

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,

Petitioner,

vs.

Case No. 14-0131E

ST. JOHNS COUNTY SCHOOL BOARD,

Respondent.

_____/

FINAL ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on May 12-14, 2014, in █, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. The parties were represented by counsel as set forth below.

APPEARANCES

For Petitioner: Beverly Oviatt Brown, Esquire
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For Respondent: Terry Joseph Harmon, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent provided Petitioner with a free and appropriate public education (FAPE),

as that term is defined by the Individuals with Disabilities Education Act (IDEA), and more specifically: 1) whether Respondent made a timely and appropriate determination of Petitioner's disabilities, if any; and 2) whether Respondent provided reasonable and necessary accommodations to Petitioner to meet his or her needs.^{1/} Petitioner is seeking compensatory education in the form of tutoring (only) from Respondent, and attorneys' fees if deemed appropriate.

PRELIMINARY STATEMENT

On January 6, 2014, Petitioner filed a Request for Due Process Hearing with Respondent. The request contained five enumerated allegations of violations by Respondent: 1) that Respondent failed to identify Petitioner as a student with disabilities until [REDACTED] -grade year, a failure of Child Find; 2) that the delayed determination of a disability caused a loss of educational opportunity; 3) that after determining the presence of a disability, Respondent failed to identify processing and social issues, and whether such failure caused loss of educational opportunities and emotional distress^{2/}; 4) that Respondent failed to provide FAPE during the period January 2012 to the present; and 5) that Respondent's failure to provide FAPE should require Respondent to provide Petitioner with compensatory education. The request was forwarded to the Division of Administrative Hearings so that a formal

administrative hearing could be conducted. The hearing was held on the dates set forth above, and both parties were in attendance.

At the final hearing, Petitioner called 11 witnesses:

██████████, psychologist; Petitioner's mother; ██████████
██████████, guidance counselor; ██████████, assistant
principal; ██████████, nurse; ██████████, bus
driver; ██████████, assistive technology specialist; ██████████
██████████, principal of Petitioner's Middle School (Middle School);
██████████, exceptional student education (ESE) teacher;
██████████, ESE teacher at Petitioner's High School (High
School); and Petitioner, on ██████ own behalf. Petitioner's
Exhibits 1-6, 9-11, and 14-15 were admitted into evidence.

Respondent also called 11 witnesses: ██████████

██████████, retired school psychologist; ██████████,
guidance counselor; ██████████, ESE teacher; ██████████,
teacher; ██████████, teacher; ██████████, teacher;
██████████, teacher; ██████████, teacher; ██████████
██████████, teacher; ██████████, ESE director; and ██████████
██████████. Respondent's Exhibits 1, 9, 10, and 13-14 were admitted
into evidence. Official recognition was taken of Respondent's
Exhibits 17-19 and 21.

A transcript of the final hearing was ordered by the parties. By agreed motion made at the conclusion of the final

hearing, the parties were allowed to submit proposed final orders within 21 days of the filing of the transcript at DOAH. The Transcript was filed at DOAH on June 4, 2014. Each party timely submitted a proposed final order and each was duly considered in the preparation of this Final Order.

FINDINGS OF FACT

1. The St. Johns County school district is a pre-Kindergarten through 12th-grade district, devoted to the needs of all students. The school district is required to comply with all relevant provisions of the IDEA.

2. Petitioner was a [REDACTED]-grade student of a [REDACTED] for the [REDACTED] school year. At the time of final hearing in this matter, Petitioner had just returned to the [REDACTED] after an extended period on hospital/homebound status due to an injury sustained at school earlier in the year. Before coming to [REDACTED], Petitioner had been a student at [REDACTED], where he attended [REDACTED] grades in school years [REDACTED], respectively.

3. Petitioner is a [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] student. [REDACTED] is interested in [REDACTED]. [REDACTED]
[REDACTED]^{3/} [REDACTED]
[REDACTED]
[REDACTED]. Petitioner admittedly

does not enjoy mathematics and generally struggles in [REDACTED] math classes.

4. In April 2006, when Petitioner was [REDACTED] years old, a neuropsychological assessment was performed by [REDACTED]. [REDACTED] concluded that Petitioner had mild-to-moderate difficulty on tasks of attention as compared to other [REDACTED] age. According to the background information [REDACTED] was provided, Petitioner "has difficulty in follow through [sic], careless errors, difficulty finishing things, is often forgetful and has difficulty listening when spoken to directly." [REDACTED] was suspected.

