STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 21-1531E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.
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SEMINOLE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 21-1730E

**, *AMENDED AS TO COPIES FURNISHED ONLY

Respondent.
_____/

AMENDED FINAL ORDER

Pursuant to notice, a due process hearing was held before the Division of Administrative Hearings (DOAH) by Administrative Law Judge Diane Cleavinger, on July 12 through 14 and August 16 through 18, 2021, via Zoom teleconference.

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of Record)

For Respondent: Stephanie K. Stewart, Esquire
The School Board of Seminole County, Florida
400 East Lake Mary Boulevard
Sanford, Florida 32773

STATEMENT OF THE ISSUES

The issues in this proceeding are:

a. Whether Respondent, the Seminole County School Board (District or School Board) failed to evaluate Petitioner (Student) for eligibility for exceptional student education (ESE) services.

b. Whether the School Board failed to develop an appropriate individualized education program (IEP) for the Student thereby failing to provide appropriate services, accommodations, and support for the Student.

c. Whether the School Board provided the parent an opportunity to participate in educational planning for the Student.

d. Whether the parent's request for an Independent Education Evaluation (IEE) at public expense should be denied.

PRELIMINARY STATEMENT

Petitioner, through Petitioner's parents, filed a request for due process hearing (Complaint) with the School Board on May 10, 2021. That same day, the School Board forwarded the Complaint to DOAH for hearing. A Case Management Order was issued on the following day establishing deadlines for a sufficiency review, as well as for the mandatory resolution session. Later, on May 28, 2021, the School Board filed a request for due process hearing in DOAH Case No. 21-1730E. On June 1, 2021, a Case Management Order was issued establishing deadlines for a sufficiency review, as well as for the mandatory resolution session. Thereafter, a telephone conference involving both cases was held with the parties to discuss consolidation of the cases and to set the cases for hearing.

Based on that discussion, on June 9, 2021, the cases were consolidated, and a Notice of Hearing was issued setting the hearing in Seminole County for July 12 through 14, 2021.

The hearing was held as scheduled but was not completed. After a telephone conference with the parties, a Notice of Hearing was issued scheduling the remainder of the final hearing via Zoom teleconference for August 16 through 18, 2021. The remainder of the hearing was held and completed as scheduled.

During the final hearing, Petitioner offered the testimony of 13 witnesses and introduced into evidence Petitioner's Exhibits numbered 1 through 9; 11, pages 45 through 50; 52; 53; 12 through 14; 16, pages 119 through 134; 20; 22; 24 through 57; 59 through 69; 71 through 234; 236 through 248; 250 through 262; 265; 267; 269 through 296; and 299 through 317. Respondent presented the testimony of witnesses and nine introduced into evidence Respondents Exhibits numbered 1 through 63.

Following the conclusion of the hearing, a discussion was held with the parties regarding the post-hearing schedule. Based on that discussion, an Order establishing deadlines for proposed orders and the final order was entered on August 20, 2021. The Order established the deadline for filing proposed final orders as October 20, 2021.

On September 28, 2021, Petitioner requested an extension of the deadline for filing proposed final orders. The extension was granted and the deadline for the parties to file their proposed final orders was established as November 19, 2021. The deadline for entry of the Final Order was extended to December 22, 2021. Later, on November 15, 2021, Petitioner requested an

additional 10-day extension of the deadline for filing proposed final orders. The request for extension was denied.

Thereafter, Respondent timely filed a Proposed Final Order on November 19, 2021. Petitioner did not file a proposed final order. To the extent relevant, Respondent's timely filed Proposed Final Order was considered in preparing this Final Order.

Additionally, unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications.

Further, for stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to Petitioner. The female pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The Student was enrolled in the Seminole County School District for her 2018-2019 kindergarten year. At the time of the hearing, the Student was eight years old, attended School A, had completed the second grade and was a rising third-grader.[1] Also, at the time of the hearing, the Student had been

[1] During the fourth quarter of the 2019-2020 school year, due to the pandemic and school closures, the Student was served in distance learning by her general education teachers, ESE teacher, service providers, and intervention instructor. During the 2020-2021 school year, the Student started as a hybrid student, attending School A in face-to-face classes for English/Language Arts and ESE services. The Student took other classes through Seminole County Virtual School (SCVS). She briefly transitioned to home school on August 28, 2020, and returned to School A on September 23, 2020, to attend face-to-face full-time classes. Throughout her education, the Student variously received specialized instruction using the 95% Group curriculum and materials, including PSI (Phonics Screener for Intervention) and PASI (Phonological Awareness Screener for Intervention); Reading Street; My Sidewalks, Wilson Foundation, and SIPPS (Systematic Instruction in Phonemic Awareness, Phonics and Sight Words). Additionally, throughout her education the Student received a variety of progress monitoring. Initially, progress monitoring was accomplished using i-Ready, the

diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and been determined eligible for ESE services under the categories of Language Impairment (LI) and Specific Learning Disabilities (SLD), involving dyslexia, dysgraphia and dyscalculia.[2]

2. The evidence demonstrated that throughout the Student's education, she has been and continues to be well-liked by school staff and peers. She is friendly, has many friends and interacts with people in an appropriate manner. The evidence also demonstrated that throughout the Student's educational career, she had reasonably good grades and had progressed from grade to grade. Additionally, the evidence was clear that the Student's behavior was, and is, in line with her peers of a similar age. The evidence was also clear that the Student has not exhibited behaviors that could be related to ADHD, which rose to a level of concern or interfered with her education. There was no evidence that the Student should have been eligible for ESE services under the category of Other Health Impairment (OHI) due to her diagnosis of ADHD.

