STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 18-4167E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Todd P. Resavage, an Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH), on [redacted] through [redacted], [redacted], in Miami, Florida.

APPEARANCES

For Petitioner: [redacted], Esquire
Disability Independence Group, Inc.
2990 Southwest 35th Avenue
Miami, Florida 33133

For Respondent: [redacted], Esquire
Miami-Dade County Public Schools
1450 Northeast 2nd Avenue
Miami, Florida 33132

STATEMENT OF THE ISSUES

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., in predetermining Petitioner's educational placement; and whether

the proposed educational placement failed to satisfy the least restrictive environment (LRE) requirement of the IDEA.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Due Process Hearing (Complaint) on [redacted]. On the same date the Complaint was forwarded to DOAH and assigned to the undersigned for all further proceedings.

Petitioner filed a Motion to Determine Stay Put Placement on [redacted]. After conducting a motion hearing on said filing, on [redacted], an Order was issued providing that during the pendency of the instant proceeding, Petitioner was to remain in a [redacted] placement.

On [redacted], Respondent filed a Notice of Insufficiency. On [redacted], the undersigned issued an Order of Sufficiency, specifically delineating those claims which met the minimal IDEA pleading requirements. Said Order was never challenged and Petitioner did not file an amended complaint thereafter. Said claims are set forth immediately above in the Statement of the Issues.

The parties conducted a resolution session on [redacted], but, were unable to reach an amicable resolution. On [redacted], the undersigned issued an Order requiring the parties to provide mutually agreeable dates in which to conduct the final hearing.

In compliance with the undersigned's [redacted], Order, the parties filed a Notice of Proposed Hearing Dates on [redacted]. In the filing, the parties represented that they required three to four days to conduct the final hearing. The parties further represented that they were mutually available to conduct the final hearing on several dates including, but not limited to, [redacted] through [redacted].

On [redacted], the undersigned conducted a telephonic conference with the parties to schedule the final hearing. After discussing the parties' availability, as well as the undersigned's availability, Petitioner represented a preference to conduct the hearing on [redacted] through [redacted]. Respondent represented a preference for conducting the final hearing on [redacted] and [redacted], and [redacted] and [redacted]. Petitioner represented a preference for the undersigned to appear in person for the final hearing and Respondent represented a preference for the undersigned to appear via video teleconference. The undersigned having considered the parties' respective positions, and in the interests of promoting the just, speedy, and inexpensive determination of all aspects of the case, as well as the timelines for conducting due process hearings as set forth in Florida Administrative Code Rule 6A-6.03311(9), the final hearing was scheduled for a live hearing in Miami, Florida, on [redacted] through [redacted]. As indicated in the Notice of Hearing, filed

[redacted], [redacted], it was understood by the parties that the commencement of the hearing on [redacted], [redacted], was outside of the prescribed timeframe set forth in rule 6A-6.03311(9).

The hearing was conducted as scheduled. The final hearing Transcript was filed on [redacted], [redacted]. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript.

Upon the conclusion of the final hearing, the parties stipulated that the proposed final orders would be filed on or before [redacted], [redacted], and that this Final Order would issue on or before [redacted], [redacted]. After granting two unopposed motions to extend the time to file proposed final orders, the parties timely submitted their proposed final orders on [redacted], [redacted]. Based on the parties' extensions, this Final Order deadline was extended commensurately to [redacted], [redacted]. The parties timely filed proposed final orders, which have been considered in this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations.

For stylistic convenience, the undersigned will use [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. Petitioner is currently [redacted] years old.

2. At [redacted] birth, Petitioner [redacted] a "[redacted]," as that term is defined in section 766.302(2), Florida Statutes. [redacted] sustained an [redacted] to [redacted] or [redacted] caused [redacted] or [redacted] occurring in the course of [redacted], [redacted], or [redacted] in the [redacted], which [redacted] and [redacted] and [redacted].[1/]

3. The nature and extent of Petitioner's [redacted] are [redacted] and [redacted]. Petitioner has been diagnosed with [redacted], [redacted], [redacted], [redacted], [redacted] with [redacted] or [redacted], history of [redacted], [redacted] to [redacted], [redacted], and [redacted]. [redacted] has a history of [redacted], a history of [redacted] to [redacted], and has been followed by a [redacted] due to [redacted] and [redacted].

