STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs.

Case No. 18-1717E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.

_____/

FINAL ORDER

A due process hearing was held in this case before Jessica Enciso Varn, an Administrative Law Judge with the Division of Administrative Hearings, from **End** through **E**, **End**, in Sanford, Florida.

APPEARANCES

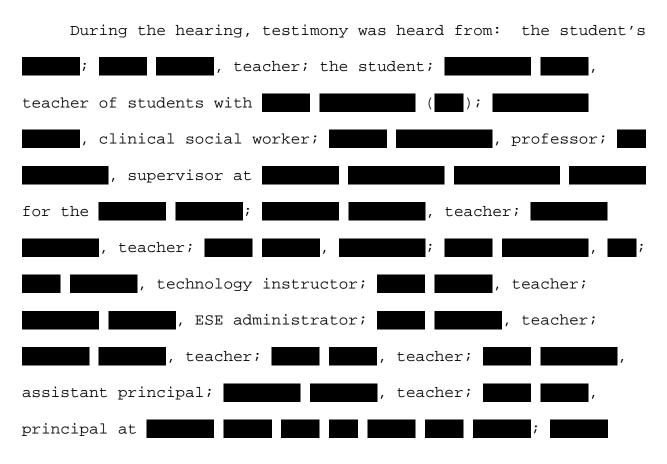
For Petitioner:	Suite 101 1220 Commerce Park Drive Longwood, Florida 32779
For Respondent:	School Board of Seminole County, Florida 400 East Lake Mary Boulevard Sanford, Florida 32773

STATEMENT OF THE ISSUE

Whether the School Board failed to provide a free and appropriate public education (FAPE) by failing to properly implement the student's Individualized Educational Plan (IEP); by failing to design an IEP that included End of School Year (ESY) and and and evaluation () services; by failing to complete an evaluation; and by failing to respond without unnecessary delay to the student's request for an independent educational evaluation (IEE) in the area of .

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on , , , , alleging that the School Board had failed to provide a FAPE to a **student**. After a telephone conference with the parties, the due process hearing was scheduled for **student** through , **student**, and the hearing was held on those dates.



administrator of services at s

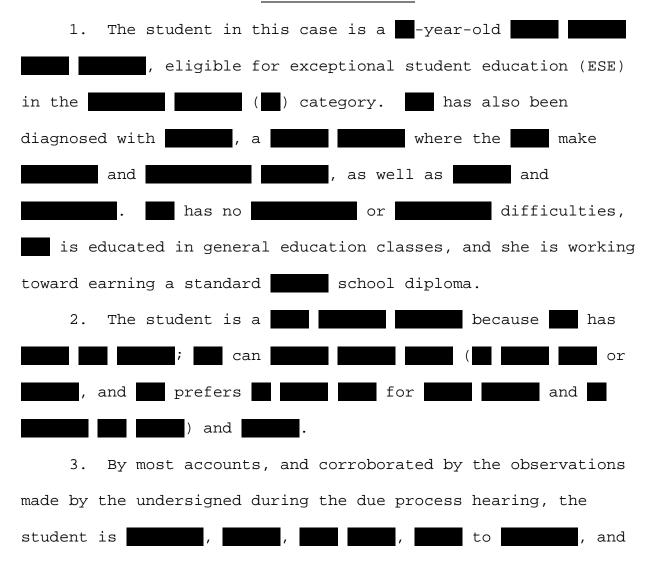
The School Board's Joint Exhibits 147, 177, and 197 were admitted into the record; and Petitioner's Joint Exhibits A, C, E, K, L, Q (pages 31 through 49), R, S (Sections 4 and 15), U (Tinkle Input), and W (parts 1, 3, and 5) were admitted into the record. The School Board's Exhibits 1, 2, 6, 8, 9, 14, 18 through 21, 24, 29-35, 37, 38, 40, 61, 62, 65 through 68, 71, 73, 74, 76 through 82, 84, 90, 96, 98 through 106, 108, 112, 123 through 125, 127 through 129, 132 through 134, 138, 141, 145, 148, 150 through 153, 157, 158, 160, 163 through 166, 173 through 175, 178 through 193, 196, and 198 were admitted into the record; and Petitioner's Exhibits B, D, F through J, M through 0, P (sections 2 and 4), S (sections 1 through 3, 5, 6 (pages 2 and 3)), T, U (Delong, Darling, and Boucher Teacher Input), V (page 3), Y, and Z (pages 11 through 14) were admitted into the record.