5. [REDACTED] such as [REDACTED] often manifest as inconsistent attention and concentration, which affects consistent performance in school because the child is not consistently engaged with what is going on around [REDACTED]. The disorders may present as difficulties with planning and organization. The child can have a difficult time being strategic in their learning and problem-solving, managing time, and managing tasks. [REDACTED] often manifest as difficulty with productivity, not capacity. A person suffering from [REDACTED] may struggle to differentiate the individual parts of an assignment from the ultimate goal; they operate without a preconceived plan for completion.

6. [REDACTED] psychological assessment concluded that a diagnosis of [REDACTED] was warranted for Petitioner at that time. The assessment provided an overview of Petitioner's condition and then made the following recommendations for assisting Petitioner in overcoming obstacles:

- Petitioner qualifies for a 504 plan to address individual needs in the classroom to assist with symptoms related to [REDACTED]. [REDACTED] mother should discuss "these findings" with guidance counselor at school.
- Consider a psychiatric follow-up for management of attention problems.
- Maintain a routine for studying to develop healthy academic habits.
- Preferential seating in the front of the classroom may assist with focusing and increased attending abilities.
- Extra test taking time is necessary to assist with optimal grades.
- Test taking and studying in a separate area to minimize distractions is warranted.
- Petitioner's mother may benefit from visiting websites for additional information on [REDACTED] and [REDACTED] in the classroom.
- Consider implementation of tutoring both outside of school and in-school.
- Monitor symptoms of anxiety for any noticeable changes in mood, social interactions, sleep patterns, eating patterns, and/or reports of excessive worry.
- Re-evaluation in 36 months to maintain accommodations in the classroom.

7. [REDACTED] assessment was provided to Petitioner's elementary school at the time. It is not clear whether the recommendations were implemented, but Petitioner did well in

that school through the [REDACTED] (although [REDACTED] FCAT score in math in grade [REDACTED] was low). In [REDACTED], Petitioner began to show signs of having problems. [REDACTED] received a C, two D's, and an F on [REDACTED] final report card for that school year. [REDACTED] FCAT scores remained the same as the prior year, including a level 2 (failing) in math. [REDACTED] had 11 absences that year which may have contributed to [REDACTED] problems.

8. In [REDACTED], Petitioner began to get referrals from school for disciplinary reasons. [REDACTED] also began not handing in [REDACTED] homework, a problem that would become regular behavior in years to come. Petitioner's mother began to reach out to the school for assistance for Petitioner at that time. It was agreed that the school would try to help Petitioner more at school and [REDACTED] mother would try to help [REDACTED] more at home. There is no evidence that [REDACTED] mother sought or suggested to the school that Petitioner be tested at that time regarding the possibility that Petitioner may have a qualifying disability.

9. Petitioner moved to [REDACTED] for [REDACTED] in the [REDACTED] school year. At that time, it was determined that a Response to Intervention, which is now called a Multi-Tiered Systems of Support (and will be hereinafter referred to jointly as RTI/MTSS), would be put in place for Petitioner. RTI/MTSS has evolved over time and is a regular education initiative focused on providing support for students before their

disability becomes an impediment. It is a precursor to determining that a student may be eligible for services under IDEA. The RTI/MTSS process will be exhausted before trying to determine whether a student needs an IEP and special services. Petitioner's mother was notified by the school that the RTI/MTSS was being implemented. It is unclear from the record what elements were contained within the RTI/MTSS for [REDACTED], but apparently there were some services or accommodations provided.

10. During that [REDACTED] year, [REDACTED] was Petitioner's world history teacher. [REDACTED] described Petitioner as a very sweet child, but said [REDACTED] frequently failed to turn in [REDACTED] homework and had difficulty staying awake in class. While in [REDACTED], Petitioner was provided extra help on [REDACTED] academic work by [REDACTED], a math teacher. Petitioner would go to [REDACTED] class (instead of going to physical education class [REDACTED] accident) in order to get extra help in math. [REDACTED] teacher in Teen Leadership Class described Petitioner as apathetic towards [REDACTED] school work; [REDACTED] history instructor said [REDACTED] appeared to be unmotivated.

11. Despite RTI/MTSS, Petitioner's grade [REDACTED] final report card contained one C, three D's, and two A's (though the A's were in physical education and computer class rather than in core courses). [REDACTED] had numerous absences during the course of

that year, with different numbers of absences in each class: 17 days in language arts; 16 days in math; 15 days in science; but only nine days in physical education and seven days in computer class. ■ reading score on the FCAT remained at 3, but ■ math score dropped to a 1.

