

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 25-4934E

DUVAL COUNTY SCHOOL BOARD,

Respondent,

and

RIVER CITY EDUCATION SERVICES,
INC.,

Intervenor.

_____ /

FINAL ORDER

The due process hearing was held on December 18 and 19, 2025; and January 20 and 21, 2026. The first two days were conducted using a hybrid method; with Petitioner and Petitioner's counsel appearing virtually, and Respondents appearing live in Jacksonville, Florida. The final two days were held by Zoom conference. Administrative Law Judge Jessica E. Varn, of the Division of Administrative Hearings (DOAH), presided over the due process hearing.

APPEARANCES

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STATEMENT OF THE ISSUES

Whether the School Board denied the student a free and appropriate public education (FAPE) by failing to design an appropriate Individualized Education Plan (IEP);

Whether the IEP was predetermined;

Whether the student's Behavior Intervention Plan (BIP) was implemented;

Whether the School Board denied the student a FAPE due to a delay in meeting its child find duty; and

What remedies, if any, are appropriate?

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on September 12, 2025. On September 24, 2025, Petitioner notified the undersigned that the parties attended a resolution session and were prepared to schedule a due process hearing. Two days later, the parties agreed to attend a pre-hearing conference on October 9, 2025.

At the pre-hearing conference, the parties agreed to schedule the due process hearing on December 18, 19, and 22, 2025. On October 13, 2025, the School Board requested an amendment to the hearing dates, stating that it could not attend a hearing during Winter Break. The School Board requested that the third day of hearing, December 22, 2025, be rescheduled either before or after Winter Break. At a November 21, 2025, motion hearing, the parties agreed to cancel the third day of the hearing. So the hearing was scheduled for only two days, December 18 and 19, 2025.

On December 8, 2025, the School Board filed a “Motion to Dismiss Issue II as Set Forth in Notice of Hearing issued by this Court November 25, 2025” (Motion to Dismiss) with over 80 pages of exhibits; arguing that the issue of predetermination of an IEP should be dismissed because its exhibits established that predetermination had not occurred. On December 17, 2025, Petitioner filed his Response objecting to the Motion to Dismiss. The Motion to Dismiss was denied at the start of the due process hearing.

The hearing was held as scheduled, but the parties did not complete their presentations. Thus, two more dates of hearing were scheduled, by agreement of the parties, on January 20 and 21, 2026. The parties entered a joint stipulation of facts, they offered the testimony of 17 witnesses, and multiple exhibits were admitted into the record. The Transcript of the due process hearing memorializes the identity and roles of each witness and the exhibits admitted into the record.

The undersigned considered all witness testimony and reviewed every exhibit; but not every witness will be referred to or every document referenced in the Findings of Fact that follow.

At the end of the due process hearing, the parties agreed that the final order deadline was extended to February 25, 2026. Both parties filed proposed final orders on February 11, 2026, and the undersigned reviewed them while preparing this final order. The parties then agreed to extend the final order deadline to March 4, 2026. The final Transcript was filed on February 11, 2026.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

Stipulated Facts

1. The student is [REDACTED]. He has an IQ of [REDACTED], and is eligible for Gifted services. He is also diagnosed with attention-deficit/hyperactivity disorder (ADHD), anxiety, and mood disorder. He entered the Duval County Public School system at a [REDACTED] school, [REDACTED], in August [REDACTED].

2. He is a student who loves to learn but requires support to access his education. At the [REDACTED] school, even with a 504 plan, his behavior did not improve.

3. On November 22, [REDACTED], he received a disciplinary referral and because of that infraction, the disciplinary action was a one-day in-school suspension.

4. On December 2, [REDACTED], he received a disciplinary referral and one-day of out-of-school suspension.

5. On December 9, [REDACTED], he received another disciplinary referral and, again, a one-day in-school suspension.

6. On December 10, [REDACTED], he again received a disciplinary referral and a three-day out-of-school suspension.

7. While at the [REDACTED] school, he could not attend certain school events because of his disciplinary write-ups.

8. On January 31, [REDACTED], he received his first referral from [REDACTED] School ([REDACTED]).

9. He received additional referrals on February 19 and 21, [REDACTED].

10. On March 4, [REDACTED], he received another referral.

11. He missed instruction because of discipline, removal, being sent home early, and through detention and suspensions both in and out of school.

12. In the [REDACTED] school year, he is enrolled in the after-school program, and was at risk of being kicked out for his behaviors that are a clear manifestation of his disability.

