

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs.

Case No. 23-0728EDM

PALM BEACH COUNTY SCHOOL BOARD,

Respondent.

AMENDED FINAL ORDER

An expedited due process hearing was held on March 27 and 30, 2023, before Jessica E. Varn, an administrative law judge with the Division of Administrative Hearings (DOAH). The due process hearing was held, by agreement of the parties, via Zoom video-teleconferencing.

APPEARANCES

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

For Respondent: Laura E. Pincus, Esquire
Palm Beach County School Board
3318 Forest Hill Boulevard, Suite C-331
West Palm Beach, Florida 33406

STATEMENT OF THE ISSUE

Whether the student's behavior, which resulted in discipline, was a manifestation of his disability.

PRELIMINARY STATEMENT

Petitioner filed a request for an expedited due process hearing (Complaint) on February 22, 2023. The School Board promptly forwarded the

Complaint to DOAH. A resolution session occurred on March 1, 2023, but the parties failed to come to an agreement. On March 7, 2023, a telephonic pre-hearing conference was held, but Petitioner failed to appear because of illness. The case was set for hearing on March 27, 2023.

At the due process hearing, Petitioner claimed that she needed time to retain an attorney. The parties agreed to reconvene on March 30, 2023.

On March 30, 2023, the due process hearing was concluded. Petitioner's mother testified on behalf of her son, but offered no other testimony or documentary evidence.¹ The School Board presented the testimony of the student; [REDACTED], a principal; [REDACTED], a behavior specialist; [REDACTED], a behavior assistant; [REDACTED], a behavior resource teacher; and [REDACTED], a psychologist. School Board Exhibits 1, 2, 4a, 4b, and 9 were admitted into the record.

At the conclusion of the hearing, the parties were invited to file proposed orders by April 5, 2023. The final order deadline for this Final Order, which is ten school days after the conclusion of the hearing, is April 14, 2023. Both parties filed proposed final orders, and they were considered during the drafting of this Final Order. This Final Order was prepared without a transcript of the due process hearing.

All references to statutory or regulatory provisions are to the provisions in effect during the relevant time period of this case, when the Complaint was filed. For stylistic convenience, the undersigned will use male pronouns in

¹ After the due process hearing had concluded, Petitioner filed a proposed exhibit as an attachment to Petitioner's proposed order, filed on April 5, 2023. This proposed exhibit was not provided to the School Board before the due process hearing, and was not introduced or offered into evidence at the hearing. Therefore, this attachment was not considered in preparing this Final Order.

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. This student is an █ grader who is eligible for exceptional student education (ESE) under the category of Other Health Impaired. He is diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD). At the due process hearing, the student's mother testified that the student has also been diagnosed with Oppositional Defiant Disorder (ODD), but she admitted that she had never told the school staff of this diagnosis and had never provided any documentation to school staff of this other diagnosis.

2. The student is academically driven and has earned high grades in his classes. During his high school career, he played football at one high school, which was beneficial to his overall school performance. Sadly, he was injured and could not continue playing football.

3. On February 16, █, the student engaged in two separate incidents that resulted in the principal's recommendation that the student be moved to an alternative educational site.

4. First, Petitioner and a friend went into the boy's restroom and interacted with a freshman student. The freshman student reported that Petitioner had stolen his phone charger. The freshman followed Petitioner and his friend, requesting that they return his charger. The three students walked between two buildings and were out of sight of adults when the freshman came running out with a bloody lip, claiming that Petitioner had hit him. He identified Petitioner by the long sleeve white shirt Petitioner was wearing. Petitioner denies that he stole the charger and that he hit the student.

5. Later that same day, Petitioner was arguing with a female student. According to Petitioner, she insulted both his mother and grandmother, who

had passed away. Petitioner reacted to this insult by stealing her purse, refusing to return it to her, breaking her laptop, and pushing another student. He does not deny this behavior.

6. On February 22, [REDACTED], a team met to determine whether the behaviors that occurred on February 16th were a manifestation of Petitioner's disability. The student and his mother participated in the manifestation determination. Due to pending criminal charges, the student's attorney recommended that he avoid providing a statement related to the incident in the bathroom. But the student did explain the purse incident, which was consistent with his testimony about getting upset with the female student because she made comments about his mother and grandmother.

7. The team included a school psychologist, who concluded that neither incident was a manifestation of this student's disability, which was ADHD. The team also determined that the student's behaviors did not result from the school staff's failure to implement the student's Individualized Education Plan (IEP).

8. Petitioner presented no persuasive evidence establishing that the behaviors on February 16th were a manifestation of the student's ADHD or that the behaviors resulted from the School Board's failure to implement the student's IEP.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the subject matter of this proceeding and of the parties. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03312(7).

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

11. 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 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 depends 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).

12. Parents and children with disabilities are given substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents have a right to examine their child's records and participate in meetings concerning their child's education; receive written notice before 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), and (b)(6).

13. School districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression. The IDEA provides that where a school district intends to place a disabled child in an alternative educational setting for a period of more than 10 school days, it must first determine that the child's behavior was not a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(C). Under the IDEA's implementing regulations, “[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the local education authority (LEA) must notify the parents of that decision, and

provide the parents the procedural safeguards notice described in § 300.504.” 34 C.F.R. § 300.530(h).

14. The necessary inquiry is set forth in 34 C.F.R. § 300.530(e):

Manifestation determination.

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
 - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

15. Generally, if the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from which he or she was removed. 34 C.F.R. § 300.530(f)(1). Additionally, if a behavior intervention plan (BIP) was not in place at the time of the misconduct, the school district must conduct a functional behavior assessment (FBA) and implement a BIP for such child. *Id.*

16. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the school

district may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c).

17. Petitioner failed to establish that the conduct was caused by, or had a direct and substantial relationship to his ADHD; or that the conduct resulted from the school's failure to implement his IEP. Therefore, Petitioner failed to prove that the student's conduct on February 16, 2023, was a manifestation of his ADHD.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is denied, in all aspects.

DONE AND ORDERED this 11th day of April, 2023, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of April, 2023.

Copies furnished:

Amanda W. Gay, Esquire
(eServed)

Michael Newsome, M.Ed.
(eServed)

Laura E. Pincus, Esquire
(eServed)

Petitioner
(eServed)

Michael J. Burke, Superintendent
(eServed)

Andrew King, General Counsel
(eServed)

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).