

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

Case No. 24-4103EDM

vs.

LAKE COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

An expedited due process hearing was held, by agreement of the parties, on December 5, 2024. Administrative Law Judge Jessica E. Varn presided over the hearing, which was held via Zoom conference.

**APPEARANCES**

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

For Respondent:    Anastasia Protopapadakis, Esquire  
                              Gray Robinson, P.A.  
                              333 Southeast Second Avenue, Suite 3200  
                              Miami, Florida 33131

**STATEMENT OF THE ISSUES**

Whether the student's conduct, which resulted in disciplinary action, should have been subject to a manifestation determination review (MDR), and; if so, whether the conduct was a manifestation of his disability.

**PRELIMINARY STATEMENT**

Petitioner filed a request for an expedited due process hearing on or about November 4, 2024. It was promptly filed with the Division of Administrative

Hearings (DOAH) on the next day. On November 13, 2024, a pre-hearing conference was held with the parties. The parties were advised of the deadline for disclosure of both a proposed witness list and all proposed exhibits. The parties were also reminded that the evidentiary record would be opened and closed at the due process hearing, and all proposed exhibits needed to be placed in the evidentiary record at the due process hearing. Petitioner was also advised of his burden of proof.

The parties mutually agreed to schedule the hearing for December 5, 2024, and the hearing was held then. The student's father testified on behalf of Petitioner. The School Board presented the testimony of four witnesses, whose identities and roles are found in the Transcript, which was not provided to the undersigned prior to the preparation of this Final Order. The School Board's Exhibits 4, 13, and 14, were admitted into the record.

At the end of the due process hearing, the parties were informed that they could file proposed final orders by no later than December 12, 2024, with or without the Transcript; and that this Final Order would be issued no later than December 19, 2024. Petitioner timely filed a Proposed Final Order, which was considered in preparing this Final Order. Petitioner attached exhibits to his Proposed Final Order, which were not reviewed or considered, as this record had been closed at the end of the due process hearing.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, male pronouns will be utilized 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. The student is a [REDACTED]-grader, eligible for exceptional student education (ESE). He is educated in an ESE classroom with six to seven students, with three adults always present. The adults consist of an ESE teacher, a teacher's assistant, and a registered behavior technician. He has never needed a behavior intervention plan (BIP).

2. In September [REDACTED], the student violated the code of conduct by "...running around the room, climbing on chairs & desks, jumping off them. Punching at the whiteboard and the desks. [He] was putting [his] hands in [his] pants and tried to get another student to put their hands in [his] pants. [\*\*] was rubbing [his] body on adults and tried to pull out [his] genitalia and rub it on another student."

3. The student had never been suspended from school, but because of this incident, he was suspended from school for two days and received a written reprimand. This was a first-time offense, and it was categorized as a "sexual offense."

4. After a meeting with the father, the Principal of the [REDACTED] school agreed to reduce the offense to "disrespect."

5. The record reflects that this suspension was the first time that the student was suspended. Stated another way, the requisite 10-day suspension trigger for an MDR was not met, so the School Board had no duty to conduct an MDR.

6. The school staff, in response to this new maladaptive behavior, sought and received consent from the student's father to conduct a functional behavior assessment (FBA). The data collection for the FBA has been obstructed by the student's father, who has refused to bring [REDACTED] son back to school regularly.

7. The School Board provided compensatory education for the two days of suspension, and has also tried to convene the individualized education plan

(IEP) team to address the student's needs. Unfortunately, the student's father, as of the day of the hearing, had not yet cooperated.

8. The evidence overwhelmingly establishes that the School Board had no duty to conduct an MDR for this one-time offense.

### 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-6.03311(9)(u) and 6A-6.03312(7).

10. Petitioner bears the burden of proof for each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Dep't of Educ., Assistance to States for the Educ. of Child. with Disab.*, 71 Fed. Reg. 46724 (Aug. 14, 2006)(explaining that the parent bears the burden of proof in a proceeding challenging a school district's manifestation determination).

11. As a threshold matter, it must first be determined whether the student has experienced a change of placement because of a disciplinary removal. Florida Administrative Code Rule 6A-6.03312 provides that “[s]chool personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements and procedures in this rule, is appropriate for a student with a disability who violates a code of student conduct.”

12. Under this rule, a “change of placement because of disciplinary removal” is defined as follows:

(1) Definitions applicable to discipline of students with disabilities. For purposes of this rule, the following definitions apply:

(a) Change of placement because of disciplinary removals. For the purpose of removing a student with a disability from the student's current educational placement as specified in the student's IEP under this rule, a change of placement occurs when:

1. The removal is for more than ten (10) consecutive school days, or

2. The student has been subjected to a series of removals that constitutes a pattern that is a change of placement because the removals cumulate to more than ten (10) school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. A school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to review through proceedings. due process and judicial proceedings.

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

13. Here, the two-day suspension was not a change in placement, triggering the obligation to conduct an MDR.

14. Petitioner failed to establish that the School Board should have conducted an MDR in disciplining the student for this one-time offense. Accordingly, all relief requested by Petitioner is denied.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all relief requested by Petitioner is DENIED.

DONE AND ORDERED this 16th day of December, 2024, in Tallahassee, Leon County, Florida.

  
Case No. 24-4103EDM

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JESSICA E. VARN  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of December, 2024.

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).