4. Despite the above challenges, Petitioner has made progress in several key areas. Petitioner has undergone [redacted]: 1) [redacted], a [redacted] to [redacted]; and 2) [redacted], a

[redacted] and [redacted] on [redacted] and [redacted]. In combination, these [redacted] have improved [redacted], [redacted] ability to [redacted], and enhanced [redacted] ability to [redacted]. Although Petitioner previously utilized a [redacted] to assist in [redacted], [redacted] can now [redacted] with [redacted] and [redacted].

5. Petitioner's [redacted] therapist, [redacted], has worked with Petitioner for approximately four years at [redacted]. [redacted] provides therapy to Petitioner four times per week, and opines that he has not yet plateaued. [redacted] credibly testified that, in addition to not requiring a [redacted], Petitioner can [redacted], [redacted] and [redacted] from a [redacted], and [redacted]. [redacted] further credibly testified that, due to [redacted], she would recommend [redacted] be observed while in school primarily due to the other students in [redacted] proximity.

6. [redacted], the [redacted] for the [redacted] of [redacted], provides [redacted] therapy to Petitioner from funding through the [redacted]. [redacted] credibly testified that [redacted] has made "tremendous progress" in [redacted], and can now [redacted] from a [redacted] and [redacted] a [redacted] by [redacted]. Although [redacted] can [redacted](to a [redacted]) with [redacted], [redacted] requires monitoring and supervision to [redacted] and to [redacted] while [redacted].

Moreover, [redacted] requires [redacted] supervision and cuing to remain on the task of [redacted]. Assuming one is familiar with [redacted], the supervising adult need not be a [redacted] of the [redacted].

7. [redacted] explained that Petitioner requires the use of a [redacted] for [redacted], and a [redacted] and [redacted]--all of which can be utilized in a public school cafeteria setting. [redacted] cautioned, however, that [redacted] would have to be closely monitored for [redacted] concerns in such a setting.

8. Petitioner has made limited strides in [redacted]. Petitioner is essentially [redacted] in his ability to [redacted]. Although [redacted] can [redacted] a [redacted] such as "[redacted]," "[redacted]," "[redacted]," and "[redacted]," [redacted] primarily [redacted] via the use of a few basic [redacted], [redacted], and [redacted]. Several different assistive technology [redacted] have been attempted to increase [redacted] ability to communicate.

9. At present, Petitioner is attempting to utilize the [redacted], an [redacted]. [redacted], a [redacted] at [redacted], provides private [redacted] therapy to Petitioner and [redacted] the [redacted] for Petitioner.

10. [redacted] does not have any specific training regarding Petitioner's diagnosis of [redacted]; however, feels competent to model the [redacted]. xxx explained that, over the past year, in the

[redacted]-to-[redacted] setting, Petitioner has been able to progress from unmasking [redacted], on the [redacted], to over [redacted].[2/] Of the [redacted] that have been unmasked, [redacted] will spontaneously access about [redacted] to [redacted] percent of those [redacted].[3/] Petitioner is beginning to combine [redacted] at a time, however, this remains an [redacted] skill. Petitioner is not [redacted] at this time.

11. [redacted] credibly opined that he requires "[redacted]" during the sessions and [redacted] progress is [redacted] upon "[redacted] of [redacted]" and "under very [redacted]." Although admittedly not [redacted] specialty, [redacted] opined that Petitioner "needs [redacted], someone to [redacted], making sure [redacted] has access to someone as far as [redacted] purposes, in an environment that is [redacted] for [redacted]." [redacted] further credibly testified that Petitioner requires [redacted]; and, in [redacted], requires someone near [redacted] at all times to redirect.