3. The School Board is the entity that operates the Seminole County School District. At the times relevant to this proceeding, it was responsible for providing a system of public education that complied with Florida and federal law.

District's regular monitoring program. However, at the request of the parent, the Student's progress in reading and math was accomplished using Easy CBM. The Student's progress in reading was also monitored using the progress monitoring tools included in the 95% Group materials. The Student's reading level was also monitored using the DRA (Diagnostic Reading Assessment), a long- recognized assessment for reading.

[2] Dyslexia is a learning disability that impairs reading ability typically related to the phonological component of reading. Dysgraphia impacts handwriting and fine motor skills. Dyscalculia impacts math or counting. All have a neurobiological origin related to the brain's processing of information, the severity of which varies from mild to severe and may, but not necessarily, rise to the level of an SLD. These impairments cannot be cured, but through education and a variety of learning skills, the impact of these disabilities may be reduced or made manageable.

4. In order to effectuate its duties, the School Board was required to and continues to be required to provide instruction that meets the requirements of the state educational standards. *See* §§ 1001.10(6) and 1006.28-1006.38, Fla. Stat. These standards are peer-reviewed and researched sets of criteria for student achievement in core subject areas that were developed by the Florida Department of Education. *See* § 1003.41, Fla. Stat.

5. Towards that end, the School Board was required and does provide instruction from curriculum, materials and texts, which were reviewed and approved for each area of instruction under the applicable standards through a state process coordinated by the Florida Department of Education. In particular, reading and language arts instruction is provided through a District-based instructional and curriculum framework developed to comply with state statutes and aligned with state standards. *See* § 1001.215, Fla. Stat. The specifications for these materials and curriculum were based on criteria developed from scientific research on effective educational strategies and materials. Further, these curriculum materials were peer-reviewed for compliance with state specifications. *See* §§ 1001.10 and 1001.215, Fla. Stat.

6. As such, the School Board's chosen curriculum and materials (such as the 95% Group reading program, which is the program challenged in this litigation) complied with the requirements of the Individuals with Disabilities Education Act (IDEA). Additionally, the overwhelming evidence from school staff showed that the curriculum and materials were provided with fidelity to Petitioner in this case. The evidence also showed that school staff did provide information to the parent regarding the programs, curriculum and materials utilized with the Student in her reading, language arts and math instruction. The information provided to the parent, including information on the 95% Group programs, provided scientific research on which the programs, curriculum and materials were based. In particular, information on the 95% Group program for dyslexic students was provided by the school to the

parent.[3] More importantly, there was no credible evidence demonstrating that the School Board's educational programs, curriculum or materials did not comply with the requirements of Florida law for selection of such curriculum and materials. Further, there was no credible evidence that these programs, curriculum and materials did not provide a free appropriate public education (FAPE) to the Student.

7. In addition to programs, curriculum and materials, the evidence showed that, in order to provide an appropriate public education to the Student, the School Board hired licensed and certified teachers to teach the reading and math courses required to be taught by the State through the use of approved curriculum and instructional materials. These teachers were trained in scientifically-researched teaching techniques and strategies to receive their teaching certificates and/or certifications. *See* § 1012.56, Fla. Stat. They also received in-service and continuing education training in good teaching techniques and strategies. In fact, all the teachers involved with the Student in this case were licensed teachers, with specialty certifications in appropriate areas. The evidence from teachers and staff demonstrated that they used their scientifically-based training to instruct in their classes and, contrary to Petitioner's assertions, thoughtfully planned and implemented the Student's programs throughout her education. Again, these teachers met the requirements of IDEA regarding teaching strategies and methodologies.

[3] The evidence showed that the 95% Group programs and materials, as well as all the programs and materials used to instruct the Student, met the needs of dyslexic students and provided a program and curriculum that was multisensory, explicit, direct, systematic, cumulative, diagnostic and prescriptive. Its materials covered areas of phonological awareness, sound symbol association, morphology, syntax, semantics, and comprehension. It also provided screening material for use with its programs. Notably in this case, the parents desired a different reading program, Orton-Gillingham, be used with the Student. However, the evidence demonstrated that both programs offer instruction in the key areas outlined above that are necessary for a student to learn to read and comprehend language. Both programs provide similar instruction that generally focuses on the same integrated approach to reading described above for the 95% Group program. Importantly and aside from immaterial pedagogical theories on reading instruction, the evidence did not demonstrate that one program is better than the other or that the Orton-Gillingham program was required in order to provide FAPE to the Student.

There was no further requirement, under IDEA, that Respondent provide research or research data to a parent in order to utilize commonly-recognized teaching techniques and strategies for the schooling of a special education student in the school system. Moreover, there was no credible evidence that the methodologies or strategies used by the Student's teachers were inadequate. Given these facts, Petitioner has failed to establish that the reading and math programs used by the School Board were inappropriate or inadequately implemented for the Student. Similarly, Petitioner has failed to establish that the methodologies and strategies used by the School Board were inappropriate or inadequately implemented for the Student.

