

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████,

Petitioner,

vs.

Case No. 13-0352E

VOLUSIA COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

Pursuant to Florida Administrative Code Rule 6A-6.03311 and section 1003.57, Florida Statutes,^{1/} a due process hearing was conducted in this case on October 2 and 3, 2013, in Daytona Beach, Florida, before James H. Peterson, III, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marla J. Rawnsley, Esquire
Pappas, Russell & Rawnsley
213 Silver Beach Avenue
Daytona Beach, Florida 32118

Douglas G. Rawnsley, Esquire
327 South Palmetto Avenue
Daytona Beach, Florida 32114

For Respondent: Andrew B. Thomas, Esquire
Andrew B. Thomas, P.A.
1625 Lakeside Drive
Deland, Florida 32720

Sebrina L. Slack, Esquire
Landis Graham French, P.A.
Post Office Box 48
Deland, Florida 32721

STATEMENT OF THE ISSUE

Whether the Volusia County School Board (School Board) deprived Petitioner of a free appropriate public education as alleged in the request for a due process hearing submitted on behalf of Petitioner and, if so, what relief, if any, should be granted.

PRELIMINARY STATEMENT

On or about January 10, 2013, a document entitled "Request for Exceptional Student Education (ESE) Due Process" (Due Process Request) was submitted to the School Board on behalf of Petitioner and Petitioner's parents. The issues identified in the Due Process Request and further refined in the parties' pre-hearing stipulation include:

- a) Whether the School Board provided Petitioner a free appropriate public education in the least restrictive environment;
- b) Whether the School Board evaluated or developed an appropriate individual education plan (IEP) for Petitioner's identified disabilities;
- c) Whether the School Board properly implemented Petitioner's IEPs; and
- d) Whether Petitioner's IEPs were reasonably calculated to enable Petitioner to receive a free appropriate public education in the least restrictive environment.

The Due Process Request was transmitted to the Division of Administrative Hearings (DOAH) on January 22, 2013, and assigned to the undersigned. On January 24, 2013, the undersigned entered an Order Requiring Status Report which advised the parties of the applicable statutory hearing and decisional timelines. On February 19, 2013, the parties requested that this case be placed in abeyance, which was granted by an Order Placing Case in Abeyance until March 11, 2013. The final hearing was subsequently rescheduled for April 25 and 26, 2013. Thereafter, at the request of Petitioner, without objection from the School Board, the final hearing was continued and rescheduled for August 20 and 21, 2013. Subsequently, once again at Petitioner's request, the final hearing was continued and rescheduled for October 2 through 4, 2013, by agreement of the parties. Because of the agreed continuances, the statutory timeframes applicable to Petitioner's Due Process Request have necessarily been extended.

At the final hearing, Petitioner offered eight exhibits which were received into evidence, consisting of Exhibits P-1 through P-5 (a composite of five exhibits received with the explanation that statements therein could not be relied upon for the truth of matters asserted unless corroborative of competent evidence), P-6, P-7, and P-8. In addition, an excerpt from P-4 and an excerpt from P-5 were separately marked and received into

evidence. Petitioner testified and offered the testimony of Petitioner's [REDACTED] (Petitioner's [REDACTED] or [REDACTED]) and [REDACTED]. The School Board offered 11 exhibits which were received into evidence as Exhibits R-A through R-J (with the same explanation regarding hearsay), R-K, and R-L. In addition, the School Board offered the testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

At the close of the evidence, by agreement of the parties, the statutory deadlines for a decision were extended until 60 days from the filing of the Transcript of the proceedings and the parties were given 30 days from the filing of the Transcript within which to file proposed final orders. The Transcript of the final hearing, consisting of four volumes, was filed on October 22, 2013. Thereafter, by agreement of the parties, an Order was entered which extended the time for filing proposed final orders until December 2, 2013. Respondent filed its Proposed Final Order on December 2, 2013. Petitioner's Proposed Final Order was filed on December 3, 2013. Both parties' Proposed Final Orders were considered in preparing this Final Order.

FINDINGS OF FACT

1. Petitioner is a student who attended [REDACTED], a school under the School Board, for [REDACTED] through [REDACTED]

grades. At various times during [REDACTED] school, Petitioner was withdrawn from [REDACTED] and attended private school, homebound programs, or virtual school.

