STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 22-3408E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
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FINAL ORDER

A due process hearing was held on January 17, and February 7, 2023, by Zoom conference before Todd P. Resavage, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Sara M. Marken, Esquire
Gabrielle L. Gonzalez, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

STATEMENT OF THE ISSUE

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq*., in failing to provide Petitioner with an appropriate educational placement in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

Respondent received Petitioner's "Request for Exceptional Student (ESE) Due Process" (Complaint) on November 3, 2022. Respondent forwarded the Complaint to DOAH on November 7, 2022, and the matter was assigned to the undersigned.

On November 15, 2022, Respondent's Response and Notice of Insufficiency was filed. On the same date, the undersigned issued an Order of Sufficiency, concluding that Petitioner's Complaint met the requirements of Florida Administrative Code Rule 6A-6.03311(9)(d) with respect to Petitioner's disagreement with Petitioner's educational placement. The Order concluded that Petitioner, however, failed to adequately set forth a description of the nature of the problem with respect to the balance of the asserted claims. Petitioner did not subsequently file a request to amend the Complaint.

On November 21, 2022, the due process hearing was scheduled for December 15, 2022. On December 12, 2022, Petitioner's Motion to Reschedule Administrative Hearing was filed. This motion was granted and the due process hearing was rescheduled for January 17, 2023.

The due process hearing was conducted, as rescheduled, on January 17, and February 7, 2023. At the end of the hearing, the parties agreed to submit proposed final orders within 14 days after the filing of the transcript at DOAH and the issuance of the undersigned's final order within 14 days after the parties' proposed final order submissions. The hearing Transcript was filed on February 27, 2023. The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript.

On March 9, 2023, Petitioner filed a motion for extension of time of seven days to file proposed final orders. The motion was granted on March 10, 2023.

Both parties filed proposed final orders, which have been considered in preparing this Final Order. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violation.

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. Petitioner, at the time of the due process hearing, was [redacted] years old.

2. He is in [redacted] grade and attending school via an online parental choice program, [redacted].

3. Throughout his educational career in Respondent's district, Petitioner has never fully participated in traditional in-person instruction. In kindergarten, he enrolled at [redacted] for six days and then completed [redacted] in the Florida Home Education program. During Petitioner's [redacted] grade year, he again enrolled at [redacted], yet after attending for one day, he left Respondent's district.

4. For all that appears, Petitioner then moved to New York and attended a traditional public school. While in New York, Petitioner was found and determined to be eligible for exceptional student education (ESE) under the eligibility category of Other Health Impaired (OHI), and an individualized education program (IEP) was developed.

5. Petitioner returned to Respondent's district, as a [redacted]-grade student, for the [redacted] school year. He was initially enrolled at a private school and then, in January [redacted], enrolled in the Florida Home Education program.

6. For the [redacted] school year, Petitioner's [redacted]-grade year, he enrolled at [redacted], but due to the COVID-19 pandemic, he attended school

through Respondent's My School Online option. An IEP meeting to determine ESE eligibility was held on January 26, [redacted]. At that time, Petitioner was found eligible under the OHI category.

7. On February 2, [redacted], an IEP was developed. The IEP team determined, from February 2 through June 9, [redacted], Petitioner's educational placement to be a general education class. Conference notes from the meeting document that Petitioner's "parent was informed that services listed on this IEP will be implemented to the extent practicable via distance learning." The IEP team further noted that "[Petitioner] requires a small group setting with remediation of skills in a general education setting. Team is recommending a structured resource setting for middle school beginning [redacted] school year."

8. At the IEP meeting, Petitioner's mother was informed that [redacted] did not have the resource program to provide Petitioner with the necessary services during his upcoming [redacted]-grade year. Respondent, however, identified [redacted] as the designated [redacted] grade school location that could appropriately implement his IEP. Petitioner's mother did not enroll him at [redacted] for the [redacted] school year, but kept Petitioner at home and enrolled him in [redacted].

9. The IEP team convened a meeting on January 31, [redacted]. At that meeting, the school-based members of the IEP team informed Petitioner's mother that [redacted] did not have the supports and services that Petitioner required to access his education. Notwithstanding, Petitioner's mother continued his placement in [redacted], with the understanding that the services may be different than those provided in a brick-and-mortar setting. Pursuant to conference notes from the meeting, Petitioner's mother informed the IEP team she would "like for [Petitioner] to receive ESE services in a resource setting when they return to a physical school."

10. An IEP meeting was conducted on July 27, [redacted]. At that time, Petitioner was found and determined to be eligible for ESE under the

eligibility category of Specific Learning Disability (SLD). Petitioner's mother was again advised by the IEP team that [redacted] did not have the appropriate supports and services Petitioner needed to access his education.