8. Relative to the parents, both parents of the Student are involved in her education. Their mode of communication is English. Both parents are capable of understanding spoken and written language. However, the parent most involved with the Student's education has serious processing deficiencies that cause the parent to process information slowly. The parent also has a disability that causes random [redacted], which at times is perilous to the parent and others. Such [redacted] occurred on a continuous basis throughout the hearing.

9. The parent's disability also causes difficulty for the parent in getting words out and formulating coherent sentences. However, the evidence demonstrated that the parent was capable and does eventually process information to the point of understanding and does eventually communicate the parent's thoughts, albeit sometimes with the help of others. Indeed, the evidence demonstrated that the parent did create multiple detailed charts of information for both parents' use to understand the Student's education and aid in both parents' ability to represent the Student in the IDEA process. Additionally, the evidence demonstrated multiple instances of the parent conducting the parent's own research and providing that information to

school staff, as well as, participating in ongoing written and oral communication with staff at all levels of the District.

10. The evidence also demonstrated that school staff provided the parent with information that the parent requested in a variety of formats to aid the parent in understanding and participating in the education of the Student. The parent was often not happy with the information and data provided, but the evidence demonstrated that the voluminous information and data provided to the parent throughout the Student's education was sufficient to allow the parents to participate in the Student's educational planning. It was clear that the parent had to work hard to organize and comprehend the information, but that struggle was endemic to the parent's disability and not the result of any action or inaction by the School Board's staff. The evidence demonstrated that throughout the Student's education, the School Board communicated with both parents in a manner that reasonably provided both parents the opportunity to understand and participate in the Student's education. There is no question that the parents were not excluded from participation in the Student's educational planning and did participate in that educational planning.

11. As noted above, the Student was enrolled in Seminole County schools for her kindergarten year (2018-2019). Close to the time of enrollment, the parent informed the general education teacher that the Student's family had a history of dyslexia and that the parent feared the Student may be dyslexic.

12. The evidence showed that in kindergarten, the Student functioned much like her peers who come into kindergarten and first grade demonstrating a wide range of pre-academic and academic skill levels, such as knowing the alphabet, counting or sequencing concepts (before/after, if/then etc.). As with all her peers, the Student had strengths and weaknesses in a variety of skills and, as with all her peers, the teacher observed the Student's strengths and weaknesses to adjust her instruction to the Student's instructional needs.

13. At the time the Student entered kindergarten, she knew some of the letters of the alphabet and made good progress during the year in learning more letters. She also knew some numbers and made good progress in learning more numbers and skills for early counting. Given testimony from the Student's teachers, the age of the Student and variability of student skills in kindergarten, the better evidence showed that the Student's progression was not unusual for a kindergarten student and did not rise to the level of concern that would have put the School Board on notice that the Student should have been evaluated for special education eligibility prior to January 2019. The Student's teachers were closely monitoring her to determine if the Student's struggles with sounds, words and counting were more than ordinary early developmental issues. Beginning in December 2018, data was being collected to determine if the Student should receive additional help in reading and writing through a multi-tiered system of support (MTSS, sometimes referred to as response to intervention or RTI). MTSS is used in a school's general education environment to provide additional targeted instruction to Students who need more instructional support in their areas of need.[4]

14. As the Student's kindergarten year progressed into January 2019, staff observed that the Student continued to demonstrate a deficit in phonological awareness. Because of that continuing deficit and with input from the parent, in February 2019 of the Student's kindergarten year, the school began the process of evaluation to determine if the Student was eligible for special education services under IDEA. Towards that end, the student was evaluated by School Board personnel for a psychoeducational evaluation in February and March 2019. At the time, the Student was

[4] MTSS has three levels or tiers of increasing instructional support, such as small group interventions and one-on-one instructional help. It also includes screening of a student to determine their instructional need. The goal of MTSS is to screen early and to give support quickly. It also helps schools distinguish between students who have not received good instruction in the past and those who need special education services under IDEA. The evidence demonstrated that the parent had input into and participated in MTSS decisions.

administered a comprehensive psychological evaluation (dates of testing: 2/5/2019, 2/8/2019, 2/19/2019, 2/20/2019 and 3/1/2019); and a comprehensive speech and language evaluation (dates of testing: 1/29/2019, 1/31/2019, 2/13/2019 and 2/27/2019). The evaluations demonstrated that the student was within the average range and did not demonstrate a need for special education services. She did demonstrate weaknesses in phonemic awareness and the evaluator recommended non-ESE tiered interventions in the area of phonemic awareness. Additionally, a variety of assessments through the year showed that the Student was within benchmarks for kindergarten.

15. On March 8, 2019, an eligibility meeting was held to determine if the Student was eligible for ESE services in the categories of SLD and LI. The parent was included and participated in the meeting, as well as submitted more comments after the meeting. Based on the evaluations, the IEP team did not find the Student eligible under SLD or LI. Further, the evidence at the time did not demonstrate that the Student was in need of special education services since the Student was within benchmarks for kindergarten, as well as making progress in learning letters and numbers. However, because the Student's progress was slow, Tier 2 MTSS instructional services were begun and implemented by the Student's teacher, including small group support interventions from her teacher and additional curriculum focused on phonological awareness.