12. Petitioner was promoted to ■■■■■■■■■■, but ■ continued to have some problems. During that grade year ■■■■■■■■■■, Petitioner had numerous absences from school. ■ had 18 authorized absences (i.e., student was in school but not in class for some reason), 41 excused absences, and 51 unexcused absences in various classes. Many of ■ absences were due to in-school suspensions (ISS) as a result of disciplinary problems. ■ teachers generally thought Petitioner to be a good person, but that ■ was unmotivated, unfocused, and unprepared for class. ■ was given ample opportunity to make up missed assignments, but rarely availed ■■■■■■■■■■ of those second chances.

13. While in ■■■■■■■■■■, Petitioner continued to be provided assistance through RTI/MTSS. ■ was provided tutoring twice a week for math and was offered after-school tutoring for help with the FCAT. Petitioner's mother attended a meeting in November 2011 with all of Petitioner's teachers. A consensus was reached as to how to help Petitioner become more organized, using a folder for assignments, teachers checking Petitioner's

binder and backpack, etc. This system was implemented, but did not prove effective for very long. Even sending assignments to Petitioner's mother proved ineffective; ■ simply would not turn in ■ work when it was due.

14. Despite the efforts of assistance, Petitioner's final grades for ■ were D's in science, math, and art appreciation; and C's and F's in other classes (except for an A in physical education). ■ FCAT scores remained a level 2 in reading and a level 1 in math. At the end of the school year, ■ mother contacted the guidance counselor with concerns about Petitioner's development. The counselor agreed to increase RTI/MTSS interventions with Petitioner so that ■ could do better in the upcoming school year.

15. In August ■, Petitioner entered ■ at ■. ■ RTI/MTSS team continued to meet and to monitor Petitioner's progress. On September 17, 2012, Petitioner's mother signed a consent for Petitioner to be evaluated under IDEA. Meanwhile, Petitioner was placed on a Tier 2 intervention plan for academics. The plan included: small group re-teaching; tutoring; additional support during math class; assistance with organization skills; extended time; and repeated or clarified instructions. Petitioner responded to those interventions and made some progress in ■ math scores.

16. During that school year, a Statement of Physical/Medical Disability was prepared by [REDACTED]. That report concluded that Petitioner had moderate [REDACTED] and reaffirmed the need for accommodations to assist Petitioner in [REDACTED] school work, e.g., having a longer time to take exams and being provided detailed explanations on assignments.

17. In October 2012, a new ESE teacher ([REDACTED]) was hired by [REDACTED]. Petitioner was initially placed in [REDACTED] RTI/study hall class for the purpose of allowing [REDACTED] to catch up on [REDACTED] work. Petitioner's mother objected to the placement, claiming it was degrading and humiliating to Petitioner. As a result, Petitioner would attend physical education class rather than go to [REDACTED] [REDACTED] class. [REDACTED] continued to miss assignments and fell even further behind in [REDACTED] work.

18. In November 2012, an evaluation of Petitioner was performed by [REDACTED], a school psychologist. [REDACTED] analysis concluded that Petitioner tested in the high average range for verbal intelligence, average for nonverbal intelligence, average overall, and below average for fluency in language and for math calculations.

19. Following [REDACTED] evaluation, Petitioner's mother sought to have Petitioner approved for ESE

services. On November 30, 2012, Petitioner was found ineligible for ESE services on the basis that [REDACTED] did not have a learning disability. When Petitioner's mother complained, [REDACTED] suggested the possibility of eligibility based upon "[REDACTED]" [REDACTED] criteria primarily due to Petitioner's diagnosis of [REDACTED]. This precipitated the creation of a "Review of Educational Information" evaluation by [REDACTED] in February 2013. Following the evaluation, Petitioner's mother signed a Consent for Formal Evaluation form, a prerequisite to the eligibility determination for ESE services. Petitioner was then deemed eligible for ESE under the [REDACTED] designation. Petitioner's [REDACTED] was not the basis for [REDACTED] approval; not all students with [REDACTED] are necessarily eligible for ESE.