2. At the time of the final hearing, Petitioner was [REDACTED] years old, had successfully completed [REDACTED] grade, and was enrolled in the [REDACTED] grade at [REDACTED] which is a school under the School Board.

3. Petitioner was diagnosed as having [REDACTED] at [REDACTED] years of age.

4. Petitioner has had an IEP since [REDACTED] grade. Petitioner attended [REDACTED] through [REDACTED] grade in Volusia County schools, where Petitioner repeated [REDACTED] grade. Petitioner attended [REDACTED] and [REDACTED] grades in [REDACTED].

5. Petitioner returned to Florida in 2010 and was enrolled in the [REDACTED] grade at [REDACTED] on August 16, 2010. [REDACTED] is under the School Board.

6. On August 30, 2010, the School Board conducted a meeting to review Petitioner's IEP. Petitioner's [REDACTED] attended the meeting. The IEP cover page from that meeting indicates that the meeting was also attended by Petitioner's general education teacher, ESE teacher, an IEP facilitator, a School Board representative (local education association or LEA representative), and an evaluation interpreter, as well as by Petitioner, who left early.

7. On the cover page, under parents' concerns for the child's education, it is noted:

Parent wants [Petitioner] to be successful in school. [REDACTED] would like to see [Petitioner] improve test scores this year.

8. The IEP developed during that August 30, 2010, meeting (the August 30, 2010, IEP) indicates that based upon Petitioner's test scores, parent input, curriculum-based assessment, and information from Petitioner's IEP from [REDACTED], Respondent's staff determined that Petitioner remained eligible for participation in a learning disabilities consultation program under the Individuals with Disabilities Education Act.

9. The August 30, 2010, IEP provided for Petitioner's placement in general education classes with ESE support. Specifically, the IEP included general education courses with co-teacher support and special instruction in language arts, science, and social studies; separate class and special instruction in math; and special instruction with consultation in reading.

10. The August 30, 2010, IEP further provided for ESE support for Petitioner's general education teachers once or twice a month and a supplementary aid for Petitioner in the form of a daily planner. It also provided for Petitioner's participation in state- and district-wide testing with test accommodations, including the use of a reader for test

directions and other items, individual or small group test administration, and additional test-taking time up to double the regular time.

11. Other accommodations provided for Petitioner in the August 10, 2010, IEP include preferential seating, intermediate reinforcement, use of a reader for content areas and assessments other than reading, fewer homework assignments, fewer questions to measure skills, test retakes with credit for improvement, provision to Petitioner of any classroom notes and hard copies of blackboard or projection presentations, and extra time for assignments.

12. Petitioner's exceptional student education teacher, [REDACTED], who attended Petitioner's August 10, 2010, IEP meeting, was conscientious about making sure that Petitioner's teachers were aware of Petitioner's IEP accommodations. [REDACTED] provided credible testimony that the accommodations contained in the August 10, 2010, IEP were provided to Petitioner. While there were times when Petitioner did not obtain classroom notes or have the planner completed, the evidence indicated that Respondent generally implemented those accommodations for Petitioner as listed in the August 30, 2010, IEP.

13. On the morning of November 11, 2010, while away from school, Petitioner became extremely upset following a conflict

with Petitioner's cousin. That same morning, while in the car with Petitioner's [REDACTED], Petitioner "just started falling apart and hitting [Petitioner's] head up against the car on the inside and then said [Petitioner] was over it and wanted to end it and [Petitioner] tried to jump out of the car."

14. Later that same day, as a result of the incident, Petitioner's [REDACTED] took Petitioner to [REDACTED], where Petitioner was admitted.

15. At the time of the admission to [REDACTED], Petitioner was doing well, academically, at [REDACTED]. The next day, during a family therapy session at [REDACTED], Petitioner advised that Petitioner liked the current school and was not being bullied there.

16. After Petitioner's hospitalization, Respondent conducted a meeting on December 13, 2010, to develop an interim IEP. Petitioner's [REDACTED] attended the meeting and reported that Petitioner had been diagnosed with [REDACTED]. [REDACTED] provided Respondent with a copy of the diagnosis from [REDACTED].

17. The IEP cover page from the December 13, 2010, IEP meeting does not indicate that Petitioner attended the meeting. The signatures on the cover page, however, denote that, in addition to Petitioner's [REDACTED], the meeting was attended by a program specialist, the ESE assistant principal, [REDACTED] [REDACTED] evaluation interpreter and ESE teacher [REDACTED]

██████████, an LEA representative, a core teacher, and another ESE teacher. The parents' concerns on the cover page are the same as in the previous IEP.