16. On April 26, 2019, the School Board met with the Student's parent to again review the evaluations and to discuss the parent's request for psychoeducational and language IEEs by the parent's choice of evaluators. The School Board agreed to the IEEs at public expense. A list of qualified providers was given to the parent. Thereafter, the parent selected the providers for the IEEs and the District timely arranged to complete the requested IEEs.

17. On April 30, 2019, a meeting with school staff and the parent was held to determine eligibility for a Section 504 plan. The Student was found eligible

for a Section 504 plan. That same day, a letter from the District was provided to the parents notifying the parent that the Student had not met kindergarten grade level expectations for reading proficiency and was identified as a student with a substantial reading deficiency. At this time in the Student's kindergarten year, the Student's general reading and comprehension was at the kindergarten level and within expectations. However, on more discreet measures, the Student was working at the early-mid kindergarten level in phonological awareness, the kindergarten entry level in phonics and the kindergarten entry level in high-frequency words. In these discreet areas, the Student was about seven to eight months behind in reading compared to expected kindergarten performance. However, her grades continued to be satisfactory and she continued to progress in school. Tier 3 support for the Student was begun. The evidence demonstrated the Student needed more help with reading skills, which help was provided by the District. However, given the Student's earlier evaluations, progress and developmental age, the evidence did not demonstrate that the Student was in need of ESE services in her kindergarten year.

18. On the other hand, the evidence showed that, at the time, the Student was generally capable of learning and did learn anything an average student could learn. However, she must work at a slower more repetitive pace to master sounds, letters and numbers involved in reading, writing and counting to demonstrate mastery in those areas. Further, the evidence showed that the Student's impairments in reading, writing and counting were not so extreme or unusual that she required different curriculum, teaching techniques or teaching methodologies than are generally available and provided in the Respondent's school system through the District's general education classroom, MTSS services, reading plan and reading framework.[5]

[5] All school districts in Florida are required to have a reading plan for their district.

19. During the summer break, the Student's teacher provided reading material to complete during summer break so that the Student could continue to learn during that period. The work was not completed and never returned by the parent to the teacher.

20. On September 10, 17, and 19, 2019, at the beginning of first grade, a comprehensive psychological IEE was completed on the Student. On October 2, 2019, a comprehensive language IEE was completed on the Student. The evidence demonstrated that the evaluations completed by the school, as well as the IEEs obtained by the parent, reviewed the Student's records; observed the Student at school in a variety of settings; interviewed teachers; interviewed the Student; utilized appropriate, normed, and valid objective rating scales; and projective testing; covered all the areas of suspected disability at that time; and met the requirements for evaluations as found in Florida Administrative Code Rule 6A-6.0331(5). The evaluations adequately identified the Student's psychological, educational and academic needs.

21. Thereafter, on December 10, 2019, the School Board met with the Student's parent to review the comprehensive psychological IEE, comprehensive language IEE and other data collected on the Student. The parent did not express concern regarding the IEEs at the time of the meeting. The Student was found eligible for ESE services under the category of SLD and LI. The evidence was clear that, with the School's evaluations and the IEEs, the team had sufficient information to allow it to educationally plan for the Student.

22. Thereafter, and after multiple inputs from the parent, an IEP meeting was timely scheduled for January 7, 2020. However, at the suggestion of the

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§ 1001.215, Fla. Stat. The plan outlines steps to be taken by educational staff to address reading in general and reading as related to various impairments including SLD. The plan also provides a list of diagnostics, curriculum and materials available for use in the District with SLD and non-SLD students to aid in meeting Florida education standards. Staff sometimes refer to the plan and its list as the 'framework'.

parent, who wanted further discussions with school staff and had family medical appointments scheduled for that day, the IEP meeting was postponed until January 21, 2020. The evidence did not demonstrate that the delay in scheduling the meeting had a material impact on the Student's education or the provision of FAPE to the Student. Further, the evidence did not show that the delay was detrimental to the parent's participation in educational planning for the Student since the delay was suggested by the parent and was likely beneficial to the parent. Ultimately, after several preliminary drafts, the initial IEP for the Student was developed by the IEP team and was implemented by school staff. The evidence was clear that the parent had considerable input and opportunity to participate in the development of the January 2020 IEP.

23. Throughout the Student's first-grade school year, the evidence demonstrated that her education was constantly monitored by school staff and the parent. During the school year the Student had four IEPs, dated January 20, March 3, and May 19, 2020. The May 19th IEP crossed over into the Student's second-grade year.

24. The better evidence from school staff and a comparison of the Student's IEPs demonstrated that, as the Student progressed, her IEPs were updated based on data collected by school staff and input from the parent. The Student's goals, including short-term goals, were based on the Student's progress through appropriate materials and curriculum provided for those goals. The evidence was clear that the instructional level presented to the Student was challenging for her and appropriately individualized for the Student given her disabilities. She did not immediately master her special education goals but had to apply herself and did eventually progress at a pace individual to her. Contrary to the parent's assertion, IEP goals were not unilaterally changed or removed by the District. Additionally, all the IEPs contained appropriate present levels of performance (PLOPs), which included information in the IEPS regarding the parent's concerns, the Student's health

concerns, the results of statewide or District assessments, the results of the Student's most recent evaluations, the Student's strengths, the Student's abilities (based on formal and informal assessments, observations, and work samples), and how the Student's disability impacts her involvement and progress in the general curriculum. Again, contrary to the parent's assertion, the IEPs included obvious references to the Student's eligibility categories of SLD and LI, as well as obvious references to the Student's recognized dyslexia, dysgraphia and dyscalculia. The evidence demonstrated that all the descriptions and information contained in the IEPs enabled the IEP teams to develop appropriate IEP goals and services for the Student throughout her first-grade year.