20. On February 8, 2013, during the second semester of Petitioner's [REDACTED]-grade year, an Individual Education Plan (IEP) was developed for Petitioner.^{4/} An IEP is a formal tool recognized under the IDEA wherein a student who has been diagnosed with a disability is provided services necessary to ensure FAPE. The IEP sets out the student's disability and the services or programs that may help him/her succeed in academics.

21. An IEP team--consisting of [REDACTED] mother, two general education teachers, a special education teacher, an LEA representative, an interpreter of instruction implications of

evaluation, [REDACTED] attorney, the school board's ESE director, and the school principal--developed an IEP for Petitioner. It contained several accommodations which were to be provided, including: 1) having directions repeated and clarified by the teacher; 2) repeating and rephrasing directions until Petitioner demonstrates an understanding of them; 3) verbal encouragement by each teacher; 4) allowing Petitioner to enter answers to tests directly in a work booklet rather than on a separate answer sheet; 5) giving extended times on assignments, up to time and a half; and 6) giving Petitioner preferential seating near front of classroom near teacher. At some point, the IEP was modified to allow for Petitioner to use a laptop computer to take notes and/or take tests. Petitioner was to be given extra time to complete standardized tests, including the FCAT. Certain specially-designed instructions were also part of the IEP, including: 1) assistance in the general curriculum in math; 2) specialized instructional approaches to address organizational strategies, study skills, and test taking skills; 3) assistance in the area of Language Arts; 4) assistance in the area of writing in the science classroom; and 5) daily nursing services.

22. In July 2013, Petitioner underwent another psychological evaluation conducted by [REDACTED] pursuant to a request by Petitioner's mother. [REDACTED]

stated intent in [REDACTED] evaluation was to assess Petitioner's "academic, cognitive, and emotional/behavioral functioning" in order to assist with educational and intervention planning. Petitioner had presented to [REDACTED] with [REDACTED] which, according to [REDACTED], "is reasonably well managed with medication support." [REDACTED] made some recommendations as to how Petitioner might be more successful in [REDACTED] school life. The recommendations include:

- Counseling to address emotional issues;
- Enlisting [REDACTED] faculty's support in dealing with social issues;
- Extended time to take tests;
- Undergoing an occupational therapy consultation;
- Academic tutoring/training in explicit learning and problem solving;
- Possible experimentation with audio textbooks;
- Use of a calculator when performing math problems;
- Consultation with pediatrician about weight loss; and
- Involvement of [REDACTED] sports coaches as mentors.

23. [REDACTED] found Petitioner to be reasonably intelligent, with an IQ quotient in the average to above average range. [REDACTED] basic skills were good, except for [REDACTED] fluency, i.e., [REDACTED] ability to write quickly. Petitioner was competent in reading, writing, and math, but had a very slow work rate. [REDACTED] slow rate could be a result of the [REDACTED], because of slow hand motor speed, or from anxiety or self-doubt. [REDACTED] described

Petitioner as a "very unhappy [REDACTED]." Petitioner's emotional issues (rather than [REDACTED]) play a significant role in the erosion of [REDACTED] academic performance. [REDACTED] noted that Petitioner's family had undergone change, a dissolution of marriage perhaps, which contributed to Petitioner's emotional stress. Conversely, poor academic performance could lead to emotional stress.

24. Several classroom observations were made by different teachers as part of the IEP process. Those teachers generally reported Petitioner to have gross motor skill difficulties, to be easily confused or disoriented, and to have some difficulty recognizing differences, between similar words or sounds. They also found [REDACTED] not to be well liked by [REDACTED] peers and not to have many friends. The teachers reported that Petitioner learns more slowly than [REDACTED] peers and picks on others verbally. [REDACTED] is also sometimes rejected or ignored by some of [REDACTED] peers.

25. Petitioner's teachers painted this picture of the young [REDACTED]:

- [REDACTED], [REDACTED] grade ESE--Petitioner had a great personality, one-on-one. [REDACTED] organizational skills, work ethic, and general math ability were all poor.
- [REDACTED], [REDACTED] grade English--Petitioner is respectful and not a behavior concern. [REDACTED] gets in trouble based on acting immature at times. Not consistent with turning in homework and completing assignments. Works slowly.