Findings of Fact based on the record

13. In an effort to give the [REDACTED] school an idea of the challenges [REDACTED] son faced, his [REDACTED] reached out to the [REDACTED] school as early as April [REDACTED], before his first day of [REDACTED] in August [REDACTED]. [REDACTED] provided the [REDACTED] school with a private evaluation, establishing his IQ, and diagnosing him with ADHD. The [REDACTED] shared that [REDACTED] had been told to seek a 504 Plan for [REDACTED] son once he was in [REDACTED] because he had been asked to leave three to four [REDACTED] due to his maladaptive behavior.

14. The [REDACTED] school staff told the [REDACTED] that [REDACTED] should bring all this information in August again—when the student was set to begin [REDACTED]. Delay in addressing the student's behavioral needs began here, and, for multiple unfortunate reasons, spanned almost an entire year, culminating in an IEP drafted a year later.

15. The student's [REDACTED] year began on August 12, [REDACTED]. A week into it, on August 19, he had to be picked up early from school because he made distracting noises during lessons, which then escalated to hitting

people with his lunch box and spitting. The Dean at the school, ██████████, had to come and chat with him, but he kept kicking and spitting.

16. The next day, the student's ██████████ sent a message to his teacher, stating, in part:

I would love to have a conference to go over scenarios with you. That said, the medicine usually keeps what happened yesterday at bay. [His] doctor tells me those are sensory overload issues and social emotional anxiety. *I'm hoping we can get [him] an IEP soon.*

(emphasis added).

17. The next day, on August 21, the student tried to hit and kick his teacher. ██████████ was again involved, but the student was not responding in a more appropriate manner, so he went home early again. The parents chose to keep the student home a few days and asked if it was possible to meet with school staff soon.

18. On August 28, ██████████, the parents met with the school staff. The ██████████ credibly testified that during this meeting, when the topic of an IEP versus a 504 plan arose, staff told the parents that because the student was not having academic challenges, he was only eligible for a 504 plan and a Gifted plan. The group spoke at length about the student's maladaptive behaviors, but staff did not seek parental consent for evaluation for Exceptional Student Education (ESE) eligibility.

19. The record makes clear that both parents were deeply concerned about their son's maladaptive behaviors, and relied on school staff to provide information as to what programs and plans could be put into place to keep these behaviors in check during the school day. The student's ██████████ also credibly testified that during ██████████ son's time at the ██████████ school, ██████████ was asked regularly to pick him up early, always due to his behavior challenges. The parents advocated for their son to avoid further discipline and focus

instead on supporting his disabilities and developing strategies to address his significant maladaptive behaviors.

20. On September 3, [REDACTED], the student threw a chair, kicked furniture, and drew on a table. Then, on September 9, [REDACTED], he hit other students with his foot and water bottle.

21. On September 10, [REDACTED], the parents reached out directly to the district seeking help, in an email. They wrote:

I am contacting you [district] in hopes of some direction and assistance with my [son]. [He] just started [REDACTED] at [REDACTED] [REDACTED] and is having trouble in the classroom. Prior to [him] starting [REDACTED] I made sure to get [him] evaluated...my [son] has ADHD and lacks social/emotional behavioral skills...the reason I am reaching out to you is for help. My [son] has been sent home three times...[he] has been removed from the classroom just about daily for disruptive behavior. I do not believe my [son] is getting the support or the education [he] needs to succeed in school at this time. *I requested an IEP and 504 plan with the school back in April* and they communicated to me that there was a miscommunication regarding the 504...

(emphasis added).

22. On September 23, [REDACTED], the student's teacher and [REDACTED] created a Positive Behavior Support Plan for the student. It included an incentive chart for him to earn stickers toward a reward when he exhibited preferred behavior. Negative consequences included giving the student additional warnings, before putting the school-wide consequences in place. The 504 Team was scheduled to meet on September 27, [REDACTED], but was rescheduled for October 22, [REDACTED], due to a hurricane.

23. During the 504 Team meeting in October, the parents shared that the student's psychiatrist had diagnosed him with anxiety and mood disorder, and that he was prescribed medicine to address his symptoms. The parents

were also paying a private occupational therapist (OT) to see the student weekly, to work on sensory issues and self-regulation strategies. The school staff met with the private OT and implemented the strategies [REDACTED] recommended for him at school. The OT even worked with the student at school. Again, the school staff did not seek parental consent to evaluate the student for ESE services.

24. On October 24, [REDACTED], the student received a disciplinary referral after putting a pillow over another student's face.

