

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 22-0463E

\*\*,

Respondent.

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FINAL ORDER

Pursuant to notice, a due process hearing was conducted in this case on May 9, 2022, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Sara M. Marken, Esquire  
Miami-Dade County School Board  
1450 Northeast 2nd Avenue, Suite 400  
Miami, Florida 33132

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

STATEMENT OF THE ISSUE

Whether the exceptional student education (“ESE”) center/special day school placement recommended by the educational staff on the Individual Education Plan (“IEP”) team is the least restrictive environment (“LRE”) for the student.

PRELIMINARY STATEMENT

On February 11, 2022, Petitioner, Miami-Dade County School Board (“Petitioner” or the “School Board”), filed a request for due process hearing (“Petition”). The Petition seeks a final order authorizing Respondent to attend [REDACTED], a special day school. On February 16, 2022, a Notice of Telephonic Scheduling Conference was issued, notifying the parties that a scheduling conference would be held on February 18, 2022. The telephonic conference occurred and the hearing was set for May 9 and 10, 2022.

The hearing was convened as scheduled and was completed on May 9, 2022.

Petitioner’s Exhibits 9, 11 through 16, 19, 25, 26, 28, 29, 35, and 62 were admitted into evidence. Respondent offered no exhibits.

At the hearing, Petitioner presented the testimony of: [REDACTED], the School Board’s instructional supervisor for [REDACTED] [REDACTED] programs; [REDACTED], the principal of [REDACTED]; [REDACTED], Respondent’s classroom teacher at [REDACTED]; and [REDACTED], the School Board’s [REDACTED].

Respondent presented the testimony of [REDACTED], Respondent’s mother.

The one-volume Transcript of the final hearing was filed with DOAH on June 22, 2022. Petitioner timely filed a proposed final order on July 5, 2022. Respondent did not file a proposed final order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the proposed placement. For stylistic

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

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and the entire record in this proceeding, the following Findings of Fact are made:

1. Respondent is an [REDACTED]-grade student residing within the jurisdiction of the School Board. At the time of the hearing, Respondent's stay-put placement was at [REDACTED].

2. Respondent is eligible for ESE services in the categories of EBD and visually impaired.

3. Respondent's EBD affects his ability to control his emotions and behavior. Respondent tends to have trouble accepting disciplinary consequences when he misbehaves. His repeated pattern is to escalate the misbehavior when faced with discipline, to the point of becoming verbally and even physically aggressive with fellow students and school personnel.

4. The School Board documented that Respondent's academic performance is at or near grade level. The School Board's concern is the deleterious effect that Respondent's behavior has on his academic performance. He often rejects participation in the academic material being presented and must be removed from the classroom for his disruptive behavior. At all times relevant to this proceeding, Respondent has had a Behavior Intervention Plan in place along with his IEP.

5. Respondent enjoys praise and attention from teachers and fellow students when he performs well, but requires constant motivation and redirection to do so. The IEP team has developed strategies and organizational tools to attempt to keep Respondent focused and engaged with his schoolwork and reduce his disruptiveness.

6. Since Respondent was in the [REDACTED] grade, his cell phone use has been a consistent behavioral issue. [REDACTED], the School Board's supervisor for [REDACTED] programs, testified that when teachers would try to work with Respondent on his behavioral skills, Respondent would call his mother on the cell phone. His mother would then become involved in the situation and undermine the authority of the teacher.

7. [REDACTED] oversees all the clinical behavioral services provided to students within the School Board's jurisdiction. [REDACTED] is responsible for ensuring that all the programs delivering services for students in the [REDACTED] programs have the supports needed to provide a free and appropriate public education ("FAPE").

8. [REDACTED] testified that [REDACTED] first met Respondent during the 2018-2019 school year, when he was transitioning from [REDACTED], a special day school for students with [REDACTED], to a traditional elementary school with a self-contained [REDACTED] program. This move was done at the request of [REDACTED], Respondent's mother. The School Board provided the parent with a choice of several schools that had programs for [REDACTED] students. All of the programs involved a [REDACTED] classroom with a low student-to-teacher ratio.