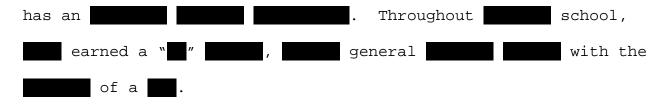
The Transcript was filed on **Prop**, **Prop**. By agreement of the parties at the conclusion of the due process hearing, the proposed final orders were due on **Prop**, **Prop**; and the Final Order was due on **Prop**, **Prop**. By Order dated **Prop**, **Prop**, and with the agreement of the parties, the deadline for the Final Order was extended to **Prop**, **Prop**. The parties' proposed

final orders were considered in the preparation of this Final Order.

Unless otherwise noted, all statutory and rule citations are to the versions in effect at the time the alleged violations took place. For stylistic convenience, the undersigned will use pronouns in this Final Order when referring to the student. The pronouns are neither intended, nor should be interpreted, as a reference to the student's actual gender.

FINDINGS OF FACT

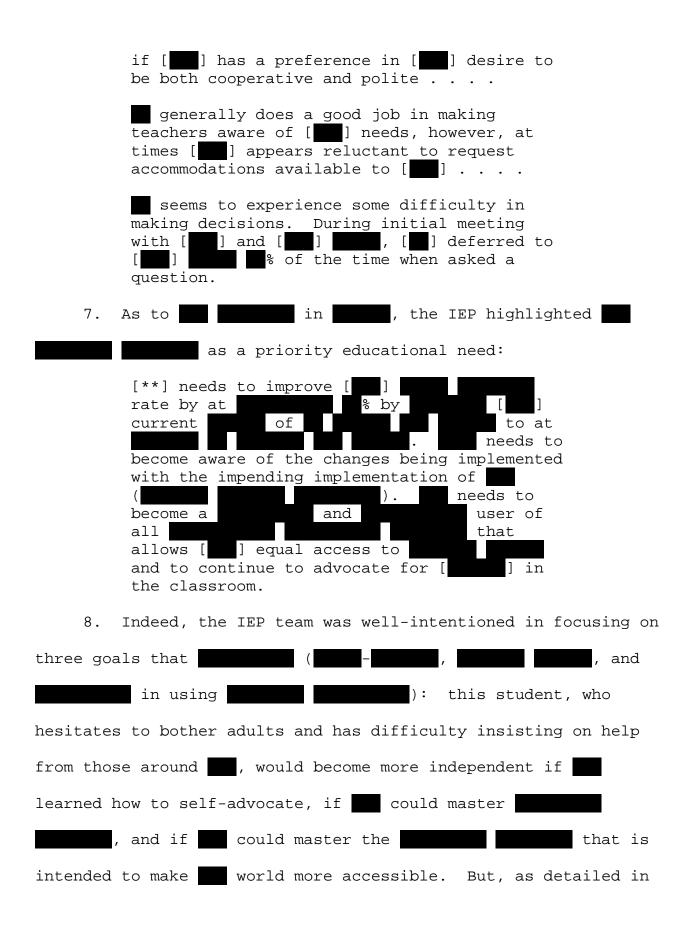




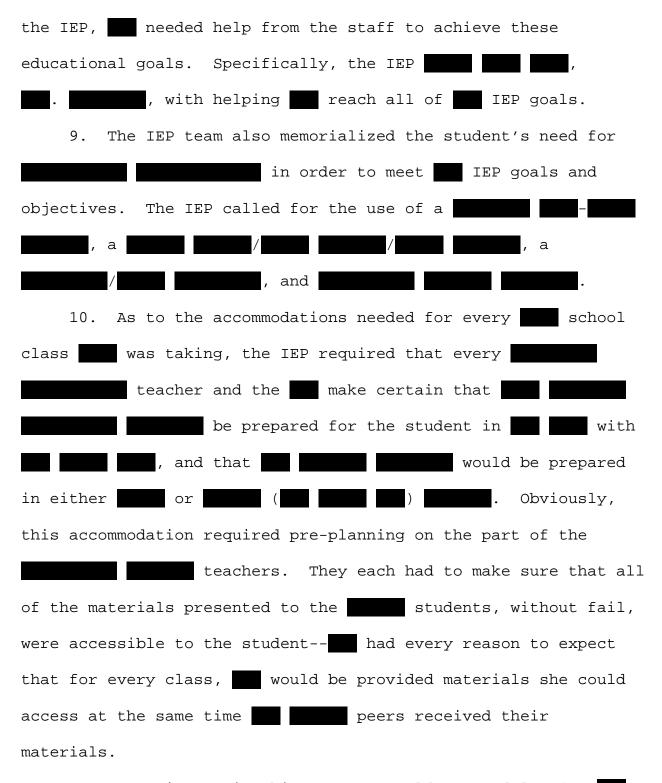
4. During the summer before school, which was the summer of , the student's made several requests for a meeting so that could confirm that the school, School A, was prepared to handle a student, and to make sure all teachers would be prepared to manage the accommodations that were necessary for manage to access me education.