- [REDACTED], [REDACTED] grade intensive reading coach--Petitioner was often tired and slept in class. [REDACTED] takes longer to complete tests and assignments.
- [REDACTED], [REDACTED] grade physical education teacher--Petitioner works best on [REDACTED] own, but [REDACTED] is not motivated. Was picked on by some other kids at first, but is better now.
- [REDACTED], [REDACTED] grade language teacher-- [REDACTED] found Petitioner unmotivated, apathetic, uncaring about his school work.
- [REDACTED], [REDACTED] grade history teacher--Petitioner was a very sweet child. [REDACTED] often failed to hand in homework and that affected [REDACTED] ability to do well on tests.
- [REDACTED], [REDACTED] grade drama teacher--Petitioner seemed able, but unwilling, to do [REDACTED] work. Very shy about public speaking, often as a result of being unprepared, but [REDACTED] interacted with fellow students "a lot" socially.
- [REDACTED], [REDACTED] grade science teacher--Petitioner was engaged and asked questions in class. [REDACTED] struggled with getting work done, but not with the content. [REDACTED] was a very compliant student, but often got distracted.
- [REDACTED], [REDACTED] grade math teacher--Petitioner had an average attention span, but was easily distracted (like all same-aged students). [REDACTED] was apathetic about academics.

26. In order to address Petitioner's problems, the classroom teachers (from the middle of [REDACTED] on) employed the accommodations set forth in the IEP. The school nurse would see Petitioner every day to administer [REDACTED] medication. [REDACTED] was provided audio versions of books in [REDACTED] English class. [REDACTED] was allowed to use [REDACTED] laptop or, if available, the classroom

computer. ■ was given full credit for turning in at least one half of an assignment in English. ■ teachers would provide Petitioner a copy of the day's classroom notes. Teachers would provide extra time for Petitioner to finish tests. ■ seating preferences were generally provided. ■ was provided tools such as the Chrome extension and Dragon Speaks software, allowing Petitioner to type or dictate rather than having to write longhand.

27. ■ acted as Petitioner's "case manager" for implementation of the IEP. ■ would keep track of Petitioner's grades and attendance in other classes, help write the IEP, and maintain contact with each of Petitioner's other teachers. Once a week ■ would send an email to all the teachers providing an overview of the prior week, then discuss any problem issues with those teachers. ■ would give Petitioner a copy of each day's class notes, make sure ■ had class notes from other classes, and print out all in-class work for Petitioner's review. ■ also gave Petitioner full credit for turning in at least part of a homework assignment.

28. Other teachers did their best to provide Petitioner the accommodations and services set forth in the IEP.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this

proceeding pursuant to the IDEA, 20 U.S.C. section 1400, et seq.; section 1003.57(1)(b), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311. Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2013 codification.

30. Section 1003.57(1)(a), requires each school district to "provide the necessary professional services for diagnosis and evaluation of exceptional students." It is undisputed in this case that Petitioner qualifies as an exceptional student for whom such services must be provided.

31. The IDEA, 20 U.S.C. section 1400, provides that the local education agency must provide children with disabilities a free and appropriate public education, which must be tailored to the unique needs of the handicapped child by means of an IEP. See also Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982). It is clear Petitioner in the instant action was being educated under a valid IEP.

32. In Florida, by statute, a DOAH Administrative Law Judge must conduct an impartial due process hearing to which a complaining parent is entitled under the IDEA. § 1003.57(1)(b), Fla. Stat. In such a hearing, Petitioners have the burden of proof to establish, by a preponderance of the evidence, that the school district failed to provide Petitioners a free and

appropriate public education. See Schaffer v. Weast, 546 U.S. 49 (2005); and Devine v. Indian River Co. Sch. Bd., 249 F.3d 1289 (11th Cir. 2011), cert. denied 123 S. Ct. 82 (2002). More specifically, Petitioner in the present case must prove that Respondent failed to provide FAPE by failing to timely and appropriately assess Petitioner and then to provide [REDACTED] with necessary accommodations.

33. The due process complaint filed by Petitioner sets forth the following issues to be addressed in this proceeding:

- Whether the District's failure to identify [Petitioner] as a student with disabilities that required supports until [REDACTED] year was a failure of Child Find.
- Whether the District's eligibility determination of [Petitioner] so late in [REDACTED] educational career caused loss of educational opportunity.
- Whether the District's failure to identify processing and social issues once eligibility was finally determined caused loss of educational opportunity and emotional distress.
- Whether during the period from January 2012 to the present, the School District failed to provide [Petitioner] with a "FAPE," including appropriate specially designed instruction, ESE support, and ESE accommodations.
- Whether by reason of its failure to provided FAPE from January 2012 to the present, including appropriate specially designed instruction, ESE support, and ESE accommodations, the School District has caused the loss of educational opportunity to [Petitioner] and is thereby liable to

provide appropriate compensatory education.

