

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

\*\* ,

Petitioner,

vs.

Case Nos. 18-1724E  
18-2003E

ESCAMBIA COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED] and [REDACTED] and [REDACTED], [REDACTED], in Pensacola, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire  
Disability Rights Florida  
Suite 200  
2473 Care Drive  
Tallahassee, Florida 32308

For Respondent: [REDACTED], Esquire  
Resolutions in Special Education, Inc.  
Suite 13  
10661 Airport Pulling Road  
Naples, Florida 34109

STATEMENT OF THE ISSUES

The issues in this case are: 1) whether the proposed change of the Student's placement to a separate day school represents the [REDACTED] within the meaning of the

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq; and 2) whether the Escambia County School Board (School Board or District) provided a free appropriate public education (FAPE) to the Student.

PRELIMINARY STATEMENT

On [REDACTED], Petitioner, through [REDACTED], filed a request for a due process hearing (Complaint) that alleged Respondent failed to provide Petitioner with FAPE due to various alleged procedural and substantive violations of IDEA. Petitioner's request for a due process hearing was forwarded to the DOAH and assigned DOAH Case No. 18-1724E.

On [REDACTED], the School Board, pursuant to section 1003.5715, Florida Statutes, filed a request for a due process hearing that sought approval to place the Student in [REDACTED].

The School Board's hearing request was necessitated by the Student's [REDACTED] refusal to provide consent to the proposed placement as recommended in the Student's individualized education plan (IEP). The School Board's Complaint was assigned DOAH Case No. 18-2003E.

The parties requested that both cases be placed in abeyance. On [REDACTED], the parties' request was granted and both cases were placed in abeyance. On [REDACTED], the cases were consolidated. Thereafter, on [REDACTED], a Notice of Hearing

was issued scheduling the final hearing for [REDACTED] through [REDACTED].

The hearing proceeded as scheduled with all parties present. During the hearing, Petitioner presented the testimony of [REDACTED] witnesses and introduced Exhibits numbered 1 through 32, 36 and 43 through 46 into evidence. Respondent presented the testimony of [REDACTED] witness, and introduced Exhibits numbered 1 through 19 into evidence.

At the conclusion of the final hearing, the post-hearing schedule was discussed. The record was held open so that the deposition of [REDACTED] could be taken by Respondent and filed in this case in lieu of [REDACTED] live testimony. Based on that discussion, it was determined that the schedule for proposed final orders would be determined after the deposition of [REDACTED] was filed.

The deposition of [REDACTED] was filed on [REDACTED]. The parties stipulated that their proposed final orders would be filed on or before [REDACTED]. Based on the parties' agreement an Order was entered establishing that the undersigned's final order would be issued on or before [REDACTED]. However, due to the impacts of Hurricane Michael, an Order extended the deadline for the issuance of the final order to [REDACTED].

As stipulated, Petitioner filed a Proposed Final Order on [REDACTED]. Respondent also filed a Proposed Final Order on [REDACTED]. Both parties' proposed orders were accepted and considered in preparing this Final Order.

Additionally, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time the subject IEP was drafted.

Finally, for stylistic convenience, [REDACTED] pronouns are used in this Final Order when referring to the Student. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student was born on [REDACTED], and enrolled in the Escambia County Public Schools as a [REDACTED]. At the time of the hearing, the Student was [REDACTED] years old, and had completed [REDACTED] grade. The Student was found eligible for ESE services in the eligibility category of [REDACTED]. [REDACTED] also was eligible to receive [REDACTED] as a related service.

2. The uncontroverted evidence demonstrated that the Student has [REDACTED]  
[REDACTED]  
[REDACTED]  
resulting in [REDACTED] and [REDACTED]

that impedes [REDACTED] learning. The uncontroverted evidence demonstrated that the Student's [REDACTED] also impedes the learning of others. [REDACTED] has exhibited [REDACTED] and [REDACTED] since [REDACTED].

3. The evidence showed that the Student [REDACTED] and makes [REDACTED] in class. The evidence also showed that the Student [REDACTED] and uses [REDACTED] towards teachers and staff. In the past, [REDACTED] has [REDACTED] [REDACTED] [REDACTED] with others that resulted in [REDACTED]. The Student has also used ordinary school objects, such as pencils, books and computer notebooks as [REDACTED]. The uncontroverted evidence showed that the Student's [REDACTED] poses a concern for [REDACTED] safety due to the intensity and frequency of [REDACTED] [REDACTED]. Further, the uncontroverted evidence showed that due to the Student's size and the [REDACTED], the Student's [REDACTED] [REDACTED] to the safety of [REDACTED] peers and staff.

4. At times, the Student has expressed calculated [REDACTED] to harm [REDACTED] by [REDACTED] own finger and then tell [REDACTED] [REDACTED] that staff inflicted the injury. The Student has also feigned illness by [REDACTED] [REDACTED]. Additionally, the Student has [REDACTED]

[REDACTED]

[REDACTED]

5. The clear evidence showed that the Student's [REDACTED] is [REDACTED] maintained, varied, and not [REDACTED]. The evidence also showed that, although the Student has the ability to follow directions, [REDACTED] behavior varies as to whether [REDACTED] chooses to comply with instructions or directions. As such, the Student's behavior requires extensive direct instruction and [REDACTED] [REDACTED] in order to acquire, generalize, and transfer skills across settings.