5. Because the , who was assigned to the student for year, year, . is not contractually obligated to work over the summer, the School A staff did not agree to meet with the student's parent until two days before the student's first day of school. At that much anticipated meeting, the was told that all concerns would be handled properly because the student had an IEP in place.

> When given a choice of activities by a teacher [] will often appear ______ about what choice to make, as it appears [] wants to please and make it easier on the teacher by letting the teacher choose for []]. [] may defer to the teacher even



б

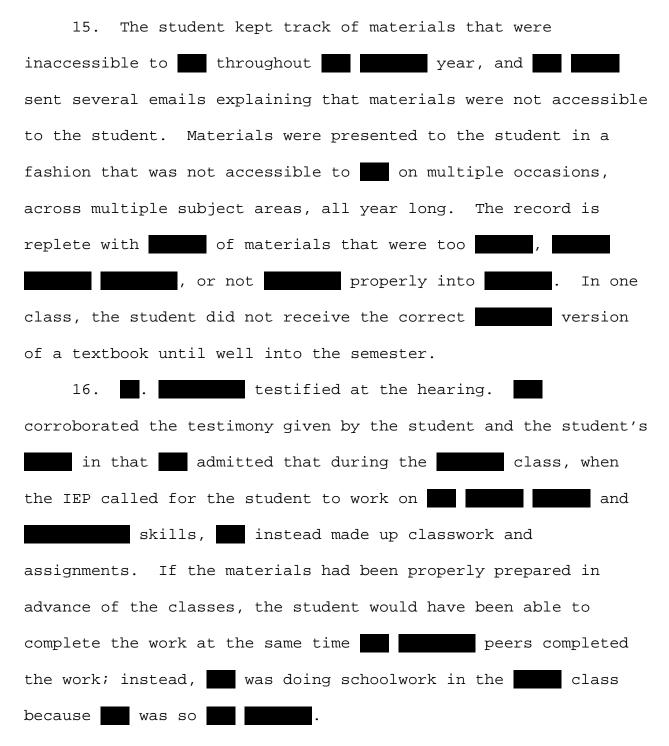


accessible. As shows school classes move daily through subject matter material, there is no "pause" button to freeze the instruction in the classroom and wait for the student to catch up. The instruction moved on, and if shows not able to access the materials at the exact time that shows peers received their materials, would perpetually find shows behind the pace of the class, behind all of shows peers. It was, therefore, imperative that each classroom teacher work closely with the shows to make the materials shows of the time.

12. Understandably, this demand on the general education teachers, who have no training in how to teach students, was likely met with some trepidation. The role of the students, was effectiveness of the student, are crucial for the proper delivery of services to this student. If the is not proficient, fails to do job, or has a poor working relationship with the student, faculty, staff, the student's educational needs would likely not be met.

13. The IEP called for **and the set of the s**

14. ESY services were not provided for in the IEP; the staff on the IEP team told the student's **manual** that ESY services would be considered later in the school year.



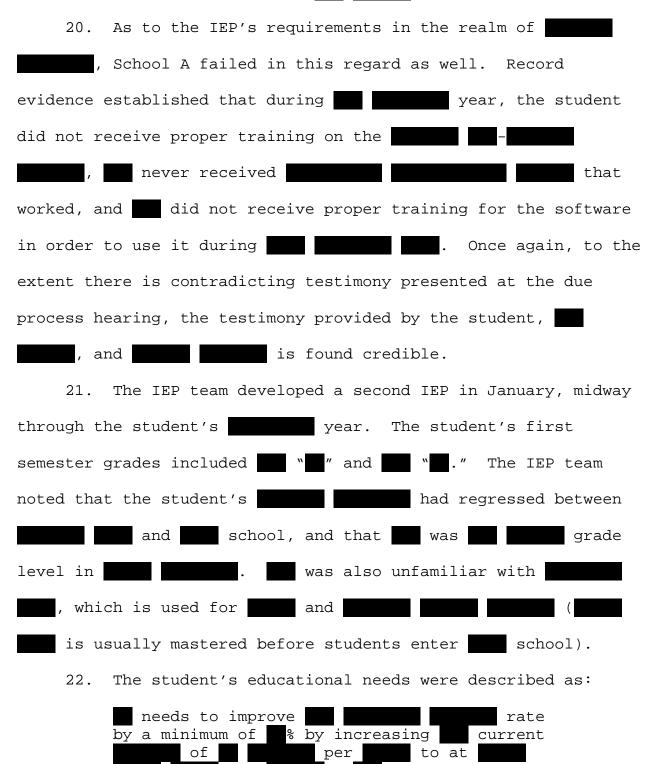
17. . was the only witness who described the student in negative terms; dislike of the student, the student's , and job assignment as the student's was evident during testimony. explained that had requested to be removed from the assignment with the student, and that had almost had a working with the student that school year. The student credibly testified that was difficult to approach, that often made it seem that making materials accessible was an inconvenience, and that . had a negative attitude toward the student. The student's description of interactions with are found credible, and were corroborated by the defensive and hostile attitude . demonstrated during testimony. 18. Given the key role that the had in meeting the

