

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 23-0497E

\*\*,

Respondent.

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FINAL ORDER

This case came before Administrative Law Judge (“ALJ”) Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on April 14, 2023.

APPEARANCES

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

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

STATEMENT OF THE ISSUE

Whether Respondent’s (“Respondent” or “the Student”) continued placement at an exceptional student education (“ESE”) center/special day school remains the least restrictive environment (“LRE”) within the meaning of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*

PRELIMINARY STATEMENT

A request for a due process hearing by Petitioner was filed with DOAH on February 7, 2023. A Case Management Order was issued on February 9, 2023. Respondent filed a Request for Extension of Time and a response to Petitioner's complaint on February 17, 2023. A Notice of Hearing by Zoom Conference was entered on February 23, 2023. Subsequently, an Amended Notice of Hearing by Zoom Conference was issued on March 3, 2023, setting the due process hearing for April 14, 2023.

The final hearing was held as scheduled on April 14, 2023. Petitioner presented the testimony of the following witnesses: [REDACTED], Teacher at School A; [REDACTED], Principal of School A; and [REDACTED], ESE Executive Director. Petitioner's Exhibits 7, 8 (only those pages referring to the 2022-2023 school year), 9, 14, and 21 were admitted into evidence.

Respondent's [REDACTED], [REDACTED], and the Student testified on his behalf. Respondent offered no exhibits.

The final hearing Transcript was filed at DOAH on May 2, 2023. The parties agreed that proposed final orders were due 14 days after the Transcript was filed at DOAH. Both parties filed timely proposed final orders, which were considered in the drafting of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the challenge to the continued 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

1. At the time of the due process hearing, Respondent was a [REDACTED]-grade student at School B, a school within Petitioner's district, the School Board of Miami-Dade County, Florida ("School Board").

2. The Student is eligible for ESE in the category of Emotional Behavioral Disability ("EBD").

3. Respondent's disability affects his ability to regulate his emotions. The Student has trouble accepting the consequences of his actions when he misbehaves. Respondent has attended multiple programs throughout the school district for EBD students.

4. Respondent makes great progress when he has sufficient supports in place. Historically, when those supports and services were removed, Respondent's behavior, and the disciplinary incidents, increased significantly.

5. It is undisputed that when the Student attended a [REDACTED] classroom in a traditional [REDACTED] school, even with the supports provided, his behavior, at best, was disruptive. At worst, it included physical aggression towards teachers and peers.

6. In January [REDACTED], the Student's Individual Education Plan ("IEP") team met in response to a critical incident on December 6, [REDACTED], during which the Student became disruptive and physically injured his teacher.<sup>1</sup> It was ultimately determined that Respondent's actions were a manifestation of his disability which necessitated the development of a new IEP for Respondent.

7. 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. The team noted that Respondent requires: a small group setting with [REDACTED]

<sup>1</sup> See *Miami-Dade Cnty. Sch. Bd. v. \*\**, Case No. 22-0463E (Fla. DOAH May 9, [REDACTED]).

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.

8. The IEP team concluded that Respondent needs a special day school to assist with his difficulties, including: frustration and stress, self-esteem, distractibility, safety concerns due to physical conditions, lack of emotional control, and difficulty in completing tasks.

9. An “ESE center” or “special day school” is a separate public school to which nondisabled peers do not have access. § 1003.57(1)(a)1.a., Fla. Stat. The team concluded that the best place to implement the IEP would be a [REDACTED] school, School A.

10. Respondent’s [REDACTED], [REDACTED], disagreed with the placement at School A. This issue was fully litigated in DOAH Case No. 22-0463E, in which the Administrative Law Judge approved Petitioner’s proposed change of the student’s placement from a [REDACTED] EBD program to a special day school.

11. Respondent began attending School A during the beginning of the [REDACTED] school year. School A is a very structured setting. The focus of the school is redirecting inappropriate behavior. Therapy is a large component of their behavior program. The school has therapists, psychologists, and social workers, as well as EBD clinicians on staff. The school has an “on-call” counseling system that allows a student to access a counselor at any point during the day. In some instances, counselors offer assistance outside of school hours. These are services that are not available in a traditional [REDACTED] school. On average, students at School A see a counselor and/or therapist

30 to 40 minutes each day.

12. School A utilizes a behavior management level system. It consists of five levels. To move from level to level the student must successfully attain a specific number of points every day for a specific number of days. Every student begins on the first level. The goal is to have each student successfully complete each level and then transition back to a traditional school setting.