34. The IDEA requires all states to develop and implement a practical method of determining whether children within each school district should receive special education services. Each district is required to identify, locate, and evaluate all children with disabilities to ascertain whether such services are needed to insure FAPE. This is the so-called "Child Find" provision of IDEA. See 20 U.S.C. § 1412(a)(3). It is the school district's responsibility to look at all children, even those who may be receiving passing grades. The school district must be diligent in its evaluation of students. It must not overlook clear signs of disability, must order testing when warranted, and must provide rational justification for deciding not to evaluate. See Sch. Bd. of the City of Norfolk v. Brown, 769 F. Supp. 2d 928 (E.D. Va. 2010). It is the district's responsibility, not the parents' responsibility, to identify, locate, and evaluate students. See Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275 (11th Cir. 2008). The school district cannot wait for a demand from the parent; they must initiate an evaluation when clear signs exist. Branham v. Gov't of D.C., 427 F.3d 7 (D.C. Cir. 2005).

35. In the present matter, Petitioner was diagnosed with [REDACTED] when [REDACTED] was [REDACTED] years old. [REDACTED] fared well at school for a

while, but began to struggle in [REDACTED]. [REDACTED] diagnosis did not change; there were obviously other factors at work in [REDACTED] decline. However, there were no clear signs that Petitioner needed to be further evaluated. The school district continued to provide FAPE to Petitioner by way of numerous accommodations under RTI/MTSS. But Petitioner's failings were essentially related to [REDACTED] own emotional and motivational issues. [REDACTED] simply failed to do the work [REDACTED] was capable of doing. See, e.g., Clay T. v. Walton County School District, 952 Supp. 817 (M.D. Ga. 1997), in which the court distinguished students whose poor marks in class resulted "not from an inability to comprehend or understand classroom material, but rather from [REDACTED] failure or refusal to turn in [REDACTED] assignments, a behavioral problem which seems more the result of an emotional disturbance than evidence of a disability." Id. at 823.

36. [REDACTED] may constitute an "[REDACTED]" if it is determined that the [REDACTED] "results in limited alertness with respect to the educational environment [and] adversely affects a child's educational performance." 34 C.F.R. § 300.7(c)(9)(i)-(ii). See also M.H. v. Nassau Co. Sch. Bd., 918 So. 2d 316 (Fla. 1st DCA 2005). In the present case, Petitioner's difficulties in school were not proven to be a result of [REDACTED] [REDACTED] diagnosis or, ultimately, [REDACTED] [REDACTED] designation of eligibility.

37. Petitioner, prior to the final hearing conducted in this matter, withdrew its claim of emotional distress or emotional damages. The essence of this case is whether a failure on the part of the school district concerning Petitioner's education under [REDACTED] IEP warrants an award of compensatory education.

38. The U.S. Court of Appeals for the Fifth Circuit has articulated a standard for determining whether a student has received FAPE in compliance with the Act. In Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245, 247-48 (5th Cir. 1997), the Court opined:

[A]n . . . IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit [REDACTED] "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit."

The Petitioner's IEP in the present action is more than sufficient. It provides several accommodations which should benefit Petitioner based on [REDACTED] individual needs. The IEP as written and implemented does not constitute a basis for finding denial of FAPE.

39. Petitioner did not meet █████ burden of proof. The evidence shows that Petitioner was timely and appropriately evaluated, that a valid IEP was created to address █████ needs, and that the IEP was implemented by the school district.

ORDER

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

Ordered that:

1. The St. Johns County School Board did not fail to timely evaluate Petitioner for IDEA purposes;
2. Petitioner is not entitled to compensatory education from the school district; and
3. The relief requested in Petitioner's due process complaint is Denied.

DONE AND ORDERED this 10th day of July, 2014, in Tallahassee, Leon County, Florida.

S

R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the

Division of Administrative Hearings
this 10th day of July, 2014.

ENDNOTES

1/ The [REDACTED] pronoun will be used in this Final Order as a matter of convenience but does not necessarily indicate Petitioner's gender.

2/ The claim for emotional distress was withdrawn by Petitioner per statement by [REDACTED] counsel at final hearing.

3/ [REDACTED]

4/ It is unclear from the record the exact date that Petitioner was deemed eligible for ESE services, but the IEP was developed beginning February 8.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(b), Florida Statutes (2011), 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).