacher directives, [redacted] follows along well with the [redacted], and [redacted] can safely navigate the campus.

7. The student's parents brought forth evidence of an [redacted], where the student allegedly [redacted] between [redacted], to demonstrate a safety concern that warrants the assignment of a [redacted]. The parents' testimony on this isolated incident is sketchy, as it is not based on first-hand knowledge. Even if the incident occurred in the manner described by the parents, it was an isolated incident and does not warrant the assignment of a [redacted], particularly in light of the greater weight of the evidence, which demonstrates that the student is

[redacted].

8. The greater weight of the evidence establishes that the student is accessing [redacted] education without the need for a [redacted].

CONCLUSIONS OF LAW

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

10. Petitioner bears the burden of proof, by a preponderance of the evidence, with respect to the issue raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005)("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.").

11. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th. Cir. 2012). The statute was intended to address the inadequate educational

services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

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

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

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

20 U.S.C. § 1401(9).

14. 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. The IEP team must annually review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i).

15. "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).

16. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Rowley, 458 U.S. at 206-207. In this case, no procedural claim has been raised.

17. 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.

18. 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. 3034). For a student 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. In this case, the evidence showed that the IEP is appropriately ambitious in light of the student's circumstances; in fact, there is no dispute as to the entire IEP, other than that it does not provide for a [redacted].

19. Deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. Id. at 1001; see also 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 Board of Education, 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.").

20. Here, the parents advance one substantive claim. Specifically, the parents aver that the IEP fails to provide FAPE to the student because it lacks the assignment of a [redacted]. Guided by the above-cited principles, the undersigned finds that the student's IEP is reasonably calculated to enable the student to make progress appropriate in light of [redacted] circumstances, and finds no credible evidence establishing the need for a [redacted] to be added to the IEP at this point in the student's education.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the current IEP is reasonably calculated to provide a FAPE to the student, and the request for a [redacted] is DENIED.

DONE AND ORDERED this 28th day of June, 2018, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge

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Filed with the Clerk of the
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this 28th day of June, 2018.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or

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