25. As with the previous school year, the evidence showed that the Student made progress and had good grades in class. Such grades demonstrate mastery of the school curriculum sufficient to advance from grade to grade. The evidence also showed that the Student continued to be well liked by her peers, was friendly, quiet, respectful, mature and a good worker who generally managed her time wisely in class. She was not a discipline problem. The better evidence did not demonstrate that her behavior interfered with her education and did not demonstrate that she was eligible for special education services in any behaviorally related category such as OHI.

26. Similarly, throughout the Student's second-grade school year, the evidence demonstrated that her education was constantly monitored by school staff and the parent. In addition to teacher-monitoring, in March 2021, the school psychologist re-administered the CTOPP-2 Later Years Version for students aged 7 and above at the request of the parent. The CTOPP is a comprehensive test of phonological processing. The evaluation was not a comprehensive psychological evaluation but was for purposes of evaluating the Student's reading. Notably, a CTOPP assessment was completed as part of the earlier IEE, however, it was the Early Years version. Both assessments

look at the student's phonological awareness, memory, and rapid naming. The evidence showed that the Student made progress between the two assessments. In the area of phonological awareness, the Student originally scored in the below average range and increased to the average range on the second assessment. In the area of phonological memory (not assessed during the earlier IEE), the Student's memory was within the average range. In the area of rapid symbolic naming, the Student was still below average; however, she had mastered her letters so she was able to complete the testing. During the earlier IEE, rapid non-symbolic naming was used because the student did not know her letters at the time. At the request of the parent, two additional CTOPP subtests of phonological awareness were administered to the Student. She scored in the average range. Overall, the evidence showed that the Student made more than a year's growth between the two administrations of the CTOPP-2.

27. An occupational therapy (OT) evaluation was also completed in April of 2021. The evaluation was thorough and complete. It demonstrated that the Student's handwriting deficiencies were not due to any deficiency in her motor or sensory skills. Further, the clear evidence from teachers and the assessment demonstrated that the Student did not require OT services.

28. Additionally, during the school year the Student had a May IEP from the previous school year, plus three updated IEPs, dated November 17, May 7, and May 11, 2020. The better evidence from school staff and a comparison of the Student's IEPs demonstrated that, as the Student progressed, her IEPs were updated based on data collected by school staff and input from the parent. All of the Student's IEPs contained appropriate PLOPs, which included information in the IEPs regarding the parent's concerns, the Student's health concerns, the results of statewide or District assessments, the results of the Student's most recent evaluations, the student's strengths, the Student's abilities (based on formal and informal assessments, observations, and work samples), and how the Student's

disability impacts her involvement and progress in the general curriculum. The Student's goals for reading, language and math, including short-term goals, were based on the Student's progress through appropriate materials and curriculum provided for those goals.

29. Again, the evidence was clear that the instructional level presented to the Student was challenging for her and appropriately individualized for the Student given her disabilities. Indeed, teacher testimony and data showed the Student's vocabulary, phonemic awareness, ability to count and writing had increased throughout her education. She made self-correcting mistakes in all areas of instruction. The better evidence from staff demonstrated that her writing is legible and similar to her peers. The evidence showed that the Student did not immediately master her special education goals but had to apply herself, sometimes regressing and sometimes progressing. However, the Student did eventually progress in her special education goals at a pace individual to her. Further, the better evidence based on a variety of assessments, including the DRA (Diagnostic Reading Assessment), demonstrated that the Student's educational gap remained about the same as the previous year, indicating the Student achieved close to a year's worth of progress during the school year. The parent was not happy with the Student's curriculum or progress. However, there was no substantive evidence that demonstrated the Student could achieve more progress than she did during the school year or that a different curriculum was required for the Student to progress. Given these facts, the evidence was clear that the District has provided FAPE to the Student and has met its obligations under the IDEA.

30. Finally, around May 24, 2021, the parties met for a resolution session in DOAH Case No. 21-1531E. As part of the parents' proposed resolution, an IEE was requested. The School Board issued a prior written notice declining to pay for an IEE on the grounds that the School Board evaluated the Student and paid for an IEE in September 2019.

31. In this case, the evidence was clear that the Student has been evaluated multiple times and continuously assessed throughout her education. The evidence was also clear that those evaluations and assessments met Florida's criteria for evaluating and assessing students. Additionally, the evidence demonstrated that the Student's IEPs were based on those multiple evaluations, progress monitoring, and data from a variety of other sources. Those IEPs were effective and the Student did progress throughout her education. There was no credible evidence that suggested more evaluations were needed to plan the future education of the Student. Given these facts, the parent's request for IEEs was properly denied by the School Board.

CONCLUSIONS OF LAW

32. DOAH 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).

33. Petitioner bears the burden of proof with respect to each of the issues raised in her administrative complaint. The School Board bears the burden of proof on the issue raised in its administrative complaint. *Schaffer v. Weast*, 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*); 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).

35. 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) and (b)(6).