25. The 504 Team met on November 7, [REDACTED], and the student was found eligible for the Gifted program. After this date, he attended the gifted classroom once a week; and although he was the youngest student there, his behavior in that classroom was appropriate. At this eligibility meeting, the school staff did not seek consent to evaluate the student for any other needs or eligibilities.

26. On November 8, [REDACTED], the student kicked one student, pushed a second student, pulled the shirt of another student, and attempted to poke a student with a pencil.

27. On November 22, [REDACTED], his behavior upended his entire class. He started with knocking over classroom materials and puzzle pieces, and, as the behavior escalated, a concern for the safety of his classmates resulted in the evacuation of all other students from the classroom.

28. On December 2, [REDACTED], the student knocked books off the teacher's table and placed his chair on the table. He was sent to the Dean's Office where his behaviors continued to escalate, including kicking the Dean three times.

29. On December 6, [REDACTED], the parents met with school staff about the increased behaviors and what could be done to support him, including creating a "*** Box" with items he could use when transitioning, to aid in calming him when dysregulated. The group also finally discussed a referral for evaluation for ESE services.

30. On December 9, [REDACTED], the student tore up the bulletin board and used a staple from its border to scratch another student, causing that student to bleed. After the teacher's attempts to de-escalate him failed, [REDACTED] arrived to assist. He continued to rip off paper from the board and throw crumpled paper, hitting other students. The classroom was evacuated for safety concerns.

31. On December 10, [REDACTED], after lunch, the teacher allowed the student to choose an activity before completing the classwork. After completing a maze activity, he laid his head down and his teacher woke him up 15 minutes before leaving for the resource room. [REDACTED] set a physical timer to assist him in preparation. He refused to line up. He refused comfort items from his box. He eventually was brought to [REDACTED] office where he hit another student and threw materials. When his teacher tried to give him options, he started kicking [REDACTED], spit on [REDACTED], and threw water on [REDACTED]. He then went to the resource room and threw things around the room, kicked other students, ripped papers off the desk and walls, and drew with markers on the walls. The classroom was evacuated. He received three days of out-of-school suspension.¹

32. Also on December 10, the district sent the parents an invitation to meet on January 16, [REDACTED], to sign consent forms for evaluation for ESE services. Despite all these maladaptive behaviors, and the evacuation of classrooms because of safety concerns, there seemed to be no urgency in evaluating the student and creating an IEP, which the parents first requested in August. The district was comfortable allowing an entire month to pass before a meeting took place just to sign a consent form.

33. The parents understandably withdrew the student from the [REDACTED] school and enrolled him in his neighborhood school over the Winter Break.

¹ With the benefit of hindsight, one can speculate whether being sent home early and being sent home for days, particularly for a gifted young boy, served to inadvertently reinforce the outbursts.

Their concerns had not been allayed at the [REDACTED] school, the student's behaviors were escalating, and he kept receiving punishments for disability-related behavior.

34. Here again, the [REDACTED] had an initial meeting with school staff before the student arrived on the new campus. At a long meeting with the new Principal, the [REDACTED] shared her son's history, and told the Principal that the IEP process was supposed to begin in January.

35. During this initial meeting at [REDACTED], the [REDACTED] relied on advice given by the staff that day, which was to give the student a chance to acclimate to a new setting before beginning the IEP process. Once again, the student's educational needs were unmet, punted.

36. The Principal testified that the parents agreed with [REDACTED] at this point—which might very well be true—but the child find obligation falls on the shoulders of school staff, with no exception for parent agreement. The parents had been asking for an IEP for months, seeking guidance from the educators at every turn, and seeking advice from a psychiatrist, a private OT, and a private therapist.

37. During this time, the student was repeatedly disciplined for disability-related behavior, with no ESE services provided at the school level to stem this maladaptive behavior, or find positive replacement behavior.

38. The first time [REDACTED] took any formal step to address the student's behavior was late February [REDACTED], after he essentially destroyed the [REDACTED] classroom.² That first step was to schedule a meeting for the parents to sign a consent form to conduct a functional behavior assessment (FBA), which would eventually be used to write a BIP.

39. In March [REDACTED], the team finalized the BIP. Later in March, on the 26th, the team met to determine eligibility for ESE services and developed an IEP. The student was found eligible for ESE services under the Other Health

² Photos of this destruction are found in Petitioner's Exhibit 45.

Impaired (OHI) category, and his Gifted eligibility remained a secondary eligibility category.

