STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

Case No. 23-2331E

vs.

SANTA ROSA COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

On June 17, 18, 20, 21, and July 22, 2024, a due process hearing was held before Administrative Law Judge Nicole D. Saunders of the Division of Administrative Hearings (DOAH), via Zoom conference.

APPEARANCES

For Petitioner: Joseph William Montgomery, Esquire
Montgomery Law
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North Palm Beach, Florida 33408

For Respondent: Terry Joseph Harmon, Esquire
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STATEMENT OF THE ISSUES[1]

Whether the School Board provided the parent(s) with an opportunity to meaningfully participate in the May 30, 2023, Individualized Education Plan (IEP) meeting;

[1] The issues outlined in the Notices of Hearing, issued on April 11, 2024; April 15, 2024; and June 7, 2024; are the only ones before the undersigned at this time.

Whether Petitioner is entitled to a manifestation determination;

Whether Petitioner's placement is the least restrictive environment (LRE) within the meaning of the Individuals with Disabilities Education Act (IDEA); and lastly,

What remedies, if any, are appropriate.

PRELIMINARY STATEMENT

On June 9, 2023, Petitioner filed a request for due process hearing (Complaint) with the School Board; and the School Board forwarded the Complaint to DOAH on June 16, 2023. That same day, a Case Management Order issued, detailing the deadlines and procedures governing this case. On June 19, 2023, the School Board filed an Unopposed Motion to Extend Deadline to File Response to Due Process Complaint (Motion). The Motion was granted the next day; and the School Board responded to the Complaint on June 22, 2023.

Then, on July 17, 2023, Petitioner filed a Status Report, stating that the parties had conducted a resolution session, and were seeking more time to resolve the issues outlined in the Complaint. Later that day, an Order issued, extending the resolution period to July 28, 2023, and requiring the School Board to file a status report within three business days of the resolution session.

On July 31, 2023, Petitioner filed another Status Report. In it, Petitioner stated that the parties were reconvening on August 9, 2023, to continue resolution-related discussions.

Then, on August 17, 2023, Petitioner filed a Motion to Enforce Stay-Put (Stay-Put Motion), seeking an order maintaining Petitioner's placement at his neighborhood school during the case and precluding the School Board from assigning Petitioner to a different school—[redacted] School of Santa Rosa ([redacted]). On August 24, 2023, the School Board responded to the Stay-Put Motion. Later that day, a Notice of Telephonic Motion Hearing issued, setting the Stay-Put Motion for a non-evidentiary hearing on August 29, 2023. At the conclusion of that hearing, another notice issued setting the Stay-Put Motion for an evidentiary hearing on September 1, 2023.

The evidentiary hearing occurred as scheduled. And on September 8, 2023, an Order on Petitioner's Motion to Enforce Stay-Put issued, finding that the School Board's decision to educate Petitioner at [redacted] did not constitute a change in placement under the IDEA.

Later, on September 14, 2023, a Notice of Hearing by Zoom Conference issued, setting the final hearing for September 21, 2023. A status conference was held the next day; and on September 18, 2023, the parties jointly moved to continue the due process hearing. That same day, an Order Granting Continuance issued, directing the parties to confer and propose new hearing dates by September 22, 2023. The parties timely complied and identified November 7 through 9, 2023, as available dates for rescheduling the final hearing.

Then, on October 6, 2023, this case was transferred to the undersigned. On October 11, 2023, the undersigned issued a notice, setting a scheduling conference for October 12, 2023. During that conference, the parties stated that they needed more time to negotiate and agreed to propose new hearing dates by October 19, 2023. On that date, Petitioner filed a Motion for

Extension of Time, seeking more time to secure hearing dates. The next day, the School Board responded, agreeing to provide dates by no later than October 20, 2023, and noting its preference for a live final hearing.

On October 26, 2023, the undersigned issued an Amended Notice of Hearing, setting a live hearing for December 12 and 13, 2023. On November 9, 2023, Petitioner filed a Notice of Substitution of Counsel. On November 28, 2023, Petitioner filed an Unopposed Motion for Continuance of Hearing, seeking more time to prepare as Petitioner's counsel was nearly retained (Motion for Continuance). The undersigned granted the Motion for Continuance, by Order dated December 1, 2023, and rescheduled the hearing for January 30 and 31, 2024.

Then, on December 28, 2023, the undersigned issued an Order, resetting the final hearing for February 8 and 9, 2024, because of a scheduling conflict. On January 11, 2024, Petitioner filed an Amended Complaint Request for Exceptional Student Education Due Process (Amended Complaint). Later that day, the undersigned issued a notice, setting a telephonic pre-hearing conference for January 16, 2024, to discuss the Amended Complaint.

