

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 21-3608E

vs.

ORANGE COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held on February 11, 2022, before Jessica E. Varn, an administrative law judge with Florida's Division of Administrative Hearings (DOAH). By agreement of the parties, the due process hearing was held by Zoom video-teleconferencing.

APPEARANCES

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

For Respondent: Sarah Wallerstein Koren, Esquire
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801

STATEMENT OF THE ISSUES¹

Whether the student's placement is in the least restrictive environment (LRE);

Whether the present levels of performance (PLOPS) are accurate in the student's Individualized Educational Plan (IEP);

Whether the IEP properly addresses the student's maladaptive behaviors;

Whether the parent has been denied meaningful participation in the drafting of the November [REDACTED], IEP because the School Board failed to issue Prior Written Notices (PWN), the School Board failed to disclose the exact purpose of the IEP meeting, and the School Board denied the parent access to observe the student's classroom; and

Whether the School Board retaliated against the parent by denying the parent the ability to talk to staff during pick-up time after school.

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on or about November 29, 2021. The case was set for a due process hearing on January 31, 2022. On January 21, 2022, the parties requested that the hearing be rescheduled. The hearing was then rescheduled for February 11, 2022.

Petitioner called [REDACTED] as a witness, and called a private behavior specialist as the only other witness. Petitioner entered one exhibit into

¹ These are the issues raised in Petitioner's Complaint. During the due process hearing, and in Petitioner's proposed final order, Petitioner only addressed two issues: whether the student is placed in the LRE, and whether the parent was denied the ability to meaningfully participate in the drafting of the November [REDACTED], IEP. Accordingly, the remaining issues are considered abandoned and are dismissed with prejudice without further analysis.

evidence. The School Board presented the testimony of [REDACTED], a Varying Exceptionalities self-contained classroom teacher; [REDACTED], an Applied Behavior Analysis (ABA) Behavior Analyst; [REDACTED], a Varying Exceptionalities self-contained classroom teacher; and Tajuana Lee-Wenze, the Due Process Coordinator for the School Board. School Board Exhibits 1 through 7, 9, 16, 17, 22 through 24, 27, and 29 were admitted into the record.

The Transcript of the due process hearing was filed on February 25, 2022. By agreement of the parties, proposed final orders were due on March 2, 2022, and the deadline for the final order was extended to March 7, 2022. The School Board filed a timely proposed order, and although Petitioner filed a proposed order one day late, it was considered in the preparation of this Final Order.

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

FINDINGS OF FACT

1. The student is currently in [REDACTED] grade and is eligible for exceptional student education (ESE) under the category of Autism Spectrum Disorder (ASD) and Language Impairment (LI). According to the parent, the student attended various [REDACTED] schools for [REDACTED] and [REDACTED] grades, and had last been enrolled in an Orange County school when he was in [REDACTED] grade.

2. He is described as being large for his age--the size of a physically imposing and strong adult--with severe maladaptive behaviors that include violence towards his peers and the staff.

3. The student entered Orange County schools on the first day of school in [REDACTED], which was August [REDACTED]. He was placed in a [REDACTED]

classroom with [REDACTED], three other adults and approximately [REDACTED] other students. Just [REDACTED] days later, the school met with the parent to discuss the student's [REDACTED] behaviors.

4. On that same date, the parent was sent a notice for a reevaluation meeting that was scheduled for August [REDACTED]. At that meeting, the staff provided input on the student's academic skills and his extensive list of maladaptive behaviors, which included elopement, inability to focus on non-preferred tasks, and his inability to assess danger to himself or others. The parent provided consent for reevaluation, and a PWN was issued denying a [REDACTED] paraprofessional and a registered behavior technician in the classroom.

5. On September [REDACTED], the team met to discuss the needs of the student. The team agreed to provide a [REDACTED] paraprofessional and reported several maladaptive behaviors, which included physical aggression against other students and staff, elopement, and stealing food from other students.

6. On October [REDACTED], the team met again to discuss the evaluations. A Behavior Intervention Plan (BIP) was designed, identifying behaviors which included:

Physical Aggression: grabbing an individual by their shirt with one or both hands, typically at the collar, or their hair and pulling with enough force to cause damage to shirt and pull out multiple strands of hair. Can also include charging, pushing individuals out of [his] way with full body weight typically to gain access to a preferred item.

Tantrum: includes two or more of the following behaviors; crying (with or without actual tears), whining, asking for items repeatedly, dropping onto knees, falling to the floor and rolling around, loud vocals, and physical aggression.