9. The final decision was to place Respondent at [REDACTED], which had a [REDACTED] program that provided Respondent with a clinician, a teacher, and a one-to-one paraprofessional. The [REDACTED] setting is the [REDACTED] setting at a traditional school. [REDACTED] testified that the [REDACTED] setting usually has one teacher for every eight students.

10. [REDACTED] testified that Respondent had behavioral issues while at [REDACTED], on one occasion having to be removed from the classroom and into the media room with his one-to-one paraprofessional and a clinician because of his actions in the classroom.

11. The School Board's Student Case Management ("SCM") information program is used to record behavioral incidents, parent conferences, and counseling. [REDACTED] stated that an SCM record is created for every disciplinary incident or any event that results in counseling. The SCM records are used to develop effective intervention strategies, services, and supports for each student.

12. Respondent's SCM records show at least ten separate disciplinary incidents during the 2018-2019 school year when he was in [REDACTED] grade at [REDACTED]. These included incidents of confronting fellow students with crude language, classroom disruptions, failure to comply with corrective strategies, and confrontations with and defiance of school personnel. On January [REDACTED], [REDACTED], Respondent was cited by the School Resource Officer ("SRO") for a battery on another student. At least twice, Respondent was removed from the [REDACTED] classroom to help him gather himself and to allow the other students to work uninterrupted.

13. After Respondent completed the [REDACTED] grade in 2018-2019, he moved to [REDACTED] for the 2019-2020 school year. [REDACTED] is a traditional school. Respondent was again assigned to the [REDACTED] classroom for students with [REDACTED]. The program at [REDACTED] included a teacher, a classroom paraprofessional, an EBD clinician, and a one-to-one paraprofessional assigned to work exclusively with Respondent.

14. [REDACTED] testified that in the fall of 2019, a disciplinary incident occurred between Respondent and classroom personnel that resulted in Respondent's not being allowed back into the classroom. For two weeks, Respondent sat in the media center with administrators helping him with his schoolwork, while [REDACTED] assisted [REDACTED] in finding another school.

15. In November 2019, the IEP team met and decided that Respondent would attend [REDACTED] and participate in the [REDACTED] program at that school. [REDACTED] was a [REDACTED]

█████ setting similar to ██████ but offered more supports and services, including a teacher, classroom paraprofessional, full-time behavioral clinician, behavior management teacher, and art therapist. ██████ testified that the ██████ program at ██████ provides more supports than can be found at any other traditional public school in Miami-Dade County.

16. The IEP created in November 2019 continued to provide Respondent with a one-to-one paraprofessional but also added 30 minutes per week of clinical services by a psychologist. The School Board hired clinical psychologist ██████ to work with Respondent.

17. ██████ testified that with all the services and supports in place, along with regular counseling from ██████, Respondent was “doing okay” for the first half of the 2019-2020 school year. However, in early 2020 the COVID pandemic struck and all of the public schools in Miami-Dade County were closed to in-person classes, providing only virtual teaching. All of Respondent’s services were kept in place, and he progressed without incident through the remainder of his ██████-grade year with virtual learning.

18. In October 2020, Respondent returned to in-person learning at ██████ for ██████ grade. During the Fall semester, Respondent was doing well enough that the IEP team began discussing whether he was ready to take some general education classes with supports. ██████ testified that there were still disciplinary incidents but that the team working with him, including ██████, were fully committed to his program. The supports appeared to be working.

19. Respondent’s conduct began to deteriorate in December 2020. ██████, the principal of ██████, testified that students in the ██████ classroom were required to give their cell phones to the teacher as they entered the room in the morning. Respondent always chafed at this rule. On or about December ██████, ██████, Respondent refused to hand his phone over to the classroom teacher, ██████. Respondent walked out of the classroom.

██████████ called for assistance. ██████████ and an assistant principal came to help. ██████████ testified that Respondent was pacing the hallway and refusing to return to the classroom.