6. In the [REDACTED] school year, the Student was enrolled in an Escambia County school (School A) as a [REDACTED]-grader. School A is a [REDACTED] school ([REDACTED] or [REDACTED] [REDACTED]) designed to meet the needs of students with [REDACTED] [REDACTED]. Students at the school do not generally spend a significant amount of time with nondisabled peers. The [REDACTED] [REDACTED] has a very [REDACTED] [REDACTED]; highly trained staff, including [REDACTED] [REDACTED]; access to specially trained [REDACTED] [REDACTED]; and various [REDACTED] personnel who can address the Student's educational and [REDACTED] with each student assigned to a counselor. The school also employs highly trained [REDACTED] and [REDACTED] personnel and is [REDACTED]

who also provide [REDACTED] to Students at the school, including Petitioner.

7. With the consent of the [REDACTED], the Student was given a psychological evaluation and a [REDACTED] ([REDACTED]) during [REDACTED] school year. As a result of the [REDACTED] was developed that set forth the Student's target [REDACTED], a hypothesis as to the function of the [REDACTED], and recommended [REDACTED]. The reasons underpinning the Student's [REDACTED] were well understood by Respondent's staff and have not changed over the Student's time in public school. There were no challenges by Petitioner to the Student's [REDACTED] school year, IEP, [REDACTED].

8. The Student returned to School A for [REDACTED]-[REDACTED]. The Student was again placed in an [REDACTED] classroom with [REDACTED] staff support. The [REDACTED] from the prior year remained in effect and were appropriate for the Student.

9. During [REDACTED] and [REDACTED]-grade years, the Student progressed on [REDACTED] IEP goals and made significant progress in controlling [REDACTED] and [REDACTED]. The Student's ability to be [REDACTED] improved significantly. The uncontroverted evidence demonstrated that the Student's [REDACTED] had decreased to the point that school staff felt the Student could begin to work on other [REDACTED] goals involving

██████████. However, the Student continued to require a high level of ██████████ support and prompting for ██████████

10. The Student's ██████████ were scheduled to be reassessed because the Student's ██████████ had improved. However, the School Board was not able to complete a reassessment of the Student's prior ██████████ because just weeks into ██████████-grade year, the Student's ██████████ elected to withdraw the Student from public school and place ██████████ in a private school. The decision was not in the best interest of the Student and proved devastating for ██████████. After seven weeks at the private school, the Student's ██████████ with ██████████ increasing. As a result, the Student was ██████████ ██████████ in a ██████████ ██████████.

11. While still ██████████, the Student reenrolled in public school shortly before ██████████. An annual IEP dated ██████████, was developed. The December IEP reflected that the Student was ██████████ ██████████, ██████████ and ██████████, with social and academic ██████████. ██████████ present level of performance in the ██████████ domain was described in the IEP as:

[The Student] can follow routines and procedures. ██████████ responds better to preferred ██████████. ██████████ gets along well with some of ██████████



peers within the classroom and unstructured activities, such as on the playground. [The Student] knows how to interact in a socially appropriate manner with peers and adults and will do so, at times.

Based on data gathered on [redacted] daily point sheets last school year, when [the Student] is feeling [redacted] or [redacted], [redacted] will respond with [redacted] and [redacted]. [redacted] will use [redacted] and verbal [redacted] others. [The Student] will leave [redacted] assigned area and refuse to respond to adults.

[redacted] when [redacted] becomes [redacted] or [redacted]. These [redacted] cause [redacted] to lose instructional time. [redacted] requires [redacted] constant monitoring of [redacted] status [redacted] to reduce [redacted] and [redacted]. [redacted] needs a highly structured, intensive, individualized, [redacted] [redacted] plan while in the classroom/school setting, [redacted] treatment infused throughout [redacted] educational program.

The above-described [redacted] were demonstrated throughout the school day and within all the domains addressed in the Student's IEP. Decisions regarding Extended School Year (ESY) services were postponed until [redacted]. Notably, all the IEPs and [redacted] were implemented during the [redacted] school year.

12. As indicated, because the Student remained [redacted] and continued to need [redacted] [redacted], the educational plan was to gradually transition the Student from a [redacted] placement to placement in an [redacted] class at School A, the [redacted]

██████████ ██████ had been in prior to ██████ withdrawal from the school by the ██████. The IEP team, including the ██████, determined that the timing and the speed of transition to School A was to be flexible. Importantly, the team decided that the timing and the speed of transition would be determined by faculty, staff and counselors at School A with the duration of each incremental step lasting until ████████████████████, the date of the next annual IEP review. The evidence demonstrated that the method of the transition was necessary for the Student and provided FAPE to the Student. As such, the IEP, as agreed to by the ██████, only needed to be updated as progress or regress occurred throughout the school year. At every step the ██████ were informed of any changed steps in the Student's transition. Further, the ████████████████████ had the opportunity to provide input into those transition changes. The evidence demonstrated that the transition process devised by the IEP team and the ████████████████████ complied with IDEA.

13. Based on the transition plan, around ████████████████████, the Student initially was enrolled in the ████████████████████ ██████ at the local ████████████████████. During that time, the Student received instruction from ████████████████████, a school district employee that served students ████████████████████ at the ████████████████████. The Student then gradually began to transition to School A.