During that conference, the parties agreed to attend a resolution session and requested to cancel the previously scheduled hearing to allow time to negotiate. Accordingly, on January 16, 2024, the undersigned issued an Order Accepting Amended Complaint, Canceling the Final Hearing, and Resetting Timelines, memorializing the parties' agreement.

Later that day, the undersigned also issued an Amended Case Management Order, resetting the case deadlines. On January 26, 2024, the School Board filed an Unopposed Motion to Extend Deadline to File Response to Amended Complaint, which the undersigned granted the same

day. On February 5, 2024, the School Board filed another unopposed motion to extend the response deadline, which the undersigned granted the next day.

On February 7, 2024, the School Board responded to the Amended Complaint. The next day, the undersigned issued an order, requiring the School Board to file a report as to the status of the resolution session no later than February 14, 2024. On February 15, 2024, the parties filed a Joint Status Report, stating that they needed more time to continue their negotiations, and requesting an extension of the resolution period.

On February 19, 2024, the undersigned issued an Order Extending Resolution Period and Time for Final Order and Requiring Status Report, which, among other things, required the parties to file a written status report no later than March 1, 2024. The parties timely submitted a Joint Status Report, again seeking more time to continue negotiations. On March 4, 2024, the undersigned issued an order, extending the resolution period to March 8, 2024, and requiring the parties to submit a status report no later than March 14, 2024.

When the parties failed to timely comply, the undersigned issued an Order Requiring Response on March 15, 2024, directing them to advise as to the status of the case no later than March 21, 2024. On March 22, 2024, the parties jointly filed another Status Report, asserting that they had reached an impasse and requesting a telephonic scheduling conference. The undersigned set the conference for March 28, 2024.

During that conference, Petitioner waived the final order deadline and the parties agreed to confer as to the format and dates for the final hearing.

On April 4, 2024, Petitioner filed a Unilateral Status Report, stating that the parties had reached an impasse as to the format of the final hearing, but expressing a preference for a fully virtual hearing. The School Board responded the next day, objecting to a virtual hearing, but raising no objection to a hybrid hearing.

Then, on April 11, 2024, the undersigned issued a Notice of Hearing with Zoom Option, setting the hearing for June 17, 18, 20, and 21, 2024, to occur in Milton, Florida. And, on April 15, 2024, the undersigned issued an Amended Notice of Hearing, updating the hearing room location.

The School Board filed its Notice of Prior Service of Written Discovery on May 17, 2024; and on June 7, 2024, filed a notice of the parties' agreement to conduct a fully virtual hearing. Accordingly, later that day, the undersigned issued a Second Amended Notice of Hearing by Zoom Conference, reflecting the change in format, but retaining the hearing dates.

The hearing occurred as scheduled. At the hearing, Petitioner called [redacted], the School Board's Exceptional Student Education (ESE) Director; [redacted], an expert in school administration; [redacted], a Board Certified Behavior Analyst (BCBA); [redacted], a former School Board administrator; [redacted], a Speech Language Pathologist (SLP) and expert in Landau-Kleffner Syndrome (LKS); [redacted], Petitioner's treating Psychiatrist; [redacted], a former BCBA for the School Board; and Petitioner's father.

The undersigned admitted Petitioner's Exhibits 1 through 3, 7 through 20, 23, 24, 26 through 29, 31 through 38, and 39 (pages 1 through 47, 64 through 67, 89 through 96, 102 through 127, and 131 through 135) into evidence.

The School Board called [redacted], former Assistant Principal of Petitioner's neighborhood school; [redacted], [redacted], [redacted], and [redacted], ESE program facilitators for the School Board; [redacted], Petitioner's school-based SLP; [redacted], Petitioner's Hospital Homebound instructor; [redacted], an ESE teacher; [redacted], Director of [redacted]; and [redacted].

The undersigned admitted School Board's Exhibits 1 through 13, 16, 19 through 23, 26, 27, 29, 30, 32, 34 through 36, 38 (pages 1215 through 1304); 39 through 46, 48, 49, 51 through 60; and Rebuttal Exhibits 1 and 2, into evidence.

At the end of the day on June 21, 2024, the parties requested an additional hearing day to complete the presentation of evidence. The undersigned granted that request, and the hearing concluded on July 22, 2024.