20. Respondent later met with one of his ██████████ counselors, ██████████, and made a verbal threat regarding ██████████, stating, “If ██████████ comes near me, I will mess ██████████ up.” The SCM record related to this incident mentions “police involvement” regarding the threat but does not further specify the law enforcement response.

21. An SCM record dated March ██████████, ██████████, as reported by ██████████, who was at that time Respondent’s behavior management teacher, states that Respondent “approached another student who was calling ██████████ names and punched ██████████ in ██████████ face then slammed ██████████ on the desk.”

22. On March ██████████, ██████████, Respondent again refused to turn in his cell phone upon entering the classroom. He told ██████████ to “leave me the ██████████ alone” and shoved ██████████ aside with ██████████ shoulder while leaving the classroom. Because the incident involved physical contact with the teacher, the SRO was called in to make a report. This was the last notable disciplinary incident during the 2020-2021 school year.

23. Respondent began ██████████ grade at ██████████ in August 2021. All of the supports described above remained in place. ██████████ testified that Respondent’s behavior was “pretty good. ██████████ wasn’t having so many issues at the beginning of the school year.”

24. As the year progressed, Respondent began having small incidents that did not merit creation of SCM reports: not listening to teachers; refusing to put away his cell phone; and aggressive behavior on the playground. The children were allowed to play outside before class, and there were issues with Respondent getting angry and holding on to the football, not letting the other children play with it.

25. On November ██████████, ██████████, Respondent picked up another student and slammed him into a trash can. On November ██████████, ██████████, Respondent boasted to

a group of students that he would have hurt the other student had they fought. He then pushed another student to the ground.

26. On November █, █, during a group art therapy counseling session with Therapist █, Respondent resisted working on the class project. When prompted to do so, he became upset. █ reported that he used inappropriate language toward her, including, “█.” He demanded that █ leave the classroom.

27. █ recalled an incident during November 2021 in which Respondent fought another student on the playground. Respondent knocked the other child to the ground and was hitting him when the school security guard stopped him. Respondent then walked over to the other child and kicked him.

28. On November █, █, Respondent was on “indoor suspension.” He was required to eat lunch indoors rather than outside on the playground with the other students. He was also suspended from the █ classroom. The teacher would give him his assignments, and he would go to the media center to complete them. On this occasion, Respondent did not want to do his classwork. He jumped up and down a set of steps. He grabbed a picture and destroyed it and then picked up a rocking chair and brandished it over his head. He walked out of the media center and out to the school’s basketball court without permission.

29. In December 2021, █, the behavior management teacher, became Respondent’s classroom teacher. On December █, █, during a classroom discussion, Respondent called another student a “█” When the paraprofessional intervened in the situation, Respondent called █ “ugly,” a “█” and “stupid.” He yelled at █ and walked out of the classroom.

30. On December 6, 2021, Respondent assaulted █, his classroom teacher. █ testified that Respondent had been getting in a lot of trouble during the previous week and was going to lose the privilege of eating



lunch outside with the general education students. When [REDACTED] told Respondent that he had to eat lunch inside, he became agitated. He told [REDACTED] to leave him alone and wandered off.

31. [REDACTED] asked him to stay with the class. [REDACTED] testified that Respondent's paraprofessional was able to walk him back to the rest of the group. When the group reached the conference center where they were to have lunch, Respondent began shouting profanity. He walked up to children who were eating and flipped their lunch trays over while cursing at them.

32. [REDACTED] testified that Respondent next called his [REDACTED] on his cell phone, which he should have turned in to [REDACTED] at the start of the school day. Respondent began telling [REDACTED] that school staff were being racist and calling him names. He began thrusting his phone at people while trying to record them saying things to him.

33. [REDACTED] stated that at this point the situation "went left." Respondent was hitting people, yelling, and putting his phone in their faces. [REDACTED] was trying to get the other students away from Respondent. [REDACTED] walked them back to the classroom while Respondent's paraprofessional stayed behind with him.