12. As referenced above, Petitioner has been diagnosed with [redacted]. He received this [redacted] diagnosis on or about [redacted], [redacted]. [redacted] is a [redacted]; however, it differs from an [redacted] as it is [redacted] based. In other words, the [redacted] is not due to damage to the [redacted] itself but the [redacted] of the [redacted] that [redacted] and [redacted] received from the [redacted].

13. Petitioner presented the testimony of [redacted], a [redacted] consultant, with significant experience and training in [redacted]. [redacted] credibly explained that there are certain characteristics connected with a [redacted] diagnosis: 1) [redacted], 2) the need for [redacted], 3) difficulty with [redacted], 4) [redacted] difficulty with [redacted], 5) difficulty with [redacted], 6) a [redacted], 7) the need for [redacted], 8) [redacted], and 9) the [redacted] of [redacted].

[redacted] opined that in the absence of accommodations to address these characteristics, a student with [redacted] will be [redacted] impacted in their academic and developmental goals as those students have a significant [redacted] of access to [redacted] learning, such "that they cannot [redacted] and [redacted] things the way other students can and it's not based on [redacted]."

14. Based upon the evidentiary presentation, there are few educational programs and resources available where an educator may increase their knowledge and expertise on this emerging [redacted]. Indeed, the evidence presented established that there are no such programs in Florida. The two primary programs are located at [redacted] for the [redacted] in [redacted] and the [redacted] for the [redacted] and [redacted].

15. With respect to [redacted], in addition to [redacted], Petitioner also has been diagnosed with [redacted], which is the

[redacted] of [redacted] or both [redacted]. The record evidence demonstrates that [redacted] is roughly equivalent to [redacted].

16. Against this background information, Petitioner's educational facts are discussed. Petitioner, at the age of [redacted], enrolled in a [redacted] program at School A, a public elementary school in Respondent's school district.

17. Petitioner was identified as a student with a disability [redacted] and in need of exceptional student education (ESE) services. At school A, Petitioner was placed in a "[redacted]" class, which is a "[redacted]" in the [redacted] program. In this setting, Petitioner spent 100 percent of the time in an [redacted] classroom. It is entitled "[redacted]" as the class is composed of ESE students, and between [redacted] typically developing students. Petitioner's [redacted] class included a teacher and two paraprofessionals.

18. Throughout Petitioner's duration at School A, IEP meetings and Individualized Education Plans (IEPs) were drafted to provide individualized programming and related services designed to address Petitioner's unique needs.

19. As Petitioner approached the end of the [redacted]-[redacted] school year, an IEP meeting was scheduled for [redacted], [redacted]. The meeting notice set forth the following purposes of the meeting: develop an IEP, review Petitioner's academic progress and/or behavior, consider the continued need for the present program

and/or placement and/or need for other programs and/or placements, review the current plan as a result of a reevaluation, and [redacted] to [redacted] transition. The meeting notice complied with the requirements of Florida Administrative Code Rule 6A-6.03028(3)(b)3.

20. In addition to the requisite school based members of the IEP team, Petitioner's [redacted] and [redacted] invited guest, [redacted], a [redacted], attended the meeting. The meeting was held from approximately [redacted] a.m. until [redacted] p.m.

21. During the meeting, the IEP team reviewed Petitioner's present levels of academic achievement and functional performance and how Petitioner's disability affects his involvement and progress in the [redacted] curriculum. Petitioner's [redacted] was afforded the opportunity to and did provide information regarding the strengths and concerns of Petitioner; participated in discussions about Petitioner's need for special education and related services and supplementary aids and services; and participated in discussions regarding the educational placement of Petitioner.