At the close of evidence, the parties agreed to file proposed final orders 15 days after the filing of the Transcript with DOAH; and the undersigned agreed to issue this Final Order no later than 30 days after the Transcript was filed.

The complete Transcript was filed on August 1, 2024. The parties both timely submitted proposed final orders, both of which were considered in preparing this Final Order.

Unless otherwise indicated, all rules and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned uses male pronouns 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 is a friendly, intelligent, [redacted]-year-old student who enjoys coloring, Star Wars, and Harry Potter books. Despite his chronological age, Petitioner has the mental age of a four or five-year-old child. He is eligible for ESE services based on these disabilities: Deaf and Hard of Hearing (DHH), Language Impaired (LI), and Speech Impaired (SI). To aid in his hearing, Petitioner uses bilateral cochlear implants, which were implanted between [redacted] and [redacted].

2. Petitioner has also been diagnosed with Temporal Focal Epilepsy, Attention-Deficit/Hyperactivity Disorder, and LKS.

3. LKS is a rare childhood disorder characterized by loss of language comprehension and verbal expression along with severely abnormal electroencephalogram (EEG) findings during sleep. It results in clinical and subclinical seizures that may impact fine motor skills and result in behavioral problems, such as hyperactivity, attention deficits, temper outbursts, impulsivity, and withdrawn behaviors.

4. With LKS, seizure activity may exacerbate behavioral challenges. And, for Petitioner, when his seizure activity intensifies, so do his deficits in language processing, memory, and behavior.

5. Due to his LKS diagnosis, Petitioner learns differently and requires continuous monitoring and assistance related to his healthcare needs. While Petitioner's deafness generally stops him from vocalizing words, he can communicate through sign language, gestures, and body language. He utilizes about 400 signs and can express his basic wants and needs.

6. Academically, Petitioner can complete grade-level tasks. Even so, his maladaptive behaviors often impede his ability to access his education.

Such behaviors generally fall into two broad categories: physical aggression—biting, spitting, hitting, kicking, pinching, and scratching; and property destruction—tearing items off walls, ripping up papers, clearing tables, and throwing his cochlear implant processors. Typically, Petitioner's more aggressive behaviors are triggered by a non-preferred activity.

7. Petitioner joined the school district in [redacted]. At the time of the final hearing, Petitioner's neighborhood school educated children from [redacted] to [redacted] grade and offered two types of ESE classrooms: social thinking classrooms and communication, behavior, social, academic (CBSA) classrooms. At the conclusion of [redacted] grade, students in Petitioner's then-neighborhood school typically matriculate to another [redacted] school, [redacted].

8. Social thinking classrooms are designed for students with social cognitive deficits. These students are either on the autism spectrum or have spectrum-like characteristics. Instruction in social thinking classrooms centers on social skills and social cues that are embedded in applied behavior analysis strategies. Alternatively, CBSA classrooms serve students with the highest communication, behavior, and academic needs. CBSA students have significant communication deficits.

9. A third category of classrooms the School Board offers is behavior focus classrooms. These classrooms "utilize intensive behavior modification throughout the school day" to improve student's targeted behaviors. Students in these classrooms typically possess above average cognitive abilities but experience significant behavioral deficits. Neither of the School Board's two [redacted] schools offer behavior focus classrooms. Instead, the School Board houses its [redacted] behavior focus classrooms at [redacted].

10. In October [redacted], Petitioner's IEP team found him eligible for ESE services under the categories of DHH, SI, and LI. Because of Petitioner's communication challenges, the IEP included 45 minutes per week of direct language therapy, 60 minutes per week of speech therapy, and 30 minutes

per day of sign language instruction with a DHH teacher. Petitioner's IEP also provided him with a full-time sign language interpreter.

11. As to the LRE, the IEP team placed Petitioner in a separate class. As the IEP notes reflect, the team selected this placement for four main reasons. First, Petitioner's need for communication development; second, the lower pupil to teacher ratio; third, Petitioner's need for social skills development; and fourth, his difficulty in completing tasks.

12. The IEP went into place soon after the IEP meeting. Thereafter, Petitioner's behavior challenges began to come to the surface. On some days, he followed directions, transitioned appropriately, and positively interacted with his peers. On other days, he kicked his teachers, threw his processors, and refused to complete schoolwork. Daily, Petitioner's teachers collected behavioral data.

13. After several months of data collection, Petitioner underwent his first functional behavioral assessment (FBA) on April 19, [redacted]. Succinctly, an FBA is a scientific process in which a student is observed across multiple settings within the school environment. Data is collected and target (challenging) behaviors are identified. For each target behavior, the behavior's antecedent (preceding behavior) and consequent (following behavior) is identified. From this data, a positive behavior intervention plan (PBIP)—a tool that employs research-based methods for reducing target behaviors and replacing them with more appropriate ones—is created.