18. As in Petitioner's August 20, 2010, IEP, the IEP developed during the December 13, 2010, meeting (the December 13, 2010, IEP) included general education courses with accommodations and co-teacher support in science, social studies, and language arts. It also provided for consultative services in reading and intensive support in math. Page three of the December 13, 2010, IEP notes: "Committee opened a re-evaluation and asked for a Social History." Petitioner's ██████████ consented to Petitioner's re-evaluation and social history.

19. Respondent subsequently developed a social history of Petitioner, as evident from a document entitled "Confidential Social History," bearing an interview date of January 26, 2011.

20. According to Petitioner's ██████████, in the spring of 2011, Petitioner was having "complete meltdowns" at home. Petitioner was screaming, yelling, crying, throwing things, and slamming doors. Petitioner would hide in the closet and was physically aggressive toward Petitioner's ██████████ and ██████████.

21. Petitioner's ██████████ attributed Petitioner's behavior to a change in prescribed psychotropic drugs, as well as issues that Petitioner was having at school. While there was evidence that Petitioner had confrontations with Petitioner's ██████████ while

█ was going through Petitioner's backpack and trying to get Petitioner to complete assignments and "communicate" homework to █, the evidence provided at the final hearing was insufficient to show that Petitioner's changes in behavior were because of issues at school.

22. Because of Petitioner's behavior and physical combativeness toward Petitioner's █ and █, on March 8, 2011, Petitioner was admitted to █, a residential behavioral health services provider. That same day, Petitioner was enrolled in █.

23. Petitioner was officially withdrawn from █ on March 21, 2011, after attending █ grade there for 121 days with nine absences.

24. Petitioner remained at █ until April 28, 2011. Petitioner's grades earned while attending █ were not appreciably different from those earned while attending █ grade at █.

25. On April 29, 2011, Petitioner was withdrawn from █ and re-enrolled at █ through the hospital homebound program.

26. Respondent conducted another IEP meeting on May 4, 2011, during which, according to the IEP developed during that meeting (the May 4, 2011, IEP), Petitioner's December 13, 2010, IEP was reviewed, along with Petitioner's current assessments,

progress, accommodations, and doctor's recommendation that Petitioner finish the school year in the hospital homebound program. The cover page of the May 4, 2011, IEP reflects that the meeting was attended by Petitioner, Petitioner's [REDACTED], the ESE assistant principal, and an LEA representative and evaluation interpreter, with input from a core teacher.

27. The May 4, 2011, IEP recited the same parents' concerns and accommodations as Petitioner's previous IEP, acknowledged Petitioner's participation "in general education curriculum with accommodations and support in Hospital/Homebound," and indicated Petitioner's placement in the hospital homebound program, where Petitioner remained until the end of the school year.

28. Records of Petitioner's academic history at [REDACTED] [REDACTED] show that Petitioner passed the [REDACTED] grade with the following final grades: B in Reading, C in Language Arts, C in Math, B in Comprehensive Science, and C in World Geography.

29. Petitioner was re-enrolled in [REDACTED] for the 2011 fall semester.

30. On August 18, 2011, Respondent held another IEP meeting for Petitioner. Attendees listed on the cover page of the IEP developed during that meeting (the August 18, 2011, IEP) include Petitioner's [REDACTED], an attorney representing both Petitioner and Petitioner's parent, a core teacher, three of

Petitioner's ESE teachers, the ESE Assistant Principal, and an LEA representative and evaluation interpreter.

31. Under the heading "parents' concerns for the child's education," the cover page of the August 18, 2011, IEP states:

Parent feels Language Impairment was dismissed without proper criteria. They feel goals and objectives are not proper. Last IEP based on Alabama evaluation is not evident. Parent expects higher expectation for goals and feels no accommodations were provided.

32. Further down on the cover page it is stated that "[t]he IEP committee initiated the reevaluation process." Petitioner's █████ consented to the re-evaluation of Petitioner for academic, speech/language, adaptive behavior, observational, clinical interview, and cognitive assessments.

33. The August 18, 2011, IEP reassigned Petitioner from the hospital homebound program to a general education program with ESE support.