11. Petitioner's mother did not, as recommended by the IEP team, enroll him in a traditional school setting, such as [redacted], for the [redacted] school year. He remained in [redacted].

12. An IEP meeting took place on October 7, [redacted]. At this meeting, the IEP team once again informed Petitioner's mother that [redacted] did not have the support and services that he required to access his education. The IEP developed on this date provided that Petitioner's education placement had to be a special class. The IEP team further recommended that he should return to a traditional school setting. The conference notes provide, as follows:

> M-Team met to discuss [Petitioner's] current placement. The M-Team agreed that [Petitioner][1] needs more supports than can be provided at [redacted]. The team recommended specialized instruction in all core subjects and that [Petitioner] return to his home school.

13. Respondent offered several alternative placements to meet the needs of Petitioner. Indeed, [redacted], the instructional supervisor for Respondent's ESE department, and [redacted], an executive director for Respondent's ESE department, credibly testified that Respondent offered three schools that could appropriately implement Petitioner's IEP. Respondent offered [redacted].

14. [redacted], who has ten years of SLD programming experience, credibly testified that within Respondent's district, SLD is the largest disability category (comprising more than 15,000 students) and that

[1] The quoted language appears to have a scrivener's error in that Petitioner's name and his brother's name are used within the same paragraph.

Respondent has several programs tailored to meet the needs of SLD students, such as Petitioner. [redacted] further credibly testified that the aforementioned schools have "pull-out" ESE classrooms which typically include smaller pupil-to-teacher ratios and instruction is delivered by ESE certified teachers.

15. Petitioner's mother presented no evidence that Petitioner's IEP could not be appropriately implemented at one of the available placement options. As justification for refusing the offered placements, Petitioner's mother testified that Petitioner is currently functioning below [redacted] grade level. Accordingly, she testified that the proposed placements offered at [redacted] and [redacted] are unacceptable because the proposed class at [redacted] has an enrollment of 18-20 students, and the resource class at [redacted] is made up of 16 students in grades [redacted]. Petitioner's mother further testified that, in her opinion, the only appropriate educational placement to meet Petitioner's needs is that of a one-teacher-to-one-student ratio at a private school.

16. [redacted], however, credibly testified that Respondent's class sizes are set forth in accordance with Florida law and explained that the size of the class is variable based on multiple factors including the needs of the students, the number of teachers in the classroom, and the teacher's qualifications. [redacted] further presented credible testimony concerning how the curriculum would be presented to Petitioner, a student with a disability that is functioning well-below grade level.

17. Petitioner failed to present credible evidence to support a finding that Petitioner requires the more restrictive setting (a one-to-one setting) in a private school to receive a free appropriate public education (FAPE).

CONCLUSIONS OF LAW

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

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

20. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.,* 915 F.2d 651, 654 (11th Cir. 1990).

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

> Special education services that--(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency;
> (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

22. "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).

23. 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). "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1,* 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (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. v. Rowley*, 458 U.S. 176, 181 (1982)).

24. Under the IDEA, parents with "complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" must "have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency." 20 U.S.C. § 1415(f). In Florida, by statute, an ALJ must conduct the "impartial due process hearing" to which a complaining parent is entitled under the IDEA. § 1003.57(5), Fla. Stat.

25. The gravamen of Petitioner's Complaint alleges that Respondent has not provided or offered Petitioner an acceptable educational placement. The evidence, however, does not support Petitioner's argument.

26. The IDEA provides directives on students' placements or educational environments 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 25 supplementary aids and services cannot be achieved satisfactorily.

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

28. 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 parent(s), 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).

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

30. 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 26 services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048-82.

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

32. Succinctly, Petitioner presented no evidence that the educational placement options provided by Respondent were inadequate or departed from the IDEA requirements. By the undisputed evidence, he was provided with three different school options that could implement his IEP and provide the necessary services. Petitioner's mother, however, repeatedly refused to enroll Petitioner in any of the traditional schools and maintained his enrollment in [redacted], despite repeated recommendations from the IEP team that he return to a traditional school as [redacted] did not possess the necessary supports and services required.

33. It is concluded that Petitioner did not meet his burden of establishing that Respondent violated the IDEA in failing to provide Petitioner with an appropriate educational placement in the LRE. To the contrary, the credible evidence establishes that Respondent provided Petitioner with placement options in conformity with Petitioner's IEPs. Accordingly, Petitioner's requested relief for private school placement and tuition reimbursement is not supported by the evidence.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof with respect to the claim asserted in Petitioner's Complaint. Petitioner's Complaint is, therefore, DENIED in all aspects.

DONE AND ORDERED this 27th day of March, 2023, in Tallahassee, Leon County, Florida.

TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
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this 27th day of March, 2023.

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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).