14. Transition to School A proceeded during the year based on faculty, staff, and counselor determinations. IEPs reflecting that transition were updated on [REDACTED]. These updated IEPs for the [REDACTED] school year did not differ significantly in the description of the Student's [REDACTED] because the educationally relevant aspects of the Student's [REDACTED] had not changed. Further, the evidence demonstrated that these IEP's met the procedural requirements of IDEA with the [REDACTED] being advised at each step in the transition. The evidence also demonstrated that these IEPs provided FAPE to the Student.

15. As reflected on the IEPs, by [REDACTED], the Student had worked up to attending School A for [REDACTED] per week [REDACTED]. Unfortunately, on [REDACTED], the Student, during an [REDACTED] [REDACTED] at School A while the [REDACTED] was appropriately attempting to [REDACTED] of the Student. The evidence demonstrated that the [REDACTED] appropriately removed a pencil from the Student's mouth to protect the Student from injury and to prevent the Student from using the [REDACTED] as [REDACTED] had done in the past. After the [REDACTED] removed the pencil and while the Student's [REDACTED] continued, the Student [REDACTED]

██████████ and then began to ██████████ the ██████████ with ██████████. Other staff intervened to stop the Student from ██████████ the ██████████. The ██████████ ██████████ was ██████████ and ██████████ against the Student on the day the ██████████ occurred.

16. Because the ██████████ against the Student and ██████████ with the ██████████ removal of the pencil from the Student's mouth, the ██████████ requested the ██████████ be removed from the school. Additionally, the day after the incident on ██████████, the Student's ██████████ emailed the District and requested that the ██████████ not engage with or work in the same room with the Student. At the time of this email, the ██████████ was already aware that the ██████████ against the Student. The School Board correctly refused to remove the ██████████ ██████████ from the Student's classroom because ██████████ had done nothing wrong in handling the Student and had developed a good working relationship with other students in the classroom. ██████████ also had developed a good working relationship with the Student. The evidence did not show that the Student would be harmed by returning to School A, or harmed by being in the same area as the ██████████. The Student's ██████████ elected for the Student not to return to School A and the Student did not return

to School A. The Student did continue to reside at the [REDACTED].

17. Given the [REDACTED] unilateral decision in [REDACTED] to not allow the Student to attend School A and the Student's [REDACTED] and need for continued [REDACTED] [REDACTED], all appropriate staff at School A agreed that the Student should continue on the [REDACTED] program as provided in [REDACTED] previously updated IEPs with services provided at the [REDACTED] or other location. The better evidence showed that the decision provided FAPE to the Student, complied with the IEP, and complied with IDEA.

18. As a result, beginning on [REDACTED] again provided [REDACTED] [REDACTED] to the Student at the [REDACTED]. Because of one [REDACTED] refusal to allow the Student to return to School A, the [REDACTED] were aware of and informed of the step change in the transition of the Student back to increased [REDACTED] program at the [REDACTED]. On [REDACTED] [REDACTED], the IEP was appropriately updated within a reasonable amount of time relative to the Student's transition. At least one [REDACTED] agreed with the transition update. Thereafter, as indicated, the Student continued to receive [REDACTED] instruction through the end of the [REDACTED] school year. More importantly, the evidence demonstrated that the Student's IEP and

educational placement were appropriate, provided FAPE to the Student, and complied with IDEA.

19. As indicated, the Student was [REDACTED] from the [REDACTED] sometime in [REDACTED] and continued on [REDACTED] placement as provided in the Student's IEP. The clear evidence demonstrated that the placement was appropriate for the Student and provided FAPE to the Student.

20. On, an IEP meeting was held with the [REDACTED] in attendance [REDACTED]. Because the [REDACTED] continued to be concerned about the [REDACTED] against the Student and because the team had ongoing concerns with the Student's [REDACTED], the updated [REDACTED], IEP was again updated on [REDACTED]. Minor changes were made in the present levels of performance. The Student's placement remained [REDACTED] with some services provided at School A at various times through the remainder of the year.

21. ESY services were discussed and added to the IEP. The services were scheduled during the summer with varying services and time periods. The team, including the [REDACTED], determined that the Student was to attend ESY at School A for the month of [REDACTED] and receive instruction in a [REDACTED] setting for the month of [REDACTED]. The [REDACTED] setting was finalized to occur at School A at an IEP meeting with the [REDACTED] on [REDACTED].

22. Daily schedules for the relevant time periods during June and July [REDACTED] were to be developed by School A staff. The [REDACTED] indicated that the hours during the day were not an issue and that the Student would be available for the to-be-determined ESY schedules. The main and very important educational need for the Student in creating the ESY daily schedules was to schedule at least [REDACTED] with the Student while [REDACTED] was at school with [REDACTED] being the teacher. The team, including the [REDACTED], agreed to the ESY plan. The evidence demonstrated that the ESY plan complied with IDEA and provided FAPE to the Student.

23. The remainder of the May [REDACTED] IEP meeting involved the Student's placement for [REDACTED] -grade year [REDACTED]. As indicated, following the [REDACTED], the Student's [REDACTED] refused to allow the Student to return for the [REDACTED] school year to School A, unless the [REDACTED] was removed from the school. The [REDACTED] requested removal was unreasonable and not required by IDEA. However, the evidence showed for reasons more [REDACTED] than educational, the Student's [REDACTED] insisted on transitioning the Student to School B, the Student's neighborhood general education middle school, even though the Student had not achieved the level of [REDACTED] expected of students to successfully transition out of School A to a school like School B.