34. In addition to the accommodations included in Petitioner's earlier IEPs developed for Petitioner's █████-grade school year, under the heading "Special Factors Comments," the August 18, 2011, IEP added that Petitioner's organizational strategies would be monitored and adjusted as necessary, that Petitioner would check in with identified staff in the mornings, would use a timer for task completion, and would use an interactive notebook for classes.

35. Beginning in September 2011, [REDACTED], a school psychologist for Respondent whose name appears on a list as an August 30, 2011, IEP re-evaluation committee participant, performed a psychoeducational evaluation of Petitioner, and prepared a report dated November 8, 2011. [REDACTED] report was supplemented to include input from Petitioner's [REDACTED] regarding the [REDACTED] [REDACTED].

36. The purpose of [REDACTED] evaluation was not to diagnose, but rather to determine, whether Petitioner was eligible for assistance under educational criteria. At the final hearing, [REDACTED] opined that Petitioner met [REDACTED] [REDACTED].

37. In addition to [REDACTED] evaluation, in September 2011, Respondent conducted a comprehensive speech/language assessment on Petitioner, consisting of a Clinical Evaluation of Language Fundamentals 4 Screen, an Oral and Written Language Scales test, and a Pragmatic Judgment Test of the Comprehensive Assessment of Spoken Language.

38. The comprehensive speech/language assessment recommended that Petitioner be placed in the [REDACTED] so that Petitioner's listening comprehensive skills and strategies could be intensively addressed and improved.

39. [REDACTED], Respondent's ESE family support specialist and a specialist for students with [REDACTED], observed Petitioner in class during the fall of 2011, where [REDACTED] saw Petitioner interacting with peers and participating in class. Through direct observations, [REDACTED] saw that Petitioner received preferential seating and was getting the notes that were needed. [REDACTED] also conferred with Petitioner, who said that the transition back to school was going pretty well and that Petitioner was having regular meetings with the assigned guidance counselor.

40. On November 30, 2011, while Petitioner and Petitioner's [REDACTED] were playing at a construction site in Petitioner's neighborhood, Petitioner hit the [REDACTED], resulting in an injury to Petitioner's [REDACTED] leg that needed medical treatment. Because of that incident, and because Petitioner's [REDACTED] felt as though Petitioner was beginning to exhibit aggressive behaviors similar to those exhibited previously, Petitioner's [REDACTED] took Petitioner to [REDACTED] [REDACTED], where Petitioner was re-admitted.

41. Petitioner was withdrawn from [REDACTED] on December 8, 2011. At the time of the withdrawal, Petitioner had attended [REDACTED] grade at [REDACTED] for 69 days, with only two absences.

42. On December 13, 2011, Petitioner was discharged from [REDACTED].

43. Respondent held another IEP meeting for Petitioner on January 9, 2012, to consider Petitioner's August 18, 2011, IEP, and develop a new IEP for Petitioner.

44. The cover page of the IEP developed from that meeting (the January 9, 2012, IEP) notes that Petitioner did not attend, but that the meeting was attended by Petitioner's [REDACTED], the school psychologist, a speech clinician, an assistant principal, two ESE teachers, a placement specialist, the School Board's attorney, counsel for Petitioner, and a person listed as both a LEA representative and an evaluation interpreter.

45. The January 9, 2012, IEP reflects that Respondent's staff reviewed Petitioner's previous IEP, Petitioner's progress in classes, current accommodations, Petitioner's [REDACTED] input regarding Petitioner's educational needs, and the results of Petitioner's reevaluation assessments.

46. The January 9, 2012, IEP provides that Petitioner met eligibility requirements for language impairment and lists goals and services for a language impairment program for Petitioner, including special instruction in communication for 45 minutes each week. It also reassigned Petitioner to a general education program with ESE support.

47. Page three of the January 9, 2012, IEP notes that Petitioner's parent does not consider the hospital homebound program as an option for [Petitioner]. The IEP further indicates that while Petitioner is no longer at [REDACTED], "[Petitioner] has not been released to go back to school," and that the services developed for the student "will take effect upon [Petitioner's] entry into a Volusia County School."