40. The March IEP was drafted with the team knowing the discipline the student received, the consistent maladaptive behaviors he exhibited, and the safety concerns he presented. The team also knew that a private OT had assisted the charter school and that the student's highest priority needs were in social interactions, communication, and emotion regulation. Yet the IEP did not include the related services of language and OT, or counseling. The school staff's approach to the IEP in March, and the record as a whole, verify Petitioner's claim of predetermination.

41. As to the BIP embedded in the March [REDACTED] IEP, it was also deficient, as explained by Petitioner's expert, [REDACTED]. The IEP goals that addressed his behavioral need, which was to replace his maladaptive behavior with positive behavior, provided for just a once-a-week social skills group. [REDACTED] explained that with a young student, the more effective manner to teach replacement behaviors is one to one, daily. As she explained, the FBA, the BIP, the Safety Plan, and the IEP goals contained deficiencies in identifying problem behaviors, tracking them accurately, implementing proper interventions, regularly employing fidelity checks, and replacing the behaviors.

42. The more persuasive evidence established that the IEP, which was delayed and predetermined, was not designed to meet the student's needs.

43. As to the implementation of the deficient BIP, the more persuasive evidence established that the staff made a good-faith effort to materially implement the BIP, and collected data.

CONCLUSIONS OF LAW

44. DOAH has jurisdiction over the parties and the subject matter of this proceeding under sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

45. The burden of proof is on Petitioner, to prove the claim by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

46. Congress passed the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasize[s] special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *Phillip C. ex rel. A.C. v. Jefferson Cnty Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

47. In enacting the IDEA, Congress intended to address inadequate educational services offered to children with disabilities and combat the exclusion of such children from the public education system. *See* 20 U.S.C. § 1400(c)(2)(A)-(B). To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

48. The School Board, a local educational agency under 20 U.S.C. § 1401(19)(A), receives federal IDEA funds and thus, must comply with certain provisions of that Act. *See* 20 U.S.C. § 1401, *et seq.*

49. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents can examine their child’s records and participate in meetings concerning their child’s education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. *See* 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

Child Find

50. The first and arguably most important procedural obligation, logically, is to identify and evaluate students for IDEA eligibility, most often referred to as the School Board's ongoing child find obligation. Child find "refers to a school's obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child's parents to confront them with evidence of this need." *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

51. The IDEA sets forth the child find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

52. In compliance with the child find mandate, rule 6A-6.0331 sets forth a school district's ongoing responsibilities related to students suspected of having a disability. This rule requires school districts to ensure that students suspected of having a disability are subject to general education intervention procedures. They must identify, locate, and evaluate all students with disabilities who need ESE and make FAPE available if the student meets the eligibility criteria.

53. As an initial matter, the school district has the "responsibility to develop and implement a [multi-tiered system of support, or RTI], which integrates a continuum of academic and behavioral interventions for students

who need additional support to succeed in the general education environment.” Fla. Admin. Code R. 6A-6.0331(1).

54. The general education intervention requirements include parental involvement, observations of the student, review of existing data, vision and hearing screenings, and evidence-based interventions. Fla. Admin. Code R. 6A-6.0331(1)(a)-(e). Rule 6A-6.0331(1)(f) cautions, however, that nothing in this section should be construed to either limit or create a right to FAPE or to delay appropriate evaluations of a student suspected of having a disability.

55. In *J.N. v. Jefferson County Board of Education*, 12 F.4th 1355 (11th Cir. 2021), the Eleventh Circuit clarified the child find obligation, explaining that a parent must, after establishing a child find violation, also put forth evidence that the student was owed ESE services for the time that lapsed before finally receiving ESE services. (“So to succeed in her claim, Molly’s mother needs to show more than a child-find violation. She needs to show that Molly’s education ‘would have been different but for the procedural violation.’”) *Id.* at 1366, quoting *Leggett v. Dist. of Columbia*, 793 F.3d 59 at 68.

56. Here, there is overwhelming evidence that the student’s maladaptive behavior impeded his ability to access his education—his aggressive and sometimes destructive behavior, which surfaced regularly, required constant redirection, and constant trouble-shooting by the teachers to keep the student focused and engaged with his schoolwork. It required the evacuation of the classroom on more than a few occasions and harmed others. It escalated to a level that could have been avoided if the behavior was properly evaluated when it first surfaced, in August [REDACTED].