24. In that regard, the evidence showed that School B is a [REDACTED] public school within the Escambia County School District. The physical plant of School B consists of [REDACTED]. There are approximately [REDACTED] students at the school. However, since representatives from the middle school were necessary to a continued discussion by the IEP team of placement at School B, the [REDACTED], meeting was adjourned with a future IEP meeting to be scheduled.

25. An IEP meeting was held [REDACTED], and an annual IEP was developed with a duration until [REDACTED]. The [REDACTED], [REDACTED], IEP reflected that the Student continued to be [REDACTED] and [REDACTED], with [REDACTED] and [REDACTED]. [REDACTED] present level of performance in the social/emotional [REDACTED] domain was described in the IEP as:

Based on observations and data, [the Student] can follow routines and procedures. [REDACTED] responds best to preferred adults. [REDACTED] gets along with some of [REDACTED] peers in the classroom and in unstructured activities such as the playground. [The Student] knows how to interact in a socially appropriate manner [REDACTED].

Based on data gathered on [REDACTED] daily point sheets when [the Student] is feeling [REDACTED] or [REDACTED] will respond with [REDACTED]. [REDACTED] will use [REDACTED] and [REDACTED] and



will also [redacted] at others. [The Student] will leave [redacted] assigned area without permission and [redacted] to respond to adults. Additionally, [the Student] continues to struggle with [redacted] items that do not belong to [redacted].

Due to [redacted] inability to [redacted] and manage [redacted] emotions and [redacted], [the Student] requires a highly structured, [redacted] throughout the school day with daily reports to family and service providers. [redacted] cause [redacted] to lose instructional time. [redacted] requires constant monitoring of [redacted] status to reduce episodes of [redacted] and [redacted]. [The Student] requires breaks throughout the day to manage [redacted]. Additionally, [the Student] needs [redacted] throughout [redacted] educational program and daily instruction in social/emotional skills. These needs interfere with [redacted] ability to [redacted] at this time.

The [redacted] were demonstrated throughout the school day and within all the domains addressed in the Student's IEP. The team, including the [redacted], decided to collect [redacted] data over the summer to determine how the Student was doing and the best way to proceed for [redacted] education in [redacted] school. The deliberate approach to decision making was warranted given the Student's [redacted] difficulty with transitions and the real concern over whether [redacted] needs could be met in a large school environment. The evidence demonstrated that the Student completed the regular school year and made adequate progress

under [REDACTED] IEP because of the [REDACTED] provided by School A staff.

26. Over the next several weeks, the daily schedule for both the June and [REDACTED] ESY sessions were established by School A staff. All the ESY services on the Student's IEP were offered during the established schedule. The better evidence demonstrated that the daily schedule for both sessions provided FAPE to the Student.

27. The June [REDACTED] session services were provided. [REDACTED] goals during the June [REDACTED] session in the small [REDACTED] setting of School A were met. During the July [REDACTED] session, the Student was to receive [REDACTED] minutes of instruction, [REDACTED] days per [REDACTED], between [REDACTED] and [REDACTED]. Teachers and staff that met the requirements of the ESY plan were present at the [REDACTED] location and were prepared to provide services to the Student. The evidence was clear that the [REDACTED] desired the [REDACTED] services be provided in the morning, even though the [REDACTED] had advised the team the hours for the daily schedule were not an issue. As a result of the [REDACTED] insistence on morning hours, the Student only attended [REDACTED] during the July ESY period and did not avail [REDACTED] of an otherwise appropriate education. The evidence did not demonstrate that morning or earlier hours were required for the Student to receive FAPE. Further, the better evidence demonstrated that the [REDACTED] ESY

services and staffing plan were appropriate for the Student, complied with IDEA and provided FAPE to the Student.

28. Additionally, during the summer, [REDACTED] data continued to be collected while the Student was in ESY. Updating the Student's [REDACTED] and [REDACTED] were discussed and planned for the future. Psychological and psychiatric reevaluations were completed.

29. An IEP meeting was held [REDACTED]. Consent for an [REDACTED] reevaluation was provided by the [REDACTED]. Additionally, the IEP team agreed to explore the implementation of the Student's IEP at School B. Planning for the Student's transition to School B from School A began in the [REDACTED] of [REDACTED]. At all times, the [REDACTED] had input into those plans. The evidence showed that a gradual transition was warranted given the Student's [REDACTED] needs and difficulty transitioning to new larger environments. The tentative plan was that the Student would attend School A during the first part of the [REDACTED] school year. Further, discussion and potential planning would occur during a future meeting to be held in early [REDACTED]. The evidence did not demonstrate that promises were made regarding the exact placement or personnel at School B.

30. The Student began the [REDACTED] school year at School A. During the [REDACTED] nine weeks of the [REDACTED] semester, the Student's IEP called for [REDACTED] to be educated in an

██████████ of a blended program of partial day services at School A and partial services at School B. During that time ██████████ data was being collected. The Student's ██████████ and IEP were implemented and the Student was provided FAPE.