36. Importantly, IDEA does not give the parent or any one member of the IEP team the right to veto a decision made by the IEP team or to micromanage the details of a decision made by the IEP team. *A.W. ex rel. Wilson v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 683 n.10 (4th Cir. 2004) ("[T]he right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions."); *J. C. v. New Fairfield Bd. of Educ.*, Case No. 3:08-cv-1591, 2011 U.S. Dist. LEXIS 34591 *48 (D. Conn. Mar. 31, 2011)("[T]he Parents may attend and participate collaboratively, but they do not have the power to veto or dictate the terms of an IEP."); and *B. B. v. Haw. Dep't of Educ.*, 483 F. Supp. 2d 1042, 1050-1051 (D. Haw. 2006).

37. 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).

38. "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) [I]nstruction conducted in the classroom,in the home, in hospitals and institutions, and in other settings . . . .

20 U.S.C. § 1401(29).

39. The central mechanism by which the IDEA ensures 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. *Endrew F. v. Douglas Cnty. Sch. Dist.*, RE-1, 13 S. Ct. 988, 999 (2017).

40. As such, 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).

41. Indeed, "the IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 13 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)(where the provision of such special education services and accommodations are recorded).

42. In *Rowley*, the Supreme Court held that a two-part inquiry or analysis of the facts 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. However, a procedural error or irregularity does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cnty. Sch. 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. 5-16, 525-26 (2007).

43. In this case, Petitioner alleged that the School Board failed to meet the procedural requirements of IDEA by not providing the parents an opportunity to participate in the IEP process because the District did not accommodate one parent's disability and by failing to evaluate the Student for eligibility under IDEA.

44. Relative to the issue involving parent participation, IDEA does not require districts to ensure that parents perfectly comprehend every aspect of their children's IEPs. Rather, the IDEA contemplates that districts will share evaluative data, include parents in IEP discussions, address parent concerns, and keep parents apprised of the student's progress. *Colonial Sch. Dist. v. G.K.*, 73 IDELR 224 (3d Cir. 2019, *unpublished*)(The parents of an elementary school student with autism and specific learning disabilities could

not show that a Pennsylvania district excluded them from the IEP process by failing to ensure they fully understood their son's IEP goals.). However, a district may need to provide accommodations the parent requires to fully, meaningfully participate in the IEP meeting and provide input. *See, Manteca Unified Sch. Dist.,* 12 ECLPR 79 (SEA CA 2014), *aff'd, J.L. v. Manteca Unified Sch. Dist*., 68 IDELR 17 (E.D. Cal. 2016)(providing a Spanish interpreter and answering a parent's questions about IEPs and evaluations before the IEP meeting helped secure meaningful participation from the parent) and *E.H. v. Tirozzi*, 16 IDELR 787 (D. Conn. 1990)(allowing a parent with limited English proficiency to tape record an IEP meeting so that she could later review it with her dictionary was necessary to provide her an opportunity to meaningfully participate).

45. In this case, the clear evidence demonstrated that school staff provided the parent with information that the parent requested in a variety of formats to aid the parent in understanding and participating in the education of the Student. The evidence also demonstrated that the voluminous information and data provided to the parent throughout the Student's education was sufficient to allow the parents to participate in the Student's educational planning and that the parents did participate in the IDEA process for the Student. As such, the portions of the due process complaint relative to parent participation are dismissed.

46. As to the District's obligations to evaluate the Student for eligibility, the IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." *L.C. v. Tuscaloosa Cnty. Bd. of Educ.*, 2016 U.S. Dist. LEXIS 52059 at *12 (N.D. Ala. 2016)(*quoting N.G. v. D.C.*, 556 F. Supp. 2d 11, 16 (D.D.C. 2008)(*citing* 20 U.S.C. § 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." *Id.* Thus, each state must put policies

and procedures in place to ensure that all children with disabilities residing in the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

47. However, "Child Find does not demand that schools conduct a formal evaluation of every struggling student." *Mr. P. v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 749 (2d Cir. 2018), *cert. denied* sub nom. *Mr. P. v. W. Hartford Bd. of Educ.*, 139 S. Ct. 322 (2018); *D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3rd Cir. 2012)(*quoting J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011))("The IDEA's child find provisions do not require district courts to evaluate as potentially 'disabled' any child who is having academic difficulties.")(internal quotation marks omitted); and *D.G. v. Flour Bluff Indep. Sch. Dist.*, 481 F. App'x. 887 (5th Cir. 2012). Further, a school's failure to diagnose a disability at the earliest possible moment is not per se actionable, in part, because some disabilities "are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all." *D.K.*, 696 F.3d at 249 (*quoting A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d 221, 226 (D. Conn. 2008))(internal quotation marks omitted). Notably, the label assigned to a particular student is less important than the skill areas evaluated. The issue is whether the district appropriately assessed the Student in all areas of a suspected disability. *See e.g., Avila v. Spokane Sch. Dist. 81, 69 IDELR 204* (9th Cir. 2017, unpublished)(noting that a Washington district had assessed a student with autism for "reading and writing inefficiencies," the court ruled that it properly evaluated the student for dyslexia and dysgraphia). *See also Lauren C. v. Lewisville Indep. Sch. Dist.*, 2017 WL 2813935 *6, 70 IDELR 63 (E.D. Texas June 29, 2017).