14. On April 28, [redacted], one of the School Board's BCBAs conducted Petitioner's FBA. To do so, she analyzed data from a two-year period, from February [redacted] to April [redacted]. The FBA identified two categories of target behaviors—physical aggression and property destruction.

15. Then, utilizing the data, the BCBA drafted Petitioner's PBIP.[2] The PBIP set forth nine antecedent behaviors, such as a demand or request, lack of attention, and being told "no" and identified Petitioner's target behaviors as "multi-functional." Sometimes, Petitioner aggressed to escape an academic task. At other times, he destroyed property to get adults' attention.

16. The PBIP also incorporated a Crisis Plan, which was "used if [Petitioner's] behavior present[ed] [a] serious safety issue for student/staff."

17. After drafting the PBIP, Petitioner's IEP team convened on April 28, [redacted], and updated his IEP to include a one-on-one paraprofessional to assist with behavior. During that IEP meeting, the school-based members of the IEP team recommended Petitioner switch from a social thinking class to [redacted] behavior focus class.

18. As the IEP meeting notes reflect, this recommendation stemmed from several factors, including Petitioner's need for more intensive behavioral interventions, more staff, and the availability of additional therapy at [redacted]. Furthermore, [redacted] had a full crisis team, trained in de-escalation strategies. At the final hearing, the School Board witnesses credibly testified that the behavior focus class was not intended as a disciplinary placement.

19. Petitioner's parents rejected the [redacted] recommendation, insisting that because Petitioner's behavior challenges stemmed from medical issues, the behavior focus class could not meet his needs. The rest of the IEP team relented and Petitioner remained at his neighborhood school.

20. However, Petitioner's behavior challenges continued to mount, impeding his ability to access his education. As his discipline records show, by the end of the [redacted] school year, Petitioner had been suspended from school for seven days and received 11 days of discipline. He had also missed 21 days of school because of medical treatments.

[2] During the final hearing, Petitioner made several arguments about the appropriateness of Petitioner's PBIPs. But as reflected in the Notices of Hearing, that issue is not before the undersigned.

21. But while Petitioner's behavioral challenges continued, his sign language communication skills blossomed. He learned signs quickly; and over a six-month period, he more than tripled his sign language vocabulary.

22. The School Board continued to collect data on Petitioner's behavior into the [redacted] school year. During that time, Petitioner's teachers tracked his behavior through behavior sheets. The sheets were divided into seven columns, delineating the subject area, time increments (10-minutes each), each target behavior (follow directions, keep hands and feet to self, and transition), totals per day, and any teacher comments.

23. At the beginning of the school year, Petitioner's target behaviors increased and included hitting, punching, scratching, and spitting. During one incident, Petitioner tried to stab his paraprofessional with a pair of scissors. At times, Petitioner would also aggress against his classmates—scratching one on October 15, [redacted], and kicking another a couple of weeks later. On another occasion, Petitioner's aggression required his teacher to remove all students from the class.

24. Because of these ongoing issues, in October [redacted], the School Board increased Petitioner's level of services by providing him a Registered Behavior Technician (RBT). Unlike a paraprofessional, an RBT must complete a 40-hour training course and pass a competency examination.

25. During this time, when school staff could not contain Petitioner, they employed the Crisis Plan. Data from the [redacted] school year shows that Petitioner was restrained about 239 times across 29 days between August [redacted] and February [redacted].

26. At times, school staff also contacted Petitioner's parents. When Petitioner's father came, he often calmed Petitioner, and allowed him to return to class. On the other hand, Petitioner's mother generally opted to take him home for the day. As [redacted] credibly testified during the final hearing, Petitioner's mother's choice to remove him from school was

always voluntary. This testimony tracks with Petitioner's disciplinary records for the [redacted] school year, which show no out of school suspensions.

27. Besides calling them, school staff also provided Petitioner's parents with copies of his daily point sheets. As Petitioner's father testified:

> Every time that [Petitioner] came home on the bus, there would be a small plastic folder in [his] backpack *with this daily [p]oint [s]heet* and maybe a random couple of pieces of paper. I would sign the document. I would sign it on [the] home printer. Put the document back in the folder and send it back to the school for their records.

(emphasis added).

28. As such, the evidence shows that school staff kept Petitioner's parents informed as to the frequency and magnitude of his behaviors.