31. From ██████████ until ██████████, the School Board conducted a reassessment of the Student's ██████████. The Student's ██████████, performed by ██████████, was extensive and took many hours to complete. The uncontroverted evidence demonstrated that the Student's ██████████ was accurate, reliable, and appropriate. As a result of the ██████████, an appropriate ██████████ was developed that set forth the Student's ██████████, a hypothesis as to the function of the ██████████, and recommended replacement ██████████. Again, the reasons underpinning the Student's ██████████ were well understood by Respondent's staff and have not changed over the Student's time in public school. Further, the uncontroverted evidence demonstrated that the ██████████ and resultant ██████████ were appropriate, provided FAPE to the Student and complied with IDEA.

32. The evidence showed that the Student's ██████████ was ██████████ and marked by various ██████████ to follow adult directions to complete academic tasks through ██████████ and ██████████, as well as other types of ██████████. In fact, the evidence demonstrated that the Student exhibited a consistent pattern of ██████████ to follow adult direction followed

by [REDACTED] in response to redirection and prompts from staff, as well as [REDACTED] toward trusted adults during transitions.

33. Based on the [REDACTED] and [REDACTED], the IEP team renewed and updated the [REDACTED] on [REDACTED], for the Student's setting at School B. The [REDACTED] was aligned with [REDACTED] strategies for use with the Student. The [REDACTED] also addressed preventative strategies to try to decrease the Student's [REDACTED]. Indeed, the uncontroverted evidence showed that teachers and staff at School B were appropriately trained on the use and [REDACTED] of the [REDACTED]. Further, the evidence demonstrated that both the [REDACTED] and the [REDACTED] were appropriate, provided FAPE to the student and complied with IDEA. In fact, Petitioner presented no competent substantial evidence of record that any [REDACTED], or IEP developed during the Student's education was not appropriate for the Student.

34. The IEP team reconvened again sometime in the beginning of October [REDACTED], at a properly noticed IEP meeting. The [REDACTED] attended the meeting. However, the meeting could not be completed and was rescheduled for [REDACTED]. At the time of the meeting, with reasonable efforts being made, School B generally was having difficulty locating and hiring an [REDACTED] teacher qualified in required [REDACTED]

subject areas who could meet the Student's unique needs. Moreover, at the time of the meeting and although a [REDACTED] [REDACTED] classroom had been discussed by the IEP team members as a possibility if needed by the Student, the evidence did not demonstrate that a [REDACTED] classroom was promised by the School Board or determined appropriate by the IEP team.

35. At the [REDACTED], meeting, the IEP team, including the [REDACTED], developed an IEP for the Student. In general, the Student's [REDACTED] is characterized throughout the IEP as not participating in class in a meaningful manner, unwilling to complete [REDACTED] work and not caring about [REDACTED] grades. Additionally, the Student hurries through assignments, if [REDACTED] chooses to complete them, and hurries through testing without making a reasonable effort on the test. The description of the Student's performance in the social/emotional [REDACTED] domain in the IEP was:

[The Student] [REDACTED]  
[REDACTED] .  
[REDACTED] .  
[REDACTED] ,  
[REDACTED] ,  
[REDACTED] . [The  
Student] [REDACTED]  
[REDACTED] .

36. Beginning [REDACTED], the Student began attending School B on a part-time basis for [REDACTED] minutes per week ([REDACTED] hours per day) and School A for [REDACTED] minutes per week ([REDACTED] hours per day). In the School B setting, the Student was to receive direct, small group, intensive instruction or curriculum with assistance, supports and accommodations. At School B, the Student's placement was in a [REDACTED] classroom for [REDACTED] percent or more of the Student's time at school. As such, the Student was in [REDACTED] classes with the exception of a [REDACTED] class with [REDACTED] minutes per week. The Student's blended schedule was specially designed to transition the Student from the School A program to School B by providing [REDACTED] ESE services for approximately [REDACTED] minutes per week for [REDACTED] periods per day with an [REDACTED] [REDACTED] [REDACTED] [REDACTED], and some on-line courses for math and science. Notably, a [REDACTED] was not contained in the IEP, but the possibility was left open depending on how the Student performed in the [REDACTED] classroom.

37. Importantly, during this transition period, the Student received daily counseling at School A at the beginning and end of the day to prepare for the day and debrief how each day had gone.

School B provided the Student with access to services by trusted adults, and implemented the Student's [REDACTED] in accordance with the [REDACTED] approach provided in [REDACTED].

Additionally, throughout the transition period, the Student's program included the support of a [REDACTED], strategies to assist with [REDACTED] education and [REDACTED], and [REDACTED] support in the regular school setting.

38. As indicated, when enrolled in the School B setting in October [REDACTED], the Student was placed in an [REDACTED] classroom with [REDACTED], a well-qualified [REDACTED] teacher specially trained in the implementation of the Student's [REDACTED]. The Student also was provided [REDACTED] services of a [REDACTED] in all settings. The [REDACTED] [REDACTED] was a trusted individual, known to the Student since [REDACTED] earlier [REDACTED] grades. The [REDACTED] had received extensive training in [REDACTED], safety care, and use of [REDACTED] strategies and was trained on implementing the Student's [REDACTED]. Similarly, all staff who might interact with the Student were trained in the implementation of the Student's [REDACTED]. Staff also received training in [REDACTED] and [REDACTED]-[REDACTED]. The evidence demonstrated that the Student's IEP and all accommodations of [REDACTED] IEP and [REDACTED] were appropriately implemented by staff at School B. However, despite counseling, intervention strategies, family conferences, [REDACTED]



██████████, observations, and other interventions, the Student's ██████████ did not improve during the ██████████ semester of the ██████████-██████████ school year. Further, the Student continued to avoid tasks, would frequently ██████████ of class, refuse to do any assignment, and would have verbal and ██████████ toward peers and adults on a daily basis.