48. During the January 9, 2012, IEP, Petitioner's [REDACTED] suggested that Petitioner's behavioral problems at home were the result of stresses at school. The staff and teachers at [REDACTED] [REDACTED] were not observing the same extreme behaviors reported by Petitioner's [REDACTED]. Therefore, the IEP team requested that Petitioner submit to a Functional Behavior Assessment to determine whether stressors at school were causing Petitioner's reported behavior at home, and, if necessary, to develop a behavior intervention plan for Petitioner. Petitioner's [REDACTED] declined the requested assessment. According to Petitioner's [REDACTED], [REDACTED] did not want Petitioner to undergo the assessment because [REDACTED] feared that it would result in Petitioner being labeled with an emotional behavior disability and placed in a separate class.

49. The January 9, 2012, IEP further notes that Petitioner's parent had an upcoming appointment with

Petitioner's doctor, and that the IEP team would reconvene after the parent could provide additional information from the doctor.

50. In the spring of 2012, Petitioner's [REDACTED] enrolled Petitioner in [REDACTED] [REDACTED], a private school, without consulting with Respondent or providing Respondent with any information from a doctor supporting the placement.

51. [REDACTED] did not have the capacity or teachers to implement Petitioner's IEP.

52. Petitioner completed the [REDACTED] grade at [REDACTED] [REDACTED], earning final grades consisting of a C in Reading, a C in Writing, a D in Math, a C+ in Science, a C- in Bible, an A in Computer, an A in Art, an A in Music, and a D in French. Petitioner attended a total of 78 days with seven absences at [REDACTED]

53. Although Petitioner's [REDACTED] testified at the final hearing that [REDACTED] asked Respondent for a private school placement prior to Petitioner's enrollment in [REDACTED] [REDACTED], there was no evidence of any written request for such a placement, and the evidence does not otherwise support a finding that Petitioner's [REDACTED] ever formally asked Respondent for private school placement prior to Petitioner's enrollment in [REDACTED] [REDACTED]. In addition, the evidence adduced at the final hearing was insufficient to support the need for

private school placement for Petitioner, as opposed to continued enrollment in the Volusia County School System.

54. Petitioner re-enrolled at [REDACTED] for the [REDACTED] grade on August 20, 2012.

55. On September 7, 2012, Respondent held an IEP meeting to consider Petitioner's January 9, 2012, IEP, and develop a new IEP. The IEP developed in that meeting (the September 7, 2012, IEP) indicates that the meeting was attended by Petitioner's [REDACTED], Petitioner's attorney, the School Board's attorney, three ESE teachers, a speech clinician, a core teacher, the school principal, the ESE assistant principal, and a person designated as both an LEA representative and evaluation interpreter. The IEP also notes that Petitioner attended part of that meeting.

56. According to the September 7, 2012, IEP, the IEP team reviewed Petitioner's prior accommodations, the progress prior to withdrawal, Petitioner's [REDACTED] input regarding Petitioner's educational needs, and the results of a psychological evaluation of Petitioner, consisting of a number of assessments conducted in the fall of 2011.

57. According to Petitioner's [REDACTED], Petitioner had done fine at [REDACTED], but, since returning to [REDACTED], Petitioner's stress and anxiety levels had increased. The September 7, 2012, IEP reflects that Petitioner's [REDACTED] reported that Petitioner was not able to

engage in self-advocacy, had no friends, did not know how to interact with peers, and had reported instances of being bullied to [REDACTED].

58. The September 7, 2012, IEP once again assigned Petitioner to a general education program with ESE support. In addition to maintaining Petitioner's short-term objectives from the previous IEP, the new IEP updated Petitioner's annual goals, added that a safe place would be identified where Petitioner could go when feeling stressed, and identified the need for Petitioner to be able to leave class three minutes early for the transition between classes.

59. The September 7, 2012, IEP further reflects that the IEP committee suggested re-evaluation of Petitioner and Petitioner's [REDACTED] consented to a re-evaluation to reassess the accommodations being provided to Petitioner. An evaluation dated September 28 and 29 and October 3 and 4, 2012, indicates that a Functional Skills in the Educational Environment Occupational Therapy Evaluation was conducted on Petitioner on those dates. That evaluation further reflects recommendations that Petitioner be provided with a "safe spot" for regrouping, early transitioning between classes, socialization groups at lunch, use of a daily planner, and reduction of the amount of materials carried in Petitioner's backpack.