22. [redacted], Petitioner's [redacted] teacher since [redacted] started at School A, was present at the IEP meeting. [redacted] credibly testified that, in her class, Petitioner was [redacted] to meet the [redacted] standards and did not demonstrate [redacted]. Even with a paraprofessional assigned

specifically to Petitioner and another paraprofessional assigned to the room, Petitioner required [redacted] assistance. [redacted] credibly testified that Petitioner requires assistance with [redacted], [redacted], [redacted], to ensure his [redacted] safety, and assistance with all [redacted] activities. [redacted] testified as follows:

> I found [redacted] strengths in [redacted] and [redacted] environment. They were matching [redacted] name between two objects. [redacted] was able to [redacted] into two separate bins using [redacted] and [redacted]. [redacted] is [redacted] to follow [redacted] and [redacted]. [redacted] was able to attend [redacted] teacher chosen tasks for around up to [redacted] minutes.
>
> Some of [redacted] [redacted] in [redacted] learning were [redacted] did not know [redacted] [redacted] yet, [redacted], how to [redacted] the [redacted], [redacted] the [redacted], [redacted] from [redacted] to [redacted].
>
> In social and emotional, [redacted] delays were [redacted] around [redacted] peers. [redacted] around [redacted] peers, [redacted] would [redacted] and [redacted] them.
>
> [redacted] functioning, [redacted] was still in [redacted]. [redacted] was not [redacted] trained. [redacted] needed assistance [redacted]. [redacted] came into my class not having to be [redacted], but then left being prompted how to [redacted] a [redacted] and bring it up to [redacted] [redacted].
>
> * * *
>
> [redacted] had [redacted] delays in [redacted] hands. [redacted] had [redacted] delays in gross [redacted]. [redacted] was unable to [redacted] the classroom independently without supervision. [redacted] would [redacted] onto [redacted] and [redacted] around.

> In [redacted] communication, [redacted] was [redacted]. [redacted] used several [redacted] devices through the period of my classroom, the [redacted], [redacted], [redacted] and an [redacted] with [redacted]. [redacted] did not use those proficiently. [redacted] never initiated using it. We had to present it to [redacted].

23. [redacted] further explained that, pursuant to a phonological awareness test she administered, the [redacted], which determines a student's phonological awareness, book concepts, and letters, Petitioner received [redacted] correct responses. The [redacted] is provided to all [redacted]-year-old students that are transitioning to [redacted].

24. [redacted] also administered the [redacted] to Petitioner on [redacted], [redacted]. [redacted] testified that this is a required assessment that measures a student's [redacted] ([redacted] and [redacted]), [redacted] ([redacted] and [redacted], and [redacted] and [redacted]), and [redacted] skills ([redacted] and [redacted]). It does not address [redacted] or [redacted] skills. The record evidence demonstrates that Petitioner scored [redacted] the [redacted] percentile on the [redacted] and [redacted], while scoring in the [redacted] percentile in [redacted].

25. At the meeting, in addition to participating in the discussions, Petitioner's [redacted] presented a five page, single-spaced document, entitled "Parent Summary." The IEP team considered the document and suggestions contained therein. To

the extent appropriate, some of the suggestions were incorporated into the IEP. Petitioner's mother presented, and the IEP team considered, a report of Petitioner's private evaluator concerning Petitioner's [redacted].[4/]

26. During the IEP meeting, the participants engaged in discussions regarding Petitioner's educational placement for [redacted]. Although there is a conflict in the evidence, the undersigned finds the better evidence is that the school-based members of the IEP team discussed a continuum of potential placements including a [redacted], a [redacted] (with support from the [redacted], and a [redacted] class.

27. Ultimately, the school-based members of the IEP team, by consensus decision, proposed the [redacted] placement at School B, a public elementary school in Respondent's school district. Importantly, the typed conference notes that are part of the IEP provided that, "[i]t is recommended that a meeting take place within the first semester, while in [redacted] to determine if his current placement is appropriate."

28. The IEP documents the rationale for the proposed placement as follows:

> MDCPS proposed [Petitioner] attend a [redacted] to [redacted] classroom setting, taught be [sic] a [redacted] Teacher who can provide [redacted] instruction throughout the day to address [Petitioner's]

[redacted] across subjects. These options still provide opportunities with [redacted] peers and will provide [redacted] teacher with training in [redacted].