34. As [REDACTED] herded the students toward their classroom, Respondent ran after them. [REDACTED] told him [REDACTED] understood he was upset. [REDACTED] asked him to stay in the conference center until he had calmed down but he refused. [REDACTED] interposed herself between Respondent and the other students and had them run inside the classroom. [REDACTED] closed the door. Respondent stood outside pulling on the door. [REDACTED] asked the [REDACTED] counselor, [REDACTED], to take Respondent to another area to eat his lunch.

35. [REDACTED] testified that Respondent was gone for about an hour and a half. He returned to the classroom with about 45 minutes left in the school day. The class was working quietly. [REDACTED] gave Respondent the assignment and offered to help him with it. Respondent stated that he was not going to do anything with so little time left in the day. He told [REDACTED],

“Don’t bother me.” ██████ left him alone and went about helping the other students with their work.

36. Respondent began bothering the other students. He touched things on their desks and asked them why they were doing this “stupid” work.

██████ told him it was fine if he did not wish to do the work but that he had to sit down and allow the other students to finish. Respondent started calling ██████ “all types of names,” but ██████ tried to ignore him and help the other students.

37. ██████ stated that ██████ was standing with two students. Respondent walked up and stood uncomfortably near them. ██████ told Respondent that ██████ was trying to explain something to these students and asked him to give them space. Respondent replied, “No. What are you going to do? ██████ you. You’re not going to touch me. You’re not going to do anything.”

38. ██████ put ██████ arm out to separate ██████ from Respondent. ██████ testified that things then became chaotic. Respondent was cursing loudly, which caused the other students to shout back. In an effort to startle the class into silence, ██████ slammed a book to the floor. Respondent accused ██████ of trying to hit him with the book.

39. Respondent started throwing papers off of ██████ desk. He threw a book in ██████ direction, then put his hands around ██████ neck and pushed ██████ hard enough that ██████ lost her balance. ██████ fell onto a student. ██████ got up and went outside to call for assistance. Respondent followed ██████ out the door but was intercepted by an assistant principal and two other adults. ██████ went to an urgent care center for treatment of ██████ hand, which ██████ injured trying to break ██████ fall when Respondent pushed ██████.

40. In keeping with School Board policy for severe behaviors, ██████ referred Respondent for expulsion. ██████ explained that students are not actually “expelled” completely from the public school system but are sent to an alternative school. ██████ explained that students expelled for

disciplinary reasons that are not manifestations of their disabilities are placed at either [REDACTED] or [REDACTED].

41. The IEP team met on January [REDACTED], [REDACTED], and found that Respondent's actions were not a manifestation of his disability, explaining that his "action was thought out and calculated." However, the IEP team met again on January [REDACTED], [REDACTED], and reversed itself, finding that Respondent's actions were a manifestation of his disability, based on "review of previous educational records and current and historical behavioral data." This finding necessitated the development of a new IEP for Respondent.

42. The IEP team drafted a new IEP at the January [REDACTED], [REDACTED], meeting. [REDACTED] and [REDACTED] advocate were present at the meeting. [REDACTED] testified that the team discussed Respondent's present levels of academic performance, which his standardized testing scores indicated to be at about grade level, though he had difficulty with grade-level material in the classroom. The team determined that Respondent required specialized instruction in all core academic areas due to his difficulties with remaining on task and completing grade-level material independently. He required accommodations, supports, and assistance in all learning activities to remain on task.

43. As to Respondent's social or emotional behavior, the IEP team found that Respondent is very confident and social. He enjoys socializing with peers, making new friends, and conversing with adults. He "is generally a happy student who takes pride in helping others, sharing and achieving success on a goal or assignment." The team went on to find that Respondent's disability affects him in lessening his ability to remain on task and to regulate his emotions when dealing with conflict. The team noted that Respondent requires: a small group setting with one-to-one interventions from staff members to continuously implement behavioral interventions and accommodations; frequent assessment of his behavioral skills utilizing a

visual behavior management system throughout the school day; instruction in social emotional learning to address deficits in his ability to maintain social relationships, self-regulate, remain on task and comply with school rules; 60 minutes per week of counseling; and 30 minutes per week of art therapy. The team agreed that Respondent still needed a one-to-one paraprofessional to assist him throughout the school day.