48. To establish a Child Find violation, Petitioner must "show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to

evaluate." *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942-43 (E.D. Va. 2010)(internal citations omitted). Further, in *Dubrow v. Cobb Cnty. Sch. Dist.,* 887 F.3d 1182 (11th Cir. 2018), the 11th Circuit held that to trigger a child find obligation and potential determination for eligibility, the petitioner had to establish that his disability had an adverse impact on his education and that the student needed special education as a result of that impact. The court also held that a student is unlikely to need special education services if: 1) the student meets academic standards, 2) teachers do not recommend special education for the student, 3) the student does not exhibit significant unusual or alarming conduct warranting special education, and 4) the student demonstrates the capacity to understand course material.

49. Rule 6A-6.0331 sets forth the school district's responsibilities regarding students suspected of having a disability. This rule provides that school districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. As an initial matter, the school district has the "responsibility to develop and implement a multi-tiered system of support, which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment." Fla. Admin. Code R. 6A-6.0331(1).

50. The general education intervention requirements include parental involvement, observations of the student, review of existing data, vision and hearing screenings, and evidence-based interventions. Fla. Admin. Code R. 6A-6.0331(1)(a)-(e). Rule 6A-6.0331(1)(f) cautions, however, nothing in this section should be construed to either limit or create a right to FAPE or to delay appropriate evaluations of a student suspected of having a disability.

51. Rule 6A-6.0331(2)(a) then sets forth a non-exhaustive set of circumstances, which would indicate to a school district that a student may

be a student with a disability who needs special education and related services. As applicable to this case, those circumstances include the following:

> 1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or
>
> 2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions . . .

52. Rule 6A-6.0331(3)(e) also sets forth the requisite qualifications of those conducting the necessary evaluations and rule 6A-6.0331(5) sets forth the procedures for conducting the evaluations. In conducting the evaluation, the school district "must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE." Fla. Admin. Code R. 6A-6.0331(5)(a)2. To the contrary, the school district "must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student." Fla. Admin. Code R. 6A-6.0331(5)(a)1. Further, the student shall be assessed in "all areas related to a suspected disability" and an evaluation "shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability." Fla. Admin. Code R. 6A-6.0331(5)(f) and (g). Given this criterion, the evidence demonstrated that the evaluations performed by the District in determining the Student's eligibility were complete and appropriate for the Student. Additionally, the evidence

demonstrated that the Student was assessed in all areas and that the evaluations otherwise met IDEA requirements.

53. Relative to the issue involving evaluations, the evidence showed that the District completed the referral and evaluation process within the time provided for such process. The evidence did not demonstrate that either the parent or the Student were denied participation or educational opportunities by any purported delay in those evaluations. Additionally, the evidence showed that the Student's age, developmental level and data collected on the Student throughout her education showed that she was not eligible for ESE services, but that she should be and was closely monitored by the school. Additionally, the clear evidence from the Student's teachers and staff demonstrated that the Student progressed through the curriculum and made progress in her areas of weakness.

54. Further, the better evidence showed that the Student did not demonstrate clear signs of disability up to the time she was found eligible under IDEA. For every school year, the evidence showed that the Student had good grades and appropriate progress on her IEP goals. The evidence also showed that the Student continued to be well liked, was friendly, quiet, respectful, mature and a good worker who generally managed her time wisely in class. She was not a discipline problem.

55. Ultimately, the IEP team, based on the evidence before it, reasonably categorized Petitioner as SLD and LI for education and IEP purposes. There was no substantive evidence that demonstrated the Student was eligible for special education services in the category of OHI due to any behavior related to her diagnosis of ADHD. As such, the District met the requirements of the IDEA and provided FAPE to the Student regarding its evaluation and categorization of the Student during the school years relevant in this case. Therefore, the portions of the Due Process Complaint relative to the referral process, child find evaluation and eligibility of the Student are dismissed.

56. Turning to the substantive issues and 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. Further, in *Endrew F.*, the Supreme Court addressed the "more difficult problem" of determining a standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." *Endrew F.*, 13 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.*

57. The determination of whether an IEP is sufficient to meet this standard differs according to the individual circumstances of each student. For a student, like the Student here, 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. at 3034). For a student, who is 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. This standard is "markedly more demanding" than the one the Court rejected in *Endrew F.,* under which an IEP was adequate so long as it was calculated to confer "some educational benefit," that is, an educational benefit that was "merely" more than "de minimis." *Id.* at 1000-1001.

58. The assessment of an IEP's substantive propriety is 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. *See 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).

59. Third, great 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."); *A.K. v. Gwinnett Cnty. v. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014)("In determining whether the IEP is substantively adequate, we 'pay great deference to the educators who develop the IEP.'")(quoting *Todd D. v. Andrews*, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1989), "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act."

60. Further, the IEP is not required to provide a maximum educational benefit, but only need provide a basic educational opportunity. *Todd D. v. Andrews*, 933 F.2d 1576, 1580 (11th Cir. 1991); *C.P. v. Leon Cnty. Sch. Bd.*, 483 F.3d 1151, 1153 (11th Cir. 2007); and *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1292 (11th Cir. 2001).

61. The statute guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989)(internal citation omitted); *see Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995); *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988)("proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act"). *Walczak v. Fla. Union Free Sch. Dist.,* 142 F.3d 119, 132 (2d Cir. 1998); and *Doe v. Bd. of Educ.*, 9 F.3d 455, 459-460 (6th Cir. 1993)("The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. ... Be that as it may, we hold that the Board is not required to provide a Cadillac... ").