* * *

MDCPS is not able to assure that [Petitioner] will be taught by a teacher who is endorsed in [redacted] training at the present time.

29. Respondent's school district possesses both itinerant [redacted] teachers and specific [redacted] programs housed within a particular school location. There are three elementary school [redacted] programs, one of which is at School B. The [redacted] program placement at School B is considered a [redacted] placement wherein Petitioner would spend [redacted] percent of the day with [redacted] peers and [redacted] percent of the day with [redacted] peers. Included within the IEP document is a recommendation that the [redacted] teacher receive training on [redacted] to assist in implementing Petitioner's IEP goals, services, and accommodations. In that regard, during the [redacted] summer, the [redacted] teacher at School B voluntarily obtained training in [redacted] via an online course offered by the [redacted] for the [redacted] and [redacted].

30. The undersigned finds that Petitioner's mother did not agree to the proposed placement based upon a desire for Petitioner to spend time in an educational placement with [redacted]

access to [redacted] peers, and concerns regarding the lack of an instructor who had been trained in [redacted] to instruct Petitioner.

31. The undersigned finds that the [redacted], [redacted], IEP meeting was properly noticed, conducted, and concluded. Although Petitioner did not agree with the placement decision, Petitioner did not file a request for a due process hearing at that time.

32. Thereafter, the undersigned finds that Petitioner made requests to reconvene the IEP team to further discuss Petitioner's present levels of performance and readdress and revise the IEP, including Petitioner's placement. Ultimately, a meeting was scheduled for [redacted], [redacted].

33. The record evidence, in this matter, fails to include the actual notice provided by Respondent to Petitioner concerning this meeting. Accordingly, the undersigned is precluded from making a finding as to whether said notice complied with Florida Administrative Code Rule 6A-6.03028(3)(b)3., or the documented purpose of the meeting.

34. Respondent's witnesses universally testified that the purpose of the meeting was limited to three items: 1) [redacted] and [redacted]; 2) training staff on [redacted] and [redacted]; and 3) [redacted]. Petitioner, on the other hand, avers that the notice provided a broader purpose--to readdress the [redacted], [redacted], IEP, including placement. In support of this position, Petitioner draws attention to the first page of the

[redacted], [redacted], IEP document. Said document includes several boxes under the heading of "Conference Considerations." The following boxes are checked: "Develop a plan: IEP," "Review your child's academic progress and/or behavior," "Other: DISCUSS [redacted]., [redacted], [redacted]."

35. In the absence of the actual notice, the undersigned finds that either interpretation by the parties was reasonable. Respondent may very well have intended this to mean that, in discussing [redacted] and [redacted] etc., one naturally will be reviewing and potentially revising the IEP, which includes a student's academic progress and behavior. Similarly, Petitioner could reasonably have concluded that the meeting was broader in scope to include all aspects of the IEP, including [redacted] and [redacted] and so on.

36. The meeting began with all required individuals (14 in total), including Petitioner's parents and counsel, in attendance. An agenda for the meeting had been prepared by the Local Education Authority, [redacted]. [redacted] opened the meeting with introductions and presented the agenda, which was limited to the three topics referenced above. Petitioner's parents and counsel advised that they desired to discuss items in addition to the agenda.

37. The parties present conflicting evidence as to what occurred after this initial dispute. Respondent's witnesses

testified that Petitioner's parents and counsel were advised that the agenda items would be addressed in order, and then Petitioner's additional areas of concern would be heard and considered. Petitioner's [redacted] and [redacted] testified that they were simply told that the meeting was limited to the agenda items.

38. It is undisputed that Petitioner's parents and counsel then left the meeting and entered a separate room for approximately an hour. Upon their return, they advised they were not going to attend the meeting under Respondent's meeting conditions. Respondent maintains that it was again reiterated that the meeting would proceed as described above. Respondent advised that the meeting would continue in their absence to which Petitioner objected and requested that the meeting be rescheduled to such a time when all of Petitioner's agenda items could be discussed.

