STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 19-6338E

SARASOTA COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a due process hearing was held before Administrative Law Judge Diane Cleavinger of the Division of Administrative Hearings (DOAH) on January 23 and 24, 2020, in Sarasota, Florida.

APPEARANCES

For Petitioner: Stephanie Langer, Esquire
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Miami, Florida 33133

For Respondent: E. Keith DuBose, Esquire
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether the School District failed to provide a free appropriate public education (FAPE) to the Student by failing to draft an individualized education program (IEP) with current present

levels of performance and appropriate services in violation of the Individuals with Disability Act (IDEA), 20 U.S.C. § 1400, *et seq*.

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing complaint (Complaint) with the Respondent, Sarasota County School Board (School District, District or School Board), on November 24, 2019. The Complaint generally alleged that Respondent failed to provide FAPE to the Student and violated IDEA when it failed to draft an IEP with current present levels of performance and appropriate services.

On November 26, 2019, the Complaint was forwarded to the Division of Administrative Hearings. On December 16, 2019, a telephonic conference was held with the parties to discuss dates for the final hearing. After conferring with the parties, the final hearing was set for January 23 and 24, 2020.

The hearing commenced as scheduled. During the final hearing, Petitioner offered the testimony of five witnesses. Additionally, Petitioner offered Petitioner's Exhibits: 1, pages 1 through 21; 2, pages 22 through 40; 3, pages 41 through 45; 4 through 8; 11 through 13; 26, page 595; 29, pages 1971 through 1992; 32, pages 2019, 2035 through 2041; and 34, page 2147, which were admitted into evidence. Respondent presented the testimony of two witnesses and offered Respondent's Exhibits: 1A; 1B; 1C; 1F, pages 93 through 121; 2A except page 153; 2B; 2E; 2F; 2I; 2J; 2O; 2P; 2X; and 2Y, which were admitted into evidence.

Following the conclusion of the hearing, a discussion was held with the parties regarding the post-hearing schedule. Based on that discussion an Order was issued establishing the deadline for proposed final orders as February 21, 2020, with the final order to be entered on or before March 23, 2020. Thereafter, Petitioner filed an unopposed motion to extend the post-hearing deadlines. The motion was granted and the deadline for filing

proposed final orders was extended to February 25, 2020, with this Final Order to be entered on or before March 30, 2020.

Neither party timely filed a proposed final order, with Petitioner and Respondent filing proposed final orders on February 26, 2020, and February 28, 2020, respectively. To the extent relevant, the filed proposed orders were considered in preparing this Final Order since neither party was prejudiced by Respondent's late filing. Additionally, on February 28, 2020, Respondent offered Respondent's Exhibits: 1F, pages 64 through 92; 2C; and 2G into evidence. Petitioner filed a response to the submission of Respondent's late-submitted exhibits indicating that Petitioner did not object to the exhibits. As such, Respondent's Exhibits: 1F, pages 64 through 92; 2C; and 2G are accepted and admitted into evidence.

Further, unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. Additionally, for stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The Student who is the subject of this case has been enrolled in the School District since pre-kindergarten. Currently, the Student is 17 years old. By Final Order in DOAH Case No. 19-0727E (Sarasota 1) entered on October 21, 2019, in a case between the same parties, the Student became a

publicly-placed private school student.[1] He is currently attending School A, a private school, and is in the 11th grade.

2. The evidence showed that the Student is doing well in School A and appears to have made significant progress in his education. The evidence also showed that the Student is career or vocationally focused, wants to attend college and is interested in working in videography. He is struggling in maintaining employment primarily because he does not have the skills to handle money and make change. He also does not have the skills to effectively utilize the County's public transportation system, especially when the routes are not familiar routes. The evidence clearly showed that there was an educational need for job coaching and instruction in task related behaviors, as well as, continued direct instruction in reading written language and math.