Classroom disruption: not complying with a known direction within 10 seconds, out of seat, out of area, roaming around the classroom, grabbing, swiping and throwing classroom property items, this can lead to physical aggression.

7. The BIP addressed all these behaviors, with multiple positive reinforcements, and step-by-step instructions on how to address all the behaviors.

8. The student's IEP included PLOPs that detailed the student's academic and behavioral strengths and weaknesses, provided detail regarding what the last IEP had summarized, and also included data that the staff was collecting as they began to assess the student.

9. The team reconvened on November [REDACTED], because the student's maladaptive behaviors were not diminishing. The student, even with a [REDACTED] paraprofessional, was not improving, and was unable to access his education due to his behavior. The other students in the class were afraid of the student, and his teacher, who was pregnant at that time, had been injured by the student's physical aggression. The school staff decided that the student should be placed in a different self-contained classroom, taught by [REDACTED], which had [REDACTED] of students to staff members. The parent disagreed with the decision, and was able to express his thoughts and reservations regarding the change in classroom.

10. From the beginning of the school year up to the time when the parent filed the Complaint, the parent communicated on a daily basis with [REDACTED], through an application used by the school. The communication log reflected an excessive amount of questions and comments sent by the parent to the teacher, who patiently and kindly responded to every single concern and suggestion.

11. Notwithstanding the constant communication with the teacher, the parent attempted to also chat with the teacher during pick-up time at the end of the school day. At that point in the day, the staff members are focused on keeping all the students safe and on their way home. Due to many legitimate reasons, including privacy and safety issues, the parent's attempts to converse with the teacher at pick-up time were met with resistance. Despite the staff letting the parent know that a conference could be scheduled, and

that he should immediately refrain from this behavior, he continued to attempt to talk to the staff during pick-up time.

12. In January, the student was moved to [REDACTED] self-contained classroom, with roughly half the number of students, and [REDACTED] ratio of adults to students, rather than the [REDACTED] ratio in [REDACTED] classroom. In this classroom, he has been able to access his education more consistently, and has made academic progress.

13. The student has remained in a self-contained classroom, but with a different teacher and a smaller number of students.

14. The parent presented no persuasive evidence to establish any of the alleged violations in the Complaint.² The record is devoid of any credible evidence establishing that the School Board violated the least restrictive environment directive, that the PLOPs were not accurate, that the IEP failed to properly address the student's maladaptive behaviors, that the parent was denied meaningful participation, or that the School Board retaliated against the parent.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

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

17. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized special

² To the extent that there are discrepancies between the testimony of the School Board witnesses and the parent, the undersigned finds the testimony provided by the school staff more persuasive and consistent with the documentary evidence.

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).

18. Parents and children 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 (FAPE). 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

19. 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).

20. 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. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181). School districts must also ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. 20 U.S.C. § 1412(a)(5)(A). In other words, the school district must endeavor to educate each disabled student in the LRE. *A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014).

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

deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

22. In this case, Petitioner has alleged that the School Board denied ■ an opportunity to meaningfully participate in the development of the November ■, IEP. Petitioner presented no persuasive evidence of this alleged violation. The School Board, though, presented persuasive evidence establishing the contrary; that is, that the parent was meaningfully participating in the development of the IEP. The parent was able to express ■ disagreement with the change in classroom, ■ concerns, ■ questions, and ■ suggestions on a daily basis. All of the parent's input was properly considered.

23. Turning to the issue of placement, schools must consider when to educate a student in a more restrictive environment. 20 U.S.C.

§ 1412(a)(5)(A) provides as follows:

Least Restrictive Environment

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

24. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R. § 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements are available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. 110. In determining the educational

placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

25. With the LRE directive, "Congress created a statutory preference for educating handicapped children with non-handicapped children." *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 695 (11th Cir. 1991)(opinion withdrawn on procedural grounds and reinstated in pertinent part; see 956 F.2d 1025, 1026-27; see also 967 F.2d 470). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, school districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to his special needs." *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989).

26. As Petitioner concedes, the student's time at school with general education students has not changed with the change in classroom. Based on the facts of this case, and the legal principles outlined above, there has been no change in placement. The student remains in the LRE, whether he is in the self-contained classroom taught by [REDACTED], or the self-contained classroom taught by [REDACTED].

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is DISMISSED and all requests for relief are DENIED.

DONE AND ORDERED this 7th day of March, 2022, in Tallahassee, Leon
County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
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this 7th day of March, 2022.

COPIES FURNISHED:

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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).