60. At Petitioner's [REDACTED] request, Respondent conducted a meeting on October 18, 2012, to review Petitioner's September 7, 2012, IEP and the Educational Environment Occupational Therapy Evaluation. According to the interim IEP developed during that meeting (the October 18, 2012, IEP), the meeting was attended by Petitioner's [REDACTED], a representative from "CARD" Center for Autism, Petitioner's attorney, the School Board's attorney, an ESE program specialist, a speech clinician, a core teacher, [REDACTED] [REDACTED] principal, a physical/occupational/speech therapist, a family support specialist, an ESE teacher, the ESE assistant principal, and an evaluation interpreter who also attended as the LEA representative.

61. The October 18, 2012, IEP reiterated the previous IEP's determination to identify a safe place for Petitioner and the need for Petitioner to leave class three minutes early, and suggested that Petitioner be given options, such as, "Can you finish this before you take a time out?"

62. According to the October 18, 2012, IEP, Petitioner's [REDACTED] stated, through [REDACTED] attorney, that [REDACTED] felt as though Petitioner's accommodations were not being implemented and that Petitioner's doctor recommended that Petitioner needed to be in a special school to meet Petitioner's psychological needs. The October 18, 2012, IEP further indicates that Petitioner's [REDACTED]

stated during the meeting that [REDACTED] believed that Petitioner did not feel safe at school. The IEP also states that Petitioner's [REDACTED] provided a letter from Petitioner's doctor, and that [REDACTED] and [REDACTED] attorney asked that the School Board pay for a special school recommended by Petitioner's doctor.

63. The October 18, 2012, IEP reflects that Respondent's staff felt as though Petitioner's current IEP was being implemented and that Petitioner was receiving a free appropriate public education. According to the IEP, Respondent's IEP team recommended that Petitioner return to [REDACTED] [REDACTED] [REDACTED] for further observation with current accommodations and implementation of the recommendations from Petitioner's Educational Environment Occupational Therapy Evaluation. The IEP further indicates that Respondent's IEP team suggested hospital homebound to Petitioner's [REDACTED], but that [REDACTED] stated Petitioner's doctor would not approve it because he felt that Petitioner needed peer interaction.

64. As in the September 7, 2012, IEP, the October 18, 2012, IEP assigned Petitioner to a general education program with ESE support.

65. Testimony from ESE support consultation teacher [REDACTED], Petitioner's [REDACTED]-grade agricultural teacher [REDACTED], and Petitioner's [REDACTED]-grade science teacher [REDACTED] provided credible evidence that the accommodations

from Petitioner's IEPs and evaluations were provided to Petitioner, including preferential seating, testing accommodations, reader services, extra time for assignments, three-minute early classroom transition time, hard copies of class notes, verbal encouragement and task redirection, use of assignment agendas, time-outs for anxiety, and use of a planner.

66. [REDACTED], Petitioner's [REDACTED]-grade guidance counselor, also provided credible evidence that the accommodations and accommodation suggestions in Petitioner's IEPs were implemented. While Petitioner attended [REDACTED] [REDACTED] during the [REDACTED]-grade year, [REDACTED] assisted Petitioner on a daily basis during fourth period helping to organize Petitioner's notebook and backpack, complete assignments and tests, and catch up on work.

67. In addition, during the [REDACTED]-grade year, Petitioner would often eat lunch with the school nurse, [REDACTED]. [REDACTED] [REDACTED] monitored Petitioner's interaction with [REDACTED], primarily at lunch time. [REDACTED] office was across the hall from [REDACTED] office. Although [REDACTED] did not recall that her office was designated as a "safe place," it functionally served as a safe place for Petitioner, who would often eat lunch in the nurse's office, which afforded time away from the crowd and confusion at school that reportedly caused Petitioner anxiety.

68. Petitioner's disciplinary record at [REDACTED] [REDACTED] indicates a number of incidences involving Petitioner as the aggressor, but not instances where Petitioner was bullied or intimidated. Respondent's records on Petitioner include an incident on November 19, 2012, when Petitioner reported that a student wanted to fight with Petitioner. Once it was investigated, Petitioner's report was found to be without basis. The records also indicate a false report by Petitioner alleging an attack on December 10, 2012, by other students during second period, but the teacher who was present said no such attack took place. The records also state that on December 18, 2012, Petitioner falsely reported an attack by students behind the portable buildings and that Petitioner therefore left school campus. [REDACTED] [REDACTED] Vice-Principal [REDACTED] investigated the report and determined that it was false and that one of the alleged assailants was not even at school on the day of the alleged attack.