39. An IEP meeting was held on ██████████, ██████████, where the IEP team, including the ██████████, decided that the Student would attend School B full-time and that a ██████████ classroom would be developed for the Student for part of the school day. However, School B did not have a ██████████ classroom of small group size since students in School B did not require such a class. Therefore, a smaller ██████████ class had to be developed with an additional ██████████ hired to teach the smaller class.

40. The evidence demonstrated that as soon as reasonably possible, given the constraints and difficulty in hiring and training specially trained ██████████ personal in the middle of the school year, ██████████, the principal at School B, developed a ██████████ for the Student's core content instruction. The evidence showed that the additional teacher, ██████████, was eventually hired and started in the beginning of ██████████ ██████████, when school was back in session after the Christmas break. ██████████ was a well-qualified ██████████ teacher.

41. The existing [REDACTED] classroom was split. [REDACTED] was assigned to the new unit.

42. [REDACTED] class was a [REDACTED] model classroom. The class had [REDACTED] [REDACTED] students in the class. Only Petitioner was taking general education curriculum in the [REDACTED] [REDACTED]. The other students were on an [REDACTED] curriculum. The evidence showed that the Student received [REDACTED] core content (science, social studies, and math) through [REDACTED] [REDACTED] that is used for [REDACTED]. The Student was placed in [REDACTED] class for half of the day and continued in [REDACTED] class for reading instruction, as well as other electives where [REDACTED] received small group instruction. Again, the evidence demonstrated that the Student was provided with all accommodations and services contained in the Student's IEP and [REDACTED]. The evidence also demonstrated that the instruction provided an appropriate educational opportunity to the Student.

43. However, the Student's [REDACTED] continued to [REDACTED] in [REDACTED] ability to take advantage of the educational opportunity provided to [REDACTED]. The Student's progress was limited due to [REDACTED] frequent requests to take breaks without completing [REDACTED] academic work and [REDACTED] refusal to return to class after taking a break. As a result, the Student "missed large chunks of instruction."

Further, because of the Student's frequent refusal to return to class in the School B setting, the Student was not able to benefit from access to typically developing peers.

44. Additionally, in the School B setting, the Student would attempt to [REDACTED] from school campus by [REDACTED] [REDACTED] [REDACTED] in an effort to leave the school grounds. Such [REDACTED] attempts were particularly dangerous to the Student, given the size and location of the School B campus.

45. The Student also [REDACTED] and the education of others. On one occasion, the Student [REDACTED] at [REDACTED] with the books, and [REDACTED] in order to attempt to gain the teacher's attention. [REDACTED] continued to teach [REDACTED] other students while being [REDACTED] by the Student. The Student would also become upset if [REDACTED] [REDACTED] with other students.

46. On [REDACTED], the Student [REDACTED] and attacked [REDACTED] [REDACTED] after the [REDACTED] appropriately [REDACTED]. The Student [REDACTED] the [REDACTED] in the [REDACTED], and [REDACTED] in the [REDACTED] a second time. The Student's [REDACTED] caused [REDACTED] and [REDACTED] to the [REDACTED] for which the [REDACTED] [REDACTED].

Because of the [REDACTED], the [REDACTED] against the Student.

47. As a result, the Student received a [REDACTED] for [REDACTED] days on [REDACTED], [REDACTED], for the [REDACTED] on [REDACTED] [REDACTED]. Previously, the Student had received a [REDACTED] [REDACTED] on [REDACTED], for the incident involving [REDACTED] reading teacher. As a result of these [REDACTED], a [REDACTED] was properly noticed and held on [REDACTED], with the [REDACTED] in attendance. The [REDACTED] that resulted in the [REDACTED] suspensions were determined to be a [REDACTED] of the Student's disability. After the [REDACTED], the IEP team met to review the Student's placement at School B. The [REDACTED] participated in the placement meeting.

48. The clear evidence demonstrated that, even though the Student had an appropriate IEP, [REDACTED] and [REDACTED] and that [REDACTED] [REDACTED] had improved somewhat, the Student's [REDACTED] in the School B setting had a negative impact on [REDACTED] education and learning, and the education and learning of others. The Student's [REDACTED] [REDACTED]

[REDACTED]. The evidence was clear that even a [REDACTED] placement at School B was not an appropriate placement for the Student. The evidence was also clear that the Student needed placement in a

school like School A, where in the past [REDACTED] had made appropriate progress with [REDACTED] and appropriate progress in academics.

49. Based on available data and appropriate input, the IEP team concluded that, due to the [REDACTED] of the Student's [REDACTED], the Student was unable to achieve reasonable educational progress in [REDACTED] or [REDACTED] classes at School B and recommended that the Student be placed back in School A, wherein the Student would have little to no time with nondisabled peers. The evidence showed that the Student's [REDACTED] felt the Student had made some [REDACTED] progress while at School B, but had not made adequate academic progress while at School B. The [REDACTED] desired that a new [REDACTED] class that taught only standard general education core curriculum and not an [REDACTED] curriculum should be created for the Student. However, the evidence demonstrated that such a [REDACTED] classroom would be [REDACTED] since the evidence did not demonstrate such a class was required by other [REDACTED] challenged students at School B. Indeed, such a class would be more restrictive and is not required under IDEA as a continuum of service in every school in the District. The Student's [REDACTED] were provided a parental consent form for placement in School A; however, the [REDACTED] did not consent.