student's educational needs, and in implementing the IEP with fidelity, it comes as no surprise that the IEP was not properly implemented--record evidence and the testimony of the student, , and , and , establish the failure to provide accessible materials to the student throughout

19. Where there is contradictory testimony and evidence on the issue of the accessibility of materials, the undersigned finds the testimony of the student, **matrix**, and **matrix** , corroborated by the student's planner, which detailed

many instances of materials being inaccessible for / and by

multiple emails sent by the expressing concern over the accessibility of materials for the second se



a consistent and proficient user of all

per

.

needs to become

that allows equal access to learning media. needs to become a more 23. On this IEP, the remained the (limited to the school campus), and same, as did ESY services were indicated as needed, and would be addressed in of , at the conclusion of the school year. The student's requested an IEE in the area of , and was denied the request based on the School Board's position that it had never conducted an initial evaluation. 24. At the conclusion of the student had classes, and . Due to having to take the summer classes for the failed classes, 🗾 was not given ESY services. To make matters worse, the platform used for the summer _____ class was completely inaccessible to the student; therefore, the student's agreed to all material to the student to have complete the summer class for school credit. 25. Because . requested to be removed from position as a for the student, the for . During the fall of , the School Board agreed was to provide distance learning tutoring sessions with , who had completed an evaluation of the student in the summer of and who was asked to teach the student skills with the , and to teach

26. During the student's year, the School Board also agreed to provide age-appropriate **concerns** (presumably the insurance concerns had been resolved), which included one trip to a local store.

28. From the summer of through for of , the parties participated in mediations which resulted in many agreements on outstanding issues. In **second**, within the

request for a due process hearing, the student's _____ once again requested an IEE in the area of _____.

29. The student became more proficient in the use of the

30. The most recent IEP, developed in **second** of **second**, did provide for community **second** instruction and provided for ESY services.

31.	The Complaint i	n this case	requests	of
compensat	ory services for	,	of compe	nsatory services
for	, and	of comp	pensatory se	rvices in
	i i i	nstruction.		

CONCLUSIONS OF LAW

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

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

34. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free

appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); <u>Phillip C. v. Jefferson</u> <u>Cnty. Bd. of Educ.</u>, 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. <u>Doe v. Ala. State Dep't of Educ.</u>, 915 F.2d 651, 654 (11th Cir. 1990).

35. Parents and students with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. <u>Bd. of Educ. v. Rowley</u>, 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).

36. 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).

37. 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); <u>Sch. Comm. of Burlington v. Dep't of</u> <u>Educ.</u>, 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. <u>Endrew F. v. Douglas Cnty. Sch. Dist. RE-1</u>, 13 S. Ct. 988, 999 (2017).

38. The IDEA provides that an IEP must include measureable annual goals designed to meet each of the educational needs that

result from the child's disability. 20 U.S.C.

§ 1414(d)(1)(A)(i)(II); <u>Alex R. v. Forrestville Valley Cmty. Unit</u> <u>Sch. Dist. #221</u>, 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); <u>CJN v.</u> <u>Minneapolis Pub. Schs.</u>, 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").

39. Here, Petitioner takes issue with the design of the student's IEP because it failed to provide for ESY services, and failed to properly address needs. Up and until the end of year, the student's IEP did not address ageappropriate community instruction and did not provide for ESY services. The record evidence, and the inclusion of those services in later IEPs, establishes that these educational needs did not suddenly surface in the student's year--these needs existed from the moment entered school. The student had regressed in , was never at grade or level in , and yet was not offered after year. Also during her year, the student was denied services beyond the school campus because of insurance reasons.