3. In general, available or parentally reported testing and psychoeducational reports (both public and private) from 2018 (involved in the previous hearing) and 2019 (from School A and included in the IEP's present levels of performance under the domain of curriculum and learning,

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[1] 34 C.F.R. § 300.518 (d) governs placement during and after administrative proceedings. It states:

> (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

Thus, as is the case here, if parents succeed in establishing the appropriateness of a placement or educational provision at a due process hearing and obtain a ruling in their favor, that placement or educational provision becomes the stay-put placement of the student throughout the appeal process, and the educational agency must then maintain that placement, including the expenses associated with the placement. As a consequence, during the pendency of a district's appeal, the hearing officer's decision effectively constitutes the student's "then-current" placement for the purpose of IDEA's stay-put requirement. *See*, 20 U.S.C. 1415 (j); *Lawrence County Sch. Dist. of Lawrence County, Ark. v. McDaniel*, 71 IDELR 3 (E.D. Ark. 2017); *Casey K. v. St. Anne Cmty. High Sch. Dist.* No. 302, 43 IDELR 1, (7th Cir. 2005), cert. denied, 110 LRP 67820, 546 U.S. 821 (2005). Further, the IDEA's stay-put provision applies to administrative orders requiring districts to conduct evaluations or consult with specialists.

but not listed under the IEP's relevant evaluation data) demonstrated that the Student remains significantly behind his peers due to the continued failure of the District to offer the Student an opportunity to close the educational gap, which developed because of the District's multiple years of failing to provide FAPE to the Student. Indeed, the parentally reported testing data from School A, which occurred in January of 2019, when the Student transferred to private school in 10th grade, showed that the Student functioned around a fifth-grade level or lower in reading and math. The parentally reported testing data from School A, done in October 2019, showed improvement in grade-level performance, but that the Student remained significantly behind his peers with grade levels in reading and math scattered between 6th and 8th grade. The District's failure to provide tutoring, remediation, or extended school year services that offer an opportunity for this Student to close his educational gap has continued through the date of the hearing in this case. The lack of services and the lack of a District plan to implement such services for compensatory education purposes have resulted in ongoing violations of IDEA and denial of FAPE to the Student.

4. After the issuance of the Order in Sarasota 1, the District did not contact Petitioner. Instead, on October 24, 2019, Petitioner, through counsel, contacted the District, to schedule an IEP meeting as soon as possible.

5. After no response to Petitioner's inquiry, Petitioner again contacted the District on October 28, 2019.

6. Around that date, Petitioner agreed to a meeting date of November 15, 2019. The meeting was confirmed by the District on November 5, 2019. The evidence was clear that, by the time the meeting was confirmed by the District, the District knew that the Student had not been in public school for almost a year and that updated information from School A was needed to determine current levels of performance so that "updated present level information that reflects his strengths and weaknesses" could be included in

the IEP. Other than requesting the parent on November 6, 2020, to obtain this information, the District made no attempt to contact School A, with whom the District has a good relationship, to obtain updated information. More importantly, the District made no attempt to ensure attendance at the meeting of the Student's teachers or other personnel with knowledge regarding the Student's education from School A, and who the evidence unequivocally showed were essential to the meeting. The evidence also showed that the District had no intention of ensuring the participation of relevant School A personnel since such personnel were not listed on the Notice of Meeting, dated November 5, 2019. In fact, as discussed below, on November 8, 2019, relevant School A personnel were only listed on an excusal form sent to Petitioner's counsel, requesting that private school personnel be excused from attending the IEP meeting.

7. On November 7, 2019, Petitioner requested, through counsel, to have a representative from vocational rehabilitation services invited to the meeting. Petitioner also requested a list of people who the District intended to have present at the meeting. Additionally, on November 7, 2019, the District asked for Petitioner to waive the 10-day notice requirement since the meeting was being set with less than 10 days' notice. Petitioner agreed to waive the 10-day notice.

8. On November 8, 2019, the District emailed Petitioner a transition assessment form and an excusal form to excuse the Student's School A teachers and private school representative from attending the meeting. Petitioner filled out the transition assessment form and brought the form to the meeting on November 15, 2019.

9. The evidence showed that the school members of the IEP team met prior to the IEP meeting and had prepared a draft IEP, which was projected on a screen during the meeting for all participants to see. There was no substantive evidence that the IEP was predetermined by the District. There was significant evidence that the District was very reluctant to engage in this

IEP meeting and to attempt to draft an IEP providing services at a private school believing that the Final Order in Sarasota 1 was "temporary."[2] The District's reluctance led, in part, to its failure to ensure the participation of private school personnel in the IEP meeting.