29. Petitioner's health also struggled during this time, often leading to increased behavioral challenges. To assist, Petitioner's parents contacted [redacted]—an LKS expert—to visit the school, observe, and offer potential solutions. The School Board agreed and worked to arrange a visit. But [redacted] ultimately declined, citing concerns about Petitioner's ongoing health issues as well as her own scheduling conflicts. Still, she offered several strategies, aimed at increasing Petitioner's language skills and behavioral support. Among other things, she recommended Petitioner have a DHH teacher and very intense speech and sign language services. She also warned that Petitioner's seizure activity could cause him to regress in his communication skills.

30. On April 28, [redacted], Petitioner's IEP team convened again to revise his PBIP and draft his [redacted] IEP. By then, Petitioner could identify all letters of the alphabet through sign and answer simple "wh" questions. At that time, the IEP team agreed to maintain Petitioner's placement in a separate classroom.

31. Even so, Petitioner's behavior issues continued and by the conclusion of the [redacted] school year, he had been suspended out of school for seven days.

32. By the start of the [redacted] school year, Petitioner was receiving support from a sign language interpreter, an RBT, a DHH teacher, an SLP, and two BCBAs, one private and one provided by the School Board. His classroom teacher was also ESE-certified. Moreover, Petitioner's private BCBA often collaborated with other members of Petitioner's services team. She drafted behavior plans and regularly visited Petitioner's classroom to assist the classroom RBT.

33. Petitioner also remained in a small, specialized social thinking classroom and even had a private section of the classroom to reduce distractions.

34. Still, he struggled to regulate his behavior. As then-Assistant Principal [redacted] concisely explained:

> If [Petitioner] didn't want to do something in the classroom that [he] was asked to do, a math work, or often DHH . . . teacher would come in, and [he] would see her come in the building or into the room and get upset, and . . . *[he] would grab anything that was near [him] and throw it.* [He] had been known to throw iPads, a coffee cup, anything that [he] would get [his] hands on so, you know, we tried to eliminate that, but [he]—[he] has ripped the plates off the electrical wall outlets, [he] has ripped those off when [he's] become angry. *[He] got to where [he] would aggress towards other students.* [He] would aggress towards staff, hitting, kicking, spitting, pinching, scratching, clawing, drawing blood, all those types of – those types of aggressions were common place, and what I would consider regular occurrences.

(emphasis added).

35. And, as the behavior data collected from that school year shows, Petitioner's aggression toward his classmates increased. On February 1,

[redacted], he threw a container at a classmate; and the next day, his class had to be cleared for 30 minutes because he was throwing items, flipping tables, biting, kicking, and scratching.

36. April [redacted] was a particularly difficult month. Petitioner aggressed against other students four times. His behaviors were the most extreme in his class.

37. On April 12, [redacted], Petitioner's IEP team convened again. At that meeting, they discussed Petitioner's curriculum and learning environment, social and emotional behavior, independent functioning, and communication. Both of Petitioner's parents expressed concerns about his communication deficits. Yet according to Petitioner's educational records from that time, he could read up to 100 of the most common sign words, learn new vocabulary, retain the vocabulary into the next week, read stories with minimal errors, and match visuals to a concept in a story 80 to 90 percent of the time.

38. And, when regulated, Petitioner could follow basic directions, gain his teacher's attention, say "please" and "thank you," use table manners, introduce himself, make introductions, and initiate conversations. In short, Petitioner could access basic communication.

39. Despite his communication gains, by April 12, [redacted], Petitioner had received 15 referrals for aggressive acts and disorderly conduct. Importantly, the IEP team did not mention Petitioner's placement at that meeting.

40. The day after the IEP meeting, Petitioner was suspended for one day for kicking a younger student during an escalation. Less than two weeks later, Petitioner threw a toy and hit another student in the face, earning another suspension. Then, on April 26, [redacted], Petitioner kicked another student in the back of the leg while returning to class from lunch. Along with these incidents, Petitioner sometimes struck staff, causing him to be restrained. At times, these restraints harmed both the staff and Petitioner.

41. Unquestionably, during this time, school staff expressed concerns about Petitioner's behavior, especially when directed toward his fellow

students. School staff also often escorted Petitioner to the front office during escalations. During those times, his interpreter would accompany him, and, at times, his DHH instructor would teach him there.