39. Petitioner's counsel's request was not granted, and the school-based members of the IEP team continued with the meeting in Petitioner's parents and counsel's absence and the IEP was revised with respect to the agenda items.

40. Petitioner's Complaint was thereafter filed on [redacted], [redacted], prior to the start of the [redacted] school year.

CONCLUSIONS OF LAW

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

42. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

43. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education (FAPE) 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 the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

44. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. 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).

45. Local school systems must satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

> Special 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).

46. "Special education," as that term is used in the IDEA, is defined as:

> [S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including–-
> (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings . . . .

20 U.S.C. § 1401(29).

47. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's "present levels of academic achievement and functional performance"; establishes measurable annual goals; addresses the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and specifies the measurement tools and periodic reports 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. "Not less frequently than annually," the IEP team must review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i).

48. "The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017)(quoting Honig v. Doe, 108 S. Ct. 592 (1988)). "The IEP is the means by which

special education and related services are 'tailored to the unique needs' of a particular child." Id. (quoting Rowley, 102 S. Ct. at 3034).

49. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Rowley, 458 U.S. at 206-207. A procedural error does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

50. Petitioner's Complaint asserts a procedural violation and avers that the placement decision at the [redacted], [redacted], IEP meeting was the result of predetermination constituting a denial of FAPE. Additionally, Petitioner contends that Respondent's unwillingness to revisit the placement decision during the meeting of July, further demonstrates Respondent's predetermination of this issue.

51. The IDEA requires districts to ensure that the parents of each child with a disability are members of any group that makes decisions about their child's educational placement. 34 C.F.R. §§ 300.327 and 300.501(c)(1). Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. See R.L. v. Miami-Dade County Sch. Bd., 757 F.3d 1173, 1188 (11th Cir. 2014)(explaining that "[p]redetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team."); H.B. v. Las Virgenes Unified Sch. Dist., 239 Fed. App'x 342, 344 (9th Cir. 2007)(explaining that in finding predetermination, a trier of fact must include findings as to the school district's predetermined plan and make findings as to the school district's unwillingness to consider other options); W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, Missoula, Mont., 960 F.2d 1479, 1483 (9th Cir. 1992)(finding that the school district independently developed a proposed IEP that would place the student in a predetermined program, where at the IEP meeting, no alternatives were considered).

52. Here, Petitioner failed to present sufficient evidence for the undersigned to conclude that Respondent had a

predetermined plan and was unwilling to consider other placement options during the [redacted], [redacted], IEP meeting or approached the meeting with a closed mind, having already decided Petitioner's educational placement. To the contrary, the better evidence demonstrates that multiple placement options were discussed by the IEP team during the meeting and options proposed by Petitioner's [redacted] and counsel were considered.

53. The parties' conduct prior to and during the [redacted], [redacted], meeting is now addressed. As discussed above, following the [redacted], [redacted], meeting, Petitioner requested a meeting to review or revise the IEP. The IDEA provides that "each public agency must ensure that . . . the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved." 34 C.F.R. § 300.324(b)(1)(i). Moreover, the IEP team must revise the IEP, as appropriate, to address, inter alia, the child's anticipated needs or other matters. See 34 C.F.R. § 300.324(b)(1)(ii).

54. Although frequency of review is not addressed in the federal regulations, and Respondent is not required to schedule an IEP meeting upon every parental request, the parents of a child with a disability have the right to such a request at any time. When Respondent "[r]efuses to initiate or change the identification, evaluation, or educational placement of the child

or the provision of FAPE to the child," written notice must be given to the parents. See 34 C.F.R. § 300.503(a). Here, the evidence supports a conclusion that Respondent convened an IEP meeting within a reasonable time of Petitioner's request obviating the need for a written notice of refusal.