40. The IEPs designed during the student's year of school are found to be deficient for these reasons. They

did not meet every educational need, and therefore were not reasonably calculated to enable the student to make progress in light of circumstances.

41. The Complaint also alleges that the IEPs were not properly implemented because School A failed to provide accessible materials to the student and failed to meet the student's **complaint meeds**.

Because these claims challenge the School Board's 42. 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-toimplement 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." <u>Wilson v. Dist. of Columbia</u>, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

43. Here, the credible evidence establishes that the student did not receive all of learning materials in an accessible manner, and that was never trained or received proper support on the proper use of the **second material** devices during all of **second material** year, and some of **second** year.

44. Applying the materiality standard detailed above, the credible evidence in the record leads to the conclusion that the School Board did not properly implement the student's IEP during all of generative year and some of generative year.

45. Because the School Board denied the student a FAPE by failing to design appropriate IEPs and also failed to implement the IEPs, the student is entitled to compensatory education.

46. In calculating an award of compensatory education, the undersigned is guided by <u>Reid ex rel. Reid v. District of</u> <u>Columbia</u>, 401 F.3d 516, 523 (D.C. Cir. 2005), wherein the D.C. Circuit emphasized that IDEA relief depends on equitable considerations, stating, "in every case . . . the inquiry must be fact specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first

place." Id. at 524. The court further observed that its "flexible approach will produce different results in different cases depending on the child's needs." Id. at 524.

This qualitative approach has been adopted by the Sixth 47. Circuit and a number of federal district courts. See Bd. of Educ. v. L.M., 478 F.3d 307, 316 (6th Cir. 2007) (agreeing with the district court that a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address the student's educational problems successfully); Petrina W. v. City of Chicago Pub. Sch. Dist., 2009 U.S. Dist. LEXIS 116223, *11 (N.D. Ill. Dec. 10, 2009) (noting that a flexible, individualized approach is more consonant with the aim of the IDEA, the Court found such an approach more persuasive than the Third Circuit's formulaic method); 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); Barr-Rhoderick v. Bd. of Educ., 2006 U.S. Dist. LEXIS 72526, *83-84 (D.N.M. Apr. 3, 2006) (holding that an award of compensatory education must be specifically tailored and cannot be reduced to a simple, hour-for-hour formula); Sammons v. Polk

Cnty. Sch. Bd., 2005 U.S. Dist. LEXIS 45838, *21-22 (M.D. Fla. Oct. 7, 2005) (adopting Reid's qualitative approach).

48. Guided by the above-stated principles, Petitioner is entitled to compensatory education for a period of time that could encompass the entire **weak** year; however, the Complaint specifically requested **weak** of compensatory services for **weak**, **weak** of compensatory services for **weak** services, and **weak** of compensatory services in **weak** services, and **weak** instruction. The undersigned is aware that the parties diligently attempted to resolve all disputes, and did so with many of the problems that arose.

49. Given that the parties have negotiated terms of agreement over the course of a year and a half, and many issues were successfully resolved to the apparent satisfaction of both parties, the award of compensatory education is limited to that which has been requested.

has in fact been provided. Accordingly, the School Board is ordered to either file a request for a due process hearing to establish the appropriateness of the evaluation, or make the decision to provide an IEE in .

ORDER

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

 The School Board denied the student a FAPE by failing to design IEPs that addressed all of the student's educational needs;

2) The School Board denied the student a FAPE when it failed to properly implement the IEPs;

3) The School Board is ordered to provide hours of compensatory services for , hours of compensatory services for , and hours of compensatory services in instruction;

4) The School Board has yet to respond to Petitioner's request for an IEE in **EXE**, and is ordered to do so within the next 15 days; and

5) All other requests for relief are denied.^{2/}

DONE AND ORDERED this 13th day of August, 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 13th day of August, 2018.

ENDNOTES

^{1/} . And the student's **And the student's And the student was taking notes in** planner regarding the accessibility of her educational materials; therefore, the undersigned is satisfied that the notes contained in the planner were taken contemporaneously with the events taking place, and not simply for purposes of the due process hearing.

^{2/} Petitioner's requests for prospective relief are denied, as those issues are not ripe for adjudication. The requests for sensitivity training and attorney's fees and costs are denied because the undersigned has no jurisdiction to award the requested relief.

COPIES FURNISHED:

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

Seminole County Public Schools 400 East Lake Mary Boulevard Sanford, Florida 32773

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

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 6A6.03311(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).