44. The IEP team identified goals and specific strategies to improve Respondent's organizational skills. As to communication, the team set measurable goals involving Respondent's ability to communicate with peers and adults without using profanity. The team identified all of the individuals who would provide counseling, therapy, and behavior management instruction.

45. The IEP team identified Respondent's need for specialized transportation to and from school. The School Board provides Respondent with a specialized bus that carries only him, his sibling, and a bus aide to ensure Respondent's safety.

46. The IEP team considered the following factors in assessing Respondent's placement in the LRE consistent with implementation of the IEP: student frustration and stress; student self-esteem and self-worth; distractibility; need for lower pupil-to-teacher ratio; time required to master educational objectives; safety concerns due to physical conditions; lack of emotional control causing harm to self and others; social skills causing increased isolation; and difficulty completing tasks. The team concluded that the best place to implement the IEP would be a [REDACTED] school, [REDACTED].

47. An [REDACTED] or [REDACTED] is a [REDACTED] public school to which nondisabled peers do not have access. § 1003.57(1)(a)1.a., Fla. Stat. In the continuum of placements from least restrictive to most restrictive, there is no placement between the [REDACTED] setting at [REDACTED] and a [REDACTED], such as [REDACTED].

48. The IEP team concluded that Respondent needs a [REDACTED] school to assist with his difficulties in several of the LRE factors listed above: frustration and stress, self-esteem, distractibility, safety concerns due to physical conditions, lack of emotional control, and difficulty in completing tasks.

49. The IEP team determined that Respondent needed more services than could be provided by [REDACTED] or any other traditional school in Miami-Dade County. Respondent's behavior during the fall of 2021 had deteriorated to the point where a more intensive therapeutic program was needed.

50. [REDACTED] had only one clinician. [REDACTED] offers multiple clinicians who provide group counseling, individual counseling, and programs in de-escalation of conflict and emotional regulation.

51. [REDACTED] disagrees with the placement of Respondent in [REDACTED]. [REDACTED] testified as to bad memories of Respondent's time at [REDACTED], the [REDACTED] school from which Respondent was transferred at [REDACTED] request in the 2018-2019 school year. [REDACTED] chief concern, aside from a general distaste for [REDACTED] schools, was the lack of extracurricular activities and sports at [REDACTED]. However, [REDACTED] agreed that Respondent has significant behavior problems caused by his disability and has trouble controlling his behavior.

52. The greater weight of the evidence establishes that the self-contained classroom at a traditional school did not allow Respondent to adequately access his education. Placement at the [REDACTED] school is the LRE given that less restrictive alternatives have been extensively tried and have failed to keep Respondent's disability from interfering with his access to FAPE.

## CONCLUSIONS OF LAW

53. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

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

55. At all times relevant to the Complaint, Respondent was a student with a disability as defined under 34 C.F.R. § 300.8(a)(1); 20 U.S.C. § 1401(3)(A)(i); and Florida Administrative Code Rule 6A-6.03411(1)(f).

56. The School Board is a local education authority (“LEA”) as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, the School Board is required to comply with certain provisions of the Individuals with Disabilities Act (“IDEA”), 20 U.S.C. § 1401, *et seq.* As an LEA, the School Board is required to make FAPE available to Respondent under the IDEA. *Sch. Bd. of Lee Cnty. v. E.S.*, 561 F. Supp. 2d 1282, 1291 (M.D. Fla. 2008) (citing *M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1095 (11th Cir. 2006)); *M.H. v. Nassau Cnty. Sch. Bd.*, 918 So. 2d 316, 318 (Fla. 1st DCA 2005).