42. Then, on May 8, [redacted], an incident occurred that raised additional concerns about Petitioner's need for more behavioral support. The School Resource Officer, an employee of the Santa Rosa County Sheriff's Office, described the event in a report as follows:

> Upon my arrival, I saw [Petitioner] laying on the ground yelling and being disruptive. [Assistant Principal] [redacted] and para professional [redacted] assisted [Petitioner] to [his] feet and escorted [him] to [redacted] office. I spoke with para professional [redacted] who told me the following: [redacted] stated she was trying to get [Petitioner] to walk to the office when [he] suddenly ran up to her and *grabbed her with [his] right hand in her genital area* on the outside of her pants. She said [he] was laughing about it while [he] was doing it. I spoke with [redacted] who told me the following: […] when she went to assist [Petitioner] with getting [him] to her office, [he] was throwing [himself] on the ground and yelling gibberish. She said she went to assist [him] to [his] feet when [he] crawled on [his] hands and knees toward her and lifted up her dress and put [his] head under her dress. She said [he] attempted to do this several more times while laughing about it.

(emphasis added).[3]

43. Immediately following this incident, Petitioner's father came to the school and picked him up. School staff suspended Petitioner for one day. While he could have returned to school on May 10, [redacted], his parents chose not to bring him back. Ultimately, May 8, [redacted], was Petitioner's last day at the school.

[3] While school staff have described the May 8, [redacted], incident as sexual, the evidence adduced at hearing demonstrates that Petitioner cannot form sexual intent at this time.

44. According to Petitioner's discipline and attendance records, by the end of the [redacted] school year, he had been suspended from school for a total of five days. And while Petitioner's father testified that he believed school staff asked him to pick Petitioner up from school early around five times, attendance records refute this assertion.

45. Those records show that school staff only requested Petitioner's father remove him on September 21, [redacted]. All other dates on which Petitioner left school early—which amounted to 15 days—were his parents' choice.

46. A couple of weeks after the May 8, [redacted], incident, an employee of the School Board emailed Petitioner's parents to schedule another IEP meeting. That email contained a proposed list of attendees, including Petitioner's attorney, the School Board's attorney, Petitioner's father and mother, Petitioner's private BCBA, several members from the School Board, representatives from the School Board's Hospital Homebound program, [redacted] social thinking classroom, and the [redacted] behavior focus class.

47. It also provided a list of topics for discussion, including, but not limited to, Petitioner's behaviors and descriptions of the social thinking class at [redacted], Hospital Homebound, and [redacted], and establishing a placement based on Petitioner's current needs.

48. The May 30, [redacted], IEP meeting proceeded as scheduled. At that time, [redacted] had three social thinking classrooms, each separated by grade level groupings—kindergarten to second grade, third to fifth grade, and sixth to eighth grade. At that meeting, the IEP team discussed the data collected on Petitioner's behavior as well as placement options within the school district. Representatives from [redacted] behavior focus class and [redacted] social thinking classrooms presented information about each of their programs.

49. Ultimately, the school-based members of the IEP team agreed that Petitioner should start the [redacted] school year at [redacted], rather than

[redacted]. All witnesses from the School Board credibly testified that placing the student at [redacted] was not a disciplinary measure. Instead, the School Board believed that [redacted] behavior focus classroom could better accommodate Petitioner's needs. Moreover, at the time of the May 30, [redacted], IEP meeting, Petitioner had not attended school in about three weeks and as such had not incurred any further discipline.

50. Petitioner's parents vehemently objected, insisting, as they had in the past, that Petitioner's behavior stemmed from medical problems. Because of this assertion, the school-based members of the IEP team sent Petitioner's parents an application for the School Board's Hospital Homebound program. In short, the Hospital Homebound program is for students who have medically diagnosed physical or psychological conditions, which are acute or catastrophic; a chronic illness; or a repeated intermittent illness because of a persisting medical problem that confines the student to home or hospital and restricts activities for a long time.

51. Petitioner's parents filed the Complaint on June 9, [redacted], asserting, among other things, that Petitioner's proposed placement at [redacted] violated the IDEA's LRE mandate.

52. Then, on August 17, [redacted], Petitioner moved to enforce the IDEA's stay-put provision to maintain Petitioner's placement in the social thinking classroom.[4]

53. On August 23, [redacted], while the Stay-Put Motion was pending, Petitioner's treating psychiatrist completed the referral form for the Hospital Homebound program, noting that due to his "seizure disorder," Petitioner could not attend school for the entire [redacted] school year.

54. Shortly after, an Order on Petitioner's Motion to Enforce Stay-Put issued, denying the Stay-Put Motion and concluding that "Petitioner's education at School B instead of School A is not tantamount to a change in

[4] Though not explained in the Stay-Put Motion, the social thinking classroom is located at [redacted], rather than [redacted].

placement. Petitioner's IEP can be implemented in full at School B. Petitioner's opportunities to interact with nondisabled peers will remain unchanged."