10. At the IEP meeting, Petitioner's team included his parent; Big Brother Volunteer- Stephen Marland; two parent advocates, Sue Memminger and Susan Magers; and Petitioner's attorney. A representative of Vocational Rehabilitation, a service provider of employment and job coaching services, was present for a portion of the meeting. Present for the District were the District's attorney; Sonia Figaredo-Alberts, public school system executive director; Erin del Castillo, school administrator; Danielle Moon-Estep, meeting facilitator and program specialist; Tammy Cassels, exceptional student education (ESE) supervisor; Kimberly Belli, local education agency representative; Robert Lees, school psychologist and evaluation interpreter; Karen Hamblin, general education teacher; Steve Hazuda, ESE teacher; a speech language pathologist; a school counselor; and a note taker. None of the District's personnel and, in particular, the special and general education teachers were currently involved in the education of the Student and had not been involved for almost a year.

11. Notably absent from the meeting were any of the Student's current ESE or general education teachers. There was also no representative of the private school (or any private school) present at the meeting. All of the private school teachers and representative were required participants for this IEP meeting under IDEA.

[2] The documents generated by the District, and the testimony and statements at the hearing, reflect that the District continues to mistakenly believe that the Student is a parentally placed private school student even after the entry of the Final Order in Sarasota 1 and that the Sarasota 1 Order is temporary because, at the time of the meeting, the District was going to appeal the Sarasota 1 Final Order. Neither belief is a valid reason to determine the extent of services that should be in an IEP or for failing to ensure the participation of the current private school teachers or private school representative.

12. Relative to these absences, the evidence showed that no one from School A was invited to the meeting by either the District or the parent. Additionally, at the beginning of the meeting, the parent and the District signed an IEP excusal form for the ESE education teacher, general education teacher, and the private school representative. The form, listed by checkbox, the only two reasons under IDEA that teachers might be excused from an IEP meeting. The reasons were:

> A member of the IEP/SP Team is not required to attend an . . . meeting, . . ., if the parent of the student . . . and the school district agree, in writing, that the attendance of the member is not necessary *because the member's area of the curriculum or related services is not being modified or discussed in the meeting*.
>
> Any member of the IEP/SP Team may be excused from attending an . . . meeting, . . ., when the meeting involves a modification to or discussion o[f] the members area of the curriculum or related services, if the parent, in writing, *and the school district consent to the excusal and the member submits, in writing to the parent and the IEP/SP Team, input into the development of the IEP/SP prior to the meeting*. (emphasis added).

Neither of the above reasons for excusal was checked on the excusal form. As such, the required participants in the meeting were not excused from attending the meeting. More importantly, the clear evidence at hearing from both parties, demonstrated that neither of the reasons for excusing required participants from attending an IEP meeting, especially private school participants, applied since areas of the curriculum and related services, such as tutoring and mental health counseling, were critical to the intense discussions that occurred over these topics during this IEP meeting. Additionally, no written input or information from private school personnel was submitted to the IEP team prior to the meeting sufficient to move the discussions of curriculum and services into necessary specifics in those areas.

13. No one from School A or any private school testified at the hearing. Thus, except for language therapy, the evidence did not establish the duration or location of the services needed by the Student and did not establish that School A or any private school could understand and implement the drafted IEP, especially relative to the vaguely defined services contained in the IEP.

14. Notably the location of the services was defined as "school environment," which definition is a catch-all for a variety of environments and includes public schools and private schools. Testimony regarding the school environment location showed that the undefined location is considered "best practices" when the educational environment cannot be ascertained based on the information the IEP team has at the meeting. The evidence showed that the reason the team did not have the information was because no one from School A was present at the meeting, or had supplied such information prior to the meeting. Additionally, this Student's suicidality and mistrust of the public schools, engendered by the District's previous and continuing violations of IDEA require that his location be specific, and not in a public school. Thus, the fact that the undefined location can include a public school is yet another failure to provide FAPE to the Student. Relative to this Student, the District's insistence on non-specific locations for services, which included a public school environment, violated IDEA and failed to provide FAPE to the Student.