57. The evidence demonstrated that the School Board failed in its child find obligation in August [REDACTED], when the student’s [REDACTED] requested an IEP be developed. The School Board had an obligation to immediately begin the evaluation process, and failed to do so for months. The evidence also demonstrated that the student needed an FBA and a BIP to address these

maladaptive behaviors, and intense behavioral therapy and counseling. The behavior was never replaced with positive behavior, and, tragically, escalated to a level that could have been prevented, and resulted in excessive disciplinary action for conduct that was a clear manifestation of his disability.

Predetermination

58. Congress established procedural safeguards to ensure that parents have meaningful input into all decisions impacting their child's education. *See Honig v. Doe*, 484 U.S. 305, 312 (1988). The Eleventh Circuit addressed the issue of predetermination for the first time in *R.L., S.L., individually and on behalf of O.L. v. Miami Dade County School Board*, 757 F.3d 1173 (11th Cir. 2014).

59. In that case, the Eleventh Circuit held that "Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team." 757 F.3d at 1188. Thus, "the state cannot come into an IEP meeting with closed minds, having already decided material aspects of the child's education program without parent input." 757 F.3d at 1188. *See N.L. v. Knox Cnty. Schs.*, 315 F.3d 688, 694-95 (6th Cir. 2003) (finding no predetermination where school district representatives "recognized that they were to come to the meeting with suggestions and open minds, not a required course of action").

60. However, "[P]redetermination is not synonymous with preparation,' which the IDEA allows." *M.V. v. Conroe Indep. Sch. Dist.*, CV H-18-401, 2019 WL 193923, at *5 (S.D. Tex. Jan. 15, 2019). Therefore, school-based members of the IEP team may have preformed opinions on what is appropriate for a child's education so long as such opinions do not "obstruct the parents' participation in the planning process." *R.L.*, 757 F.3d at 1188.

61. As the Court explained, to avoid a finding of predetermination, there must be evidence that the School Board was receptive and responsive at all

stages to the parents' position, even if it ultimately rejected it. The inquiry into whether predetermination occurred is inherently fact intensive, but should identify those cases in which parental participation is meaningful and those cases in which it is a mere formality. *Id.* at 1189.

62. Here, Petitioner argues that the School Board denied their right to meaningfully participate in the March [REDACTED] IEP meeting, ignoring all data they presented. The school staff, at the IEP meeting, knew of a long history of disciplinary action based on the disability-related conduct, that a private OT had worked with the student at the charter school and continued to work with the student, that the student's therapist made suggestions as to how to manage the student's behavior, and that the student has communication challenges. Despite all this, school staff refused to place related services on the IEP, for OT and language; and did not place any type of counseling in the IEP. Their indefensible explanation was that more data needed to be collected. The parents' legitimate pleas to address their son's needs were summarily dismissed. Thus, the resulting IEP, based on the more persuasive evidence, was predetermined.

Design of IEP

63. Petitioner also alleges a substantive violation; that is, that the IEP was flawed in design and did not provide FAPE. 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).

64. 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 to 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 is the centerpiece of the statute’s education delivery system for disabled children.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Id.* (quoting *Rowley*, 458 U.S. at 181).

65. Under the second step of the *Rowley* test, it must be determined whether the IEP is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07.

66. In *Andrew F.*, the Supreme Court held that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S. Ct. at 999. As discussed in *Andrew 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.*

67. Most importantly, the IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet *each* educational need that results from the child’s

disability. 20 U.S.C. § 1414(d)(1)(A)(i)(II); *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004)(explaining that an IEP must respond to all significant facets of the student’s disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003)(“We believe, as the district court did, that the student’s IEP must be responsive to the student’s specific disabilities”).

68. Here, the more persuasive evidence establishes that the IEPs were not appropriately ambitious in light of the student’s circumstances. The IEPs did properly identify the student’s levels of performance and academic achievement, but they failed to address the student’s significant behavior needs, did not provide the related services of OT and language to aid in social skills and communication, and included no type of counseling. The BIP embedded in the IEP was also deficient, and conflicted with its behavioral goals. The record as a whole established that the March [REDACTED] IEP was not designed to provide this student FAPE.

Implementation of BIP

69. Lastly, Petitioner alleges that the student’s BIP was not properly implemented. The Eleventh Circuit addressed the issue of implementation for the first time in *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019). The court outlined the standard for claimants to prevail in a “failure-to implement case.” *Id.* The court concluded that “a material deviation from the plan violates the [IDEA].” *L.J.*, 927 F.3d at 1206. The *L.J.* court expanded upon this conclusion as follows:

Confronting this issue for the first time ourselves, we concluded that to prevail in a failure-to implement case, a plaintiff must demonstrate that the school has materially failed to implement a child’s IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a

school has failed to implement substantial or significant provisions of a child's IEP.