55. On September 27, [redacted], Petitioner's IEP team convened to draft his Hospital Homebound IEP. At the meeting, the team modified Petitioner's eligibility to Hospital Homebound and outlined the services he would receive during the [redacted] school year. Petitioner's current placement is Hospital Homebound—the most restrictive environment under the IDEA. During this time, Petitioner has received services from several individuals, including a private BCBA.

56. As the data sheets collected during the [redacted] school year show, Petitioner has done well in the Hospital Homebound environment. On May 23, [redacted], his Hospital Homebound teacher wrote:

> [B]ehaviors *continue to decrease*, especially during preferred activities and less tangible reinforcement is used. At this time, [the student] is able to answer general WH questions and sort question answers into the appropriate category with 31% accuracy and answer questions from a short text or story with 47% accuracy. Percentages have decreased some, however the complexity of material has increased. I am very proud of [the student's] growth over the course of the school year!

(emphasis added).

57. Ultimately, Petitioner failed to prove he is entitled to a manifestation determination, that his parents were denied meaningful participation in the May 30, [redacted], IEP meeting, or that the School Board violated the IDEA's LRE mandate.

CONCLUSIONS OF LAW

58. DOAH has jurisdiction over the subject matter of this proceeding as well as the parties. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.0331(9)(u).

59. As the party seeking relief, Petitioner bears the burden of proving each issue raised in the Amended Complaint. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

60. Congress passed the IDEA "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasize[s] 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. ex rel. A.C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

61. In enacting the IDEA, Congress intended to address inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public education system. *See* 20 U.S.C. § 1400(c)(2)(A)-(B). To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

62. The School Board, a local education agency under 20 U.S.C. § 1401(19)(A), receives federal IDEA funds, and is thus, required to comply with certain provisions of that Act. *See* 20 U.S.C. § 1401*, et seq*.

63. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents can 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

about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. *See* 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

64. 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. First, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. 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, the school board only denies a student FAPE where the procedural flaw impedes the student's right to FAPE, significantly infringes on the parents' opportunity to participate in the decision-making process, or causes an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

65. Four matters are at issue in this Final Order: first, whether the School Board provided the parent(s) with an opportunity to meaningfully participate in the May 30, [redacted], IEP meeting; second, whether Petitioner is entitled to a manifestation determination; third, whether Petitioner's placement is the least restrictive environment within the meaning IDEA; and fourth, what remedies, if any, are appropriate. This Final Order addresses each of these allegations in turn.

Meaningful Participation

66. Congress has established procedural safeguards to ensure that parents have meaningful input into all decisions impacting their child's education. *See Honig v. Doe*, 484 U.S. 305, 312 (1988). The Eleventh Circuit addressed the issue of predetermination for the first time in *R.L., S.L., individually and on behalf of O.L. v. Miami Dade Cnty. Sch. Bd.*, 757 F.3d 1173 (11th Cir. 2014).

67. In that case, the Eleventh Circuit held that "Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team." 757 F.3d at 1188. This prohibition arises out of the IDEA's implementing regulation, which "maintains that a child's placement 'must be based on the IEP.'" *Id.* (citing 34 C.F.R. § 300.116(b)). Thus, "the state cannot come into an IEP meeting with closed minds, having already decided material aspects of the child's education program without parent input." 757 F.3d at 1188. *See N.L. v. Knox Cnty. Schs.*, 315 F.3d 688, 694-95 (6th Cir. 2003) (finding no predetermination where school district representatives "recognized that they were to come to the meeting with suggestions and open minds, not a required course of action").

68. However, "'[P]redetermination is not synonymous with preparation,' which the IDEA allows." *M.V. v. Conroe Indep. Sch. Dist.*, CV H-18-401, 2019 WL 193923, at *5 (S.D. Tex. Jan. 15, 2019). Therefore, school-based members of the IEP team may have preformed opinions on what is appropriate for a child's education so long as such opinions do not "obstruct the parents' participation in the planning process." *R.L.*, 757 F.3d at 1188.

69. As the Court explained, to avoid a finding of predetermination, there must be evidence that the School Board was receptive and responsive at all stages to the parents' position, even if it ultimately rejected it. *Id.* at 57. The inquiry into whether predetermination occurred is inherently fact intensive, but should identify those cases where parental participation is meaningful and those cases where it is a mere formality. *Id.* at 1189.