13. Along with the behavior management system, the school utilizes many positive reinforcements to encourage positive conforming behavior. Each classroom at School A has a ratio of [REDACTED] students per teacher. A typical [REDACTED] school has a ratio of [REDACTED] students per teacher.

14. When Respondent first began attending School A, he had a difficult time adjusting to the behavior management system. Respondent believed that he should not be at the school and, therefore, did not have to comply with its rules. The Student also exhibited difficulty interacting with his peers. He would often isolate himself.

15. Despite his initial apprehension, sometime in November [REDACTED], Respondent began to respond to the level system. He started to care if he earned his daily points and showed improvements both in his behavior and his academics.

16. During the time Respondent attended School A, he was able to successfully complete the first three levels of the behavior management system. His grades significantly improved from Cs and Ds to As and Bs.

17. An interim IEP meeting was held on January 26, [REDACTED], at the request of the Student's [REDACTED]. [REDACTED] sought a change in Respondent's educational placement back to a traditional school. Respondent's [REDACTED] wants to reward the Student for his significant academic and social gains and wants him to have a traditional [REDACTED] school experience, including organized sports and social activities.

18. The IEP team considered a change of placement, but the consensus among the team was that Respondent should remain at School A. Respondent

made gains and showed improvement in his behavior, but he still needed to work on developing social skills, getting along with others, and conforming behaviors.

19. If he did not get his way, Respondent still exhibited difficulty regulating his emotions to the point of spiraling out of control. Additionally, Respondent was still struggling to get along with his peers despite the [REDACTED] classroom setting. The IEP team was concerned that if he was struggling in a [REDACTED], structured setting, this would only be intensified in a large [REDACTED] school.

20. Respondent stopped attending School A shortly after the IEP meeting in January [REDACTED], because he feared for his safety due to a threat from another student.<sup>2</sup> Respondent has been attending School B, the only other Miami-Dade County [REDACTED] school.

21. Although Respondent improved greatly while at School A, he cannot yet adequately access his education in a [REDACTED] classroom at a traditional school. The preponderance of the evidence demonstrates that the placement at a special day school mainstreams Respondent to the maximum extent appropriate, and, as such, placement at the [REDACTED] school is currently appropriate.

#### CONCLUSIONS OF LAW

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

23. The burden of proof is on Petitioner to prove the claims by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1313 (11th Cir. 2003); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

<sup>2</sup> See Respondent's Emergency Motion for [\*\*] Safety filed with DOAH on February 24, [REDACTED].

24. The IDEA provides directives on students' placements or education 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 supplementary aids and services cannot be achieved satisfactorily.

25. 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).

26. 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.

*Daniel*, 874 F.2d at 1048.

27. 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.

28. The undisputed testimony of Petitioner’s educators was that Respondent requires a multitude of supplementary aids and services to access his education. These supports and services are not offered in a traditional high school. While Respondent has made progress in his short time at School A, the better evidence demonstrates that he still needs to develop behavior skills that will allow him to succeed in the future.

29. The undersigned is mindful that great deference should be paid to the educators involved in education and administration of the school system. *A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014) (“In determining whether the IEP is substantively adequate, we ‘pay great deference to the educators who develop the IEP.’”) (quoting *Todd D. v. Andrews*, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in *Daniel*, “[the undersigned’s] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the Act.” *Daniel*, 874 F.2d at 1048.

30. At this time, the placement at a special day school mainstreams the student to the maximum extent possible and, therefore, complies with the mandate that a student be educated in the LRE. *See Orange Cnty. Sch. Bd. v. \*\**, Case No. 20-4487E, at \*14 (Fla. DOAH Jan. 19, 2021) (finding that the



student's continuous disruptive and aggressive behavior warranted placement at the special day school).

31. While it is undisputed that the proposed placement offers less potential for interaction with nondisabled peers, the better evidence demonstrated that the Student's history of serious disruptive and aggressive behaviors warrants such a result.

32. Four months have passed since the IEP team rejected the request to change the Student's placement to a traditional high school, during which time the student presumably continued his gains. Nothing precludes Respondent and his parent from seeking a mainstream placement in the future when his record of academic and social achievement is more established.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the continued placement at an ESE school is approved.

DONE AND ORDERED this 25th day of May, 2023, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 25th day of May, 2023.

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).