50. The evidence was clear that the size of the campus and the general education setting of School B was unreasonably

██████████ and inappropriate for the Student, even with ██████████ and ██████████ classes provided. For the same reasons, the evidence also demonstrated that the Student could not gain appropriate educational progress while at School B. Further, the evidence demonstrated that interventions provided in the Student's ██████████ need to be followed, but could not be implemented at the School B campus with fidelity and safety due to the physical plant and personnel available. The fact that the IEP team tried to implement the Student's services at School B for a little more than a semester does not indicate that the School Board failed to provide FAPE to the Student during this time period. Notably, to that provide a student the opportunity to succeed in a lesser restrictive setting do not violate IDEA and in fact were desirable under the facts of this case in order to provide the Student the opportunity to succeed in a regular ██████████ school environment. Unfortunately, as the evidence over time demonstrated, the IEP team's attempt did not work out and the IEP team within a reasonable amount of time sought to rectify their failed attempt when it recommended placement back in School A.

51. As indicated, School A, the proposed ██████████ school, is an educational facility specially designed to meet the needs of students with ██████████. The school includes ██████████ students

and has a [REDACTED] population of students. The [REDACTED] also has a [REDACTED] (approximately [REDACTED]); highly trained staff, including [REDACTED] teachers; access to specially trained [REDACTED]; and various [REDACTED] personnel who can address the Student's educational and [REDACTED] needs. The proposed class at the [REDACTED] school would consist of approximately [REDACTED] students and [REDACTED]--the teacher, a classroom [REDACTED], and a [REDACTED]. The curriculum at School A is the same grade-level instruction using the same books, technology, and standards as a [REDACTED] public school. Each teacher provides an interactive classroom, with teacher-led assignments aligned to each student's goals and objectives contained in their IEP.

52. The mission of School A is to provide ESE students with [REDACTED] to permit students to receive education, [REDACTED] integrated services. The collaborative approach with local [REDACTED] services and providers includes [REDACTED].

53. The basic philosophy of School A is founded in [REDACTED] designed to provide coping skills and [REDACTED], so that students can be academically successful and

[REDACTED]. The goal of School A is to transition students to traditional public schools if possible.

54. School A operates a specially designed [REDACTED] [REDACTED] with specific class space, access to [REDACTED] counselors, and [REDACTED] space for students with [REDACTED] [REDACTED] needs. Pragmatic social skills training is a core function of instruction at School A. Additionally, the evidence showed that School A is a [REDACTED] school. It has extensive safety features to prevent students' [REDACTED] from the facility. Within easy access of the classrooms, School A has designed [REDACTED] [REDACTED].

55. All staff members of School A are extensively trained in safety care, [REDACTED], and [REDACTED]. Training of staff is ongoing annually and consumes hundreds of hours. The evidence showed that staff, at School A, are trained to a degree that is not possible at School B.

56. School A also provides [REDACTED] every day, either in small groups or individual [REDACTED] sessions. Therapists include [REDACTED]. The evidence showed that, at School A, [REDACTED] are embedded throughout the school day.



57. The clear evidence demonstrated that the [REDACTED] [REDACTED] would be able to implement the Student's IEP goals and [REDACTED], and would be an appropriate placement for the Student.

58. As indicated, the Student's [REDACTED] refused such placement, in part, based on the [REDACTED] desire that the Student attend a regular school so that [REDACTED] could have appropriate peers to model. However, as noted above, the Student required [REDACTED] [REDACTED] support and frequently refused to interact with both nondisabled and disabled peers. In fact, disabled peers avoided interacting with the Student because of [REDACTED].

59. In summary, the better evidence demonstrated that the Student cannot be satisfactorily educated in the [REDACTED] and [REDACTED] classroom with the use of supplemental aids and services. Further, the Student has been mainstreamed by the School Board to the maximum extent appropriate and placement in a [REDACTED] school is necessary due to the Student's [REDACTED]. Given these facts, placement in the [REDACTED] school is appropriate.

#### CONCLUSIONS OF LAW

60. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(b) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

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

62. 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 the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990). See also Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 197 L. Ed. 2d 335, 2017 U.S. LEXIS 2025, 137 S. Ct. 988, 85 U.S.L.W. 4109, 26 Fla. L. Weekly Fed. S 490 (U.S. Mar. 22, 2017).

63. [REDACTED] 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, [REDACTED] 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) and (b)(6).

64. Local school systems must also 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).

65. "Special education," as that term is used in the IDEA, is defined as:

[S]pecially designed instruction, at no cost to ██████████, 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).

66. 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).

67. 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).

68. 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 [REDACTED] 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. 5-16, 525-26 (2007).

69. In this case, the Petitioner alleged procedural violations based on the failure to hold a meeting in March of [REDACTED], when the Student returned to [REDACTED] placement, and failure to perform an [REDACTED] and create a new [REDACTED] in February of [REDACTED], when the IEP team recommended placement back in School A. However, neither allegation was established by the evidence.