55. At the [redacted], [redacted], meeting, it is undisputed that Respondent set forth an agenda to be followed. The undersigned is unaware of any IDEA regulation precluding such a practice. Indeed, the IDEA prescribes no specific format for IEP meetings and such a practice would appear to facilitate the orderly and expedient use of time to ensure the ability to adequately address Petitioner's needs and provide Petitioner's parents time to adequately participate. Notwithstanding Respondent's limited agenda, the evidence supports a conclusion that Respondent was amenable to considering those other items of concern that Petitioner wished to discuss once the agenda items were concluded. The calculated decision by Petitioner's counsel and parents' to not participate in the scheduled meeting forecloses a different conclusion.

56. Parents have an absolute right to attend and participate in IEP meetings. 34 C.F.R. § 300.322(a). While this is unassailable, an IEP meeting "may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend." 34 C.F.R. § 300.322(d).

Here, it is undisputed that the meeting was scheduled at a mutually agreed upon time and place, and that Petitioner's parents and counsel were present at the meeting. It is further undisputed that despite Respondent's requests for Petitioner's parents and counsel to participate in the scheduled meeting, they opted to leave the scheduled meeting with multiple school-based personnel present. Accordingly, it is concluded that Respondent committed no procedural violation in proceeding with the IEP meeting. Thus, it is concluded that Petitioner's procedural claims are unsupported by the evidence and, therefore, are denied.

57. Pursuant to the second step of the Rowley test, it must be determined if the IEP developed, pursuant to the IDEA, is reasonably calculated to enable the child to receive "educational benefits." Rowley, 458 U.S. at 206-07. Recently, in Endrew F., the Supreme Court addressed the "more difficult problem" of determining a standard for "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." Endrew F., 137 S. Ct. at 993. In doing so, the Court held that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Id. at 999. As discussed in Endrew F., "[t]he 'reasonably calculated' qualification

reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." Id.

58. The determination of whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student who is "fully integrated in the regular classroom," an IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. (quoting Rowley, 102 S. Ct. 3034). For a student not fully integrated in the regular classroom, an IEP must aim for progress that is "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." Id. at 1000.

59. The assessment of an IEP's substantive propriety is further guided by several principles, the first of which is that it must be analyzed in light of circumstances as they existed at the time of the IEP's formulation; in other words, an IEP is not to be judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011)(holding that an IEP can only be

evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990)("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated."). Second, an assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008)(holding that an IEP must be evaluated as written). Third, deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. at 1001 ("This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review" and explaining that "deference is based on the application of expertise and the exercise of judgment by school authorities.").

60. Here, Petitioner advances one substantive claim. Specifically, Petitioner avers that the [redacted], [redacted], IEP fails to provide Petitioner with a FAPE in that the proposed placement of a [redacted] is not a placement in the least restrictive environment. The IDEA provides directives on students'

placements or education environment in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A), provides as follows:

> Least restrictive environment.
>
> (A) In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

61. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R. § 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. In turn, the Florida Department of Education has enacted rules to comply with the above-referenced mandates concerning LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

62. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the

parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

63. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, School districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to his special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1044 (5th Cir, 1989).

64. In Daniel, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school

> has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048.

65. In Greer, infra, the Eleventh Circuit adopted the Daniel two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: 1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits he will receive in a self-contained special education environment; 2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and 3) the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the student in a regular classroom. Greer, 950 F.2d at 697.

66. Petitioner argues that the proposed placement provides less access to nondisabled peers and contends that Petitioner can be satisfactorily educated in a [redacted] (or [redacted]), with the use of [redacted] and [redacted]. As addressed below, the undersigned concludes that Respondent [redacted] educate Petitioner in a [redacted] classroom.

67. Addressing the first prong of the Greer/Daniel injury, it is correct that Petitioner would certainly have greater access to nondisabled peers in a general education setting which, theoretically, could provide a benefit to Petitioner in modeling. While Respondent, understandably, has raised concerns regarding [redacted], [redacted], and [redacted] equipment, the undersigned agrees with Petitioner that the same do not preclude a consideration of a [redacted] placement or significantly weigh in favor of a [redacted] placement.