69. The evidence at the final hearing showed that, during the [REDACTED] grade, as in Petitioner's previous years at [REDACTED] [REDACTED], Petitioner's IEPs were being implemented. Increased absences, however, made it difficult for Petitioner to keep up with classwork or meet IEP goals.

70. Respondent's records reflect that on January 24, 2013, Petitioner received a disciplinary referral for taunting another student with inappropriate comments.

71. Thereafter, Petitioner's [REDACTED] unilaterally withdrew Petitioner from [REDACTED] and Petitioner was enrolled in Virtual School, where [REDACTED] grade was successfully completed. Petitioner's final grades reported from Virtual School included a B in U.S. History, an A in Language Arts, a C in Pre-Algebra, and a B in Comprehensive Science.

72. Records reflect that, during the [REDACTED]-grade year, Petitioner was present for school for 114 days, had 13 excused absences, and 50 unexcused absences.

73. Although Petitioner's [REDACTED] and Petitioner suggested that the accommodations in Petitioner's IEPs were not implemented, the credible evidence showed that, for the most part, they were. Further, the evidence indicated that the seven IEPs developed for Petitioner during the time at [REDACTED] [REDACTED] were appropriately prepared with consideration of reported evaluations and concerns regarding Petitioner's educational needs. Although Petitioner's [REDACTED] and Petitioner suggest that Respondent was somehow responsible for Petitioner's anxiety and behavioral issues, the evidence adduced at final hearing was insufficient to support such a finding.

74. Rather than showing that Respondent was responsible for Petitioner's anxiety and problems experienced at school or at home, the evidence suggested otherwise. As stated by Petitioner when asked what made Petitioner angry at home:

And those things are usually my mistakes that I have to pay for because I didn't do what was expected of me at home so I accept that.

75. The evidence was otherwise inadequate to prove that Petitioner's problems were caused or related to the School Board's alleged failure to develop or implement an appropriate IEP for Petitioner.

76. Moreover, the evidence showed that Petitioner's [REDACTED] school IEPs were appropriately developed and implemented to accommodate Petitioner's identified disabilities and were reasonably calculated to enable Petitioner to receive a free and appropriate public education in the least restrictive environment.

77. In sum, Petitioner did not prove that the School Board deprived Petitioner of a free appropriate public education.

CONCLUSIONS OF LAW

78. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), and 1003.57(1), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9).

79. Under the "Florida K-20 Education Code," found in chapters 1000 through 1013, Florida Statutes, Florida district school boards are required to "[p]rovide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) and 1003.57. That requirement is necessary for Florida to receive federal funding under the Individuals with Disabilities Education Act, 20 United States Code, sections 1400, et seq., as amended (the IDEA).

80. The IDEA provides procedural safeguards designed to ensure that students with disabilities receive a "free appropriate public education" (FAPE). 20 U.S.C. § 1415(a).

81. Specifically, the IDEA requires that states provide parents with the opportunity to present complaints with respect to any matter relating to the identification, evaluation, and educational placement of their child, or the provision of a FAPE to such child. Id.; 20 U.S.C. § 1415(b)(6)(A).

82. Because Petitioner asserts a denial of FAPE, Petitioner has the burden of proof. Schaffer v. Weast, 546 U.S. 49, 62 (2005). The standard of proof that Petitioner must meet is a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

83. The determination of whether a school district has provided a FAPE to an exceptional student involves a twofold inquiry as directed by the United States Supreme Court in Board

Of Education of the Hendrick Hudson Central School District v.

Rowley, 458 U.S. 176 (1982):

First, has the State [or school district] complied with the procedures set forth in the Act [IDEA]? And second, is the individualized educational program [IEP] developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State [or school district] has complied with the obligations imposed by Congress and the courts can require no more.

Id. at 206-207. See also Sch. Bd. of Collier Cnty., Fla. v. K.C., 285 F.3d 977 (11th Cir. 2002) (restating and applying the Rowley test).

84. The IDEA requires the development of an IEP which identifies the child's present levels of academic achievement and functional performance, establishes measurable annual goals, addresses the services and accommodations to be provided, addresses 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. An IEP team that develops an IEP is required to include the parents, one of the child's general education teachers, a special education teacher, and a qualified representative of the LEA. 20 U.S.C. § 1414(d)(1)A.i.; 34 C.F.R. § 300.320. The IEPs developed for Petitioner in this case met these requirements.