70. The clear evidence regarding the [REDACTED] placement showed that the IEP team followed the IEPs in place at the time and followed the process established by the IEP team and

the [REDACTED] for the transition plan. In fact, the evidence showed that placement never changed, but the location and amount of those services changed over time based on the team-developed transition plan. At every stage, the [REDACTED] were informed and had input into the steps of the transition. Additionally, the evidence demonstrated that it was the [REDACTED] unilateral decision to not return the Student to School A, the Student's [REDACTED] [REDACTED] and continued [REDACTED] that caused the need for the Student to return to services at the [REDACTED] or another location. Given these facts, the portions of the Due Process Complaint relative to the failure to meet in March [REDACTED] should be dismissed.

71. In regards to the failure to perform an [REDACTED] and update the [REDACTED] in [REDACTED], the clear evidence demonstrated that there was no need for such action. The Student's [REDACTED] and the reasons underpinning that [REDACTED] had not changed and were well-understood by the School Board's staff. Additionally, as discussed below, the evidence was clear that the Student's proposed change in placement to a [REDACTED] was appropriate, making any failure to perform a new [REDACTED] or update the [REDACTED] immaterial. Given these facts, the portions of the Due Process Complaint relative to the failure to perform an [REDACTED] and update the [REDACTED] in February [REDACTED] should be dismissed.

72. 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.

73. 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.

74. 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).

75. Third, great deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Andrew 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."

76. 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).

77. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving [REDACTED]." 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 [REDACTED] 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 . . . .").

78. In this case, the clear evidence demonstrated that Petitioner was offered an appropriate opportunity, in both regular and ESY school terms, to progress during [REDACTED] educational

career based on [REDACTED] unique [REDACTED] and [REDACTED] issues that caused the Student to struggle and will likely continue to cause the Student to struggle. The evidence was clear that all teachers and staff at School A and School B were appropriately trained and appropriately implemented the Student's IEP and [REDACTED]. The evidence also demonstrated that, initially at School B, there was no promised [REDACTED], but that the Student would be provided an opportunity to progress academically and [REDACTED] in inclusive classes. The [REDACTED] would only be developed if the Student needed such a class. That need was not determined until [REDACTED] 2014, and, as the evidence demonstrated, was met within a reasonable amount of time after that determination was made by the IEP team given the fact that a teacher had to be hired and the class created from a larger [REDACTED] class. Further, the evidence demonstrated that the Student's curriculum, services and instruction were appropriate for the Student in the [REDACTED] and [REDACTED] and provided FAPE to the Student. Unfortunately, the Student did not make adequate academic progress due to [REDACTED]. However, the evidence demonstrated that it would have been inappropriate to create a different [REDACTED] for only [REDACTED] student. More importantly, as discussed below, the clear evidence demonstrated that the proposed [REDACTED] school was the appropriate and least restrictive placement for the Student.

79. In that regard, in addition to requiring that school districts provide students with FAPE, the IDEA further gives 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.

80. 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, the Florida Department of Education has enacted rules to comply with the above referenced mandates concerning LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

81. 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 [REDACTED], 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).

82. 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 [REDACTED] special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1044 (5th Cir. 1989).

83. 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.

Id. at 1048.

84. In Greer, infra, the 11th 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 ■ 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.

85. Here, the overwhelming evidence established that the Student cannot be satisfactorily educated in the regular classroom, with the use of supplemental aids and services.

86. 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).

87. In this case, the Student has received progressively more restrictive interventions and strategies on the placement continuum, to no avail. Likewise, the staff at School B has utilized all appropriate interventions and strategies, to no avail. As discussed above in the Findings of Fact, due to the nature and severity of the Student's disability, [REDACTED] did not, or could not receive an educational benefit from said interventions and strategies in a [REDACTED] placement. Additionally, [REDACTED] posed a [REDACTED] to [REDACTED] and others, and [REDACTED] [REDACTED] classmates' ability to learn.

88. The Student's IEP team has opined, and School Board witnesses uniformly testified, that FAPE cannot be provided to the Student absent a [REDACTED] setting. The undersigned is mindful that great deference should be paid to the educators who developed the IEP. A.K. v. Gwinnett Cnty. 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, "[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." Daniel, 874 F.2d at 1048.

89. In that regard, the IEP team proposes a change of the Student's placement to the next point (in terms of escalating restrictiveness) on the continuum of possible placements. While it is undisputed that the proposed placement offers less potential for interaction with nondisabled peers, the better evidence demonstrated that the Student's daily [REDACTED] and [REDACTED] warrant such a result. Therefore, the School Board's proposed placement of the Student in a [REDACTED] [REDACTED] mainstreams the Student to the maximum extent appropriate and is approved.



90. Finally, the balance of Petitioner's claims as asserted in the due process 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 the Due Process Complaint filed by Petitioner is dismissed since Respondent complied with IDEA and provided FAPE to the Student and that Respondent's proposed change of the Student's placement from a [REDACTED] to an [REDACTED] is approved.

DONE AND ORDERED this 20th day of November, 2018, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of November, 2018.

COPIES FURNISHED:

[REDACTED], Esquire  
Disability Rights Florida  
Suite 200  
2473 Care Drive  
Tallahassee, Florida 32308  
(eServed)

[REDACTED], Esquire  
Resolutions in Special Education, Inc.  
Suite 13  
10661 Airport Pulling Road  
Naples, Florida 34109  
(eServed)

[REDACTED]  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399  
(eServed)

[REDACTED], General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

[REDACTED]

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).