

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

** ,

Petitioner,

vs.

Case No. 18-1135E

ST. JOHNS COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

A due process hearing was held on [REDACTED] and [REDACTED], [REDACTED], in Ponte Vedra, Florida, before Jessica Enciso Varn, Administrative Law Judge with the Florida Division of Administrative Hearings.

APPEARANCES

For Petitioner: [REDACTED], Esquire
Wood, Atter, & Wolf, P.A.
100 North Laura Street, Suite 702
Jacksonville, Florida 32202

For Respondent: [REDACTED], Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

Whether Respondent (School Board) has consistently provided material in enlarged print over the last two years, and whether the School Board has consistently provided enlarged material that is complete and of high contrast and/or simple font style.^{1/}

PRELIMINARY STATEMENT

A request for due process hearing was filed on [REDACTED], [REDACTED]. The following day, on [REDACTED], [REDACTED], a Case Management Order was issued, establishing deadlines for a sufficiency review, as well as for mandatory resolution session. The parties attended a resolution session on [REDACTED], [REDACTED]. Following the resolution session, the School Board filed a Notice of Outcome of Resolution Meeting on [REDACTED], [REDACTED], indicating that the parties were unable to resolve the matter. On [REDACTED], [REDACTED], a hearing was scheduled for [REDACTED] and [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], counsel for Petitioner filed a Motion for Continuance, seeking additional time to prepare for the hearing because counsel had just been retained by Petitioner. Counsel for Petitioner also filed a Notice of Appearance that same day. An Order Granting Continuance was entered on [REDACTED], [REDACTED], cancelling the hearing and requesting a status report from the parties by [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], the parties filed a Joint Status Report detailing that Petitioner would be unavailable for a hearing date until [REDACTED] due to prior travel and work obligations.

A pre-hearing conference was held on [REDACTED], [REDACTED]. An Order Rescheduling Hearing was entered on [REDACTED], [REDACTED], setting the hearing date for [REDACTED] and [REDACTED], [REDACTED]. A telephonic hearing was

held on [REDACTED], [REDACTED], wherein the parties agreed to reschedule the hearing. An Order Rescheduling Hearing was entered on [REDACTED], [REDACTED], setting the hearing dates for [REDACTED] and [REDACTED], [REDACTED].

During the due process hearing, testimony was heard from: the student's [REDACTED]; the student; [REDACTED], [REDACTED] of same-aged student at student's school; [REDACTED], [REDACTED] of same-aged student at student's school; [REDACTED], teacher of students with [REDACTED]; [REDACTED], student's [REDACTED] and [REDACTED] teacher; [REDACTED], student's exceptional student education (ESE) teacher; [REDACTED], student's [REDACTED]; [REDACTED], student's [REDACTED]; and [REDACTED], assistant principal.

School Board Exhibits 7 through 13, 15 through 18, 20 through 27, 30, 31, 34, 36, 37, 40, 41, and 43 were admitted into the record. Petitioner Exhibits 2 and 4 were admitted into the record.

Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Petitioner. The [REDACTED]

pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. By all accounts, the student in this case is a polite, well-behaved, very articulate, [REDACTED] student, who is currently [REDACTED] years old and in the [REDACTED] grade. [REDACTED] is eligible for ESE pursuant to the [REDACTED] category. [REDACTED] eligibility is based on [REDACTED] [REDACTED] and [REDACTED] [REDACTED] level and the fact that [REDACTED] level in both areas.

2. In March of [REDACTED], when the student was in [REDACTED] grade, [REDACTED] was diagnosed with [REDACTED], but with corrective [REDACTED], [REDACTED] had [REDACTED].

3. In [REDACTED] of [REDACTED], when the student was in [REDACTED] grade, the student's physician wrote a letter indicating that preparing documents in [REDACTED] would benefit the student. The physician noted, once again, that with [REDACTED], the student had [REDACTED].

4. In March of [REDACTED], the student's Individualized Education Plan (IEP) team designed an IEP which included several accommodations, including: [REDACTED] and/or a [REDACTED] [REDACTED], a [REDACTED] to [REDACTED] or [REDACTED] [REDACTED], [REDACTED], a [REDACTED], a [REDACTED], [REDACTED] and [REDACTED], [REDACTED], and [REDACTED] of the class. Conference

notes indicate agreement that [REDACTED]
[REDACTED], but the student [REDACTED]
[REDACTED] assignments.

5. At the conclusion of [REDACTED] grade, the student had progressed on all [REDACTED] academic IEP goals and advanced to [REDACTED] grade.

6. In October of [REDACTED], when the student was in [REDACTED] grade, the IEP team revisited the IEP. The accommodations listed above remained the same.

7. In March of [REDACTED], the IEP team met for an annual review of the IEP. At this point, the IEP was amended to require [REDACTED]
[REDACTED] [REDACTED] and a [REDACTED]. [REDACTED] other accommodations were placed in the IEP. The IEP team noted that the student had made progress on all [REDACTED] IEP goals.

8. In May of [REDACTED], at the conclusion of [REDACTED] grade, the IEP team amended the IEP. The accommodation of [REDACTED] was made more specific; the IEP listed [REDACTED] in the paper-based presentation section of the IEP and the computer-based presentation section of the IEP. A list of [REDACTED] accommodations was included in the IEP.

9. Although the student [REDACTED] of school in [REDACTED] grade, [REDACTED] earned passing grades in all academic classes, progressed on all IEP goals, and advanced to [REDACTED] grade.