70. Here, Petitioner argues that the School Board denied his parents' right to meaningfully participate in the May 30, [redacted], IEP meeting by placing Petitioner at [redacted] over their objection and failing to provide comprehensive information regarding Petitioner's disciplinary history.

71. This claim fails. As Petitioner's father credibly testified at the final hearing, daily, the School Board provided him with Petitioner's behavior sheets, which he routinely signed and returned. Moreover, for at least the [redacted] school year, Petitioner's parents utilized a private BCBA, who worked closely with school staff, and presumably reported back to them information regarding Petitioner's behavior. By all accounts, Petitioner's parents fiercely and lovingly advocated for him and his educational needs, actively participating in his education. Furthermore, while the parents ultimately disagreed with Petitioner's attendance at [redacted], such disagreement does not mean the School Board violated their rights to meaningful participation. As such, Petitioner failed to establish this claim.

Entitlement to a Manifestation Determination

72. Under 34 C.F.R. § 300.530(b)(1):

> School personnel […] may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

See also Fla. Admin. Code. R. 6A-6.03312(1)(a).

73. Title 34 C.F.R. § 300.536 expands on section § 300.530(b)(1) by explaining that:

> (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—
> (1) The removal is for more than 10 consecutive school days; or
> (2) The child has been subjected to a series of removals that constitute a pattern—

> (i) Because the series of removals total more than 10 school days in a school year;
> (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
> (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

34 C.F.R. § 300.536(a).

74. Finally, whether a pattern of removals constitutes a change of placement is a "case-by-case" determination and is subject to review through due process and judicial hearings. *See* 34 C.F.R. § 300.536(a)-(b).

75. Taken together, for a child with a disability to be entitled to a manifestation determination, he must prove that either he was suspended from school for more than ten school days within a single school year or, alternatively, that he was subject to a series of removals during a single school year that amounted to more than ten school days.

76. Petitioner has not met this burden. As the evidence shows, during the [redacted] school year, school staff contacted Petitioner's parents many times due to his behavior. At times, the parents would allow Petitioner to remain at school, other times, they would voluntarily take him home, though they were not required to do so. Moreover, Petitioner's discipline records from that time show no out of school suspensions. As such, Petitioner is not entitled to a manifestation determination for the [redacted] school year.

77. Moreover, Petitioner's [redacted] school records show that the School Board suspended him for five non-consecutive days. And while Petitioner's father testified that in addition to these suspensions, the School Board asked him to pick Petitioner up from school early at least five different times due to his behavior, Petitioner's school records refute this claim. Moreover, even if

the undersigned were to rely on Petitioner's father's testimony, these removals would not meet the threshold under 34 C.F.R. § 300.536(a).[5]

78. Finally, as further explained below, Petitioner's placement at [redacted] does not meet the definition of a change in placement. As such, Petitioner is not entitled to a manifestation determination for the [redacted] school year.

LRE

79. The next issue is whether Petitioner's proposed placement at [redacted] violates the LRE mandate within the meaning of the IDEA. That mandate provides, in relevant part:

> 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.

20 U.S.C. § 1412(a)(5)(A).

80. With the LRE directive, "Congress created a statutory preference for educating [disabled] children with [nondisabled] 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 [disabled] children and, at the same time, must tailor each child's educational

[5] Even combining the days when the student was taken home early with the non-consecutive suspensions, the total does not meet the threshold of more than 10 days under 34 C.F.R. § 300.536(a)(1).

placement and program to his special needs." *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989).

81. In *Daniel*, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement: first, whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* 20 U.S.C. § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education; the second issue is whether the school has mainstreamed the child to the fullest extent appropriate. *Daniel*, 874 F.2d at 1048.

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

83. Here, Petitioner asserts that the School Board violated the IDEA's LRE mandate when it assigned him to [redacted] behavior focus classroom for the [redacted] school year.[6] To succeed on this claim, Petitioner would have needed to establish that this environment is more restrictive than [redacted] social thinking classroom. And, as explained above, this argument was also rejected in the Order on Petitioner's Motion to Enforce Stay-Put. As such, this claim is denied.

[6] Notably, Petitioner's current placement is the Hospital Homebound program, the most restrictive placement, in which he has no contact with any other students, disabled or not. The continued appropriateness of this placement is not at issue here.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof. All requests for relief are denied.

DONE AND ORDERED this 28th day of August, 2024, in Tallahassee, Leon County, Florida.

NICOLE D. SAUNDERS
Administrative Law Judge
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Filed with the Clerk of the
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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).