15. In this case, the evidence was clear that significant input from the private school was critical to developing and implementing the IEP, since the Student is publically placed in private school and a private school must be able to implement the IEP, as well as, provide the curriculum, services, and accommodations contained in the IEP. The capability of the private school is the common-sense basis underpinning IDEA's requirement that private school personnel participate or provide sufficient input into the development of a publicly placed private school student's IEP. Further, it is the District's,

not the parents, duty to ensure such participation. Additionally, the evidence was clear that since there were no current teachers from the private school present at the meeting, there was insufficient information available to the IEP team to draft credible present levels of performance or engage in discussions regarding services under the IEP relative to duration or availability at the private school.

16. The evidence was clear that the meeting was very contentious, at times, and especially contentious relative to current present levels of performance, location of services, and duration of services. The evidence was clear that the Student team and parent participated in the IEP meeting and had significant input into the discussions during the meeting, supplying information from School A to the IEP, which was included in the IEP. The School A information supplied by the parent was insufficient to enable the team to fully discuss the Student's educational needs or draft meaningful services relative to the Student's education. As such, the failure of the District to ensure the participation and input of the private school teachers or personnel violated IDEA and was fatal to drafting an IEP that provides FAPE to the Student.

CONCLUSIONS OF LAW

17. 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).

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

19. 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 Cty. 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).

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

21. 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).

22. 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 Cty. Sch. Dist.*, RE-1, 13 S. Ct. 988, 999 (2017).

23. "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). Those other settings include private schools.

24. 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, in location, frequency, and duration; addresses accommodations to be provided to the child; 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. *See also*, Fla. Admin. Code R. 6A-6.03028 (3)(h),. "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). *See also*, Fla. Admin. Code R. 6A-6.03028 (3)(f).

25. 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).

26. 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. A procedural error does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cty. 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).

27. Specific to the IEP process, the School Board, not the parents or the parents' legal team, is required to convene an IEP meeting and IEP team with appropriate team members. Relative to this case, 34 C.F.R § 300.325 sets forth the requirements for convening the meeting and required team members when a private school is involved in providing FAPE to a Student. The section states:

> Private school placements by public agencies.
>
> (a) Developing IEPs. (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.
>
> (2) *The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.*

> (b) Reviewing and revising IEPs. (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
>
> (2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—
>
> (i) Are involved in any decision about the child's IEP; and
>
> (ii) Agree to any proposed changes in the IEP before those changes are implemented.
>
> (c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. (emphasis added).

28. Florida Administrative Code Rule 6A-6.03028(3)(n) implements the above federal regulation. It states:

> 1. If a student with a disability is placed in a private school by the school district, in consultation without the student's parents, the school district shall:
>
> a. Ensure that the student has all of the rights of a student with a disability who is served by a school district.
>
> b. Before the school district places the student, initiate and conduct a meeting to develop an IEP for the student, in accordance with this rule or for children ages three (3) through five (5), an IEP or an IFSP in accordance with rules 6A-6.03011 through 6A-6.0361, FAC.; and,
>
> c. Ensure the attendance of a representative of the private school at the meeting. If the representative

> cannot attend, the school district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
>
> 2. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the school district but the school district must ensure that the parents and a school district representative are involved in decisions about the IEP and agree to proposed changes in the IEP before those changes are implemented by the private school.
>
> 3. Even if a private school or facility implements a student's IEP, responsibility for compliance with these rules remains with the school district.

29. Additionally, rule 6A-6.03028(3)(d) only allows excusal of required team members upon mutual written agreement between the parent and the District, when those members are not necessary "because the member's area of the curriculum or related services is not being modified or discussed in the meeting" or "when the meeting involves a modification to or discussion of the member's area of the curriculum or related services and the member submits, in writing to the parent and IEP team, input into the development of the IEP prior to the meeting."