62. Additionally, the IEP must be implemented. *Endrew F, supra. L.J. v. Sch. Bd.*, 927 F.3d 1203 (11th Cir. 2019), and *Van Duyn v. Baker Sch. Dist.,* 502 F.3d 811, 821 (9th Cir. 2007). In *L.J.* the Eleventh Circuit Court of Appeals addressed the standard for claimants to prevail in a "failure-to-implement case." The court concluded that "a material deviation from the plan violates the [IDEA]." *L.J.*, 927 F.3d at 1206. The *L.J.* court expanded upon this conclusion as follows:

> Confronting this issue for the first time ourselves, we concluded that to prevail in a failure to implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the

> plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.

Id. at 1211.

63. While declining to map out every detail of the implementation standard, the court provided a few principles to guide the analysis. *Id.* at 1214. To begin, the court stated that the focus in implementation cases should be on the proportion of services mandated to those actually provided, viewed in context of the goal and import of the specific service that was withheld. In other words, the task is to compare the services that are actually delivered to the services described in the IEP itself. In turn, "courts must consider implementation failures both quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole." *Id.*

64. Additionally, the *L.J.* court noted that the analysis must consider implementation as a whole:

> We also note that courts should consider implementation as a whole in light of the IEP's overall goals. That means that reviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole.

Id. at 1215.

65. In this case, the evidence from the Student's teachers and staff demonstrated that they used scientifically-based curriculum, materials and training to instruct in their classes. The evidence also demonstrated that the

IEP team and staff thoughtfully planned and implemented the Student's IEPs throughout her education. There was no evidence that any portion of the IEPs were not materially implemented or that any services required by the IEPs were not materially provided. Decisions were based on credible teacher observations and valid data on the Student with sufficient progress reporting provided. The goals challenged the Student. Additionally, the evidence showed that the goals, accommodations, and services of these IEPs were appropriate for the Student and offered the Student an opportunity to progress in school with a program that was reasonably challenging for the Student. Additionally, the clear evidence demonstrated that the Student made adequate progress on those goals, was able to learn the curriculum and advance from grade to grade with good grades. As such, the IEPs provided FAPE to the Student. Given these facts the portions of the Student's complaint relative to the implementation and the adequacy of the IEPs are dismissed.

66. Turning to the School Board's complaint alleging that the parent is not entitled to additional IEEs, it is noted that under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense. The circumstances under which a parent has a right to an IEE at public expense are set forth in 34 C.F.R. § 300.502(b), which provides as follows:

> Parent right to evaluation at public expense.
>
> (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.
>
> (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

67. Florida law, specifically rule 6A-6.03311(6), provides similarly as follows:

(a) A parent of a student with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

* * *

> (g) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:
>
> 1. Ensure that an independent educational evaluation is provided at public expense; or
>
> 2. Initiate a due process hearing under this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the school district initiates a hearing and the final decision from the hearing is that the district's evaluation is appropriate, then the parent still has a right to an independent educational evaluation, but not at public expense.
>
> (h) If a parent requests an independent educational evaluation, the school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's evaluation.
>
> (i) A parent is entitled to only one (1) independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

68. These provisions make clear that a district school board in Florida is not automatically required to provide a publicly funded IEE whenever a parent asks for one. A school board has the option, when presented with such a parental request, to initiate——without unnecessary delay——a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school board is able to meet its burden and

establish the appropriateness of its evaluation, it is relieved of any obligation to provide the requested IEE.

69. To satisfy its burden of proof, the School Board must demonstrate that the assessments at issue complied with rule 6A-6.0331(5), which sets forth the elements of an appropriate evaluation. Rule 6A-6.0331(5) provides as follows:

> (5) Evaluation procedures.
>
> (a) In conducting an evaluation, the school district:
>
> 1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a databased problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;
>
> 2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,
>
> 3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

> (f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
>
> (g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

70. Based on the findings of fact as stated herein, the School Board has proven that its evaluations, as well as the IEEs, fully complied with rule 6A6.0331(5). In particular, the evaluations were conducted by trained and knowledgeable professionals who utilized, and properly administered, a variety of valid instruments that yielded reliable and comprehensive information concerning the student's educational needs. Further, the evidence showed that the evaluations conducted by the School Board in 2019 investigated all the areas of suspected disabilities at the time and adequately identified the Student's psychological, educational and academic needs. Additionally, there was no substantive evidence that demonstrated further evaluations are needed to educationally plan for the Student. Since the 2019 evaluations were appropriate, the parent's request for additional IEEs at public expense is denied. However, although the parent is not entitled to an IEE at public expense, the parent is free to present any evaluations obtained at private expense to the School Board, the results of which the School District is required to consider. *See* Fla. Admin. Code R. 6A-6.03311(6)(j)1. (providing that if a parent "shares with the school district an evaluation obtained at private expense ... [t]he school district shall consider the results of such evaluation in any decision regarding the provision of FAPE to the student, if it meets appropriate district criteria").

71. Finally, the balance of Petitioner's claims as asserted in the due process Complaint were not supported by the evidence, and, therefore, are dismissed.

ORDER

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

1. Petitioner Student's Complaint is DISMISSED in its entirety.
2. The parent's request for an IEE is denied.

DONE AND ORDERED this 30th day of November, 2021, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
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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)(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).