Id. at 1211.

70. The court provided a few principles to guide the analysis. *Id.* at 1214. First, the court said that the focus in implementation cases should be on the proportion of services mandated to those provided, viewed in the context of the goal and importance of the specific service withheld. Thus, the task is to compare the services delivered to the services described in the IEP. In turn, "courts must consider implementation failures quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole." *Id.*

71. Additionally, the *L.J.* court noted that the analysis must consider implementation as a whole:

We also note that courts should consider implementation as a whole in light of the IEP's overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

Id. at 1212.

72. Here, Petitioner provided no persuasive evidence that the student's BIP, as written, was not materially implemented. The evidence showed that the staff did their best to record data, and followed the deficient BIP as best they could. Thus, this claim fails.

Relief

73. Because the School Board procedurally violated the IDEA by failing in its child find obligation and because the student was deprived of adequate behavioral services from August [REDACTED] to September [REDACTED], and denied FAPE

in the predetermined IEP created in March [REDACTED], the student has a right to appropriate remedies.

74. In that regard, if a district court or administrative hearing officer determines that a school district violated the IDEA by denying FAPE, the court shall “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). In so doing, the court or administrative hearing officer has broad discretion. *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2001); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009)(observing that 20 U.S.C. § 1415(i)(2)(C)(iii) authorizes courts and hearing officers to award appropriate relief, despite its silence in relation to hearing officers).

75. Such “appropriate” relief may include reimbursing parents for the cost of private replacement therapy; transportation expenses; credit card transaction fees and interest; and, for times when a trained service provider is unavailable, reimbursement for time a parent spent providing therapy personally. *See Bucks Cnty. Dep’t of Mental Health v. Pa.*, 379 F.3d 61, 63 (3d Cir. 2004)(“[W]e hold that under the particular circumstances of this case, where a trained service provider was not available and the parent stepped in to learn and performed the duties of a trained service provider, reimbursing the parent for her time spent in providing therapy is ‘appropriate’ relief”); *D.C. ex rel. E.B. v. N.Y.C. Dep’t of Educ.*, 950 F. Supp. 2d 494, 516 (S.D.N.Y. 2013)(awarding reimbursement for transportation costs); *JP v. Cnty. Sch. Bd.*, 641 F. Supp. 2d 499, 506-07 (E.D. Va. 2009) (awarding parents a reasonable interest rate to compensate for tuition payments made by credit card, as well as credit card processing fees). Appropriate relief also depends on equitable considerations, so that the ultimate award provides the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005).

76. In addition, a court may provide an award of compensatory education. *Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (quoting 20 U.S.C. § 1415(e)(2)). Compensatory education is an award “that simply reimburses a parent for the cost of obtaining educational services that ought to have been provided free.” *Hall v. Knott Cnty. Bd. of Educ.*, 941 F.2d 402, 407 (6th Cir. 1991); see also *Draper v. Atlanta Indep. Sch. Sys.*, 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007)(holding that, in formulating a compensatory education award, “the Court must consider all relevant factors and use a flexible approach to address the individual child’s needs with a qualitative, rather than quantitative focus”), *aff’d*, 518 F.3d 1275 (11th Cir. 2008).

77. Guided by the above principles, Petitioner is entitled to compensatory behavioral services designed specifically for his behavioral needs, for the period between August [REDACTED] and September [REDACTED]; with a full evaluation, and a BIP designed by a behavioral expert such as a Board Certified Behavior Analyst (BCBA). He is also entitled to a new IEP that addresses all his needs—OT, language, counseling, and behavioral goals that incorporate a one-to-one Registered Behavior Technician (RBT).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board denied the student FAPE, and is ordered to:

1. Conduct a full behavioral evaluation of the student, including an FBA conducted by a behavior expert, such as a BCBA, to address all the student’s current needs;
2. Create and implement a BIP to address the student’s maladaptive behaviors;
3. Reconvene the IEP team and develop an IEP that incorporates OT, language, and a 1:1 RBT daily; and

4. Provide one year of mental health counseling as compensatory education, as well as ongoing counseling.

5. All other forms of relief are DENIED.

DONE AND ORDERED this 27th day of February, 2026, in Tallahassee, Leon County, Florida.

~~Case No. 25-4934E~~

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of February, 2026.

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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).