57. 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); *see also Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency’s compliance with the IDEA’s procedural and substantive requirements. *Doe v. Alabama State Dep’t*

*of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990); *see also Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

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

Special education and related 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).

59. “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).

60. 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, 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. 26. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Andrew F.*, 137 S. Ct. at 994 (quoting *Honig v. Doe*, 484 U.S. 305, 311 592 (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. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 181 n.4 (1982)).

61. In addition to requiring that school districts provide students with FAPE, the IDEA further gives directives on student placements or education environment in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A) provides as follows:

Least restrictive environment.

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

62. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet LRE requirements. 34 C.F.R. § 300.114(a). Each public agency must also ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. In turn, the Florida Department of Education has enacted rules to comply with the above-referenced mandates concerning LRE



and providing a continuum of alternative placements. *See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).*

63. In Florida, a school district may not place a student in a special ESE center without parental consent. Where, as here, the parent does not consent, the school district may not proceed with such placement, unless the school district obtains “approval” through a due process hearing. *See § 1003.5715, Fla. Stat.* Section 1003.5715 does not abrogate any parental right identified in the IDEA and its implementing regulations. § 1003.5715(7), Fla. Stat.

64. In determining the educational placement of a student 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 student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the student’s placement must be determined at least annually, based on the student’s IEP, and as close as possible to the student’s home. 34 C.F.R. § 300.116(b).

65. With the LRE directive, Congress created a statutory preference for educating handicapped children with children who are not handicapped to the maximum extent appropriate. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 181 n.4 (1982). “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).

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

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

the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

*Id.* at 1048.

67. Here, the greater weight of the evidence established that Respondent cannot be satisfactorily educated in the regular classroom, with the use of supplemental aids and services. Therefore, this case turns on the second part of the test: whether Respondent has been mainstreamed to the maximum extent appropriate. In determining this issue, the *Daniel* court provided the following general guidance:

The [IDEA] and its regulations do not contemplate an all-or-nothing educational system in which handicapped children attend either regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services. Thus, the school must take intermediate steps where appropriate, such as placing the child in regular education for some academic classes and in special education for others, mainstreaming the child for nonacademic classes only, or providing interaction with nonhandicapped children during lunch and recess. The appropriate mix will vary from child to child and, it may be hoped, from school year to school year as the child develops. If the school officials have provided the maximum appropriate exposure to non-handicapped students, they have fulfilled their obligation under the [IDEA].

*Daniel*, 874 F.2d at 1050 (internal citations omitted).

68. When placed at [REDACTED], the traditional school with [REDACTED] [REDACTED] program, Respondent's behavior initially improved. The principal reported that his behavior was "okay" during the first half of the 2019-2020 school year. The COVID pandemic closed the schools in early 2020. Respondent resumed in-person classes at [REDACTED] in October 2020 and did well enough that discussions were held on trying him

out in regular education classes. The aids, services, and supports seemed to be working to regulate Respondent's behavior.

69. However, Respondent's behavior began to deteriorate in December 2020 and then rapidly declined early in the 2021-2022 school year. Despite all the services provided by his IEP, Respondent experienced several disciplinary incidents of increasing severity, culminating in the December █, █, assault on █. It became apparent to the IEP team that Respondent's placement in the █ program was not providing him with FAPE and was materially disrupting the school's efforts to provide educational services to his similarly disabled classmates.

70. The evidence presented at the hearing demonstrated that, in light of his disruptive and aggressive behaviors, Respondent needs a more therapeutic center and intensity of services to adequately access his education. The █ school is the next step on the LRE continuum from Respondent's prior placement in a █ program in a traditional school. The placement at a █ school mainstreams Respondent to the maximum extent appropriate and, therefore, complies with the mandate that a student be educated in the LRE.

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board's proposed change of the student's placement from a █ program to a █ school is approved.

DONE AND ORDERED this 21st day of July, 2022, in Tallahassee, Leon County, Florida.



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LAWRENCE P. STEVENSON  
Administrative Law Judge  
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Division of Administrative Hearings  
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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).