30. In this case, the evidence was clear that the District did not contact, invite, or even attempt to have any teachers or personnel from the private school familiar with the Student attend the IEP meeting. The evidence was also clear that no one from the private school submitted written input to the parent and the IEP team prior to the IEP meeting. Further, the un-contradicted evidence was clear that the District's failure caused the present levels of performance written in the IEP to inadequately reflect current levels of performance of the Student. Current present levels of performance are

fundamental to the development of appropriate annual goals, services, and accommodations for a student. Additionally, all of these items are necessary for an IEP to be individual and appropriate to the Student.

31. Additionally, the District's failure to include private school team members materially undermined the development of an appropriate IEP for the Student and caused the Student's IEP services to be nonspecific and ill-defined, especially as related to the amount of each service the Student currently needs. Similarly, the location of where the services were to be provided was left nonspecific. In this case, based on the facts found in the Sarasota 1 Order and the suicidality of the Student, location of the services outside of the District's public-school setting is a necessary component of the provision of FAPE to the Student. The failure of the team to develop an IEP with appropriately defined services that were located outside the District's public school setting denied FAPE to the Student and violated IDEA.

32. Moreover, due to the failure of the District to include private school team members it is impossible to analyze the substance of the IEP and whether it is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 13 S. Ct. at 993. Finally, since no one from the private school testified at the hearing, there is no credible or substantive evidence that this IEP, as drafted, can be implemented at the private school.

33. Because the School Board denied the Student FAPE by failing to design an appropriate IEP and failing to provide any services since his removal from public school, the Student is entitled to compensatory education.

34. In calculating an award of compensatory education, the undersigned is guided by *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005), wherein the D.C. Circuit emphasized that IDEA relief depends on equitable considerations, stating, "in every case . . . the inquiry must be fact specific and, to accomplish IDEA's purposes, the ultimate award must be

reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Id*. at 524. The court further observed that its "flexible approach will produce different results in different cases depending on the child's needs." *Id*. at 524. This qualitative approach has been adopted by the Sixth Circuit and a number of federal district courts. *See Bd. of Educ. v. L.M.*, 478 F.3d 307, 316 (6th Cir. 2007) (agreeing with the district court that a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address the Student's educational problems successfully); *Petrina W. v. City of Chicago Pub. Sch. Dist*., 2009 U.S. Dist. LEXIS 116223, at *11 (N.D. Ill. Dec. 10, 2009) (noting that a flexible, individualized approach is more consonant with the aim of the IDEA, the Court found such an approach more persuasive than the Third Circuit's formulaic method); *Draper v. Atlanta Indep. Sch. Sys.,* 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007) (holding that, in formulating a compensatory education award, the Court must consider all relevant factors and use a flexible approach to address the individual child's needs with a qualitative, rather than quantitative focus), aff'd, 518 F.3d 1275 (11th Cir. 2008); *Barr-Rhoderick v. Bd. of Educ.*, 2006 U.S. Dist. LEXIS 72526, at *83-84 (D.N.M. Apr. 3, 2006) (holding that an award of compensatory education must be specifically tailored and cannot be reduced to a simple, hour-for-hour formula).

35. Guided by the above-stated principles, Petitioner is entitled to compensatory education for the number of school days that services were not provided to the Student since his removal from public school.

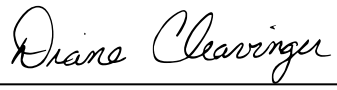
ORDER

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

1. The School Board shall within a reasonable time from the date of this Order, consult and coordinate with the private school to comply with IDEA and Florida Administrative Code Rule 6A-6.03028.

2. The School Board shall within a reasonable time from the date of this Order, convene an IEP meeting, or alternatively elect to have the private school convene the meeting and develop the IEP pursuant to Florida Administrative Code Rule 6A-6.03028, which includes appropriate staff from the private school and public school, to draft an appropriate IEP for the Student in private school which includes: current levels of performance and appropriate services; direct instruction; mental health counselling; intensive tutoring and remediation including tutoring and remediation during the summer; job coaching and skills training; task related instruction; private school location of services; and compensatory education for the number of school days that services were not provided to the Student since his removal from public school sufficient to offer the Student an opportunity to close the educational gap created by the District.

DONE AND ORDERED this 27th day of March, 2020, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 27th day of March, 2020.

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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).