10. In [REDACTED] of [REDACTED], when the student was in [REDACTED] grade, the IEP team once again met. The team agreed that the student would receive materials in [REDACTED] or [REDACTED], and [REDACTED] accommodations were placed in the IEP.

11. In November of [REDACTED], a state-facilitated IEP team meeting was held. The student attended a portion of the IEP team meeting and explained that [REDACTED] teachers always provided [REDACTED] with [REDACTED] and normal-sized copies of the materials, but [REDACTED] did not always choose the [REDACTED] material. The IEP team agreed that paper-based presentations would be provided in [REDACTED] or electronically. A list of [REDACTED] accommodations was also included in the IEP.

12. The student was absent for the entire month of [REDACTED] [REDACTED].

13. On [REDACTED], [REDACTED], one of the student's physicians issued a report noting that the student's vision was [REDACTED] with [REDACTED], and that with corrective eyeglasses, the student could read [REDACTED].

14. The final IEP that was written for the student was dated [REDACTED], [REDACTED]. This IEP continued to require [REDACTED] [REDACTED] and/or [REDACTED] materials. [REDACTED]-[REDACTED] accommodations were included in the IEP.

15. Every teacher and administrator testified credibly that all materials were presented to the student at all times in

compliance with the IEP. The teachers would give materials to a front office staff member, who had the responsibility of [REDACTED] all materials for the student. Each teacher was equipped with a [REDACTED] to ensure that the materials complied with the IEP requirements. The staff member regularly spent multiple hours daily preparing the materials for the student, without any issue being raised by the student regarding the availability of the materials, the completeness of the materials, or the inadequacy of the font style or contrast utilized. In fact, the student [REDACTED] agreed that materials were given to [REDACTED] in [REDACTED], but that [REDACTED] chose to use normal-sized print.

16. As to the completeness of the material, [REDACTED] of the [REDACTED], and the [REDACTED], there was simply no credible evidence presented to establish that the materials were incomplete, were regularly presented in [REDACTED], or in a [REDACTED] that was inappropriate.^{2/} There was no credible evidence that the teachers were ever told that the [REDACTED] not [REDACTED] or that the [REDACTED] had to be a [REDACTED], or that anything was missing from the materials.

17. The totality of the evidence establishes that the School Board implemented the IEP as written and materials were regularly provided in [REDACTED] and were complete. There was no credible evidence that the materials used an unacceptable [REDACTED]

█████, or that the materials were in need of ██████████, or that either of these two preferences were required by any of the IEPs drafted in the last █████ years.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto. See §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

19. Petitioner bears the burden of proof with respect to each of the issues raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

20. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies,

which is contingent on each agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Ala. State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

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

22. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with a free appropriate public education (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).

23. The central mechanism by which the IDEA ensures a FAPE for each child is the development and implementation of an IEP. 20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985) (“The modus operandi of the [IDEA] is the . . . IEP.”)(internal quotation marks omitted). The IEP must be developed in accordance with the procedures laid out in the IDEA, and must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 13 S. Ct. 988, 999 (2017).

24. In the instant case, the parent alleges that the School Board failed to properly implement the student’s IEP by not regularly providing materials in [REDACTED], and by not providing complete materials with enough [REDACTED] and without [REDACTED].

25. Because these claims challenge the School Board's implementation of Petitioner's educational programming—rather than its substance—a different standard of review applies. L.J. v. Sch. Bd. of Broward Cnty., 850 F. Supp. 2d 1315, 1319 (S.D. Fla. 2012). In particular, a parent raising a failure-to-implement claim must present evidence of a “material” shortfall,

which occurs when there is "more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." Van Duyn v. Baker Sch. Dist., 502 F.3d 811, 822 (9th Cir. 2007). Notably, this standard does not require that the student suffer demonstrable educational harm in order to prevail. Id. at 822; Colon-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 143-44 (D.P.R. 2014); Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 40 (D.D.C. 2013). Rather, the materiality standard focuses on "the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

26. Here, the best evidence establishes that the IEP was implemented with fidelity; the school staff credibly testified that great measures were taken to ensure that a staff member would █████ all materials for the student, and that all materials were presented as required by the IEP.

27. Applying the materiality standard detailed above, the credible evidence in the record leads to the conclusion that the School Board has properly implemented the student's IEP.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED. The School Board properly implemented the student's IEP.

DONE AND ORDERED this 8th day of October, 2018, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
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 8th day of October, 2018.

ENDNOTES

^{1/} During the hearing and in Petitioner's Proposed Final Order, many other issues were raised and argued, including a failure to implement the preferential seating accommodation, a failure to provide electronic materials, alleged bullying of the student, and a failure of the IEP team to find an additional eligibility of [REDACTED]. None of those issues were raised in the Complaint; accordingly, they are not addressed in this Final Order.

^{2/} During the hearing, the student was asked to review materials that were allegedly given to [REDACTED] by the school; the student testified that [REDACTED] could not see the material because of the [REDACTED] and because of the [REDACTED]. The undersigned does not find this testimony credible, as it is inconsistent with the testimony of the teachers and staff, which is found credible.

Several witnesses testified that the student could [REDACTED]-
[REDACTED] material, and every physician stated that with [REDACTED]
[REDACTED], the student could see [REDACTED].

COPIES FURNISHED:

[REDACTED], Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301
(eServed)

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

[REDACTED], Esquire
Wood, Atter, & Wolf, P.A.
Suite 702
100 North Laura Street
Jacksonville, Florida 32202
(eServed)

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

[REDACTED]

NOTICE OF RIGHT TO JUDICIAL REVIEW

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

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

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