85. All of Petitioner's IEPs developed while Petitioner was enrolled at [REDACTED] were properly attended and developed with appropriate goals and objectives. The IEPs included sufficient specificity and commitment of resources to substantially address Petitioner's educational needs, and also provided Petitioner an opportunity to develop social skills in a school setting.

86. The IEPs reflect that the IEP teams reviewed Petitioner's level of performance at each meeting and appropriately incorporated existing goals, objectives, and Petitioner's present levels of performance. The IEPs further contain reaction to Petitioner's [REDACTED] reports of behavioral issues at home and indicate that the IEP team took appropriate steps to evaluate Petitioner, and contain appropriate accommodations reasonably calculated to provide Petitioner with educational benefits and FAPE. Evidence at the final hearing showed that the IEPs developed for Petitioner were implemented, and the accommodations within them were provided to Petitioner.

87. The nature and extent of "educational benefits" required by Rowley to be provided by Florida school districts was discussed in School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999):

Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Educational benefits provided under IDEA

must be more than trivial or de minimis. J.S.K. v. Hendry Cnty. Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997) (citing Bd. of Educ. of Cmty. Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ., 938 F.2d 712 at 715, and Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988)). Thus, if a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits. See Rowley, 458 U.S. at 207-208; O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

88. Under the IDEA, to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled. 34 C.F.R. § 300.114(a)(2)i. Use of special classes, separate schooling, or other removal of children with disabilities from the regular educational environment is only appropriate when the nature or severity of the disability is such that an education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2)ii.

89. Petitioner's parents are entitled to reimbursement for private school expenses only if they demonstrate that the School Board's public placement of Petitioner violated the IDEA and that placement of Petitioner in the private school was proper. Florence Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993).

90. Florida Administrative Code Rule 6A-6.03311(7)(d)(1) provides that the cost of reimbursement for private placement may be denied if:

At the most recent IEP Team meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the school district to provide FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the school district of the information described herein;

91. Not only did Petitioner's [REDACTED] fail to inform the IEP team that [REDACTED] rejected its proposal for placement at [REDACTED] [REDACTED] prior to enrolling Petitioner in [REDACTED] [REDACTED], [REDACTED] failed to consult with the School Board or IEP team or provide Respondent with any information from a doctor supporting the private school placement prior to the placement.

92. Further, the evidence was insufficient to support a finding that Petitioner benefited either educationally or emotionally at [REDACTED] to a greater extent than Petitioner would have had Petitioner remained at [REDACTED] [REDACTED] in accordance with the established IEPs.

93. In sum, Petitioner failed to show that the School Board deprived Petitioner of a free appropriate public education and failed to demonstrate entitlement to reimbursement for private school placement or attorney's fees, or any other relief sought in this case.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Request for Exceptional Student Education Due Process filed on behalf of Petitioner on or about January 10, 2013, is DISMISSED.

DONE AND ORDERED this 3rd day of January, 2014, in Tallahassee, Leon County, Florida.

S

JAMES H. PETERSON, III
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 3rd day of January, 2014.

ENDNOTE

^{1/} Unless otherwise noted, references to Florida Statutes, the Florida Administrative Code, the United States Code, and the Code of Federal Regulations are to the current versions.

COPIES FURNISHED:

Marla J. Rawnsley, Esquire
Pappas, Russell & Rawnsley
213 Silver Beach Avenue
Daytona Beach, Florida 32118

Douglas G. Rawnsley, Esquire
327 South Palmetto Avenue
Daytona Beach, Florida 32114

Andrew B. Thomas, Esquire
Andrew B. Thomas, P.A.
1625 Lakeside Drive
Deland, Florida 32720

Sebrina L. Slack, Esquire
Landis Graham French, P.A.
Post Office Box 48
Deland, Florida 32721

Dr. Margaret A. Smith, Superintendent
School Board of Volusia County
200 North Clara Avenue
DeLand, Florida 32721

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399

Catherine A. Bishop, Senior Educational Program Director
Bureau of Exceptional Education
and Student Services
Turlington Building, Suite 614
325 West Gaines Street
Tallahassee, Florida 32399

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)(b), Florida Administrative Code Rule 6A-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).