68. The benefits that Petitioner may receive in a [redacted] placement, however, greatly exceed those of a [redacted] classroom. The better evidence established that Petitioner requires [redacted] instruction throughout [redacted] school day; is not [redacted]; requires [redacted] and [redacted] in all [redacted]; is easily [redacted] by students and [redacted]; and [redacted] the [redacted] to meet [redacted] even in a [redacted] class setting.

69. Moreover, the current primary educational concern of both Petitioner's parents and Respondent is working within Petitioner's [redacted] to provide [redacted] access to [redacted] education. The [redacted] placement, within the realm of possible educational placements, is a logical placement, which provides Petitioner with access to the [redacted] services available in Respondent's district with teachers dedicated to educating and

training themselves in this subset of [redacted]. To the extent that Petitioner has concerns regarding the level of paraprofessional support or credentialing requirements of the [redacted] instructor, that is a school personnel support issue, not a placement issue.

70. Petitioner's argument that the [redacted] placement may be detrimental because the current [redacted] teacher at School B is also [redacted] is without merit. While the evidence was clear that, at this time, Petitioner [redacted] primarily with [redacted], an [redacted] is not an insurmountable problem. The better evidence is that such an instructor may be able to provide certain [redacted] to another student who is [redacted].

71. Concerning the second prong, the evidence supports a conclusion that, at this time, Petitioner's presence in a [redacted] classroom would have a negative impact on the education of other students in that classroom. Petitioner's [redacted] teacher, [redacted], credibly testified that, of all the kids in [redacted] class, which included [redacted] and [redacted] students, Petitioner required [redacted], [redacted], [redacted], and [redacted]. In a less restrictive setting than the proposed setting, the [redacted] of an educator's time may [redacted] the [redacted] of students in the classroom.

72. No evidence was presented concerning the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for Petitioner in a [redacted] classroom, and, therefore, it neither weighs in favor of or against a particular placement.

73. Having concluded that Petitioner cannot be satisfactorily educated in the [redacted] classroom at this time, the undersigned further concludes that Respondent has discharged its duty to mainstream Petitioner to the maximum extent appropriate. It is important to note that the proposed placement includes students who are [redacted]. At this time, there is no evidence to support a contention that Petitioner would not benefit from [redacted] interaction with [redacted] peers. Additionally, the proposed placement provides Petitioner with [redacted] time with [redacted] peers than previously provided at School A.

74. In conclusion, Petitioner failed to satisfy [redacted] burden of establishing that the proposed placement determination fails to satisfy the least restrictive environment requirement of the IDEA.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is denied in all respects.

DONE AND ORDERED this 28th day of December, 2018, in Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
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 28th day of December, 2018.

ENDNOTES

1/ The undersigned has taken official recognition of the Final Order Approving Stipulation for Entry of Award (July 21, 2015), in DOAH Case No. 15-1045N.

2/ The term unmask here is used to refer to words that are visible on the device's touch screen. The device has a 3,000 word capability.

3/ By "spontaneously access," [redacted] is referring to Petitioner responding to a scenario, such as "Where do you want to go?" and Petitioner may locate the word "out."

4/ In addition to the above, during this meeting, Petitioner was found to be eligible under the [redacted] category and was determined to be no longer eligible for [redacted]. Accordingly, [redacted] was eligible for [redacted], [redacted], [redacted], [redacted], and [redacted].

COPIES FURNISHED:

[redacted], Esquire
Disability Independence Group, Inc.
2990 Southwest 35th Avenue
Miami, Florida 33133
(eServed)

[redacted], Esquire
Miami-Dade County Public Schools
1450 Northeast 2nd Avenue
Miami, Florida 33132
(eServed)

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

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

Alberto M. Carvalho, Superintendent
Miami-Dade County School Board
Suite 912
1450 Northeast Second Avenue
Miami, Florida 33132-1308

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).